

**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,

Plaintiff-Intervenor,

vs.

**Case No.: 2014 CA 001611
Division: J**

**SOUTH PALAFOX PROPERTIES, LLC.
A Florida Limited Liability Company.**

Defendant.

_____ /

ORDER GRANTING DEPARTMENT'S MOTION FOR CONTEMPT

THIS CAUSE came to be heard on November 22, 2019, on the Plaintiff, State of Florida Department of Environmental Protection's ("Department") Motion for Contempt ("Motion"), filed on March 22, 2019. All parties appeared at the hearing through counsel. This Court having jurisdiction over the parties and the subject matter hereto and having considered the Motion, the testimony provided by the Department's witness Elizabeth Orr, the Assistant Director of the Northwest District, the Department's exhibits 1 (photos taken at the real property owned and operated by South Palafox Properties, LLC, located at 6900 Rolling Hills Road, Pensacola, Florida, hereinafter referred to as the "Facility") and 2 (South Palafox Properties, LLC's Balance Sheet as of June 12, 2019), arguments of counsel, and being fully advised as to premises, this Court finds as follows:

1. On June 8, 2016, this Court entered Final Judgment in favor of the Department

against the Defendant. A copy of the Final Judgment is attached to this Order as Exhibit A.

2. The Final Judgment ordered the Defendant to undertake certain corrective actions in regards to the Facility, including; the operation and maintenance of the remedial system in accordance with the Department's Remedial Action Plan until a site rehabilitation completion order was issued, obtain financial assurance for the cost of the corrective action program, continue to remediate all water quality exceedances and regain compliance with water quality criteria, supplement its financial assurance for long term care costs, properly dispose of any unauthorized waste.

3. The Defendant did not file a response to the Department's Motion for Contempt and provided no testimony or evidence at the hearing.

4. The Defendant has willfully failed to comply with the terms of the Final Judgment.

5. The Defendant has allowed the remedial action system to fall into disrepair. The remedial action system is not operational.

6. The Defendant has not obtained any of the additional financial assurance as required by the Final Judgment.

7. The Defendant has unauthorized waste stored at the Facility.

8. The Defendant had and has the ability to comply with the Final Judgment.

9. The Defendant is in Indirect Civil Contempt of Court for willfully failing to comply with the terms of the Final Judgment as described in this Order.

IT IS THEREFORE ORDERED AND ADJUDGED;

A. The Department's Motion for Contempt is hereby **GRANTED** and the Defendant is adjudicated guilty of Indirect Civil Contempt of Court.

B. The Defendant, South Palafox Properties, LLC, may purge itself of contempt by complying with the terms of the Final Judgment in accordance with the timeframes as listed below.

C. South Palafox Properties, LLC, shall within 30 days of the date of this Order remove all unauthorized waste from the Facility.

D. South Palafox Properties, LLC, shall within 180 days of the date of this Order repair and restore the ground water wells.

E. South Palafox Properties, LLC, shall within 180 days of the date of this Order repair and restore the aeration basin.

F. South Palafox Properties, LLC, shall within 180 days of the date of this Order repair and restore the percolation ponds.

G. South Palafox Properties, LLC, shall within 180 days of the date of this Order, repair and restore the infrastructure and equipment necessary to operate the remedial action system.

H. The court finds that South Palafox Properties, LLC has the present ability to comply with the above-listed purge provisions.

I. The court reserves jurisdiction to consider the imposition of sanctions against South Palafox Properties, LLC. In the event South Palafox Properties, LLC fails to comply with this Order, the Department may move to have this reserved issue and any others considered in a Motion for Order to Show Cause.

DONE and ORDERED in Chambers in Pensacola, Escambia County, Florida, this 25th day of November, 2019.


Lacey Powell Clark, Circuit Judge

Copies to:

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IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA
CIVIL DIVISION

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

Plaintiff,

and

ESCAMBIA COUNTY, FLORIDA,

Plaintiff-Intervenor,

v.

CASE NO. 2014-CA-001611

SOUTH PALAFOX PROPERTIES, LLC,
A Florida Limited Liability Company,

Defendant.

**FINAL JUDGMENT GRANTING INJUNCTIVE RELIEF
AND ASSESSMENT OF CIVIL PENALTIES**

THIS CAUSE having come before the Court for non-jury trial on May 24 and May 25, 2016, on the Plaintiff's Amended Motion for Permanent Injunctive Relief and Plaintiff's Complaint for Assessment of Civil Penalties. The Plaintiff, State of Florida Department of Environmental Protection, was represented by Margaret E. Seward, Esquire and B. Jack Chisolm, Jr, Esquire. The Plaintiff/Intervenor, Escambia County, Florida, was represented by Barbara Ellis-Wiggins, Esquire. The Defendant, South Palafox Properties, LLC, was represented by Todd M. LaDouceur, Esquire and M. Austin Moretz, Esquire.

