

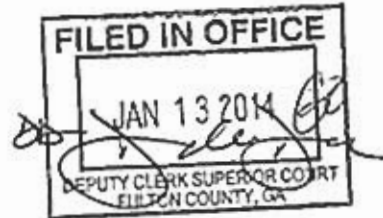
New York

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

Southern Cross Financial, LLC )  
 )  
Plaintiff )  
 )  
v. )  
 )  
City of Atlanta, Georgia, a municipal )  
Corporation )  
 )  
Defendant )  
 )  
and )  
 )  
Mark Williams, Individually in his Official )  
Capacity as Commissioner of the Georgia )  
Department of Natural of Natural Resources )  
and Judson H. Turner, Individually in his )  
Official Capacity as Director of the Georgia )  
Environmental Protection Division )  
 )  
Proposed Defendants )

ORIGINAL

Civil Action No. 2012-CV-215858



**PLAINTIFF'S SECOND AMENDED COMPLAINT**

COMES NOW, Plaintiff, Southern Cross Financial, LLC, by and through its counsel, and files this, its Second Amended Complaint, showing the Court as follows:

19.

Paragraphs 1 through 18 of the original Complaint are incorporated herein as if fully restated.

**FACTS IN SUPPORT OF  
PLAINTIFF'S CLAIM FOR WRIT OF MANDAMUS**

20.

This claim for a Writ of Mandamus arises out of the Georgia Environmental Protection Division's (the "EPD") failure to enforce its own rules and regulations regarding the requirements of permitting, siting, closure, and post-closure care for the City of Atlanta's Gun

Club Landfill, hereinafter "Gun Club" or "GC" and for allowing the City of Atlanta, Georgia (the "City") to operate an unpermitted landfill known as the "Baby Gun Club Landfill" or "Baby Gun Club."

21.

The EPD is the state agency charged with primary responsibility for solid waste management and landfills, and is given the authority pursuant to state law to govern the operation of solid waste facilities owned and operated by local municipalities including the issuance of permits to engage in solid waste handling, closing permits, and the governance of post-closure care. See, O.C.G.A. §§ 12-8-21, 12-8-23 – 12-8-23.1. Additionally, the rules, regulations, and requirements promulgated by the EPD constitute the state of Georgia's plan for the implementation of federal law. See, EPD Rule 391-3-1-.02(2)(ggg) and the "Georgia Comprehensive Solid Waste Management Act" at O.C.G.A. § 12-8-20 et seq., generally.

22.

Judson H. Turner is the Director of the EPD. Pursuant to O.C.G.A. §§ 12-8-23.1, 12-8-29, 12-8-29.1, 12-8-30, 12-8-30.6, and other applicable provisions of the "Georgia Comprehensive Solid Waste Management Act" found at O.C.G.A. § 12-8-20 *et seq.*, the "Director" is charged with the responsibility to oversee and enforce Georgia's statutes and regulations for landfill maintenance, closure and post-closure maintenance. Mr. Turner has been personally served with summons and process at his office located at 2 Martin Luther King Jr. Drive, S.E., Suite 1152, East Tower, Atlanta, Georgia 30334.

23.

Gun Club landfill is a "permitted" landfill pursuant to EPD Permit No. 060-026D (SL) originally "permitted" by the EPD in the mid to late 1970s. Gun Club began "closure" certification in and about 1996.

24.

Lying between Plaintiff's Property, as described in the original Complaint, and Gun Club is a parcel of land acquired by the City in 1992 from Inez Conyers upon which, upon information and belief, waste and trash has been deposited. This parcel of land is a portion of the property identified, in documents submitted by or on behalf of the City to EPD, as "Baby Gun Club Landfill" or "Baby Gun Club."

25.

These same documents also show that the southern waste limit of Baby Gun Club encroaches and crosses into Plaintiff's Property. There is *no* break between the northern waste limit of Baby Gun Club and the permitted area of Gun Club.

26.

Upon information and belief, Baby Gun Club was an overflow area or a "temporary holding area" utilized by the City of Atlanta while operating Gun Club which was not formally disclosed to EPD as a lateral expansion, or a part, of the City's closure certification or the City's monitoring of Gun Club.

27.

