



1 geometric mean and 400 organisms per 100 mL as a weekly geometric mean for fecal  
2 coliform, 1.0 mg/L monthly average for total residual chlorine and 40 mg/L monthly average  
3 and 60 mg/L daily maximum for ammonia.

4 (b) After completion of the Phase I improvements, the Permittee will be  
5 capable of treating its effluent so as to meet effluent limitations, measured as specified in the  
6 Permit, of not more than 10 percent of the samples exceeding 43 fecal coliform organisms per  
7 100 mL, 0.25 mg/L monthly average and 0.50 mg/L daily maximum for total residual chlorine  
8 and 40 mg/L monthly average and 60 mg/L daily maximum for ammonia. During the start up  
9 period in Paragraph 7.B(7), the Permittee shall operate the facilities as effectively as  
10 practicable but shall not be required to meet any specific pollutant limitation.

11 5. The Department and Permittee recognize that the Environmental Quality  
12 Commission has the power to impose a civil penalty and to issue an abatement order for  
13 violations of conditions of the Permit. Therefore, pursuant to ORS 183.415(5), the  
14 Department and Permittee wish to limit and resolve the future violations referred to in  
15 Paragraph 3 in advance by this Mutual Agreement and Order (MAO).

16 6. This MAO is not intended to settle any violation of any interim effluent  
17 limitations set forth in Paragraph 4 above. Furthermore, this MAO is not intended to limit, in  
18 any way, the Department's right to proceed against Permittee in any forum for any past or  
19 future violations not expressly settled herein.

20 NOW THEREFORE, it is stipulated and agreed that:

21 7. The Environmental Quality Commission shall issue a final order:

22 A. Requiring Permittee to comply with the following schedule for Phase I  
23 improvements:

24 (1) By no later than thirty (30) days after issuance of this MAO, the  
25 Permittee shall submit to the Department a plan for notifying the public of the potential  
26 discharge of bacteria levels exceeding the shellfish standard. The plan shall include procedures

1 to be followed by the Permittee that may include, but not be limited to, media notifications,  
2 posting of warning signs and other public notification steps. Upon approval of the  
3 Department, the Permittee shall implement the plan.

4 (2) By no later than fifteen (15) months after issuance of this MAO, the  
5 Permittee shall design, construct and initiate operation of interim dechlorination facilities. It is  
6 recognized that the facilities will be low cost and temporary in nature but must be designed to  
7 reduce the bacteria and chlorine levels in the effluent to comply with the post -Phase I interim  
8 limits in Paragraph 4(b). To the extent possible, the facilities may be used permanently as part  
9 of the Phase II improvements.

10 B. Requiring Permittee to comply with the following schedule for Phase II  
11 improvements:

12 (1) By no later than eighteen months after issuance of this MAO, the  
13 Permittee shall submit a draft Facilities Plan to the Department that evaluates alternatives for  
14 complying with all water quality standards and ensures that the Permittee can continuously  
15 comply with all effluent limitations included in Permittee's Permit.

16 (2) By no later than ninety (90) days of receiving Department comments,  
17 the Permittee shall submit a final approvable Facilities Plan for providing wastewater control  
18 facilities as needed to assure that the Permittee can continuously comply with all water quality  
19 standards and effluent limitations included in Permittee's Permit. If the Facilities Plan  
20 recommends new facilities that will result in a new or modified NPDES Permit, the Facilities  
21 Plan submittal shall include an application for a new or modified NPDES Permit.

22 (3) By no later than nine (9) months after Department approval of the  
23 Facilities Plan, the Permittee shall submit draft engineering plans and specifications for the  
24 necessary wastewater control facilities to the Department.

25 (4) By no later than sixty (60) days after of receiving Department  
26 comments, the Permittee shall submit a final approvable engineering plans and specifications

1 for the necessary wastewater control facilities to the Department.

2 (5) By no later than four (4) months after Department approval of the  
3 engineering plans and specifications, Permittee shall award a contract for the construction of  
4 the necessary wastewater control facilities.

5 (6) By no later than two (2) years after award a contract, the Permittee  
6 shall complete construction of the approved wastewater control facilities and initiate  
7 operations.

8 (7) By no later than sixty (60) days after the completion of construction,  
9 the Permittee shall attain operation level of the wastewater treatment facilities and comply with  
10 all water quality standards and all effluent limitations in Permittee's permit.

