

ORIGINAL *of*

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

Jun 2 2 44 PM '04
SUN PRAIRIE SAND AND GRAVEL, LLC,
495 Marshview Drive
Sun Prairie, WI 53590,

Plaintiff,

CIRCUIT COURT
DANE COUNTY, WI

04CV1689

Case No.: _____
Case Code: *30704 and 30201*

vs.

YAHARA MATERIALS, INC.
6117 CTH K
P.O. Box 277
Waunakee, WI 53597-0277

Defendant.

AFFIDAVIT OF WILLIAM R. POOLE

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

William R. Poole, being duly sworn on oath, deposes and says:

1. I am a Principal Environmental Scientist with Natural Resources Consulting, Inc., P. O. Box 128, Cottage Grove, WI 53527-0128.
2. I have a degree in biology and wildlife management, and have worked in natural resources consulting for 19 years. Attached as Exhibit 1 is a copy of my curriculum vitae.
3. I am familiar with and regularly apply Wisconsin's recently adopted Nonmetallic Mining Reclamation rules in chapter NR 135 of the Wisconsin Administrative Code. Since the rules were adopted, I have written several reclamation plans implementing those rules.
4. I am similarly familiar with and regularly apply Dane County's Non-Metallic Mining Ordinance, Chapter 74 in my work on mining reclamation projects. In fact, Dane County

regularly uses a reclamation plan I developed as a template for others.

5. For a property like the subject Property, the sequence of the proper mining process involves six basic steps:

- A. Remove and stockpile the topsoil layer to the side of the area to be mined;
- B. Remove and stockpile the overburden soil layer separately from the topsoil and to the side of the area to be mined;
- C. Remove the sand and gravel and stockpile for processing;
- D. Replace the set-aside overburden layer on the mined area;
- E. Replace the topsoil over the overburden; and
- F. Seed the topsoil.

6. To prevent and minimize environmental harm from mining activities, accepted best management practices require that certain procedures be used in the mining process to allow for proper reclamation. Those practices require dividing the mining operation into phases, stockpiling of material to allow for reclamation, and incorporating proper erosion control measures during each phase.

7. Proper management procedures include the removal of the topsoil and overburden material into separate vegetated stockpiles and berms prior to the removal and processing of underlying sand and gravel. Development of such stockpiled berms has at least three environmental benefits:

- A. The berms control erosion over and adjacent to the active mining site.
- B. This practice also affords visual screening from the mining activities.
- C. Placing the berms, composed of segregated materials, around the periphery of the mining area allows for an efficient means of properly reclaiming the site upon

completion of mining activities.

8. On May 27, 2004, I visited the Yahara Materials mining operation located in Section 34, T7N, R11E, Cottage Grove Township, Dane County, Wisconsin, off Highway 12 ("Property"). The following is a summary of the conditions I observed at the Property:

A. Large portions of the topsoil and subsoil overburden material are mixed together or mixed with sand and gravel and placed into randomly located piles.

B. Topsoil and overburden has been pushed into open water areas instead of being stockpiled for reclamation.

C. Sand, gravel and overburden material have been placed on top areas of topsoil which was not removed and stockpiled prior to commencement work.

D. Erosion control measures have not been implemented, including defined erosion control berms/measures and stockpiled topsoil and overburden material stabilized with vegetation or mulch.

9. As a result of these practices, topsoil and overburden has been lost for use in reclamation. At present, there is now insufficient topsoil to ensure adequate reclamation of the expanded mining area without the importation of additional topsoil.

10. A number of mining practices and the resulting conditions I observed during the May 27, 2004, visit are inconsistent with best management practices for a mining operation and have damaged the Property, including but not limited to:

A. Limiting the ability to successfully reclaim the site as productive agricultural land; and

B. Contributing to local water quality impacts due to lack of erosion control measures.

11. The site conditions maintained by Yahara Materials also appear to violate the stormwater/erosion control requirements of Chapter 14, Dane County Code of Ordinances. Those standards require Universal Soil Loss evaluations and erosion control measures such as stabilized perimeter berms, vegetated buffers, French drains, etc., but the site conditions offered none of these measures.

12. Also, as part of my investigation of the mining activities on the Property, I reviewed historic aerial photographs taken in the years 1992 through 2002. Based on that review, it appears that only a few acres of the Property were disturbed during the period from 1999 through 2002.

13. It is my opinion, based upon my best professional judgment that Yahara's activities, including mixing of the top soils, placing gravel and overburden piles on areas of existing topsoil and the lack of erosion control and stormwater management measures will make reclaiming the site back into productive crop land very costly and difficult and may be contributing to local water quality degradation.

14. It is further my opinion, based upon my best professional judgment and the conditions of the Property I observed during my inspection, that expansion of stripping or excavation activities onto undisturbed lands using current practices will damage more topsoils on the Property and make the ability to reclaim the Property increasingly more difficult.

