

STATE OF NORTH CAROLINA
COUNTY OF GREENE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
2002 CVS 185

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NCS 000

STATE OF NORTH CAROLINA, *ex rel.*,)
WILLIAM G. ROSS, JR., Secretary,)
North Carolina Department of)
Environment and Natural)
Resources,)

Plaintiff,)

v.)

JAMES O. SHACKELFORD, JR. and)
PAULINE SHACKELFORD,)

Defendants.)

CONTEMPT ORDER

On May 5, 2003, in Greene County Superior Court in Snow Hill, North Carolina, this matter came on for hearing on this Court's April 2, 2003 Order to Show Cause why the Defendants should not be held in contempt of the undersigned Judge's October 7, 2002 Default Judgment Granting Permanent Injunction against the Defendants.. Both Defendants were present at the hearing pro se. The State's attorney, Assistant Attorney General Allison S. Corum and representatives of DENR's Division of Waste Management (DWM) were also present at the hearing. After hearing the arguments and evidence of the parties, the undersigned Judge makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The State filed the complaint in this action on June 10, 2002.
2. On October 7, 2002, the Court entered a Permanent Injunction against James O. Shackelford, Jr. and Pauline Shackelford ordering the Defendants to comply with the following directives:

- a. James O. Shackelford, Jr. and Pauline Shackelford shall immediately stop moving USTs, ASTs, drums, other containers, other wastes, and petroleum substances onto the Site and shall not resume these activities unless approved to do so by the Department's Division of Waste Management (DWM).
- b. Within three (3) days of the entry of the injunction order, James O. Shackelford, Jr. and Pauline Shackelford shall prevent unauthorized entry to the Site by installing gates, chains, berms, or fences, and post signs stating that the site is closed and that no dumping is permitted. These signs and entry barriers shall remain in place until such time that the DWM authorizes their removal.
- c. Within three (3) days of the entry of the Injunction Order, James O. Shackelford, Jr. and Pauline Shackelford, shall assess whether any of the wastes or conditions at the Site pose an immediate threat to public health or to the environment and inform the DWM immediately of any such threat. Within 24 hours after receiving notification by the DWM that immediate action is needed in regard to any such threat, James O. Shackelford, Jr. and Pauline Shackelford shall mitigate or remove the conditions posing such threat in accordance with directions provided by the DWM and in accordance with all applicable environmental laws, rules and regulations. James O. Shackelford, Jr. and Pauline Shackelford shall not remove wastes or otherwise alter site conditions without consulting with the DWM and complying with the specific directions of the DWM.
- d. Within thirty (30) days of the Court's order, James O. Shackelford, Jr. and Pauline Shackelford shall develop and submit to the DWM for approval a Comprehensive Sampling, Analysis, and Assessment Plan and a schedule for completion of the Plan. This Plan shall characterize the known contents of tanks, drums and any other containers at the Site and shall describe actions to be taken to fully determine and characterize the contents of all other tanks, drums, and any other containers at the Site. Actions to characterize the contents of tanks, drums, and any other containers or waste at the Site shall include performance of a waste determination pursuant to 15A NCAC 13B .0102(d) and 15A NCAC 13A .0109(c) in accordance with the DWM's "Procedure and Criteria for Waste Determination" to determine whether the wastes at the Site are (i) hazardous as defined by 15A NCAC 13A and (ii) suitable for disposal at a solid waste management disposal facility." The Comprehensive Sampling, Analysis and Assessment plan shall also describe actions to be taken to fully characterize suspected or known releases at the Site. Actions taken to characterize suspected or known releases at the Site shall include identifying the sources of contamination, the nature and extent of contamination, determining site hydrogeologic conditions, evaluation of fate/transport of the contaminants, pathways for migration, and identifying potential human and environmental receptors. This Comprehensive Sampling, Analysis and Assessment plan shall also include a determination of whether activities at the Site have resulted in an increase in the concentration of any substance in excess of the groundwater quality standards as specified in 15A NCAC 2L .0202. To the extent that the activities as alleged herein at the Site have resulted in an increase in the concentration of any substance in excess of the groundwater quality standards as specified in 15A NCAC 2L .0202, James

O. Shackelford, Jr. and Pauline Shackelford shall: (1) immediately notify the Division of the activity that has resulted in the increase and the contaminant concentration levels; (2) take immediate action to mitigate the contamination and hazards resulting from exposure to the pollutants and eliminate the source or sources of contamination on a date, at a time, and in a manner approved by the DWM; (3) submit as part of the Comprehensive Sampling, Analysis and Assessment, a Plan assessing the cause, significance and extent of the 15A NCAC 2L .0202 violation(s) in accordance with the specific requirements of 15A NCAC 2L .0106(c)(3) and .0106(g).

