



PUBLIC NOTICE

US Army Corps
of Engineers

New York District, CENAN-OP-R

Upstate Regulatory Field Office

1 Buffington Street, Bldg. 10, 3rd Fl. North

Watervliet, New York 12189-4000

In replying refer to:

Public Notice Number: NAN-2005-01283

Issue Date: **JUL 19 2011**

Expiration Date: **AUG 18 2011**

TO WHOM IT MAY CONCERN: The District Engineer, United States Army Corps of Engineers New York District, proposes to issue an order assessing a Class I Administrative Penalty against Thomas Building and Development Company, 329 Moonlight Drive, Ballston Spa, New York 12020 (the "Permittee"), for an alleged violation of an authorization granted under the Clean Water Act.

PERMIT INVOLVED AND ALLEGED VIOLATION: A Department of the Army authorization, number NAN-2005-01283, was issued to the Permittee on June 29, 2006. The authorization confirmed that a Clean Water Act Nationwide General Permit applied to authorize fill of 0.19 acres of waters of the United States proposed by the Permittee.

The Permittee's project is located in the Hudson River watershed along New York State Route 50 in the Town of Ballston, Saratoga County, New York.

Special Condition B of the authorization required that the Permittee secure a deed restriction on 6.36 acres of land, to guarantee preservation of the land for wetland and wildlife purposes. Such deed restriction was to be filed for recording in Saratoga County, New York records on or before August 27, 2006.

The Permittee filed a deed restriction meeting the requirements of the authorization on June 13, 2007, more than nine months after such filing was due.

AUTHORITY FOR PROCEEDING: This administrative penalty proceeding is initiated under the authority of 33 U.S.C. §1319(g), 33 U.S.C. §1344 (s)(4), and 33 C.F.R. 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, 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.

PENALTY PROPOSED: The amount of the penalty proposed in this case is \$2,000.00. 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 I penalty may not exceed \$11,000 per violation or a maximum amount of \$27,500. In a case involving multiple violators, each violator is subject to a separate, not joint, penalty.

REQUEST FOR HEARING: The Permittee has 30 days following receipt of a proposed administrative penalty order to request a hearing. Written request, by the Permittee, for a hearing must be directed to the District Engineer within this period and must state the specific reasons for requesting a 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, the Permittee may not challenge the permit condition(s) or limitation(s), the subject matter of the proposed order.

COMMENTS/ADMINISTRATIVE RECORD: During a 30-day comment period ending on the expiration date shown above, any person may submit written comments on the proposed penalty. These comments should be sent to the District Engineer's representative at the address shown below, within the 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 by persons commenting on the proposed penalty will be placed in the administrative record, which will be available for inspection during regular business hours at the New York District Upstate Regulatory Field Office, Watervliet, New York. Telephone 518-266-6364 to arrange an appointment review the administrative record. (The administrative record is subject to provisions of law restricting the disclosure of confidential information.)

Send comments to:

Amy Gitchell, Chief, Upstate New York Section
US Army Corps of Engineers New York District
ATTN: CENAN-OP-RU
Upstate Regulatory Field Office
1 Buffington Street, Bldg. 10, 3rd Fl. North
Watervliet, NY 12189-4000

ALL COMMENTS REGARDING THIS ACTION MUST BE PREPARED IN WRITING AND MAILED TO REACH THE ABOVE OFFICE BEFORE THE EXPIRATION DATE OF THIS NOTICE.


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. Any hearing may be held in New York, New York.

FINAL DECISION: If the Permittee does not request a hearing, the District Engineer may issue a Final order on this violation on or after 30 calendar days following receipt of the proposed administrative penalty order by the Permittee.

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).

It is requested that you communicate the foregoing information to any person known to you to be interested in and who did not receive a copy of this notice. If you have questions regarding this matter, you may contact Amy Gitchell at the Upstate Regulatory Field Office, telephone 518-266-6364.

For more information on New York District Corps of Engineers programs, visit our website at <http://www.nan.usace.army.mil>


Richard L. Tomer
Chief, Regulatory Branch