

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF ENVIRONMENTAL)
PROTECTION,)
)
Petitioner,)
)
vs.) Case No. 12-1185EF
)
WANDA J. PHILLIPS AND PATRICK)
PHILLIPS,)
)
Respondents.)
_____)

SUMMARY FINAL ORDER

A motion for summary final order was filed by Petitioner on July 25, 2012. No response was filed by Respondents. Section 120.57(1)(h), Florida Statutes (2011), provides that a party may move for a summary final order "when there is no genuine issue as to any material fact." Petitioner's allegations, as set forth in the pleadings and in the affidavits attached to the motion for summary final order, in conjunction with Respondents' failure to dispute the allegations with evidence or argument, establishes that there exists no genuine issue as to any material fact.

STATEMENT OF THE ISSUES

The issues to be decided in this case are whether Respondents are liable for the violation charged in Petitioner's Notice of Violation, Orders for Corrective Action, and

Administrative Penalty Assessment ("NOV"), whether Respondents should pay the penalties assessed in the NOV, and whether Respondents should be required to take the corrective actions demanded in the NOV.

PRELIMINARY STATEMENT

On March 5, 2012, Petitioner issued the NOV, charging Respondents with filling wetlands without a permit. Respondents denied the charges and requested a hearing. The matter was referred to the Division of Administrative Hearings.

Petitioner filed a response to the Initial Order, but Respondents did not. Petitioner served on Respondents interrogatories and requests for admissions, which Respondents did not answer. Petitioner filed a motion to compel Respondents to answer the interrogatories. Respondents did not respond to the motion to compel. Respondents were ordered to serve their answers by July 18, 2012, but failed to do so. Petitioner then filed its motion for summary final order.

FINDINGS OF FACT

1. Petitioner is the state agency with the power and duty to protect Florida's air and water resources, including wetlands, pursuant to chapters 373 and 403.

2. Respondent Wanda Phillips owned the property located at 13285 Sweet Hill Road, Polk City, Polk County, Florida ("the

site") during all times relevant to the charges brought by Petitioner.

3. The site includes wetlands, as defined in Florida Administrative Code Rule 62-340.200(19).

4. Sometime in 2010, Petitioner received a complaint about wetlands being filled on the site. Joseph Drumm, a biologist and Environmental Specialist employed by Petitioner, conducted an inspection of the site on July 20, 2010.

5. Based on aerial photographs, vegetative species in undisturbed areas, observations of soil in and around the disturbed area, hydrologic indicators, and ground elevations in the area, Mr. Drumm determined that approximately .35 acres of wetlands had been filled on the site.

6. On the same date, Mr. Drumm spoke with Respondent Patrick Phillips, who confirmed that fill was placed on the site and that he directed the filling with Wanda Phillip's knowledge and consent.

7. The filling was done sometime in 2007 and was for the purpose of meeting Polk County requirements related to the installation of a septic tank and drain field for a new single-family residence.

8. Respondents did not apply for or obtain a permit from Petitioner before filling the wetlands.

CONCLUSIONS OF LAW

9. The Department may institute an administrative proceeding to establish liability for the violation of the laws that the Department administers. § 403.121(2), Fla. Stat. (2011).

10. Because the Department seeks to impose administrative penalties, a final order is issued by the Administrative Law Judge. § 403.121(2)(d), Fla. Stat. (2011).

11. The Department has the burden to prove by a preponderance of the evidence that Respondents are liable for the violations charged in the NOV. § 403.121(2)(d), Fla. Stat. (2011).

12. Count I of the NOV charges Respondents with filling wetlands without a permit as required by rule 62-343.050. The Department proved that Respondent is liable under Count I.

13. Section 403.121(3)(c), Florida Statutes, provides that for unauthorized filling a penalty of \$1,000 shall be assessed. The statute provides further that an additional penalty of \$1,000 shall be assessed if the area filled is greater than one-quarter acre, but less than one acre. Therefore, the total penalty that shall be assessed under Count I is \$2,000.

14. Evidence may be received in mitigation and the Administrative Law Judge may reduce a penalty up to 50 percent for mitigating factors. § 403.121(10), Fla. Stat. (2011). No

mitigating evidence that would justify a reduction of the penalty was presented by Respondents, nor is apparent from the record. Therefore, the penalty under Count I shall not be reduced.

15. Section 403.121(8) provides for a penalty assessment for the "direct economic benefit gained by the violator." Petitioner alleges that Respondents realized an economic gain of \$710 by not applying for the required permit, but the basis for this amount does not appear in the record. Therefore, this penalty shall not be assessed.

16. Count II of the NOV seeks recovery of the Department's investigative costs incurred in this enforcement matter of \$1,000. That is a reasonable amount for the Department's enforcement efforts as shown in the record.

17. The corrective actions demanded in the NOV for the restoration of the wetlands that were filled are reasonable and shall be imposed.

DISPOSITION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that:

1. Within 30 days of this Final Order, Respondents shall pay \$2,000 to Petitioner for the assessed penalties. The payment shall be made by cashier's check or money order payable

to the "State of Florida Department of Environmental Protection" and shall include thereon the OGC Case Number 11-0823 and the notation "Ecosystem Management and Restoration Trust Fund." The payment shall be sent to the Department of Environmental Protection, Attn: David Brown, 13051 North Telecom Parkway, Temple Terrace, Florida 33637-0926.

2. Within 30 days of this Final Order, Respondents shall pay \$1,000 to Petitioner for its investigative costs. The payment shall be made by cashier's check or money order payable to the "State of Florida Department of Environmental Protection" and shall include thereon the OGC Case Number 11-0823 and the notation "Ecosystem Management and Restoration Trust Fund." The payment shall be sent to the Department of Environmental Protection, Attn: David Brown, 13051 North Telecom Parkway, Temple Terrace, Florida 33637-0926.

3. Respondents shall comply with the Orders for Corrective Actions set forth in paragraphs 24 through 35 of the NOV, which are adopted by reference herein and made a part of this Final Order. All deadlines stated in the Orders for Corrective Action shall be calculated from the date of this Final Order.

DONE AND ORDERED this 6th day of August, 2012, in
Tallahassee, Leon County, Florida.



BRAM D. E. CANTER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of August, 2012.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.