

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-1202-AIR-E RN105669949 CASE NO. 38061
RESPONDENT NAME: TITAN GUNITE, LLC

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATIONS OCCURRED: 1727 DeSoto Street, Houston, Harris County

TYPE OF OPERATION: Sand and cement storage site

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: Complaints were received alleging that Respondent placed stockpiles of sand onsite and that dust was creating a nuisance, covering complainant's vehicles, and causing breathing problems. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: The complainant and Matthew S. Tejada and Cecilia Dykes with Galveston-Houston Association of Smog Prevention (GHASP) have expressed an interest in this matter. The complainant has indicated a desire to speak at Agenda.

COMMENTS RECEIVED: The *Texas Register* comment period expired July 26, 2010. No comments were received.

CONTACTS AND MAILING LIST:

- TCEQ Attorney:** Ms. Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400
- TCEQ Enforcement Coordinator:** Mr. James Nolan, Air Enforcement Section, MC 149, (512) 239-6634
- TCEQ Regional Contact:** Mr. Jason Harris, Houston Regional Office, MC R-12, (713) 767-3609
 Mr. Manuel Bautista, Houston Regional Office, MC R-12, (713) 767-3678
- Respondent:** Mr. Thien Nguyen, President, Titan Gunite, LLC, 1727 DeSoto Street, Houston, TX 77091
- Respondent's Attorney:** Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: May 14, 2009*</p> <p>Dates of Investigation Relating to this Case: May 22, 2009 and August 6, 2009</p> <p>Dates of NOEs Relating to this Case: July 22, 2009 and September 11, 2009</p> <p>Background Facts:</p> <p>The EDRP was filed on February 23, 2010 and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The EDFARP was filed on April 14, 2010. The United States Postal Service returned the EDRP and EDFARP sent by certified mail as "unclaimed." The first class mail has not been returned. The Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>*Multiple complaints have been received and investigated by the Houston Regional office since September 2008, however, TCEQ investigators were able to substantiate only the violations alleged in the May 14, 2009 complaint.</p> <p>Current Compliance Status:</p> <p>Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p>AIR:</p> <p>1. Failed to locate stationary equipment and stockpiles at the Plant at least 300 feet any residence not occupied or used solely by the owner of the property on which the Plant is located [30 TEX. ADMIN. CODE § 106.144(3) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2. Failed to water, treat with dust-suppressant chemicals, oil, or pave and clean as necessary all permanent in-plant roads and vehicle work areas to achieve maximum control of dust emissions [30 TEX. ADMIN. CODE § 106.144(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$6,120</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$6,120</p> <p>This is a Default Order. Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately, begin taking adequate measures to achieve maximum control of sand and dust emissions from the Plant, including all sand piles and in-plant roads and vehicle areas. 2. Within 15 days, submit written certification to demonstrate compliance with Ordering Provision No. 1; 3. Within 30 days, submit an administratively complete permit New Source Review Permit ("NSRP") application. 4. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the NSRP application within 30 days after the date of such requests, or by any other deadline specified in writing. 5. Within 180 days, submit written certification that either authorization to construct and operate a source of air emissions has been obtained or that operations have ceased until such time that appropriate authorization is obtained.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	27-Jul-2009			
	PCW	3-Dec-2009	Screening	29-Jul-2009	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Titan Gunite, LLC				
Reg. Ent. Ref. No.	RN105669949				
Facility/Site Region	12-Houston	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	38061	No. of Violations	2		
Docket No.	2009-1202-AIR-E	Order Type	1660		
Media Program(s)	Air	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Suzanne Walrath		
		EC's Team	Enforcement Team 4		
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000		

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$6,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	2.0% Enhancement	Subtotals 2, 3, & 7	\$120
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Notes: The Respondent received one notice of violation for a dissimilar violation.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$538
 Approx. Cost of Compliance: \$11,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$6,120
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$6,120**

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$6,120
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral offered for non-expedited cases.

PAYABLE PENALTY	\$6,120
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Screening Date 29-Jul-2009

Docket No. 2009-1202-AIR-E

PCW

Respondent Titan Gunite, LLC

Policy Revision 2 (September 2002)

Case ID No. 38061

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105669949

Media [Statute] Air

Enf. Coordinator Suzanne Walrath

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 2%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The Respondent received one notice of violation for a dissimilar violation.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 2%

Screening Date 29-Jul-2009 **Docket No.** 2009-1202-AIR-E **PCW**
Respondent Titan Gunite, LLC *Policy Revision 2 (September 2002)*
Case ID No. 38061 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN105669949
Media [Statute] Air
Enf. Coordinator Suzanne Walrath

