Borrow Pit/Louisiana Parish Ordinance: Federal Court Addresses Enforceability of Settlement Agreement

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06/18/2026

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The United States District Court for the Eastern District of Louisiana ("Court") addressed in a June 3rd Order & Reasons an issue arising out of a Plaquemines Parish Government's ("Parish") attempt to reimpose local excavation restrictions on a borrow pit operator ("operator"). *See Midway Cattle Ranch, LLC, et al. v. Plaquemines Parish Government*, Civil Action No. 17-7468.

The question addressed whether the operator's failure to timely renew a seven-year local permit effectively terminated a prior federal settlement agreement that exempted the borrow pit from certain backfill requirements.

Plaintiffs Midway Cattle Ranch, LLC and Crescent Excavation, LLC ("Plaintiffs") own and operate a commercial borrow pit. This is an area excavated to harvest clay soil for levee construction and industrial projects. It has operated in the Parish since 2013.

The Parish council in 2012 enacted an ordinance regulating borrow pit operations. The ordinance included a strict backfill requirement forcing operators to fill the pits back to pre-excavation elevations once operations ceased.

Plaintiffs sued the Parish in 2017. They challenged the constitutionality of the ordinance.

To resolve the litigation, the parties executed a formal settlement agreement on May 7, 2018, containing the following language:

[Plaintiffs] shall be exempted, released from, and granted a variance from the Ordinance's backfill requirements for all sales prior to the Effective Date of this Agreement which are alleged to be made in violation of the Ordinance, and from any requirement to backfill Plaintiffs' Borrow Pits going forward from the Effective Date.

In exchange for this permanent variance, Plaintiffs dismissed their lawsuit and agreed to pay the Parish an environmental impact fee of $0.05 per ton of material sold to non-governmental projects. The contract contained no sunset provision or termination clause.

Pursuant to local law, operators must renew their active permits every seven years. In December 2025, Plaintiffs discovered their operating permit had inadvertently lapsed a few months prior.

They applied for a replacement permit to cover the exact same operational footprint. The Parish attempted to condition the approval on Plaintiffs waiving the 2018 settlement agreement and submitting to the backfill mandate.

Following a subsequent stop-work order and an escalation of required letters of credit from $250,000 to $1,500,000, Plaintiffs moved to enforce the settlement agreement and sought an injunction.

The Parish opposed the motions. It argued that the contract implicitly expired when the 2020 operating permit lapsed. The settlement as a perpetual waiver was argued to yield an “absurd” result and that there was no mutual meeting of the minds.

A settlement is interpreted under Louisiana law as using standard objective contract principles. If the contractual language is clear, explicit, and leads to no absurd consequences, courts look no further than the text to find the parties’ intent.

The Court summarily rejected the Parish's arguments. It characterized them as “buyer’s remorse.” The text of the settlement agreement did not condition its validity on ongoing permit compliance, nor did it contain an expiration date. Furthermore, the Court noted the Parish’s past behavior contradicted its current defense: the Parish had successfully issued a renewal permit in 2020 without demanding a backfill clause, and it continued to accept environmental fee payments long after the 2025 permit lapse.

Addressing the Parish's concern that the ruling gives operators a free pass to violate local regulations:

If Plaintiffs fail to comply with the Ordinance, the Parish has a remedy namely, stopping Plaintiffs' operations until they come into compliance . . . However, the Parish, for its part, cannot condition Plaintiffs' continued operation—including, the issuance of future permits—on the Plaintiffs' relinquishment of the backfill variance that they bargained for in the settlement agreement.

Consequently, the Court granted the motion to enforce the settlement agreement and issued a permanent injunction blocking the Parish from enforcing the backfill rules against Plaintiffs.

A copy of the Order and Reasons can be found here.