



1           6. According to Schedule A, Condition 1.a.(3) of the 2006 Permit, the Permittee was  
2 required to achieve a minimum removal efficiency for BOD<sub>5</sub> of 85% in the effluent discharge at  
3 Outfall 001.

4           7. The same BOD<sub>5</sub> removal efficiency requirement described in Section I, Paragraph 6,  
5 above, is included in Schedule A, Condition 1 of the 2021 Permit.

6           8. In violation of ORS 468B.025(2), Permittee failed to achieve the minimum percent  
7 removal efficiency limit for BOD<sub>5</sub> twenty-one (21) times from November 2016 to March 2022, as  
8 described in Exhibit A, Table 2. These are Class III violations according to OAR 340-012-  
9 0055(3)(c). DEQ has assessed a civil penalty of \$600 for these violations. The determination of the  
10 civil penalty is attached as Exhibit 1, and is incorporated as part of this MAO.

11           9. According to Schedule A, Condition 1.a.(3) of the 2006 Permit, the Permittee was  
12 required to achieve a minimum removal efficiency for Total Suspended Solids (TSS) of 65% in the  
13 effluent discharge at Outfall 001.

14           10. The same TSS removal efficiency requirement described in Section I, Paragraph 9,  
15 above, is included in Schedule A, Condition 1 of the 2021 Permit.

16           11. In violation of ORS 468B.025(2), Permittee failed to achieve the minimum percent  
17 removal efficiency limit for TSS thirteen (13) times from November 2016 to February 2021, as  
18 described in Exhibit A, Table 3. These are Class III violations according to OAR 340-012-  
19 0055(3)(c). DEQ has assessed a civil penalty of \$600 for these violations. The determination of the  
20 civil penalty is attached as Exhibit 2, and is incorporated as part of this MAO.

21           12. Schedule A.1 of the 2021 Permit prohibits any discharge from Outfall 001  
22 between May 1 and October 31 (the 2006 Permit allowed a discharge during the May 1 to  
23 October 31 time period if authorized in writing by DEQ).

24           13. Between May 1, 2022, and July 19, 2022, Permittee discharged a total of  
25 approximately 20 million gallons of effluent from Outfall 001 to Yoncalla Creek as described in  
26 Exhibit A, Table 4.

1 14. Permittee's discharges, described in Section I, Paragraph 13, above, contained  
2 pollutants including Total Suspended Solids, *E. coli* bacteria, chlorine and ammonia.

3 15. In violation of ORS 468B.050(1)(a), Permittee discharged wastes to waters of the  
4 state without a permit between May 1, 2022 and July 19, 2022, as described in Exhibit A, Table 4.  
5 Permittee's effluent was "wastes" according to ORS 468B.005(9) because it contained substances  
6 that will or may cause pollution or tend to cause pollution to any waters of the state. Yoncalla Creek  
7 is a waters of the state according to ORS 468B.005(10). These are Class I violations according to  
8 OAR 340-012-0051(c). DEQ has assessed a civil penalty of \$3,150 for these violations. The  
9 determination of the civil penalty is attached as Exhibit 3, and is incorporated as part of this MAO.

10 16. According to Schedule A, Condition 1.a.(3) of the 2006 Permit, the Permittee was  
11 required to meet the following effluent limitations for *E. coli* bacteria at Outfall 001:

Parameter	Limitation
<i>E. coli</i> bacteria	Shall not exceed 126 organisms per 100 mL monthly geometric mean. No single sample shall exceed 406 organisms per 100 mL.

16 17. The same effluent limitations for *E. coli* bacteria described in Section I, Paragraph  
17 16, above, are included in the 2021 Permit.

18 18. In violation of ORS 468B.025(2), Permittee exceeded the *E. coli* limit seven (7)  
19 times, from January 2017 to October 2021, as described in Exhibit A, Table 5. These are three (3)  
20 Class II violations according to OAR 340-012-0055(2)(a)(C) and four (4) Class III violations  
21 according to OAR 340-012-0055(3)(b)(C). DEQ has assessed a civil penalty of \$1,087.50 for these  
22 violations. The determination of the civil penalty is attached as Exhibit 4, and is incorporated as part  
23 of this MAO.

