



1 D. From May 22 through June 1, 2017, Permittee discharged fully treated  
2 effluent to the Molalla River in violation of Schedule A, Condition 1 of the permit and ORS  
3 468B.025(1)(a).

4 E. From June 14-26, 2017 Permittee discharged fully treated effluent to the  
5 Molalla River in violation of Schedule A, Condition 1 of the permit and ORS 468B.025(1)(a).

6 F. From October 12-31, 2017, the Permittee discharged fully treated wastewater  
7 to the Molalla River in violation of Schedule A, Condition 1 of the permit and ORS  
8 468B.025(1)(a).

9 G. On September 6, 2017 violated ORS 468B.025(1)(b) when it discharged  
10 chlorinated effluent to Bear Creek that caused an exceedance of the acute toxicity water quality  
11 standard for chlorine.

12 H. In July, August, September and October of 2017, Permittee violated permit  
13 effluent limits for turbidity and total coliform bacteria in recycled water.

14 I Permittee exceeded the monthly total suspended solids (TSS) average  
15 concentration effluent limit of 10 milligrams per liter by discharging effluent with the following  
16 monthly average TSS concentrations: November 2015 - 11 mg/L, December 2015 - 11 mg/L  
17 January 2017 - 12 mg/L.

18 J. For an unknown amount of time following the implementation of the Class A  
19 standard in the August 29, 2014 Recycled Water Use Plan and prior to April 2016, it is possible  
20 that Permittee's turbidimeter was not providing accurate information. Any potential violations of  
21 the Recycled Water Use Plan or the Permit due to those errors in measurement are expressly  
22 resolved by this MAO.

23 3. DEQ and the Permittee recognize that until new or modified facilities are  
24 constructed and put into full operation, Permittee might continue to violate the seasonal  
25 discharge limit and its effluent limits for total suspended solids (TSS).

26 ////

1           4.     DEQ and Permittee recognize that the Environmental Quality Commission has the  
2 authority to impose a civil penalty and to issue an abatement order for violations of conditions of  
3 the Permit. Therefore, pursuant to ORS 183.415(5), DEQ and Permittee wish to settle those past  
4 violations referred to in Paragraph 2 and address future violations referred to in Paragraph 3  
5 (unless caused negligently, willfully or intentionally) in advance by this Mutual Agreement and  
6 Order (MAO).

7           5.     The U.S. Environmental Protection Agency appropriately delegated the federal  
8 NPDES permitting program to DEQ, making DEQ the primary administrator and enforcer of the  
9 NPDES permits. DEQ believes that this MAO furthers the goals of the NPDES permitting  
10 program by ensuring progress towards compliance and is consistent with DEQ's goal of  
11 protecting human health and the environment. However, DEQ and Permittee recognize that this  
12 MAO does not eliminate the possibility of additional enforcement of Permit requirements by the  
13 U.S. Environmental Protection Agency or citizens under the federal citizen suit provisions.

14           6.     This MAO is not intended to limit, in any way, DEQ's right to proceed against  
15 Permittee in any forum for any unknown past or future violations not expressly settled herein.

16           7.     This MAO is not intended to limit, in any way, Permittee's right to apply for an  
17 amended permit during the course of this MAO.

18           NOW THEREFORE, it is stipulated and agreed that:

19           8.     The Environmental Quality Commission shall issue a final order:

20           A.     Requiring Permittee to comply with the following compliance order:

21                   (1)   Development of a Wastewater Facility and Collection System Master  
22                   Plan document that will comply with the applicable DEQ requirements for a  
23                   facilities plan (herein called the "Master Plan"), as described in

24                   <http://www.oregon.gov/deq/FilterDocs/FacilitiesPlansGuidelines.pdf>

25                   according to the following schedule:

26                           1) Notice to proceed 9/1/17.

- 2) By 7/2/18, submit draft Master Plan for DEQ review and approval.
- 3) Within 60 days of receiving all of DEQ comments on the draft Master Plan, revise the plan consistent with DEQ's comments and submit for DEQ review and approval.
- 4) Within 40 days of DEQ approval of Master Plan, Planning Commission to hold public hearings to recommend approval by City Council. Within 30 days following Planning Commission approval, City Council to hold its first public meeting for adoption of Master Plan and ordinance within.
- 5) The plan above must evaluate the removal of infiltration and inflow, removal of biosolids and expanded use of recycled water as both interim steps prior to any other plant upgrade or expansion and as ongoing activities to best manage the collection and treatment system and beneficially use of biosolids and recycled water.
- 6) Because Permittee will be submitting a permit modification application the results of which may change the recommendations of the facilities planning process, DEQ shall prioritize reviewing Permittee's application to the extent possible to ensure minimal delay.
- 7) If the results of DEQ's final decision on Permittee's permit modification application require revisions to the Master Plan, Permittee shall provide DEQ with an amended draft Master Plan within 180 days of DEQ's decision becoming final.
- 8) Within 60 days of receiving all of DEQ comments on the revised draft Master Plan, Permittee shall revise the plan consistent with DEQ's comments and submit for DEQ review and approval.

