

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

FILED  
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REGIONAL HEARING CLERK  
EPA REGION VI

In the Matter of	§	Docket No. CWA-06-2011-2709
	§	
Mr. Henry R. Stevenson, Jr.	§	Proceeding to Assess a
Parkwood Land Co.	§	Civil Penalty Under Section 309(g)
	§	of the Clean Water Act
	§	
Respondents	§	Administrative Complaint

**I. STATUTORY AUTHORITY**

1. This Administrative Complaint (“Complaint”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 309(g) of the Clean Water Act (“the Act”), 33 U.S.C. § 1319(g). The Administrator has delegated the authority to issue this Complaint to the Regional Administrator, EPA Region 6, who has further delegated this authority to the Director of the Water Quality Protection Division, EPA Region 6. This Class I Administrative Complaint is issued in accordance with the Consolidated Rules of Practice, published at 40 C.F.R. Part 22.

2. Based on the following Findings, Complainant finds that Henry R. Stevenson and Parkwood Land Co. (“Respondents”) have violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

**II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

3. Parkwood Land Co. is a Texas corporation and therefore considered a “person” as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

4. At all times relevant to the violations alleged herein, Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides that it is unlawful for any person to discharge a pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, a permit issued under the Act.

5. At all times relevant to the violations alleged herein, Section 309(g)(1)(A) of the Act, 33 U.S.C. § 1319(g)(1)(A), provides that whenever, on the basis of any available information, the Administrator finds that a person has violated Section 301 of the Act, 33 U.S.C. § 1311, the EPA is authorized to assess a civil penalty under Section 309(g) of the Act, 33 U.S.C. § 1319(g).

6. Section 404 of the Act, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers for the U.S. Army Corps of Engineers, to issue permits for the discharge of dredged or fill material into waters of the United States.

7. On multiple dates between August 9, 2007, and August 3, 2010, Respondents, and/or other persons or business entities acting at Respondents' direction and/or on Respondents' behalf, discharged pollutants from a point source into waters of the United States without a permit issued under the Act in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). More specifically, Respondents, and/or other persons or entities discharged "dredged material" and "fill material," as defined by 40 C.F.R. § 232.2, by means of equipment (e.g., earth-moving equipment) in, on and into approximately 1.26 acres of wetlands located within an approximately 79-acre tract of land located northeast of the Interstate Highway 10 and the Neches River in Orange County, Texas, and referenced in Warranty Deed, instrument number 303215, Tract 3, as filed for record on September 20, 2006, in the Official Public Records of Orange County, Texas, which was adjacent to, hydrologically connected to, and/or has a significant nexus to a

navigable-in-fact body of water, in this case, the Neches River.

8. The discharged dredged material and fill material are considered “pollutants,” within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).

9. Each piece of mechanized equipment used to carry out the discharges is considered a “point source,” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

10. The wetlands identified in paragraph 7 above are “waters of the United States,” as that term is defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 232.2.

11. At no time during the period identified in paragraph 7 did Respondents have a permit issued by the U.S. Army Corps of Engineers which authorized the discharge(s) alleged. Each day of unauthorized discharge was a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

12. The EPA has notified the Texas Commission on Environmental Quality of the issuance of this Complaint and has afforded the State of Texas an opportunity to consult with the EPA regarding the assessment of a civil penalty against Respondents, as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

13. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), Respondents are liable for a civil penalty in an amount not to exceed \$16,000 per day for each day during which a violation occurs or continues, up to a maximum of \$37,500.

14. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), the EPA has notified the public of the filing of this Complaint and afforded the public reasonable opportunity to comment on the proposed penalty. At the expiration of the notice period, the EPA will consider any comments filed by the public.

### **III. PROPOSED PENALTY**

15. Based on the foregoing Findings of Fact and Conclusions of Law, and pursuant to Sections 309(g)(1) and (g)(2)(A) of the Act, 33 U.S.C. § § 1319(g)(1) and (g)(2)(A), the EPA, Region 6 finds that Respondents committed the violations alleged above and hereby proposes to assess against Respondents a penalty of thirty-two thousand five-hundred dollars (\$32,500.00).