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1           19.     According to Schedule A, Condition 1.a.(3) of the 2006 Permit, the Permittee was  
2 required to meet the following effluent limitations for Total Chlorine Residual at Outfall 001:

Parameter	Limitation
Total Chlorine Residual	Shall not exceed 0.02 mg/L daily maximum and a 0.01 mg/L monthly average

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6           20.     Notwithstanding the Total Chlorine Residual limits described in Section I, Paragraph  
7 19, above, the 2006 Permit, Schedule A, Note 3, states that when the Total Chlorine Residual level  
8 is below 0.10 mg/L [the Quantitation limit at the time the 2006 Permit was issued], DEQ will use  
9 0.10 mg/L as the compliance evaluation limit.

10           21.     The same effluent limitations for Total Chlorine Residual described in Section I,  
11 Paragraph 19, above, are included in the 2021 Permit, however the Quantitation limit, and therefore  
12 the compliance evaluation limit, was set at 0.05 mg/L in the 2021 Permit.

13           22.     In violation of ORS 468B.025(2), Permittee exceeded the Total Chlorine residual  
14 limit sixty-five (65) times, from March 2018 to March 2022, as described in Exhibit A, Table 6.  
15 These are Class I violations according to OAR 340-012-0055(1)(l). DEQ has assessed a \$2,250 civil  
16 penalty for these violations. The determination of the civil penalty is attached as Exhibit 5, and is  
17 incorporated as part of this MAO.

18           23.     According to Schedule A, Condition 1.a.(3) of the 2006 Permit, the Permittee was  
19 required to meet the following effluent limitations for pH at Outfall 001:

Parameter	Limitation (SU)
pH	Shall be within the range of 6.0 to 9.0

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22           24.     The pH limit in the 2021 Permit was adjusted such that effective November 1, 2021,  
23 the Permittee's effluent must be within the range of 6.3 to 9.0 standard units (SU).

24           25.     In violation of ORS 468B.025(2), Permittee exceeded the pH limit of 9.0 SU ten  
25 (10) times, from March 2018 to February 2022, as described in Exhibit A, Table 7. These are Class  
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1 III violations according to OAR 340-012-0055(3)(b)(B). DEQ has assessed a civil penalty of \$700  
2 for these violations. The determination of the civil penalty is attached as Exhibit 6, and is  
3 incorporated as part of this MAO.

4 26. Schedule B, Condition 1.b of the 2006 Permit required Permittee to monitor the  
5 Facility's effluent daily at Outfall 001 for chlorine residual.

6 27. During the entire month of January 2017, April 2017, April 2018, January 2019, and  
7 December 2020, Permittee failed to monitor the Facility's effluent for chlorine residual.

8 28. Schedule B, Condition 1.b of the 2006 Permit required Permittee to monitor the  
9 Facility's effluent once every two weeks at Outfall 001 for TSS.

10 29. During the two-week period January 13-26, 2019 and the two-week period February  
11 3-16, 2019, Permittee failed to monitor the Facility's effluent for TSS.

12 30. Schedule B, Condition 1.a of the 2006 Permit required Permittee to monitor the  
13 influent to the Facility once every two weeks for BOD<sub>5</sub> and TSS.

14 31. In August 2021 and October 2021, Permittee collected and analyzed a single sample  
15 of the influent to the Facility for BOD<sub>5</sub> and TSS each month, and failed to collect and analyze the  
16 second required sample for each month.

17 32. Schedule B, Condition 1.b of the 2006 Permit requires Permittee to monitor the  
18 Facility's effluent daily at Outfall 001 for Total chlorine residual. Similarly, Schedule B, Condition  
19 3.b of the 2021 Permit requires Permittee to monitor the Facility's effluent daily at Outfall 001 for  
20 Total chlorine residual.