1 9) Within 45 days of DEQ approval of the revised final Master Plan,  
2 Planning Commission to hold public hearings to recommend approval  
3 by the City Council. Within 30 days following Planning Commission  
4 approval, City Council to hold its first public meeting for adoption of  
5 Master Plan and ordinance within.

6 10) Construction of the new WWTP identified in the final approved  
7 Master Plan must be completed no later than 12/1/2023.

8 11) DEQ shall have 6 weeks from the date of receipt to review any  
9 submittal from Permittee related to construction of the WWTP. Should  
10 the DEQ review period exceed this time limitation, the deadline  
11 contained in 8.A.(1)(10) shall be extended by an equivalent amount of  
12 time.

13 B. Requiring the Permittee to meet the following interim effluent limitations,  
14 measured as specified in the Permit, until completions of the upgrades identified in the final  
15 Master Plan:

16

	Units	Average Monthly	Average Weekly	Daily Maximum
18 TSS (November 19 1 – April 20 30)	mg/L	15	20	-
	lbs/day	240	300	480
	% removal	85	-	-

21 C. The Permittee will submit any plans and specifications for collection system  
22 and treatment plant upgrades or expansions to DEQ for review and approval. A Certification of  
23 Capacity stating that the Permittee agrees to provide sewer service and has sewerage system and  
24 treatment capacity to do so must be included with all plan and specification reviews submitted by  
25 the Permittee to DEQ, per OAR 340-052-0015(3)(c).  
26

1 D. If the existing lagoons are used as part of the upgraded facility, the lagoons  
2 will be drained and the clay liners checked for leaks and repaired or replaced as necessary.

3 E. Any out of season discharges not authorized by the Permit that occur during  
4 the months of May, June and October will be addressed per DEQ's Enforcement Guidance  
5 Internal Management Directive in effect at the time of the violation provided the following  
6 conditions are met:

7 1. The Molalla WWTP lagoons have less than one month storage  
8 capacity available;

9 2. The fields designated to accept recycled water do not have the  
10 capacity to assimilate recycled water;

11 3. The Molalla River:

12 i. has had a 7-day moving average of 350 cubic feet per second  
13 or greater as measured at the USGS monitoring station number 14200000 MOLALLA RIVER  
14 NEAR CANBY, OR; (if there is an active monitoring station which better characterizes Molalla  
15 River Flow near the outfall, this station may be substituted subject to DEQ approval), and/or

16 ii. the 7-day moving average effluent temperature does not  
17 exceed 18.0 C.

18 iii. These moving averages determination shall begin on the  
19 seventh day of discharging.

20 4. Permittee notifies:

21 i. DEQ as soon as possible that an out of season discharge may  
22 be necessary to prevent an overtopping of the WWTP lagoons, and

23 ii. DEQ when a discharge commences.

24 iii. the City of Canby water treatment facility when a discharge  
25 commences.

26 5. i. Permittee complies with the monitoring requirements in

1 Schedule B, Conditions 3 and 4 of the permit.

2 ii. Permittee's discharge does not exceed the effluent limits in  
3 Schedule A of the permit.

4 6. The above conditions, 1 through 5, shall be recorded in the Daily  
5 Monitoring Reports each day discharge occurs.

6 F. Requiring Permittee, upon receipt of a written Penalty Demand Notice from  
7 DEQ, to pay the following civil penalties:

8 1. \$600 for each day of violation of the compliance order set forth in  
9 Paragraph 8A.

10 2. \$1,500 for each day of out of season discharge occurring during the  
11 months of May, June and October where the conditions of Paragraph 8.E are not met.

12 3. For exceedance of the limits in 8.B, \$300 for any exceedance of  
13 50% or more of the limit, \$150 for any exceedance of 20% or more, but less than 50% of the  
14 limit, and \$75 for an exceedance of less than 20% of the limit.

15 G. Imposing upon permittee a civil penalty of \$23,325 for the violations listed in  
16 Paragraph 10 below. The penalty may be mitigated to \$4,665 through performance of a  
17 Supplemental Environmental Project in accordance with the provisions of Paragraph 12.

18 9. If any event occurs that is beyond Permittee's reasonable control and that causes or  
19 may cause a delay or deviation in performance of the requirements of this MAO, Permittee shall  
20 immediately notify DEQ verbally of the cause of delay or deviation and its anticipated duration,  
21 the measures that have been or will be taken to prevent or minimize the delay or deviation, and  
22 the timetable by which Permittee proposes to carry out such measures. Permittee shall confirm  
23 in writing this information within five (5) working days of the onset of the event. It is  
24 Permittee's responsibility in the written notification to demonstrate to DEQ's satisfaction that the  
25 delay or deviation has been or will be caused by circumstances beyond the control and despite  
26 due diligence of Permittee. If Permittee so demonstrates, DEQ shall extend times of

1 performance of related activities under this MAO as appropriate. Circumstances or events  
2 beyond Permittee's control include, but are not limited to, acts of nature, unforeseen strikes, work  
3 stoppages, fires, explosion, riot, sabotage, or war. Increased cost of performance or a  
4 consultant's failure to provide timely reports are not considered circumstances beyond  
5 Permittee's control.

