

**STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

---

In the Matter of the Alleged Violations of Article 17 of the New York State Environmental Conservation Law (ECL), and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR)

-by-

**TITAN CONCRETE INC.,**

Respondent.

---

**ORDER**

DEC Case No.  
CO 3-20220201-40

In this administrative enforcement proceeding, staff of the New York State Department of Environmental Conservation (Department) alleges that respondent Titan Concrete Inc. (respondent) violated ECL article 17, 6 NYCRR 750-2.5(a)(1), 750-2.5(e)(1), and 750-2.1(e) and State Pollutant Discharge Elimination System (SPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (GP-0-17-004) (hereinafter MSGP). Specifically, Department staff alleges that respondent failed to file a complete discharge monitoring report (DMR ) for (i) the January 1, 2021, through June 30, 2021, semi-annual reporting period, and (ii) the January 1, 2021, through March 31, 2021, and April 1, 2021, through June 30, 2021, quarterly reporting periods for respondent's facility located at 301 Route 52, Carmel, Putnam County, New York (facility).

The complaint seeks an order of the Commissioner:

- (1) finding respondent in violation of 6 NYCRR 750-2.5(a)(1), 750-2.5(e)(1), and 750-2.1(e) and the MSGP;
- (2) directing respondent to submit the overdue semi-annual and quarterly DMRs to the Department;
- (3) assessing a civil penalty in the amount of thirteen thousand nine hundred and twenty dollars (\$13,920); and
- (4) granting such other relief as the Commissioner may deem appropriate.

Administrative Law Judge (ALJ) Timothy M. MacPherson of the Department's Office of Hearings and Mediation Services was assigned to this matter and prepared the attached default summary report, which I adopt as my decision, subject to my comments below.

As set forth in the ALJ's default summary report, respondent failed to file an answer to the complaint served by Department staff in this matter and failed to appear for the adjudicatory hearing scheduled for September 29, 2022 (*see* Default Summary Report at 4 [Finding of Fact

No. 16]). At the September 29, 2022, adjudicatory hearing, Department staff made an oral motion for a default judgment. ALJ Elizabeth A. Phillips, presiding at the hearing, reserved on the motion, and Department staff later submitted a written motion for default judgment with supporting papers.

As a consequence of respondent's failure to answer or appear in this matter, ALJ MacPherson recommends that Department staff's motion for a default judgment be granted (*see* Default Summary Report at 4-8). I concur that staff is entitled to a judgment on default pursuant to 6 NYCRR 622.15. The pleadings and the papers submitted with and in support of the motion provide sufficient facts to enable me to determine that staff has a viable claim that respondent failed to submit complete DMRs for (i) the January 1, 2021, through June 30, 2021, semi-annual reporting period, and (ii) for the January 1, 2021, through March 31, 2021, and April 1, 2021, through June 30, 2021, quarterly reporting periods for respondent's facility, within twenty-eight days of the end of the respective reporting periods, the dates that the semi-annual and quarterly DMRs were due to be submitted to the Department. Accordingly, respondent is in violation of 6 NYCRR 750-2.5(a)(1), 750-2.5(e)(1) and 750-2.1(e) and the MSGP.

Department staff correctly points out that the requirement to submit complete and accurate DMRs is essential to the Department's mission (*see* Motion for Default Judgment, Exhibit A, Affirmation of Anne Haas, Esq., dated November 1, 2022, ¶ 15; Affidavit of Ryan Waldron [Waldron Affidavit] sworn to October 31, 2022, ¶ 15). DMRs enable the Department to determine "compliance with the MSGP, identify unpermitted discharges, and evaluate potential environmental and other harms" (Waldron Affidavit ¶ 15).

Department staff seeks a civil penalty in the amount of thirteen thousand nine hundred and twenty dollars (\$13,920). Respondent repeatedly failed to correct the violations and has not filed DMRs since obtaining coverage under the MSGP on November 27, 2019 (*see* Affirmation of Anne Haas ¶ 8; Waldron Affidavit ¶ 14). Based on the above, the ALJ recommends that I impose a civil penalty of \$13,920 as requested in Department staff's complaint. ECL 71-1929(1) authorizes a penalty up to \$37,500 for each of the three violations at issue (two quarterly reports and one semi-annual report) for every day that the violations persist (*see* Default Summary Report at 6). Based on this record, the penalty requested by staff is authorized and appropriate.

