

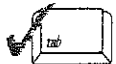


Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands  
**WPA Form 9 – Enforcement Order**  
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number: \_\_\_\_\_

## A. Violation Information

**Important:**  
When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



This Enforcement Order is issued by:

MARION CONSERVATION COMMISSION 24 SEPT 2014  
Conservation Commission (Issuing Authority) Date

To:

TOWN OF MARION  
Name of Violator  
2 SPRING ST, MARION, MA  
Address

1. Location of Violation:

Property Owner (if different)  
SPRAGUE'S COVE  
Street Address  
City/Town MARION Zip Code 01946  
Assessors Map/Plat Number LOT 30 Parcel/Lot Number

2. Extent and Type of Activity (if more space is required, please attach a separate sheet):

CONSTRUCTION OF ROCK WALL, PLACEMENT OF  
FILL IN SALT MARSH COAST SEAWARD OF THE HIGH  
TIDE LINE

## B. Findings

The Issuing Authority has determined that the activity described above is in a resource area and/or buffer zone and is in violation of the Wetlands Protection Act (M.G.L. c. 131, § 40) and its Regulations (310 CMR 10.00), because:

☒ the activity has been/is being conducted in an area subject to protection under c. 131, § 40 or the buffer zone without approval from the issuing authority (i.e., a valid Order of Conditions or Negative Determination).



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**B. Findings (cont.)**

☐ the activity has been/is being conducted in an area subject to protection under c. 131, § 40 or the buffer zone in violation of an issuing authority approval (i.e., valid Order of Conditions or Negative Determination of Applicability) issued to:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Dated

\_\_\_\_\_  
File Number

\_\_\_\_\_  
Condition number(s)

- ☐ The Order of Conditions expired on (date): \_\_\_\_\_ Date
- ☐ The activity violates provisions of the Certificate of Compliance.
- ☐ The activity is outside the areas subject to protection under MGL c.131 s.40 and the buffer zone, but has altered an area subject to MGL c.131 s.40.
- ☐ Other (specify): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**C. Order**

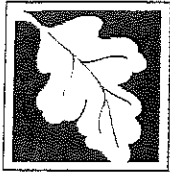
The issuing authority hereby orders the following (check all that apply):

- ☒ The property owner, his agents, permittees, and all others shall immediately cease and desist from any activity affecting the Buffer Zone and/or resource areas.
4. ☒ Resource area alterations resulting from said activity shall be corrected and the resource areas returned to their original condition. OR

☐ A restoration plan shall be filed with the issuing authority on or before \_\_\_\_\_ Date

for the following: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The restoration shall be completed in accordance with the conditions and timetable established by the issuing authority.



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**C. Order (cont.)**

2. ☒ Complete the attached Notice of Intent (NOI). The NOI shall be filed with the Issuing Authority on or before:

Date

19 Nov 2014

for the following:

MOVE THE ROCK WALL AND ANY FILL LANDWARD OF THE HIGH  
TIDE LINE/SALT MARSH. REBUILD IT IN ACCORDANCE WITH AN

No further work shall be performed until a public hearing has been held and an Order of Conditions has been issued to regulate said work.

- ☐ The property owner shall take the following action (e.g., erosion/sedimentation controls) to prevent further violations of the Act:

APPROVED ENGINEERING PLAN. SEE CEALDA-R-PEA LETTER

FILE # NAE-Y014-01310 DATED AUG 14, 2014 FOR RELATED INFORMATION.

THE COMMISSION NOTES THAT THE PLAN OF RECORD APPROVED BY

SE41-556 INCLUDED THE REQUIREMENTS FOR THAT SECTION OF  
THE EARTHWORKS TO BE ARMORED

Failure to comply with this Order may constitute grounds for additional legal action. Massachusetts General Laws Chapter 131, Section 40 provides: "Whoever violates any provision of this section (a) shall be punished by a fine of not more than twenty-five thousand dollars or by imprisonment for not more than two years, or both, such fine and imprisonment; or (b) shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each violation". Each day or portion thereof of continuing violation shall constitute a separate offense.

**D. Appeals/Signatures**

An Enforcement Order issued by a Conservation Commission cannot be appealed to the Department of Environmental Protection, but may be filed in Superior Court.

Questions regarding this Enforcement Order should be directed to:

NORMAN HILLS

Name

508-748-325

Phone Number

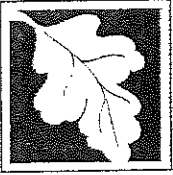
Hours/Days Available

Issued by:

MARION CONSERVATION COMMISSION

Conservation Commission

Conservation Commission signatures required on following page.



