



US Army Corps
of Engineers
Portland District

PUBLIC NOTICE OF PROPOSED ADMINISTRATIVE PENALTY

30 Day Notice

Issue Date: September 22, 2004
Expiration Date: October 22, 2004
Corps of Engineers Action ID: 200200155
199700120

1. INTERESTED PARTIES: The District Engineer, Portland District, proposes to issue an order assessing a Class I Administrative Penalty against the Eugene Water & Electric Board (EWEB) for violation of permits granted under the Clean Water Act.

2. PERMITS INVOLVED AND ALLEGED VIOLATION: The Department of the Army issued Standard Permits, Nos. 199700120 and 200200155, to EWEB on October 20, 1997 and July 5, 2002, respectively. Permit No. 199700120 authorized the discharge of fill biannually to maintain the inlet to the Walterville Canal tailrace. Permit No. 200200155 authorized the discharge of fill material to construct fish passage and other improvements at the Walterville hydroelectric facility.

Permit No. 199700120 was violated as follows:

The permittee exceeded the scope of work authorized by discharging cobble and riprap to plug the inlet channel on November 21, 2003 after the permit authorization expired on October 31, 2000. Further, a report outlining potential alternatives to this action, which will minimize potential impacts of the work, was not submitted before work was initiated and an alternative the U.S. Army Corps of Engineers (Corps of Engineers) deems practicable was not implemented.

In response to the enforcement action for Permit No. 199700120, EWEB stated it had applied to the Corps of Engineers for authorization to continue the discharge in November 2003, and that the placement of the fill was an emergency action to protect the anadromous salmon return bypass inlet and channel and the related fish passage facilities, required by the Federal Energy Regulatory Commission license for EWEB's hydroelectric facility and the Biological Opinion and Incidental Take Statement for the facility. EWEB removed the fill material placed in the inlet of the bypass channel and is finalizing an alternative design for the fish bypass system.

Permit No. 200200155 was violated as follows:

The permittee exceeded the scope of work authorized by placing riprap along approximately 80 feet of bankline in the tailrace bypass channel. Planting of native vegetation on areas disturbed by grading was not performed on the approximately 80 feet of riprap bankline along the tailrace bypass channel. Modifications to rock-drop structures were carried out on June 17 through June 20, 2003, in violation of the July 1 through August 31 in-water work period. The required Compensatory Mitigation Plan was not fulfilled in entirety and the mitigation was not completed prior to or concurrent with the fill authorized.

In response to the enforcement action for Permit No. 200200155, EWEB stated the placement of riprap was an emergency action necessary to prevent further scour erosion of the bankline and prevent damage to the tailrace fish barrier, required by the Federal Energy Regulatory Commission license for EWEB's hydroelectric facility and the Biological Opinion and Incidental Take Statement for the facility. EWEB has planted native vegetation adjacent to the riprap placed along the bypass channel bankline. In addition, EWEB has implemented the Compensatory Mitigation Plan.

3. AUTHORITY FOR PROCEEDING: This Administrative Penalty proceeding is initiated under the authority of 33 U.S.C. § 1319(g) and 33 CFR Part 326.6. The procedure for assessing civil penalties in cases such as this is set out in the statute and the regulation. Following the discovery and investigation of a violation of a permit, notice is given to the permittee, the appropriate state agency, and the public. The permittee, the state, or any member of the public may file comments within 30 days. If requested by the permittee, a hearing will be held before a Presiding Officer who will submit a report and recommend a decision to the District Engineer. The District Engineer will issue a Final Order on the case to the permittee. Public participation in the hearing is permitted if a hearing is held.

4. PENALTY PROPOSED: The amount of the penalty proposed in this case is \$19,000. EWEB may present a supplemental environmental project which may be credited toward a portion of the penalty. This proposal is subject to revision in the interests of justice after all evidence and comments have been received and reviewed. The amount of the penalty that the District Engineer is authorized to assess as a Class I Penalty is \$11,000 per violation and not more than \$27,500 total. In a case involving multiple violators, each violator is subject to a separate, not joint penalty.

5. REQUEST FOR HEARING: The permittee has 30 days following receipt of this formal notice of proposed penalty to request a hearing. Written request, by the permittee, for a hearing should be directed to the District Engineer within this designated comment period and must state the specific reasons for requesting a public hearing. The request should specify, in summary form, the factual and legal issues in dispute and the specific grounds for defense. The permittee has a right to present evidence at the hearing; however, he may not challenge the permit condition(s) or limitation(s), which is the subject matter of this order.

6. COMMENTS/ADMINISTRATIVE RECORD: During the 30 day comment period, any person may submit written comments on the proposed Penalty Order. These comments should

be sent to the District Engineer within this designated comment period. Any submitted comments will be included in the administrative record relating to the Proposed Order. All information submitted by the permittee and persons commenting on the Proposed Order will be placed in the administrative record, which will be available for inspection during regular business hours at the U.S. Army Corps of Engineers, Portland District, Regulatory Branch, 333 SW First Street, Portland Oregon. (The administrative record is subject to the provisions of law restricting the disclosure of confidential information.) Comments should be directed to:

U.S. Army Corps of Engineers
ATTN: Justin Simms (CENWP-OP-GC)
P.O. Box 2946
Portland, Oregon 97208-2946

7. PUBLIC HEARING: The permittee and all persons who file comments will be given notice of any hearing held on this case. The permittee and all commenters will have a reasonable opportunity to be heard and to present evidence at such hearing, if a hearing is held.

8. FINAL DECISION: If the permittee does not request a hearing, the District Engineer may issue the Final Order on this violation on or after 30 days following receipt of this formal notice by the permittee.

9. POST DECISION HEARING/APPEAL: Any Final Order issued under these procedures shall become effective 30 calendar days following its issuance unless (1) a petition to set aside the order and to hold a hearing is filed by any person who commented on the Proposed Order and the petition is granted, or (2) an appeal to the United States District Court is taken under 33 U.S.C. § 1319(g)(8).


Richard W. Hobernicht
Colonel, Corps of Engineers
District Engineer