

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

Plaintiff,

and ESCAMBIA COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS,

CASE NO.: 2006-CA-1207

Intervenor,

vs.

LOUISIANA INVESTMENT GROUP, L.L.C.,

Defendant.

ORDER GRANTING PLAINTIFF'S AMENDED FOURTH MOTION FOR CONTEMPT

This cause came to be heard on November 13, 2007 upon the State of Florida Department of Environmental Protection's ("Department") Amended Fourth Motion for Contempt against Louisiana Investment Group, L.L.C. ("LIG"). Having heard evidence from the parties, and being otherwise advised in the premises, the Court makes the following FINDINGS OF FACT:

1. This Court entered an Order for Contempt on January 3, 2007 requiring LIG to complete the tasks listed in the Saufley Landfill Critical Path Chart by April 30, 2007, and to control odors, hydrogen sulfide gas, and particulate matter by whatever means and methods necessary.
2. This Court entered an Order on April 30, 2007 extending LIG's time to comply with the Contempt Order until May 6, 2007.

3. This Court entered an Order Imposing Contempt Sanctions on June 11, 2007. The January 3, 2007 Order for Contempt, the April 30, 2007 Order extending time, and the June 11, 2007 Order Imposing Contempt Sanctions are collectively referred to as "Orders."

4. The Department filed an Amended Fourth Motion for Contempt ("Motion") on November 2, 2007 alleging that LIG had failed to complete the construction of the stormwater management system. The Department's Motion also alleged that rain events in July and October of 2007 had caused significant erosion to the facility, and consequently the cover dirt is no longer 2 feet thick over the entire waste pile, as required by the Court's Orders.

5. The merits of the Department's Motion have been established by the preponderance of evidence through its witnesses, Mike Stephen, Cliff Street, and Marshall Seymore.

6. Mike Stephen is an Environmental Specialist at the Department. He inspected the facility on July 10, 2007, which was the date that LIG submitted documentation to the Department showing that two feet of cover had been applied to the facility. The condition of the site on that date is reflected in Plaintiff's Exhibit 1. Mr. Stephen again inspected the facility on July 24, 2007. On that date, he noted that cover dirt had washed off of the facility after a rain event. Sediment was deposited on the East Fence Road and on the Saufley Field Road rights-of-way. Photographs taken on that date show areas of uncovered waste. On July 24, 2007, Mr. Stephen observed that the stormwater retention pond was filled to capacity, and that the stormwater swale that surrounds the facility contained sediment that had washed off the slopes of the landfill. The condition of the site on that date is reflected in Plaintiff's Exhibits 2 through 5.

7. Mr. Stephen inspected the facility on August 28, 2007 after another rainfall event. He observed that erosion had occurred on the southern slope, that no vegetation existed on that

slope, and that sediment had washed into the stormwater collection system. The condition of the site on that date is reflected in Plaintiff's Exhibit 6.

8. Mr. Stephen inspected the facility on September 25, 2007 following a rain event. He observed sediment in the stormwater collection system and severe erosion on the slopes of the facility, as shown in Plaintiff's Exhibit 7.

9. Mr. Stephen inspected the facility on October 18, 2007, after a significant rainfall event. Sediment had washed off of the Saufley landfill on the eastern slope, and been deposited on the Johnsons' property, as shown in Plaintiff's Exhibit 8. Mr. Stephen also observed severe erosion to the facility, which exposed waste and deposited cover dirt in the stormwater collection system. The condition of the site on that date is reflected in Plaintiff's Exhibits 9 through 11.

10. Mr. Stephen inspected the facility on November 12, 2007. On that date, he observed that placement of cover dirt on the side slopes was about 80 percent complete. He also noted that no vegetation was established. Mr. Stephen estimated that the stormwater swales around the perimeter of the facility were about 40 to 50 percent complete. Mr. Stephen observed that the stormwater pond contained water and sediment that had washed off the slopes of the landfill. The condition of the site on that date is reflected in Plaintiff's Exhibits 14 and 15.