**NOW, THEREFORE**, having considered this matter and being duly advised, it is **ORDERED** that:

- I. Department staff's motion for a default judgment pursuant to 6 NYCRR 622.15 is granted. By failing to answer or appear in this proceeding, respondent Titan Concrete Inc. waived its right to be heard at the hearing.
- II. Based upon the pleadings and papers submitted with and in support of Department staff's motion, respondent Titan Concrete Inc. is determined to have violated 6 NYCRR 750-2.5(a)(1), 750-2.5(e)(1), and 750-2.1(e) and State Pollutant Discharge Elimination System (SPDES) Multi-Sector General Permit for Stormwater

Discharges Associated with Industrial Activity (GP-0-17-004) by failing to file complete discharge monitoring reports for (i) the January 1, 2021, through June 30, 2021, semi-annual reporting period, and (ii) the January 1, 2021, through March 31, 2021, and April 1, 2021, through June 30, 2021, quarterly reporting periods.

- III. Within thirty (30) days of the service of this order upon respondent Titan Concrete Inc., respondent shall submit to the Department complete discharge monitoring reports for the January 1, 2021, through June 30, 2021, semi-annual reporting period and the January 1, 2021, through March 31, 2021, and April 1, 2021, through June 30, 2021, quarterly reporting periods.
- IV. Respondent Titan Concrete Inc. is hereby assessed a civil penalty in the amount of thirteen thousand nine hundred and twenty dollars (\$13,920). Respondent shall pay the penalty within thirty (30) days of the service of this order upon respondent. Payment is to be by certified check, cashier's check or money order made payable to the New York State Department of Environmental Conservation.
- V. The discharge monitoring reports referenced in paragraph III of this order and the penalty payment set forth in paragraph IV shall be sent to the following address:

Anne Haas, Esq.  
Office of General Counsel  
New York State Department of Environmental Conservation  
625 Broadway, 14<sup>th</sup> Floor  
Albany, New York 12233-1500.

- VI. The provisions, terms and conditions of this order shall bind respondent Titan Concrete Inc., and its agents, successors and assigns, in any and all capacities.

For the New York State Department  
of Environmental Conservation

/s/

By:

\_\_\_\_\_  
Basil Seggos  
Commissioner

Dated: Albany, New York  
December 20, 2022

**STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

---

In the Matter of the Alleged Violations of Article 17 of the New York State Environmental Conservation Law (ECL), and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR)

-by-

**DEFAULT SUMMARY  
REPORT**

**TITAN CONCRETE INC.,**

DEC Case No.  
CO 3-20220201-40

Respondent.

---

Procedural History

Staff of the New York State Department of Environmental Conservation (Department or DEC) served respondent Titan Concrete Inc. (respondent) with a notice of hearing and complaint dated August 1, 2022, alleging violations of ECL article 17, 6 NYCRR 750-2.5(a)(1), 750-2.5(e)(1), and 750-2.1(e) and the State Pollutant Discharge Elimination System (SPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (Permit No. GP-0-17-004) (hereinafter MSGP). Specifically, the notice of hearing and complaint allege that respondent failed to file acceptable discharge monitoring reports (DMR or DMRs) for the January 1, 2021 through March 31, 2021, and April 1, 2021 through June 30, 2021, quarterly monitoring periods as well as the January 1, 2021 through June 30, 2021, semi-annual monitoring period by April 28, 2021, July 28, 2021, and July 28, 2021, respectively. The DMRs that are the subject of this report apply to respondent's facility located at 301 Route 52, Carmel, New York. The complaint seeks an order of the Commissioner: (1) finding respondent in violation of 6 NYCRR 750-2.5(a)(1), 750-2.5(e)(1), and 750-2.1(e) and the MSGP; (2) directing respondent to submit the overdue quarterly DMRs and the overdue semiannual DMR; (3) assessing a civil penalty in the amount of thirteen thousand nine hundred and twenty dollars (\$13,920); and (4) granting such other relief as the Commissioner may deem appropriate.<sup>1</sup>