The Plaintiff, Florida Department of Environmental Protection ("Department") administers and enforces the provisions of Chapter 403, Florida Statutes, and the rules

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CLERK OF CIRCUIT COURT
ESCAMBIA COUNTY, FLORIDA
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CIVIL DIVISION

Exhibit A

promulgated thereunder, including those applicable to construction and demolition debris ("C & D") disposal facilities. Pursuant to §403.121(1)(a) and §403.141, Florida Statutes, the Department has the authority to institute a civil action on behalf of the State of Florida seeking civil penalties and injunctive relief for any violation of Chapter 403.

The Defendant, South Palafox Properties, LLC, ("South Palafox"), is a Florida limited liability corporation that owns real property located at 6990 Rolling Hills Road, Pensacola, Escambia County, Florida. South Palafox obtained a Construction and Demolition Debris Disposal Facility Permit from the Department on February 20, 2013, Permit No. 003397-013-SO ("C & D Permit"). South Palafox operated the facility as a construction and demolition debris disposal facility under the name "Rolling Hills Construction and Demolition Recycling Center." All material received by the facility is disposed of in an active disposal pile known as Cell 2, located in the middle of the northern section of the parcel. (Another cell known as Cell 1 was closed a number of years ago by the prior operator/owner.)

On February 22, 2012, the Department issued a Notice of Violation, Orders for Corrective Action, and Administrative Penalty Assessment to South Palafox, citing numerous violations of Department rules and violations of the C & D Permit. The violations alleged were unauthorized solid waste storage and disposal; exceedance of maximum allowed slopes; failure to abide by C & D permits; failure to provide weekly cover; exceedance of maximum debts; failure to operate facility in a manner to control vectors; failure to control erosions; and failure to submit a Remedial Action Plan for documented groundwater contamination.

On November 15, 2012, the Department and South Palafox entered into a Consent Order to resolve the violations. The Consent Order required South Palafox to submit a Remedial Action Plan to the Department. On July 3, 2013, the Department approved the proposed

Remedial Action Plan submitted by South Palafox. The proposed Remedial Action Plan was to be implemented by South Palafox within one hundred twenty (120) days of the Department approval.

The C & D Permit was renewed in February 2013 and was set to expire in early 2018. The renewed Permit incorporated the terms and conditions of the Consent Order dated November 15, 2012, as well as detailed requirements relating to operation of the facility, water quality monitoring, an odor remediation plan, financial assurance and costs estimates, and closure of the facility.

On July 31, 2014, the Department issued a Notice of Violation alleging South Palafox had violated permit conditions and rules that govern the operation of the facility. These alleged violations included the failure of South Palafox to comply with certain time frames and deadlines for implementing the Remedial Action Plan required by the November 15, 2012 Consent Order. The alleged violations also include violations of surface water quality standards; failure to provide adequate financial assurance for closure and long term care of the facility; failure to provide adequate financial assurance for corrective action required by the Remedial Action Plan; failure to timely take steps to reduce objectionable odors and failure to timely implement a routine odor monitoring program; accepting unauthorized waste and failure to remove unauthorized waste; and an allegation that the facility was operating outside its permitted dimensions. In the Notice of Violation, the Department sought closure of the facility and revocation of the C & D permit.

South Palafox requested an administrative hearing to challenge the proposed agency action. The matter was referred to the Division of Administrative Hearings and an Administrative Law Judge conducted an evidentiary hearing on December 9 through 11, 2014.

The Administrative Law Judge, D. R. Alexander entered a Recommended Order on March 2, 2015. The Administrative Law Judge made Findings of Fact and Conclusions of Law regarding the violations and found that South Palafox had committed numerous violations of the permit conditions and rules that govern the operation of the facility. The Administrative Law Judge recommended that the Department enter a final order revoking South Palafox's C & D Permit and ordered the facility to be closed.

Both South Palafox and the Department filed Exceptions to the Recommended Order and the matter was presented to the Secretary of the Department for final agency action. On May 29, 2015, the Secretary of the Department, Jonathan P. Steverson, entered a Final Order which adopted the Recommended Order in its entirety. The Final Order revoked South Palafox's Operating Permit and ordered the facility be closed in accordance with Florida Administrative Code Rule 62-701.730(9)(B).

