

OCT 16 2019



At 11:38 A.M.  
Velva L. Price, District Clerk

Cause No. D-1-GN-19-007086

STATE OF TEXAS,

Plaintiff,

v.

TRIPLE P.G. SAND DEVELOPMENT,  
L.L.C.,

Defendant.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

126TH JUDICIAL DISTRICT

**AMENDED AGREED TEMPORARY RESTRAINING ORDER**

On this day, Plaintiff, the State of Texas (“State”), and Defendant, Triple P.G. Sand Development, L.L.C. (“Triple P.G.”), presented to the Court this Agreed Temporary Restraining Order. The State appeared through Attorney General Ken Paxton, on behalf of the people of Texas and the Texas Commission on Environmental Quality (“TCEQ”). Defendant Triple P.G. appeared through counsel.

The purpose of this Agreed Temporary Restraining Order is to enforce the Texas Water Code, and the TCEQ’s rules promulgated thereunder, which control the quality of water in the state, pertaining to the Defendant’s sand mining and processing operation, located at 1025 Hueni Road in Porter, Texas.

The Court, having reviewed this Agreed Temporary Restraining Order, finds that it is a proper resolution of the matters raised in the State’s application for temporary restraining order in the Plaintiff’s Original Petition and Application for Injunctive Relief. The Court, therefore, approves this Agreed Temporary Restraining Order.

IT IS THEREFORE ORDERED that the following Definitions and General Provisions apply to this Agreed Temporary Restraining Order:

**I. Definitions and General Provisions**

1.1 As used in this Agreed Temporary Restraining Order, the following terms have the meaning set forth below:

- A. "Defendant" means Triple P.G. Sand Development, L.L.C., as well as its officers, agents, servants, and employees and upon those persons in active concert or participation with them;
- B. "Facility" means the sand mining operation at 1025 Hueni Road in Porter, Texas, including 1) any areas where sand was dredged and 2) pits or ponds where process wastewater was stored;
- C. "Effective Date" means the date that the Court signs this Agreed Temporary Restraining Order;
- D. "Immediately" means the date this Court signs this Agreed Temporary Restraining Order;
- E. "Industrial Waste" means waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business. *See* Tex. Water Code § 26.001(11). It includes "process wastewater" (as defined herein). Additionally, it includes industrial waste that has commingled with stormwater or surface water (*e.g.*, water flowing to or from White Oak Creek and Caney Creek).
- F. "OAG" means the Office of the Attorney General of Texas;
- G. "Parties" means Plaintiff, the State of Texas, and Defendant Triple P.G. Sand Development, L.L.C.;
- H. "Process Wastewater" is any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product. *See* 30 Tex. Admin. Code § 305.2(30). It includes water in the Facility's pits and/or ponds.

- I. "TCEQ" means the Texas Commission on Environmental Quality;
- J. "Water" or "water in the state" means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state. It includes White Oak Creek, Caney Creek, the San Jacinto River and Lake Houston.

1.2 The Parties and their counsel represent and warrant that they have participated fully in the drafting, review, and revision of this Agreed Temporary Restraining Order. The Parties and their counsel represent and warrant that they understand the conduct prohibited by and required by this Agreed Temporary Restraining Order. The Parties and their counsel represent and warrant that they understand the meaning, definition, use, and intent of all terms in this Agreed Temporary Restraining Order.

1.3 Defendant acknowledges receipt of a copy of this Agreed Temporary Restraining Order, is aware of the duties placed upon it by the provisions of this Agreed Temporary Restraining Order, and is willing and capable of carrying out those duties in full. The Defendant waives the necessity of the issuance and service of a writ of injunction and show cause order pursuant to Texas Rule of Civil Procedure 692.

1.4 Each of the undersigned representatives of a Party to this Agreed Temporary Restraining Order certifies that he or she is fully authorized to enter into the terms and conditions of the Agreed Temporary Restraining Order and to legally execute and bind that party to this Agreed Temporary Restraining Order.

1.5 The Parties hereby waive the right of appeal from this Agreed Temporary Restraining Order.

1.6 The Parties stipulate that prior drafts of this Agreed Temporary Restraining Order, or any language proposed by any party in the negotiations that resulted in this Agreed Temporary Restraining Order, shall not be admissible in evidence for any purpose.

