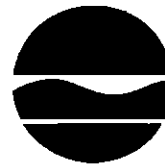


New York State Department of Environmental Conservation
Division of Environmental Permits
Dulles State Office Building
317 Washington Street, Watertown, New York 13601-3787
Phone: (315) 785-2245 • Fax: (315) 785-2242
Website: www.dec.ny.gov



Joe Martens
Commissioner

ORIGINAL

FEDERAL ENERGY
REGULATORY COMMISSION

2011 JUN -8 A 9:29

FILED
SECRETARY OF THE
COMMISSION

June 2, 2011

Michael McDonald
Hampshire Paper Company, Inc.
PO Box 339
Gouverneur, NY 13642

RE: 401 Water Quality Certification
Emeryville Hydroelectric Facility
DEC I.D. # 6-4038-00078/00001
FERC #2850

Dear Mr. McDonald:

Enclosed please find the Water Quality Certification for the Emeryville Hydroelectric Facility. The certificate is being issued pursuant to Section 401 of the Federal Water Pollution Control Act (33 USC 1341) and Section 608.9 of the New York Department of Environmental Conservation's regulations pertaining to the Use and Protection of Waters (6 NYCRR, Part 608).

Should you have any questions regarding the Water Quality Certificate, please contact me.

Sincerely,

Lawrence R. Ambeau
Regional Permit Administrator
Region 6

LRA:dli

Enclosure

cc: Kimberly D. Bose, Secretary
Service List

ec: Dana Dougherty, Stantec Consulting
William Little, DEC



Facility DEC ID 6-4038-00078/00001

PERMIT
Under the Environmental Conservation Law (ECL)

Certificate Holder and Facility Information

Permit Issued To:
 HAMPSHIRE PAPER COMPANY
 1827 COUNTY ROUTE 22
 GOUVERNEUR, NY 13642
 (315) 287-1990

Facility:
 EMERYVILLE HYDROELECTRIC PROJECT
 OSWEGATCHIE RIVER
 EMERYVILLE, COUNTY RT. 22

Facility Location: Town of FOWLER in ST. LAWRENCE County

Facility Principal Reference Point: NYTM-E: 470.818 NYTM-N: 4904.963

Project Location: Located 5 miles east of the Village of Gouverneur on County Route 22 (Emeryville Rd.) in the hamlet of Emeryville, (Town of Fowler, St. Lawrence County) at approximately river mile 70 on the Oswegatchie River.

Authorized Activity: Operation and maintenance of the Emeryville Hydroelectric facility (FERC No. 2850), a 3,500 kW hydroelectric facility in accordance with the attached conditions and the applicable provisions, of the Emeryville Hydroelectric Offer of Settlement, dated March 2010.

Permit Authorizations

Water Quality Certification - Under Section 401 - Clean Water Act

Permit ID 6-4038-00078/00001 (FERC 2850)

New Permit Effective Date: 6/2/11

Expiration Date: coincident with expiration date of the License issued by the Federal Energy Regulatory Commission (FERC) for FERC project #2850

NYSDEC Approval

By acceptance of this permit, the Certificate Holder agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, all conditions included as part of this certificate, and the provisions of the Emeryville Hydroelectric Project Offer of Settlement (Settlement) dated March 2010. This Certificate and the conditions herein are based upon those documents and the application for a water quality certification submitted on June 2, 2010, including supporting attachments, reports, appendices, and studies filed by the applicant with the Department to obtain this Certificate.



Facility DEC ID 6-4038-00078/00001

Permit Administrator: New York State Department of Environmental Conservation
Regional Permit Administrator
Address: 317 Washington St.
Watertown, NY 13601

Authorized Signature:

Laurence R. Ambrose

Date:

6/2/2011

Distribution List

Settlement parties

Permit Components

NATURAL RESOURCE PERMIT CONDITIONS

WATER QUALITY CERTIFICATION SPECIFIC CONDITIONS

GENERAL CONDITIONS, APPLY TO ALL AUTHORIZED PERMITS

NOTIFICATION OF OTHER Certificate Holder OBLIGATIONS

Permit Attachments

NATURAL RESOURCE PERMIT CONDITIONS - Apply to the Following Permits: WATER QUALITY CERTIFICATION

- 1. Conformance with Plans** All activities authorized by this permit shall be in strict conformance with the approved plans submitted by the applicant or his agent as part of the permit application and licensing Settlement.
- 2. State Not Liable for Damage** The State of New York shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the State for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.
- 3. Precautions Against Contamination of Waters** All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.



