




In the Matter of Stevenson, et al -- CWA 06=2011-2709 

Patrick Rankin to: Chuck Kibler, Russell Murdock

Cc: Lorena Vaughn

11/07/2012 04:25 PM

From: Patrick Rankin/R6/USEPA/US
To: "Chuck Kibler" <chuck@kiblerlaw.com>, Russell Murdock/R6/USEPA/US@EPA
Cc: Lorena Vaughn/R6/USEPA/US@EPA

Gentlemen:

I attach a copy of my order denying Respondents' Motion for Judgment.

After our telephone conference this morning, it occurred to me Mr. Stevenson may believe a District Court review of EPA's final decision in a CWA Class I penalty action is *de novo*. I've not thoroughly researched that issue, but suggest it would more likely be a record review case. *See Buxton v. EPA*, 961 F.Supp. 6 (D. D.C. 1997). If Mr. Stevenson declines to attend the hearing, he may thus forfeit his only opportunity to explain his side of this matter in person.

I hope you manage to work out an arrangement along the lines we discussed in the conference call this morning. If not, I hope to see you at the hearing next Wednesday.

Pat Rankin
Regional Judicial Officer



Denial of Motion for Judgment.pdf

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REGION 6

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In the Matter of:

Mr. Henry R. Stevenson, Jr.,
and Parkwood Land Co.,

Respondents

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Docket No. CWA-06-2011-2709

ORDER

Respondents now move for judgment without hearing in this matter. In support of the motion, Respondents claim they "believe the actions taken against him [sic] are biased in favor of Complainant and purposely designed to drain him [sic] of financial resources and delay his opportunity to receive a fair and impartial hearing before his peers in Federal Court." In addition, Respondents again object to the documentation provided them in Complainant's pre-hearing exchange.

Pending before me are two issues:

- (1) In response to Complainant's Supplemental Motion for Accelerated Determination, Respondents claimed their discharges of fill material were authorized by Nationwide Permit 3 (2007). Based on its pre-hearing exchange, it appears Complainant intends to elicit evidence that (a) a Regional Condition to Nationwide Permit 3 (2007) required pre-construction notification for discharges to bald cypress - tupelo swamps (b) the area to which Respondents discharged fill is a bald - cypress tupelo swamp and (c) Respondents did not submit preconstruction notification for their discharges
- (2) If Respondents' permit authorization defense is rejected, then an appropriate penalty amount must be determined. Complainant's penalty proposal is largely based on assertions

CERTIFICATE OF SERVICE

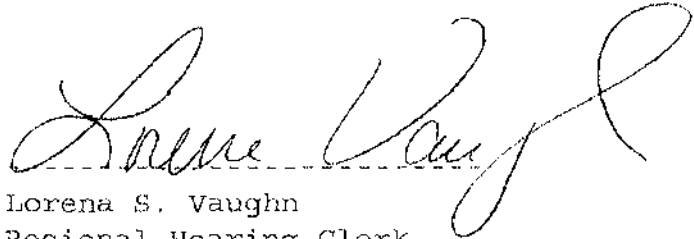
I, Lorena S. Vaughn, the Regional Hearing Clerk, do hereby certify that a true and correct copy of the Order for CWA - 06-2011-2709 was provided to the following on the date and in the manner stated below:

Charles M. Kibler, Jr.
The Kibler Law Firm
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Silsbee, Texas 77656

CERTIFIED MAIL

Russell Murdock
U.S. Environmental Protection Agency
1445 Ross Avenue
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INTEROFFICE MAIL



Lorena S. Vaughn
Regional Hearing Clerk

11/7/12

Date