



**US Army Corps
of Engineers®**

**PUBLIC NOTICE
PROPOSED ORDER
TO ASSESS AN ADMINISTRATIVE
PENALTY**

PHILADELPHIA DISTRICT
Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107
ATTN: CENAP-OC

PUBLIC NOTICE NO.: CWA-NAP2007-1
PUBLIC NOTICE DATE: AUG 15 2007
ALLEGED VIOLATOR: LAKE HAUTO CLUB

The District Engineer, Philadelphia District, proposes to issue an order assessing a Class I Administrative Penalty for violation of a Section 404 Clean Water Act permit granted to **LAKE HAUTO CLUB**.

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 [Enclosure 1] and describes the alleged permit violation. Additional information concerning the Class I administrative penalty process is contained below.

1. **PUBLIC COMMENT AND PARTICIPATION:** 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 written comments within 30 days from the date of this Notice [see, paragraph 3, below, for the address for submission of comments]. The District Engineer shall include all written comments in the administrative record relating to the proposed order. Any person who comments on a proposed order shall be given notice of any hearing held on the proposed order. Such persons shall have a reasonable opportunity to be heard and to present evidence at the hearing. 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, and will be given 30 days in which to petition the District Engineer to set aside the order and to provide a hearing on the penalty. The District Engineer shall set aside the penalty if the evidence presented by the commenter in support of the commenter's petition for a hearing is material and was not considered when the order was issued.

2. AVAILABILITY OF THE ADMINISTRATIVE RECORD. The administrative record relating to the proposed order in this case is available for inspection by the public at the Pocono Area Field Office. In the event that you desire to inspect the administrative record, it is requested that you contact Mr. Wade Chandler at 570-842-1044 to arrange an appointment. All information submitted by the permittee and persons commenting on the proposed order is available as part of the administrative record subject to provisions of law restricting the public disclosure of confidential information.

3. INQUIRIES. Written comments on the proposed penalty must be submitted within 30 days from the date of this notice to: Barry Gale, Office of Counsel, U.S. Army Corps of Engineers, Philadelphia District, Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107. Any questions concerning this matter may be directed to Barry Gale at the above address or telephonically at 215-656-6528.



GWEN E. BAKER
Lieutenant Colonel, Corps of Engineers
District Commander

**BEFORE THE UNITED STATES ARMY CORPS OF ENGINEERS
PHILADELPHIA DISTRICT**

IN THE MATTER OF : Docket No. CWA-NAP 2007-1
:
Lake Hauto Club :
:
DA Permit :
CENAP-OP-R200200296 :

PROPOSED ORDER

Under the authority granted by 33 U.S.C. 1319(g) and 33 CFR 326.6, I, Gwen Baker, LTC, District Engineer, Philadelphia District, propose to issue this Order assessing a Class I Administrative Penalty for violations of the above numbered Permit.

A. NAME AND ADDRESS OF PERMITTEE: Lake Hauto Club, 140 Maple Terrace, Nesquehoning, PA 18240-2128

B. PERMITTED ACTIVITY: Rehabilitation of the Lake Hauto Dam located west of the Village of Hauto, Nesquehoning Township, Carbon County, Pennsylvania

C. PERMIT CONDITIONS OR LIMITATIONS VIOLATED: Special Conditions 1, 4, 5, 6, 7, 10, 11, 12

GENERAL ALLEGATIONS

1. The Lake Hauto Club was issued Department of the Army Permit CENAP-OP-R 200200926 ["Permit"] on July 25, 2002. The Permit authorized certain activities associated with the rehabilitation of the Lake Hauto Dam as described therein.
2. The Permit was issued subject to 21 special conditions set forth in the Permit.
3. By signing the Permit document, The Lake Hauto Club, as permittee, accepted and agreed to comply with the terms and conditions of the Permit on July 25, 2002.

