



Oregon

Kate Brown, Governor

Department of Environmental Quality

Office of the Director
811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5343
FAX (503) 229-5100
TTY: 711

September 26, 2016

CERTIFIED MAIL: 7014 2870 0001 3373 6002

Dorena Hydro LLC
c/o National Registered Agents, Inc.
388 State Street Suite 420
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/I-WR-2016-089

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$11,400 for operating the Dorena Dam such that it caused exceedances of the state's water quality standard for dissolved oxygen between April 3, 2016, and April 10, 2016. DEQ has also cited you, without penalty, for other violations of your 401 Water Quality Certification.

DEQ issued this penalty because low levels of dissolved oxygen are harmful to aquatic life and other beneficial uses. Low levels of dissolved oxygen can impair fish reproduction and cause mortality. In addition, DEQ is concerned that you violated the 401 Water Quality Certification issued for this project by failing to implement protocol laid out in the management plans for the Dorena Dam.

Included in Section IV of the enclosed Notice is an order requiring you to revise the Dissolved Oxygen and Total Dissolved Gas Management Plan and the Water Quality Monitoring Equipment Malfunction Prevention and Response Plan, and develop an annual training program for key personnel responsible for implementing the plans and adhering to the conditions of the 401 water quality certification.

DEQ appreciates your efforts to minimize the effects of the violations as described in the April 21st email submitted by your consultant on your behalf. DEQ considered these efforts when determining the amount of civil penalty.

If you wish to appeal this matter, DEQ must receive a request for a contested case hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail - 811 S.W. 6th Ave., Portland, OR 97204

Via fax - 503-229-5100

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review it and refer to it when discussing this case with DEQ.



DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor in lieu of paying your penalty. Enclosed is more detail on how to pursue a SEP. SEP documents are available on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>, or by calling the number below to request a paper copy.

DEQ's rules are available on the internet at <http://www.deq.state.or.us/regulations/rules.htm>, or by calling the number below to request a paper copy.

If you have any questions, please contact DEQ Environmental Law Specialist Courtney Brown, at (503) 229-6839. You may call toll-free within Oregon at 1-800-452-4011, extension 6839.

Sincerely,



Sarah Wheeler, Acting Manager
Office of Compliance and Enforcement

Enclosures

cc: Chris Stine, DEQ, Eugene
John Koestler, WQ, HQ
Sandy Slayton, Senior Project Manager, ERM, 1001 SW 5th Ave., Suite 1010, Portland, OR 97204
Aquila Infrastructure Management, Inc., Attn: Steve Disley, Asset Manager, 55 University Ave., Suite 201, Toronto, Ontario, M5J 2H7, Canada
Aquila Infrastructure Management Inc., Attn: Alina Osorio, CEO, 55 University Ave., Suite 201, Toronto, Ontario, M5J 2H7, Canada

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 IN THE MATTER OF:)
4 DORENA HYDRO LLC,)
an Oregon limited liability corporation,)
5 Respondent.)

NOTICE OF CIVIL PENALTY
ASSESSMENT AND ORDER
CASE NO. WQ/I-WR-2016-089

6
7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
9 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140,
10 ORS Chapter 183, ORS Chapter 468B, and Oregon Administrative Rules (OAR) Chapter 340, Divisions
11 011, 012, 041, and 048.

12 II. FINDINGS OF FACT

13 1. Respondent operates the Dorena Dam Hydroelectric Project (“Dorena Dam”) located on the
14 Row River, waters of the state, in Lane County, Oregon.

15 2. A Clean Water Act section 401 water quality certification (“401 WQC”) was issued for the
16 FERC-licensed Project on January 18, 2008.

17 3. As the operator of the Dorena Dam, Respondent must comply with the 401 WQC.

18 4. Condition 10.F of the 401 WQC states that “no activities shall be conducted which will
19 violate state water quality standards.”

20 5. OAR 340-041-0016(1)(a) states that for water bodies identified as active spawning areas in
21 Table 340B(a), dissolved oxygen may not be less than 11.00 milligrams per liter (mg/l).

22 6. Table 340B(a) designates the Row River as an active salmon and steelhead spawning area
23 from January 1 through May 15.

24 7. Monitoring data from Sensor 4 at Dorena Dam showed variations indicating a need for
25 maintenance beginning in March 2016 and intensifying throughout that month.

26 8. On or about April 3, 2016, through on or about April 10, 2016, Respondent operated Dorena

27 ///

1 Dam so that levels of dissolved oxygen in the Row River just below the Dorena Dam were below 11.0
2 mg/l.

3 9. Condition 3 of the 401 WQC requires that the operator implement the Dissolved Oxygen
4 and Total Dissolved Gas Management Plan (the “DO & TDG Plan”).

5 10. Section 4.2 of the DO & TDG Plan includes a plan and schedule for implementing
6 corrective measures. It states that “[i]f the combination [of] these measures are not sufficient to achieve
7 compliance with DO standards, the project will go offline and water will be rerouted through the
8 existing outlet works of Dorena Dam.”