In the instant case, the Department has filed a Complaint for Assessment of Civil Penalties as well as an Amended Petition for Enforcement and Injunctive Relief. On September 4, 2015, this Court entered an Order finding that the factual issues in this action are identical to those that were litigated in the administrative proceeding and that the parties had a full and fair opportunity to present evidence on the facts and to litigate the legal issues fully. This Court ruled that the Defendant is collaterally estopped from relitigating the facts and issues litigated in the administrative proceedings. This Court adopted the factual findings of the Administrative Law Judge and determined that the only matters left for this Court to determine are civil penalties and enforcement/ injunctive relief.

COUNT I
SURFACE WATER QUALITY STANDARDS

South Palafox filed two (2) Water Quality Monitoring Reports with the Department which reflected that the contaminants contained in the water samples exceeded surface water quality standards at two (2) monitoring locations (MW-2 and SW-6) sampled on August 26, 2013, and at one monitoring location (MW-2) sampled on March 4, 2014. The water surface samples exceeded the Class III Fresh Surface Water Quality Standards for iron, copper, lead, and mercury at SW-6 and iron at MW-2. Additional water quality monitoring reports that were subsequently filed continued to reveal that the water contamination issues have not been resolved. Additional sampling was conducted on October 27, 2014 (Plaintiff's exhibits 6 and 7), which reflected the water quality samples exceeded surface water quality standards at two (2) monitoring locations (MW-3 and SW-6). At MW-3 the water quality samples exceeded the Class III Fresh Surface Water Quality Standards for iron, copper, and lead. At the SW-6 location, the water surface samples exceeded the Class III Fresh Surface Water Quality Standards for iron and mercury.

On December 2, 2015, South Palafox filed a Water Quality Monitoring Report which only sampled the water for three (3) metals: iron, copper, and zinc. South Palafox was required to submit samples for sixteen (16) metals. There was no explanation offered as to why South Palafox did not submit a sample for the remaining thirteen (13) metals.

As of the present date, the water quality violations still have not been corrected. This is a violation of Rules 62-302.500 and 62-302.530, Florida Administrative Code and the Permit.

COUNT II
FAILURE TO TIMELY IMPLEMENT REMEDIAL ACTION PLAN

The Remedial Action Plan Approval Order was entered on July 3, 2013. South Palafox was required to implement the Remedial Action Plan within one hundred twenty (120) days of the Approval Order. The terms and conditions of the Remedial Action Plan were implemented into the Renewed Permit in February 2013. All work was to be completed by July 2014. The Remedial Action Plan was not fully implemented as of July 31, 2014.

There are two (2) phases of the proposed Remedial Action Plan. Phase 1 required South Palafox to install a pump and treat system at the facility. The system would be designed to withdraw contaminated groundwater through recovery wells, pump the water to aeration basins to treat the water, and then re-infiltrate the treated water back into the ground. The system was not operational until December 8, 2014, approximately twelve (12) months after the Remedial Action Plan was to be implemented.

On October 16, 2013, Escambia County issued a cease and desist order and halted construction of Phase 1 of the Remedial Action Plan because South Palafox had not obtained a storm water permit. South Palafox blames the delays of implementation of the Remedial Action Plan on Escambia County shutting down Phase 1 construction until the permit was obtained. However, South Palafox did not apply for the storm water permit until September 10, 2014, approximately one (1) year after Escambia County issued the cease and desist order.

Although the Remedial Action System has now been fully implemented, the Court finds there are several concerns with operation of the Remedial Action System. As stated above, the contaminated groundwater is pumped to aeration basins to treat the water before it is re-filtered back into the ground. There is a break in the baffle of one of the aeration basins which causes water to flow into the baffle instead of around it. The function of the baffles is to force water to

flow in a certain path around the baffles in order to properly aerate the water. Because of the break in the baffle, the system is not properly treating the contaminated water.

The Remedial Action System was designed so that the two (2) aeration basins are separated by a berm. The berm is currently under water. As a result, the water does not infiltrate into the basin as quickly as it should.

The Remedial Action Plan was modified on December 17, 2012 so that the clay liner in the aeration basins was changed to a polyethylene liner to stop the water from escaping the basins. There has not been adequate testing on the groundwater samples to determine if the system will support the liner that was installed by the modification to the Remedial Action Plan. In addition, the percolation ponds were not properly constructed in accordance with the Remedial Action Plan. The ponds were designed to be forty-five (45) feet by sixty-five (65) feet wide with a berm separating the two (2) ponds. Instead, the ponds are forty-five (45) feet by fifty-nine (59) feet wide. The size of the ponds is critical because the percolation process is the final stage of treating the water before it goes back into the ground. Therefore, the inadequate size of the percolation ponds affects the storage capacity for groundwater. The percolation ponds need to be reconstructed in accordance with the Remedial Action Plan design.

The failure to properly and timely construct and implement the Remedial Action Plan is a violation of the Consent Order, and Rules 62-780.700(11) and 62.780.790, Florida Administrative Code.