21 33. During the entire month of October 2021, Permittee failed to monitor the Facility's  
22 effluent for Total chlorine residual.

23 34. During March 2022, Permittee failed to monitor the Facility's effluent for Total  
24 chlorine residual on two days.

25 35. Schedule B, Condition 3.b of the 2021 Permit requires Permittee to monitor the  
26 Facility's effluent three times per week at Outfall 001 for temperature.

1 36. During the week of November 14, 2021, Permittee failed to monitor the Facility's  
2 effluent one of the required three times for temperature.

3 37. Schedule B, Condition 3.c of the 2021 Permit requires Permittee to monitor the  
4 receiving stream, Yoncalla Creek, once per month for stream temperature, pH and alkalinity.

5 38. In January 2022, Permittee failed to monitor the receiving stream, Yoncalla Creek,  
6 for stream temperature, pH and alkalinity.

7 39. Permittee violated 468B.025(2), Schedule B, Condition 1 of the 2006 Permit, and  
8 Schedule B, Condition 3 of the 2021 Permit by failing to monitor, as described in Section I,  
9 Paragraphs 26-38, above. These are 191 Class I violations according to OAR 340-012-  
10 0055(1)(o). DEQ has assessed a civil penalty of \$4,205 for these violations. The determination of  
11 the civil penalty is attached as Exhibit 7, and is incorporated as part of this MAO.

12 40. According to OAR 340-045-0015(5)(d), as the responsible party under a NPDES  
13 permit, Permittee must comply with DEQ's requirements for recording, reporting, monitoring, and  
14 sampling, and make no false statements, representations, or certifications in any form, notice, report  
15 or document required under the permit.

16 41. As described in greater detail in Exhibit A, Table 8, Permittee submitted Discharge  
17 Monitoring Reports (DMRs) to DEQ for monitoring conducted between May 2021 and February  
18 2022 that contain multiple inaccuracies as compared to the information contained in the Facility's  
19 bench sheets, which is information recorded by the Facility operators in the field.

20 42. Permittee violated OAR 340-045-0015(5)(d) by failing to comply with DEQ's  
21 requirements for reporting and by making false statements on a required report, as described in  
22 Section I, Paragraphs 40-41, above and in Exhibit A, Table 8. These are Class I violations  
23 according to OAR 340-012-0053(1)(b). DEQ has assessed a civil penalty of \$3,450 for these  
24 violations. The determination of the civil penalty is attached as Exhibit 8, and is incorporated as part  
25 of this MAO.

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1           43.     Schedule F, Condition D6 of the 2006 Permit and Schedule F, Condition D6 of the  
2 2021 Permit requires Permittee to submit a written report of all instances of noncompliance not  
3 reported under Schedule F, Condition D4 (compliance schedule violations) or D5 (24-hour  
4 reporting of noncompliance that may endanger health or the environment), along with Permittee's  
5 monthly DMR. The noncompliance report must, among other requirements, describe the issue, its  
6 cause, and any steps planned to prevent recurrence.

7           44.     During the months of August 2021, October 2021, November 2021, December  
8 2021, January 2021, February 2022 and March 2022, Permittee reported effluent limit exceedances  
9 yet failed to submit a noncompliance report.

10          45.     In violation of ORS 468B.025(2), and Schedule F, Condition D6 of the 2006  
11 Permit and the 2021 Permit, Permittee failed to submit at least seven noncompliance reports with  
12 its monthly DMRs, as described in Section I, Paragraphs 43-44, above. These are Class III  
13 violations according to OAR 340-012-0055(3)(a). DEQ has not assessed a civil penalty for these  
14 violations.

15          46.     DEQ and Permittee recognize that the Environmental Quality Commission has the  
16 authority to impose a civil penalty and to issue an abatement order for violations of conditions of  
17 the 2006 Permit and the 2021 Permit. Therefore, pursuant to ORS 183.417(3), DEQ and  
18 Permittee wish to settle those past violations referred to in Section I, Paragraphs 5, 8, 11, 15, 18,  
19 22, 25, 39, 42 and 45 by this Mutual Agreement and Final Order (MAO).

