

## STAFF REPORT

Agenda Item No.:	D
Work Plan:	Private Forests
Topic:	Final Orders
Presentation Title:	Final Order: ATR Services, Inc. & Rose Logging, Inc.
Date of Presentation:	July 20, 2016
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### SUMMARY

The purpose of this consent agenda item is to consider the hearing record for the notice of civil penalty involving several forest practices violations by ATR Services, Inc. and Rose Logging, Inc. Both operators were found responsible and cited for the same violations on the same operation. The operation was located off Enchanted Way, east of I-5, north of Albany, Oregon. The Board of Forestry will decide on whether or not to accept the proposed order (Attachment 1) regarding the matter.

### CONTEXT

The *2011 Forestry Program for Oregon's* Strategy A and Strategy B describes the importance of promoting a sound and effective legal system and the importance of ensuring Oregon's forests continue to provide a diverse suite of social and economic outputs and benefits. Citations and repair orders for violations of forest regulations are part of an effective enforcement program that meets these objectives. The purpose of the enforcement program is to change behaviors to comply with best management practices designed to promote a multitude of forest outputs and benefits.

### BACKGROUND

On October 29, 2014, an Oregon Department of Forestry Department stewardship forester discovered that ATR Services, Inc., and Rose Logging, Inc., or their agents, had constructed a stream crossing that did not pass a peak flow that at least corresponded to a 50-year return interval. In addition, the crossing was installed without a written plan. Two violations for each operator resulted from their actions:

- Violation of Oregon Administrative Rule (OAR) 629-605-0170(2): did not submit a statutory written plan for operating near a Type F stream (Miller Creek).
- Violation of OAR 629-625-0320(2)(a): crossing structure installed does not pass a peak flow meeting at least a 50-year return interval.

On September 15, 2015, Oregon Department of Forestry (ODF) issued Notice of Civil Penalty for the violations referenced above. The notice was amended on January 21, 2016. Repairs were completed as ordered. The total penalties were ordered as follows:

- ATR Services, Inc: \$2,825.00
- Rose Logging, Inc: \$1,425.00

Because ATR Service, Inc. had a history of past violations, they received a higher value for prior knowledge, making their penalties more than the penalties Rose Logging, Inc. received for the same violations.

Both respondents appealed the Notice of Civil Penalty on October 1, 2015. A joint hearing was conducted by Administrative Law Judge (ALJ) Bernadette Bignon on April 13, 2016, at the Office of Administrative Hearings in Eugene, Oregon. Angela Lane, Civil Penalties Administrator, and lay representative for the department, presented the cases at the hearing. See Attachment 1, Proposed Order, for more details; respondent and agency exhibits offered and admitted at hearing are available upon request. The issues for the purpose of the hearing included:

1. Whether ATR Services, Inc. violated the Forest Practices Act, in Department Case Nos. 14-CN019 and 14-CN020, by:
  - failing to submit to the State Forester a written plan prior to performing forest operations that required notification under OAR 629-605-0140, and within 100 feet of a Type F stream; in violation of OAR 629-605-0170(2), ORS 527.610; and
  - failed to design and construct a stream crossing to pass a peak flow that at least corresponds to the 50-year return interval, in violation of OAR 629-605-0170(2); OAR 629-625-0320(2)(a); and ORS 527.610.
2. If so, whether ATR Services, Inc. is liable for a civil penalty of \$ 800.00 in Case No. 14-CN019 and \$2025.00 in Case No. CN020 for a total civil penalty amount of \$2,825.00 as proposed by ODF. ORS 527.683 through .687 and 527.992; OAR 629-670-0210.
3. Whether Rose Logging, Inc. violated the Forest Practices Act, in Department Case Nos. 14-CN021 and 14-CN022, by:
  - failing to submit to the State Forester a written plan prior to performing forest operations that required notification under OAR 629-605-0140, and within 100 feet of a Type F stream, in violation of OAR 629-605-0170(2), ORS 527.610; and
  - failed to design and construct a stream crossing to pass a peak flow that at least corresponds to the 50-year return interval, in violation of OAR 629-605-0170(2); OAR 629-625-0320(2)(a); and ORS 527.610.
4. If so, whether Rose Logging, Inc. is liable for a civil penalty of \$400.00 in Case No. 14-CN021 and \$1,025.00 in Case No. CN022, for a total civil penalty in the amount of \$1,425.00, as proposed by ODF. ORS 527.683 through .687 and 527.992; OAR 629-670-0210.