Service of the notice of hearing and complaint was made by certified mail, return receipt requested, and was received by respondent on August 3, 2022 (*see* Motion for Default Judgment,

---

<sup>1</sup> Department staff requested a thirteen thousand nine hundred and twenty dollar (\$13,920) civil penalty in its motion for default judgment, notice of hearing, complaint, order on consent and, more particularly, in the affirmation of Anne Haas [Haas Aff.], dated November 1, 2022. A detailed mathematical explanation and rationale for the \$13,920 civil penalty request was made in the affirmation of Anne Haas. The notice of motion for default judgment, however, requests only a four thousand six hundred and forty dollar (\$4,640) civil penalty. Because the rationale for the \$13,920 civil penalty is explained in detail in the affirmation of Anne Haas – and because all of Department staff's other papers request this same relief – the \$4,640 request in the notice of motion for default judgment has been deemed a typographical error. (*See* Appendix A, attached hereto [listing documents submitted on motion].)

Exhibit C). Respondent did not answer the complaint. The matter was noticed for hearing on September 29, 2022, at 10:00 a.m. The notice of hearing provided detailed instructions for attending the virtual hearing by videoconference or telephone. The notice also instructed respondent to call the Office of Hearings and Mediation Services (OHMS) if the parties experienced difficulty joining the virtual hearing. At or about 10:00 a.m. on September 29, 2022, Administrative Law Judge (ALJ) Elizabeth A. Phillips convened the virtual adjudicatory hearing by videoconference and telephone conference. Department staff was represented by Anne Haas, Esq., Senior Attorney. No one appeared on behalf of respondent.

ALJ Phillips noted for the record that respondent had failed to answer the complaint and failed to appear for the adjudicatory hearing. Department staff moved orally for a default judgment pursuant to 6 NYCRR 622.15. ALJ Phillips reserved on the oral motion, allowing the record to remain open for Department staff to submit the documentation required by 6 NYCRR 622.15(b). By cover letter dated November 1, 2022, staff submitted a written motion for a default judgment with supporting papers (*see* Appendix A, attached hereto [listing documents submitted on motion]). Department staff served the motion and supporting papers on respondent by USPS first class mail on November 1, 2022 (*see* Affidavit of Service of Melissa Evans, sworn to November 1, 2022). On November 1, 2022, the matter was assigned to me.

#### Applicable Regulatory Provisions

Section 750-2.5(a)(1) of 6 NYCRR states that a permittee “shall comply with all recording, reporting, monitoring and sampling requirements specified in the permit.” Section 750-2.5(e)(1) provides that the permittee “shall submit the results of any wastewater or ambient monitoring results required by the permit at the end of each month, unless otherwise specified by the department.” Section 750-2.1(e) states that a permittee “must comply with all terms and conditions of the permit.”

The MSGP requires the owner or operator to submit completed semiannual DMRs to the Department within 28 days following each semiannual reporting period (*see* MSGP Part VI at 44-45; Table IV.1 at 37). The semi-annual monitoring periods are January 1 through June 30 and July 1 through December 31 of each year (*see* MSGP Table IV.2 at 37). Because respondent’s facility discharges to an impaired waterbody or water bodies, respondent must also conduct quarterly monitoring. The quarterly monitoring periods are January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31 of each year (*see* MSGP Part VI at 44-45; Table IV.1 at 37).