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4. No Interference with Navigation There shall be no unreasonable interference with navigation by the work herein authorized.

5. State May Require Site Restoration If any work authorized by this certificate has not been completed, the applicant shall, without expense to the State, and to such extent and in such time and manner as the New York State Department of Environmental Conservation (the Department) may with appropriate authority require, remove all or any portion of the uncompleted structure or fill and restore the site to its former condition. No claim shall be made against the State of New York on account of any such removal or alteration.

6. Notification Requirements for Emergencies Except for the emergency provisions described in the Settlement (see subsections 3.2.3, and 3.3.2.2), the following procedures shall apply to all activities conducted at the project in response to an emergency:

Prior to commencement of emergency activities, Certificate Holder shall notify the Department and receive approval in advance of the work commencing. If circumstances require that emergency activities be taken immediately such that prior notice to the Department is not possible, then the Department shall be notified by the Certificate Holder within 24 hours of commencement of the emergency activities. In either case, notification shall be by certified mail or other written form of communication, including fax and electronic mail. This notification shall be followed within 24 hours by submission of the following information:

- a. a description of the action;
- b. location map and plan of the proposed action;
- c. reasons why the situation is an emergency.

All notifications, requests for emergency authorizations and information submitted to support such requests shall be sent to the contacts listed in Special Condition 25.

7. Offer of Settlement This Certificate includes and incorporates the Emeryville Hydroelectric Project's Offer of Settlement ("Settlement") dated March 2010, to the extent that the Settlement provides for or requires the certificate holder's compliance with New York State water quality standards and the conditions of this certificate.

OPERATING CONDITIONS

8. Project Operations and Impoundment Fluctuations Project reservoir shall be operated in a run-of-river mode in accordance with the Settlement (see Section 3.1). Prior to being implemented, all alternate impoundment operation plans (including, but not limited to impoundment drawdown, refilling rates and procedures) shall be reviewed and approved by the Department in writing. Emergencies shall be dealt with in accordance with Natural Resource Permit Condition #6 of this Certificate.

9. Bypassed Flows The certificate holder shall maintain a bypassed flow of 20 cubic feet per second (or inflow to the Emeryville impoundment, whichever is less) in accordance with the Settlement (see Section 3.2). The Certificate Holder will consult with and obtain the written approval of the Department prior to conducting any routine maintenance or construction activities that cause the bypass flow to be suspended or modified. Emergencies shall be addressed pursuant to Natural Resource Permit Condition



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#6 of this Certificate.

10. Flow and Water Level Monitoring Section 3.4 of the Settlement requires that the certificate holder agrees to install, within 18 months of issuance of the FERC license, bypass flow monitoring gages/instruments. Section 3.4 requirements are incorporated as a condition of this certificate. Prior to and as a condition for installation, the certificate holder shall develop and submit to the Department an approvable stream flow and water level monitoring plan. Upon receiving the Department's written approval of that plan the certificate holder shall install, maintain and operate all water level and flow monitoring equipment consistent with the Settlement and this Certificate.

11. Fish Protection and Downstream Fish Movement Within 18 months of license issuance and acceptance, the certificate holder shall install fish protection measures (e.g. 1" clear spaced trashracks), downstream fish passage facilities, and appropriate channel excavation (modifications) to facilitate downstream fish passage in accordance with the Settlement (see Sections 3.2 and 3.3). At least 6 months prior to commencing installation of the downstream fish passage structures and performing bypassed reach channel modifications, the licensee shall submit for the Department's approval a construction plan that includes an erosion and sediment control plan consistent with **Conditions #20 and #21** of this water quality certificate. The certificate holder shall obtain the Department's written approval of the construction plan before commencing work.

12. Public Access and Recreation Public access and recreational opportunities shall be provided in conformance with the Settlement, (see Section 3.5). The Licensee shall draft a Recreation Management Plan (RMP) that is consistent with the Settlement and submit it to the Department for its review and approval. Once the RMP is approved by the Department, it will become part of this certificate.