11 C. Requiring Permittee to meet the interim effluent limitations set forth in  
12 Paragraph 4(a) above from the date this MAO is executed until completion of the corrective  
13 actions required by the schedule in Paragraph 7.A. Requiring Permittee to meet the interim  
14 effluent limitations set forth in Paragraph 4(b) from the completion of the corrective actions  
15 required by Paragraph 7.A. until completion of the corrective actions required by Paragraph  
16 7.B., except, during the start up period in Paragraph 7.B(7), the Permittee is not required to  
17 meet the interim limitations in Paragraph 4(b) so long as Permittee operates the facilities as  
18 effectively as practicable.

19 D. Requiring Permittee, upon receipt of a written Penalty Demand Notice from  
20 the Department, to pay the following civil penalties:

21 (1) \$250 for each day of each violation of the compliance schedule set  
22 forth in Paragraphs 7A and 7.B.

23 (2) \$100 for each violation of each daily average waste discharge  
24 limitation set forth in Paragraph 4.

25 (3) \$500 for each violation of each monthly average waste discharge  
26 limitation set forth in Paragraph 4.

1           8.    If any event occurs that is beyond Permittee's reasonable control and that causes  
2 or may cause a delay or deviation in performance of the requirements of this MAO, Permittee  
3 shall immediately notify the Department verbally of the cause of delay or deviation and its  
4 anticipated duration, the measures that have been or will be taken to prevent or minimize the  
5 delay or deviation, and the timetable by which Permittee proposes to carry out such measures.  
6 Permittee shall confirm in writing this information within five (5) working days of the onset of  
7 the event. It is Permittee's responsibility in the written notification to demonstrate to the  
8 Department's satisfaction that the delay or deviation has been or will be caused by  
9 circumstances beyond the control and despite due diligence of Permittee. If Permittee so  
10 demonstrates, the Department shall extend times of performance of related activities under this  
11 MAO as appropriate. Circumstances or events beyond Permittee's control include, but are not  
12 limited to, acts of nature, unforeseen strikes, work stoppages, fires, explosion, riot, sabotage,  
13 or war. Increased cost of performance or consultant's failure to provide timely reports may  
14 not be considered circumstances beyond Permittee's control.

15           9.    Regarding the schedule set forth in Paragraphs 7A and 7B above, Permittee  
16 acknowledges that Permittee is responsible for complying with that schedule regardless of the  
17 availability of any federal or state grant monies.

18           10.   The terms of this MAO may be amended by the mutual agreement of the  
19 Department and Permittee.

20           11.   The Department may amend the compliance schedule and conditions in this MAO  
21 upon finding that such modification is necessary because of changed circumstances or to  
22 protect public health and the environment. The Department shall provide Permittee a  
23 minimum of thirty (30) days written notice prior to issuing an Amended Order modifying any  
24 compliance schedules or conditions. If Permittee contests the Amended Order, the applicable  
25 procedures for conduct of contested cases in such matters shall apply.

26           12.   This MAO shall be binding on the parties and their respective successors, agents;

1 and assigns. The undersigned representative of each party certifies that he or she is fully  
2 authorized to execute and bind such party to this MAO. No change in ownership or corporate  
3 or partnership status relating to the facility shall in any way alter Permittee's obligations under  
4 this MAO, unless otherwise approved in writing by DEQ.

5 13. All reports, notices and other communications required under or relating to this  
6 MAO should be directed to Ruben Kretzschmar, DEQ Coos Bay Regional Office, 340 N.  
7 Front Street, Coos Bay, Oregon 97420, phone number (541) 269-2721, extension 23. The  
8 contact person for Permittee shall be the City Manager, 500 Central Ave., Coos Bay, OR  
9 97420, phone number 541-269-8912.

10 14. Permittee acknowledges that it has actual notice of the contents and requirements  
11 of the MAO and that failure to fulfill any of the requirements hereof would constitute a  
12 violation of this MAO and subject Permittee to payment of civil penalties pursuant to  
13 Paragraph 7D above.

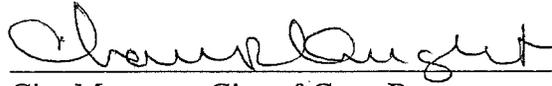
14 15. Any stipulated civil penalty imposed pursuant to Paragraph 7D shall be due upon  
15 written demand. Stipulated civil penalties shall be paid by check or money order made payable  
16 to the "Oregon State Treasurer" and sent to: Business Office, Department of Environmental  
17 Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204. Within 21 days of receipt of a  
18 "Demand for Payment of Stipulated Civil Penalty" Notice from the Department, Permittee may  
19 request a hearing to contest the Demand Notice. At any such hearing, the issue shall be  
20 limited to Permittee's compliance or non-compliance with this MAO. The amount of each  
21 stipulated civil penalty for each violation and/or day of violation is established in advance by  
22 this MAO and shall not be a contestable issue.