## II. Temporary Restraining Order

2.1 IT IS FURTHER ORDERED that Defendant Triple P.G. Sand Development, L.L.C., as well as its officers, agents, servants, and employees and those persons in active concert or participation with them who receive actual notice of this order, are hereby temporarily restrained and enjoined as follows:

2.2 Defendant shall not engage in any operations at its Dredge Facility that discharge process wastewater, nor shall Defendant engage in any operations that produces process wastewater that must be discharged off the Defendant's property.

2.3 Defendant shall immediately begin repairing damaged or breached berms around the pits and ponds at the Facility.

2.4 Within fourteen days of the Effective Date, Defendant shall ensure that all pits and ponds at the Facility are surrounded by berms that are capable of hydraulically isolating any Industrial Waste therein. Any breaches in existing berms shall likewise be repaired to ensure hydraulic isolation. The berms shall be constructed and repaired or the Defendant shall take other action, as necessary to halt the influx of water from creeks on or adjacent to the Facility's pits and/or ponds, to prevent commingling with any Industrial Waste and/or Process Wastewater and sediment within the dredge ponds, and to prevent Industrial Waste and/or Process Wastewater from flowing out of

the Facility's ponds into water in the state. The berms shall also be constructed and repaired as necessary to halt and prevent any discharges of Industrial Waste and/or Process Wastewater from the Facility's ponds and/or pit during rain events.

- 2.5 Defendant shall immediately commence efforts to cease and prevent all discharges of any Industrial Waste and/or Process Wastewater from the Facility into or adjacent to waters in the state.
- 2.6 Within fourteen days of the Effective Date, Defendant shall retain the services of a Professional Engineer, licensed in the State of Texas and appropriately qualified, to 1) assess whether the Facility's berms are capable of hydraulically isolating the pits and ponds in accordance with the requirements of Paragraph 2.4 above on a permanent basis, and 2) identify additional and/or alternative remedial efforts that will prevent future discharges of any Industrial Waste and/or Process Wastewater from the Facility into or adjacent to waters in the state.
- 2.7 Defendant shall not destroy or delete any records or electronic information in its possession, custody, or control that relate to or concern their activities at the Facility, including the processing, storage, recycling, discharge or disposal of any sand or Industrial Waste that occurred or existed during the five years preceding the Effective Date through final disposition of this lawsuit.
- 2.8 Within fourteen days of the Effective Date, Defendant shall submit a written certification to the TCEQ and OAG to demonstrate its efforts towards satisfying the work required under these injunctive provisions. Certifications

required by these injunctive provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Defendant, and shall include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

- 2.9 Defendant may request an extension of any deadline in the Agreed Temporary Restraining Order by providing the following information to the TCEQ and OAG in writing: (a) description of good faith efforts made by Defendant to meet the deadline; (b) explanation why the deadline has not been met despite those efforts; (c) length of the requested extension; and (d) reasons for the requested extension. The OAG and TCEQ shall consider the request and provide a written response as soon as practicable. Reasonable, justified requests for extensions will be granted only upon Defendant’s demonstration of diligent efforts to comply with the existing deadline. An agreed modification of any deadline shall be in writing and signed by all Parties.
- 2.10 While Defendant performs the actions required in this Agreed Temporary Restraining Order, the TCEQ may submit requests for information in writing to Defendant through its counsel. Defendant shall respond to any requests for additional information from the TCEQ by the deadline in the request or within

three (3) days of receiving such questions or requests, if no deadline is specified.

2.11 Any reports, submissions, data, updates, extension requests, or other documentation required to be submitted by Defendant in this Agreed Temporary Restraining Order to the TCEQ and Office of the Attorney General shall be sent to the following addresses and/or e-mails:

Water Section Manager  
Region 12—Houston  
Texas Commission on Environmental Quality  
5425 Polk Street, Suite H  
Houston, Texas 77023-1452  
R12WQ@tceq.texas.gov

and

H. Carl Myers  
Environmental Protection Division  
Office of the Attorney General  
P.O. Box 12548, MC-066  
Austin, Texas 78711-2548  
Carl.Myers@oag.texas.gov

### **III. Temporary Injunction Setting and Bond Exemption**

3.1 The State of Texas is exempt from posting bond pursuant to Tex. Civ. Prac. & Rem. Code § 6.001(a).

IT IS FURTHER ORDERED that the hearing on Plaintiff's application for temporary injunction is set for 9:00 a.m. on **October 28, 2019**. The purpose of the hearing will be to determine whether this temporary restraining order should be made a temporary injunction pending a full trial on the merits.

