

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Petitioner,

vs.

Case No. 14-3135EF

GUENTHER SPINDLER AND INGE
SPINDLER,

Respondents.

SUMMARY FINAL ORDER

Petitioner filed a motion for summary final order based on its contention that there is no genuine issue as to any material fact regarding the Notice of Violation, Orders for Corrective Action and Administrative Penalty Assessment ("NOV") issued against Respondents. No response to the motion was filed by Respondents.

APPEARANCES

For Petitioner: Matthew Smith-Kennedy, Esquire
Department of Environmental Protection
Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

For Respondent: Ryan Dugan, Esquire
2223 McGregor Boulevard
Fort Myers, Florida 33901-3311

STATEMENT OF THE ISSUES

The issues to be decided in this case are whether Respondents are liable for the violations charged in the 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 May 1, 2014, Petitioner Department of Environmental Protection ("Department") issued the NOV, charging Respondents with filling a wetland without a permit. On June 23, 2014, Respondents filed a petition for administrative hearing. The Department then referred the matter to the Division of Administrative Hearings ("DOAH").

Respondents were generally recalcitrant in responding to discovery requests, making ordered filings, responding to motions, and making themselves available for hearing. Consistent with this pattern, they did not file a response to the Department's motion for summary final order.

FINDINGS OF FACT

1. The Department is the state agency with powers and duties related to the regulation of construction activities in wetlands and surface waters, including filling in wetlands.

2. Respondents are individuals who own real property on Bayshore Road in North Fort Myers, Florida. Some confusion

exists in the record about the street number for the property. It is alternately described as 11590, 11620, 11650, and 11850. This is partly due to the fact that the property consists of at least two recorded parcels. The actual location of the filled area is not disputed, nor is it disputed that Respondents own the property where the fill was placed.

3. The property is adjacent to the Caloosahatchee River. It contains freshwater marsh wetlands dominated by Leather Fern.

4. The Department conducted a site inspection of Respondents' property and determined that Respondents had filled 0.96 acres of wetlands.

5. The Department produced evidence that it incurred costs of \$1,824.50 in this case.

6. The corrective actions ordered in the NOV, which are designed to restore the wetlands that were filled, are reasonable.

CONCLUSIONS OF LAW

7. The Department may initiate an administrative proceeding to establish liability for violations of the laws the Department administers. § 403.121(2), Fla. Stat. (2014).

8. Because the Department seeks to impose administrative penalties, a final order is issued by the Administrative Law Judge. § 403.121(2)(d), Fla. Stat. (2014).

9. The Department has the burden to prove by a preponderance of the evidence that Respondents are liable for the violations charged in the NOV.

10. A party may move for a summary final order when there is no genuine issue as to any material fact. § 120.57(1)(h), Fla. Stat. (2014). The Administrative Law Judge has determined from the pleadings and affidavits that there is no genuine issue as to any material fact.

11. Count I of the NOV charges Respondents with a violation of Florida Administrative Code Rule 62-330.020, which requires authorization from the Department to fill wetlands. Respondents are liable under Count I.

12. Section 403.121(3)(c) provides that the Department shall assess an administrative penalty of \$1,000 for unauthorized filling, plus \$2,000 when the area filled is greater than one-half acre.

13. In Count I, the Department also seeks an administrative penalty of \$420, which represents the cost of a permit to fill in wetlands. The Department is authorized to assess a penalty for failure to obtain a required permit of up to \$3,000. § 403.121(4)(c), Fla. Stat.

14. Respondents' total liability under Count I is \$3,420.

15. In Count II of the NOV, the Department seeks to recover its costs. Section 403.121(2)(f) provides that the prevailing

party shall recover all costs incurred in an administrative enforcement proceeding. Respondents are liable under Count II for \$1,824.50.

16. The corrective actions ordered in the NOV are reasonable and should be imposed, except for the deadlines for compliance, which are unreasonably short.

DISPOSITION

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

ORDERED that:

Respondents shall comply with the Orders for Corrective Actions set forth in the NOV except that all deadlines are doubled in length, so that, for example, the deadline to remove all fill and restore the "wetland impact area" shall be 60 days, rather than 30, and payments shall be made in 20 days, rather than 10.

2. The NOV terms are also modified to change the Department's total cost recovery from \$1,000.00 to \$1,824.50.

3. All deadlines shall be calculated from the date of this Summary Final Order.

DONE AND ORDERED this 16th day of June, 2015, in
Tallahassee, Leon County, Florida.



BRAM D. E. CANTER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of June, 2015.

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.