

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

FILED

2012 NOV -7 PM 4:11

REGIONAL HEARING CLERK
EPA REGION VI

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

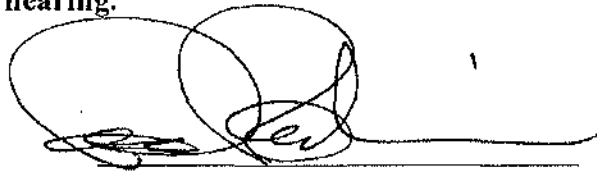
(2) If Respondents' permit authorization defense is rejected, then an appropriate penalty amount must be determined. Complainant's penalty proposal is largely based on assertions

Respondents were aware of their obligation to obtain a permit authorizing their discharges, but failed to seek or obtain such a permit. Respondents have claimed they were unaware their discharges required authorization and/or they regarded them as having been authorized. An evidentiary hearing may shed light on those claims.

Clean Water Act section 309(g)(2)(A) requires that an opportunity for hearing be afforded prior to assessment of a penalty. Respondents have neither withdrawn their answer, stipulated to material facts in this matter, nor otherwise obviated the need for receipt of evidence. If Respondents continue to contest material facts, a hearing must thus occur in this matter.

Respondents' Motion for Judgment is DENIED. Respondents may object to specific evidence proffered by Complainant at the hearing.

November 7, 2012

A handwritten signature in black ink, appearing to read 'Pat Rankin', written over a horizontal line.

Pat Rankin
Regional Judicial Officer

CERTIFICATE OF SERVICE

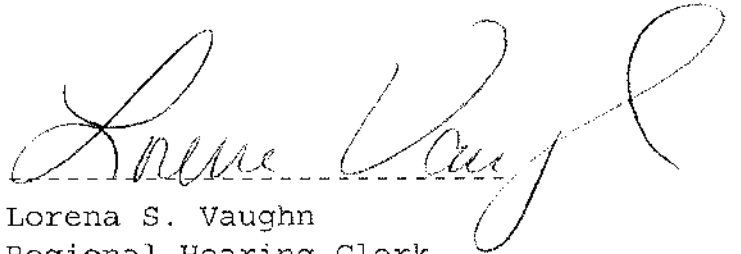
I, Lorena S. Vaughn, the Regional Hearing Clerk, do hereby certify that a true and correct copy of the Order for CWA - 06-2011-2709 was provided to the following on the date and in the manner stated below:

Charles M. Kibler, Jr.
The Kibler Law Firm
765 N. 5th Street
Silsbee, Texas 77656

CERTIFIED MAIL

Russell Murdock
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202

INTEROFFICE MAIL



Lorena S. Vaughn
Regional Hearing Clerk

11/7/12
Date