US Army Corps of Engineers
Portland District

PUBLIC NOTICE OF PROPOSED ADMINISTRATIVE PENALTY

Issue Date: December 29, 2003
Expiration Date: February 2, 2004
30 Day Notice Corps of Engineers Action ID: 199800762

1. INTERESTED PARTIES: The District Engineer, Portland District, proposes to issue an order assessing a Class 1 Administrative Penalty against Weston-Freeman L.L.C. for violation of a permit granted under the Clean Water Act.

2. PERMIT INVOLVED AND ALLEGED VIOLATION: A Department of the Army Nationwide Permit (No. 199800762) was issued to Weston-Freeman, L.L.C., Attn: Joe Weston, on August 19, 1998. The permit authorized fill of 1.08 acres of wetlands adjacent to a headwater tributary to McKay Creek, near Hillsboro, Washington County, Oregon, Section 14 and 15, Township 1 North, Range 2 West.

The permit was violated as follows:

Weston-Freeman, L.L.C., did not submit the required monitoring reports for the replacement mitigation; altered the mitigation plan's vegetation species and layout; and did not provide a recorded deed restriction on the mitigation site.

3. AUTHORITY FOR PROCEEDING: This Administrative Penalty proceeding is initiated under the authority of 33 U.S.C. § 1319(g) and 33 CFR Part 326.6. The procedure for assessing civil penalties in cases such as this is set out in the statute and the regulation. Following the discovery and investigation of a violation of a permit, notice is given to the permittee, the appropriate state agency, and the public. The permittee, the state, or any member of the public may file comments within 30 days. If requested by the permittee, a hearing will be held before a Presiding Officer who will submit a report and recommend a decision to the District Engineer. The District Engineer will issue a Final Order on the case to the permittee. Public participation in the hearing is permitted if a hearing is held.

4. PENALTY PROPOSED: The amount of the penalty proposed in this case is $ 2,140.00. However, this proposal is subject to revision in the interests of justice after all evidence and comments have been received and reviewed. The amount of the penalty that the District Engineer is authorized to assess as a Class 1 Penalty is $10,000 per violation and not more than $25,000 total. In a case involving multiple violators, each violator is subject to a separate, not joint penalty.

5. REQUEST FOR HEARING: The permittee has 30 days following receipt of this formal notice of proposed penalty to request a hearing. Written request, by the permittee, for a hearing should be directed to the District Engineer within this designated comment period and must state the specific reasons for requesting a public hearing. The request should specify, in summary form, the factual and legal issues in dispute and the specific grounds for defense. The permittee has a right to present evidence at the hearing; however, he may not challenge the permit condition(s) or limitation(s), which is the subject matter of this order.

6. COMMENTS/ADMINISTRATIVE RECORD: During the 30 day comment period, any person may submit written comments on the proposed Penalty Order. These comments should be sent to the District Engineer within this designated comment period. Any submitted comments will be included in the administrative record relating to the Proposed Order. All information submitted by the permittee and persons commenting on the Proposed Order will be placed in the administrative record, which will be available for inspection during regular business hours at the U.S. Army Corps of Engineers, Portland District, Regulatory Branch, 333 SW First Street, Portland Oregon. (The administrative record is subject to the provisions of law restricting the disclosure of confidential information.) Comments should be directed to:

U.S. Army Corps of Engineers
ATTN: Karen Nelson (CENWP-OP-G)
P.O. Box 2946
Portland, Oregon 97208-2946

7. PUBLIC HEARING: The permittee and all persons who file comments will be given notice of any hearing held on this case. The permittee and all commenters will have a reasonable opportunity to be heard and to present evidence at such hearing, if a hearing is held.

8. FINAL DECISION: If the permittee does not request a hearing, the District Engineer may issue the Final Order on this violation on or after 30 days following receipt of this formal notice by the permittee.

9. POST DECISION HEARING/APPEAL: Any Final Order issued under these procedures shall become effective 30 calendar days following its issuance unless (1) a petition to set aside the order and to hold a hearing is filed by any person who commented on the Proposed Order and the petition is granted, or (2) an appeal to the United States District Court is taken under 33 U.S.C. § 1319(g)(8).

Richard W. Hobernicht
Colonel, Corps of Engineers
District Engineer