



**DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT CORPS OF ENGINEERS
915 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90017**

August 7, 2008

REPLY TO
ATTENTION OF

CESPL-RG (690-700a)

**MEMORANDUM FOR Ms. Heather A. Wylie, USAED Los Angeles District, Regulatory
Division**

SUBJECT: Notice of Proposed Suspension (30 days)

1. This is official notice that I propose to suspend you from work and pay for thirty (30) calendar days not earlier than thirty (30) calendar days after you receive this notice for: (1) Failure to follow instructions by sending an unauthorized and inappropriate E-mail message; and (2) Failure to observe written policy, or procedures by participating in an unsafe, unauthorized, boating expedition on the Los Angeles River that violated a Corps of Engineers policy that prohibits boating in the area. The specific reasons for this proposed action are listed in paragraphs 2 and 3 below.

2. Reason 1: Failure to follow instructions by sending an unauthorized and inappropriate E-mail message.

On 8 July 2008 you sent an unauthorized and inappropriate E-mail message to approximately 15 staff members in Regulatory Division, Office of Counsel and the District Commander. The specific text of your E-mail was the following: "You have to read the actual letters (Scroll to the bottom of the above link.)! Start with Nakayama's attachment! I love her, she appropriately slams the "reach of creek" scope of analysis. She says what I have been saying for over a year now; that the guidance is not consistent with the Rapanos ruling, science or the intent of the CWA and is putting our waters at risk! I couldn't have written it better myself. Thank gosh for Greenpeace that this is in the hands of Waxman and Oberstar now! Maybe we will be rescued from having to implement an illegal piece of "guidance" soon."

The content and the subject matter of the E-mail were entirely inappropriate because it stated among other things that the Corps is currently implementing illegal guidance to determine waters of the United States pursuant to the Rapanos Supreme Court decision.

I have conducted two previous counseling sessions with you regarding the issue of the Corps of Engineers official position on the Rapanos Guidance. I have specifically instructed, both verbally and in writing (see Memorandum dated March 2008) that it was inappropriate for you to send out E-mails at work that undermined and contradicted

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current Corps of Engineers policies. I have on several occasions asked you not to send E-mails to the CESPL-CO-R address list and any group larger than the North Coast Branch staff without prior review and approval by the Chief, or Acting Chief of the North Coast Branch. By sending this E-mail, you clearly elected to ignore my specific instructions communicated to you during the face-to-face counseling sessions in August 2007 and March 2008 and in writing in March 2008. Based on your repeated circulation of written opinions that are contrary to Corps of Engineers official policies, the above counseling sessions have been ineffective in changing your conduct.

3. Reason 2: Failure to observe written policy, or procedures by participating in an unsafe, unauthorized, boating expedition on the Los Angeles River that violated a Corps of Engineers policy that prohibits boating in the area.

On 28 July 2008, I found photographic evidence on a website: (http://laist.com/2008/07/27kayaking_the_la_river_part_2_east_v.php) that clearly documents you participating in an unauthorized boating expedition on the Los Angeles River on 26 July 2008.

Since the release of the Corps draft Traditional Navigable Water (TNW) determination for the Los Angeles River in early April 2008, you have been aware that boating is not authorized in the Los Angeles River (one of the major reasons for the Corps' navigability determination is that boating is considered unsafe in the Los Angeles River flood control channel). Numerous newspaper articles that were circulated by our Public Affairs Office to all employees in the District over the last three months have clearly documented the Corps' position on boating in the Los Angeles River and, on several occasions in conversations with co-workers, you have discussed the articles, contents of the above determination and expressed your strong disagreement with the Corps' determination regarding navigation in the Los Angeles River and the Corps policy related to boating in the river.

You knowingly participated in an unsafe and unauthorized boating expedition in the Los Angeles River that clearly violated a Corps of Engineer's policy that precludes boating in this flood control channel. Your inappropriate E-mail message of 8 July 2008 referenced above further affirms your awareness that boating was not allowed in the flood control channel. Furthermore, Regulatory Division specifically discussed many of the issues related to navigation in our Division meeting on March 12, 2008. On June 11, 2008 you and two co-workers listened to a one hour conference call in the Ventura Field office where Colonel Magness discussed the Los Angeles River TNW determination with a large number of resource agencies, environmental groups and congressional representatives. During the conference call, Colonel Magness discussed the safety issues associated with boating in the Los Angeles River flood control channel and the Corps policies regarding activities in the channel.

