

Rodney O. Corr
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Certified Mail

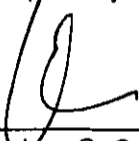
Feb 28, 2009

Ms. Patricia A Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W. Atlanta, Georgia 30303

Re: Administrative Complaint, Docket No. CWA-04-2008-5508

Please take this as an answer to this Administrative Complaint. This Complaint documents
where also sent to Hon. Judge Gunning. (See Attached)

Respectfully submitted:



Rodney O. Corr

2009 FEB -3 AM 6:54
HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Rodney O. Corr
Post Office Box 1147
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(228) 323-8936

The Honorable Barbara A. Gunning
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Administrative Consent Order
Docket No. CWA-04-2008-5508

Also Re: Administrative Consent Order
Docket No. CWA-04-2005-5762

Honorable Gunning:

I am writing to respond to the decision by the United States Environmental Protection Agency ("EPA"), Region 4, to issue a "Finding of Violation and Order of Compliance" dated Sept 4, 2008 (the "Order").

Please understand that there is an Administrative Consent Order already in place previously by United States Environmental Protection Agency office Region 4, William Sapp dated April 4, 2005. (answer enclosed)

This letter is still our position on the property:

In fact, it is our understanding that the United States Army Corp of Engineers ("Corps") and/ or Region 4 were aware of my development activities at the almost **now 48 months** before taking any **new** enforcement action. Likewise, EPA itself issued the Order almost six months after conducting its "enforcement" visit to the Site. This six month period of inaction by Region 4 led me to believe (and rely to his detriment) that the Site was not subject to EPA's jurisdiction. Waiting such an extensive period of time before commencing enforcement not only discredits the claims in the order, but such delay may also support a claim of estoppel against your agency if litigation ensues. **I'm exploring available legal recourses for repeated harassment by your agency and/ or the Corps in relation to the projects known as Ireland Street and St. Joseph Subdivision. We will be willing to submit documentation supporting the harassment claims.**

Understand that this property is not in my name and has been sold to another party. Maybe this is some Government oversight on the previous Administrative Consent Order that was never addressed by there office.

I'm currently owner financing this Subdivision to another party. I'm not able to make note of \$ 8,000.00 a month to the bank because of the Corp and EPA enforcement actions. This loan will go into foreclosure in the next 2-3 months and the Mobile Corp of Engineers and Atlanta Environmental Protection Agency will be liable for this action.

Also understand that Mrs. Cobb from EPA, Atlanta office said " I'm putting a lien on this property if you don't answer the Consent Order", which we have already answered.

HEARING CLERK

2009 MAR -3 AM 6:53

RECEIVED
EPA REGION 4

Please be informed that it is my position that the Army Corps of Engineers or Environmental Protection Agency ("EPA") does not have any jurisdiction under the Clean Water Act over the property in question. It is also our position that the regulations promulgated pursuant to the Clean Water Act by both Agencies go beyond the provisions of the Clean Water Act as Passed by the United States Congress and are therefore outside the parameters set forth by that Act. Any attempt by the Corps of Engineers or EPA to enforce that part of its regulations which are not based in the law and in fact go beyond the law as set forth by Congress could result in employees of these Agencies operating outside of the scope of their employment which could subject them to litigation wherein they could be determined to be personally liable for their actions.

Sincerely,



Rodney O. Corr
25-Feb-09

cc: Wilda W. Cobb
Hon. J.P. Compretta
Sen. Thad Cochran



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July 8, 2005

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED
AND VIA FEDERAL EXPRESS

William Sapp, Esq.
Wetlands Protection Section (15th Floor)
U. S. Environmental Protection Agency
Region 4
61 Forsythe Street, SW
Atlanta, Georgia 30303

Re: Administrative Consent Order
Docket No. CWA-04-2005-5762

Dear Bill:

I am writing to respond to the decision by the United States Environmental Protection Agency ("EPA"), Region 4, to issue a "Findings of Violation and Order of Compliance" to my client, Mr. Rodney Corr, dated April 4, 2005 (the "Order"). In the Order, Region 4 alleges that Mr. Corr violated the Clean Water Act ("CWA"), 33 U.S.C. §§ 1251 *et seq.*, by conducting certain land-clearing activities and dredging or filling material into approximately 14 acres of "jurisdictional wetlands" located adjacent to Highway 603 and Farve Lane in Hancock County, Mississippi (the "Site"). Region 4 claims that the wetlands on the Site are jurisdictional because they are "adjacent to the headwaters of Edwards Bayou, a tidal water body, which is tributary to the Jourdan River which flows into Saint Louis Bay." We respectfully disagree with the findings in the Order and, as a result, Mr. Corr will not consider himself obligated to comply with the Order. In fact, Mr. Corr has obtained all necessary state and local approvals for the development of Cameron Bay Estates, including a stormwater permit from the Mississippi Department of Environmental Quality. We would, however, welcome any opportunity your office might afford to resolve this situation short of litigation.

There are several reasons why we do not agree with your assertion that Mr. Corr's activities constituted a violation of the CWA. First, Mr. Corr's review of the Site, both before and after development activities commenced, revealed that no wetlands (jurisdictional or otherwise) would be disturbed by the development. Last year, Mr. Corr retained an environmental consultant to survey the Site to determine whether any State waters or wetlands would be impacted by the development. The consultant, Mr. Gary J. Cuevas, conducted a survey of the Site on April 20, 2004. Notably, the survey revealed no wetlands on the property other than a small fringe associated with a man-made drainage ditch bordering the east and south side

of the Site. While this decades-old ditch did contain standing water, the construction activities did not include dredging or filling the wet areas. Silt fencing was in place at all times along the project perimeter to ensure that no development activities occurred in the wet areas. Thus, Mr. Corr did not and does not believe a federal wetlands permit is required for the construction of Cameron Bay Estates.