23 16. Providing Permittee has paid in full all stipulated civil penalties pursuant to  
24 Paragraph 15 above, this MAO shall terminate 60 days after Permittee demonstrates full  
25 compliance with the requirements of the schedule set forth in Paragraphs 7A and 7B above.

26

PERMITTEE

1  
2 08/20/03  
3 Date

  
City Manager, City of Coos Bay

DEPARTMENT OF ENVIRONMENTAL QUALITY

6 8/21/03  
7 Date

  
Kerri L. Nelson, Western Region Administrator

9 ///  
10 ///  
11 ///  
12 ///

FINAL ORDER

14 IT IS SO ORDERED:

ENVIRONMENTAL QUALITY COMMISSION

16 8/21/03  
17 Date

  
Kerri L. Nelson, Western Region Administrator  
Department of Environmental Quality  
Pursuant to OAR 340-11-136(1)



# Oregon

Theodore R. Kulongoski, Governor

## Department of Environmental Quality

Western Region Eugene Office

165 East 7<sup>th</sup> Avenue, Suite 100

Eugene, OR 97401

(541) 686-7838

FAX (541) 686-7551

OTRS 1-800-735-2900

RECEIVED

JUN 22 2009

City of Coos Bay

June 19, 2009

Chuck Freeman, City Manager  
City of Coos Bay  
500 Central Avenue  
Coos Bay, OR 97420

RE: MAO Modification Number 1  
MAO WQ/M-WR-03-022  
Coos Bay Wastewater Facility No. 2 (Empire plant)  
NPDES Permit 100771  
*File 19821*

Dear Mr. Freeman:

On August 21<sup>st</sup>, 2003, the Department of Environmental Quality (Department) issued a renewed NPDES permit which contained effluent limits for fecal coliform bacteria that the existing treatment plant could not meet. Mutual Agreement and Order (MAO) No. WQ/M-WR-03-022 resolved this problem by applying interim effluent limits until treatment plant upgrades are completed.

In studying the situation, the City has discovered that the collection system is in poor condition and may be allowing excessive amounts of extraneous water into the system. The DEQ and City entered into discussions regarding a delay in the upgrade to allow time to investigate how much extraneous water could be eliminated. However, in your April 6<sup>th</sup>, 2009 letter from J. Garrett Pallo, the City's consultant, the City documents the results of recent facilities planning efforts showing that Plant #2 is in immediate need of improvements. The letter also contained a proposed schedule for the Plant #2 improvements.

Based on our review, the Department concurs that the following schedule is the shortest practicably achievable. Therefore, pursuant to paragraph 11 of the MAO, the Department approves modification of the MAO compliance schedule (paragraph 7.B – Phase II improvements) as follows:

- (1) By October 1<sup>st</sup>, 2009 the Permittee shall complete smoke-testing the entire collection system feeding Plant #2, with the exception of that portion of the collection system owned and operated by the Charleston Sanitation District. A summary report shall be submitted to the Department summarising the findings from the testing, along with a plan to address any identified deficiencies.
- (2) By May 1<sup>st</sup>, 2010 the Permittee shall submit to the Department a draft of the Pre-Design Report.

- (3) By no later than sixty (60) days after receiving Department comments on the draft Pre-Design Report, the Permittee shall submit the final Pre-Design Report.
- (4) By no later than one (1) year of submitting the final Pre-Design Report, the Permittee shall submit the final plans and specifications for the construction of the improvements to Wastewater Facility #2.
- (5) By no later than sixty (60) days after receiving Department comments on the final plan and specifications, the Permittee shall advertise for bids for the construction of the treatment plant upgrades.
- (6) By no later than twenty-four (24) months of entering into a contract for construction of the treatment plant improvements, the new facilities shall be placed into service.

Thank you for your continued attention to the MAO requirements including the above modifications. Should you have any questions about the content of this letter, please contact Andy Ullrich at (541) 776-6010 ext. 246 or via e-mail at [ullrich.andy@deq.state.or.us](mailto:ullrich.andy@deq.state.or.us).