#### Findings of Fact

The following facts are found based upon the pleadings and papers submitted with and in support of staff’s motion for a default judgment:

1. Respondent is the owner/operator of an industrial facility called “Titan Concrete Inc.,” having a street address of 301 Route 52, Carmel, New York. (*See* Motion for Default

Judgment, Exhibit A “Affirmation of Anne Haas” [Haas Aff.], dated November 1, 2022, ¶ 5, Exhibit D)

2. Respondent applied for coverage under the SPDES MSGP in a notice of intent on October 26, 2019, which was made effective on November 27, 2019. (*See* Affidavit of Ryan Waldron [Waldron Aff.], sworn to October 31, 2022, ¶ 5, Exhibit 1; Motion for Default Judgment, Exhibit B, Complaint ¶ 7.)
3. Ryan Waldron is an employee of the Department and has served since 2019 as Chief of the Compliance Assurance Section of the Bureau of Water Compliance in the Division of Water, Central Office. Prior to serving as Section Chief, Mr. Waldron worked as a Professional Engineer 1 in the Division of Water, Bureau of Water Permits, Stormwater Section from April 2012 through August 2019. Mr. Waldron has access to and is the custodian of Department records related to the SPDES program of the State of New York, including DMRs filed pursuant to the MSGP. (*See* Waldron Aff. ¶¶ 1-3.)
4. Respondent’s facility is covered under Sector E (“Glass, Clay, Cement, Concrete and Gypsum Products”) of the MSGP. (*See* Waldron Affidavit Exhibit 1, Notice of Intent at 4; MSGP at 61-63.)
5. Respondent received coverage under the MSGP effective November 27, 2019, and Department staff assigned SPDES Permit ID No. NYR00G329 to respondent’s permit (*See* Waldron Aff. ¶ 5; Motion for Default Judgment, Exhibit B, Complaint ¶ 7.)
6. Pursuant to the terms of the MSGP, respondent is required to file semi-annual DMRs for the January 1 through June 30, and the July 1 through December 31 reporting periods. Because respondent’s facility discharges to an impaired waterbody or water bodies, respondent must also file quarterly DMRs for the following reporting periods: Quarter 1 (January 1 to March 31), Quarter 2 (April 1 to June 30), Quarter 3 (July 1 to September 30), and Quarter 4 (October 1 to December 31). Respondent must file both semi-annual and quarterly DMRs within 28 days after the end of each reporting period. (*See* Waldron Aff. ¶¶ 6-7; Motion for Default Judgment, Exhibit B, Complaint ¶¶ 13-15.)
7. The DMRs are filed electronically using the United States Environmental Protection Agency’s (EPA) NetDMR system (*see* Waldron Aff. ¶ 7; Motion for Default Judgment, Exhibit B, Complaint ¶¶ 13-15).
8. Respondent did not file a complete semi-annual DMR for the January 1, 2021 through June 30, 2021, semi-annual reporting period nor did respondent file complete quarterly DMRs for the January 1, 2021 through March 31, 2021, or the April 1, 2021 through June 30, 2021, quarterly reporting periods. (*See* Waldron Aff. ¶¶ 8-9.)
9. After respondent failed to timely submit the required DMR for the first quarterly monitoring period of 2021, Department staff mailed a notice of violation (NOV) to respondent on July 15, 2021. The NOV advised respondent of its non-compliance and instructed respondent to file the missing DMR through NetDMR within 30 days. The

NOV further advised respondent that failure to submit the DMR within 30 days may result in penalties of up to \$37,500 per day. (*See Waldron Aff* ¶ 10, Exhibit 2.)