Upon information and belief, Baby Gun Club Landfill, including the portion lying under and upon Plaintiff's Property never received a permit by the EPD or any similar governmental agency with authority to grant such permits and was, instead, an illegal extension of Gun Club.

28.

Upon information and belief the creation of a landfill (or dump<sup>1</sup>) in the area of Gun Club and Baby Gun Club began in or around the early 1970s with the City's acquisition of a license to dump municipal solid waste along the road-frontage of property owned by Inez Conyers. In or around 1976 the City entered into an agreement with the Inez Conyers' Trust to expand this

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<sup>1</sup> Industry jargon for what would otherwise be considered a landfill, but was created without being granted a permit.

existing, unpermitted landfill further into the same parcel of land owned by the Inez Conyers' Trust; however, the City has not identified any documents whereby permission was granted by either Inez Conyers or any predecessor in title of Plaintiff to extend the landfill onto the back of the Conyers' property or onto Plaintiff's property.

29.

In or around 1977 the federal government began to promulgate standards and regulations for the creation and operation of landfills and Georgia adopted statutes and regulations to comply with the federal mandates.

30.

The City acquired and sought landfill permits for property lying immediately north of Inez Conyers' property and, as part of the permitting process, *included* the entire front portion of Inez Conyers' property (the area already controlled as an *unpermitted* landfill) in the area subject to the permit, Permit No. 060-026D (SL), creating Gun Club.

31.

As part of the permitting standards, Rule 391-3-4-.07(h), the City was required to fence and gate the perimeter of the entire Gun Club. Upon information and belief, the City complied with this requirement and maintained exclusive access and control of vehicular access to all of Gun Club and Inez Conyers' property.

32.

In 1992 the City of Atlanta purchased all of Inez Conyers' property on Gun Club Road and continued to legally operate its permitted landfill activities on the permitted portion of this parcel. Upon information and belief, the City also used the balance of Inez Conyers' property for the benefit of the permitted landfill including allowing the use of the property for overflow and temporary holding uses.

33.

In or around 1995, the City of Atlanta hired Roy F. Weston, Inc. (now known as Weston Solutions), hereinafter "Weston" to assist the City in applying for a closing permit to close Gun Club, and to perform the required engineering and construction to in fact close Gun Club.

34.

Closure requirements depend, in part, on the total volume of waste material buried in a landfill. Above 3.2 million cubic yards of material, closure requirements are significantly increased, including the specific mechanism used to "cap" such landfill.

35.

If a similar amount of waste is buried in the back of Inez Conyers' property, which has been improperly excluded from the calculations used to determine closure requirements, Gun Club has not been properly closed.

36.

Additionally, one requirement the EPD imposed on the City was that the City place a "Notice of Landfill Operations" in the deed records for all parcels of land upon which landfill operations had occurred.

37.

EPD additionally required the City to purchase or control that land (and the access thereto) whereupon the City planned on maintaining methane monitoring wells.

38.

In January 2000, the EPD notified the City that it would have to acquire the property to the southeast of Gun Club (the property eventually to be known as Baby Gun Club Landfill) in order for the City and Weston to receive the Closing Certificate for Gun Club.

39.

In mid-2000, the City and Weston accessed the property lying southeast of Gun Club (including Plaintiff's property) to dig test pits to ascertain the limits of the waste buried outside Gun Club.

40.

Though the City had not complied with EPD's mandate, on or around January 24, 2001, EPD awarded the City and Weston a closure certificate for Gun Club. Among the requirements of that closure certificate was that the City would have to monitor Gun Club's release of methane.

41.

On July 1, 2001, Weston submitted a letter to the City identifying that waste and trash were indeed buried in Baby Gun Club. The City has produced no correspondence or notification to the EPD by the City or Weston that indicates that the EPD was made aware of this new "finding."

42.

Instead, for the next five years the City engaged in extensive negotiations with EPD pertaining to several violations by the City of Gun Club's post-closure requirements and the design capacity of Gun Club and, specifically, the amount of waste that was deposited at the facility. If the amount of waste deposited at Gun Club and its design capacity exceeded a certain amount, Gun Club would have been subject to additional air quality requirements under federal and state law.

43.