9 11. Condition 4 of the 401 WQC states that the operator shall immediately discontinue Project
10 operations if it determines that Project operations are contributing to downstream dissolved oxygen
11 violations of the dissolved oxygen standard.

12 12. On or about April 8, 2016, Respondent turned on the air admission system.

13 13. At no time did Respondent go offline and discontinue project operations.

14 14. On or about April 8, 2016, Respondent confirmed a malfunction of the monitoring
15 equipment resulting from a lack of maintenance of the continuous monitoring probe at Station 4.

16 15. Condition 5 of the 401 WQC states that the operator shall implement the Monitoring
17 Equipment Malfunction Prevention and Response Plan (the “Monitoring Plan”).

18 16. Section 4.1 of the Monitoring Plan states that the operator must view the real-time data via
19 the remote connection.

20 17. Respondent does not view real-time data via a remote connection.

21 18. Section 5.1 of the Monitoring Plan states that in the event of an equipment malfunction, the
22 operator will notify the DEQ hydropower coordinator within 24 hours of equipment failure by both
23 phone and email.

24 19. Respondent notified the DEQ hydropower coordinator via e-mail on April 21, 2016, thirteen
25 days after confirming the equipment malfunction.

26 III. CONCLUSIONS

27 1. Respondent has violated ORS 468B.025(1)(b) by operating the Dorena Dam from on or

1 about April 3, 2016, through on or about April 10, 2016, such that it caused a reduction of the water
2 quality of the Row River below the water quality standard for dissolved oxygen at OAR 340-041-
3 0016(1)(a). These are Class I violations, according to OAR 340-012-0055(1)(b). DEQ hereby assesses a
4 \$11,400 civil penalty for these violations.

5 2. On or about April 3, 2016, Respondent violated ORS 468.130 and ORS 468.140(3)(b)(B).
6 Specifically, Respondent violated Condition 3 of the 401 WQC by violating Section 4.2 of the DO & TDG
7 Plan, and Condition 4 of the 401 WQC, by failing to take the Project offline and discontinue project
8 operations. This is a Class I violation, according to OAR 340-012-0053(1)(a). DEQ has not assessed a
9 civil penalty for this violation.

10 3. On or before April 3, 2016, Respondent violated ORS 468.130 and ORS 468.140(3)(b)(B).
11 Specifically, Respondent violated condition 5 of the 401 WQC by violating Section 4.1 of the Monitoring
12 Plan by not viewing the real-time data via the remote connection. This is a Class I violation, according to
13 OAR 340-012-0053(1)(a). DEQ has not assessed a civil penalty for this violation.

14 4. On or about April 9, 2016, Respondent violated ORS 468.130 and ORS 468.140(3)(b)(B).
15 Specifically, Respondent violated Condition 5 of the 401 WQC by violating Section 5.1 of the Monitoring
16 Plan by failing to notify DEQ within 24 hours of confirming the malfunction of the equipment on April 8,
17 2016. Respondent did not notify DEQ until April 21, 2016. This is a Class I violation, according to OAR
18 340-012-0053(1)(a). DEQ has not assessed a civil penalty for this violation.

19 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

20 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
21 hereby ORDERED TO:

22 1. Pay a total civil penalty of \$11,400. The determination of the civil penalty is attached as
23 Exhibit No.1 and is incorporated as part of this Notice.

24 If you do not file a request for hearing as set forth in Section V below, your check or money
25 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**
26 **Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204**. Once you pay the penalty, the Findings of
27 Fact, Conclusions and Order become final.

1 2. Amend the DO & TDG Plan so that it establishes a clear decision-making process in the
2 event of a water quality standard violation and is consistent with the 401 WQC. Submit the amended
3 plan for DEQ review and approval within 60 days of a final order in this matter to: DEQ, Attn:
4 Christopher Stine, 165 East Seventh Ave., Suite 100, Eugene, OR 97401.

5 3. Amend the Monitoring Plan so that it establishes a clear decision-making process in the
6 event of monitoring equipment malfunction. Submit the amended plan for DEQ review and approval
7 within 60 days of a final order in this matter to: DEQ, Attn: Christopher Stine, 165 East Seventh Ave.,
8 Suite 100, Eugene, OR 97401.

9 4. Develop an annual training program for key personnel responsible for adhering to the 401
10 water quality certification and for implementing the plans referred to in paragraphs 2 and 3, above. The
11 training program must include operation and maintenance of monitoring equipment, data interpretation,
12 communication and documentation protocol, corrective actions and other measures necessary to
13 maintain compliance with the 401 WQC. Submit documentation of your compliance with this
14 requirement within 60 days of a final order in this matter to: DEQ, Attn: Christopher Stine, 165 East
15 Seventh Ave., Suite 100, Eugene, OR 97401.

