

BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.

FILED

2011 MAY 10 AM 9:13

REGIONAL HEARING CLERK  
EPA REGION VI

In re:

Henry R. Stevenson, Jr. &  
Parkwood Land Co.

Docket No. CWA-06-2010-2708

Complainant

§  
§  
§  
§  
§  
§  
§  
§

CWA Appeal No. 11-02

**COMPLAINANT'S MEMORANDUM IN OPPOSITION TO  
RESPONDENT'S MOTION FOR RECONSIDERATION**

COMES NOW COMPLAINANT, the Director of the Water Quality Protection Division, United States Environmental Protection Agency, Region 6, by and through its attorney, submits this memorandum in opposition to Henry R. Stevenson and Parkwood Land Company's (hereinafter "Respondent") motion for reconsideration of this Court's April 19, 2011, Order denying Respondent's appeal for lack of jurisdiction.

1. Complainant filed the Administrative Order ("Order") in this matter on January 31, 2011 for violations of the Clean Water Act ("the Act"). On February 6, 2011, Respondent filed an appeal with the Environmental Appeals Board ("Board") seeking review of a decision of "Administrative Law Judge Miguel I. Flores." The "decision" referenced by Respondent in its appeal and in its Motion for Reconsideration is, in fact, the above Order issued by Mr. Flores. Mr. Flores is the Director of the Water Quality Protection Division for Region 6 of the U.S. Environmental Protection Agency ("EPA"). Mr. Flores is neither an Administrative Law Judge nor a Regional Judicial Officer.

2. The Board filed an Order dismissing Respondent's appeal for lack of jurisdiction on April 19, 2011. The Board found that it lacked jurisdiction under the Consolidated Rules of Practice, sections 22.4(a), .29-30, to hear the appeal, because the Order at question "is not an initial decision or interlocutory ruling or order of an Administrative Law Judge or Regional Judicial Officer." Respondent has now filed a motion for reconsideration of the dismissal of its appeal.

3. Under 40 C.F.R. § 124.19(g), a party may seek reconsideration and a stay of the Board's final order by filing a motion to reconsider within 10 days of service of the final order. Such motions will not be granted absent a showing that the Board has made a clear error, such as a mistake of law or fact. See *In re DPL*, PSD Appeal No. 01-02, slip op. at 2-3 (EAB, Mar. 29, 2001) (Order Denying Motion for Reconsideration). The process "... should only be used to bring to the attention of [the Board] clearly erroneous factual or legal conclusions." *In re Town of Ashland Wastewater Treatment Facility*, NPDES Appeal No. 00-15, slip op. at 2 (EAB, Apr. 9, 2001) (Order Denying Motion for Reconsideration), quoting from *In re Southern Timber Prods., Inc.*, 3 E.A.D. 880, 889 (JO 1992).

4. Under the Consolidated Rules of Practice contained in 40 C.F.R. Part 22, the Board is a body of limited jurisdiction. The Board "rules on appeals from the initial decisions, rulings and orders of a presiding officer in proceedings under these Consolidated Rules of Practice." 40 C.F.R. § 22.4(a). A "presiding officer" must be an Administrative Law Judge under the rules, except for under specific instances where a regional judicial officer may serve as Presiding Officer. 40 C.F.R. § 22.3.

5. Respondent's motion fails to demonstrate that the Board made a clear error in its Order dismissing Respondent's appeal. The Administrative Order at issue in the case is not an initial decision or interlocutory ruling or order of an Administrative Law Judge or Regional Judicial Officer. Further, as the Board stated in its Opinion, Mr. Flores is neither an Administrative Law Judge nor a Regional Judicial Officer. Respondent has failed to demonstrate the Board made an error—much less demonstrate clear error—in its Order. Thus, the Board lacks jurisdiction under the Consolidated Rules of Practice and Respondent's motion should be denied.

#### CONCLUSION

For the foregoing reasons, Complainant respectfully requests that the Board deny Respondent's motion for reconsideration of the Board's April 19, 2011 Order.

RESPECTFULLY SUBMITTED,



---

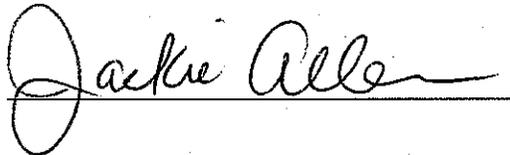
Russell Murdock  
Enforcement Counsel (6RC-EW)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733  
Tel.: (214) 665-3189  
Fax: (214) 665-3177

**CERTIFICATE OF SERVICE**

I certify that the original of the foregoing MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION FOR RECONSIDERATION was electronically filed to the Clerk of the Board and a true and correct copy was sent to the following on this 10th day of May, 2011, in the following manner:

VIA CERTIFIED FIRST CLASS U.S. MAIL:

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

A handwritten signature in cursive script that reads "Jackie Allen". The signature is written in black ink and is positioned above a solid horizontal line.