Sincerely,



Keith N. Andersen  
Western Region Division Administrator

cc: J. Garrett Pallo, Civil West Engineering Services, Inc., 486 'E' Street, Suite 8, Coos Bay, OR 97420  
John Ruscigno, DEQ Western Region WQ Manager, Salem  
Jon Gasik, DEQ Senior Engineer, Medford, via email only  
Andy Ullrich, DEQ-Medford, via email only  
DEQ Medford Office Files

**MODIFICATION**

This Modification Shall Be Attached To and Made A Part Of Permit #100771

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
WASTE DISCHARGE PERMIT**

Department of Environmental Quality  
Western Region - Salem Office  
750 Front Street NE, Suite 120, Salem, OR 97301-1039  
Telephone: (503) 378-8240

Issued pursuant to ORS 468B.050 and The Federal Clean Water Act

**ISSUED TO:**

Coos Bay, City of  
500 Central Avenue  
Coos Bay, OR 97420

**SOURCES COVERED BY THIS PERMIT:**

Type of Waste	Outfall Number	Outfall Location
Treated Wastewater	001	R.M. 3.8
Emergency Overflows: Pump Station #7, 421 Morrison Street P.S. #8, 1812 Newmark	002	Coos Bay, R.M. 6.0
P.S. #14, 150 Mill Street	003	Coos Bay, R.M. 6.0
P.S. #16, 999 Lakeshore Drive	004	Coos Bay, R.M. 5.25
Flow Monitoring Station, West end of Fulton Street	005	Coos Bay, R.M. 6.0
	006	Coos Bay, R.M. 4.5

**FACILITY TYPE AND LOCATION:**

Activated Sludge  
Coos Bay STP #2  
100 Fulton Street  
Coos Bay, Oregon

Treatment System Class: Level IV  
Collection System Class: Level III

**RECEIVING STREAM INFORMATION:**

Basin: South Coast  
Sub-Basin: Coos  
Receiving Stream: Coos Bay  
Hydro Code: 14A\*COOS 3.8 D  
LLID: 1243397433543-3.8-D  
County: Coos

**EPA REFERENCE NO: OR002358-2**

This permit was originally issued on August 21, 2003 in response to Application No. 994488 received September 11, 1995. This is a Department initiated modification in accordance with OAR 340-045-0055, Application No. 982770. This permit was issued based on the land use findings in the permit record.

Michael H. Korten Hof, Western Region Water Quality Manager

December 15, 2004

Date

**ADDENDUM NO. 1**

**Modification #1** – Permit No. 100771, Schedule A, Condition 3.a (1) is modified to add Note 5 to the Total Residual Chlorine limit. Note 5 shall read as follows:

5. When the total residual chlorine limitation is lower than 0.10 mg/L, the Department will use 0.10 mg/L as the compliance evaluation level (i.e. daily maximum concentrations below 0.10 mg/L will be considered in compliance with the limitation).

**Modification #2** – Permit No. 100771, Schedule B, Condition 1.a. (Influent Monitoring Requirements) is modified to delete the requirement to monitor metals and cyanide semi-annually. The Condition shall read as follows:

a. Influent

The facility influent grab and composite samples and measurements are taken from the manhole just before the influent wet well. The composite sampler is located in the motor/generator room on top of the wet well.

Item or Parameter	Minimum Frequency	Type of Sample
Total Flow (MGD)	Daily	Measurement
Flow Meter Calibration	Semi-Annual	Verification
BOD <sub>5</sub>	2/Week	Composite
TSS	2/Week	Composite
pH	3/Week	Grab

**Modification #3** – Permit No. 100771, Schedule B, Condition 1.b. (Effluent Monitoring Requirements) is modified to delete the requirement to monitor metals and cyanide semi-annually and silver monthly. In addition, Schedule B, Condition 1.b. is modified to require Whole Effluent Toxicity monitoring annually for the remainder of the permit cycle and to perform at least three “priority pollutant” scans during the remainder of the permit cycle. The Condition shall read as follows:

b. Treated Effluent Outfall 001

The facility effluent grab and composite samples and measurements are taken just before the effluent weir of the chlorine contact chamber except for the total chlorine residual sample. The total chlorine residual sample is taken from the first manhole on the outfall pipeline. The composite sampler is located on the walkway over the chlorine contact chamber.