COUNT 1

4. Special Condition 6 required the permittee to provide at least 0.37 acre of wetland compensation for permanent wetland impacts associated with the project.
5. Special Condition 1 required that all work performed in association with the authorized project be conducted in accordance with identified project plans. Among those identified plans was Sheet G6, entitled "WETLAND MITIGATION PLAN, dated April 10, 2002, last revised July 10, 2002.
6. The Wetland Mitigation Plan, referenced in paragraph 5, above, indicated that a large hill would be removed. Only a portion of the hill was removed by the permittee.
7. The permittee violated Special Conditions 1 and 6 by not constructing at least 0.37 acre of wetland compensation and by not constructing the site in accordance with the applicable project plan referenced in paragraph 5, above.

COUNT II

8. Special Condition 4 states: "Any deviation in construction methodology or project design from that shown on the above noted drawings must be approved by this office, in writing, prior to performance of the work. All modifications to the above noted project plans shall be approved, in writing, by this office. No work shall be performed prior to written approval of this office."
9. The permittee altered the design of the mitigation site, including not removing a large hill shown on the project plans as being completely removed. This change in design was not submitted to the Corps for written approval.
10. The permittee violated Special Condition 4 of the Permit by not obtaining written approval for the design change to the wetland mitigation site.

COUNT III

11. Special Condition 10 states: "That the permittee shall monitor the wetland compensation site for five consecutive growing seasons, and submit to this office two monitoring reports per season (June and November) for the first two years, and one report per season (November) for the remaining three years. Each monitoring report shall contain the following information: surface and groundwater elevations, percent aerial vegetative cover, and representative photographs of the site."

12. The Corps has received only two of the seven required monitoring reports. The first report, received on June 16, 2005, did not provide percent aerial vegetative cover and did not contain any photographs of the site. The second report, received on December 7, 2005, provided no information concerning site hydrology or vegetative cover.

13. The permittee violated Special Condition 10 by failing to monitor the wetland compensation site as required therein.

COUNT IV

14. Special Condition 11 states: "All wetland areas within the identified limits of disturbance, except for those identified as permanently impacted, shall be restored to original contours and seeded with a wetland seed mix within 30 days of the site being considered adequately stabilized by the Carbon County Conservation District."

15. Inspection of the site by the Corps on May 5, 2004 revealed that construction of the dam was complete and disturbed areas were stabilized.

16. Inspection of the site by the Corps on January 13, 2006 revealed that wetland areas subject to temporary impacts had not yet been restored to original contours.

17. The permittee violated Special Condition 11 by failing to restore wetlands subject to temporary project impacts within 30 days of site stabilization.

COUNT V

18. Special Condition 12 states: "The permittee shall provide this office with photographs and documentation (i.e., description of hydrology and vegetation) indicating that the wetlands temporarily impacted by the project have been adequately restored. The information shall be submitted to this office one year after completion of the project. If it is determined by this office that the wetlands have not been adequately restored, additional work may be required."

19. Inspection of the site by the Corps on May 5, 2004 revealed that construction of the dam was complete and disturbed areas were stabilized.

20. The Corps, as of the date of this Proposed Order, has not received photographs or documentation concerning restoration of the temporarily impacted wetlands.

21. The permittee violated Special Condition 12 by failing to submit the required information concerning restoration of the temporarily impacted wetlands within one year of completion of the project.

Based on the foregoing allegations, I propose to assess a Class I Administrative Penalty against Lake Hauto Club as follows:

Count I -	\$9,000
Count II -	\$4,000
Count III -	\$5,000
Count IV -	\$6,000
Count V -	\$3,000

TOTAL: \$27,000

This proposal is subject to revision in the interest of justice after all the evidence and comments have been received and reviewed. The amount which may be assessed as a Class I Administrative Penalty may not exceed \$11,000 per violation. The maximum amount of any Class I penalty is not to exceed \$27,500.

Issued this 15th day of August, 2007



GWEN E. BAKER
Lieutenant Colonel, Corps of Engineers
District Commander