In any event, even if wetlands on the Site were impacted, the Court of Appeals for the Fifth Circuit – the court governing federal law in the State of Mississippi – recently restricted the your agency’s authority to assert jurisdiction over certain waterbodies. See *In the matter of Needham*, 354 F.3d 340 (5th Cir. 2003). Specifically, the Fifth Circuit rejected the “expansive interpretation” of the jurisdictional term “navigable waters” employed by two other circuits that allowed federal agencies to assert jurisdiction over “all waters, excluding groundwater, that have any hydrological connection with ‘navigable water’.” *Id.* at 345. For example, in the Fourth Circuit, your agency can assert authority “over wetlands that are ‘adjacent to, and drain into, a roadside ditch whose waters eventually flow into [a] navigable [river].’” *Id.* (rejecting *United States v. Deaton*, 332 F.3d 698, 702 (4th Cir. 2003)). Likewise, in the Sixth Circuit, your agency can assert jurisdiction “over wetlands that flow into a man-made drain, which in turn flows into a creek, which in turn flows into a navigable river.” *Id.* (rejecting *United States v. Rapanos*, 339 F.3d 447, 449 (6th Cir. 2003)).

In this Circuit, however, your agency cannot assert jurisdiction in these situations. In fact, the Fifth Circuit has recently stated:

The [Clean Water Act is] not so broad as to permit the federal government to impose regulations over “tributaries” that are neither themselves navigable nor truly adjacent to navigable waters. [] Consequently, in this circuit the United States may not simply impose regulations over puddles, sewers, roadside ditches and the like; under *SWANCC* “a body of water is subject to regulation . . . if the body of water is actually navigable or adjacent to an open body of navigable water.”

Id. at 345-46 (internal citations omitted) (emphasis added). As a result, at least in this Circuit, your agency cannot rely on the “hydrological connection” theory as a sole means for justifying an assertion of jurisdiction over Mr. Corr’s property. In addition, in this Circuit, your agency cannot assert jurisdiction over an otherwise non-jurisdictional wetland on the basis that the wetlands are located a few miles from the “headwaters” of a “tidal waterbody” that eventually flows into a navigable river.

In fact, your agency can only assert jurisdiction over (1) “wetlands” that are (2) “adjacent to” (3) an “open body” of (4) “navigable water.” *Id.* As discussed above, Mr. Corr’s property did not impact wetlands on the Site, either before or after development activities commenced at the Site. Second, even if there were wetlands on the Site, the wetlands were not “adjacent to an open body of navigable water.” In this Circuit, “adjacency necessarily implicates a ‘significant

William Sapp, Esq.

May 9, 2005

feet from a bayou, which itself is not an "open body of navigable water." In fact, the bayou must flow over three miles before reaching the navigable Jourdan River. In this Circuit, that is too attenuated of a connection to constitute a "significant nexus."

In light of the foregoing, Mr. Corr is considering the option of, among other things, filing a lawsuit challenging this unlawful Order in federal court. See *Alaska Dept. of Envtl. Conservation v. EPA*, 540 U.S. 461, 482-83 (2004) (recognizing that administrative compliance orders issued by EPA that possess the requisite "finality" are reviewable by federal courts). In addition to relying on an overly expansive interpretation of navigability, we believe that this Order also falls woefully short of the requirements of due process and cannot serve as the basis of any enforcement action. See *Tennessee Valley Authority v. Whitman*, 336 F.3d 1236, 1260 (11th Cir. 2003) (holding that administrative compliance orders issued by EPA under the Clean Air Act are unconstitutional). The Order issued in this case came before Mr. Corr ever had an "opportunity to argue, before a neutral tribunal" that the conduct underlying the Order did not amount to a violation of the Clean Water Act. See *id.* at 1243. Mr. Corr also has other constitutional protections at his disposal, including a claim for a taking of private property without just compensation. By Region 4's assertion of jurisdiction, the Site would be rendered virtually incapable of development, amounting to a loss in value of approximately \$700,000.

In fact, it is our understanding that the United States Army Corps of Engineers ("Corps") and/or Region 4 were aware of Mr. Corr's development activities at the Site almost 18 months before taking any enforcement action. Likewise, EPA itself issued the Order almost six months after conducting its "enforcement" visit to the Site. This six month period of inaction by Region 4 led Mr. Corr to believe (and rely to his detriment) that the Site was not subject to EPA's jurisdiction. Waiting such an extensive period of time before commencing enforcement not only discredits the claims in the Order, but such delay may also support a claim of estoppel against your agency if litigation ensues. Mr. Corr is also exploring available legal recourses for repeated harassment by your agency and/or the Corps in relation to the projects known as Ireland Street and St Joseph Subdivision. We will be willing to submit written documentation supporting the harassment claim.

Again, my client would welcome an opportunity to discuss this matter with you further. Mr. Corr currently possesses all necessary state and local approvals, and we will not hesitate to comply with any state and/or federal requirements that are determined to be applicable. Nonetheless, given that the Site is not adjacent to an "open body of navigable water," we see no reason for your agency to assert jurisdiction over this matter.