5. Whether ODF is estopped from assessing penalties against ATR, Logging, Inc., and/or Rose Logging, Inc. for failing to file a written plan based on an alleged waiver by ODF of the requirement for a written plan.

On July 1, 2016, ALJ Bignon issued a Proposed Order for the Board's consideration. In the order, ALJ Bignon concluded that:

1. ATR Services, Inc. violated the Forest Practices Act, in Department Case Nos. 14-CN019 and 14-CN020, by:
  - failing to submit to the State Forester a written plan prior to performing forest operations that required notification under OAR 629-605-0140, and within 100 feet of a Type F stream;
  - failing to design and construct a stream crossing to pass a peak flow that at least corresponds to the 50-year return interval.
2. ATR Services, Inc. is liable for a civil penalty of \$ 800.00 in Case No. 14-CN019 and \$2025.00 in Case No. CN020, for a total civil penalty amount of \$2,825.00 as proposed by ODF.
3. Rose Logging, Inc. violated the Forest Practices Act, in Department Case Nos. 14-CN021 and 14-CN022, by:
  - failing to submit to the State Forester a written plan prior to performing forest operations that required notification under OAR 629-605-0140, and within 100 feet of a Type F stream; and
  - failing to design and construct a stream crossing to pass a peak flow that at least corresponds to the 50-year return interval.
4. Rose Logging, Inc. is liable for a civil penalty of \$400.00 in Case No. 14-CN021 and \$1,025.00 in Case No. CN022, for a total civil penalty in the amount of \$1,425.00, as proposed by ODF.
5. Respondents did not prove that ODF waived the requirement for a written plan and estoppel does not apply.

Therefore, ALJ Bignon proposed the following order:

(1) The Amended Notice of Civil Penalty and Proposed/Final Order, issued January 21, 2016, to ATR Services, Inc. (ODF Case Nos. 14-CN019 and 14-CN020) be affirmed; and ATR Services be ordered to pay the total civil penalty in the amount of \$2,825.00 as set forth in the Amended Notice.

(2) The Amended Notice of Civil Penalty and Proposed/Final Order, issued January 21, 2016, to Rose Logging, Inc. (ODF Case Nos. 14-CN021 and 14-CN022) be affirmed; and

Rose Logging be ordered to pay the total civil penalty in the amount of \$1,425.00 as set forth in the Amended Notice.

The Board may schedule oral or written argument if it is determined to be necessary or appropriate to assist in making a decision. According to OAR 629-001-0045(3)(a), the Board may only take argument from the State Forester and any party that filed exceptions to the proposed order, with such argument being limited to matters raised in those written exceptions. The deadline for written exceptions is July 8, 2016. At this time, the State Forester does not have any exceptions. If the parties submit exceptions in a timely manner, they will be immediately forwarded to the Board for their review prior to considering ALJ Bignon's proposed order.

**ALTERNATIVES CONSIDERED**

Upon review of the proposed order and record presented in this case, the Board can:

1. Remand the matter to the hearing officer for further hearing on such issues as the Board specifies and to prepare a revised proposed order as appropriate under OAR 137-003-0655(2); or,
2. Reject the hearing officer's proposed order and adopt a different final order that contains the necessary findings of fact and conclusions of law based on the record; or,
3. Adopt the proposed order as the Board's final order.

The department supports alternative three.

**RECOMMENDATION**

The department recommends adopting the proposed order submitted by ALJ Bignon (Attachment 1) as the Board's final order.

**ATTACHMENTS**

- (1) Proposed Order