Item or Parameter	Minimum Frequency	Type of Sample
BOD <sub>5</sub>	2/Week	Composite
TSS	2/Week	Composite
pH	3/Week	Grab
Fecal Coliform	2/Week	Grab
Ammonia-N	Weekly	Composite
Quantity Chlorine Used	Daily	Measurement
Chlorine Residual	Daily	Grab
Pounds Discharged (BOD <sub>5</sub> and TSS)	2/Week	Calculation

Average Percent Removed (BOD <sub>5</sub> and TSS)	Monthly	Calculation
Toxics:		
Whole Effluent Toxicity (See Note 3)	Annually	Acute & chronic
Priority Pollutants	(See Note 9)	24-hour Composite
Temperature:		
Effluent Temperature, Daily Max (See Note 7)	Daily	Continuous
Effluent Temperature, Average of Daily Maximums (See Note 7)	Weekly	Calculation
Excess Thermal Load	Weekly (May 1 – October 31)	Calculation (See Note 7)

**Modification #4** – Permit No. 100771, Schedule B Notes are modified to delete Notes 1, 2 and 8.

**Modification #5** – Permit No. 100771, Schedule B, Note 3 is modified to read as follows:

- Beginning in calendar year 2005, the permittee shall conduct Whole Effluent Toxicity testing for a period of three (3) years in accordance with the frequency specified above. If the Whole Effluent Toxicity tests show that the effluent samples are not toxic at the dilutions determined to occur at the Zone of Immediate Dilution and the Mixing Zone, no further Whole Effluent Toxicity testing will be required during this permit cycle. Note that at least four Whole Effluent Toxicity test results will be required along with the next NPDES permit renewal application.

**Modification #6** – Permit No. 100771, Schedule B, Note 9 is added and shall read as follows:

- The permittee shall perform all testing required in Part D of EPA Form 2A. The testing includes all metals (total recoverable), cyanide, phenols, hardness and the 85 pollutants included under volatile organic, acid extractable and base-neutral compounds. Three scans are required during the 4 ½ years after permit issuance. Two of the three scans must be performed no fewer than four months and no more than eight months apart. The effluent samples shall be 24-hour daily composites, except where sampling volatile compounds. In this case, six discrete samples (not less than 40 mL) collected over the operating day are acceptable. The permittee shall take special precautions in compositing the individual grab samples for the volatile organics to insure sample integrity (i.e. no exposure to the outside air). Alternately, the discrete samples collected for volatiles may be analyzed separately and averaged.

**Modification #7** – Permit No. 100771, Schedule D, Condition 5 (Priority Pollutant Scan procedures) is deleted.

**Modification #8** – Permit No. 100771, Schedule E is deleted.

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF: ) AMENDMENT NO. 3  
CITY OF COOS BAY, )  
Wastewater Facility No. 2 ) MUTUAL AGREEMENT AND  
Permittee. ) ORDER NO. WQ/M-WR-03-022  
COOS COUNTY

WHEREAS:

1. On August 21, 2003, the Department of Environmental Quality (DEQ) and Permittee entered into Mutual Agreement and Order (MAO) No. WQ/M-WR-03-022.

2. Paragraph 10 of MAO states: "The terms of this MAO may be amended by the mutual agreement of the Department and Permittee."

3. On December 20, 2010, DEQ sent the City a letter requesting a revised schedule for upgrading the facility by January 15, 2011. On January 14, 2011, DEQ received a proposed revised schedule. The revised schedule included completion of a value analysis study in November 1, 2011. The value analysis study was conducted in October 2011 and a final report was submitted to DEQ on November 4, 2011. On November 18, 2011, the City submitted a revised schedule based on the results of the value analysis study.

4. The City has demonstrated to the Department's satisfaction that it has good cause to request the time extension.

NOW THEREFORE, it is stipulated and agreed that the compliance order of the MAO should be amended as follows:

5. Paragraph 7.B. is replaced with the following:

Requiring Permittee to comply with the following schedule:

7.B.1 By June 1, 2012, the Permittee must submit to the Department for review and approval a completed wastewater facilities plan amendment.

1 7.B.2 By no later than 1 year after receiving Department approval of the wastewater  
2 facilities plan amendment, the Permittee must submit to the Department for review a draft of the  
3 Pre-Design Report.

4 7.B.3 By no later than sixty (60) days after receiving Department comments on the draft  
5 Pre-Design Report, the Permittee must submit the final Pre-Design Report revised to conform with  
6 any Department comments.

7 7.B.4 By no later than one (1) year after Department approval of the final Pre-Design  
8 Report, the Permittee must submit for Department review and approval final plans and  
9 specifications for the construction of the improvements to Wastewater Facility #2.

