

CITY OF COOS BAY CITY COUNCIL
Agenda Staff Report

MEETING DATE August 16, 2016	AGENDA ITEM NUMBER
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TO: Mayor Shoji and City Councilors

FROM: Rodger Craddock, City Manager

ISSUE : **Amended DEQ MAO and the Next Upcoming Deadline**

BACKGROUND:

MAO and MAO Ament History:

The City was issued an MAO in 2003 by the Oregon Department of Environmental Quality (DEQ) for the Empire Plant, commonly referred to as Plant 2 and or WWTP2 (Plant 2). Since then, there have been five amendments. The amendments have mostly centered around scheduling. In 2011, the proposed plan for the Plant 2 upgrade was to expand the plant to City property located immediately south of the existing plant. However, upon further analysis, it was discovered that due to environmentally sensitive areas the developable footprint was not of adequate size. Upon this discovery, the City analyzed other alternative locations - one of which was constructing a plant on the property at the north east corner of Fulton Ave and Empire Boulevard (the current approved plan). It was at this time where DEQ required the City to prepare a Facility Plan Amendment (FPA). DEQ understood that this FPA requirement would affect the MAO schedule, and as a result issued Amendment 3 with updated deadlines. This amendment was issued March 2, 2012. Since 2012 an FPA, Value Analysis, Pre-Design, Value Engineering, and Final Design Plans and Specifications have been prepared and approved by DEQ. To date, all of the milestones associated with planning and design have met the deadlines set forth in the March 2, 2012 MAO Amendment anticipating construction would commence summer 2016.

Resent MAO Amendments and New Deadlines:

On June 21, 2016, Council approved a motion to investigate privatizing the wastewater treatment plants, thus work was suspended on the proposed Plant 2 upgrade until further direction from Council was provided. On June 27, 2016, DEQ issued Amendment 4 to the MAO. Amendment 4 expanded on the construction deadlines with a new commencement date of September 12, 2016; however, it did not change the completion date of June 16, 2018. Additionally, Amendment 4 increased the penalty fine from \$250 per day to \$1,600 per day. Understanding that it would be extremely difficult, if not impossible, to meet that deadline of September 12th (regardless of the June 21, 2016 Council decision), I submitted an appeal to DEQ asking for an extension. As a result of the appeal, DEQ issued Amendment 5 to the MAO that provided a 10-week extension on the commencement of construction but held the completion date of June 16, 2018.

The following table summarizes deadlines associated with the Mutual Agreement and Order (MAO) amendments for Plant 2:

Deadline	March 2, 2012 (Amendment 3)	June 27, 2016 (Amendment 4)	August 1, 2016 (Amendment 5)
Advertise Bids	June 16, 2016	n/a	n/a
Commence Site Work	n/a	Sept. 12, 2016	Nov. 23, 2016
Complete Empire Piping Work	n/a	Nov. 20, 2016	Nov. 23, 2016
Commence Construction of SBR	n/a	January 1, 2017	January 18, 2017
Complete Construction of SBR	n/a	June 1, 2017	July 31, 2017
Complete Construction of UV	n/a	February 1, 2018	March 20, 2018
Plant Online	June 16, 2018	June 16, 2018	June 16, 2016

n/a = Not Applicable
 SBR = Sequencing Batch Reactor

Next Steps:

The first deadline is November 23, 2016 which requires commencement of site preparation work including mobilization and utilities installation along with completing the Empire Piping Work. The Empire Piping work is also anticipated to be completed by this date. The Empire Piping portion of the project has been bid and awarded, and the contractor will mobilize late August/early September. However, many steps need to be completed to meet the other deadlines to avoid or minimize future fines from DEQ.

A normal time frame, assuming that the bid package is ready and has been reviewed and approved, from the time that you advertise to the time that the contractor is mobilized is three to four months depending on the size and complexity of the project. Prior to the stop work order issued to the Construction Manager/General Contractor (CMGC), the site work bid package was started, but it is not completed. The Plant 2 project is a very large and complex project that is funded with federal money. The funding adds another level of complexity to the process as well as the schedule. Because of the funding, there are longer review times (because the funding agency must also review) and longer bid period times with pre-bid meetings (a funding agency requirement). Also due to the complexity of this project several submittals will have to be reviewed and approved prior to the contractor mobilizing. The submittal process is typically a four to six week effort; but for the purposes of meeting the DEQ deadline of November 23rd, it had to be reduced to three weeks. Below is an aggressive schedule that has the potential to meet the site work deadline:

Task	Start	End
Council Approval	No Later Than August 23	
Remove Stop Work Order	August 24	
Complete Bid Packages	August 25	August 31
DEQ & Attorney Approval	September 1	September 2
Advertise for Bids (1)	September 6	October 3
Open Bids	October 4	
Determine Responsive Bid	October 5	October 6
Protest Period	October 7	October 13
Notice to Proceed	October 14	October 27
Submittal Approval	October 28	November 18
Mobilization	November 21	November 22
Break Ground	November 23, 2016	June 16, 2018

The aggressive schedule does not allow for any contingency. With any bid process, there are always unknowns. Also in setting schedules, it has been done so in a manner that relies on other people's schedules. For instance, a reasonable time for DEQ and the attorney to review and approve the bid packages is a two-week time frame. This does not take into consideration DEQ's or the attorney's other commitments or their staff's vacation schedules. For the purposes of this aggressive schedule only two days were assumed. Another example is the 15-day (21 calendar days) time frame allotted for the submittal review and approvals. Typically, this is a 20-day (28 calendar days) effort that is noted in the contract documents. Should Council decide to move forward with bidding out the site work portion of the project, the contract documents must be updated to reduce the 20 working days to 15.

As mentioned above, on June 21, 2016, Council approved a motion to investigate privatizing the wastewater treatment plants, thus work was suspended on the proposed Plant 2 upgrade until further direction from Council was provided. While the Council is still investigating the privatizing of the City's wastewater treatment plants, I believe it makes sense to at least move forward with the bid process. The Council could hold off on awarding the bids until the Council decides what to do. Allowing the bidding process to begin on the site work could limit the number of days we are in violation, if any, and thus limit the amount of potential fines. In order to move forward with the bidding process, in accordance with Council Rules, a motion would need to be made by one of the four Councilors (Councilors Daily, Brick, Vaughan or Leahy) who voted in favor of stopping all work on the DEQ approved plan.

ADVANTAGES:

Allowing the bidding of the site work would allow the City the best opportunity to meet the newly changed DEQ deadline of November 23rd, and thus possibly eliminate potential fines or at least limit fine amounts for violations of the MAO.

Allowing the bidding for the site work does not limit the Council from continuing to explore privatization of the plants.

DISADVANTAGES:

None identified

BUDGET:

Conducting the bidding process for the site work requires some staff time and there are costs associated with the bidding and advertising process. Although, those costs are minimal compared to the costs of the stipulated fines for violations of the MAO deadline.

RECOMMENDATION:

It is my recommendation that the Council reconsider its decision to stop work on the DEQ approved plan even if that reconsideration is limited to allowing the bidding process for the site work at this time.