

# PUBLIC NOTICE



US ARMY CORPS  
OF ENGINEERS

OMAHA DISTRICT

PERMITTEE: RIVER GREENWAY  
HOSPITALITY, LLC  
ACTION NO: NWO-2011-02615-PIE  
WATERWAY: BIG SIOUX RIVER  
ISSUE DATE: OCTOBER 15, 2012  
EXPIRATION DATE: NOVEMBER 14, 2012

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Regulatory Office, 28563 Powerhouse Rd, Room 118, Pierre, SD 57501  
<http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/SouthDakota.aspx>

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**30-DAY NOTICE**

**SPECIAL PUBLIC NOTICE**  
**ADMINISTRATIVE COMPLAINT**

And

**PROPOSED PENALTY**

**RIVER GREENWAY HOSPITALITY, LLC, SIOUX FALLS, SOUTH DAKOTA**

**INTERESTED PARTIES:** The District Commander, Omaha District, proposes to issue an order assessing a Class I Administrative Penalty to River Greenway Hospitality, LLC for its failure to comply with two (2) conditions of Nationwide Permit 33 - Temporary Construction, Access, and Dewatering, during the demolition of the Sioux Falls River Ramp Parking structure. The property is located along the both sides of the Big Sioux River, adjacent to 9th Street, in the City of Sioux Falls, Minnehaha County, South Dakota.

**PERMITS INVOLVED:** The Department of the Army issued verification of authorization under Nationwide Permit No. 33 to River Greenway Hospitality, LLC (U.S. Army Corps of Engineers action ID: NWO-2011-02615-PIE) for the fill associated with constructing a temporary work pad impacting 0.80 acres of the Big Sioux River (a water of the United States).

**FINDINGS and ALLEGED NONCOMPLIANCE:** River Greenway Hospitality, LLC never constructed the temporary rock work pad as described in their Pre-Construction Notification (PCN). Instead, during demolition of the parking ramp, the debris was allowed to fall directly into the Big Sioux River. Whereby, the debris was utilized as a work pad for further demolition of the parking structure. This resulted in an uncontrolled sediment plume of concrete fines discharged to the Big Sioux River. (See attached photographs.)

River Greenway Hospitality, LLC was initially notified of their noncompliance with the permit conditions by a letter dated April 30, 2012. They were ordered to immediately remove the concrete debris and come into compliance with the permit conditions. As of June 2012, the Permittee satisfied their requirements to remove the fill material and are currently compliant with all terms and conditions of the subject authorization.

The specific activities (conditions) determined to be in non-compliance with the DA Nationwide Permit, Action ID No. NWO-2011-02615-PIE and that are part of this administrative process are as follows:

- 1) Failure of River Greenway Hospitality, LLC to provide appropriate soil erosion and sediment controls which is in non-compliance with General Condition #12.
- 2) Failure to adhere to the approved construction plans as described in the Pre-Construction Notification (PCN) which is in non-compliance with General Condition #27.

**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:** Under section 309(g)(2)(A) of the Clean Water Act, The District Engineer can assess Class I civil penalties up to \$11,000 per violation, except that the maximum amount of any Class I civil penalty shall not exceed \$27,500. In a case involving multiple violators, each violator is subject to a separate, not joint, penalty. The amount of the proposed penalty in this case was arrived at using a number of factors including, the permittee's cooperation, and responsiveness to directives from this office for corrective measures and restoration. The amount of the penalty proposed in this case is \$6,950.00. This proposal is subject to revision in the interest of justice after all evidence and comments have been received and reviewed.

**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, 30 days from the date of this public notice any person may submit written comments on the proposed Penalty Order.

Comments should be directed to:

U.S. Army Corps of Engineers  
Omaha District, South Dakota Regulatory Field Office  
28563 Powerhouse Road, Room 118  
Pierre, South Dakota 57501-6174

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.

**LOCATION OF THE ADMINISTRATIVE RECORD:** The administrative record, which is subject to the provisions of law restricting the disclosure of confidential information, will be available for inspection during regular business hours (8 AM to 4:30 PM) at the following location:

U.S. Army Corps of Engineers  
Omaha District, South Dakota Regulatory Field Office  
28563 Powerhouse Road, Room 118  
Pierre, South Dakota 57501-6174

**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).



Photographs of excavators working on concrete debris discharged into the Big Sioux River.