10 7.B.5 By no later than sixty (60) days after receiving Department comments, Permittee  
11 must revise the final plan and specifications to conform with the Department comments and  
12 advertise for bids for the construction of the treatment plant upgrades.

13 7.B.6 By no later than twenty-four (24) months of entering into a contract for construction  
14 of the treatment plant improvements, the Permittee must place the new facilities into service.

15 7.B.7 By no later than fifteen (15) months after initiation of operation of the new facilities,  
16 Permittee must submit a report summarizing the performance testing conducted during the first  
17 twelve (12) months of operation and an evaluation of whether the actual performance meets  
18 expectations. If needed, the report must also include a list of recommended performance  
19 improvements.

20 6. Paragraph 13 is replaced with the following: "All reports, notices and other  
21 communications required under or relating to this MAO should be directed to DEQ Coos Bay  
22 Regional Office, 381 N. Second St., Coos Bay, OR 97420, phone number (541) 269-2721. The  
23 contact person for Permittee is the City Manager, 500 Central Ave., Coos Bay, OR 9 97420, phone  
24 number 541-269-8912.

25 7. Paragraph 16 is replaced with the following: "This MAO will terminate the day after the  
26 final task in Paragraph 7 is completed. However, Permittee remains liable for stipulated penalties  
27

1 for any violations of the MAO occurring during the period the MAO was in effect and demanded  
2 pursuant to Paragraph 15.”

3 8. All other terms and conditions of MAO No. WQ WQ/M-WR-03-022 remain unchanged.  
4  
5  
6

7 PERMITTEE

8  
9 2/27/12

10 Date

11 

12 Rodger Craddock, City Manager

13 City of Coos Bay, Oregon

14 DEPARTMENT OF ENVIRONMENTAL QUALITY and  
15 ENVIRONMENTAL QUALITY COMMISSION

16 3/2/12

17 Date

18 

19 Leah E. Koss, Manager

20 Office of Compliance and Enforcement

21 on behalf of DEQ pursuant to OAR 340-012-0170

22 on behalf of the EQC pursuant to OAR 340-011-0505  
23  
24  
25  
26  
27



# Oregon

Kate Brown, Governor

## Department of Environmental Quality

Headquarters  
811 SW 6th Ave  
Portland, OR 97204-1390  
(503) 229-5696  
FAX (503) 229-6124  
TTY: 711

June 27, 2016

CERTIFIED MAIL: 7014 2870 0001 3378 2788

City of Coos Bay  
c/o Roger Craddock, City Manager  
500 Central Avenue  
Coos Bay, OR 97420

Re: Mutual Agreement and Order  
Case No. WQ/M-WR-03-022

This letter serves as written notice that the Department of Environmental Quality (DEQ) intends to issue an order amending the referenced Mutual Agreement and Order (MAO) 30 days from the city of Coos Bay's receipt of this notice.

Paragraph 11 of the MAO states that DEQ may amend the compliance schedule and conditions of the MAO upon finding that such modification is necessary because of changed circumstances or to protect public health and safety. On June 21, 2016, the Coos Bay City Council adopted a motion prohibiting city staff from taking action to complete the remaining tasks in the MAO compliance schedule until such time as the city determines that privatizing the city's wastewater treatment system is not "viable." The city's decision to indefinitely defer upgrading its wastewater treatment facilities, after having already been granted three extensions to complete the upgrades, constitutes a changed circumstance necessitating amendment of the MAO.

DEQ will amend the MAO as follows:

Paragraphs 7.B.6 and 7.B.7 are replaced with the following:

*"7.B.6 By no later than September 12, 2016, Permittee must begin site preparation work, including mobilization and utilities installation, for a new replacement wastewater treatment plant at 490 Fulton Avenue in Coos Bay, Oregon as described in DEQ's April 18, 2016 approval letter.*

*7.B.7 By no later than November 20, 2016, Permittee must complete the Empire Boulevard pipe crossing project.*

*7.B.8 By no later than January 1, 2017, Permittee must begin construction (excavate foundation) of the sequencing batch reactor at 490 Fulton Avenue in Coos Bay, Oregon as described in DEQ's April 18, 2016 approval letter.*

*7.B.9 By no later than June 1, 2017, Permittee must complete construction of the concrete structure for the sequencing batch reactor at 490 Fulton Avenue in Coos Bay, Oregon as described in DEQ's April 18, 2016 approval letter.*