16 5. In the event you fail to abate violations of conditions 3, 4, and 5, in whole or in part, of the
17 401 WQC incorporated into the FERC license, DEQ may seek enforcement under any one or a
18 combination of the authorities set forth below and may revoke the 401 WQC in accordance with
19 applicable law:

- 20 (1) Specific performance of the 401 WQC;
- 21 (2) Citizen suit under 33 U.S.C. §1365;
- 22 (3) Action to abate pollution under ORS Chapters 468 and 468B;
- 23 (4) Assessment of civil penalties under ORS Chapters 468 and 468B;
- 24 (5) Issuance and enforcement of an order under ORS 468B.110.

25 These remedies are in addition to any other remedy DEQ may have in relation to FERC, which
26 remedies DEQ reserves.

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1 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

2 You have a right to a contested case hearing on this Notice, if you request one in writing. You
3 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you
4 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in
5 this Notice or attached exhibit(s), you must include them in your request for hearing, as factual matters
6 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
7 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request
8 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**
9 **Portland, Oregon 97204**, or fax it to **503-229-5100**. An administrative law judge employed by the
10 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR
11 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
12 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or
13 association.

14 Active duty service-members have a right to stay proceedings under the federal Service
15 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
16 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
17 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
18 <http://legalassistance.law.af.mil/content/locator.php>.

19 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
20 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
21 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
22 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
23 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
24 information submitted by you, as the record for purposes of proving a prima facie case.

25
26 September 26, 2016
Date

26 Sarah Wheeler
Sarah Wheeler, Acting Manager
Office of Compliance and Enforcement

EXHIBIT 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION 1: Violating ORS 468B.025(1)(b) on or about April 3, 2016, through on or about April 10, 2016, by conducting activities at the Dorena Dam that caused a violation of the water quality standard at OAR 340-041-0016(1)(a).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(b).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(D).

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2) (a) (A), because there are no prior significant actions.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is no prior history.

"O" is whether the violation was repeated or ongoing and receives a value of 3 according to OAR 340-012-0145(4)(c), because there were from seven to 28 occurrences of the violation. The violation occurred on April 3, 2016, through at least April 10, 2016. Each day of violation is a separate occurrence.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. Monitoring information from the probe at Station 4 at the project indicated that the sensor may have been malfunctioning or needed maintenance near the end of March 2016, at least two weeks prior to reporting the dissolved oxygen violations to DEQ. By consciously disregarding this monitoring information, and by continuing to operate without following the DO & TDG and Monitoring Plans, Respondent consciously disregarded a substantial and unjustifiable risk

that it would cause an exceedance of the applicable water quality standard for dissolved oxygen.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -2 according to OAR 340-012-0145(6)(d), because Respondent eventually made some efforts to minimize the effects of the violation. In its notification to DEQ regarding the DO exceedances on April 21, 2016, Respondent indicated that it had taken actions to cease the exceedances and fix monitoring equipment in order to detect future exceedances.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0, as DEQ is unable to apply the U.S. Environmental Protection Agency's BEN computer model to make a reasonable estimate of the economic benefit in this case.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$6,000 + [(0.1 x \$6,000) x (0 + 0 + 3+ 8 + -2)] + \$0
= \$6,000 + [\$600 x 9] + \$0
= \$6,000 + \$5,400 + \$0
= \$11,400

SEP FAQs

What is a Supplemental Environmental Project (SEP)?

A SEP is a means through which persons who have been assessed civil penalties may reduce penalties owed to DEQ by agreeing to fund projects that benefit public health and the environment in Oregon. Penalties may be mitigated dollar for dollar up to 80% depending on the cost of the project and type of benefits derived.

Who/what, projects qualify?

- Project must primarily benefit the public health or the environment in Oregon.
- Respondent's contribution to the project is worth at least as much as the penalty reduction;
- Project must not be an activity or result that is already required by law or one that is not set to become a future requirement.
- The portion of the project attributable to penalty reduction is not funded by government contracts, loans or grants.
- The responsibilities of the respondent under the SEP are commensurate with the respondent's expertise and capabilities, if respondent is doing the work.
- Project does not result in DEQ's controlling the funds or implementing the SEP, nor can the SEP fulfill statutory obligations or circumvent statutory prohibitions of DEQ.
- Project does not create a significant market or economic advantage for the violator.
- Project must provide for a final report.
- DEQ prefers that projects relate to the same environmental program and will be implemented in the same geographic area in which the violation occurred.

Are there examples of past successful projects or ideas available? Glad you asked! DEQ is currently maintaining and updating a list of possible project ideas. Give us a call at 503-229-5340 to obtain a copy.

Can a third party conduct the project if I commit the funds? Absolutely. Many successful projects have been conducted through third party nonprofit organizations, such as local communities, cities, watershed councils, etc. There must be a defined project that is approved by DEQ before the penalty can be mitigated.

How do I get started? Call the Office of Compliance and Enforcement at 503-229-5340 to obtain an application. Identify a project, fill out the SEP application as completely as possible and submit it to the department's Office of Compliance and Enforcement at 811 SW 6th Avenue, Portland, Oregon 97204. **Please be sure to include the enforcement case name and number.**