

Velva L. Price
District Clerk
Travis County
D-1-GN-19-007086
Carrisa Stiles

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

STATE OF TEXAS,

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IN THE DISTRICT COURT

Plaintiff,

v.

TRAVIS COUNTY, TEXAS

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

Defendant.

126TH JUDICIAL DISTRICT

**THE STATE OF TEXAS’S ORIGINAL PETITION AND
APPLICATION FOR INJUNCTIVE RELIEF**

The State of Texas, by and through its Attorney General, on behalf of the Texas Commission on Environmental Quality (“TCEQ”), files this Original Petition and Application for Injunctive Relief against Triple P.G. Sand Development, L.L.C. (“Triple P.G.”).

INTRODUCTION

This is a suit to protect the quality of water in the state by enforcing violations of Texas Water Code Chapter 26. Sand mine operator Triple P.G. has experienced multiple berm breaches around its dredge ponds during heavy rainfall, resulting in unauthorized discharges of sediment-laden process wastewater (industrial waste) into waters in the state. TCEQ cited Triple P.G. in May 2019 for the unlawful discharge of process wastewater. Triple P.G. made repairs to its berms, apparently halting the discharge. However, in September, additional breaches occurred and have not been repaired. Because of those breaches, process wastewater and sediment within the dredge pond has flowed freely into the waters in the state *and continues to do so*. Specifically, dredge pond contents are flowing unobstructed into Caney Creek, which leads directly to the East Fork of the San Jacinto River, then to Lake Houston.

The State seeks a temporary restraining order, temporary injunction, permanent injunction, civil penalties, and its reasonable attorneys’ fees and costs.

I.
DISCOVERY

1. The State intends to conduct discovery under a Level 2 Discovery Control Plan pursuant to Tex. R. Civ. P. 190.

2. This case is not subject to the restrictions of expedited discovery under Tex. R. Civ. P. 169 because the State seeks non-monetary injunctive relief and the State's claims for civil penalties, costs, and attorneys' fees exceed \$100,000.

3. Pursuant to Texas Rule of Civil Procedure 47(c), the State states that it seeks monetary relief over \$200,000 but not more than \$1,000,000, non-monetary injunctive relief, and all other relief to which it is entitled.

II.
PARTIES

4. Plaintiff, the State of Texas, is authorized to bring this suit through its Attorney General at the request of TCEQ pursuant to Tex. Water Code §§ 7.032, 7.072, and 7.105. No filing fee or other security for costs is required of the State under Tex. Civ. Prac. & Rem. Code § 6.001.

5. Defendant Triple P.G. Sand Development, L.L.C. is a Texas corporation with its principal place of business at 4321 Kingwood Drive #135, Kingwood, Texas 77339. Triple P.G. can be served through its registered agent and Director, Prabhakar Guniganti, at 50 Waterford Circle, Nacogdoches, Texas 75965, or wherever he may be found.

III.
JURISDICTION AND VENUE

6. This Court has jurisdiction over this case, and venue is proper in Travis County pursuant to Tex. Water Code §§ 7.032 and 7.105, and Tex. Gov't Code § 2001.202.

IV.
FACTUAL ALLEGATIONS

7. Defendant Triple P.G. owns and operates a sand mining operation at 1025 Hueni Road in Porter, Harris and Montgomery Counties, Texas (the “Facility”).

8. The Facility is registered with TCEQ as an active Aggregate Production Operation (“APO”), engaged in operating sand and gravel pits as well as dredges and in washing, screening, or otherwise preparing sand and gravel for use in construction and other industries.

9. Triple P.G.’s sand mining operations produce “process wastewater” that is laden with sediment and is a product of Triple P.G.’s industrial activities at the Facility, thereby making it industrial waste. This process wastewater is stored in dredge ponds at the Facility. TCEQ has not permitted or otherwise authorized Triple P.G. to discharge this process wastewater into any waters in the state (*e.g.*, any creek).

10. Presently, berms around a large dredge pond at the Facility remain breached. Water from White Oak Creek, on the west of the Facility, enters the dredge pond through a berm breach approximately 150 feet long. Water is currently flowing into the dredge pond, commingling with the water and sediment therein, and then flowing out into Caney Creek, on the east of the Facility, through a berm breach approximately 100 feet long.

11. Over the past several years, the Facility has repeatedly failed to prevent the discharge of process wastewater from the large dredge pond, resulting in unlawful discharges of sediment-laden, silty water into adjacent Caney Creek in the San Jacinto River basin, and ultimately into Lake Houston.

January 2015 Unlawful Discharge Investigation

12. In January 2015, TCEQ investigated a complaint that a sand pit was discharging very silty water into Lake Houston. TCEQ investigated Triple P.G. after identifying it as the closest

sand mining operation to the alleged discharge point. A copy of that investigation report, TCEQ Inv. #1222233, is attached as **Exhibit A**.

13. During the January 2015 investigation, TCEQ determined that a large dredge pond at the Facility received process wastewater produced in the Facility's sand mining operations. In times of heavy rain, the dredge pond would become full, eventually reaching the level of a spillway on the east side of the Facility. Commingled water from the dredge pond would then flow unencumbered into Caney Creek, within the San Jacinto River Basin.