20          47.     DEQ and Permittee recognize that until improvements to the Facility and the  
21 associated collection system are constructed and put into operation, Permittee may continue to  
22 violate the 2021 Permit's minimum removal efficiency requirements for BOD<sub>5</sub> and TSS,  
23 described in Section I, Paragraphs 6-7 and 9-10, above, at times.

24          48.     In addition, DEQ and Permittee recognize that until improvements to the Facility  
25 and the associated collection system are constructed and put into operation, Permittee may  
26 continue to violate the prohibition against discharging between May 1 and October 31, described

1 in Section I, Paragraph 12, above.

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

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

11 51. In the event Permittee chooses to conduct a Supplemental Environmental Project  
12 (SEP), Respondent agrees to refrain from using the value of the SEP as a tax deduction or as part of  
13 a tax credit application; and, whenever Permittee publicizes the SEP or the results of the SEP,  
14 Permittee will state in a prominent manner that the project was undertaken in connection with the  
15 settlement of a DEQ enforcement action. An approved SEP will be incorporated into this MAO by  
16 amendment. Permittee will be deemed to have completed the SEP when the DEQ Office of  
17 Compliance and Enforcement receives a final report documenting completion of the SEP.

18 52. This MAO shall be effective upon the date fully executed ("MAO Effective Date").

## 19 II. FINAL ORDER

20 The Environmental Quality Commission hereby enters a final order:

21 1. Requiring Permittee to comply with the following corrective action schedule to  
22 address near term infiltration and inflow issues through priority collection system improvements:

23 a. By April 30, 2023, the Permittee must complete design work and secure  
24 funding for the collection system improvements described in Exhibit B (August 2, 2022, Dyer  
25 Partnership Memorandum).

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1           b. By October 31, 2023, the Permittee must complete the collection system  
2 improvements described in Exhibit B including: replacement or repair of 4 manholes,  
3 replacement of approximately 515 lineal feet of 8 inch gravity sewer lines, repair or replacement  
4 of 3,025 lineal feet of gravity sewer lines, and additional television evaluation of approximately  
5 3,800 lineal feet of gravity sewer lines.

6           2. Requiring Permittee to comply with the following corrective action schedule for  
7 Facility improvements:

8           a. By April 30, 2023, the Permittee must complete a draft wastewater facilities  
9 plan consistent with the guidance in "Preparing Wastewater Planning Documents and  
10 Environmental Reports for Public Utilities,"<sup>1</sup> and submit to DEQ for review and approval. The  
11 draft plan must describe the Facility improvements that will be made to ensure compliance with  
12 the BOD<sub>5</sub> and TSS limits in the 2021 Permit and ensure compliance with the prohibition on  
13 discharging from Outfall 001 between May 1 and October 31, including but not limited to a  
14 schedule for yearly I/I evaluation and improvements.

15           b. Within 30 days after receiving DEQ comments on the draft facilities plan, the  
16 Permittee must submit a final plan for DEQ approval.

17           c. By December 31, 2023, the Permittee must secure funding for the selected  
18 facility plan alternative design and provide documentation to DEQ.

19           d. By May 31, 2024, the Permittee must submit a pre-design report to DEQ.

20           e. Within 30 days after receiving DEQ comments on the pre-design report, the  
21 Permittee must submit a final pre-design report to DEQ for approval.

22           f. By June 30, 2025, the Permittee must submit final engineering plans for DEQ  
23 review and approval.

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26 <sup>1</sup> Available at: <https://www.oregon.gov/deq/FilterDocs/FacilitiesPlansGuidelines.pdf>

1 g. By November 30, 2025, the Permittee must secure funding for the selected  
2 alternative and provide documentation to DEQ.

3 h. By March 31, 2026, the Permittee must begin construction and submit  
4 written notice to DEQ that construction has commenced.

5 i. By March 30, 2027, the Permittee must complete construction and submit  
6 documentation to DEQ.