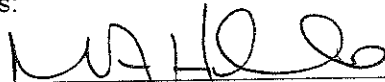
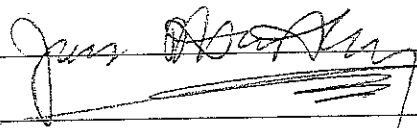
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DEP File Number: \_\_\_\_\_

**D. Appeals/Signatures (cont.)**

In a situation regarding immediate action, an Enforcement Order may be signed by a single member or agent of the Commission and ratified by majority of the members at the next scheduled meeting of the Commission.

Signatures:

  
  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of delivery person or certified mail number



DEPARTMENT OF THE ARMY  
US ARMY CORPS OF ENGINEERS  
NEW ENGLAND DISTRICT  
696 VIRGINIA ROAD  
CONCORD MA 01742-2751

August 14, 2014

Regulatory Division  
CENAE-R-PEA  
File Number: NAE-2014-01310

Robert Zora  
Department of Public Works  
50 Benson Brook Road  
Marion, Massachusetts 02738

Dear Mr. Zora:

This letter is in regards to the rock seawall work by Silvershell Beach that we understand was performed by the Town of Marion Department of Public Works (DPW). Richard Kristoff of our staff met Mr. Norman Hills of the Conservation Commission at the site for an inspection of the work on July 29, 2014. As Mr. Kristoff noted in the field, it appears the rock has been placed below the high tide line and within saltmarsh. We have not found any record indicating that portions of the work has been authorized. Therefore, we must assume work was performed in violation of Section 10 of the Rivers and Harbors Act and in violation of Section 404 of the Clean Waters Act. Please note authorization NAE-1991-01012, attached, does show a portion of the seawall.

For the Town's awareness, Section 10 of the Rivers and Harbors Act of 1899 (RHA), 33 U.S.C. 403, prohibits the installation of any structure in or over navigable waters of the United States and the excavation from or depositing material into such waters unless the work has been properly authorized by a Department of the Army permit. Section 404 of the Clean Water Act, 33 U.S.C. 1344, prohibits the discharge of dredged or fill material into waters of the United States unless such discharge has been properly authorized by a Department of the Army permit. Injunctive relief, including restoration, is also available. A fact sheet that includes a summary of our authority, jurisdiction, definitions and permit requirements is attached to this letter.

Violations may be resolved either through removal and restoration of the work or by obtaining an after the fact permit. Please note that fill placed directly landward of our jurisdiction does not ordinarily require authorization from the Corps. During the field visit it was discussed that an expedited way to resolve the violation would be to remove any fill placed (without proper Corps approvals) in saltmarsh or seaward of the high tide line.

Please advise us within 60 days how the Town intends to proceed to correct this apparent violation or provide us with information indicating you understood that this work had been permitted by the Corps. If the Town chooses to remove fill placed within our jurisdiction we would need to re-inspect the site after the work is complete to insure that any affected saltmarsh areas will re-vegetate adequately. If adequate re-vegetation does not occur further mitigation may be required. If the Town proposes to retain the rock seawall that was constructed as it exists today a detailed application package which would include an adequate mitigation plan

91-28



DEPARTMENT OF THE ARMY  
NEW ENGLAND DIVISION, CORPS OF ENGINEERS  
424 TRAPELO ROAD  
WALTHAM, MASSACHUSETTS 02254-9149

REPLY TO  
ATTENTION OF

Regulatory Division  
CENED-OD-R  
199101012

29 MAY 1991

91-1012

Town of Marion  
% Mr. George A. Jennings  
2 Spring Street  
Marion, Massachusetts 02738

Dear Mr. Jennings:

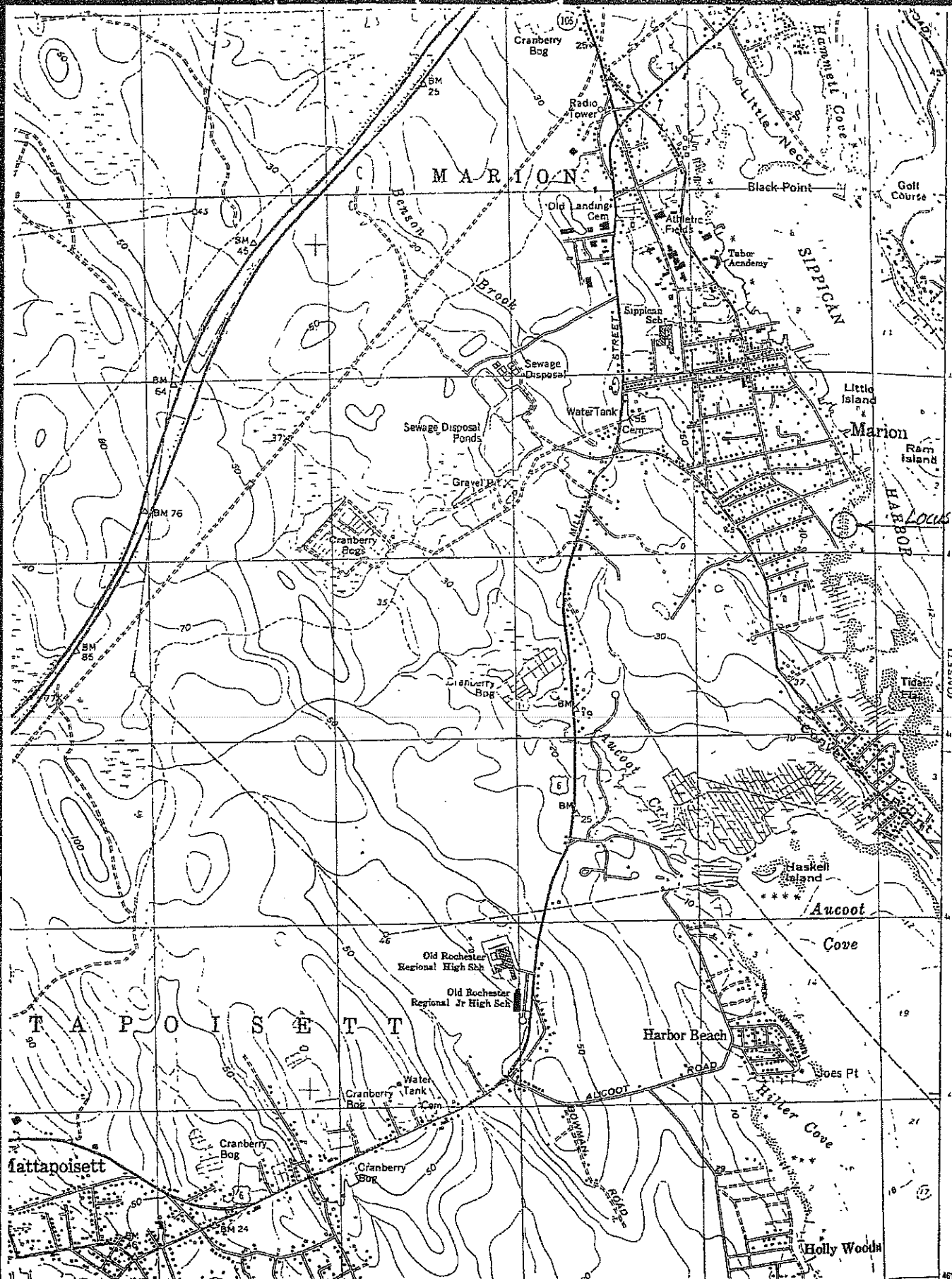
This refers to your application dated May 8, 1991. We have completed our evaluation and wish to inform you that, under the provisions of Section 10 of the Rivers and Harbors Act of March 3, 1899, you are hereby authorized to remove approximately 250 rocks which have been exposed by tidal action, below the high tide line, on Silvershell Beach. This area is approximately 100' wide x 150' long. Most of the rocks will be removed by hand (approximately 80.0%). The remaining rocks will be removed using a full track mounted backhoe or equivalent vehicle. The rocks will be relocated to an adjacent cove, approximately 125 feet south of the existing groin structure, in a rocky intertidal area.