COUNT III **FAILURE TO PROVIDE FINANCIAL ASSURANCE**

South Palafox is required to provide a mechanism for financial assurance for closure and long term care of the facility. The purpose of the financial assurance requirement is to ensure

that the Department will have funds to close the facility and provide long term care for the facility if South Palafox fails to do so.

South Palafox failed to provide the required annual 2014 financial assurance mechanism that demonstrates proof of financial assurance for closure and long term costs estimates of the facility. The C & D Permit requires that on or before March 1 of each year, South Palafox is required to revise the closure costs estimates to account for inflation. An additional \$18,000.00 was required.

The inflation adjustment was not submitted until April 15, 2014. The Department approved the increased costs estimates with a due date of June 16, 2014. South Palafox has never provided a performance bond or other type of financial assurance for the inflation adjustment for the year 2014.

On March 31, 2015, the Department approved the 2015 costs estimates for closure and long term care of the facility. The costs estimates approved by the Department for closure was \$661,407.54, and for long term care was \$205,353.63. South Palafox has never obtained financial assurance for 2015. South Palafox has not provided financial assurance for closure of the facility and long term care for the year 2016. The costs estimates for 2016 have yet to be submitted by South Palafox.

The revised costs estimates are necessary not only to adjust for inflation, but are important because the costs estimates for closure and long term care of the facility are calculated based on the size of the facility. As will be explained below, the size of the current facility greatly exceeds its permitted dimensions and new costs estimates should have been submitted taking into account the current size and dimensions of the facility. In addition, the costs estimates for closure and long term care are premised on South Palafox being in

compliance with the Permit. As discussed elsewhere, South Palafox clearly has not been in compliance with the terms and conditions of the C & D Permit.

The failure to provide the required financial assurance for close and long term care of the facility is a violation of Rule 62.701.730(11), Florida Administrative Code and the Permit.

COUNT IV
FINANCIAL ASSURANCE FOR CORRECTIVE ACTION

South Palafox has failed to maintain a financial assurance mechanism to demonstrate proof that it can undertake the corrective action required by the Remedial Action Plan. South Palafox was required to provide financial assurance in the amount of \$566,325.85 on or before October 31, 2013. As of the present date, South Palafox has never provided the required financial assurance, in violation of Rule 62.701.730(11)(c), Florida Administrative Code and the Permit.

COUNT V
OBJECTIONABLE ODOR

South Palafox has failed to timely take steps to reduce objectionable odors and has failed to timely implement a routine odor monitoring program. There have been numerous complaints from citizens of the Wedgewood community concerning off-site odors at the facility. Routine inspections by the Department have detected objectionable odors, both at the facility and in off-site locations.

The operations at the C & D facility result in hydrogen sulfide being emitted into the air. The Department inspectors and citizens of the Wedgewood community characterize the hydrogen sulfide as smelling like a "rotten egg." A Department engineer visited the site in

April of 2014, and on two (2) occasions noted that the odor was strong enough to make her physically ill. In June of 2014, Department inspectors continued to note the rotten egg smell. The rotten egg smell continued throughout much of the fall of 2014. A resident of the Wedgewood community testified before the Administrative Law Judge that on multiple occasions, she smelled objectionable odors in her home and yard and at the Wedgewood Center, and she noted that those odors have been coming from the facility for a number of years.

The objectionable odors have continued throughout 2015 and 2016. On December 15, 2015, a Department inspector noted several hydrogen sulfide hotspots which resulted in a rotten egg smell. On February 5, 2016, a Department inspector noted a rotten egg smell even though she was off-site. On April 18, 2016, a Department inspector could smell the hydrogen sulfide odor off-site.

South Palafox did not properly implement a plan to monitor and alleviate the objectionable odors, in violation of Rules 62-296.320(2) and 62-701.730(7)(e), Florida Administrative Code and the Permit. The remedy is to close the facility and put a soil cap over the top of the facility.

COUNTS VI AND VII
ACCEPTING UNAUTHORIZED WASTE AND
FAILURE TO REMOVE UNAUTHORIZED WASTE

The C & D landfill may only accept construction and demolition debris, which is defined as "discarded materials generally considered to be not water soluble and non-hazardous in nature." §403.703(6), Florida Statutes; Florida Administrative Code Rule 62-701.200(24). Debris includes items such as steel, glass, brick, concrete, asphalt material, pipe, gypsum wallboard, lumber, rocks, soils, tree remains, and other vegetative matter that normally result

from land clearing or land development operations. Id. No solid waste other than construction and demolition debris may be disposed of at the facility. Florida Administrative Code 62-701-703(4)(d).