7 3. Requiring Permittee to meet the following interim effluent limits at Outfall 001,  
8 measured as specified in the 2021 Permit, until this MAO is terminated:

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Parameter	Minimum Removal efficiency
BOD <sub>5</sub>	45%
TSS	45%

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13 4. Notwithstanding the interim effluent limits described in Section II, Paragraph 3  
14 above, Permittee must operate the treatment system as efficiently as possible and BOD<sub>5</sub> and TSS  
15 removal efficiency must be as high as practicable.

16 5. For all out-of-season discharges between May 1 and October 31, requiring  
17 Permittee to comply with the same requirements listed in the 2021 Permit for November 1  
18 through April 30 discharges, except for BOD and TSS loading Permittee must comply with the  
19 following interim effluent limits:

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Parameter	Average Monthly (lbs/day)	Average Weekly (lbs/day)	Daily Maximum (lbs/day)
BOD <sub>5</sub>	67	100	130
TSS	110	170	220

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1           6.    Requiring Permittee, should Permittee fail to comply with the requirements in  
2 Section II, Paragraphs 1 or Section II, Paragraph 2, above, to cease allowing new connections to  
3 Permittee's sewage collection system.

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

6                a.   \$600 for each day violation of the corrective action schedule set forth in  
7 Section II, Paragraph 1 or Section II, Paragraph 2.

8                b.   \$50 for each exceedance of the interim effluent limits in Section II,  
9 Paragraph 3.

10              c.   For each exceedance of interim effluent limits in Section II, Paragraph 5,  
11 \$300 for exceedances of 50% or more, \$150 for exceedances of more than 20% but less than  
12 50%, and \$50 for exceedances of less than 20%.

13              d.   \$10,000 for any violation of the ban on new connections pursuant to Section  
14 II, Paragraph 6.

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

1 provide timely reports are not considered circumstances beyond Permittee's control.

2 9. Imposing upon Permittee a total civil penalty of \$16,042.50 for the violations listed in  
3 Section I, Paragraphs 5, 8, 11, 15, 18, 22, 25, 39, 42 and 45. The determination of the civil  
4 penalties are attached as Exhibits 1-8 and are incorporated as part of this MAO. The total penalty  
5 amount may be decreased by an amount equal to that spent on one or more SEPs that meet the  
6 criteria in DEQ's Internal Management Directive on Evaluating and Approving SEPs, and are  
7 approved by DEQ within 60 days of the MAO Effective Date, such decrease not to exceed \$12,834.  
8 Permittee will pay \$3,208.50 to the State of Oregon by December 1, 2022. Make the check or  
9 money order payable to "State Treasurer, State of Oregon" and send it to DEQ, Business Office,  
10 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232. The remaining unpaid civil  
11 penalty will be due and owing to the State of Oregon within 60 days of the MAO Effective Date,  
12 unless one or more SEP proposals with costs that are equal to or exceed the amount of remaining  
13 unpaid penalty have been approved by DEQ.

14 10. The violations set forth in Section I, Paragraphs 8 and 11 (BOD<sub>5</sub> and TSS removal  
15 efficiency violations) are expressly settled herein with penalty. Until this MAO is terminated  
16 pursuant to Section II, Paragraph 21, violations of the 2021 Permit referred to in Section I,  
17 Paragraph 47 that do not exceed the interim effluent limits in Section II, Paragraph 3 will be  
18 addressed per DEQ's Enforcement Guidance Internal Management Directive in effect at the time  
19 of the violation.

20 11. The violations set forth in Section I, Paragraph 15 (discharging without a permit)  
21 are expressly settled herein with penalty. Until this MAO is terminated pursuant to Section II,  
22 Paragraph 21, violations of the 2021 Permit referred to in Section I, Paragraph 48 that comply  
23 with the requirements and meet the interim effluent limits in Section II, Paragraph 5 will be  
24 addressed per DEQ's Enforcement Guidance Internal Management Directive in effect at the time  
25 of the violation.

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1           12. Pursuant to OAR 340-012-0030(19) and OAR 340-012-0145(2), the violations  
2 expressly settled in this MAO, will be treated as prior significant actions in the event a future  
3 violation occurs.