10. On September 2, 2021, Department staff mailed a second NOV to respondent this time notifying respondent that it had failed to submit DMRs for the first semi-annual monitoring period, and the second quarterly monitoring period of calendar year 2021. The second NOV also instructed respondent to reply within 30 days and, again, advised respondent that failure to submit complete DMRs within 30 days may result in penalties of up to \$37,500 per day. (*See Waldron Aff.* ¶ 11, Exhibit 3.)
11. Respondent did not respond to either the July 15, 2021, or September 2, 2021, NOV nor did respondent submit any completed DMR (*see Waldron Affidavit* ¶¶ 8-9).
12. On February 15, 2022, Department staff mailed respondent an order on consent in an attempt to settle the matter. The cover letter directed respondent to submit the missing DMRs, signed order on consent and a civil penalty payment of six thousand nine hundred and sixty dollars (\$6,960.00) by March 17, 2022. Respondent failed to submit any of the missing DMRs, the signed order on consent or the civil penalty payment and did not, in any fashion, respond to staff's offer to settle by March 17, 2022. (*See Waldron Affidavit* ¶ 12, Exhibit 4.)
13. As of October 31, 2022, respondent has failed to file DMRs for the first semi-annual monitoring period, and the first two quarterly monitoring periods of calendar year 2021 (*see Waldron Affidavit* ¶ 13).
14. Since obtaining coverage under the MSGP on November 27, 2019, respondent has failed to register for the NetDMR reporting system and has failed to file a single DMR or annual certification report (ACR), as required by the MSGP. Furthermore, respondent has declined to respond to either the July 15, 2021, or September 2, 2021, NOV and was similarly nonresponsive to the Department's February 15, 2022, offer to settle. (*See Waldron Aff.* ¶¶ 12-14.)
15. Service of the cover letter, notice of hearing, complaint, and statement of readiness all dated August 1, 2022, was made by certified mail, return receipt requested and was received by respondent on August 3, 2022 (*see Motion for Default Judgment Exhibit B, C, Affidavit of Service of Melissa Evans, sworn to October 20, 2022*).
16. Respondent failed to file an answer to the complaint and failed to appear at the adjudicatory hearing scheduled in the matter on September 29, 2022, at 10:00 a.m. as directed in the notice of hearing. (*See Hearing Record.*)

#### Discussion

A respondent upon whom a complaint has been served must serve an answer within 20 days of receiving a notice of hearing and complaint (*see* 6 NYCRR 622.4[a]). A respondent's failure to file a timely answer "constitutes a default and a waiver of respondent's right to a

hearing” (6 NYCRR 622.15[a]). In addition, attendance by a respondent at a scheduled pre-hearing conference or hearing is mandatory, “and failure to attend constitutes a default and a waiver of the opportunity for a hearing” (6 NYCRR 622.8[c]; *see also* 6 NYCRR 622.15[a] [“A respondent’s ... failure to appear at the hearing or the pre-hearing conference ... constitutes a default and waiver of respondent’s right to a hearing”]).

Upon a respondent’s failure to answer a complaint or failure to appear for a pre-hearing conference or hearing, Department staff may make a motion to an ALJ for a default judgment. Such motion must contain:

- “(1) proof of service upon respondent of the notice of hearing and complaint or such other document which commenced the proceeding;
  - “(2) proof of respondent's failure to appear or failure to file a timely answer;
  - “(3) consistent with CPLR 3215(f), proof of the facts sufficient to support the violations alleged and enable the ALJ and commissioner to determine that staff has a viable claim;
  - “(4) a concise statement of the relief requested;
  - “(5) a statement of authority and support for any penalty or relief requested; and
  - “(6) proof of mailing the notice required by [6 NYCRR 622.15(d)], where applicable.”
- (*See* 6 NYCRR 622.15[b][1] - [6].)

As the Commissioner has held, “a defaulting respondent is deemed to have admitted the factual allegations of the complaint and all reasonable inferences that flow from them” (*Matter of Alvin Hunt, d/b/a Our Cleaners*, Decision and Order of the Commissioner, July 25, 2006, at 6 [citations omitted]). In addition, in support of a motion for a default judgment, staff must “provide proof of the facts sufficient to support the claim[s]” alleged in the complaint. (*Matter of Queen City Recycle Center, Inc.*, Decision and Order of the Commissioner, December 12, 2013, at 3.) Staff is required to support its motion for a default judgment with enough facts to enable the ALJ and the Commissioner to determine that staff has a viable claim (*see Matter of Samber Holding Corp.*, Order of the Commissioner, March 12, 2018 [*Samber*], at 1 [citing *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70-71 (2003)]; *see also* CPLR 3215[f]).

The record establishes that: (i) Department staff served the notice of hearing and complaint upon respondent; (ii) respondent failed to file an answer to the complaint, as directed in the notice of hearing served with the complaint; (iii) respondent failed to appear for the adjudicatory hearing scheduled on September 29, 2022, as directed in the notice of hearing; (iv) Department staff’s complaint includes a concise statement of the relief requested; (v) staff’s motion includes a statement of authority and support for the penalty and relief requested (*see* Affirmation of Anne Haas, Esq., [Haas Aff.] dated November 1, 2022, ¶¶ 10-17; Waldron Affidavit ¶ 15), and (vi) Department staff provided proof of service of the motion papers on respondent (*see* Affidavit of Service of Melissa Evans, sworn to November 1, 2022). Respondent did not file or serve a response to staff’s motion. Based upon the foregoing, the Department is entitled to a default judgment in this matter pursuant to the provisions of 6 NYCRR 622.15.