- e. Within forty-five (45) days after the DWM approves the Comprehensive Sampling, Analysis, and Assessment Plan and schedule as described above, James O. Shackelford, Jr. and Pauline Shackelford shall complete performance of the Plan and submit a Comprehensive Sampling, Analysis and Assessment Report, a Remediation Plan, and a Remediation Schedule to the DWM for approval. The Comprehensive Sampling, Analysis and Assessment Report shall include all items specified in the Comprehensive Sampling, Analysis and Assessment Plan approved by the Division. The Remediation Plan and Remediation Schedule shall include plans to remove all solid waste at the Site which is not hazardous waste and to dispose of it at an approved disposal site or facility in a manner approved of by the Division. This Remediation Plan and Remediation Schedule shall also include plans to remove all hazardous waste from the Site and to manifest all hazardous waste to a permitted hazardous waste treatment, storage or disposal facility or other disposal facility approved by the Division. Any hazardous waste transported from the Site pursuant to this Plan must be transported by a transporter authorized to transport hazardous waste under the Act and Rules. This Remediation Plan and Remediation Schedule shall also include plans to comply with N.C.G.S. §§ 143-215.83 and 143-215.84 by collecting and removing the discharge of oil and other hazardous substances and to restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge as required by N.C.G.S. § 143-215.84. If the activities as alleged herein at the Site have resulted in an increase in the concentration of any substance in excess of the groundwater quality standards as specified in 15A NCAC 2L .0202, this Remediation Plan and Remediation Schedule shall also include plans to restore the groundwater quality to a condition and in a manner which is compliant with 15A NCAC 2L .0106 and which is approved by the DWM.
- f. Within ninety (90) days after the DWM approves the Site Remediation Plan and Remediation Schedule, James O. Shackelford, Jr. and Pauline Shackelford shall complete the Remediation Plan and submit to the DWM a Remediation Completion Report which describes all remediation performed. To the extent that the approved Remediation Plan requires groundwater monitoring or other monitoring activities beyond the date on which this Remediation Completion Report is required to be submitted, reports of these additional monitoring activities may be submitted subsequent to the date the Remediation Completion Report is submitted but must be submitted in accordance with any monitoring schedules and deadlines set forth in the Remediation Plan approved by the Division.
- g. In performing the obligations under the Court's order, James O. Shackelford, Jr. and Pauline

Shackelford shall comply with all of the requirements the Solid Waste Management Act, N.C.G.S. Chapter 130A, Article 9; the Hazardous Waste Rules, 15A N.C.A.C. 13A; the Solid Waste Rules, 15A N.C.A.C. 13B; the Oil Pollution and Hazardous Substances Control Act (OPHSCA), Chapter 143, Article 21A, N.C.G.S. 143-215.83 et seq.; and the 2L Rules, 15A N.C.A.C. 2L.

3. Testimony by Mike Williford, Eastern Compliance Supervisor with the Division and Dick Denton, Waste Management Specialist at the DWM establish that James O. Shackelford, Jr. and Pauline Shackelford have failed to comply with all but one of the court-ordered directives set forth in the Permanent Injunction and have made no attempt to comply with these directives. In fact, the defendants have failed even to contact the DWM representatives in order to coordinate their efforts with the DWM. The only directives that the Shackelfords have complied with or have attempted to comply with is that they posted no dumping signs at the Site and strung up crime scene tape around the Site. However, they did not install fences, berms, gates or similar barriers to actually prevent unauthorized entry onto the Site as required by the October 2, 2002 Permanent Injunction. Other than the no dumping signs and the tape, the Defendants have made no further efforts to comply with any of the directives in the October 2, 2002 Permanent Injunction.