Finally, on or around August 21, 2006, the City's new contractor assisting it with Gun Club's closure, CH2MHill, created a "Regulatory Compliance and Buffer Property" map, hereinafter the "CH2MHill Map." A true and correct copy of the CH2MHill Map is attached hereto as Exhibit A. The CH2MHill Map explicitly identified Plaintiff's Property as "Required

Purchase For Compliance” and “Critical Purchase For Environmental Buffer.” This map categorically described the area south of “Gun Club Landfill” as “Baby Gun Club Landfill”<sup>2</sup> and directly acknowledged the existence of waste and trash in Baby Gun Club including that portion encroaching and crossing into and onto Plaintiff’s Property. Plaintiff’s Property can be identified as parcels 11, 10, and 19 on the CH2MHill Map.

44.

At all relevant times, from the mid-1970s until the summer of 2013, the City has had exclusive control of all vehicular access leading to Inez Conyers’ property and the area the City labeled the Baby Gun Club Landfill, including Plaintiff’s Property. But for vehicular access the quantity of waste buried on Plaintiff’s Property could not have been achieved.

45.

On or around September 1, 2006, the City promulgated and submitted to the EPD a “Minor Modification Schedule for Methane Monitoring Compliance.” This Schedule projected that Plaintiff’s Property and other properties would be acquired within 420 days (or by April 18, 2008). On or around December 15, 2006, the EPD sent a letter to the City demanding that the City provide the EPD with a firm completion date for the acquisition of the properties.

46.

On or around January 12, 2007, the City provided the EPD with a revised schedule stating that acquisition of the property, including Plaintiff’s Property, would happen within 480 days (or by August 7, 2009). On or around March 15, 2007 a representative of CH2MHill, in correspondence to other City contractors, employees, and CH2MHill contractors and employees, stated that the City was “on borrowed time” from the EPD for the acquisition of the properties.

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<sup>2</sup> While the term “Baby Gun Club” was not used on any official correspondence or reports until this time, meeting minutes from the City of Atlanta reveal that this area was referred to as Baby Gun Club as early as September 7, 2000.

47.

On or around July 18, 2007, the City notified EPD that they were in the process of acquiring the property, including Plaintiff's Property. Nonetheless, almost six years later, the property, including Plaintiff's Property, has not been acquired by the City. Upon information and belief, EPD has not attempted to pursue the City for its failure to acquire the properties, including Plaintiff's Property, in compliance with EPD's requirements that the City adhere to the post-closure requirements for Gun Club.

48.

In addition to being in breach of EPD's mandates for the closure and post-closure care of Gun Club, the City's failure to purchase Plaintiff's Property is also a violation of EPD Rule 391-2-4-.07(b) requiring buffers ranging from 100 to 200 feet, depending on when the landfill was permitted (if permitted at all), "between the property line and the waste disposal boundary." This buffer is extended to 500 feet "between the waste disposal boundary and any occupied dwelling" and private water supply.

49.

The City's failure to purchase Plaintiff's Property constitutes a violation of EPD rules and regulations intended for the protection of the public. Specifically, the City's failure to purchase Plaintiff's Property, in accordance with the required post-closure care and methane monitoring plan, is a violation of EPD's rules and regulations intended to protect the public from exposure to methane.

50.

The EPD's failure to pursue and enforce its rules and regulations is a failure of an official and public duty on the part of the EPD, said duty is to protect the public from the harmful effects of improperly closed and inadequately monitored landfills. Specifically, the EPD's failure to pursue and enforce its requirement that the City purchase Plaintiff's Property and the other



properties is a failure of EPD's official and public duty to protect the public from the harmful effects of methane exposure and inadequate methane monitoring.

51.

Mr. Turner's failure to pursue and enforce EPD's rules and regulations is a failure of an official and public duty on the part of Mr. Turner, said duty is to protect the public from the harmful effects of improperly closed and inadequately monitored landfills. Specifically, Mr. Turner's failure to pursue and enforce EPD's requirement that the City purchase Plaintiff's Property and the other properties is a failure of Mr. Turner's official and public duty to protect the public from the harmful effects of methane exposure and inadequate methane monitoring.

52.

