



Stevenson, Sonny - Resp's Mot for Judgment
Chuck Kibler to: Lorena Vaughn
Cc: Russell Murdock, Patrick Rankin

FILED
2012 NOV -5 PM 1:36
11/04/2012 06:17 PM
REGIONAL HEARING CLERK
EPA REGION VI

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1 attachment



Stevenson, Sonny - Respondent's Motion for Judgment.pdf

Please find Respondent's Motion for Judgment attached.

As noted by Mr. Murdock's previous email, I will be in trial Monday and Tuesday, November 5-6th, but will be available for a conference call, if necessary in light of this filing, on Wednesday between 9:00 a.m. and 10:00 a.m.

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of

Mr. Henry R. Stevenson, Jr.
Parkwood Land Company

Docket No. CWA-06-2011-2709

Respondents

RESPONDENT'S MOTION FOR JUDGMENT

Henry R. Stevenson, Jr., Individually and as Owner of Parkwood Land Co. files this Motion for Judgment and would respectfully show the following:

1. On or about October 31, 2012, Complainant filed its Supplemental Pre-Hearing Exchange. This supplement included (1) no less than 235 pages of additional documents and evidentiary materials and (2) the inclusion of an "expert" witness. This supplement was introduced fourteen (14) days prior to the scheduled hearing. Respondent filed his Motion for Continuance in order to have adequate time to review the voluminous supplement and possibly employ the services of his own expert to counter the suspected testimony of Complainant's new expert. This Motion was denied.
2. In denying Respondent's Motion for Continuance, the Regional Judicial Officer states, "[t]he [scheduling] order also required the parties to supplement their pre-hearing exchanges no later than November 1, 2012. Respondents filed no timely objection to that schedule." The Order further states that "Counsel should also have expected this documentation would be extensive, yet did not previously object to the relatively short time my order provided between the pre-hearing exchange and hearing." First, Respondent is at a loss as to how he could possibly supplement his pre-hearing exchange prior to receiving, evaluating Complainant's

materials and identifying materials which would offer responsive probative value. Farther, when the issue was discussed via conference call on or about September 19, 2012, Respondent's counsel did state, "I do not understand how my client can supplement any materials without first knowing what Mr. Murdock has to offer." The Regional Judicial Offer answered with "there should only be the issue of the bald cypress-tupelo swamp and the issue of whether there was a written requirement by the Galveston Corps of Engineers to provide written plans of the work to be accomplished under NWP #3." With all respect intended, the Regional Judicial Officer misstates the objections of Respondent's counsel. And finally, regarding "Counsel should also have expected this documentation to be extensive," Respondent is at a loss as to how such voluminous records, not to mention the inclusion of a new expert, could be anticipated. Respondent, while alleged to have violated the sacred provisions of the Clean Water Act, obviously is believed to be blessed with some sort of extra-sensory perception or mind-reading skills.

3. On March 21, 2012, the United States Supreme Court issued its ruling on *Sackett v. EPA* which held that petitioner's could bring a civil action under the Administrative Procedure Act to challenge the issuance of the Environmental Protection Agency's administrative compliance order under §309 of the Clean Water act, requiring them to take certain actions with respect to their property. 566 U.S. _____ (2012). In a unanimous decision, Justice Alito states, "The position taken in this case by the Federal Government—a position that the Court now squarely rejects—would have put the property rights of ordinary Americans entirely at the mercy of Environmental Protection Agency (EPA) employees. The reach of the Clean Water Act is notoriously unclear. Any piece of land that is wet at least part of the year is in danger of being classified by EPA employees as wetlands covered by the Act, and according to the Federal Government, if property owners begin to construct a home on a lot that the agency thinks

possesses the requisite wetness, the property owners are at the agency's mercy." *Id.* Justice Alito further states, "the combination of the uncertain reach of the Clean Water Act and the draconian penalties imposed for the sort of violations alleged in this case still leaves most property owners with little practical alternative but to dance to the EPA's tune." *Id.*

4. The Regional Judicial Officer, in the above-referenced case, has already rejected Respondent's allegations regarding jurisdiction and granted Complainant's Motion for Accelerated Decision. The hearing is merely to determine the penalty of Respondent's "violations." Because *Sackett* was decided after the original complaint was filed against Respondent, Respondent has "danced to the EPA's tune" in an effort to (1) resolve the issue without penalty or (2) obtain a final, appealable judgment which would provide standing under pre-*Sackett* rules and allow Respondent to seek justice in Federal District Court.

5. Based upon the circumstances and actions taken to date in this administrative process, Respondent believes that the actions taken against him are biased in favor of Complainant and purposely designed to drain him of financial resources and delay his opportunity to receive a fair and impartial hearing before his peers in Federal Court. Respondent does not wish to expend further financial resources in an endeavor in which Complainant is allowed to (1) double or triple the volume of evidentiary documents previously provided in support of the complaint fourteen (14) days before hearing and (2) add a new expert witness with no more disclosed credentials than "he has been employed by the Corps' Regulatory Branch for 21 years and is responsible for performing wetland delineations." Respondent has driven automobiles for more than 21 years, but such a fact does not necessarily make him an expert on internal combustion engines.

6. Therefore, Respondent respectfully requests Judgment upon this matter, without hearing, based upon the evidence before the Regional Judicial Officer and to all other and such further relief Respondent may be entitled.

Respectfully Submitted.

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CERTIFICATE OF SERVICE

I certify that on November 5, 2012 a true and correct copy of Respondent's Motion for Judgment was served to each person listed below by the method indicated.

Charles M. Kibler, Jr.

Charles M. Kibler, Jr.

Russell Murdock
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