



U.S. Army Corps
of Engineers
Buffalo District
CELRB-TD-R

PUBLIC NOTICE OF PROPOSED ADMINISTRATIVE PENALTY

30 Day Notice

Issue Date: March 17, 2021
Expiration Date: April 16, 2021
Corps of Engineers No. LRB-2010-00299

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

2. PERMIT INVOLVED AND ALLEGED VIOLATION: The Corps issued a Department of the Army individual permit (No. LRB- 2010-00299) to Arkwright Summit Windfarm, LLC on March 8, 2017. The permit authorized permanent impacts to 6.02 acres of federally jurisdictional wetlands and 3,155 linear feet of federally jurisdictional streams associated with the construction of the Arkwright Summit Wind Farm project, located off of State Route 83, in the Towns of Pomfret and Arkwright, Chautauqua County, New York. Special Condition 6 of the permit, as modified on April 16, 2018, states: “Temporary impacts/fill may not be in place greater than 14 months in any single project location. All temporary impacts must be restored to preconstruction conditions following completion of construction.”

The permit was violated as follows:

The permittee impacted a total of approximately 11.41 acres of wetlands, including impacts to 65 discrete wetland areas beyond those authorized for either permanent or temporary wetland fills. In addition, the permittee modified the size/orientation of 14 culverted stream crossings without authorization. These modifications are not in compliance with the authorized permit drawings or with the special conditions of the permit. The permittee has not restored all temporary impacts to preconstruction conditions, and temporary impacts have remained in place greater than 14 months from construction, which the permittee considered complete in August/September 2018.

Note: The permittee has performed restoration of numerous wetland/stream areas and work associated with this corrective action will continue until all unauthorized impacts to waters of the U.S. are restored. The proposed administrative penalty is in addition to the on-site restoration efforts.

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 \$55,801. 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 \$22,321 per violation, and not more than \$55,801 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:

Bryan Young
U.S. Army Corps of Engineers
1776 Niagara Street
Buffalo, New York 14207
Bryan.T.Young@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, Corps of Engineers
District Commander