11. Within a few days after the rain events, LIG would work to re-cover the facility. On November 12, 2007, some areas of the side slopes did not have 24 inches of cover applied, as Mr. Stephen could see waste through the dirt. The Department relies on the owner or operator to provide documentation demonstrating that two feet of cover has been applied and that the side slopes meet the three-foot horizontal to one-foot vertical rise requirement.

12. Cliff Street is the engineering supervisor of the submerged lands and environmental resources program, and has been employed by the Department for 18 years. Mr. Street is a professionally licensed engineer in Florida.

13. Pursuant to Chapter 62-25, Fla. Admin. Code, Mr. Street reviews stormwater plans for stormwater quality, which is based on the first half-inch of runoff being recovered in 72 hours, with a factor safety of two.

14. Mr. Street reviewed the stormwater documentation that LIG submitted to the Department on July 10, 2007, and determined that the stormwater system does not comply with the Department's stormwater rules. Mr. Street prepared a memorandum dated July 27, 2007, and introduced as Plaintiff's Exhibit 19, requesting additional information from LIG. This letter was transmitted to LIG on August 1, 2007. The Department has not received a response to this letter.

15. Mr. Street reviewed the photographs taken on November 12, 2007, and introduced as Plaintiff's Exhibits 14 and 15, and testified that based on those photographs, the stormwater pond is not percolating stormwater. Based on Mr. Street's expertise, it appeared to him that the stormwater pond had been blinded by fine sediment, preventing stormwater from infiltrating the bottom of the pond.

16. Mr. Street recommended that LIG sod and pin the entire 23-acre site. Although sod is dormant during the winter, Mr. Street testified that pinning the sod would hold it in place until the sod establishes roots. He opined that this method is more likely to hold the slopes in place than seeding, because a seeded site does not have an adequate rooting system established.

17. Mr. Street also opined that placing erosion mats impregnated with grass seed on the facility, and staking the mats, is a good alternative to seeding. The mat protects the finished

slopes until the seed can germinate and establish the root system necessary to create a stable slope.

18. Marshall Seymore is the Solid Waste Section Supervisor at the Department's Northwest District Office. Mr. Seymore compared the Saufley landfill with the Cerny Construction and Demolition Debris Disposal facility which is located approximately 2 miles from the Saufley landfill. The photographs in Plaintiff's Exhibit 20 demonstrate that the Cerny facility experienced minimal erosion from the rainfall events occurring in October 2007. Based on his expertise and experience, Mr. Seymore gave the opinion that the vegetation on the Cerny facility has minimized erosion.

19. The court finds that the Department's witnesses were credible and had the means and opportunity to know the facts about which each testified. In addition, Mr. Street and Mr. Seymore testified as expert witnesses and their expert opinions have been accepted by the court as such.

20. LIG called three witnesses: Michael Black, Charles Miller and Brennon Vinet. Michael Black testified that he started working at the Saufley landfill on October 24, 2007.

21. Mr. Black has been replacing the cover dirt on the facility and digging out the stormwater retention pond. He rented equipment to do this work and put it on his personal credit card. He also purchased a machine to hydromulch the facility. Mr. Black avers that he is doing the work for free because he is friends with Brennon Vinet.

22. Mr. Black maintains that he can rent any size excavator or bulldozer that he needs. Mr. Black believes that he has the financial resources to obtain this equipment, and he intends to continue to work at the Saufley landfill until the work is completed.

23. Charles Miller prepared the operation and closure plans for the Saufley landfill. He received Cliff Street's memorandum, introduced as Plaintiff's Exhibit 19, around August 1, 2007. Mr. Miller has not submitted the as-built certification to the Department because he is awaiting a survey. Brennon Vinet must order the survey, and he had not done so.

24. About May or June 2007, Mr. Miller told Brennon Vinet that he would no longer charge him for any work that he does. He intends to continue to render services to LIG, regardless of whether he is paid.