Violation Number 1
Rule Cite(s) 30 Tex. Admin. Code § 106.144(3) and Tex. Health & Safety Code § 382.085(b)
Violation Description Failed to locate stationary equipment and stockpiles at the Plant at least 300 feet any residence not occupied or used solely by the owner of the property on which the Plant is located. Specifically, there were four sand piles located within 85 feet and 75 feet of a neighboring residence and a silo located within 126 feet of a neighboring residence.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Major	Moderate	Minor	
	Actual	Potential	Potential	
		x		10%

>> Programmatic Matrix

	Major	Moderate	Minor	Percent
Falsification				
				0%

Matrix Notes Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2 140 Number of violation days

- daily
 - weekly
 - monthly
 - quarterly x
 - semiannual
 - annual
 - single event
- mark only one with an x*

Violation Base Penalty \$2,000

Two quarterly events are recommended based on the date of the first investigation (May 22, 2009) until October 9, 2009.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,000

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$141 **Violation Final Penalty Total** \$2,040

This violation Final Assessed Penalty (adjusted for limits) \$2,040

Economic Benefit Worksheet

Respondent Titan Gunite, LLC
Case ID No. 38061
Reg. Ent. Reference No. RN105669949
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$3,000	22-May-2009	30-Apr-2010	0.94	\$141	n/a	\$141

Notes for DELAYED costs

These are estimated costs to move the sand piles and the silo in order to provide a 300 foot separation distance from any residence. The date required is the date of the first investigation, and the final date is the projected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$3,000

TOTAL

\$141

Screening Date 29-Jul-2009 **Docket No.** 2009-1202-AIR-E **PCW**
Respondent Titan Gunite, LLC *Policy Revision 2 (September 2002)*
Case ID No. 38061 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN105669949
Media [Statute] Air
Enf. Coordinator Suzanne Walrath

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent <input type="text" value="10%"/>	
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	x	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent <input type="text" value="0%"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	x
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	x	(mark with x)

Notes

Violation Subtotal

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount **Violation Final Penalty Total**

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Titan Gunite, LLC
Case ID No. 38061
Reg. Ent. Reference No. RN105669949
Media Air
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment	\$2,500	22-May-2009	30-Apr-2010	0.94	\$8	\$157	\$164
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$2,500	22-May-2009	30-Apr-2010	0.94	\$117	n/a	\$117

Notes for DELAYED costs

These are estimated costs to implement measures at the Site in order to achieve maximum control of dust emissions. The date required is the date of the first investigation, and the final date is the projected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$282

Compliance History Report Pending

Customer/Respondent/Owner-Operator: CN603436148 Titan Gunite, LLC Classification: AVERAGE Rating: 1.50
Regulated Entity: RN105669949 TITAN GUNITE Classification: AVERAGE Site Rating: 1.50
ID Number(s): AIR NEW SOURCE PERMITS REGISTRATION 87165
Location: 1727 DESOTO ST, HOUSTON, TX, 77091
TCEQ Region: REGION 12 - HOUSTON
Date Compliance History Prepared: September 24, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: September 24, 2004 to September 24, 2009
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Suzanne Walrath Phone: 239 - 2134

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 05/11/2009 (745344)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 10/31/2008 (701848)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 106, SubChapter E 106.144(4)
Description: Failure to receive written approval before beginning construction.
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
TITAN GUNITE, LLC;
RN105669949**

§
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§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2009-1202-AIR-E**

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's First Amended Report and Petition filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Titan Gunite, LLC ("Titan").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Titan owns and operates a sand and cement storage plant located at 1727 DeSoto Street, Houston, Harris County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. During investigations conducted on May 22, 2009 and August 6, 2009, a TCEQ Houston Regional Office investigator documented that Titan:
 - a. Failed to locate stationary equipment and stockpiles at the Plant at least 300 feet any residence not occupied or used solely by the owner of the property on which the Plant is located. Specifically, there were four sand piles located within 85 feet and 75 feet of a neighboring residence and a silo located within 126 feet of a neighboring residence; and
 - b. Failed to water, treat with dust-suppressant chemicals, oil, or pave and clean as necessary all permanent in-plant roads and vehicle work areas to achieve maximum control of dust emissions. Specifically, dust from in-plant roads and vehicles were being discharged off-site and causing a negative impact on neighboring properties and vehicles.