13. Invasive Species Management In conformance with the Settlement (see Section 2.9), the Certificate Holder shall submit an Invasive Species Management Plan (ISMP) to the Department for review and approval. The ISMP shall include provisions to prevent the introduction and spread both aquatic and terrestrial invasive species that may be introduced as a result of activities authorized under the operation, maintenance and construction of the project and include monitoring and reporting provisions. Once the ISMP has been accepted by the Department it shall be incorporated into this certificate.

PROJECT MAINTENANCE AND CONSTRUCTION

14. NOTE: All matters pertaining to "Project Maintenance and Construction" work affecting water quality, compliance with water quality standards, and this certificate shall be addressed to:

Regional Natural Resources Supervisor
New York State Department of Environmental Conservation
317 Washington Street
Watertown, NY 13601

15. In-Water Work Restriction In-water maintenance activities (including but not limited to dredging, cofferdam construction or removal, etc.) involving the potential disturbance of the bed and/or banks of the Oswegatchie River, shall not occur from **March 15 to July 15**, in order to minimize impacts to fish spawning activities.



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16. Impoundment Drawdowns/dewatering activities Impoundment drawdowns (the operation of drawing down the impoundment) for maintenance or construction purposes shall be allowed between July 16 to September 30. Impoundment drawdowns **shall not** occur from **October 1 to July 15**, to protect hibernating amphibians and reptiles and to protect fish spawning activities in the impoundment. However impoundment drawdowns may be allowed for flashboard installation or dam safety inspections during the October 1 to July 15 period, provided the certificate holder consults with and receives the Department's written approval to commence with a drawdown within this restricted timeframe. Consultation shall include, but not be limited to, establishing acceptable timing of drawdown and refilling rates.

Prior to **any** drawdown or dewatering activities, the certificate holder shall provide the Department with a written proposal including engineering and design details (if applicable) for the Department's review. Impoundment drawdowns or dewatering activities shall not commence until the certificate holder consults with and receive the Department's written approval regarding timing of drawdown and refilling rates as well as acceptance of any submitted designs. The certificate holder shall also provide proper prior notification to the Department as per **Condition #25** before any work commences.

Drawdown elevations for routine spillway maintenance activities shall be consistent with provisions identified in Section 3.1 and Table 3.1 of the Settlement. Emergencies shall be addressed pursuant to Natural Resource Permit Condition #6 of this Certificate.

Impoundment drawdown and refilling operations shall occur at a gradual rate (pursuant to the foresaid consultation and approval) in order not to strand aquatic species. The certificate holder shall monitor areas affected by the drawdown, refilling operations or dewatering activities and return any stranded fish back to adequate water conditions.

17. Maintenance Dredging The certificate holder shall install and maintain appropriate turbidity control structures while conducting any maintenance dredging activities in associated with the Project. Refer to **Condition #15** for in-water work restrictions.

Appropriate turbidity control structures (such as, but not limited to filter fabric (turbidity) curtains weighted across the bottom and suspended at the top by floats) shall be positioned to enclose the work site before commencing dredging. The containment method shall remain in place and in functional condition during all phases of dredging operations and remain in place until after dredging has terminated and turbidity inside the containment area no longer exceeds ambient levels. During any portion of the dredging operation or prior to containment removal, if noticeable turbidity occurs outside the containment area, work shall cease until the containment method is repaired or reinforced and is functioning properly.

18. Sediment Analysis and Disposal The certificate holder shall sample any sediment which will be disturbed by the work or removed from the project's waters and test them for contaminants. Sampling and testing shall be accomplished according to a protocol that is consistent with the Department's Technical and Operations Guidance 5.1.9 or applicable guidelines/regulations. The sampling protocol shall include a disposal protocol based on analytical sediment sampling results and current applicable regulations/guidelines. The sampling results are required to be submitted to the Department at least 60 days prior to the commencement of dredging or work that will disturb sediment in the project waters. Dredging or other excavation cannot commence until the certificate holder also secures the Department's



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approval for the disposal or interim holding locations for any sediments to be removed from the project waters.

19. Placement of cofferdams, construction of temporary access roads or ramps, or other temporary structures which encroach upon the bed or banks of the Oswegatchie River or project reservoir At least 60 days prior commencing work on the installation of cofferdam or other temporary structures which encroaches on the bed or banks of the Oswegatchie River, the Certificate holder shall submit NY State certified engineered designs to the Department for review. The certificate holder shall not commence work until the Department grants written approval of the proposed design of all such structures as they pertain to water quality, and to compliance with water quality standards and this certificate. The Department will conduct its review of the proposed design within 60 days after receipt of all materials it determines are necessary for completing such review.