On April 14, 2014, the Department documented the disposal of unauthorized waste, including tires, clothing, shoes, an electronic item, a grill, basketball goal, quiklube material, a toy, treated wood, and a blanket. On July 18, 2014, the Department documented the disposal of household garbage, furniture, drilling mud, and a suitcase.

Disposal of unauthorized waste is a violation of Rule 62.701.730(4)(a), Florida Administrative Code and the Permit. Failure to remove unauthorized waste is a violation of Rule 62-701.730(7)(d), Florida Administrative Code and the Permit.

COUNT VIII **FACILITY OUTSIDE PERMITTED DIMENSIONS**

The C & D Permit provides that the elevation of the waste/debris pile shall not exceed one hundred thirty (130) feet vertical and that the waste be contained within a seventeen (17) acre footprint. A topographical survey on March 18, 2015, revealed the facility waste area to be 19.74 acres, in violation of the Permit. The survey also revealed the vertical height of the debris pile to be one hundred thirty five (135) to one hundred forty (140) feet. A second topographical survey done on February 12, 2016, revealed the vertical elevation of the waste pile to be one hundred thirty eight (138) to one hundred thirty nine (139) feet, in violation of the Permit.

CLOSURE OF THE FACILITY

On March 2, 2015, the Administrative Law Judge entered an order revoking South Palafox's C & D Permit. On May 29, 2015, the Department entered a Final Order adopting the

Recommendation of the Administrative Law Judge, entered an order revoking South Palafox's C & D Permit, and further ordered that the facility be closed. South Palafox was ordered to submit a Permit Application for Closure and Long Term Care within thirty (30) days of the date of the Final Order, and to complete closure within one hundred eighty (180) days of obtaining the Permit for Closure and Long Term Care of the facility. South Palafox has yet to submit a Permit Application for Closure and Long Term Care of the facility.

The Department has made demand on the Performance Bond originally posted by South Palafox. The bonding company has deposited the money into a trust account. The Department will provide a closure plan and bid out the work. The Department and its agents need access to the facility in order to close the facility and provide long term care.

South Palafox proposes an alternative method of closing the facility which would involve extracting the waste from the landfill and refining it into "pelletized fluff". The fluff would then be sold to other entities that use coal such as utility companies. In order to implement the proposed plan, it would be necessary to construct a 35,000 square foot metal building on the property. The project would take approximately five (5) to seven (7) years.

South Palafox does not have the capability to implement its proposed plan for closure. Instead, it would delegate implementation of the plan to National Energy USA. The Founder and CEO of National Energy USA, Dave Robau, testified as to how his company would try to implement the proposed plan. Although the Court does not doubt the sincerity of Dave Robau, the proposed concept for closure of the facility offered by Dave Robau is speculative and would not comply with the terms and conditions for closure as outlined by the Department in its Final Order dated May 29, 2015.

The proposed plan contains environmental risks. Operations at the facility have emitted objectionable odors into the air for the past several years. Digging up the waste in the landfill could continue to emit hydrogen sulfide into the air, which would continue to be a nuisance to the surrounding community. Evacuating the waste in the landfill could also pose additional risks to the environment such as fires, excessive dust, and wind-blown debris.

In order to implement South Palafox's proposed plan, the plan would have to be approved by the Department. South Palafox has not applied or has not presented the concept to the Department for approval. As stated above, it has been a year since the Department has entered the Final Order for closure and South Palafox has not applied for a closure and long term care permit.

Dave Robau testified he is aware of similar plans at other C & D facilities across the country, but that he has never actually implemented such a plan at a C & D facility. In addition, Dave Robau testified his company has not taken any samples of the debris from the Rolling Hills Landfill to see if this is the type of waste that could be recycled into pelletized fluff.

There was no evidence presented as to how much the South Palafox proposal would cost and there were no specifics provided as to who would fund the South Palafox proposal. The proposal would allow South Palafox to rent the land at Rolling Hills to National Energy USA. South Palafox would be able to continue generating revenue for several years. However, there was no testimony as to an amount of rent that would be paid to South Palafox.

Scott Miller, one of the founding partners at South Palafox, testified that one of the reasons the company has not been able to provide the required adequate financial assurance for corrective action and closure of the facility is that the Remedial Action Plan was too expensive. The company stopped accepting debris in May of 2015. It has no income or assets. It was only

able to post a Financial Assurance Bond in 2014 when one of the partners placed a mortgage against his home. There was no evidence as to an amount of income or revenue that South Palafox would generate from his proposed concept and there is no evidence that South Palafox will be able to provide the adequate financial assurance for closure and long term care of the facility.