16. The proposed penalty amount has been determined based on the statutory factors specified in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), which include such factors as the nature, circumstances, extent and gravity of the violation(s), any economic benefits, any prior history of such violations, degree of culpability, and such matters as justice may require. The penalty amount proposed in this Paragraph 15 includes a ten percent (10%) adjustment for an anticipated rapid settlement.

### **IV. FAILURE TO FILE AN ANSWER**

17. If Respondents wish to admit, deny, or explain any material allegation set forth in the above Findings of Fact and Conclusions of Law or contest the amount of the civil penalty proposed, Respondents must file an Answer to this Complaint within thirty (30) days after Respondents' receipt of the Complaint, regardless of whether Respondents request a hearing on the allegations of the Complaint.

18. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15. Respondents' failure to file an Answer setting forth any such admission, denial, or explanation shall constitute an admission of all facts alleged, and waive Respondents' right to a hearing, pursuant to 40 C.F.R. § 22.15(d).

19. If Respondents fail to file an Answer within thirty (30) days of service of the

Complaint, Respondents may be found in default whereby a default order may be issued pursuant to 40 C.F.R. § 22.17. Any default shall constitute an admission of all facts alleged in the Complaint and a waiver of Respondents' right to contest such allegations.

20. Respondents must send an Answer, including any request for a hearing, and all other pleadings to be filed with the Regional Hearing Clerk to:

Ms. Lorena Vaughn (6RC-D)  
Regional Hearing Clerk  
U. S. EPA Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

Respondents shall also send a copy of its Answer to this Complaint to the following EPA attorney assigned to this case:

Mr. Russell Murdock (6RC-EW)  
U.S. EPA Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

21. The Answer must be signed by Respondents' corporate representative or its attorney or other representative, if any, authorized to sign on behalf of Respondents, and include the information required by 40 C. F. R. §§ 22.5 and 22.15. All other pleadings must be similarly signed and filed with the Regional Hearing Clerk.

#### **V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

22. Respondents may request a hearing to contest any material allegation set forth in this Complaint or to contest the appropriateness of the amount of the proposed penalty, pursuant to Section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2). The hearing procedures are set forth at 40 C.F.R. §§ 22.21-26.

23. If a hearing is requested, any person who commented on the issuance of the Complaint during the public comment period will have a right to be heard and to present evidence at the hearing under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B).

## VI. SETTLEMENT

24. The EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, a Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. Respondents may appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Complaint, please contact Ms. Barbara J. Aldridge at (214) 665-2712.

25. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer, pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order (“CAFO”) pursuant to 40 C.F.R. § 22.18(b). The issuance of a CAFO would waive a Respondent's right to a hearing on any matter stipulated therein or alleged in the Complaint. Any person who commented on this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such CAFO and request a hearing on the issues raised in the Complaint. Such petition would be granted and hearing held only if the evidence presented by the petitioner's comments was material and not considered by EPA in the issuance of the CAFO.

26. Neither the assessment nor the payment of a penalty in resolution of this action will affect Respondents' continuing obligation to comply with all requirements of the Act, applicable

regulations and permits, and any compliance order issued under Section 309(a) of the Act,  
33 U.S.C. § 1319(a), including an order relating to the violations alleged herein.

JUL 18 2011

\_\_\_\_\_  
Issuance date

  
\_\_\_\_\_  
Miguel I. Flores  
Director  
Water Quality Protection Division

**CERTIFICATE OF SERVICE**

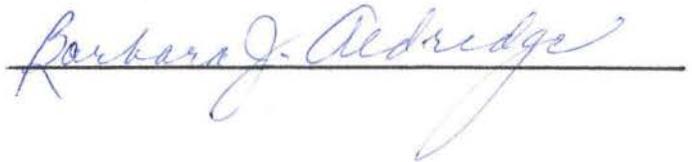
I certify that on JUL 18 2011 the original and a true and correct copy of this Complaint were filed with the Regional Hearing Clerk, EPA Region 6, and that true and correct copies of the Complaint were deposited with the U. S. Postal Service addressed to the following persons.

Certified mail, return receipt requested:

Mr. Henry R. Stevenson, Jr.  
Parkwood Land Co.  
2085 Galway Drive  
Vidor, Texas 77662-2951

First-class mail:

Mr. Charles M. Kibler, Jr.  
The Kibler Law Firm  
765 N. 5<sup>th</sup> Street  
Silsbee, Texas 77656

  
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