

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
IN AND FOR BAY COUNTY, FLORIDA

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

Plaintiff,

v.

PHOENIX CONSTRUCITON SERVICES, INC.,

Defendant.

Case No.: 00-1125-J

HAROLD BAZZEL
CLERK OF CIRCUIT COURT
BAY COUNTY, FLORIDA

COMPLAINT

Plaintiff, State of Florida Department of Environmental Protection (Department), sues Defendant, Phoenix Construction Services, Inc., and as grounds alleges:

1. This is a civil action for injunctive relief, civil penalties, and Department costs and expenses, for violations of the rules and statutes pertaining to dredging and filling of jurisdictional lands in violation of Chapters 373 and 403, Florida Statutes and the rules promulgated thereunder in Florida Administrative Code Title 62.

JURISDICTION AND VENUE

2. This is an action for injunctive relief and civil penalties in excess of \$15,000.

3. This Court has jurisdiction over this action pursuant to Article V, section 5 of the Constitution of the State of Florida, and Sections 26.012, 373.129, 403.121(1), 403.131, 403.141, Florida Statutes (1999).

4. Venue properly lies in this Circuit because the events and activities involved in this suit have taken place in Bay County.

PARTIES

5. Plaintiff, Department, is the regulatory agency of the State of Florida charged with the duty to enforce the provisions of Chapters 373 and 403, Florida Statutes (1999) and the rules adopted thereunder in Florida Administrative Code Rules 62-312 and 62-340.

6. Defendant, Phoenix Construction Services, Inc., is an active Florida corporation and a "person" within the meaning of Sections 373.019(12) and 403.031(5), Florida Statutes (1999).

7. Defendant was hired by the City of Panama City Beach to construct soccer fields at Frank Brown Park, Section 17, Township 3 South, Range 16 West, Bay County, Florida (Park).

8. The Park is adjacent to a manmade ditch leading to West Bay, a surface water of the State as defined in Sections 373.019(17) and 403.031(13), Florida Statutes, and within the Department's jurisdiction pursuant to Florida Administrative Code Rule 62-312.030(2) and 62-340.

9. On May 4, 1999, Department staff observed employees of Defendant at the Park placing soil in an area adjacent to the ditch.

10. Department staff informed Defendant's on-site manager that the Department had not issued a permit for the activity.

11. On May 7, 1999, Defendant received a Warning Letter ordering Defendant to cease activity at the Park until Defendant received a permit from the Department.

12. On May 10, 1999, Department staff again observed Defendant's employees continuing to place soil in an area of the Park adjacent to the man-made ditch.

13. The soil is fill within the meaning of Section 373.403(14), Florida Statutes and Florida Administrative Code Rule 62-312.020(11).

14. The fill was placed on approximately 3.5 acres within the landward extent of surface waters of the State as determined pursuant to Florida Administrative Code Rule 62-340 and is within the Department's jurisdiction.

15. The Department did not issue a permit to conduct dredging and filling activity at the Park prior to the filling activity by Defendant.

16. Florida Administrative Code Rule 62-312.030(1) requires that the dredging and filling conducted in, on, or over those surface waters of the state as provided in the rule require a permit from the Department.

17. The failure of Defendant to obtain a permit required by Part IV of Chapter 373 or by any rule or regulation adopted pursuant thereto is a violation of Section 373.430(1)(b), Florida Statutes (1999).

WHEREFORE, the State of Florida Department of Environmental Protection respectfully requests that this Court enter judgment and therein:

A. Issue a permanent injunction, pursuant to Sections 373.129 and 403.131, Florida Statutes, prohibiting Defendant from undertaking or directing any

further work or activity on lands within the Department's dredge and fill jurisdiction without proper authorization;

B. Assess civil penalties against Defendant of not more than \$10,000 per day per violation, pursuant to Sections 373.129(5) and 403.141, Florida Statutes (1999);

C. Assess the Department's costs and expenses and reasonable attorney's fees as provided in Section 373.129(6), Florida Statutes (1999);

D. Retain jurisdiction to enforce compliance with this Court's Orders and Judgments;

E. Enter such other relief as the Court deems just and appropriate.

DATED THIS 31st day of March 2000.

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION



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