Permit: USACE Permits No. 2007639065 and 200500229

PROPOSED ADMINISTRATIVE PENALTY ORDER

Under the authority granted by 33 U.S.C. § 1319(g) and 33 CFR Part 326.6, I, Colonel John E. Pulliam, Jr., District Engineer, Wilmington District, propose to issue this order assessing a Class I Administrative Penalty for violation of the above-referenced permit.

Name/Address of Permittee:

Mr. Karl Miller

Permitted Activity:

A permanent discharge of fill material into 0.038 acres of wetlands for the purpose of constructing a drainage swale (NWP 18) and a temporary discharge of fill material into 0.04 acres of wetlands for the purpose of establishing a construction corridor for home construction (NWP 33), at 243 and 245 Beech Street, in the City of Wilmington, New Hanover County, North Carolina, consistent with the application and plans for USACE Permits No. 2007639065 and 200500229.

Condition(s) or Limitation(s) of Permit Reportedly Violated:

Mr. Miller failed to comply with Special conditions 1 and 2, and General conditions 3, 5, and 9, of the subject permits. Special condition 1 relates to the creation of an on-site wetland creation project. Special condition 2 relates to recordation of a conservation declaration. General condition 3 relates to proper sedimentation and erosion control. General condition 5 relates to heavy equipment and soil disturbance. General condition 9 relates to water quality certification and standards.

Description of the Nature of the Violations:

1) Discharge of fill material for single and complete project exceeded authorized amount. Approximately 0.2 acres of additional jurisdictional wetlands were impacted by a discharge of fill and excavated material.

2) Failure to implement the on-site wetland creation as required by Special Condition 1 and described in the Restoration Plan;

3) Failure to implement the on-site preservation as required by Special Condition 2;

4) Failure to construct the drainage swale as designed and authorized (additional impacts occurred);

5) Failure to maintain proper sediment and erosion control to include the use of heavy equipment in wetlands without minimized soil disturbance (NWP General Conditions 3. and 5.);

6) Performance of approximately 30 linear feet of stream channel excavation with associated discharges from driveway/bridge downstream to coastal marsh;

7) Violation of the Terms and Conditions of Section 401 Water Quality General Certification 3402 (NWP General Condition 9);

I propose to assess a Class I Administrative Penalty against the permittee in this case for $15,000; however, this proposal is subject to revision in the interest of justice after all evidence and comments have been received and reviewed. The amount that may be assessed as a Class I Administrative Penalty may not exceed $11,000 per individual violation or a maximum amount of $27,500.

Issued this 30th day of July 2007.

G. Kenneth Jeffy

for John E. Pulliam, Jr.
Colonel, U.S. Army
District Commander