In addition to Mr. Turner and the EPD's failure to compel the City of Atlanta to purchase Plaintiff's Property in accordance with Mr. Turner and the EPD's also failed to enforce explicit statutes and rules of regulations regarding the existence, maintenances, and creation of Baby Gun Club. For example, Mr. Turner and the EPD failed to require the City to secure a permit under EPD Rule 391-3-4-.02 and O.C.G.A. § 12-8-24 to operate Baby Gun Club, despite being fully aware, as early as the year 2000, of Baby Gun Club's existence and the City's illegal operation of same.

53.

Mr. Turner and the EPD also allowed, in violation of EPD Rule 391-3-4-.04, the City of Atlanta, to operate an open dump on Plaintiff's Property.

54.

Mr. Turner and the EPD have failed and refused to enforce EPD Rule 391-3-4-.05's requirement that the City meet the mandated criteria for siting the City's major modification to Gun Club Landfill, to wit, the City's lateral/horizontal expansion of Gun Club Landfill onto Plaintiff's Property, i.e. Baby Gun Club.

55.

Mr. Turner and the EPD have failed and refused to enforce EPD Rule 391-3-4-.07(1)(a)'s requirement that the City require Baby Gun Club to be designed by a professional engineer.

56.

Mr. Turner and the EPD have failed and refused to enforce EPD Rule 391-3-4-.07(1)(b)'s requirement that the City buffer Baby Gun Club from adjacent properties.

57.

Mr. Turner and the EPD have failed and refused to enforce EPD Rule 391-3-4-.07(1)(c)'s requirement that the City have site survey controls at Baby Gun Club.

58.

Mr. Turner and the EPD have failed and refused to enforce EPD Rule 391-3-4-.07(1)(d)'s requirement that the City have a liner and a leachate collection system at Baby Gun Club.

59.

Mr. Turner and the EPD have failed and refused to enforce EPD Rule 391-3-4-.07(2)(e)'s requirement that the City have erosion and sediment controls at Baby Gun Club.

60.

Mr. Turner and the EPD have failed and refused to enforce EPD Rule 391-3-4-.07(2)(g)'s requirement that the City have Baby Gun Club abide by a sequence of landfilling.

61.

Mr. Turner and the EPD have failed and refused to enforce EPD Rule 391-3-4-.07(3)(e)'s requirement that the City meet daily cover requirements at Baby Gun Club.

62.

Mr. Turner and the EPD have failed and refused to enforce EPD Rule 391-3-4-.07(3)(f)'s requirement that the City have "disease vector controls" at Baby Gun Club.

63.

Mr. Turner and the EPD have failed and refused to enforce EPD Rule 391-3-4-.11 – 391-3-4-.12's requirement that the City put Baby Gun Club through the closure process, which is mandated by federal laws that are incorporated into the EPD Rules.

64.

Each and every failure and refusal by Defendant Turner and the EPD recited above constitutes a failure and refusal by Defendant Turner and the EPD to uphold a mandated legal duty.

65.

Each and every failure and refusal by Defendant Turner and the EPD recited above constitutes a gross abuse and discretion by Defendant Turner and the EPD for which no evidence exists to support such decisions not to act.

COUNT II  
COUNT FOR MANDAMUS

66.

Plaintiff incorporates by reference paragraphs 19 through 65 of this Amended Complaint as if fully set forth herein.

67.

Mr. Turner, as Director of EPD, has a public and official duty to ensure that EPD's regulations, rules, and similar requirements are pursued and enforced for the protection of the public.

68.

Mr. Turner's failure to enforce and pursue EPD's regulation, rule, and requirement that the City acquire Plaintiff's Property and the other properties is a failure by Mr. Turner to perform upon his and the EPD's official and public duties.

69.

Mr. Turner's failure to enforce and pursue EPD's regulation, rule, and requirements, including but not limited to Mr. Turner's failure to compel the City of Atlanta to purchase Plaintiff's Property and those additional failure recited in paragraphs 52 through 64 of this Second Amended Complaint, are failures to perform upon Mr. Turner and the EPD's official and public duties.

70.

Plaintiff is interested in the execution and enforcement of EPD's rules, regulations, and requirements and Mr. Turner and EPD's official and public duties enforced. Plaintiff is specifically interested in the execution and enforcement of EPD's rules, regulations, and requirements as they are applied to the City's unpermitted major modification/lateral expansion, to wit: Baby Gun Club, as a significant portion of Baby Gun Club sits upon Plaintiff's Property.