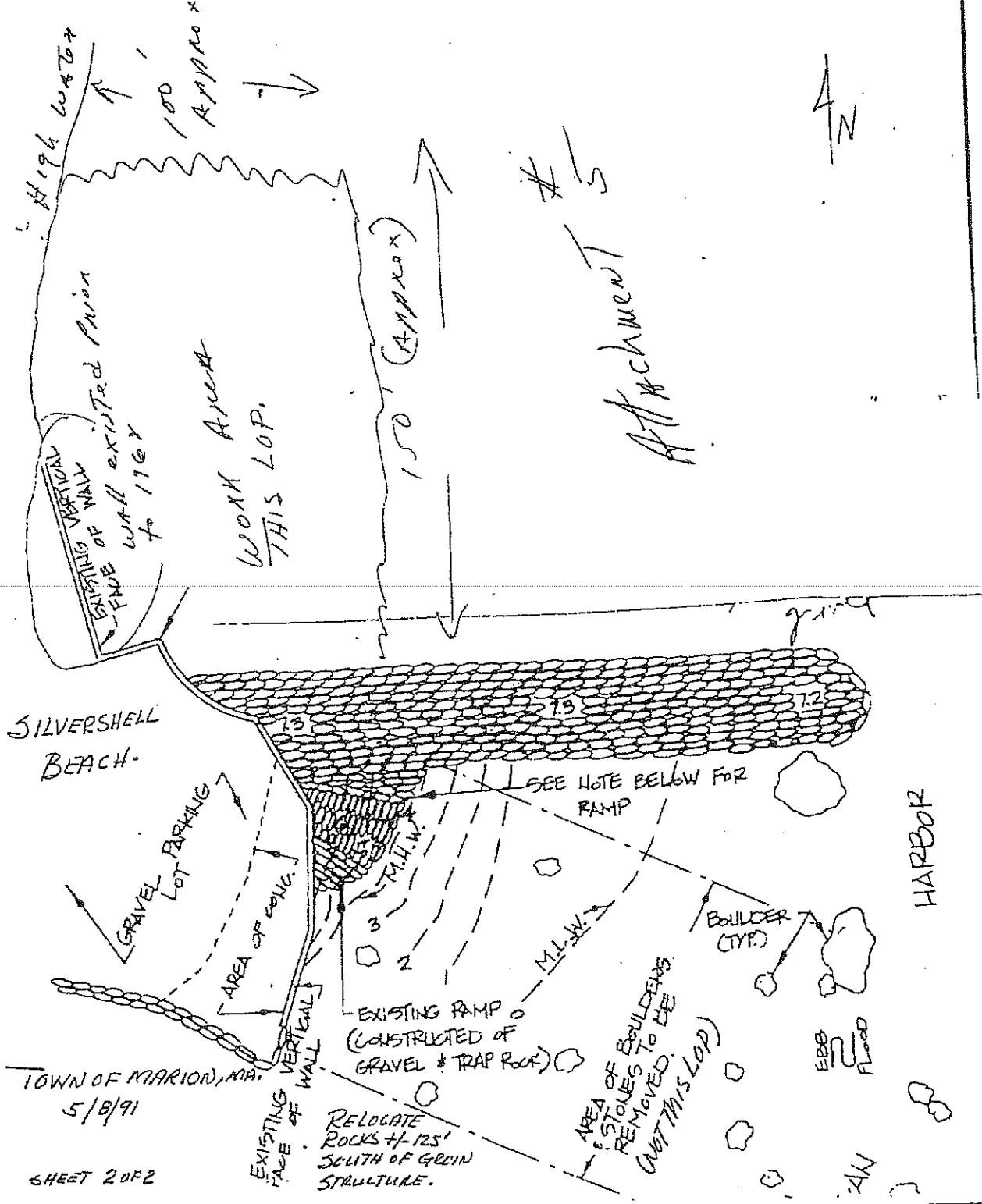
This Letter of Permission (LOP) is subject to all conditions in Attachment No. 1 and is made in accordance with the plans attached hereto entitled, "TOWN OF MARION, MA." in two sheets dated "5/8/91".

This is a limited authorization containing a stated set of conditions which must be complied with. If a contractor performs the work for you, both you and the contractor are responsible for assuring the work is done in conformance with the conditions and limitations of this authorization. Please be sure that the person who will do the work has read and understands these conditions.

Performing any work not specifically authorized by this LOP, or failing to comply with its conditions, may subject you to the enforcement provisions of our regulations. If any change in the plans or construction methods is found necessary, please contact us immediately to discuss modification of your authorization. Any change must be approved before it is undertaken.

0130







Programmatic General Permits (PGPs) have been issued for each of the New England States. A copy specific to your state is enclosed for your information and review. Activities described under Category I of the PGP do not need to be submitted to the Corps for review. This is a non-reporting category. Activities described under Categories II and III require project-specific authorization from the Corps in writing. The difference between Categories II and III is in the information to be submitted and the extent of public-interest review of the project. Category III activities require an individual permit. If a project meets **all** the terms and conditions of Category I of the PGP, it is not necessary to submit the project for our review. The PGP includes more details on this subject. However, those performing work under the assumption that the work is authorized under Category I of the PGP are responsible for any errors in that assumption. They should carefully check the PGP or consult our office to verify the assumption. The same situation applies if someone incorrectly determines that a project is outside Corps jurisdiction.

Violations of the Clean Water Act are punishable by civil and/or criminal fines of up to \$25,000 per day of violation (up to \$50,000 per day for criminal fines) and possible imprisonment. In addition, an order may be issued for (1) complete removal of the unauthorized work or fill and (2) restoration of the area to pre-construction conditions.