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

7           14. Regarding the schedule set forth in Section II, Paragraphs 1 and 2 above, Permittee  
8 acknowledges that Permittee is responsible for complying with that order regardless of the  
9 availability of any federal or state grant monies.

10           15. The terms of this MAO may be amended by mutual agreement of DEQ and  
11 Permittee.

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

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

22           18. All reports, notices and other communications required under or relating to this  
23 MAO should be directed to Andy Ullrich, DEQ Medford Office, 221 Stewart Avenue, Suite 201,  
24 Medford, OR 97501, or [Andy.Ullrich@deq.oregon.gov](mailto:Andy.Ullrich@deq.oregon.gov), with a copy to Becka Puskas at  
25 [Becka.Puskas@deq.oregon.gov](mailto:Becka.Puskas@deq.oregon.gov). The contact person for Permittee shall be Jennifer Bragg, City  
26 Administrator, City of Yoncalla, P.O. Box 508, 2640 Eagle Valley Road, Yoncalla, OR 97499 or

1 [jennifer@cityofyoncalla.com](mailto:jennifer@cityofyoncalla.com)

2 19. Permittee acknowledges that it has actual notice of the contents and requirements of  
3 this MAO and that failure to fulfill any of the requirements hereof will constitute a violation of  
4 this MAO and subject Permittee to payment of civil penalties pursuant to Section II, Paragraph 7  
5 above.

6 20. Any stipulated civil penalty imposed pursuant to Section II, Paragraph 7 shall be  
7 due upon written demand. Stipulated civil penalties shall be paid by check or money order made  
8 payable to the "Oregon State Treasurer" and sent to: DEQ, Business Office, 700 NE Multnomah  
9 Street, Suite 600, Portland, Oregon 97232. Within 20 days of receipt of a "Final Order and  
10 Stipulated Penalty Demand Notice" from DEQ, Permittee may request a hearing to contest the  
11 Demand Notice. At any such hearing, the issue shall be limited to Permittee's compliance or  
12 non-compliance with this MAO. The amount of each stipulated civil penalty for each violation or  
13 each day of violation is established in advance by this MAO and shall not be a contestable issue.

14 21. This MAO shall terminate at the end of the day on the date the final compliance  
15 tasks in both Section II, Paragraph 1, and Section II, Paragraph 2 above are completed,  
16 whichever is later. However, Permittee remains liable for stipulated penalties for any violations  
17 of the MAO occurring during the period the MAO was in effect and demanded pursuant to  
18 Section II, Paragraphs 7 and 20.

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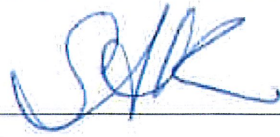
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**CITY OF YONCALLA, PERMITTEE**

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11/8/22  
Date

  
Signature

Stacey Atwell-Keister  
Name (print)

Mayor  
Title (print)

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

11/10/2022  
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

EXHIBIT 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY  
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION: Violating a condition of a wastewater permit (BOD<sub>5</sub> removal efficiency), in violation of ORS 468B.025(2).

CLASSIFICATION: This is a Class III violation pursuant to OAR 340-012-0055(3)(c).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$250 for a Class III, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(C) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) because Permittee has a NPDES permit for a wastewater treatment facility with a permitted flow of less than 2 million gallons per day.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10 according to OAR 340-012-0145(2)(a)(C) and (D) and (b) because there was one Class I violation in Mutual Agreement and Final Order No. WQ/M-WR-14-092 and more than ten Class I violations in Case No. WQ/M-WR-2016-250.

"H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing, and receives a value 3 according to OAR 340-012-0145(4)(c) because there were from seven to 28 occurrences of the violation. Permittee failed to achieve the minimum percent removal efficiency limit for BOD<sub>5</sub> twenty-one (21) times from November 2016 to March 2022, as described in Exhibit A, Table 2.