25. Mr. Miller agrees that in order for the stormwater system to work, vegetative cover must be in place.

26. Brennon Vinet is a managing member of LIG and controls the progress of the work in closing the landfill. He acknowledged that he sold a piece of commercial property and received \$30,000 in proceeds on August 7, 2007. From August 13 through August 26, 2007 there were no rain delays, yet Mr. Vinet did not have the facility surveyed. He paid Charles Miller and Gary Bishop with the proceeds. He also paid the insurance policy premium to satisfy the financial assurance requirement for closure of the landfill. Mr. Vinet testified that he cashed in a life insurance policy, and used that money for the Saufley landfill. Mr. Vinet also testified that he paid Jack Williams \$8,800 so he would survey the property. Mr. Vinet has an agreement with Michael Black that Mr. Black is going to make purchases on Mr. Black's credit card until Mr. Vinet is able to pay him back.

27. Mr. Vinet testified that his income from his current employment is \$6,000 to \$8,000 dollars a month, that his rent is \$700 a month, and his child support payments are \$3,000 to \$3,500 a month.

28. The Department and LIG signed a Stipulated Order of Temporary Injunction ("Injunction"), which was entered by this Court on August 8, 2006. Paragraph 9 of the Injunction states "[e]conomic circumstances shall not be considered circumstances beyond the control of Defendant." LIG's financial circumstances do not excuse LIG from complying with this Court's Orders.

29. The Court did not find the testimony of Mr. Vinet regarding his financial circumstances credible.

30. LIG is found to be in willful contempt of this Court's above listed orders.

31. LIG has the present ability to comply with the Orders, has had an ability to comply for periods of time throughout relevant times during this proceeding, and has willfully failed to do so.

32. Consistent with the immediately preceding enumerated findings, the Court announced specific ordered requirements on the record at the conclusion of the hearing.

33. After the evidentiary, a Case Management Conference was held with counsel and Mr. Vinet (who had been remanded to custody on the date of the hearing and paid the purge) present. The Court advised counsel that the specific requirements the Court orally announced at the conclusion of the hearing had been reconsidered as to the cover required on site and advised counsel verbally of an expanded order which would permit alternative methods of cover taking into account economic considerations.

WHEREFORE, IT IS HEREBY ORDERED that:

A. The Department's Amended Fourth Motion for Contempt is GRANTED.

B. The Sheriff of this State is directed to confine Brennon Vinet in the Escambia County Jail until he purges the civil contempt by paying \$10,000.00 which shall be applied to the previously assess penalty ordered by the Court. As of this date, this condition is satisfied.

C. LIG shall re-apply two feet of cover to the facility, as required by its permit and Rule 62-701.730(9)(b), Fla. Admin. Code, and shall submit certification to the Department, signed and sealed by a Florida licensed professional engineer, that demonstrates the cover has been applied.

D. As announced at the Case Management Conference after the evidentiary hearing, LIG shall either have erosion mats impregnated with grass seed installed according to the manufacturer's instructions or sod laid, whichever is more economically feasible, on the slopped sides of the entire facility and shall adequately stake whichever cover is used to secure it in place within thirty (30) days of the date of this order.

E. As the growing season has passed, the site shall have winter rye grass seed applied by the hydromulch method to the top and slopped sides of the site within ten (10) days of the date of this order.

F. The top of the site shall have seed, sod, or erosion matting suitable to grow a permanent grass cover, as LIG elects, applied not later than April 15, 2008.

G. LIG shall continue to abide with all prior orders of this Court.

DONE AND ORDERED in chambers in Pensacola, Escambia County, Florida this 31st day of December, 2007.

/s/ Terry D. Terrell

TERRY D. TERRELL
CIRCUIT COURT JUDGE

mailed
Copies furnished to:

Karen Bishop, for Plaintiff
Charles V. Pepler, for Intervenor
Steve Bowden, for Defendant