*7.B.10 By no later than February 1, 2018, Permittee must substantially complete construction of the ultraviolet disinfection system at 490 Fulton Avenue in Coos Bay, Oregon as described in DEQ's April 18, 2016 approval letter.*

*7.B.11 By no later than June 16, 2018 Permittee must substantially complete construction of the new wastewater treatment plant at 490 Fulton Avenue in Coos Bay, Oregon as described in DEQ's April 18, 2016 approval letter and place the new wastewater treatment plant into service.*

*7.B.12 By no than October 1, 2019, Permittee must submit a report summarizing the performance testing conducted during the first twelve (12) months of operation and an evaluation of whether the actual performance of the new facilities meets expectations. If performance does not meet expectations, the report must also include a list of recommended performance improvements."*

Paragraph 7.D(1) is replaced with the following:

*"Requiring Permittee, upon receipt of a written Penalty Demand Notice from DEQ, to pay the following penalties: (1) \$1,600 for each day of violation of the compliance schedule set forth in Paragraphs 7.B.6 through 7.B.12."*

Adding Paragraph 7.E, which states:

*"DEQ may terminate this MAO upon violation of the compliance schedule set forth in Paragraphs 7.B.6 through 7.B.12. However, Permittee remains liable for stipulated penalties for any violations of the MAO occurring during the period the MAO was in effect and demanded pursuant to Paragraph 15. If Permittee contests termination, the applicable procedures for conduct of contested cases in such matters shall apply."*

If you have any questions, please contact Jeff Bachman at (503) 229-5950.

Sincerely,

*Leah K. Feldon for*

Leah K. Feldon, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Pete Shepherd, HQ, DEQ  
Keith Andersen, Western Region, Eugene Office, DEQ  
Ranei Nomura, Western Region, Eugene Office, DEQ  
Steve Nichols, Western Region, Coos Bay Office, DEQ  
Jon Gasik, P.E., Western Region, Medford Office, DEQ  
John Koestler, WQ, HQ  
Nathan B. McClintock, Corrigall McClintock et al, PO Box 1178, Coos Bay OR 97420



# Oregon

Kate Brown, Governor

## Department of Environmental Quality

Headquarters  
811 SW 6th Ave  
Portland, OR 97204-1390  
(503) 229-5696  
FAX (503) 229-6124  
TTY: 711

August 1, 2016

CERTIFIED MAIL: 7014 2870 0001 3378 2801

City of Coos Bay  
c/o Roger Craddock, City Manager  
500 Central Avenue  
Coos Bay, OR 97420

Re: Department Order  
Case No. WQ/M-WR-03-022

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a Department Order amending the terms of Mutual Agreement and Order No. WQ/M-WR-03-022 (MAO). DEQ notified you of its intent to amend the MAO in a letter you received on June 29, 2016.

Paragraph 11 of the MAO states that DEQ may amend the compliance schedule and conditions of the MAO upon finding that such modifications are necessary because of changed circumstances or to protect public health and safety. On June 21, 2016, the Coos Bay City Council adopted a motion prohibiting city staff from taking action to complete the remaining tasks in the MAO compliance schedule until such time as the city determines that privatizing the city's wastewater treatment system is not "viable."

The city's decision to indefinitely defer upgrading its wastewater treatment facilities, after having already been granted three extensions to complete the upgrades, constitutes a changed circumstance necessitating amendment of the MAO. The city has been in violation of its permit and studying options to ensure permit compliance since 2003. Final plans were approved by DEQ, and the Department cannot justify continued relief from enforcement if the city delays its return to compliance.

Please be advised that the interim timeframes from DEQ's June 27, 2017 Notice letter have been extended in response to a request from the city. The final deadline for completing all work required by the MAO remains unchanged. The interim timeframes are intended to ensure the city timely completes the tasks necessary to meet the final deadline.

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. 6<sup>th</sup> 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 Order will become final.

The attached Order further provides further instructions for appealing the Order. Please review it and refer to it when discussing this case with DEQ.



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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 Jeff Bachman at (503) 229-5950. You may call toll-free within Oregon at 1-800-452-4011, extension 5950.