This order expires on October 30, 2019.

SIGNED this 16th day of October, 2019 at 10:57a .m.

  
HONORABLE JUDGE PRESIDING

**APPROVED AS TO FORM AND SUBSTANCE AND ENTRY REQUESTED:**

KEN PAXTON  
Attorney General of Texas

JEFFREY C. MATEER  
First Assistant Attorney General

DARREN L. MCCARTY  
Deputy Attorney General for Civil Litigation

PRISCILLA M. HUBENAK  
Chief, Environmental Protection Division



---

H. CARL MYERS  
Assistant Attorney General  
State Bar No. 24046502  
Carl.Myers@oag.texas.gov

PHILLIP LEDBETTER  
Assistant Attorney General  
State Bar No. 24041316  
Phillip.Ledbetter@oag.texas.gov  
Office of the Attorney General of Texas  
Environmental Protection Division  
P.O. Box 12548, MC-066  
Austin, Texas 78711-2548  
Telephone: (512) 463-4089  
Facsimile: (512) 320-0911

ATTORNEYS FOR THE STATE OF TEXAS

**APPROVED AS TO FORM AND SUBSTANCE AND ENTRY REQUESTED:**



**CHRISTOPHER PEPPER**

State Bar No. 24034622

[cpepper@winstead.com](mailto:cpepper@winstead.com)

**ANDREW SCHUMACHER**

State Bar No. 24051310

[aschumacher@winstead.com](mailto:aschumacher@winstead.com)

**WINSTEAD, P.C.**

401 Congress Avenue, Suite 2100

Houston, Texas 77056

Telephone: (512) 370-2800

Facsimile: (512) 370-2850

**ATTORNEYS FOR DEFENDANT**



CITATION  
THE STATE OF TEXAS  
CAUSE NO. D-1-GN-19-007086

STATE OF TEXAS

, Plaintiff

vs.

TRIPLE P.G. SAND DEVELOPMENT, L.L.C.

, Defendant

TO: TRIPLE P.G. SAND DEVELOPMENT, L.L.C.  
BY SERVING ITS REGISTERED AGENT AND DIRECTOR,  
PRABHAKAR GUNIGANTI  
50 WATERFORD CIRCLE  
NACOGDOCHES, TEXAS 75965  
OR WHEREVER HE MAY BE FOUND

Defendant, in the above styled and numbered cause:

**YOU HAVE BEEN SUED.** You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Attached is a copy of the THE STATE OF TEXAS'S ORIGINAL PETITION AND APPLICATION FOR INJUNCTIVE RELIEF of the PLAINTIFF in the above styled and numbered cause, which was filed on OCTOBER 11, 2019 in the 126TH JUDICIAL DISTRICT COURT of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, October 11, 2019.

REQUESTED BY:  
HENRY CARL MYERS  
OFFICE OF THE ATTORNEY GENERAL  
P O BOX 12548 CAPITOL STATION MC 066  
AUSTIN, TX 78711-2548  
BUSINESS PHONE: (512)475-4103 FAX: (512)320-0667



*[Handwritten Signature]*  
**Valva L. Price**  
**Travis County District Clerk**  
**Travis County Courthouse**  
**1000 Guadalupe, P.O. Box 679003 (78767)**  
**Austin, TX 78701**

PREPARED BY: CARRISA ESCALANTE

--- R E T U R N ---

Came to hand on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_M., and executed at \_\_\_\_\_ within the County of \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_M., by delivering to the within named \_\_\_\_\_, each in person, a true copy of this citation together with the THE STATE OF TEXAS'S ORIGINAL PETITION AND APPLICATION FOR INJUNCTIVE RELIEF accompanying pleading, having first attached such copy of such citation to such copy of pleading and endorsed on such copy of citation the date of delivery.

Service Fee: \$ \_\_\_\_\_

\_\_\_\_\_  
Sheriff / Constable / Authorized Person

Sworn to and subscribed before me this the

By: \_\_\_\_\_

\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Printed Name of Server

\_\_\_\_\_  
Notary Public, THE STATE OF TEXAS

\_\_\_\_\_  
County, Texas