



City Council Chambers
206 N. Main Street
Toledo, Oregon 97391
6:15 p.m.

TOLEDO CITY COUNCIL
Work Session
September 11, 2018

1. **Call to Order**
2. **Visitors/Public Comment**
(The public comment period provides the public with an opportunity to address the City Council regarding items not on the agenda. Please limit your comments to five (5) minutes).
3. **Discussion and Information Items**
 - Committee Updates
 - Draft Department of Environmental Quality Mutual Agreement and Order Review with Project ID & Potential Funding Strategies
 - Review City Council Rules
4. **Reports and Comments**
 - Department Reports
 - City Manager's Report
 - Council Comments
 - Mayor Comments
5. **Adjournment**

*Draft Department of Environmental Quality Mutual Agreement and Order Review with
Project ID & Potential Funding Strategies*

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:) MUTUAL AGREEMENT
) AND ORDER
CITY OF TOLEDO,) NO. WQ/M-WR-2017-211____
Permittee.) LINCOLN COUNTY
)

WHEREAS:

1. On December 27, 2005, the Department of Environmental Quality (DEQ) issued National Pollutant Discharge Elimination System (NPDES) Waste Discharge Permit Number 101713 (Permit) to the City of Toledo (Permittee). The Permit authorizes the Permittee to construct, install, modify or operate wastewater treatment control and disposal facilities (Facility) and discharge adequately treated wastewaters into the Yaquina River, waters of the state, in conformance with the requirements, limitations and conditions set forth in the Permit. The Permit expired on November 30, 2010, but is administratively extended as Permittee made timely application for renewal.

2. The Permit has the following requirements:

a. Schedule A, Condition (1)(a)(3) of the Permit states that the removal efficiency for biochemical oxygen demand (BOD₅) shall not be less than an 85% monthly average.

b. Schedule B, Condition (3)(a) of the Permit requires Permittee to submit an annual inflow and infiltration (I/I) report to DEQ by February 1 of each year.

c. Schedule F, Condition (B)(6)(c) of the Permit prohibits overflows.

d. Schedule F, Condition (B)(6)(e) of the Permit requires Permittee to report overflows to DEQ within 24 hours of becoming aware of the overflow.

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2 3. Permittee has violated the Permit as follows:

3 a. According to its discharge monitoring reports, Permittee failed to meet the
4 85% removal efficiency for BOD₅ as follows:

<u>Month</u>	<u>Reported BOD Removal Efficiency</u>
December 2015	65
January 2016	82
November 2016	76
December 2016	84
January 2017	83
February 2017	84

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12 b. Permittee submitted its 2014 I/I report on March 13, 2015, its 2015 I/I report
13 on June 29, 2017, and its 2016 I/I report on February 16, 2017.

14 c. On January 2, 2018, the Permittee discharged approximately 45,000 gallons
15 of municipal water containing raw sewage from a broken sewer pipe into a storm drain near
16 Sturdevant Road, which then discharged into the Olalla Slough, which is waters of the state and a
17 tributary to the Yaquina River.

18 d. Permittee failed to orally report the January 2, 2018 overflow to DEQ within
19 24 hours of becoming aware of the overflow.

20 4. DEQ and the Permittee recognize that until tasks in Paragraph 8 are completed,
21 Permittee might continue to violate the BOD removal efficiency requirement at times and have
22 sanitary sewer overflows.

23 5. DEQ and Permittee recognize that the Environmental Quality Commission has the
24 authority to impose a civil penalty and to issue an abatement order for violations of Permit
25 conditions. Therefore, pursuant to ORS 183.415(5), DEQ and Permittee wish to settle those past
26 violations referred to in Paragraph 3 and address future violations referred to in Paragraph 4

1 (unless caused negligently, willfully or intentionally) in advance by this Mutual Agreement and
2 Order (MAO).

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

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

12 NOW THEREFORE, it is stipulated and agreed that:

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

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

15 a. By no later than January 1, 2020 complete the Butler Bridge Pump
16 Station and Force Main Project.

17 Gravity Sewer Collection System Improvements:

18 b. By no later than March 1, 2019, Permittee must update cost
19 estimates and develop funding alternatives to implement Priority
20 1, 2, and 3 Projects identified in Appendix C of the 2014 Civil
21 West Engineering Services Wastewater Facility Plan. These
22 include the Butler Bridge slope, NW 6th Street, SE 10th Street, N
23 Nye Street, E Graham Street, NE 12th Street, Alley Repair,
24 Business 20, Manhole Rehab, SE 5th Street, Alder Way, and SE
25 Alder Street projects (Priority 1, 2, and 3 Projects).
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- c. By no later than December 1, 2019, Permittee must submit documentation that all inflow sources (missing cleanout caps, roof drains, storm water cross connections, etc.) identified in the 2011 Inflow and Infiltration study have been eliminated.
- d. By no later than December 1, 2020, Permittee must clean, television inspect, and smoke test the entire public wastewater collection system and submit a document to DEQ that includes a summary of the findings. The document must rate all deficiencies found using a nationally recognized system. The document must also include a plan, schedule, and budget to address prioritized deficiencies.
- e. By no later than May 1, 2021, Permittee must award bids and issue a notice to proceed for the Priority 1, 2, and 3 Projects.
- f. By no later than December 1, 2022, Permittee must submit documentation that the Priority 1, 2, and 3 Projects are substantially complete.

