

NOV 25 2019 JG

At 9:03 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.

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IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

126TH JUDICIAL DISTRICT

AGREED TEMPORARY INJUNCTION

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 Injunction. 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 Injunction 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 Defendant's sand mining and processing operation, located at 1025 Hueni Road in Porter, Texas.

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

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

I. Definitions and General Provisions

1.1 As used in this Agreed Temporary Injunction, 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 Injunction;
- D. "Immediately" means the date this Court signs this Agreed Temporary Injunction;
- 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.
- 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 that is in or has ever been in the Facility's "Dredge Ponds," as defined herein.

- I. "TCEQ" means the Texas Commission on Environmental Quality;
- J. "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.
- K. "Dredge Ponds" are the pits or ponds from which Triple P.G. has removed sand or sediment for processing. It specifically includes the "water body area" reflected on the Site Map issued November 3, 2016 (attached hereto as Exhibit A).

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 Injunction. The Parties and their counsel represent and warrant that they understand the conduct prohibited by and required by this Agreed Temporary Injunction. The Parties and their counsel represent and warrant that they understand the meaning, definition, use, and intent of all terms in this Agreed Temporary Injunction.

1.3 Defendant acknowledges receipt of a copy of this Agreed Temporary Injunction, is aware of the duties placed upon it by the provisions of this Agreed Temporary Injunction, 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 Injunction certifies that he or she is fully authorized to enter into the terms and conditions of

the Agreed Temporary Injunction and to legally execute and bind that party to this Agreed Temporary Injunction.

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

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

II. Temporary Injunction

2.1 IT IS FURTHER ORDERED that Defendant Triple P.G., 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 conduct any dredging operations at the Facility. Defendant shall not engage in any operations at its Facility that discharge process wastewater, nor shall Defendant engage in any operations at the Facility that produce process wastewater that must be discharged off Defendant's property without express prior approval from TCEQ.

2.3 Defendant shall ensure that the Dredge 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 Defendant shall take other action, as necessary, to halt the influx of water from creeks on or adjacent to the Facility's Dredge 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 Dredge Ponds into water in the state. The berms shall be 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.

- 2.4 Defendant shall immediately and permanently cease and prevent all discharges of any Industrial Waste and/or Process Wastewater from the Facility into or adjacent to waters in the state. Defendant shall not allow any discharge of water that is in or has ever been in the Facility's Dredge Ponds without the express prior approval of TCEQ. Defendant likewise agrees to comply with Texas Water Code § 26.121.
- 2.5 Defendant shall immediately retain the services of a Professional Engineer, licensed in the State of Texas and appropriately qualified, to propose a plan satisfactory to TCEQ that will 1) ensure the Facility has berms capable of hydraulically isolating the pits and ponds in accordance with the requirements of Paragraph 2.4 above on a permanent basis OR 2) provide for reclamation of part or all of the Dredge Ponds sufficient to eliminate the foreseeable need for the TCEQ's regulatory oversight of the Dredge Ponds. Defendant shall provide a proposed plan to TCEQ within ninety (90) days.
- 2.6 Any plan developed in accordance with 2.5 above shall reasonably ensure Triple P.G. can prevent future discharges of any Industrial Waste and/or Process Wastewater from the Facility into or adjacent to waters in the state.

Defendant shall facilitate direct communication between TCEQ personnel and the retained expert(s) to allow TCEQ to evaluate the viability of plans proposed or being developed by Defendant.

- 2.7 Either party may request a modification of this Agreed Temporary Injunction in Travis County District Court. Each party agrees to reasonably cooperate to schedule and participate in a hearing on any motion to modify this Agreed Temporary Injunction. If an evidentiary hearing is required, Defendant agrees to make its officers, directors, and/or employees available to testify without requiring issuance or service of a subpoena.
- 2.8 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.
- 2.9 Defendant shall submit monthly (by the 10th day of each calendar month) written certifications to the TCEQ and OAG to demonstrate its efforts towards satisfying the work required under these injunctive provisions, until notified by the State that such certifications are no longer necessary, which shall be before Defendant's implementation of its plan identified in Paragraph 2.5, above. The first of such reports will be due on or before December 10, 2019. 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.”

- 2.10 Defendant may request an extension of any deadline in the Agreed Temporary Injunction 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.
- 2.11 While Defendant performs the actions required in this Agreed Temporary Injunction, 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.

- 2.12 In addition to, and as a separate requirement from all other requirements in this Injunction, Triple P.G. shall immediately use best efforts to comply with the injunctive provisions in this Agreed Temporary Injunction. If Triple P.G. fails to comply wholly with a specific provision in this Agreed Temporary Injunction but could have at least partially complied with that provision, Triple P.G. must do so.
- 2.13 Any reports, submissions, data, updates, extension requests, or other documentation required to be submitted by Defendant in this Agreed Temporary Injunction 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

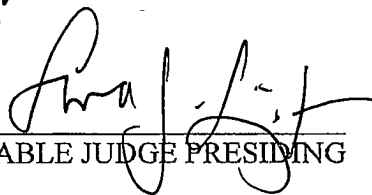
and

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. Trial Setting

IT IS FURTHER ORDERED that this case is set for trial on the merits at 9:00 a.m. on **June 22, 2020**, on the Central Settings Docket pursuant to Rule 2.2 and 2.3 of the Local Rules of Civil Procedure of the District Courts of Travis County.

