

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ST. JOHNS RIVER WATER	)	
MANAGEMENT DISTRICT	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO. 83-1556
	)	
CITRA MINING, INC.,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

Consistent with an Order dated March 5, 1984, of the Hearing Officer in this case, Arnold H. Pollock a Hearing Officer with the Division of Administrative Hearings, Petitioner, St. Johns River Water Management District, filed affidavits, written argument, and a proposed Recommended Order for consideration by the undersigned. This procedure was suggested by counsel for Petitioner, who, in his request, represented that counsel for Respondent interposed no objection to that procedure. The issue for consideration was whether Respondent was required to obtain a permit from Petitioner prior to undertaking the complained of activity on the property in question.

For Petitioner: Vance W. Kidder, Esquire  
Office of Legal Services  
St. Johns River Water Management District  
Post Office Box 1429  
Palatka, Florida 32078-1429

For Respondent: Herbert T. Schwartz, Esquire  
Schwartz & Wilson  
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Post Office Box 1292  
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(Mr. Schwartz, by letter of February 23, 1984, a copy of which went to counsel for Petitioner, advised the undersigned that this client, Respondent herein, had instructed him not to proceed further with its defense. Therefore, subsequent to that date, no pleadings or other documents have been received from Respondent or counsel and no submission was made for the purposes of this resolution of the issues.)

BACKGROUND INFORMATION

On April 25, 1983, Petitioner herein, St. Johns River Water Management District, filed an Administrative Complaint charging Respondent herein, Citra Mining, Inc., with an unlawful and unpermitted excavation and berm construction on a piece of property known as Black Sink Prairie, in Marion County, Florida. Respondent was given 14 days from receipt of the complaint (April 29, 1983) to

request a hearing and on May 12, 1983, within the time period prescribed, did so.

Hearing was scheduled for September 26 through 28, 1983, but, upon request of counsel for Respondent, was continued until November 24 through 23, 1983. Thereafter, counsel for Respondent again requested a continuance which was granted with the hearing being rescheduled for March 8 and 9, 1984. However, on February 23, 1984, counsel for Respondent, by letter, a copy of which was sent to counsel for Petitioner, advised that his client had instructed him not to proceed further with its defense in this case on the basis that Respondent no longer had any right, title, or interest in the subject property.

Subsequent to that letter, counsel for Petitioner contacted the undersigned and, indicating that Respondent interposed no objection, requested that the hearing be held on written submissions rather than in personam. Relying on counsel's representation that no objection was forthcoming from Respondent and, on Respondent's counsel's letter of February 23, 1983, as mentioned above, on March 5, 1984, the undersigned, by written order, granted that request, canceled the scheduled hearing, and granted the parties until April 1, 1984, to submit such matters as were deemed appropriate for the undersigned to consider. A copy of this Order was sent to counsel for Respondent, Mr. Schwartz.

Thereafter, Petitioner submitted affidavits, written argument, and a proposed Recommended Order. No submission of any nature was received from Respondent.

#### FINDINGS OF FACT

1. Respondent, Citra Mining, Inc. (Citra), owned a proprietary interest in at least 120 acres of property located in Sections 2 and 3, Township 13 South, Range 22 East, Marion County, Florida. This property lies within a natural surface water storage system known as Black Sink Prairie, an area of approximately 3,860 acres, consisting of wetlands interspersed with open bodies of water and hammocks. Respondent corporation no longer has any interest in the property in question, does not conduct any mining or other activity there, and may soon be dissolved.

2. In late August 1981, R. Dirk Schmidt, Director of the Division of Enforcement in Petitioner's Department of Resource Management, visited Respondent's property in question here and saw Respondent's employees collecting limerock at a depth of 5 to 10 feet below the level of the adjacent land, removing it from the pit, and hauling it away in trucks.

3. His survey of the area during this and subsequent visits revealed that Respondent had created a hole surrounded by various spoil piles and ditches (canals) and had enlarged spoil piles in the area which had existed prior to the commencement of its mining operation.

4. The entire mine area treated this way was ultimately expanded to 87 (plus or minus) acres of the Respondent's property. The water which existed in the mine area was pumped out by Respondent and discharged onto property outside the Respondent's boundaries. At that time, because of drought conditions which had existed for several years, the water flow was sufficiently small that pumping was able to keep the mine site dry. However, since the drought was ended sometime in 1982, the mine area has been underwater and is that way at the present time.

