



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
1455 MARKET STREET, 16TH FLOOR
SAN FRANCISCO, CALIFORNIA 94103-1398

OCT 24 2011

REPLY TO
ATTENTION OF

Regulatory Division

Certified Mail

Subject: File No. 2000-252570N

NOTICE OF ALLEGED VIOLATION

Mr. John Sweeney
171 Sandpiper Drive
Pittsburg, California 94565

Dear Mr. Sweeney:

This inquiry concerns an unauthorized activity for which you have identified yourself as the responsible party. The property where the activity in question occurred is located on Chipps Island, within the Suisun Marsh Primary Management Area, on property identified as "Club 915," in Solano County, California (Please see attached map).

The unauthorized activity involves levee repair work you conducted at your property below the High Tide Line (HTL) and Mean High Water (MHW) of Spoonbill Creek on August 17, 2011. Based on my site visit of September 16, 2011, and my conversation with you while on site, you sunk a 40' x 10' metal shipping container into the breached portion of your exterior levee below the HTL and MHW of Spoonbill Creek then filled the container with approximately 150 cubic yards (cy) of dredged material. You estimated the total amount of fill material discharged into Spoonbill Creek to complete the breach repair in question and other associated work was approximately 1,200cy.

It is the Corps' understanding that you completed the work in question with the intent of receiving authorization under Department of the Army Regional General Permit 3 for Activities in the Suisun Marsh (RGP3). Under authority of RGP3, the California Department of Fish and Game (CDFG) and landowners represented by the Suisun Marsh Conservation District (SRCD) are authorized to work and place fill material in areas subject to Corps jurisdiction. Many factors dictate a policy of strict adherence to all terms and conditions of RGP3.

The Corps has determined the levee work you conducted on your property (Club 915) does not comply with the terms and conditions outlined in RGP3 and therefore is in violation of Section 404 of the Clean Water Act (33 U.S.C. § 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403). Landowners represented by the SRCD who do not obey the terms and conditions of RGP3 can lose their SRCD representation and consideration of future work activities under the RGP3.

Please Note: all discharges of dredged or fill material occurring below the plane of ordinary high water in non-tidal waters of the United States, or below the high tide line in tidal waters of the United States, and within the lateral extent of wetlands adjacent to these waters typically require Department of the Army authorization and the issuance of a permit under Section 404 of the Clean Water Act. Waters of the United States generally include all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; all interstate waters including interstate wetlands; all other waters, the use degradation or destruction of which could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the United States; tributaries of the waters identified above; the territorial seas; and wetlands adjacent to all the waters identified above. Furthermore, all structures and work occurring below the plane of mean high water in tidal waters of the United States, in former diked baylands currently below mean high water, outside the limits of mean high water but affecting the navigable capacity of tidal waters, or below the plane of ordinary high water in non-tidal waters designated as navigable waters of the United States typically require Department of the Army authorization and the issuance of a permit under Section 10 of the Rivers and Harbors Act of 1899. Navigable waters of the United States generally include all waters subject to the ebb and flow of the tide, and/or all waters presently used, or have been used in the past, or may be susceptible for future use to transport interstate or foreign commerce. The term "structure" includes, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island or reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, or any other obstacle or obstruction. The term "structure" does **not** include bridges and causeways constructed in or over navigable or tidal waters of the United States, since this regulatory responsibility has been delegated to the U.S. Coast Guard under the Department of Transportation Act of 1966 (Pub. L. No. 89-670). The term "work" includes, without limitation, any dredging or disposal of dredged material, filling, or other modification of a navigable water of the United States.

The provisions of 33 C.F.R. Section 326.3 direct the District Engineer to commence an initial investigation of any unauthorized work, structures, and associated dredged or fill material discharges in waters of the United States to determine the appropriate administrative and/or legal actions to be pursued. In the event the alleged violation is subsequently confirmed, administrative actions could include a voluntary restoration of the site, an order requiring the completion of initial corrective measures to alleviate imminent adverse impacts to aquatic resources, and/or the issuance of an after-the-fact Department of the Army Permit to authorize any remaining work, structures, and dredged or fill material discharges in waters of the United States. Administrative actions could further include the use of Class I or Class II civil fines for violations under Section 404 of the Clean Water Act. Legal actions could include the initiation of civil or criminal proceedings when circumstances warrant such action.

Section 309 of the Clean Water Act (33 U.S.C. § 1319) provides penalties for violation of Section 301 (33 U.S.C. § 1311) of the Clean Water Act. Pursuant to Section 301, it is illegal to discharge any dredged or fill material without a permit issued by the Corps of Engineers pursuant to Section 404 (33 U.S.C. § 1344) of the Clean Water Act. A person may be subject to civil penalties of as much as \$37,500 per day for each violation. Furthermore, the law also allows criminal penalties for violations. For the most egregious of those violations, the law provides for imprisonment for as much as 15 years, or fines of up to \$1,000,000 for a violation (or even higher in some circumstances) (33 U.S.C. § 1319; 18 U.S.C. § 3571).

Under Section 12 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 406), a person convicted of violating Section 10 of the Rivers and Harbors Act may be subject to a criminal fine of up to \$2,500.00, or by imprisonment for up to one year, or by both such punishments. Section 12 of the Act further authorized the Court to enforce the removal of any structure erected in violation of the Act. For the most egregious violations of the Act, a person or an organization who violates any provision of the Act may be subject to a criminal fine of not more than \$100,000.00 or \$200,000.00, respectively (or even higher in some circumstances) (18 U.S.C. § 3571).

To facilitate completion of our initial investigation, you are requested to provide this office the information specified in the enclosed *Investigation Questionnaire* within fifteen (15) days of receipt of this letter; this requested information may be held against you in the event of any subsequent legal action. You are further requested to contact this office within this timeframe to allow Regulatory staff to formulate any required resolution. You are advised to cease any ongoing work that may be occurring in waters of the United States.

You may refer any questions on this matter to Mr. David Wickens of my Regulatory staff by telephone at (415) 503-6787 or by e-mail at david.m.wickens@usace.army.mil. All correspondence should be addressed to the Regulatory Division, North Branch, referencing the file number at the head of this letter.

Sincerely,
ORIGINAL SIGNED
BY
LAURIE A. MONARRES
CHIEF, REG. DIV., NORTH BRANCH
Jane M. Hicks
Chief, Regulatory Division

Enclosure