Even if the South Palafox proposal was a viable option for closure of the facility, the Court does not have the authority to adopt South Palafox's proposal. The Final Order entered by the Department on May 29, 2015, provides that the closure be complete within one hundred eighty (180) days of obtaining the closure permit. There is no way to close the facility within one hundred eighty (180) days if the South Palafox proposal is adopted. It is undisputed that the process described by Dave Robau would take five (5) to seven (7) years.

Finally, it should be noted that if National Energy USA could implement the closure process for the facility as proposed, it could still be implemented after the facility is closed and the landfill is capped. National Energy USA and/or South Palafox could apply to the Department for a permit to extract the waste from the landfill, recycle it into pelletized fluff, and then sell it to entities as a coal alternative source for energy.

CIVIL PENALTIES

Section 403.121(1)(b), Florida Statutes, authorizes the court to assess civil penalties for each violation of Chapter 403 in an amount not to exceed \$10,000.00 per day for each violation. The Administrative Law Judge found that "the troubling aspect of this case is Defendant's across-the-board failure to adhere to a number of deadlines and Permit conditions established several years ago, and to make any serious effort to comply with those requirements until it was

faced with possible revocation of its Permit” (Recommended Order, p. 35). This Court must consider the findings made by the Administrative Law Judge. Section 403.121(1)(b), Florida Statutes, requires the court also consider any mitigating evidence presented by South Palafox.

Once South Palafox became aware that the Department was seeking to revoke its Permit, South Palafox invested a large amount of capital to purchase new equipment to bring the facility into compliance. South Palafox purchased a Caterpillar bulldozer, low-speed grinder, and Trommel screener. South Palafox purchased the new equipment as part of a plan to reduce the height of the trash pile and bring the pile within the permitted dimensions.

South Palafox also hired a new manager, Charles Miller, who completed preparation of the height reduction plan on September 3, 2014. Charles Miller also thoroughly reviewed and oversaw construction of the Remedial Action Plan to address the surface water quality issues, and also made attempts to address the off-site odors as well.

Even though the Remedial Action Plan was not timely implemented, Charles Miller, Barry Long, Gary Bishop, and other South Palafox consultants testified they made a good faith effort to construct the Remedial Action Plan in accordance with the required plans and specifications. The South Palafox consultants testified they believe the system is capable of operating as designed, despite a few construction flaws. (The Court cannot definitively determine that the Remedial Action System is operating as designed because there have not been updated groundwater samples submitted to the Department as of the date of non-jury trial in this case.)

The failure of South Palafox to obtain the required financial assurances in this case have largely been a result of an inability to do so. As stated above, South Palafox has no income or assets. It was only able to post a Financial Assurance Bond in 2014 when one of the partners

placed a mortgage against his home. The company stopped accepting debris in May of 2015. Even when the company did generate revenue prior to May of 2015, it had difficulty obtaining the required financial assurance from a bonding company.

The Court has considered the findings of the Administrative Law Judge, the evidence submitted by the Department at the non-jury trial in this case, as well as mitigating evidence presented by South Palafox in determining the amount of civil penalties and costs to assess against South Palafox. The Court feels the following penalties and costs are appropriate:

1. Exceeding surface water quality standards - \$6,000.00;
2. Failure to timely implement RAP - \$5,000.00;
3. Failure to provide adequate financial assurance to implement corrective action system - \$1,000.00;
4. Failure to provide adequate financial assurance for closure and long term care of the facility - \$1,000.00;
5. Failure to timely implement a plan to alleviate objectionable odors - \$10,000.00;
6. Disposal of unauthorized waste - \$2,000.00;
7. Failure to remove unauthorized waste - \$2,000.00;
8. Disposal of waste outside its permitted dimensions - \$8,000.00;
9. Enforcement costs sought by the Department - \$3,000.00.

The total amount of civil penalties and costs that have been assessed is \$38,000.00.

INJUNCTIVE RELIEF

The Department is entitled to injunctive relief pursuant to §403.131, Florida Statutes. The requirements for awarding permanent injunctive relief have been met in this action. The established violations have not been corrected by South Palafox and are continuing in nature.

There is no adequate remedy at law to correct the continuing violations absent the court ordering appropriate permanent injunctive relief. The Department initiated this action and is seeking permanent injunctive relief to enforce its police power pursuant to Chapter 403, Florida Statutes. Thus, irreparable harm is presumed and the injunctive relief sought by the Department is appropriate.

WHEREFORE, based on the Findings of the Administrative Law Judge and the Recommended Order dated March 2, 2015, the Final Order of the Department dated May 29, 2015, as well as this Court's findings as described above, it is hereby ORDERED AND ADJUDGED that:

1. Final Judgment is hereby entered in favor of the Plaintiff, State of Florida Department of Environmental Protection, 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida 32399-3000, and against Defendant, South Palafox Properties, LLC, 6990 Rolling Hills Road, Pensacola, Escambia County, Florida 32505, in the above-styled action.

