



**US Army Corps  
of Engineers**  
Omaha District

# **PUBLIC NOTICE**

**Announcement of Proposed Class I Administrative Penalty  
for Violations of  
Permit NWO-2002-80670-DEN  
Granted Under Section 404 of the Clean Water Act**

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**REPLY TO:**

Denver Regulatory Office  
9307 South Wadsworth Blvd  
Littleton, CO 80123-6901  
FAX (303) 979-0602

**30 DAY NOTICE**

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## **PUBLIC NOTICE FOR SECTION 404 PERMIT APPLICATION SUBMITTED TO U.S. ARMY CORPS OF ENGINEERS**

**INTERESTED PARTIES:** The District Commander, Omaha District, proposes to issue an order assessing a Class I Administrative Penalty against Deer Creek Golf Club, LLC, currently doing business as (d/b/a) In Play Membership Golf, Inc., for violations of a permit granted under Section 404 of the Clean Water Act.

**PERMITS INVOLVED AND ALLEGED VIOLATION:** The Department of the Army issued an authorization to Deer Creek Golf Club, LLC to utilize Nationwide Permit (NWP) 42 for the discharge of fill material into 0.38 acres of waters of the United States, specifically wetlands adjacent to Massey Draw, a tributary to Chatfield Lake and the South Platte River, for the purpose of enhancing the existing Deer Creek Golf Course. The 165-acre property is located northwest of the junction of Colorado State Highway 470 and South Kipling Parkway, in the City of Littleton, Jefferson County, Colorado.

Deer Creek Golf Club, LLC failed to comply with the terms and conditions of the subject NWP. Specifically, the Permittee failed to complete the on-site wetland creation as specified in Special Condition 1 and failed to submit annual mitigation monitoring reports as described in Special Condition 2. As of June 24, 2012, the Permittee satisfied their requirements for compensatory mitigation and are currently compliant with all terms and conditions of the subject authorization.

**AUTHORITY FOR PROCEEDING:** This Administrative Penalty proceeding is initiated under the authority of 33 U.S.C. 1319(g) and 33 CFR 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 Commander. The District Commander will issue a Final Order on the case to the permittee. Public participation in the hearing is permitted if a hearing is held.

**PENALTY PROPOSED:** The amount of the penalty proposed in this case is \$7,800.00. This proposal is subject to revision in the interest of justice after all evidence and comments have been received and reviewed. The amount of the penalty that the District Commander is authorized to assess as a Class I Penalty is \$11,000 per violation and not more than \$27,500 total. In a case involving multiple violators, each violator is subject to a separate, not joint, penalty.

**REQUEST FOR HEARING:** The permittee has 30 days following receipt of this formal notice of proposed penalty to request a hearing. Written request, by the permittee, for a hearing should be directed to the District Commander 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, he may not challenge the permit condition or limitation, which is the subject matter of this order.

**COMMENTS/ADMINISTRATIVE RECORD:** During the 30 day comment period, any person may submit written comments on the proposed Penalty Order. These comments should be sent to the District Commander by 4:30 p.m CST, September 10, 2012. 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 is subject to the provisions of law restricting the disclosure of confidential information and will be available for inspection during regular business hours at the following location:

U.S. Army Corps of Engineers  
Omaha District, Denver Regulatory Field Office  
9307 South Wadsworth Boulevard  
Littleton, Colorado 80128-6901

Comments should be directed to:

U.S. Army Corps of Engineers  
Omaha District, Regulatory Division  
ATTN: Jennifer Frye  
1616 Capitol Avenue, Suite 9000  
Omaha, Nebraska 68102-9000

**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.

**FINAL DECISION:** If the permittee does not request a hearing, the District Commander may issue the Final Order on this violation on or after 30 days following receipt of this formal notice by the permittee.

**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).