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June 28, 2011

Regional Hearing Clerk (6RC-D)  
U.S.EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

Re: In the Matter of Sunrise Plastic Enterprise, a Texas Corporation, NPDES Facility No. TXU010921; Docket No. CWA-06-2011-1731; Proceeding to Assess a Civil Penalty under Section 309(g) of the Clean Water Act

Dear Sir or Madam:

Enclosed please find the original and two copies of the following:

- 1) Respondent's Original Answer

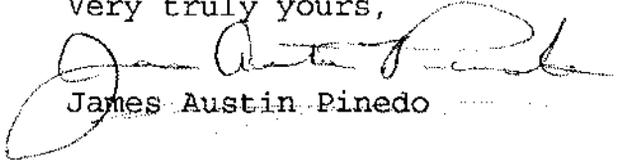
for filing in the above-referenced matter. Please file-stamp one copy of these pleadings and return it to me in the enclosed stamped self-addressed envelope.

Please note that in the Answer, a HEARING IS REQUESTED.

By copy hereof, all counsel of record have been provided with a copy of the same.

Thank you for your cooperation.

Very truly yours,

  
James Austin Pinedo

cc: Efron Ordonez  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

Sunrise Plastic Enterprise, Inc.

Susan Johnson, Manager  
Enforcement Section I, MC 169  
Texas Commission on Environmental Quality

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

FILED  
2011 JUN 30 PM 3: 34

In the Matter of \* Docket No. CWA-06-2011-1731  
\*  
Sunrise Plastic Enterprise, \* Proceeding to Assess a  
a Texas Corporation, \* Civil Penalty under Section  
\* 309(g) of the Clean Water Act  
Respondent \*  
\*  
NPDES Facility No. TXU010921 \* RESPONDENT'S ORIGINAL ANSWER

NOW COMES, Sunrise Plastic Enterprise, Inc., Respondent, and files this its Original Answer.

I.

RESPONSE TO FACTUAL ALLEGATIONS

1. The allegations of this paragraph are ADMITTED.
2. The allegations of this paragraph are ADMITTED.
3. The allegations of this paragraph as to the facility are DENIED. ADMITTED that Greens Bayou is considered a "water of the United States."
4. The allegations of this paragraph are DENIED.
5. The allegations of this paragraph are ADMITTED.
6. The allegations of this paragraph are ADMITTED.
7. The allegations of this paragraph are ADMITTED.
8. Respondent cannot ADMIT or DENY that the facility was inspected by EPA water inspectors on October 6, 2010. On October 6, 2010 two people from the EPA visited Sunrise Plastic as part of an investigation of PVC materials. During the course of the visit, facility personnel and one of the EPA officials did discuss the facility's stormwater procedures and facility personnel took one of the EPA officials on a brief tour of the facility. DENIED that Sunrise Plastic Enterprise discharged pollutants from the facility, with or without coverage under the General Permit.
9. The allegations of this paragraph are ADMITTED. On February 4, 2004, TCEQ informed Respondent that its SIC Code 5162 "does not trigger the requirement to obtain a storm water permit."
10. DENIED that the facility discharged pollutants to waters of the United States. ADMITTED that on October 6, 2010 an EPA engineer said that since the facility fell under SIC Code 2821 (which is denied), it needed an NPDES permit and a Storm Water

Pollution Prevention Plan. DENIED that pollution prevention measures have not been installed.

11. Respondent cannot admit or deny the allegations of this paragraph. Respondent did not make any unauthorized discharges.

12. The allegations of this paragraph are DENIED.

13. Respondent has insufficient information to admit or deny the allegations of this paragraph.

14. Respondent has insufficient information to admit or deny the allegations of this paragraph.

## II.

### GROUNDS OF RESPONDENT'S DEFENSES

Sunrise is not subject to the requirements of SIC Code 2821, as alleged by the EPA. The Texas Comptroller has issued Sunrise SIC Code 5162, which is the proper code for storage facilities such as Sunrise. SIC Code 2821 is for manufacturers, which SUNRISE IS NOT.

Sunrise is not required to submit a Notice of Intent (NOI) for Storm Water Permit coverage (TXR 050000). The Texas Commission on Environmental Quality is the permitting authority for most of Texas. On February 4, 2004, the Texas Commission on Environmental Quality informed Respondent that its SIC Code 5162 "does not trigger the requirement to obtain a storm water permit."

Sunrise did not, in fact, discharge any pollutants from its facility from 2006 to 2010. The EPA's Compliance Monitoring Report of 10-19-10 states: "Sunrise has implement[ed] controls at the outfalls as a result of the past releases [from 2003]. Currently, the controls do appear to be effective. Good housekeeping does appear to be apart [sic] of their daily routine." (emphasis mine). Sunrise implemented these controls in 2003. On February 4, 2004, the Texas Commission on Water Quality found that corrective action had been taken for violations found on July 16, 2003. These controls have, in fact, been effective. There have been no discharges of pollutants from Sunrise since 2003.

Sunrise was, in fact, fully compliant with everything required of it by the Texas Commission on Environmental Quality and its SIC Code from 2006 to October 2010, the period that the EPA states Sunrise was non-compliant.

## III.

### FACTS DISPUTED BY RESPONDENT

Respondent denies that it was required by the Clean Water Act

to file a Notice of Intent to be covered by a National Pollutant Discharge Elimination System general permit.

Respondent denies that it discharged pollutants during the relevant time period into any water body of the United States.

IV.

BASIS FOR OPPOSING ANY PROPOSED RELIEF

Respondent denies that it was required by the Clean Water Act to file a Notice of Intent to be covered by a National Pollutant Discharge Elimination System general permit.

Respondent denies that it discharged pollutants during the relevant time period into any water body of the United States.

In effect, the EPA is seeking to retroactively penalize Sunrise when it was operating based on prior approval from the State and the TCEQ.

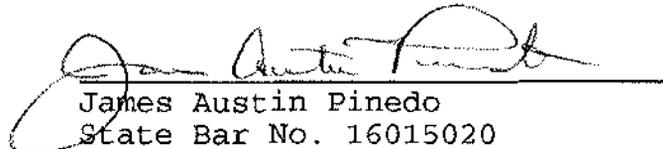
V.

HEARING REQUESTED

A hearing is requested.

WHEREFORE, PREMISED CONSIDERED, Respondent Sunrise Plastic Enterprise, Inc. requests that the Administrative Complaint be dismissed and that no penalties be assessed against it.

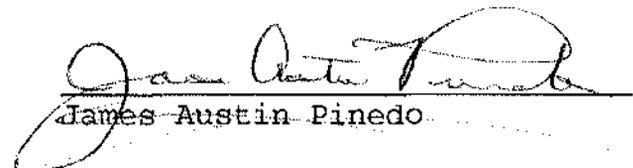
Respectfully submitted,



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ATTORNEY FOR Respondent, Sunrise  
Plastic Enterprise, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Respondent's Original Answer was forwarded by certified mail on the 29<sup>th</sup> day of June, 2011 to Efron Ordonez, U.S. EPA, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.



James Austin Pinedo