6 10. The violations set forth in Paragraph 2 above are expressly settled herein for the  
7 following penalties, Paragraph 2.A, \$5,100; 2.B, \$3,000; 2.C, \$1,725; 2.D, \$3,000; 2.E, \$3,000;  
8 2.F, \$3,000, and 2.G, \$4,500 for a total civil penalty of \$23,325. The violations cited in  
9 Paragraphs 2.H, 2.I and 2.J are resolved without penalty.

10 11. Based on evidence submitted by Permittee that no violation occurred, DEQ  
11 dismisses Violation 3 of Notice of Civil Penalty Assessment and Order No. WQ/M-NWR-2016-  
12 163.

13 12. The \$23,325 civil penalty may be mitigated to \$4,665 on the condition that  
14 Respondent completes a Supplemental Environmental Project approved by DEQ. A SEP proposal  
15 must be submitted to DEQ within 90 days of full execution of the MAO. An approved SEP will be  
16 incorporated into this MAO by amendment. If DEQ does not approve an SEP by March 1, 2019,  
17 the balance of the civil penalty, \$18,660, becomes immediately due and owing. Payment of the  
18 \$4,665 penalty not subject to mitigation through a SEP is due 30 days from full execution of this  
19 MAO.

20 13. Permittee and DEQ hereby waive any and all of their rights to any and all notices,  
21 hearing, judicial review, and to service of a copy of the final order herein. DEQ reserves the  
22 right to enforce this order through appropriate administrative and judicial proceedings.

23 14. Regarding the order set forth in Paragraph 8A above, Permittee acknowledges that  
24 Permittee is responsible for complying with that order regardless of the availability of any  
25 federal or state grant monies.

26 15. The terms of this MAO may be amended by mutual agreement of DEQ and



1 Permittee.

2 16. DEQ may amend the compliance order and conditions in, or terminate, this MAO  
3 upon finding that such modification is necessary because of changed circumstances or to protect  
4 public health and the environment. DEQ shall provide Permittee a minimum of thirty (30) days  
5 written notice prior to issuing an Order amending or terminating this MAO. If Permittee contests  
6 the Order, the applicable procedures for conduct of contested cases in such matters shall apply.

7 17. This MAO shall be binding on the parties and their respective successors, agents,  
8 and assigns. The undersigned representative of each party certifies that he or she is fully  
9 authorized to execute and bind such party to this MAO. No change in ownership or corporate or  
10 partnership status relating to the facility shall in any way alter Permittee's obligations under this  
11 MAO, unless otherwise approved in writing by DEQ.

12 18. All reports, notices and other communications required under or relating to this  
13 MAO should be directed to Tiffany Yelton Bram, DEQ Water Quality Northwest Regional  
14 Office, 700 NE Multnomah St., Suite 600, Portland, Oregon 97232, phone number 503 229  
15 5219, with copies sent to Jeff Bachman, Office of Compliance and Enforcement, same address.  
16 The contact person for Permittee shall be Gerald Fisher, City of Molalla - Director of Public  
17 Works, 117 N. Molalla Avenue, P.O. Box 248, Molalla, OR 97038, 503.829.6855.

18 19. Permittee acknowledges that it has actual notice of the contents and requirements of  
19 this MAO and that failure to fulfill any of the requirements hereof will constitute a violation of  
20 this MAO and subject Permittee to payment of civil penalties pursuant to Paragraph 8.F above.

21 20. Any stipulated civil penalty imposed pursuant to Paragraph 8.F shall be due upon  
22 written demand. Stipulated civil penalties shall be paid by check or money order made payable  
23 to **"State Treasurer, State of Oregon"** and sent to the **DEQ, Business Office, 700 NE**  
24 **Multnomah Street, Suite 600, Portland, Oregon 97232**. Within 20 days of receipt of a  
25 "Demand for Payment of Stipulated Civil Penalty" Notice from DEQ, Permittee may request a  
26 hearing to contest the Demand Notice. At any such hearing, the issue shall be limited to

1 Permittee's compliance or non-compliance with this MAO. The amount of each stipulated civil  
2 penalty for each violation and/or day of violation is established in advance by this MAO and  
3 shall not be a contestable issue.

4 21. This MAO shall terminate at the end of the day on the date the final compliance task  
5 in Paragraph 8A above is to be completed. However, Permittee remains liable for stipulated  
6 penalties for any violations of the MAO occurring during the period the MAO was in effect and  
7 demanded pursuant to Paragraph 20.

8  
9 CITY OF MOLALLA

10 9-17-18


11 Date

  
12 Dan Huff  
13 City Manager

14 DEPARTMENT OF ENVIRONMENTAL QUALITY and  
15 ENVIRONMENTAL QUALITY COMMISSION

16  
17 10/4/18

18 Date

  
19 Kieran O'Donnell, 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