



U.S. Army Corps  
of Engineers  
Buffalo District  
CELRB-TDR

# PUBLIC NOTICE OF PROPOSED ADMINISTRATIVE PENALTY

**30 Day Notice**

Issue Date: April 14, 2022  
Expiration Date: May 14, 2022  
Corps of Engineers  
No. LRB - 2013-00553

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**1. INTERESTED PARTIES:** The District Engineer, U.S. Army Corps of Engineers, Buffalo District (Corps), proposes to issue an order assessing a Class I Administrative Penalty against Lockwood Villas, LLC for violation of a permit granted under the Clean Water Act.

**2. PERMIT INVOLVED AND ALLEGED VIOLATION:** The Corps affirmed a Department of the Army Nationwide Permit 29, as published in the Federal Register, Volume 77, No. 34 (No. LRB-2013-00553) for Lockwood Villas, LLC on February 5, 2015. The permit authorized permanent impacts to 0.49 acre of federally jurisdictional wetlands and temporary impacts to 0.13 acre of federally jurisdictional wetlands associated with the construction of a residential housing development located at 2493 and 2497 Sweet Home Road, in the Town of Amherst, Erie County, New York.

**Lockwood Villas, LLC violated the permit conditions as follows:**

Special Condition No. 1 required the permittee to execute a performance bond to provide financial assurances for the performance of the obligations, covenants, terms, conditions, and agreements required by the permit, prior to conducting any work authorized by the permit. The permittee has failed to provide an executed performance bond or any financial assurances and commenced work in late spring/early summer 2015.

As compensatory mitigation for unavoidable wetland losses, Special Condition No. 2 and 6(c) required perpetual deed restrictions to be recorded to preserve 0.23 acre of avoided wetlands and that a certified copy be provided to the Corps prior to conducting any work authorized by the permit. The permittee has failed to provide a copy of recorded deed restrictions and commenced work in late spring/early summer 2015.

Special Condition No. 5 required the permittee to notify the Regulatory Branch in writing one week prior to conducting activities authorized by the permit. The Corps office did not receive any correspondence prior to commencement of authorized work activities.

Special Condition No. 6(b) of the permit required reestablishment of a minimum 0.13 acres of scrub-shrub wetland, which was to be temporarily impacted during construction. A Corps representative and permittee's consultant conducted a compliance inspection on June 13, 2017, and the Corps determined the 0.13 acre reestablishment area was not meeting the wetland performance standards. Monitoring reports submitted by the permittee's consultant for monitoring years 2017, 2018, and 2019 also confirmed the reestablished wetland area was not meeting the performance standards. The Corps approved a corrective action plan on July 2, 2019 for implementation during 2019, however the 2019 monitoring report indicated the permittee did not initiate the corrective action plan.

Special Condition No. 6(c) required preservation of 0.23 acre of avoided wetlands (including the 0.13 acre to be temporarily impacted and reestablished), and a vegetative performance standard for the reestablished wetland that must be met throughout and by the end of the five-year monitoring period. More specifically, the restored wetland must be vegetated with a minimum of 80 percent (%) aerial cover of hydrophytic vegetation (Wetland Indicator Status of Facultative and Facultative Wetland, with no more than 50% cover of one species).

Special Condition No. 12 required submittal of annual monitoring reports on the re-established wetland for the first five years after construction by December 31 of the year due. The Corps did not receive monitoring reports for either the fourth year (2020) or fifth year (2021).

General Condition No. 30 of the Nationwide Permit requires submission of a signed compliance completion form documenting completion of the authorized work and any required compensatory mitigation. The Corps did not receive the required form.

**3. AUTHORITY FOR PROCEEDING:** This administrative penalty proceeding is initiated under the authority of 33 U.S.C. § 1319(g) 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 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 \$33,897. 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 Administrative Penalty is \$22,585 per violation, and not more than \$56,461 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 Administrative 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, they may not challenge the permit condition(s) or limitation(s) which is the subject matter of the Proposed Order.

**6. COMMENTS/ADMINISTRATIVE RECORD:** During the 30-day comment period, any person may submit written comments on the Proposed Order. These comments should be sent to the U.S. Army Corps of Engineers 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, Buffalo District, Regulatory Branch, 1776 Niagara Street, Buffalo, New York 14207. (The administrative record is subject to the provisions of law restricting the disclosure of confidential information.) Comments should be directed to the following:

David Leput  
U.S. Army Corps of Engineers  
1776 Niagara Street  
Buffalo, New York 14207  
David.W.Leput2@usace.army.mil

**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 the permittee's receipt of this formal notice.

**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).

Eli S. Adams  
Lieutenant Colonel, U.S. Army  
Commanding