2. The Final Order issued by the Department of Environmental Protection dated May 29, 2015, is hereby adopted by the Court and fully incorporated herein.

3. The Department is hereby awarded the following permanent injunctive relief to remedy the established violations in this action:

- a. Upon rendition of the Final Judgment, Defendant shall continue to perform remediation of the groundwater contamination present at the Facility pursuant to Chapter 62-780, Florida Administrative Code, and in accordance with the Department approved Remedial Action Plan, Remedial Action Plan Approval Order dated July 3, 2013 and Remedial Action Plan modification approval order dated January 12, 2016 until a site rehabilitation

completion order is issued by the Department pursuant to Chapter 62-780, Florida Administrative Code;

b. Within 60 days of the rendition of the Final Judgment, Defendant shall complete full and proper construction of the remedial action system in accordance with the Department approved Remedial Action Plan, Remedial Action Plan Approval Order dated July 3, 2013 and Remedial Action Plan modification approval order dated January 12, 2016;

c. Within 60 days of completing the construction of the remedial action system referenced herein, Defendant shall submit the required as-built certification for the remedial action system to the Department;

d. Upon completion of construction of the remedial action system referenced herein, Defendant shall operate same in accordance with the Department approved Remedial Action Plan, Remedial Action Plan Approval Order dated July 3, 2013 and Remedial Action Plan modification approval order dated January 12, 2016, including but not limited to all timely completing all required sampling events;

e. If the sampling events required by the Remedial Action Plan Approval Order dated July 3, 2013 indicate that the remedial action system is not functioning as intended, Defendant shall submit to the Department a proposed Remedial Action Plan modification to address any issues revealed through the remedial action system's operation, and shall implement the Remedial Action Plan modification upon Department approval of same;

f. Within 60 days of the rendition of the Final Judgment, Defendant shall obtain financial assurance for the cost of the corrective action program Defendant is required to undertake at the Facility (i.e., the Remedial Action Plan) in accordance with Rule 62-701.730(4)(c), Florida Administrative Code, as required by Rule 62-701.730(11)(d), Florida

Administrative Code, in the amount of \$566,325.85, approved by the Department on August 9, 2013 (unless a different amount is approved by the Department), and shall provide proof of same to the Department within 15 days of acquisition;

g. From the rendition of the Final Judgment, Defendant shall continue to remediate all surface water quality exceedances to regain compliance with the surface water criteria listed in Rules 62-302.500 and 62-302.530, Florida Administrative Code. In the event that the sampling reveals that something more than the remedial action system referenced herein is necessary to regain compliance with the surface water criteria listed in Rules 62-302.500 and 62-302.530, Florida Administrative Code, Defendant shall propose and submit to the Department an alternative appropriate remedial strategy pursuant to Chapter 62-780, Florida Administrative Code, to remediate all surface water quality exceedances, and shall implement and perform same upon Department approval;

h. Within 90 days of Department notification of the approved cost estimate for closure of the Facility in its current condition, Defendant shall supplement the existing financial assurance amount for closure to increase it to the amount of the cost estimate for closure of the facility in its current condition approved by the Department;

i. Within 60 days from the rendition of the Final Judgment, Defendant shall supplement its financial assurance for long-term care to reflect current site conditions at the Facility by obtaining the required increases for 2015 and 2016;

j. From the rendition of the Final Judgment, Defendant shall continue to comply with Rule 62-701.730(11), Florida Administrative Code and obtain the required annual inflation increases each year in financial assurance for long term care of the Facility until such time that same is no longer required;

k. From the rendition of the Final Judgment, Defendant shall ensure that the Facility remains non-operational and does not accept any additional authorized or unauthorized construction and demolition debris waste;

l. From the rendition of the Final Judgment, Defendant shall continue to allow the Department, its agents, employees, contractors, and subcontractors acting under the authority of the Department, to enter the Property without additional notice to:

i. perform final closure of the Facility to the extent that funds are available to do so;

ii. perform any necessary compliance, complaint and progress inspections of the Facility;

iii. perform inspections of the remedial action system; and

iv. perform emergency response activities as necessary and appropriate on the Property, including but not limited to addressing the threat or existence of fire, and hydrogen sulfide abatement;

