



US Army Corps  
of Engineers  
Portland District

# PUBLIC NOTICE OF PROPOSED ADMINISTRATIVE PENALTY

Issue Date: 17 August 2004

Expiration Date: 18 September 2004

30 Day Notice

Corps of Engineers Action ID: 199901346

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**1. INTERESTED PARTIES:** The District Engineer, Portland District, proposes to issue an order assessing a Class 1 Administrative Penalty against Home Port, Inc. 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. 199901346) was issued to Home Port, Inc. on December 13, 1999. The permit authorized the placement of fill in 0.018 acre of an unnamed tributary to Mount Scott Creek at William Otty Road, in the City of Happy Valley, in Clackamas County, Oregon. The work authorized the permittee to culvert 140 linear feet of an unnamed tributary and place clean fill in 100 linear feet of an unnamed tributary. To mitigate for these impacts, 120 feet of tributary would be created, and 270 feet would be enhanced.

The permit was violated as follows:

The permittee exceeded the scope of work authorized by filling an additional 270 feet of the unnamed tributary. The permittee did not fulfill the mitigation obligation for this permit.

**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.

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**4. PENALTY PROPOSED:** The amount of the penalty proposed in this case is \$ 8000. The permittee has offered to propose a supplemental environmental project. \$6000 of the penalty may be used towards the supplemental environmental project. 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:

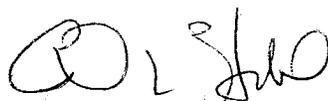
U.S. Army Corps of Engineers  
ATTN: Corrie Veenstra (CENWP-OP-G)  
P.O. Box 2946  
Portland, Oregon 97208-2946

**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).

A handwritten signature in black ink, appearing to read 'R. Höberricht', written in a cursive style.

Richard W. Höberricht  
Colonel, Corps of Engineers  
District Engineer