5. Material has been removed from the area by the Respondent's mining operation at depths from 1/2 foot to 8 feet. Of the total 87 (plus or minus) acres disturbed by Respondent, approximately 1.5 acres have been mined to a depth of below 48 feet MSL (the undisturbed marshlands range from wet marsh at 49.5 feet MSL to high marsh at up to 54 feet MSL), 21 acres mined to between 48 and 50 feet MSL, and 27.7 acres to between 50 and 52 feet MSL. An additional 22.5 acres have been only superficially scraped. If unrepaired, natural vegetation will ultimately produce communities appropriate to these elevations and those areas lying below 48 feet MSL will remain open water communities.

6. On April 20, 1982, Respondent applied to Petitioner for a permit to mine limestone by dragline to a depth of 60 feet. The application indicated that no water consumption or discharge would be required. This application was subsequently withdrawn before being acted upon and has never been resubmitted. Consequently, all Respondent's activity in the area has been without permit.

7. Palmer Kinser, an environmental zoologist and entomologist for Petitioner, on several occasions during late 1982, visited the Respondent's site in question for the purpose of examining and assessing the nature of the property, including both those areas impacted by Respondent's mining activity and those areas not impacted. In completing his assessment and in addition to his on-site evaluation, he utilized soil maps of the Soil Conservation Service, aerial photographs, and vegetation and land use maps developed by the Florida Department of Transportation. He also collected samples from the area and, upon completion of his evaluation, concluded that the larger portion of the property in question was a wetland prior to the commencement of mining.

8. Prior to 1976, all of the mining site, with the exception of several hammocks, was classified as freshwater marsh. However, because of extended drought conditions which existed between then and 1980, terrestrial and opportunistic woody species invaded the area. The soil maps of the area indicate that by far the greatest part of the area, including the mine site, consisted of basically three types of soil: Holopaw sand; Anclote sand; and Anclote-Tomoka Association; all of which are poorly drained soils and all of which are consistent with marsh areas.

9. There are three types of wetland communities represented in the mine area: wet marsh communities on Anclote-Tomoka Association soils and on Anclote sand; high marsh and mixed hardwood forests on Holopaw sands; and in the uplands surrounding the site, Adamsville sands dominated by mixed hardwood forests.

10. In late 1982, visits to the site showed relatively high water levels; and collected data on the area reveals that the water level, previously due to drought conditions, had been low enough for colonies of high ground varieties of plants to become established. However, the continuation of established colonies of drought-resistant marsh species indicates previously existing marsh wetlands during more normal conditions.

11. Marshes play an important part in the ecological scheme of things, contributing to the primary productivity of wetlands and also being important in nutrient assimilation, sediment stabilization, secondary production, provision of habitat, maintenance of species diversity, and other like activities. For example, marsh vegetation helps channel nutrients into desirable production pathways and, by competition, assists in suppressing nuisance vegetation such as the water hyacinth and others. Plants trap and consolidate sediments and, in some cases, contribute to hydrosols by the deterioration of their own bodies. Organisms in the marsh either are themselves a part of or contribute to the

continuation of the food chain for wildlife species including waterfowl, marsh and shore birds, upland game birds, and wild mammals and fish.

12. In substance, then, mining activities by Respondent at the site have either totally removed or substantially disrupted the vegetation on approximately 87 acres of wetlands with resultant damage to the plant and animal life located there. In addition, the extensive spoil deposits generated by the Respondent's unpermitted mining activity inhibit surface water flow, interfering with the periodic exchange of surface water between the mine site and the rest of the prairie. The steep and unstable slopes on the edges of many of the excavated areas are subject to erosion and are unsuitable for the establishment of beneficial vegetation.

13. Most of the adverse impacts of Respondent's activity, as detailed above, can be mitigated and the area restored to ecologically productive status. To do this, it will be necessary to:

- (a) Level the interior spoil piles and place the spoil into the scraped area, which should then be graded and contoured to an acceptable slope ratio; and
- (b) Breach the perimeter spoil piles with 50-foot openings in three separate designated areas and dispose of the spoil as outlined in (a) above.

#### CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding.

15. The area included in Respondent's operation described herein is within the jurisdiction of Petitioner, St. Johns River Water Management District, as it is located within the area described in Section 363.069(2)(c), Florida Statutes (1981), as encompassed within the St. Johns River Water Management District; and Section 363.023(1), Florida Statutes (1981), which subjects all waters in the state to regulation under that chapter unless specifically exempted, a fact which has not occurred here.