4. Based on the testimony of James O. Shackelford, Jr. and Pauline Shackelford, the Court finds that the Defendants have presented testimonial evidence of physical and/or mental disabilities, have testified to having limited financial resources, have testified that they are surviving on public assistance, and have testified to a limited understanding of the proper procedures for dealing with the environmental law violations at issue in this action. However, the Defendants have failed to provide adequate documentation of their financial condition and of James O. Shackelford, Jr.'s medical conditions in spite of discovery requests sent by the Plaintiffs requesting such information. The Court further finds that the Defendants have failed to answer the discovery requests served on

them by the Plaintiffs. In light of Defendants' failure to produce and submit adequate documentation of their financial and medical conditions, the Court cannot at this time find that the Defendants are unable to comply with the October 2, 2002 injunction or to take reasonable measures which would enable them to comply with the October 2, 2002 injunction and must therefore conclude that they are presently able and have the means to comply with the permanent injunction.

5. The Court further finds that the defendants have not made a good faith effort to comply with the October 2, 2003 Permanent Injunction entered by the undersigned Judge.

6. The October 2, 2003 Permanent Injunction remains in force.

CONCLUSIONS OF LAW

1. The Court finds and concludes that the Defendants' noncompliance with the October 2, 2002 Permanent Injunction and Order is willful.

2. Based on the evidence presented at this hearing and at the October 2, 2003 Permanent Injunction hearing, the Court finds and concludes that the Defendants have created an environmental hazard in violation of the laws referenced in the October 2, 2002 Permanent Injunction.

3. In light of Defendants' failure to produce and submit adequate documentation of their financial and medical conditions, the Court cannot at this time find and conclude that the Defendants are unable to comply with the October 2, 2002 injunction or to take reasonable measures which would enable them to comply with the October 2, 2002 injunction and must therefore find and conclude that the Defendants are able to comply with the permanent injunction.

4. The October 2, 2002 Permanent Injunction is enforceable by and through the contempt powers of this Court pursuant to Chapter 5A of the North Carolina General Statutes and the October 2, 2002 Permanent Injunction remains in force.

5. The purpose of the October 2, 2002 Permanent Injunction order may still be served by Defendants' compliance with said Injunction order.

6. The Court finds and concludes that the Defendants are in Contempt of court.

ORDER

WHEREFORE, the Court orders the Defendants to do the following:

1. In light of their claims of limited resources and medical disabilities, the Court orders the Defendants to serve on the State's attorney, Assistant Attorney General Allison S. Corum their responses and (including all requested documents) to the State's March 3, 2003 Requests for Production of Documents no later than 30 days after the date of this Order.

2. The Court orders the Defendants to meet with representatives of the DENR's Division of Waste Management (DWM) within 30 days of the date of this Order at the Site to review the Site physically with the DWM representatives and to discuss legal requirements for the proper assessment and remediation of the Site.

3. The Court further orders the defendants to provide DWM representatives access to any vehicles owned by the Defendants so that the DWM representatives can assess the condition and value of these vehicles.

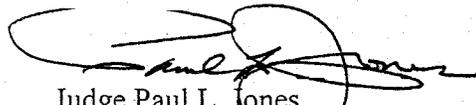
4. The Court orders the DWM to schedule a follow up hearing of this matter before the undersigned Judge within 90 days of the date this Order is entered if the DWM wishes to pursue the matter further and if the Defendants have not satisfactorily complied with the October 2, 2002 Permanent Injunction and the requirements of this Contempt Order by that time.

5. The Defendants may purge themselves of Contempt by complying completely with the directives set forth in the October 2, 2002 Permanent Injunction entered by this Court and by

complying with this Contempt Order.

6. This Court retains jurisdiction of this matter for such further orders as may be required to insure full compliance with the North Carolina Solid Waste Management Act, N.C.G.S. Chapter 130A, Article 9 (the "Act"), and the North Carolina Hazardous Waste Management Rules, 15A NCAC 13A (the "Rules"), the North Carolina Solid Waste Management Rules, and the Oil Pollution and Hazardous Substances Control Act (OPHSCA), the 2L Rules (15A NCAC 2L) and any Judgments and Orders promulgated thereunder.

This the ~~4th~~ day of *June*, 2003.



Judge Paul L. Jones
Senior Resident Superior Court Judge