SIGNED this 25th day of November, 2019 at 9⁰⁰ AM


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
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Telephone: (512) 463-4089
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ATTORNEYS FOR THE STATE OF TEXAS

APPROVED AS TO FORM AND SUBSTANCE AND ENTRY REQUESTED:



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WINSTEAD, P.C.

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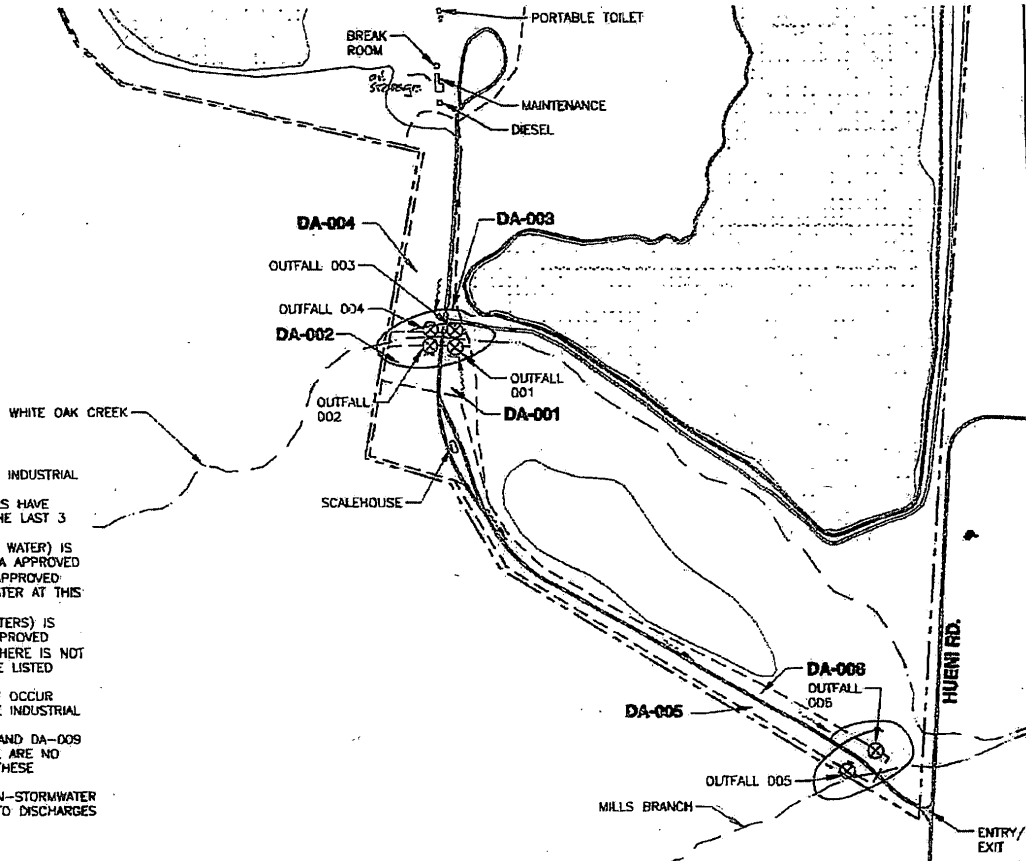
Houston, Texas 77056