16. Under the provisions of Section 373.413(1), Florida Statutes (1981), governing boards or the department may require permits for alteration of the area in question, and this permit was required by Section 40C-4.041(b), Florida Administrative Code; and a permit is required by Section 40C-4.041(1), Florida Administrative Code, before any work is begun. The evidence shows Respondent applied for a permit long after work was begun, but withdrew its application before a permit was issued and did not resubmit. Respondent's unpermitted activity caused unlawful damage to the area in question which requires mitigation.

17. The Petitioner has authority to order Respondent to take corrective action to mitigate the damage caused by its unpermitted activity under Section 373.119, Florida Statutes (1981).

18. The Petitioner has submitted a proposed Recommended Order which includes proposed findings of fact and conclusions of law. The proposed findings and conclusions have been adopted only to the extent that they are expressly set out in the Findings of Fact and Conclusions of Law above. They

have been otherwise rejected as contrary to the better weight of the evidence, not supported by the evidence, irrelevant to the issues, or legally erroneous.

RECOMMENDED ACTION

Based on the foregoing, it is, therefore,

RECOMMENDED THAT:

Respondent be ordered by Petitioner to take, or cause to be taken, appropriate action to mitigate the damage to the area in question by:

(a) Leveling interior spoil piles to the elevation of the surrounding land surface and placing the spoil removed into the areas previously scraped;

(b) Grade and contour previously scraped areas to a slope no steeper than 4 (horizontal) to 1 (vertical); and

(c) Breach the perimeter spoil piles for 50 feet at each of the three locations indicated by Petitioner's experts and place the spoil so removed on the previously identified scraped area as called for in (b) above.

RECOMMENDED this 9th day of May, 1984, in Tallahassee, Florida.

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ARNOLD H. POLLOCK  
Hearing Officer  
Division of Administrative Hearings  
The Oakland Building  
2009 Apalachee Parkway  
Tallahassee, Florida 32301  
(904) 488-9675

Filed with the Clerk of the  
Division of Administrative Hearings  
this 9th day of May, 1984.

COPIES FURNISHED:

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Mr. E. D. Vergara  
Executive Director  
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Palatka, Florida 32078-1429

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AGENCY FINAL ORDER

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STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ST. JOHNS RIVER WATER  
MANAGEMENT DISTRICT,

Petitioner,

vs.

CASE NO. 83-1556

CITRA MINING, INC.,

Respondent.

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FINAL ORDER

On May 9, 1984, the duly appointed Hearing Officer in the above-styled matter completed and submitted to the St. Johns River Water Management District, hereinafter "District," and to Citra Mining, Inc., hereinafter "Citra," a Recommended Order. A copy of that Recommended Order is attached hereto as Exhibit A.

Pursuant to Florida Administrative Code Rule 40C-1.08(9) and Section 120.57(1)(b)8, Florida Statutes, the parties were allowed fourteen (14) days in which to submit written exceptions to the Recommended Order. The District made exception to the Recommended Order. A copy of the District's Exceptions is attached hereto as Exhibit B.

On June 12, 1984, the Recommended Order and Exceptions came on for consideration to the District's Governing Board. Consideration of the matter was tabled until July 10, 1984, when it could be considered simultaneously with a permit application of C. Ray Greene and Angus Hastings that concerned the property on which Citra had mined without a District permit.

On July 10, 1984, the matter again was considered. In addition to considering the matter pursuant to Sections 120.57(1)(b)9 and 120.59, Florida Statutes, the District's Governing Board considered the matter pursuant to Section 120.69, Florida Statutes. It thereby could consider facts in addition to those in the record. Florida Department of Transportation v. J.W.C., Co., Inc., 396 So.2d 778 (Fla. 1st DCA 1981). Pursuant thereto, the District's

Governing Board determined that Citra had been determined bankrupt and lost the property on which it had mined without a permit; the area which had been mined had substantially evolved a wetland habitat; and, most importantly, a permit to construct and operate works for a limestone mine had been issued to C. Ray Greene and Angus Hastings.

Having considered the Recommended Order, the Exceptions, and being otherwise fully advised:

IT IS ORDERED as follows:

1. The Findings of Fact and Conclusions of Law contained in the Recommended Order are adopted and approved;
2. The Finding of Fact and Conclusions of Law contained in the Exceptions are adopted and approved;
3. The Recommendation contained in the Recommended Order is rejected because, as explained above, it now makes no sense to institute an action to restore the area.

DONE AND ORDERED this 23rd day of July 1984 in Palatka, Florida.

ST. JOHNS RIVER WATER  
MANAGEMENT DISTRICT

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IDWAL H. OWEN, JR., Chairman

RENDERED this 23rd day of July, 1984.

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RUTH D. HEDSTROM  
DISTRICT CLERK

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