14. Investigators informed Facility personnel that the water flowing from the dredge pond over the spillway constituted an unauthorized discharge of process wastewater. The Facility agreed to, and did, use dirt to block the spillway, apparently preventing dredge pond water from discharging through the spillway into Caney Creek.

May 2019 Investigation

15. On or about May 13, 2019, a berm breached at the southwestern edge of the Facility under heavy rain, causing water from White Oak Creek to enter the Facility's large dredge pond from the outside. The breach was approximately 100 feet in length and 30 feet in width. A second breach occurred on the eastern edge of the Facility, causing water to flow from the dredge pond to Caney Creek. The breach was approximately 75 feet in length and 30 feet in width.

16. As a result of the two berm breaches, from May 13, 2019 until May 29, 2019—for a total of 17 days—water entered the Facility's dredge pond on the west side (from White Oak Creek) and exited on the east side (into Caney Creek).

17. Facility personnel trucked in clay filler, filling in the breaches and packing them with clay. The berm breaches occurred on May 13 and remained breached until May 29, a total of 17 days. TCEQ conducted an investigation, producing TCEQ Inv. #1569361, which is attached as

Exhibit B. TCEQ cited Triple P.G. with the violation of failure to prevent the unauthorized discharge of process wastewater.

18. As a result of the May breaches, the entire contents of the Triple P.G. dredge pond (about 180 acres in area) were released into Caney Creek. An estimated 325 million gallons of sediment-laden water exited into Caney Creek, which leads directly to the East Fork of the San Jacinto River and onward to Lake Houston.

September 2019 Investigation

19. Between September 20 and 23, 2019, another berm breach occurred at the southwestern edge of the Facility that borders White Oak Creek. The breach was approximately 150 feet in length and 30 feet in width. As a result, water from White Oak Creek came into the Facility's large dredge pond from the outside. A second breach occurred at the southeastern edge of the Facility, along Caney Creek. This second breach was approximately 100 feet in length and 30 feet in width. As a result, commingled water flowed from inside the dredge pond out into Caney Creek. In addition, at the southeastern edge of the Facility, there was an area along the southeastern berm where water had overtopped the berm and flowed off-site, causing water from the dredge pond to flow southeast over the berms and off-site towards Caney Creek.

20. As a result of the two berm breaches, the dredge pond was breached on two sides of the Facility, with White Oak Creek coming into the Facility from the west through an approximate 150-foot berm breach, and then exiting on the east edge of the Facility into Caney Creek, including through an approximate 100-foot breach of the southeastern berm. TCEQ investigators documented the situation in TCEQ Inv. #1597993, attached as **Exhibit C.**

21. As of October 9, 2019, investigators determined that the berm breaches had not been repaired and that wastewater continued to flow from the dredge pond of the Facility into Caney Creek.

22. Upon information and belief, the berm breaches remain, and process wastewater continues to flow from the dredge pond of the Facility into Caney Creek.

23. Triple P.G. is not authorized by TCEQ to discharge process wastewater from the Facility into any water of the state.

V.
NATURE OF SUIT AND AUTHORITY

24. This suit is a civil enforcement proceeding to enforce Chapter 26 of the Texas Water Code and related regulations.

Texas Water Code – Unauthorized Discharges Prohibited

25. Section 26.121(a)(1) of the Texas Water Code provides that no person may discharge industrial waste into or adjacent to any water in the state, except as authorized by TCEQ.¹

26. “Industrial waste” includes “waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business.” Tex. Water Code § 26.001(11).

¹ If process wastewater from a sand mining operation is managed in a way that results in discharge to surface waters, an individual Texas Pollutant Discharge Elimination System (“TPDES”) wastewater permit is required. TPDES wastewater permits are issued with minimum technology-based effluent limitations that comply with Environmental Protection Agency (“EPA”) adopted national effluent limitation guidelines contained in Title 40, Code of Federal Regulations, Part 436, Subparts C and D. Individual wastewater TPDES permit applications are evaluated to ensure authorized discharges further comply with Texas Surface Water Quality Standards adopted in Title 30, Texas Administrative Code Chapter 307. Additional provisions can be placed in individual wastewater permits to protect surface water bodies, with examples including establishing specific buffer zones, best management practices, and other special conditions.

27. “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.” 30 Tex. Admin. Code § 305.2(30). Process wastewater is industrial waste.

28. “To discharge” means “to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.” Tex. Water Code § 26.001(20).

29. A “person” includes “an individual, association, partnership, corporation, municipality, state or federal agency, or an agent or employee thereof.” Tex. Water Code § 26.001(25).

30. “Pollution” means “the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.” Tex. Water Code § 26.001(14).

31. “Water in the state” includes “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.” Tex. Water Code § 26.001(5).

Texas Water Code – State Enforcement Authority

32. “A person may not cause, suffer, allow, or permit a violation of a statute within the commission’s jurisdiction or a rule adopted or an order or permit issued under such a statute.” Tex. Water Code § 7.101.

