

TOLLING DOCUMENT

REGULATION ON APPEALING A CORPS OF ENGINEERS PERMIT DECISION

Effective on August 9, 1999, a permit appeal provision was added to the Corps permit regulations under 33 CFR 320.1, 326.3 and 331. In the past, a decision made by the District Engineer was not appealable; however, the applicant did have the right to challenge the Corps of Engineers in court on how that decision was reached. Now, once a decision is made by the District Engineer to issue or deny a permit, the applicant can object to the decision or object to the conditions or restrictions imposed on the permitted work. The appeal review can include forwarding the review outside the New Orleans District to the Mississippi Valley Division Engineer.

When dealing with a permit application for work that was performed without a required Corps' permit or work performed not in accordance with the provisions of the permit, a "tolling" agreement is required under 33 CFR 331.11(c) titled "Tolling of Statutes of Limitations". This section states that *"Any person who applies for an after-the-fact permit, where the application is accepted and processed by the Corps, thereby agrees that the statute of limitation regarding any violation associated with that application is tolled until one year after the final Corps decision, as defined at 33 CFR 331.10. Moreover, the application for an after-the-fact permit must also memorialize that agreement to toll the statute of limitations, by signing an agreement to that effect..."*. The term "toll" in the context of statutes of limitation generally means to "remove" or "take away".

In accordance with these regulations, attached is the standard tolling agreement. Please sign and return it to us as soon as possible.

If you have any questions, please contact Rosie Schwamenfeld of this office at (337) 291-3045.

TOLLING AGREEMENT

WHEREAS, the United States of America, on behalf of the United States Army Corps of Engineers (Corps) may file a complaint against

Rossllyn Stone

("potential defendant(s)") for, *inter alia*, alleged violations of Sections 301(a), 309, & 404 of the Clean Water Act ("CWA"), 33 U.S.C. Sections 1311(a), 1319, & 1344 and/or Section 9, 10, or 13 of the Rivers and Harbors Act of 1899, 33 U.S.C. Sections 401, 403, or 407, and/or Ocean Dumping Act Sections 101 and/or 103 (33 U.S.C. 1411, 1413), at a site commonly known as

2049 Levee Hwy, South of Pierre Part, Louisiana

at Approx Lat: 29.9105, Long: -91.2231 in St. Martin Parish

WHEREAS, the purpose of any such complaint would be to obtain appropriate injunctive relief and to impose appropriate civil or criminal penalties for potential defendant'(s) alleged violations of the statute(s) cited above;

WHEREAS, the Corps accepted an after-the-fact (ATF) permit application from the potential defendant(s) in an attempt to settle the above claims;

WHEREAS, both parties believe that their interests will best be served by continuing the ATF permit process without the disruption that might be occasioned should the United States file a complaint in the immediate future;

AND WHEREAS, both parties acknowledge the requirement found at 33 C.F.R. 331.11(c) for an applicant for an ATF permit to provide a signed tolling agreement;

THEREFORE, the United States and potential defendant(s) stipulate and agree as follows:

1. The United States and potential defendant(s) agree that the time between the acceptance by the Corps of the ATF permit application and the final Corps decision (as defined at 33 CFR 331.10), plus one year thereafter, will not be included in calculating any statute of limitations that might be applicable to the alleged statutory violation(s) described above. Potential defendants agree not to assert, plead, or raise in any fashion on behalf of any party, whether by answer, motion, or otherwise, any defense or avoidance based on the running of any statute of limitations that may apply during that period or any defense or avoidance based on laches or other principle concerning the timeliness of commencing a civil action, based on the failure of the United States to file its complaint during that period.

2. Potential defendants further agree not to transfer the property in question during the pendency of this tolling agreement nor during the pendency of any civil action brought as described above, without first notifying the United States and giving the United States a reasonable opportunity to oppose such transfer.

3. Nothing in this tolling agreement shall restrict or otherwise prevent the United States from filing a complaint regarding any alleged statutory violation(s) not described above, at any time.

4. This tolling agreement does not constitute any admission of liability on the part of potential defendants; nor does it constitute any admission or acknowledgement on the part of the United States that any statute of limitations has run or that any statute of limitations is applicable to the statutory claims described above.

5. This tolling agreement contains the entire agreement between the parties, and no statement, promise or inducement made by any party to this agreement, or any agent of such parties, that is not set forth in this agreement shall be valid or binding. This tolling agreement may not be enlarged, modified or altered except in writing signed by the parties. This tolling agreement may be executed in counterparts.

FOR: United States of America



STEPHAN C. ROTH, District Counsel
New Orleans District, U.S. Army Corps of Engineers

01-24-23

DATE

FOR: ("potential defendant(s)")

DATE