4. Titan received notices of the violations on or about July 27, 2009, and September 16, 2009.
5. The Executive Director filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Titan Gunite, LLC” (the “EDPRP”) in the TCEQ Chief Clerk’s office on February 23, 2010.
6. By letter dated February 23, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Titan with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Titan received notice of the EDPRP.
7. The Executive Director filed the “Executive Director’s First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Titan Gunite, LLC” (the “EDFARP”) in the TCEQ Chief Clerk’s office on April 14, 2010.
8. By letter dated April 14, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Titan with notice of the EDFARP. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Titan received notice of the EDFARP.
9. More than 20 days have elapsed since Titan received notice of the EDPRP and EDFARP, provided by the Executive Director. Titan failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1 and 2, Titan is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 382 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Titan failed to locate stationary equipment and stockpiles at least 300 feet any residence not occupied or used solely by the owner of the property on which the Plant is located, in violation of 30 TEX. ADMIN. CODE § 106.144(3) and TEX. HEALTH & SAFETY CODE § 382.085(b).
3. As evidenced by Finding of Fact No. 3.b., Titan failed to water, treat with dust-suppressant chemicals, oil, or pave and clean as necessary all permanent in-plant roads and vehicle work areas to achieve maximum control of sand and dust emissions, in violation of 30 TEX. ADMIN. CODE § 106.144(2) and TEX. HEALTH & SAFETY CODE § 382.085(b).

4. As evidenced by Findings of Fact Nos. 5 and 6, the Executive Director timely served Titan with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
5. As evidenced by Findings of Fact Nos. 7 and 8, the Executive Director timely served Titan with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
6. As evidenced by Finding of Fact No.9, Titan failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Titan and assess the penalty recommended by the Executive Director.
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Titan for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission’s jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
8. An administrative penalty in the amount of six thousand one hundred twenty dollars (\$6,120.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Titan is assessed an administrative penalty in the amount of six thousand one hundred twenty dollars (\$6,120.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Titan’s compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the “Texas Commission on Environmental Quality.” The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation “Re: Titan Gunite, LLC; Docket No. 2009-1202-AIR-E” to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Titan shall undertake the following technical requirements:

- a. Immediately upon the effective date of this Order, Titan shall begin taking adequate measures to achieve maximum control of sand and dust emissions from the Plant, including all sand piles and in-plant roads and vehicle areas, pursuant to 30 TEX. ADMIN. CODE § 101.4 and § 106.144(2);
- b. Within 15 days after the effective date of this Order, Titan shall submit written certification, as described in Ordering Provision No. 2.f., below, to demonstrate compliance with Ordering Provision No. 2.a.
- c. Within 30 days after the effective date of this Order, Titan shall submit an administratively complete New Source Review Permit ("NSRP") application in accordance with 30 TEX. ADMIN. CODE § 116.111 to:

Air Permits Division, MC 162
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- d. Titan shall respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the NSRP application within 30 days after the date of such requests, or by any other deadline specified in writing; and
- e. Within 180 days after the effective date of this Order, Titan shall submit written certification, as described in Ordering Provision No. 2.f., below, that either authorization to construct and operate the Plant as a source of air emissions has been obtained under 30 TEX. ADMIN. CODE ch. 116, or that operations at the Plant have ceased until such time that appropriate authorization is obtained.
- f. The certifications required by Ordering Provisions Nos. 2.b. and 2.e. shall include detailed supporting documentation, including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a., 2.c., and 2.d. The certifications shall be notarized by a State of Texas Notary Public and 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 immediately 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."

Titan shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.e. to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Jason Harris, Air Section Manager
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Titan. Titan is ordered to give notice of this Order to personnel who maintain day-to-day control over the Plant operations referenced in this Order.
5. If Titan fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Titan's failure to comply is not a violation of this Order. Titan shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Titan shall notify the Executive Director within seven days after Titan becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Titan shall be made in writing to the

Executive Director. Extensions are not effective until Titan receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas (“OAG”) for further enforcement proceedings without notice to Titan if the Executive Director determines that Titan has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF LAURENCIA N. FASOYIRO

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

“My name is Laurencia N. Fasoyiro. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Titan Gunite, LLC” (the “EDPRP”) was filed with the Office of the Chief Clerk on February 23, 2010.

The EDPRP was mailed to Titan at its last known address on February 23, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Titan received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Titan Gunite, LLC” (the “EDFARP”) was filed with the Office of the Chief Clerk on April 14, 2010.

The EDFARP was mailed to Titan at its last known address on April 14, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDFARP sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Titan received notice of the EDFARP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

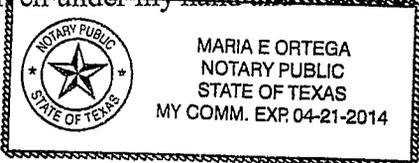
More than 20 days have elapsed since Titan received notice of the EDPRP and the EDFARP. Titan failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.”

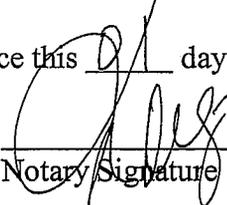


Laurencia N. Fasoyiro, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Laurencia N. Fasoyiro, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 01 day of JUNE, A.D., 2010.





Notary Signature