Department staff’s submissions in support of the motion for a default judgment provide proof of facts sufficient to enable me to determine that staff has a viable claim that respondent failed to submit complete DMRs for the January 1, 2021 through June 30, 2021, semi-annual

reporting period and for the January 1, 2021 through March 31, 2021, and April 1, 2021 through June 30, 2021, quarterly reporting periods for respondent's facility located at 301 Route 52, Carmel, New York within twenty-eight days of the end of the reporting periods, the dates that the semi-annual and quarterly DMRs are due to the Department, in violation of 6 NYCRR 750-2.5(a)(1), 750-2.5(e)(1) and 750-2.1(e) and the MSGP (*see Samber* at 1). As of the date of staff's motion respondent had not filed the missing complete DMRs for the January 1, 2021 through June 30, 2021, semi-annual reporting period or for the January 1, 2021 through March 31, 2021, and April 1, 2021 through June 30, 2021, quarterly monitoring periods.

### Penalty

Department staff's complaint and motion for default judgment request the Commissioner impose a civil penalty of thirteen thousand nine hundred and twenty dollars (\$13,920).<sup>2</sup> Staff's submissions on the motion for default judgment elaborate on the requested penalty, discussing the Department's Civil Penalty Policy, DEE-1 and the Division of Water Technical and Operational Guidance Series (TOGS) 1.4.2 (Compliance and Enforcement of SPDES Permits [June 24, 2010]), as well the importance of reporting requirements, the duration of the violation, and respondent's history of noncompliance. (*See Haas Aff.* ¶¶ 10-17.)

ECL 71-1929(1) provides for a civil penalty of up to \$37,500 per day for each violation of the provisions of ECL article 17, and the regulations promulgated thereto. The total maximum statutory penalty for the violation proven by staff, as of the date of staff's complaint is forty-four million eight hundred thousand dollars (\$44,800,000). (*See Haas Aff.* ¶¶ 11-13.)

Department staff explained that the requested penalty was determined using TOGS 1.4.2. Staff determined the base penalty for failing to submit a complete 2021 semi-annual or quarterly DMR is one thousand one hundred sixty dollars (\$1,160) for each of the three missing submissions, or a total of three thousand four hundred and eighty dollars (\$3,480).<sup>3</sup> Staff then applied a multiplier (a calculated adjustment factor that takes respondent's culpability, cooperation, history of non-compliance and other factors into consideration) of 2 to the penalty to arrive at an initial penalty of six thousand nine hundred and sixty dollars (\$6,960) for settlement purposes. In its complaint and motion, staff requested a penalty of twice this amount, or thirteen thousand nine hundred and twenty dollars (\$13,920), citing provisions in DEE-1 applicable to instances where respondent declines to enter a settlement voluntarily.<sup>4</sup>

I note that the base penalty amounts set forth in TOGS 1.4.2 are to be "used only for settlement purposes" and are to be adjusted every two years for inflation and deflation (*see* TOGS 1.4.2 at 30). Moreover, TOGS 1.4.2 "provides the minimum enforcement response and penalty" (TOGS 1.4.2 at 2). Thus, if an enforcement matter is not settled and instead proceeds to an administrative enforcement hearing, the civil penalty amounts set forth under TOGS 1.4.2 are not controlling.

---

<sup>2</sup> *See* footnote 1 *supra*.

<sup>3</sup> The base penalty provided in TOGS 1.4.2 is \$1,000 for each DMR not filed. The penalty is then adjusted for inflation (*see* TOGS 1.4.2 at 44).

<sup>4</sup> *See* footnote 1 *supra*.

