

CARSON EXTENSION MEDIATED VERSION

General Information

Carson Rug Company is a mid-size family-owned business located in Garth. The business is ideally located along the Melrose River and a major interstate within commuting distance of a large metropolitan area. This business and property is owned by Stuart Carson.

Carson, thinking of expanding his property to accommodate larger shipments and more clientele, applied for an Army Corps of Engineers Section 404 permit to place and maintain a fill and rip-rap seawall to extend into the Melrose River. Because the river is a complex ecological habitat, his original application was denied due to the extension's potentially harmful effects on nearby fisheries. However, his second application, with specifications for a smaller extension, was determined environmentally safe and was approved. The difference between the original and reduced specifications was more than three thousand feet, almost halving the size of the authorized fill.

Carson contracted with the Hills Engineering firm to do the fill work. A year later, a Corps inspector realized the fill was not within the authorized bounds set by the 404 permit. Carson claims the noncompliance was unintentional and thus not his fault. He blames the engineering firm for misinterpreting his instructions.

In past cases of noncompliance, the violating party returns within compliance standards in accordance with the Corps and the permit and also pays civil penalties. The severity of the penalty is based on the company's past compliance record, as well as whether the violation was deliberate. The Corps determines a technological solution to the violation is determined by that is the most environmentally sound as well as cost and time efficient. However, they also consider recommendations from both the violating party and others involved.

In this case, however, the Corps determined Carson's actions to be a deliberate and willful violation. The Corps believes he was well informed about the boundaries specified by the permit and the environmental impacts caused by extending beyond the specifications. Since this fill was not considered a continuing environmental harm, the Corps and the U.S. Attorney's Office placed this case as a low priority passing it from one assistant to another over the years. Thus the case of *U.S. v. Stuart Carson* was slow to go to court.

When the Corps of Engineers finally went to court to order the removal of the unauthorized fill and riprap, the court ruled in the Corps' favor. The court settlement was that the fill would be removed to the authorized bounds according to plans drawn up by the Corps at two-thirds the cost to Carson and one-third the cost to the Hills Engineering firm. The Corps would organize and process the permit for removal. Upon receiving the plans and choosing a contractor, the removal of the unauthorized fill and rip-rap should occur within the sixty days with accommodations for bad weather.

By the time the court case was settled, six years had passed since the unauthorized fill was entered. The Corps had taken two additional years to formulate an environmentally sound removal plan. These plans were sent to Carson and Hills Engineering. The town was anxious for the resolution and issued an enforcement order to Stuart Carson, to carry out the court-ordered removal.

By now, more than fifteen years have passed since the fill was illegally placed. The permit for the removal of the fill is still valid. You must negotiate a solution that is agreeable for all involved parties. The following three issues must be resolved:

- 1. Environmental Considerations** Can the situation be rectified fifteen years later? Will the removal of the fill cause more harm than good? If removal is determined harmful, what other solutions are possible? How should the best solution be chosen?
- 2. Time Considerations** With fifteen years already passed, how quickly does the solution need to be implemented? Should recent bad publicity affect the urgency and implementation of the solution?
- 3. Penalty Considerations** According to the court, Carson has already been determined to pay two-thirds of the cost of the environmental solution. Should he be paying other civil penalties? Should Hills Engineering be fined as well?

In this negotiation you will participate as one of the following parties: the lawyer from the Army Corps of Engineers, the environmental engineer from the Army Corps of Engineers, the representative from the Garth Town Council, Stuart Carson (the business and property owner), the representative from Hills Engineering, the environmentalist from Green Earth, or (in some instances) a mediator hired by all the parties to facilitate their discussion and help them reach agreement. The meeting is being held in a private conference room in the Garth Town Hall. Because it involves pending litigation it has been closed to the public. The meeting was called by the lawyer from the Army Corps of Engineers.