B. Requiring Permittee to meet the following waste discharge limitations, measured as specified in the Permit, until this MAO is terminated per paragraph 14 or 19.

OTHER PARAMETERS (year-round)

LIMITATIONS

BOD Removal Efficiency

When monthly average influent flow is greater than 2 MGD, must not be less than 65%.

When monthly average influent flow is greater than 1.5 MGD but less than 2 MGD, must not be less than 75%.

C. Requiring Permittee, upon receipt of a written Penalty Demand Notice from

1 DEQ, to pay the following civil penalties:

2 (1) \$600 for each day of violation of the compliance order set forth in
3 Paragraph 8(A).

4 (2) \$100 for each violation of the waste discharge limitation set forth in
5 Paragraph 8(B).

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

20 10. The violations set forth in Paragraph 3 are expressly settled herein as follows:

21 A. For the violation of Schedule A, Condition (1)(a)(3) of the Permit Set forth in
22 Paragraph 3(a) above, DEQ hereby assesses a civil penalty of \$350. The determination of the civil
23 penalty is attached as Exhibit No. 1 and is incorporated herein.

24 B. For the violation Schedule B, Condition (3)(a) of the Permit set forth in
25 Paragraph 3(b) above, DEQ has not assessed a civil penalty.

26 C. For the violation of Schedule F, Condition (B)(6)(c) of the Permit set forth in

1 Paragraph 3(c) above, DEQ hereby assesses a civil penalty of \$1,800. The determination of the
2 civil penalty is attached as Exhibit No. 2 and is incorporated herein.

3 D. For the violation of Schedule F, Condition (B)(6)(e) of the Permit set forth in
4 Paragraph 3(d) above, DEQ hereby assesses a civil penalty of \$1,800. The determination of the
5 civil penalty is attached as Exhibit No. 3 and is incorporated herein.

6 E. The total civil penalty amount is \$3,950.

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

10 12. Regarding the order set forth in Paragraph 8(A) above, Permittee acknowledges that
11 Permittee is responsible for complying with that order regardless of the availability of any
12 federal or state grant monies.

13 13. The terms of this MAO may be amended by mutual agreement of DEQ and
14 Permittee.

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

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

26 16. All reports, notices and other communications required under or relating to this

1 MAO should be directed to Julie Ulibarri, DEQ Western Region Eugene Office, 165 East 7th
2 Avenue, Eugene, Oregon, 97401, phone number 541-687-7437. The contact person for
3 Permittee shall be Michael J. Adams, Public Works Director, City of Toledo, P.O Box 220,
4 Toledo, Oregon, 97391, phone number 541-336-2247 ext. 2070.

5 17. Permittee acknowledges that it has actual notice of the contents and requirements of
6 this MAO and that failure to fulfill any of the requirements hereof will constitute a violation of
7 this MAO and subject Permittee to payment of civil penalties pursuant to Paragraph 8(C) above.

8 18. Any stipulated civil penalty imposed pursuant to Paragraph 8(C) shall be due upon
9 written demand. Stipulated civil penalties shall be paid by check or money order made payable
10 to the "Oregon State Treasurer" and sent to: Business Office, Department of Environmental
11 Quality, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232. Within 20 days of
12 receipt of a "Demand for Payment of Stipulated Civil Penalty" Notice from DEQ, Permittee may
13 request a hearing to contest the Demand Notice. At any such hearing, the issue shall be limited
14 to Permittee's compliance or non-compliance with this MAO. The amount of each stipulated
15 civil penalty for each violation and/or day of violation is established in advance by this MAO
16 and shall not be a contestable issue.

17 19. This MAO shall terminate at the end of the day on the date the final compliance task
18 in Paragraph 8A above is to be completed. However, Permittee remains liable for stipulated
19 penalties for any violations of the MAO occurring during the period the MAO was in effect and
20 demanded pursuant to Paragraph 18.

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**CITY OF TOLEDO,
PERMITTEE**

Date

Michael J. Adams
Public Works Director

**DEPARTMENT OF ENVIRONMENTAL QUALITY and
ENVIRONMENTAL QUALITY COMMISSION**

Date

Kieran O'Donnell, Manager
Office of Compliance and Enforcement
on behalf of DEQ pursuant to OAR 340-012-0170
on behalf of the EQC pursuant to OAR 340-011-0505