Telephone: (512) 370-2800

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ATTORNEYS FOR DEFENDANT

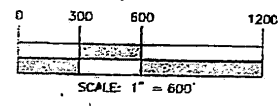
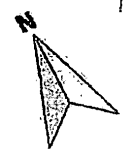
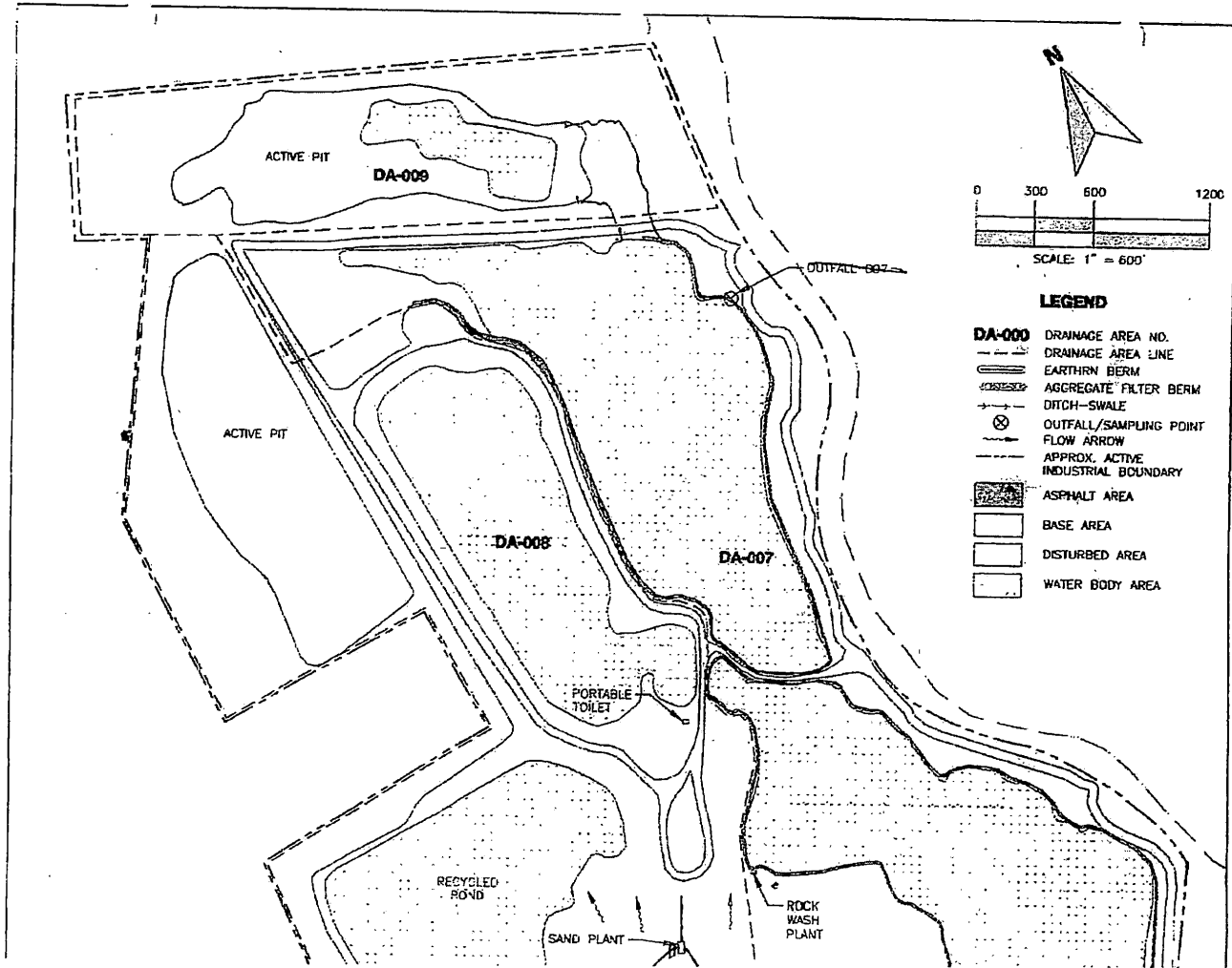
EXHIBIT A



1. APPROX. AREA OF THE ACTIVE INDUSTRIAL BOUNDARY IS 4.76 ACRES.
2. NO KNOWN REPORTABLE SPILLS HAVE OCCURRED ON-SITE WITHIN THE LAST 3 YEARS.
3. WHITE OAK CREEK (RECEIVING WATER) IS NOT LISTED ON THE 2014 EPA APPROVED 303(d) LIST. THERE IS NO APPROVED TMDL FOR THIS RECEIVING WATER AT THIS TIME.
- 3a. CANEY CREEK (RECEIVING WATERS) IS LISTED ON THE 2014 EPA APPROVED 303(d) LIST FOR BACTERIA. THERE IS NOT A TMDL ASSOCIATED WITH THE LISTED SEGMENT.
4. LOADING AND UNLOADING MAY OCCUR ANYWHERE WITHIN THE ACTIVE INDUSTRIAL BOUNDARY AT THE SITE.
5. STORMWATER FROM DA-008 AND DA-009 ARE RETAINED ONSITE. THERE ARE NO OUTFALLS ASSOCIATED WITH THESE DRAINAGE AREAS.
- * WATER FROM ALLOWABLE NON-STORMWATER ACTIVITIES MAY CONTRIBUTE TO DISCHARGES FROM THESE OUTFALLS.

SHEET NO.	SITE MAP		REV.	DESCRIPTION	BY	DATE
	IMAGE:	NONE				
ISSUE DATE:	11/03/2016					
DRAWN BY:	NM					
CHECKED BY:	WK					
SCALE:	1" = 600'					
JOB NO.:	110697-004					

WESTWARD
 Environmental, Engineering, Natural Resources.
 P.O. Box 2205 Boerne, Texas 78006
 (830) 249-8284 Fax: (830) 249-0221
 TBPE REG. NO.: F-4524



LEGEND

- DA-000** DRAINAGE AREA NO.
- DRAINAGE AREA LINE
- ===== EARTHEN BERM
- AGGREGATE FILTER BERM
- - - - - DITCH-SWALE
- ⊗ OUTFALL/SAMPLING POINT
- FLOW ARROW
- - - - - APPROX. ACTIVE INDUSTRIAL BOUNDARY
- ▨ ASPHALT AREA
- BASE AREA
- ▤ DISTURBED AREA
- ▧ WATER BODY AREA