15. It is further my opinion, based upon my best professional judgment, that in order to prevent further damage to the Property, the following activities must be immediately discontinued:

A. Mining areas without first stripping and separately stockpiling the topsoils and overburden and complying with the terms of the Lease;

B. Mixing topsoil with other materials, placing sand and gravel or other materials onto existing topsoil areas or topsoil stockpiles, disposing of topsoil into open water, disturbing existing topsoil stockpiles or taking any other action that may further degrade the topsoil of the Property;

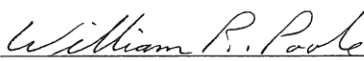
C. Allowing topsoil stockpiles to erode.

16. It is further my opinion, based upon my best professional judgment, that before additional mining activities take place, Defendant should:

A. Develop and implement a plan to restore, remediate or replace the separate stockpiles of topsoils and overburden that are sufficient to allow for adequate reclamation of the site as required by the Lease between the parties ("Restoration Plan").


B. Cease all further mining activities on the Property until Defendant has fully implemented the Restoration Plan.

Dated this 2 day of June, 2004.



William R. Poole

Signed and sworn to before me
this 2nd day of June, 2004.



Notary Public, Dane County, Wisconsin
My Commission Expires on 7/29/07 /~~Is Permanent~~.

ORIGINAL *df*

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

Jul 2 2 45 PM '04
SUN PRAIRIE SAND & GRAVEL, LLC
495 Marshview Drive
Sun Prairie, WI 53590,

CIRCUIT COURT
DANE COUNTY, WI

Plaintiff,

Case No: 04CV1699

Case Code: 30704 and 30201

vs.

YAHARA MATERIALS, INC.
6117 CTH K
P.O. Box 277
Waunakee, WI 53597-0277

Defendant.

AFFIDAVIT OF NATHAN SIEVERS

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Nathan Sievers, being duly sworn on oath, deposes and says:

1. I am employed by Sun Prairie Sand & Gravel LLC ("SPSG"), 495 Marshview Drive, Sun Prairie, WI 53590 as Reclamation Manager and oversee the reclamation of properties owned by SPSG.

2. I have degrees in Reclamation and Environmental Conservation and was instrumental in the development of a nonmetallic mining reclamation ordinance for Rock County in Wisconsin.

3. I have been overseeing the mining activities of Yahara Materials, Inc., ("Yahara") at the SPSG property located at Section 34, T7N, R11E, Cottage Grove Township, Dane County Wisconsin ("Property"), since SPSG first purchased the Property in May 2003.

4. Around the time of the purchase, I evaluated Yahara's reclamation plan for the Property and inspected the activities on site. At that time, I had only minor concerns with Yahara's management of the site and spoke with Yahara officials about those concerns.

5. Since SPSG's purchase of the Property, I have been monitoring Yahara's mining activities and management of the Property.

6. On our about May 22, 2004, I inspected the Property and became very concerned with several aspects of Yahara's activities. On May 25, 28 and 30, I have personally photographed areas of the Property to show the current site conditions. As further described herein, true and accurate copies of those photographs are attached as exhibits to this Affidavit.

7. At the time of my May 22, 2004 visit and on subsequent visits, I observed many instances of material mismanagement and site destruction, which include the following:

A. There were many examples of topsoil, overburden, and mineral materials being mixed together with the best example of these actions located in the center of the mine. Attached as Exhibits 1, 2 and 3 are accurate photographs that I took on May 25, 28 and 30, 2004, showing those conditions on the Property. Exhibit 3 shows the ultimate result of mixing materials.

B. In other areas, the topsoils have not been stripped before mining activities were started. Because of this practice, overburden and sand and gravel were placed on top of topsoil. Attached as Exhibits 4 and 5 are accurate photographs that I took on May 28 and 30, 2004, showing those conditions on the Property. The first

picture shows soil horizons being covered by sand and gravel with overburden on top of the sand and gravel. The second shows material being pushed across the topsoil without stripping.

C. Top soil and overburden were placed in an open water area instead of being stockpiled for reclamation. Attached as Exhibits 6 and 7 are accurate photographs that I took on May 28, 2004, showing those conditions on the Property.

D. In addition to the newly stripped areas, Defendant disturbed an existing topsoil pile that had been stabilized since the purchase of the Property by driving equipment through the center of it. Attached as Exhibit 8 is an accurate photograph that I took on May 30, 2004, showing that area of the Property.

E. The berms are not seeded or placed in manner to prevent erosion or runoff. A good example of the erosion taking place on site is the silt plume shown in the photograph attached as Exhibit 9, which is an accurate photograph that I took on May 25, 2004, showing that area of the Property. The topsoil pile is gradually eroding and is causing large amounts of runoff into the newly planted fields and the small pond to the north. Exhibit 10 is another accurate photograph showing the site erosion that I took on May 28, 2004.

8. The damage resulting from Yahara's activities is destroying the Property in several ways:

A. The soil and material mixing will cause significant problems for any future reclamation of the Property. There is no way to separate the usable topsoil from the overburden. The loss of usable topsoil will make revegetation impossible.

B. With the lack of vegetation on site, erosion and runoff will be severe and may affect surrounding properties and infiltrate into area waterways.

C. Future use of the Property for agriculture will be nearly impossible given the destruction of the soils. The Property will not be able to produce or sustain viable crops.