Here, Department staff provided support for the total penalty of thirteen thousand nine hundred and twenty dollars (\$13,920). Respondent repeatedly failed to correct the violations and submit the required DMRs. The fact that respondent has failed to register for the NetDMR reporting system and has failed to file even a single DMR since obtaining coverage under the MSGP on November 27, 2019, is an aggravating factor. Accordingly, I find that the thirteen thousand nine hundred and twenty dollar (\$13,920) civil penalty requested in staff's complaint and motion is well below the statutory maximum and is appropriate under the circumstances presented here.<sup>5</sup>

### Remedial Action

In addition to the above, Department staff requests that the Commissioner direct respondent to file the overdue 2021 semi-annual and quarterly DMRs. The remedial relief requested is warranted and appropriate.

### Conclusion of Law

By failing to file a complete DMR for the January 1, 2021 through June 30, 2021, semi-annual reporting period, and the January 1, 2021 through March 31, 2021, and April 1, 2021 through June 30, 2021, quarterly reporting periods for respondent's facility located at 301 Route 52, Carmel, New York, respondent violated 6 NYCRR 750-2.5(a)(1), 750-2.5(e)(1), and 750-2.1(e) and the SPDES MSGP.

### Recommendation

Based upon the foregoing, I recommend that the Commissioner issue an order:

1. Granting Department staff's motion for default, and finding respondent Titan Concrete Inc. in default pursuant to the provisions of 6 NYCRR 622.15;
2. Holding that respondent Titan Concrete Inc. violated 6 NYCRR 750-2.5(a)(1), 750-2.5(e)(1), and 750-2.1(e) and the New York State Pollutant Discharge Elimination System Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, Permit No. GP-0-17-004;
3. Directing respondent Titan Concrete Inc. to submit complete DMRs for the January 1, 2021 through June 30, 2021, semi-annual reporting period and the January 1, 2021 through March 31, 2021, and April 1, 2021 through June 30, 2021, quarterly reporting periods;
4. Directing respondent Titan Concrete Inc. to pay a civil penalty of thirteen thousand nine hundred and twenty dollars (\$13,920); and

---

<sup>5</sup> See footnote 1 *supra*.

5. Directing such other relief as the Commissioner may deem appropriate.

/s/

---

Timothy M. MacPherson  
Administrative Law Judge

Dated: Albany, New York  
December 12, 2022

## APPENDIX A

*Titan Concrete Inc.*  
DEC File No. CO 3-20220201-40  
Motion for Default Judgment

- Cover letter, dated November 1, 2022, addressed to Administrative Law Judge Elizabeth Phillips of the Department’s Office of Hearings and Mediation Services, attaching staff’s motion papers
  - Notice of Motion for Default Judgment, dated November 1, 2022
  - Motion for Default Judgment, dated November 1, 2022, attaching Exhibits A through D and Affidavit of Ryan Waldron:
    - A. Affirmation of Anne Haas, dated November 1, 2022, referencing Exhibits B – D of the Motion for Default Judgment, dated November 1, 2022;
    - B. Cover letter, Notice of Hearing, Complaint, and Statement of Readiness, dated August 1, 2022, and Order on Consent with Invoice;
    - C. Affidavit of Service of Melissa Evans, sworn to October 20, 2022; attaching three United States Postal Service delivery confirmations (Attachments A - C,) all dated October 19, 2022, reflecting service upon respondent on August 3, 2022;
    - D. NYS Department of State, Division of Corporations, Entity Information Sheet regarding Titan Concrete Inc.
- Affidavit of Ryan Waldron, sworn to October 31, 2022 attaching Exhibits 1-5:
1. Notice of Intent (GP-0-17-004) from Titan Concrete Inc.;
  2. Notice of Violation, dated July 15, 2021;
  3. Notice of Violation, dated September 2, 2021;
  4. Cover letter, dated February 15, 2022 with Order on Consent;
  5. Notice of Violation, dated January 22, 2021
- Affidavit of Service (motion papers) of Melissa Evans, sworn to November 1, 2022
  - State Pollutant Discharge Elimination System Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (GP-0-17-004) (March 1, 2018, modified March 2, 2020) – Official Notice Taken