Sincerely,



Leah K. Feldon, Manager  
Office of Compliance and Enforcement

Enclosure

cc: John Koestler, WQ, HQ  
Jon Gasik, PE, Western Region, Medford Office, DEQ  
Steve Nichols, Western Region, Coos Bay Office, DEQ  
Nathan B. McClintock, Corrigan McClintock et al, PO Box 1178, Coos Bay OR 97420



1 III. CONCLUSION

2 Respondent's decision to indefinitely delay work on the remaining tasks necessary to ensure  
3 it meets the requirements of the compliance order in Paragraph 7 of the MAO constitutes "changed  
4 circumstances" as stated in Paragraph 11 of the MAO.

5 IV. ORDER

6 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, DEQ amends the  
7 MAO as follows:

8 Paragraphs 7.B.6 and 7.B.7 are replaced with the following:

9 *"7.B.6 By no later than November 23, 2016, Permittee must begin site preparation work, including*  
10 *mobilization and utilities installation, for a new replacement wastewater treatment plant at 490 Fulton*  
11 *Avenue in Coos Bay, Oregon as described in DEQ's April 18, 2016 approval letter.*

12 *7.B.7 By no later than November 23, 2016, Permittee must complete the Empire Boulevard pipe*  
13 *crossing project.*

14 *7.B.8 By no later than January 18, 2017, Permittee must begin construction (excavate foundation) of*  
15 *the sequencing batch reactor at 490 Fulton Avenue in Coos Bay, Oregon as described in DEQ's April*  
16 *18, 2016 approval letter.*

17 *7.B.9 By no later than July 31, 2017, Permittee must complete construction of the concrete structure*  
18 *for the sequencing batch reactor at 490 Fulton Avenue in Coos Bay, Oregon as described in DEQ's*  
19 *April 18, 2016 approval letter.*

20 *7.B.10 By no later than March 20, 2018, Permittee must substantially complete construction of the*  
21 *ultraviolet disinfection system at 490 Fulton Avenue in Coos Bay, Oregon as described in DEQ's April*  
22 *18, 2016 approval letter.*

23 *7.B.11 By no later than June 16, 2018 Permittee must substantially complete construction of the new*  
24 *wastewater treatment plant at 490 Fulton Avenue in Coos Bay, Oregon as described in DEQ's April*  
25 *18, 2016 approval letter and place the new wastewater treatment plant into service.*

26 *7.B.12 By no than October 1, 2019, Permittee must submit a report summarizing the performance*  
27 *testing conducted during the first twelve (12) months of operation and an evaluation of whether the*

1 actual performance of the new facilities meets expectations. If performance does not meet expectations,  
2 the report must also include a list of recommended performance improvements.”

3 Paragraph 7.D(1) is replaced with the following:

4 “Requiring Permittee, upon receipt of a written Penalty Demand Notice from DEQ, to pay the  
5 following penalties: (1) \$1,600 for each day of violation of the compliance schedule set forth in  
6 Paragraphs 7.B.6 through 7.B.12.”

7 Adding Paragraph 7.E, which states:

8 “DEQ may terminate this MAO upon violation of the compliance schedule set forth in Paragraphs  
9 7.B.6 through 7.B.12. However, Permittee remains liable for stipulated penalties for any violations of  
10 the MAO occurring during the period the MAO was in effect and demanded pursuant to Paragraph 15.  
11 If Permittee contests termination, the applicable procedures for conduct of contested cases in such  
12 matters shall apply.”

### 13 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

14 You have a right to a contested case hearing on this Order, if you request one in writing. You  
15 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you  
16 receive this Order. If you have any affirmative defenses or wish to dispute any allegations of fact in this  
17 Order, you must include them in your request for hearing, as factual matters not denied will be  
18 considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-  
19 0530 for further information about requests for hearing.) You must mail the request for hearing to:  
20 **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue, Portland, Oregon**  
21 **97204**, or fax it to **503-229-5100**. An administrative law judge employed by the Office of  
22 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340,  
23 Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the  
24 hearing, or you may represent yourself unless you are a corporation, agency or association.

25 Active duty service-members have a right to stay proceedings under the federal Service  
26 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-

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1 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
2 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
3 <http://legalassistance.law.af.mil/content/locator.php>.

4 If you fail to file a request for hearing in writing within 20 calendar days of receipt of this  
5 Order, the Order will become a final order by default without further action by DEQ, as per OAR  
6 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing  
7 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default  
8 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including  
9 information submitted by you, as the record for purposes of proving a prima facie case.  
10  
11

12  
13 August 1, 2016  
14 Date

12  
13 Saman Wheeler for  
14 Leah K. Feldon, Manager  
Office of Compliance and Enforcement