



US Army Corps  
of Engineers  
Portland District

# PUBLIC NOTICE OF PROPOSED ADMINISTRATIVE PENALTY

Issue Date: 28 July 2004  
Expiration Date: 27 Aug 2004

30 Day Notice

Corps of Engineers Action ID: 200100211

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**1. INTERESTED PARTIES:** The District Engineer, Portland District, proposes to issue an order assessing a Class 1 Administrative Penalty against Clackamas County Department of Transportation and Development for violation of a permit granted under the Clean Water Act.

**2. PERMIT INVOLVED AND ALLEGED VIOLATION:** A Department of the Army individual Permit (No. 200100211) was issued to Clackamas County Department of Transportation and Development on September 11, 2003 and modified on September 24, 2003. The permit authorized the construction of stepped concrete retaining walls on all four corners with sub-angular rock footings. The work also entailed the placement of six boulder weirs in the channel to reduce the channel velocities near the retaining walls. The total amount of fill permitted to be placed below the ordinary high water line is approximately 223 cubic yards.

The permit was violated as follows:

Native rock from the creek was placed along 33 feet of the bank of Foster Creek. Approximately 9 cubic yards was placed along this portion of the bank. The permittee exceeded the scope of work authorized.

**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 \$ 4000. 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).

*for*   
Richard W. Hobernicht *LTC, EN*  
Colonel, Corps of Engineers  
District Engineer