



Stevenson, Henry - Resp's Obj to Compl Supp PreH Exch Req for Exp Rpt
and Cont

Chuck Kibler to: Russell Murdock, Lorena Vaughn, Patrick
Rankin

11/01/2012 11:51 AM

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1 attachment



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Please find my client's Objection to Complainant's Supplemental Pre-Hearing Exchange, Request for Expert Report and Request for Continuance attached. Hard copies will go out with today's mail.

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

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

**RESPONDENT'S OBJECTION TO COMPLAINANT'S SUPPLEMENTAL PRE-
HEARING EXCHANGE REQUEST FOR EXPERT REPORT AND REQUEST FOR
CONTINUANCE**

Respondent, Henry R. Stevenson, Jr., Individually and as Owner of Parkwood Land Company files this Respondent's Objection to Complainant's Supplemental Pre-Hearing Exchange, Request for Expert Report and Request for Continuance and would respectfully show the following:

1. On October 31, 2012, Respondent received no less than 235 pages of Supplemental Pre-Hearing Exchange which included a change to the status of a previously listed fact witness to expert witness. There was no expert report included in the Supplemental Pre-Hearing Exchange.
2. Respondent is afforded only fourteen (14) days in which to: (1) review the 235 pages of supplemental response (which is larger than Complainant's Original Pre-Hearing Exchange); (2) *analyze the materials provided to determine the probative value at the hearing;* (3) *prepare* gather or otherwise determine the means by which to answer this voluminous supplementary record; (4) provide a supplementary pre-hearing exchange with any documents which would or could be identified in #3; (5) guess as to what information/testimony Mr. Davidson would provide as a newly appointed expert witness; and (6) seek out, hire, and schedule a counter

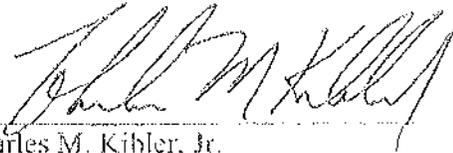
expert witness to Mr. Davidson's suspected testimony. This, in essence, amounts to "trial by ambush."

3. While 40 CFR §22.19(2)(i) does not specifically require an expert report (as would be required in Federal or Texas State courts), to allow an "expert" to be identified, without the benefit of submitting (1) qualifications as a witness or (2) a report outlining the expert's testing methodology, sample means, and results/conclusions does not provide Respondent with the means by which to counter any testimony provided by the "expert" or even object to the "expert" based upon qualification, experience, etc. Further, to identify an "expert" fourteen (14) days before final hearing further amounts to "trial by ambush."

4. Therefore, premises considered, Respondent's (1) object to Complainant's 235 page Supplemental Pre-Hearing Exchange as well as the addition of "expert" witnesses; (2) requests that at a minimum, Complainant's provide a written report of the "expert's" qualifications to serve in that capacity given the expected testimony; (3) grant Respondent a Continuance of no less than thirty (30) days from the date Complainant's provide said expert report; and (4) all other such relief as Respondent may be entitled to.

Respectfully Submitted,

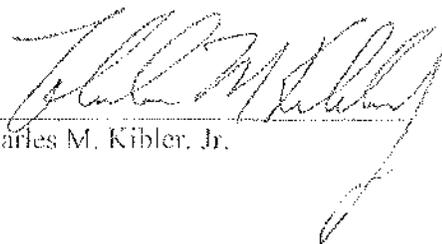
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Attorney for Respondent, Henry R.
Stevenson, Jr. and Parkwood Land Co.

Certificate of Service

I certify that on November 1, 2012 Respondent's Objections to Complainant's Pre-Hearing Exchange, Request for Expert Report and Motion for Continuance were filed with the Regional Hearing Clerk, EPA Region 6, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733 via email and Regular Mail and to the counsel of record, Mr. Russell Murdock, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733 via Regular Mail.



Charles M. Kibler, Jr.