71.

A writ of mandamus is sought to compel Mr. Turner, individually in his official capacity as Director of the EPD, a public officer of the State of Georgia provided with the authority under state and federal law to govern and administer landfills in the state of Georgia, to enforce EPD's rules, regulations, and requirements upon the City by requiring the City to first correctly permit, then buffer, and establish creation of a valid post-closure and methane monitoring plan which includes the purchase of Plaintiff's Property and the overall enforcement of all of EPD's rules, regulations, and requirements upon the City of Atlanta as they apply to Baby Gun Club.

72.

Upon information and belief, Mr. Turner and the EPD failed to enter an order against the City to ameliorate continuing violations of EPD rules, regulations, and requirements, as explained above, by corrective action despite the City's failure to correct its violations within a reasonable time.

73.

Such failure – i.e. the decision not to enforce virtually any of EPD's rules, regulations, requirements, to allow an unpermitted lateral expansion of Gun Club, have a valid methane monitoring plan, and to compel the City to purchase Plaintiff's Property despite the City's continuing violation of EPD rules, regulations, and requirements; and the decision to allow the

City to operate an unpermitted landfill – was clearly arbitrary and capricious, and constituted a gross abuse of discretion.

74.

Mandamus lies to compel compliance with all of EPD's rules, regulations, and requirements, and, specifically, the creation of a valid methane monitoring plan and the purchase of Plaintiff's Property pursuant to that plan.

75.

Each and every failure and refusal by Defendant Turner and the EPD recited above constitutes a failure and refusal by Defendant Turner and the EPD to uphold a mandated legal duty.

76.

Each and every failure and refusal by Defendant Turner and the EPD recited above constitutes a gross abuse and discretion by Defendant Turner and the EPD.

77.

The issuance of a Writ of Mandamus in this matter would not be nugatory or fruitless, nor would it be granted on mere suspicion or fear. The City and EPD have failed for more than a decade to comply with the EPD's rules, regulations and requirements concerning proper landfill permitting as well as the closure of Gun Club and the creation of a valid methane monitoring plan required by the EPD as part of Gun Club's closure.

COUNT III  
EJECTMENT  
(VERSUS THE CITY OF ATLANTA)

78.

Paragraphs 1 through 18 of the original Complaint and Paragraphs 19 through 76 of the Second Amended Complaint are incorporated herein as if fully restated.

79.

Plaintiff owns title to, and should have the absolute right to possess, use, enjoy, dispose of, and exclude others from the use of, the Subject Property.

80.

The City, either by inadvertence or with predatory intent, has unlawfully encroached upon and possesses the Subject Property, to which the City does not own title.

80.

Plaintiff has requested that the City abandon its possession of the Subject Property, and to remove its encroachment, but the City has refused.

81.

As a result of the City's unlawful encroachment and possession, Plaintiff has been, and continues to be, wrongfully deprived of its rightful possession of the Subject Property.

82.

Accordingly, the City should be removed from the Subject Property.

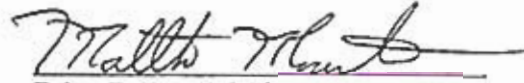
WHEREFORE, having fully set forth its Second Amended Complaint against Defendant City of Atlanta, Georgia, and Defendant Judson H. Turner, individually in his official capacity as Director of the Georgia Environmental Protection Division, Plaintiff prays this Court grant the following additional relief:

1. Empanel a jury to try all questions of fact;
2. Find and adjudge in Plaintiff's favor and against the City on Counts 1 and 3;
3. Find and adjudge in Plaintiff's favor and against Mr. Turner and the EPD on Count 2;
4. Compel Mr. Turner and the EPD's enforcement of its official and public duty to properly and adequately enforce its rules, regulations, and requirements concerning the closure of Gun Club and the existence and maintenance of Baby Gun Club;
5. Eject the City from the Subject Property;

7. Award Plaintiff such further and other relief as this Court deems just.

Respectfully submitted this 13th day of January, 2014.

ROBERTS & DAUGHDRILL, P.C.



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