20. Erosion and Sediment Control Plan At least 60 days prior to commencing any major construction or maintenance activities within the project boundary which could adversely affect water quality, the certificate holder shall submit to the Department for review and approval, an erosion and sediment control plan (the Plan). The Plan and work proposed therein shall meet the erosion and sediment control goals and performance standards set forth in **Condition #21**. Work shall not commence until the certificate holder receives the Department's written approval of the Plan.

21. Erosion and Sediment Control Goals and Performance Standards At a minimum, the certificate holder shall ensure that the following erosion and sediment/contaminant control measures, are adhered to during operation, construction and/or maintenance that may result in sediments/contaminants entering any wetland or waterbody:

a) All erosion and sediment controls measures shall be properly installed prior to work. Site preparation work shall not be undertaken until all required erosion control measures have been installed and are functioning properly. Siltation prevention measures (e.g. silt fencing, sediment traps or settling basins) shall be installed and maintained during the project to prevent movement of silt and turbid waters from the project site and into any watercourse, stream, water body or wetland.

b) Install effective erosion control measures on the downslope of all disturbed areas (including, but not limited to construction/maintenance equipment staging areas, driveways, roads ramps or other areas where runoff would reach a waterbody) to prevent eroded material from entering any waterbody or wetland. Erosion control measures shall be maintained in fully functional condition until the disturbed areas are fully stabilized. These erosion control measures are to be installed before commencing any other activities involving soil disturbance, equipment staging or major construction/maintenance activities commence.

c) Isolate in-stream work from the flow of water and prevent discolored (turbid) discharges and sedimentation caused by excavation, dewatering and construction/maintenance activities from entering any waterbody or wetland.

d) Exclude the use of heavy construction equipment below the mean high water line until the work area is protected by an approved structure and dewatered.



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- e) Stabilize any disturbed banks by grading to an appropriate slope, followed by armoring or vegetating as appropriate, to prevent erosion and sedimentation into any waterbody or wetland.
- f) Minimize soil disturbance, provide appropriate grading and temporary and permanent re-vegetation of stockpiles and other disturbed areas to minimize erosion/sedimentation potential.
- g) All areas of soil disturbance resulting from project operation, construction or maintenance shall be seeded with an appropriate perennial grass, and mulched with straw immediately upon completion of the activity. Mulch shall be maintained until suitable vegetation cover is established to the Department's satisfaction.
- h) Protect all waters from contamination by deleterious materials such as wet concrete, gasoline, solvents, epoxy resins or other materials used in the construction, maintenance and operation of the project.
- i) Ensure the immediate and complete removal of all dredged and excavated material, debris or excess materials from operation, construction, or maintenance from the bed and banks of all water areas to a Department approved upland disposal site.
- j) Ensure that all temporary fill and other materials placed in the waters of the river are completely removed, immediately upon completion of construction, unless otherwise directed by the Department.

22. Turbidity Monitoring During maintenance or construction related activities in or near the Oswegatchie River or project reservoir, the certificate holder will monitor the waters of the river at a point immediately upstream of project activities and at a second point no more than 100 feet downstream from any discharge point or other potential source of turbidity. The certificate holder specifically agrees that if, at any time, turbidity measurements from the downstream locations exceed the measurements from the locations upstream of the work areas, all related construction on the project will cease until the source of the turbidity is discovered and the situation is corrected. The certificate holder is required to report any events where turbidity measurements for the downstream locations exceed the measurements from the upstream locations to the Department's Region 6 Natural Resources contact person (as specified in **Condition #25**), within 24 hours of the incident.

23. Maintenance of River Flows During all periods of maintenance and construction activities, the certificate holder shall continuously maintain adequate flows immediately downstream of the work site consistent with the provisions of this certificate. If adequate river flows are not maintained, the certificate holder is required to notify the Department's Region 6 office in Watertown, within 24 hours of the incident.

24. Stormwater SPDES All activities at the project requiring the disturbance of greater than one acre shall obtain coverage under the SPDES General Permit for Stormwater Discharges from Construction Activities (GP-02-01).