33. “A person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit” under the jurisdiction of TCEQ “shall be assessed for each violation a civil penalty not less than \$50 nor greater than \$25,000 for each day of each violation....” Tex. Water Code § 7.102. “Each day of a continuing violation is a separate violation.” *Id.*

VI. **CIVIL PENALTIES**

Unauthorized Discharge of Wastewater (Tex. Water Code § 26.121)

34. Section 26.121(a)(1) of the Texas Water Code provides that no person may discharge industrial waste into or adjacent to any water in the state, except as authorized by TCEQ.

35. Triple P.G. is a “person” as defined in Tex. Water Code § 26.001(25).

36. TCEQ has not authorized Triple P.G. to discharge any industrial waste into or adjacent to any water in the state.

37. Process wastewater is industrial waste as defined in Tex. Water Code § 26.001(11).

38. Caney Creek, San Jacinto River and its tributaries, and Lake Houston are waters in the state as set forth in Tex. Water Code § 26.001(5).

39. From May 13 through May 29, 2019, the entire contents of the Triple P.G. dredge pond (about 180 acres in area) were released into Caney Creek as the result of two berm breaches. Therefore, Defendant Triple P.G. caused, allowed, or permitted the discharge of industrial waste (process wastewater) into or adjacent to water in the state, in continuous violation of Tex. Water Code § 26.121(a)(1) for 17 days.

40. From about September 20 through at least October 9, 2019, the contents of the dredge pond of Triple P.G. were released into Caney Creek through one or more berm breaches. Therefore, Defendant Triple P.G. has caused, allowed, or permitted the discharge of industrial waste (process wastewater) into or adjacent to water in the state, in continuous violation of Tex. Water Code § 26.121(a)(1) for at least 19 days.

41. Pursuant to Tex. Water Code § 7.102, the State requests that Triple P.G. be assessed a civil penalty of not less than \$50 nor more than \$25,000 for each day that it caused, suffered, allowed, or permitted the discharge of industrial waste into or adjacent to water in the state.

VII.
APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY
INJUNCTION, AND PERMANENT INJUNCTION

42. The Attorney General may institute suit in the name of the State of Texas and on behalf of TCEQ to enjoin a violation or threatened violation of any “statute within the commission’s jurisdiction or a rule adopted or an order or a permit issued under such a statute...” Tex. Water Code §§ 7.032 and 7.105.

43. As set forth in Section VI of this petition, Triple P.G. has caused, suffered, allowed, or permitted the unauthorized discharge of contaminated wastewater into water in the state. Unless enjoined, Defendant will continue to operate and maintain the Facility in violation of the law.

44. No bond is required of the State prior to granting of an injunction as set forth in Tex. Water Code § 7.032(d).

45. The State requests that the Court enter a temporary restraining order requiring Triple P.G. to immediately repair the berm breaches around its dredge ponds at the Facility. Such repairs should be adequate to halt the influx of water from White Oak Creek on the west of the dredge ponds, to prevent further commingling with the process wastewater and sediment within

the dredge ponds, and to prevent water from flowing out the east side of the dredge ponds into Caney Creek, until such time as a temporary injunction hearing may be held.

46. The State requests a temporary injunction ordering Triple P.G., its officers, agents, servants, employees, and all other persons acting in concert or participation with them, to take appropriate actions to ensure that further berm breaches and further unauthorized discharges of process wastewater will not occur pending trial.

47. The State requests that appropriate permanent injunctive relief be granted at trial.

VIII. ATTORNEY'S FEES AND COSTS

48. This is an action brought by the State to recover civil penalties and for injunctive relief. As set forth in Tex. Water Code § 7.108, the Attorney General is entitled to recover and collect reasonable attorney's fees, investigative costs, and court costs incurred in relation to this proceeding on behalf of the State. In the event of an appeal to the Court of Appeals or to the Supreme Court, the Attorney General is entitled to recover and collect its additional reasonable attorney's fees and court costs on behalf of the State.

IX. POST-JUDGMENT INTEREST

49. Pursuant to Tex. Fin. Code § 304.003, the State asks this Court to award the State post-judgment interest on all amounts awarded in relation to this proceeding, at the maximum rate allowed by law.

PRAYER FOR RELIEF

The State of Texas requests the following:

1. That the Court enter a temporary restraining order requiring Triple P.G. to immediately repair the berm breaches around the dredge ponds at the Facility,

preventing the contents of the dredge ponds from commingling with White Oak Creek or Caney Creek;

2. That a citation be issued for Triple P.G. to appear, answer, and show cause why a temporary injunction should not be granted;
3. That upon hearing, temporary injunctive relief be granted against Triple P.G. as requested herein;
4. That upon trial, the Court grant a permanent injunction against Triple P.G. as requested herein;
5. That the Court grant judgment against Triple P.G. for appropriate civil penalties within the range allowed by law;
6. That the Court award the State its reasonable attorney's fees, court costs, and reasonable investigative costs in this action;
7. That the Court award the State post-judgment interest at the legal rate from the date of judgment until fully paid; and
8. That the Court award the State all such other relief, general and special, at law and in equity, to which it may show itself justly entitled.

Respectfully submitted,

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