m. From the rendition of this Final Judgment, Defendant shall continue to allow the Department to maintain its lock on the Northwest access gate to allow the Department, and its agents, employees, contractors, and subcontractors acting under the authority of the Department to access the Property to perform the activities set forth in paragraph 6(l) herein. The Department's lock shall be maintained on the Northwest access gate in such a manner as to not prevent Defendant from accessing the Property, and Defendant shall not alter, tamper with, change, repossess or remove the Department's lock from the Northwest access gate at the Property. Conversely, the Department shall not alter, tamper with, change, repossess or remove Defendant's own lock to the Property;

n. Defendant shall be prohibited from in any way hindering, removing, tampering with, jeopardizing or interfering with any equipment and materials staged on the Property by the Department, its agents, employees, contractors, and subcontractors acting under the authority of the Department for purposes of performing final closure activities and emergency response activities;

o. Defendant shall be prohibited from in any way hindering, tampering with, jeopardizing or interfering with the ongoing or completed final closure and emergency response activities conducted by the Department, its agents, employees, contractors, and subcontractors acting under the authority of the Department on the Property;

p. Defendant shall properly dispose of any unauthorized waste (waste that is not construction and demolition debris defined in Chapter 62-701.200(24), Florida Administrative Code) discovered during the final closure performed by the Department;

q. Upon Department notification that the Department has completed final closure of the Facility, Defendant shall begin performing long-term care monitoring and maintenance of the Facility in accordance with 62-701.730(10), Florida Administrative Code, and the following subparagraphs:

i. Continue to monitor and maintain the integrity and effectiveness of the final cover as well as other appurtenances of the facility for a minimum of five years from the date final closure is completed;

ii. Control erosion, including but not limited to filling subsidences, repairing the final cover where erosion has occurred and re-vegetating areas that are denuded of vegetation, for a minimum of five years from the date final closure is completed;

iii. Maintain the stormwater system for a minimum of five years from the date final closure is completed;

iv. Control objectionable odors, and implement an odor remediation plan, if required, in accordance with Rule 62-701.530(3)(b), Florida Administrative Code; and

v. Comply with the water quality monitoring plan that was established in Appendix 3 of the Facility Permit 003397-013-SO.

r. In the event that Defendant fails to perform long term care monitoring and maintenance of the Facility as required herein, the Department and its agent(s) shall be granted access to the Property to perform long term care maintenance activities as needed at the Facility, to that extent funds are available to do so;

s. From the rendition of the Final Judgment, the Department shall have site access to the Property for the purpose of allowing the Department or its agent(s) to verify compliance with the terms of the Judgment, Department permits and orders, Florida Statutes, and Department rules;

t. Defendant shall perform such other activities this Court deems just and necessary to abate the imminent threat of irreparable harm to public health and welfare, and to the air, waters and property of the State, to enjoin any existing violations at the Facility and to prevent any future violations from occurring, and to regain compliance with the Consent Order and Department rules.

4. The Department shall recover from Defendant the total sum of \$38,000.00 (\$35,000.00 in civil penalties and \$3,000.00 in costs), pursuant to Sections 403.121 and 403.141, Florida Statutes, for the violations in this action, that shall bear interest at the legal rate of 4.78%, for which let execution now issue.

5. Defendant shall make all payments required by this Judgment by cashier's check, money order or on-line payment. Cashier's check or money order shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this action ("OGC No. 14-0479") and the notation "Water Quality Assurance Trust Fund." Online payments by e-check can be made by going to the DEP Business Portal at <http://www.fldepportal.com/go/pay/>. Other payments and submittals shall be sent to the State of Florida Department of Environmental Protection, Northwest District, 160 West Government Street, Suite 308, Pensacola, Florida 32502-5740.

6. It is further ordered and adjudged that the Defendant shall complete under oath Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet), including all required attachments, and serve it on the Department's attorney, at Douglas Building, MS #35, 3900 Commonwealth Blvd., Tallahassee, Florida 32399-3000, within 60 days from the effective date of the Final Judgment, unless the Final Judgment is satisfied or post-judgment discovery is stayed. Failure to complete Form 1.977 as ordered may be considered contempt of court. Upon serving the completed forms, the Defendant is required to file a notice of compliance with the clerk of court and serve a copy of the notice of compliance on the Department's attorney.

7. Entry of this Judgment does not relieve Defendant of the need to comply with applicable federal, state or local laws, regulations, or ordinances.

8. The Court shall retain jurisdiction of this action to enforce the provisions of this

Final Judgment by contempt or other appropriate sanctions.

DONE AND ORDERED in Pensacola, Escambia County, Florida this 7 day of
June, 2016.



JOHN L. MILLER, CIRCUIT JUDGE

6-7-16
SC
Copies to:
Margaret E. Seward, Esquire
B. Jack Chisolm, Esquire
Barbara Ellis-Wiggins, Esquire
Todd M. LaDouceur, Esquire
M. Austin Moretz, Esquire