

HILLSBOROUGH, SS.

SUPERIOR COURT

NORTHERN DISTRICT

OSSIPEE BLUFFS ASSOCIATION

v.

DONALD R. LEE, SR.

Docket No. 07 -E-437

ORDER

Hearing held on pending motions in reference to the above entitled matter consistent with the Notice of Hearing (dated 3/10/08). Subsequent to review, the Court renders the following determination(s).

Preliminarily, the Respondent's Motion to Stay Remedial Action Due to Installation of New Walls on the Lovell River (filed 10/31/07) was WITHDRAWN by the Respondent's counsel. Further, the limited Motion to Intervene submitted by the State of New Hampshire, Department of Environmental Services (DES) through the Office of the Attorney General (filed 6/13/07) is GRANTED in that none of the parties objected to same.

In reference to the Petitioner's Motion for Contempt (filed 5/31/07) and by way of brief background; subsequent to a hearing on the merits, in reference to the underlying Petition for Injunctive Relief and Damages in Nuisances (filed 6/1/04); the Court issued an Order (dated 9/27/06). Within said Order, the Court directed the following provisions:

1. That the Respondent shall, at his sole expense, forthwith contract with a qualified

professional engineer, to produce a plan, time table and application and to apply to the department of Environmental Services ("DES") for all necessary approvals and permits to perform material removal in the area of the Bradford Cove, Lake Ossipee Lake, NH, which expeditiously results in the removal of the present sandbar and reestablishment of the "typical fan-shaped delta," which was in existence prior to the Respondent's non-permitted above-said actions. Said plan shall encompass removal of those materials that the DES determines are the result of the Respondent's non-permitted activities, as above said.

2. That Respondent shall, at his sole expense, forthwith pay the appropriate professionals to implement the removal plan, as provided above, or as modified and permitted by said DES. In approving the plans submitted by the said Respondent as directed; the Court assumes that the above-said concerns will be addressed by the DES.

On or around 5/3/07, the Respondent, through a firm (Heindel and Noyes, Inc.) submitted a 1 ~ page document -letter that reviewed generally a proposal to remediate the subject beach and delta area. By Letter dated 5/31/07, said proposal was reviewed by the Department of Environmental Service and the Attorney General's Office who opined that same "did not include plans or an adequate description of activity proposed and therefore cannot be properly viewed by DES." The Attorney General further indicated that "any submittal should include, at a minimum, a detailed restoration plan, a site plan showing the area of work, detailed engineering or other construction plans including the lake elevation and any other data necessary for evaluation." Subsequent to same, the Respondent submitted a Motion to Compel DES to Comply with Court Order of 9/27/06 (filed 6/11/07). Within said Motion, the Respondent requests that the Court direct that the DES "determine the appropriate amount of material to remove

which is consistent with the Court Order dated September 27, 2006 and previous DES Orders, especially said Order dated October 6, 2003." In objecting to same (filed 6/3/07), the DES averred in part that same was not a party to the initial action and accordingly, should not be enjoined from taking action "that it would not otherwise take" or specifically prospectively provide plans that are incumbent on the Respondent to produce.

Subsequent to review of the Court's notes of the above-said hearing on the merits, the subject Court Order, oral argument, the pleadings and/or submissions submitted by the respective parties; the Court directs the following provisions:

1. That the Respondent's Motion to compel DES to Comply with Court Order of September 27, 2006 is DENIED.

2. That as earlier directed by the Court, the Respondent shall, at his sole expense, forthwith contract with a qualified professional engineer, to produce a plan, time table and application and to apply to the Department of Environmental Services ("DES") for all necessary approvals and permits to perform material removal in the area of Bradford Cove, Lake Ossipee, NH, which expeditiously results in the removal of the present sandbar and reestablishment of the "typical fan-shaped delta" which was in existence prior to Respondent's non-permitted actions as reviewed in the Order (dated 9/27/06). In this regard, the Court directs that said plan, time table and application shall be submitted consistent with the Petitioner's "preferred alternative" ("channelization; partial dredge of sandbar and abatement" - Exhibit #33C). All competent evidence produced at trial indicated that this was the most reasonable approach to accomplish the above. Within 60

days of the Clerk's' Notice of this Order, the said Respondent shall submit all documents required by the DES to review said plan and application. The Court assumes that the concerns broached by the Court in the Order (dated 9/17/06) will be addressed by the DES.

3. That as earlier directed by the Court, subsequent to approval, the Respondent shall, at his sole expense, forthwith pay the appropriate professionals to implement the removal plan.

4. That the Court holds in abeyance a finding of willful contempt against the said Respondent and the appropriate resulting sanctions were the Petitioner's Motion granted, pending further review including compliance by the said Respondent with the provisions contained within this Order.

SO ORDERED.

April 11, 2008

~. DON·lk111

James D. O'Neill, III
Presiding Justice