

DEPARTMENT OF THE ARMY
Wilmington District, Corps of Engineers
Post Office Box 1890
Wilmington, North Carolina 28402-1890

Action ID No. SAW 2007-01357-065

April 23, 2008

PUBLIC NOTICE

INTERESTED PARTIES: The District Engineer, Wilmington District, proposes to issue an order assessing a Class I Administrative Penalty against Riverfront Holdings, LLC and Waterfront Holdings, LLC, for a violation of permits granted under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

PERMITS INVOLVED AND ALLEGED VIOLATION: The Department of the Army issued authorization to Riverfront Holdings, LLC and Waterfront Holdings, LLC to utilize Wilmington District Regional General Permit 198000291 on July 18, 2007 for impacts to approximately 0.26 acres of Department of Army (DA) jurisdictional waters of the United States, including wetlands, for the purpose of driving wooden pilings and the construction of an elevated wooden walkway, on property identified as the Dean Hardwoods/Cowan Street Site, immediately south of U.S. Highway 17/74/76 Isabella Holmes Bridge, west of Third Street, in wetlands adjacent to the Northeast Cape Fear River, Wilmington, New Hanover County, North Carolina.

Regional General Permit No. 198000291 was violated as follows:

Riverfront Holdings, LLC and Waterfront Holdings, LLC failed to comply with the general conditions of the subject RGP 198000291. Specifically, the permittees conducted excavation and fill within waters and wetlands beyond the permitted areas (General Condition a.), failed to comply with the terms and conditions of the Section 401 Water Quality Certification (General Condition c.), and failed to comply with the Sedimentation Pollution Control Act of 1973 (General Condition d.).

Riverfront Holdings, LLC and Waterfront Holdings, LLC began construction at the project location and discharged fill material and conducted mechanized land clearing activities beyond the permitted area. They also failed to maintain erosion control measures, stabilize the project area, and comply with the State of North Carolina's water quality standards and requirements.

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.

PENALTY PROPOSED: The amount of the penalty proposed in this case is \$7,500. This proposal is subject to revision in the interest 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 is \$11,000 per violation and not more than \$27,500 total. 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 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 or limitation, which is the subject matter of this order.

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 by 4:30 p.m., May 22, 2008. 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, Wilmington District, 69 Darlington Avenue, Wilmington, North Carolina. (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: Justin McCorcle (CESAW-OC)
PO Box 1890
Wilmington, North Carolina 28402

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.

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.

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).

Permit: USACE Permit No. 2007-01357-065

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 Commander, Wilmington District, propose to issue this order assessing a Class I Administrative Penalty for violation of the above-referenced permits.

Name/Address of Permittee:

Riverfront Holdings, LLC _____ Waterfront Holdings, LLC _____

Permitted Activity:

Impacts to approximately 0.26 acres of Department of Army (DA) jurisdictional (Section 10 and Section 404) waters of the United States, including wetlands, for the purpose of driving wooden pilings and the construction of an elevated wooden walkway, on property identified as the Dean Hardwoods/Cowan Street Site, immediately south of U.S. Highway 17/74/76 Isabella Holmes Bridge, west of Third Street, in wetlands adjacent to the Northeast Cape Fear River, Wilmington, New Hanover County, North Carolina, consistent with the application and plans for USACE Regional General Permit No. 198000291.

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

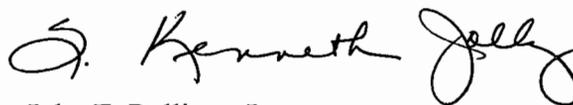
Riverfront Holdings, LLC and Waterfront Holdings, LLC failed to comply with the general conditions of the subject RGP 198000291. Specifically, the permittees conducted excavation and fill within waters and wetlands beyond the permitted areas (General Condition a.), failed to comply with the terms and conditions of the Section 401 Water Quality Certification (General Condition c.), and failed to comply with the Sedimentation Pollution Control Act of 1973 (General Condition d.).

Description of the Nature of the Violation(s):

Riverfront Holdings, LLC and Waterfront Holdings, LLC began construction at the project location and discharged fill material and conducted mechanized land clearing activities beyond the permitted area. They also failed to maintain erosion control measures, stabilize the project area, and comply with the State of North Carolina's water quality standards and requirements.

I propose to assess a Class I Administrative Penalty against the permittee in this case for \$ 7,500; 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 21st day of April 2008.

A handwritten signature in black ink, reading "John E. Pulliam, Jr." with a stylized flourish at the end.

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