9. Since my May 22, 2004 inspection, I have observed continuing practices by Yahara that are further and irreparably damaging the Property, which include:

A. Defendant is continuing to mix materials and to improperly strip lands.

B. There has been no attempt at any erosion control practices on site, such as the use of silt fencing, contouring the land to maintain internal drainage, placement of the berms and other materials to prevent erosive conditions. Nor has Defendant made an attempt to seed and mulch any of the berms or stripped material.

10. Since my May 22, 2004 inspection and based on several inspections I have made since that date, including on or about May 24, 26, 28 and 30, 2004, I estimate that Yahara is mining at a rate of approximately one quarter acre per day or more given the size of loaders and the use of both a screening plant and wash plant.

11. It is further my opinion, based upon my knowledge and experience with mining and reclamation activities, that Yahara's activities, including mixing of the top soils, placing gravel piles on areas of existing topsoil stockpiles and the lack of erosion control measures will make reclaiming the Property back into productive crop land very costly and difficult and may be contributing to local water quality degradation.

12. It is further my opinion, based upon my knowledge and experience with

mining and reclamation activities and the conditions of the Property I observed during my inspections, that expansion of stripping or excavation activities onto undisturbed lands using current practices will damage more topsoils on the Property and make the ability to reclaim the Property increasingly more difficult.

13. It is further my opinion, based upon my knowledge and experience with mining and reclamation activities, that in order to prevent further damage to the Property, the following activities must be immediately discontinued:

A. Mining areas without first stripping and separately stockpiling the topsoils and overburden and complying with the terms of the Lease;

B. Mixing topsoil with other materials, placing sand and gravel or other materials onto existing topsoil areas or topsoil stockpiles, disposing of topsoil into open water, disturbing existing topsoil stockpiles or taking any other action that may further degrade the topsoil of the Property;

C. Placing topsoil into open water areas.

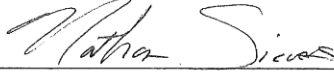
D. Allowing topsoil stockpiles to erode.

14. It is further my opinion, based upon my knowledge and experience with mining and reclamation activities, that before additional mining activities take place, Defendant should:

A. Develop and implement a plan to restore, remediate or replace the separate stockpiles of topsoils and overburden that are sufficient to allow for adequate reclamation of the site as required by the Lease between the parties ("Restoration Plan").

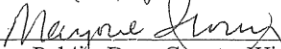
B. Cease all further mining activities on the Property until Defendant has fully implemented the Restoration Plan.

Dated this 01 day of June, 2004.



Nathan Sievers

Signed and sworn to before me
this 1st day of June, 2004.



Notary Public, Dane County, Wisconsin

My Commission Expires on 7/29/07 /Is Permanent.



EXHIBIT 1



EXHIBIT 2

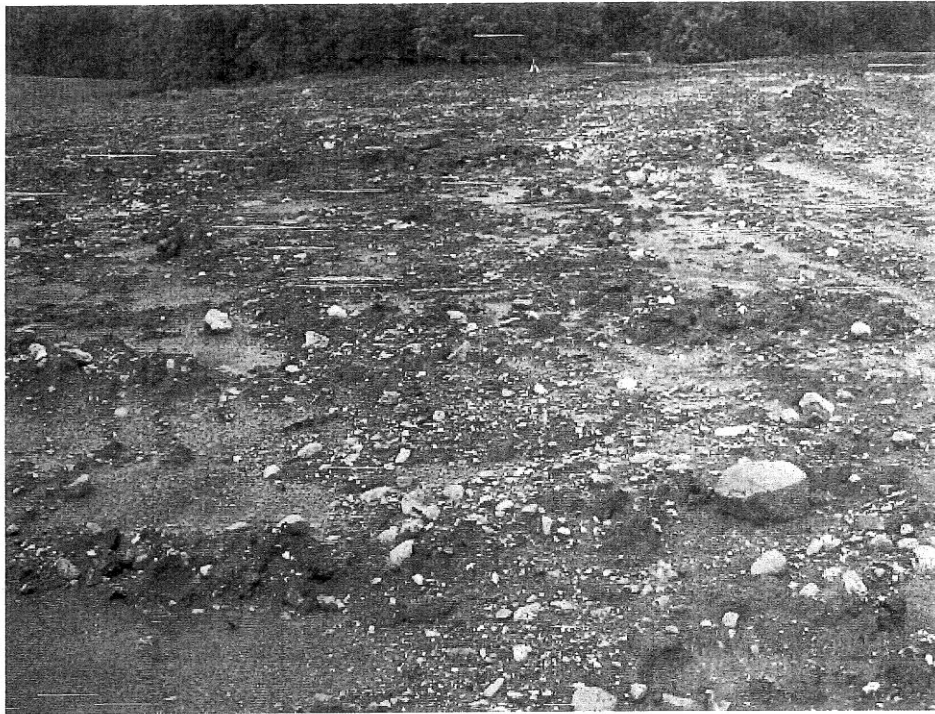


EXHIBIT 3



EXHIBIT 4



EXHIBIT 5



EXHIBIT 6



EXHIBIT 7



EXHIBIT 8



EXHIBIT 9



EXHIBIT 10