

Wetlands/404 Enforcement: Federal District Court Addresses Motion to Suppress Evidence



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06/17/2021

A United States District Court (D.C. Conn.) (“Court”) addressed in a June 11th ruling a number of issues arising in a Clean Water Act 404 enforcement action. See *United States of America v. Jeffrey Andrews, et al.*, 2021 WL 2400255.

One of the issues addressed by the Court was a Motion to Suppress evidence obtained by the United States (“U.S.”) during its search of defendants’ property.

The U.S. brought an enforcement action against various defendants for alleged violations of Section 404 of the Clean Water Act. The action sought penalties and injunctive relief pursuant to Section 309(b) and (d) of the Clean Water Act.

The defendants filed a Motion to Dismiss for Lack of Jurisdiction and Motion to Suppress certain evidence. The defendant’s Motion to Dismiss was predicated on an argument that the U.S. had:

. . . failed to show by a preponderance of the evidence . . . that the property in question . . . contains wetlands as defined under federal law, and that the defendants have filled or dredged those wetlands without a permit . . .

In assessing the Motion to Dismiss, the Court first addressed the Motion to Suppress.

The defendants’ Motion to Suppress related to evidence obtained by the United States during its search of the defendants’ property pursuant to an administrative warrant signed by a United States Magistrate.

The Court notes that the standard for issuance of an administrative search is less stringent than the probable cause standard required for criminal search warrants. An administrative warrant application is stated to be subject to a “relaxed standard of probable cause.”

Consequently, probable cause exists to support the issuance of an administrative search warrant where there are reasonable grounds to believe a violation has occurred. Further, the granting of an application for an administrative search warrant does not require that an agency present conclusive evidence that a violation has occurred.

The defendants argued that the U.S. misled the Court in its warrant application by relying upon evidence generated using the Connecticut definition of wetlands. The state’s definition differs from the federal definition (i.e., Connecticut law only requires that a single parameter be present to constitute a wetland). The defendants stated that in relying on a wetlands delineation map based on the Connecticut standard, the U.S. confused or misled the Magistrate into concluding there was reasonable ground to believe a violation occurred involving federal wetlands.

The Court disagrees with the defendants' interpretation of the application for the administrative search warrant. It references the defendants hiring a consultant in 2003 to delineate the wetlands on the property using Connecticut's standards. The U.S. is stated to have expressly qualified its reference to that delineation:

. . . specifically pointing out in the Warrant Application – at the beginning of its discussion of this map — that it was prepared using the state standard for wetlands, and described the federal standard as different, defining both.

The Court also referenced the Warrant Application's citing:

- Substantial movement of soil and vegetation at the property for over 10 years
- Refusal to respond to the U.S. repeated request for permission to enter the property
- Observations/photos from adjoining property
- Aerial records
- U.S. Department of Agriculture soil survey data
- U.S. Fish and Wildlife National Wetland Inventory Wetlands data

This information was deemed reasonable grounds to believe that the property contained federal wetlands that had been filled.

The Court rejects the defendants' position that the U.S. needed to show the existence of federally defined wetlands on the property before it could obtain an administrative warrant to investigate. It holds that nothing in the case law under the Fourth Amendment or the Clean Water Act requires that the U.S. establish a wetland violation before obtaining a warrant.

The Court subsequently discussed the Motion to Dismiss for Lack of Subject Matter Jurisdiction. This Motion was rejected and the Court held it had jurisdiction over this Clean Water Act enforcement action.

A copy of the Decision can be downloaded [here](#).