25. Notifications and Department Authorizations The Regional Natural Resources Supervisor, or other appointed Natural Resources staff shall be notified in writing at least 60 days prior to commencing any project maintenance or construction work pertaining to water quality, compliance with water quality

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standards or to this certificate. Additionally, the certificate holder shall contact the assigned Region 6 Natural Resources staff within 7 days prior to the activity commencing (including but not limited to all drawdowns, flashboard replacements requiring drawdowns or disruptions of flows, and all construction or maintenance activities pertaining to water quality, compliance with water quality standards or this certificate) and within 7 days after it is finished (start notification/end notification). The Department will provide the certificate holder with the Region 6 Natural Resources contact information.

The Department reserves the authority to temporarily prohibit the project operator from commencing impoundment releases or drawdowns, or conducting in-water maintenance work (including dredging) due to the Department's determination that such actions will cause the project or facility to be out of compliance with applicable water quality standards or the Water Quality Certificate issued for the hydropower license. The project operator shall contact the Department Natural Resources staff contact person as soon as the project operator finds that water quality conditions permit the release, drawdown or in-water work to be conducted without being out of compliance with water quality standards or the Water Quality Certificate. The Department Natural Resources staff person will then advise the project operator if conditions permit commencing releases or drawdowns.

WATER QUALITY CERTIFICATION SPECIFIC CONDITIONS

1. Water Quality Certification The New York State Department of Environmental Conservation ("Department" or "NYS DEC") hereby certifies:

- the Department has reviewed the certificate holder's Application for Federal Hydroelectric License (hereafter referred to as "the Application") and all other available pertinent information, including the Settlement;
- the project will comply with Sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act as amended and as implemented by the limitations, standards and criteria of the state statutory and regulatory requirements set forth in 6NYCRR Section 608.9(a); and
- the project will comply with applicable New York State effluent limitations, water quality standards and thermal discharge criteria set forth in 6NYCRR Parts 700-706.

This Water Quality Certification is issued pursuant to Section 401 of the Federal Water Pollution Control Act (33 USC 1341).

GENERAL CONDITIONS - Apply to ALL Authorized Permits:

1. Facility Inspection by the Department The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the Certificate Holder is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71-0301 and SAPA 401(3).



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The Certificate Holder shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this certification, including the Settlement Agreement, as well as the FERC license and all pertinent maps, drawings and special conditions shall be available for inspection by Department staff at all times during such inspections at the project site or facility. Failure to produce a copy of the certification upon request by a Department representative is a violation of this permit.

2. Relationship of this Permit to Other Department Orders and Determinations Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

3. Applications for Permit Renewals or Modifications The Certificate Holder shall submit a separate written application to the Department for renewal, modification or transfer of this permit. Such application shall include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department shall be in writing.

4. Department Contacts All contacts with the concerning this certificate, including submission of the information required by the above Natural Resource Permit Conditions and all applications for permit modification or renewal are to be submitted to:

Regional Permit Administrator
New York State Department of Environmental Conservation
317 Washington Street
Watertown, NY 13601

5. Permit Modifications, Suspensions and Revocations by the Department The Department reserves the right to exercise all available authority to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:

- a. materially false or inaccurate statements in the permit application or supporting papers;
- b. failure by the Certificate Holder to comply with any terms or conditions of the certificate;
- c. exceeding the scope of the project as described in the permit application;
- d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing certificate;
- e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

6. Permit Transfers Permits are transferrable unless specifically prohibited by statute, regulation or



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another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.

NOTIFICATION OF OTHER CERTIFICATE HOLDER OBLIGATIONS

Item A: Certificate Holder Accepts Legal Responsibility and Agrees to Indemnification

The Certificate Holder expressly agrees to indemnify and hold harmless the DEC, its representatives, employees, and agents for all claims, suits, actions, and damages, to the extent attributable to the Certificate Holder's acts or omissions in connection with the Certificate Holder's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

Item B: Certificate Holder's Contractors to Comply with Permit

The Certificate Holder is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the Certificate Holder's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the Certificate Holder.

Item C: Certificate Holder Responsible for Obtaining Other Required Permits

The Certificate Holder is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

Item D: No Right to Trespass or Interfere with Riparian Rights

This permit does not convey to the Certificate Holder any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.

Document Content(s)

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