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The permit granted to the group you joined for the boating expedition in the Corps flood control channel specifically precluded boating in the channel. You participated in the boating expedition on the Los Angeles River undermining the Los Angeles District's specific direction to the group regarding boating and our policy on boating in a Corps flood control channel.

4. Although not part of the specific reasons for taking this action, the following is cited to show action taken by the Agency correct your misconduct.

a. You have been counseled and warned repeatedly about your ongoing disruptive behavior, failure to follow Corps policies and procedures and inappropriate and unacceptable E-mails, most recent specifically, on 14 March 2008, and 18 June 2008.

b. On 6 June 2008, you were reprimanded for disruptive and discourteous conduct toward your supervisor.

5. This action will improve the efficiency of the Federal service by impressing you that this type of behavior will not be tolerated. Although, the boating on 26 July 2008 was outside of duty hours, and it is unclear whether anyone knew you were a Corps of Engineers employee, your picture going down the Los Angeles River was posted on the Internet for public viewing. Moreover, your participation undermined the Corps of Engineers authority and knowingly placed others in danger, and potentially opened the Federal government to liability in case of injury by not attempting to stop the activity. Public service is a public trust and as Government employees we have the responsibility to not engage in outside activities that conflict with official Government duties and responsibilities.

6. In proposing this action, I have taken into account not only the charges above, but, a number of factors including the seriousness of your misconduct. The sending of E-mails that are openly critical and disrespectful to Corps of Engineers policies and procedures is unacceptable, as is engaging in prohibited and unauthorized activities that placed yourself and others in danger. As a Federal employee you are expected to maintain a higher standard of conduct and to act professionally on and off the job. Your misconduct negatively affects the morale of the Regulatory Division, endangered the public, had high potential to place the Federal government at risk of liability and greatly impacts my confidence in your ability to objectively carry out the duties of your position as a Physical Scientist. Your misconduct does not warrant proposing a lesser penalty.

7. This action is proposed to improve the efficiency of the Federal service. Therefore, I find it necessary to propose your suspension. Further incidents of this nature could result in a more severe disciplinary action.

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8. This action merely proposes a suspension and does not mean that the action is final. You have the right to reply to this proposed action. You may make a reply in person, in writing, or both. You may furnish any witness statements, affidavits, and other documentary evidence to support your reply.
9. Your reply, if any, should be made to Mr. Mark Cohen, Assistant Chief, Regulatory Division. Mr. Cohen may be reached at (213) 452-3413. Please send any written reply to Mr. Mark Cohen, 915 Wilshire Blvd, Suite 1550, Los Angeles, California 90017.
10. Any reply you wish to make must be received by Mr. Cohen within fourteen (14) calendar days of your receipt of this memorandum. If needed, you may request more time in which to make your reply. Such a request should be in writing to Mr. Cohen. Your request should include the reason(s) for your request.
11. The material upon which this proposed action is based is enclosed.
12. If you wish, you may have a representative act for you in discussion of this proposed action, or assist you in any reply you wish to make. You may request up to four (4) hours of official duty time, if you are otherwise in a duty status, to review the material relied upon to support this proposed action. The request for official time or more time if needed should be made to me. If you have any questions about this matter, you may contact Ms. Marcelina Reyes, Human Resources Specialist, at (916)557-5130.
13. In reaching a decision on this proposed action, any reply you make will be fully considered. A written decision will be issued to you whether or not you reply. You will remain in a duty status during the advance notice period unless you make yourself unavailable for work.



AARON ALLEN, Ph.D.
Chief, North Coast Branch
Regulatory Division

Enclosures Tabs (A-H)

Please acknowledge receipt of this notice in the space below. Acknowledgement in no way constitutes concurrence or non-concurrence with the contents.

Employee refused to Sign 07-Aug-2008
Signature Heather A. Wylie Date