



# SPECIAL PUBLIC NOTICE

**US Army Corps  
of Engineers**®

## PROPOSED ORDER TO ASSESS ADMINISTRATIVE PENALTY

*LOS ANGELES DISTRICT*

**Public Notice/Application No.:** 200200729-JLB

**Comment Period:** January 14<sup>th</sup> through February 13<sup>th</sup>, 2004

**Project Manager:** Joshua L. Burnam (213) 452-3294 [joshua.l.burnam@usace.army.mil](mailto:joshua.l.burnam@usace.army.mil)

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The District Engineer, Los Angeles District, proposes to issue an order assessing a Class I Administrative Penalty for non-compliance with the 404 Clean Water Act permit granted to the City of Carson (“City”).

The purpose of this notice is to solicit comments from the public concerning the proposed penalty order. The proposed order is attached to this Notice and describes the alleged permit violation. Additional information concerning the Class I Administrative Penalty process is contained below.

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1. **PERMIT INVOLVED AND ALLEGED VIOLATION:** On June 3, 2002, the Corps of Engineers (“Corps”) issued an after-the-fact, conditional letter of verification of Nationwide Permits (NWPs) 14 and 33 (Corps file no. 2002-00729-JLB) to the City for the construction of a double box-culvert within Macco Channel at the Del Amo Boulevard over-crossing at I-405, in Carson, Los Angeles County, California.

The City failed to comply with Permit Special Condition 1 which required the City mitigate for permanent impacts to waters of the United States at a 7:1 ratio by removal of exotic species and planting of pickleweed (*Salicornia virginica*) in a 0.07 acre portion of the Dominguez Channel and to submit a final detailed plan for this activity to the Water Board, the California Department of Fish and Game (CDFG), and [the Corps] by July 18, 2003.

2. **AUTHORITY FOR PROCEEDING:** The administrative penalty proceeding is initiated under the authority of 33 U.S.C. § 1319(g) and 33 C.F.R. § 326.6. The procedure for assessing civil penalties in cases such as this is set out in the statute and the regulation. Following discovery and investigation of a violation of a permit, notice is given to the responsible party, the State, and the public. The responsible party, the State, and/or any member of the public may file comments within 30 days. If requested by the responsible party, a hearing may be held before a Presiding Officer, at the discretion of the District Engineer. The Presiding Officer

will submit a final report and recommend a decision to the District Engineer. The District Engineer will issue a Final Order on the case to the responsible party. Public participation in the hearing is permitted if a hearing is held.

3. **PROPOSED PENALTY:** The amount of the penalty proposed in this case is \$10,000. 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 is authorized for a Class I administrative penalty is \$10,000 per violation and not more than \$25,000 total. The Proposed Order was formally sent to the responsible party and the State, and is available at the Corps' website at:

[http://www.spl.usace.army.mil/regulatory/administrative\\_penalties.htm](http://www.spl.usace.army.mil/regulatory/administrative_penalties.htm)

4. **REQUEST FOR HEARING:** The responsible party has 30 days following receipt of the formal notice of a proposed penalty to request a hearing. Written request, by the responsible party, for a hearing should be directed to the District Engineer within the comment 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 responsible party has a right to present evidence at the hearing; however, the responsible party may not challenge the permit condition(s) or limitation(s), which is the subject matter of this order.

5. **COMMENTS/ADMINISTRATIVE RECORD:** The permittee, the state, or any member of the public may file written comments within the 30-day comment period. The District Engineer shall include all written comments in the administrative record relating to the proposed order. The administrative record relating to the proposed order in this case is available for inspection by the public at the Los Angeles District Office. All information submitted by the permittee and persons commenting on the proposed order will be available as part of the administrative record subject to provisions of law restricting the public disclosure of confidential information.

6. **PUBLIC HEARING:** Any person who comments on a proposed order shall be given notice of any hearing which may be held on a proposed order. Such persons shall have a reasonable opportunity to be heard and to present evidence at any hearing.

7. **FINAL DECISION/POST-DECISION HEARING OR APPEAL:** If the responsible party does not request a hearing, the District Engineer may issue the Final Order on this violation after 30 calendar days following receipt of the formal notice by the responsible party. If no hearing is requested by the permittee, any person who has submitted comments on the proposed order shall be given notice by the District Engineer of any Final Order issued. 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, based on evidence presented by the commentator in support of the commentator's petition for a hearing that is material and was not considered when the order was issued; or (2) an appeal to the United States District Court is taken under 33 U.S.C. § 1319(g)(8).

8. **ADDRESS FOR COMMENTS:** Written comments on the proposed penalty must be submitted within the comment period on this notice to:

U.S. Army Corps of Engineers, Los Angeles District  
Regulatory Branch  
ATTN: CESPL-CO-R-200200729-JLB  
P.O. Box 532711  
Los Angeles, California 90053-2325

Alternatively, comments can be sent electronically to: [joshua.l.burnam@usace.army.mil](mailto:joshua.l.burnam@usace.army.mil). Any questions relating to this matter may be directed to Joshua Burnam at the above address or by telephone at (213) 452-3294.

This public notice is issued by the Chief, Regulatory Branch.