

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

In the Matter of	§ Docket No. CWA-06-2012-2710
	§
Paco Swain Realty, L.L.C.	§
a Louisiana Corporation,	§
	§ JOINT SET OF STIPULATED
Respondent	§ FACTS, EXHIBITS AND TESTIMONY

JOINT SET OF STIPULATED FACTS, EXHIBITS AND TESTIMONY

The Complainant, the Director of the Water Quality Protection Division, United States Environmental Protection Agency, Region 6 (“EPA”) through its attorney, and the Respondent, Paco Swain Realty, L.L.C. (“Paco Swain”), through its attorney (collectively, the “Parties”), hereby file this Joint Set of Stipulated Facts, Exhibits and Testimony pursuant to the Order Scheduling Hearing (“Order”), dated October 22, 2014, issued by the Administrative Law Judge (“ALJ”) and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22. In the Order, the ALJ instructed the Parties to file a Joint Set of Stipulated Facts containing specific information. This document contains the Parties’ response to the Order.

A. STIPULATED FACTS:

The Parties stipulate to the following facts:

1. Paco Swain is a limited liability company incorporated under the laws of the State of Louisiana.
2. At all times relevant to the violations alleged in this matter, Paco Swain owned real property located at the end of Nancy Drive, south of Highway 1024 in Sections 6 and 7, Township 6 South, Range 4 East, in Walker, Livingston Parish, Louisiana (“subject property”).

The subject property is known as the proposed Megan's Way subdivision.

3. On multiple dates between on or about April 2007 through May 2008, Paco Swain conducted certain operations on and to associated with development of a residential subdivision and included removal of vegetation and construction of roads, ditches and other infrastructure. The Parties do not stipulate as to the jurisdiction of the United States Army Corps of Engineers ("Corps") over these wetlands as "waters of the United States."

4. The discharges referenced in Stipulated Fact 3 were done without authorization of a permit issued by the Corps.

5. On June 15, 2007, the Corps conducted an on-site inspection at the subject property. The Corps issued a verbal Cease and Desist ("C&D") Order to a contractor—Eagle Land Construction, LLC—working at the site on behalf of Paco Swain. Eagle Land Construction, LLC informed Paco Swain of the C&D Order. On August 22, 2007, the Corps issued a written C&D Order to Paco Swain notifying it of the alleged violations of Section 301 of the Clean Water Act discovered through the June 15, 2007 inspection..

6. On April 8, 2008, the Corps conducted another on-site inspection of the subject property. The Corps issued verbal C&D Orders on April 8, 2008 and April 18, 2008. On May 8, 2008, the Corps conducted another on-site inspection at the subject property. On May 20, 2008, the Corps issued another C&D Order to Paco Swain notifying it of alleged violations of Section 301 of the Clean Water Act.

7. On September 30, 2010, EPA issued an Administrative Order ("AO"), Docket Number CWA-06-2010-2736. Paco Swain received this AO on October 12, 2010. Paco Swain has not complied with the terms of the AO.

B. STIPULATED EXHIBITS:

The Parties Stipulate to the authenticity and admissibility of the following exhibits:

1. Complainant's Exhibits 1 through 19, submitted with Complainant's Prehearing Exchange;
2. Complainant's Exhibit 22 and Declaration of William Nethery, submitted with Complainant's Motion to Supplement Complainant's Prehearing Exchange (dated September 4, 2013);
3. Respondent's Exhibits 1 through 3, submitted with Respondent's Prehearing Exchange, as supplemented.

C. STIPULATED TESTIMONY

The Parties do not intend to submit stipulated testimony in this matter.

Respectfully submitted,

/s/ Robert W. Morgan
(see attached proof of signature)

ATTORNEY FOR COMPLAINANT
Tucker Henson
Assistant Regional Counsel (6RC-EW)
Office of Regional Counsel
U.S. EPA, Region 6
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ATTORNEY FOR RESPONDENT
Robert W. Morgan
Attorney At Law
212 North Range Avenue
Denham Springs, LA 70726

CERTIFICATE OF SERVICE

I certify that the original of the foregoing JOINT SET OF STIPULATED FACTS, EXHIBITS AND TESTIMONY was filed with the **Headquarters Hearing Clerk** of the Office of the Administrative Law Judges (“OALJ”) via the OALJ E-Filing System, and a true and correct copy was sent to the following on this 24th day of December, 2014, via email to:

Robert W. Morgan
Attorney at Law
212 North Range Avenue
Denham Springs, LA 70726
morganlaw@bellsouth.net

Tucker Henson

Henson, Tucker

From: Henson, Tucker
Sent: Wednesday, December 24, 2014 11:27 AM
To: 'Bob Morgan'
Subject: RE: Fw: Joint Set of Stipulated Facts due Friday

EPA is OK with these revisions. I will remove the strikethrough and file them with the OALJ, along with a redacted copy of this email.

From: Bob Morgan [mailto:morganlaw@bellsouth.net]
Sent: Wednesday, December 24, 2014 8:39 AM
To: Henson, Tucker
Subject: Re: Fw: Joint Set of Stipulated Facts due Friday

Henson:

Attached are my proposed revisions of the drafts of stipulations.

[Redacted]

[Redacted] I authorize you to sign the original in my behalf. You may contact me by telephone if you need to discuss any of it. [Redacted]

Thank you.

Bob Morgan
225.223.2144
225.933.6798

On Tuesday, December 23, 2014 3:14 PM, Bob Morgan <morganlaw@bellsouth.net> wrote:

Tucker:

[Redacted]

Bob Morgan

Tucker:

[REDACTED]

Bob Morgan

[REDACTED]

Sent via the Samsung Galaxy S® 5 ACTIVE™, an AT&T 4G LTE smartphone

----- Original message -----
From: "Henson, Tucker"
<Henson.Tucker@epa.gov>
Date: 12/23/2014 1:31 PM (GMT-06:00)
To: Bob Morgan
<morganlaw@bellsouth.net>
Cc: "McDonald, Scott" <mcdonald.scott@epa.gov>, "Mullins, Donna" <mullins.donna@epa.gov>
Subject: Fw: Joint Set of Stipulated Facts due Friday

Bob,

[REDACTED]

Tucker Henson

From: Henson, Tucker
Sent: Wednesday, December 17, 2014 1:23 PM
To: Bob Morgan
Subject: FW: Joint Set of Stipulated Facts due Friday

Bob,

[Redacted]

Tucker Henson
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From: Henson, Tucker
Sent: Monday, December 15, 2014 8:40 AM
To: Bob Morgan
Subject: Joint Set of Stipulated Facts due Friday

Bob,

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Tucker Henson
Assistant Regional Counsel
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Bob,

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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Subject: Joint Set of Stipulated Facts due Friday

Bob,

[REDACTED]

[REDACTED]

[REDACTED]

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