"M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. In Case No. WQ/M-WR-2016-250, Permittee was cited for sixteen BOD<sub>5</sub> percent removal efficiency violations between 2013 and 2016. By failing to make facility improvements required to improve



BOD<sub>5</sub> removal efficiency, Permittee failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in additional removal efficiency violations.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent took reasonable affirmative efforts to minimize the effects of the violation. Permittee has agreed to a schedule of requirements in Section II, Paragraph 2 of the MAO which will minimize the effects of the violations by improving BOD<sub>5</sub> removal efficiency.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because DEQ has insufficient information to calculate an economic benefit for these violations.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$250 + [(0.1 \times \$25) \times (10 + 0 + 3 + 4 + -3)] + \$\text{EB}$   
 $= \$250 + (\$25 \times 14) + \$0$   
 $= \$250 + \$375 + \$0$   
 $= \$600$

EXHIBIT 2

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY  
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION: Violating a condition of a wastewater permit (TSS removal efficiency), in violation of ORS 468B.025(2).
- CLASSIFICATION: This is a Class III violation pursuant to OAR 340-012-0055(3)(c).
- MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$250 for a Class III, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(C) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) because Permittee has a NPDES permit for a wastewater treatment facility with a permitted flow of less than 2 million gallons per day.
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10 according to OAR 340-012-0145(2)(a)(C) and (D) and (b) because there was one Class I violation in Mutual Agreement and Final Order No. WQ/M-WR-14-092 and more than ten Class I violations in Case No. WQ/M-WR-2016-250.
- "H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).
- "O" is whether the violation was repeated or ongoing, and receives a value of 3 according to OAR 340-012-0145(4)(c) because there were from seven to 28 occurrences of the violation. Permittee failed to achieve the minimum percent removal efficiency limit for TSS thirteen (13) times from November 2016 to February 2021, as described in Exhibit A, Table 3.
- "M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. In Case No. WQ/M-WR-2016-250, Permittee was cited for seven TSS percent removal efficiency violations between 2013 and 2016. By failing to make facility improvements required to improve TSS removal

efficiency, Permittee failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in additional removal efficiency violations.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent took reasonable affirmative efforts to minimize the effects of the violation. Permittee has agreed to a schedule of requirements in Section II, Paragraph 2 of the MAO which will minimize the effects of the violations by improving TSS removal efficiency.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because DEQ has insufficient information to calculate an economic benefit for these violations.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$250 + [(0.1 \times \$25) \times (10 + 0 + 3 + 4 + -3)] + \$\text{EB}$   
 $= \$250 + (\$25 \times 14) + \$0$   
 $= \$250 + \$350 + \$0$   
 $= \$600$

### EXHIBIT 3

#### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION: Discharging wastes to waters of the state without a permit ORS 468B.050(1)(a) and Schedule A.1 of the 2021 Permit.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0051(c).
- MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) because Permittee has a NPDES permit for a wastewater treatment facility with a permitted flow of less than 2 million gallons per day.
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and initially receives a value of 10 according to OAR 340-012-0145(2)(a)(C) and (D) and (b) because there was one Class I violation in Mutual Agreement and Final Order No. WQ/M-WR-14-092 and more than ten Class I violations in Case No. WQ/M-WR-2016-250. According to OAR 340-012-0145(2)(d)(A)(ii), this amount is reduced by 4 because all the formal enforcement actions in which prior significant actions were cited were issued more than five years before the date the current violation occurred. Thus, the P factor is 6.
- "H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).
- "O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day is a separate occurrence of the violation. Respondent discharged waste to Yoncalla Creek without a permit on 80 days from May 1, 2022, and July 19, 2022.
- "M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a

foreseeable risk of conduct constituting or resulting in a violation. Permittee prepared a Facilities Plan in 2013, which outlined a number of priority collection system improvements, which would reduce infiltration and inflow and the need for out-of-season discharges to Yoncalla Creek. Between 2013 and date of this MAO, the only collection system improvement project that has been completed was the new sewer pump station on Halo Trail. This project replaced the wastewater treatment facility's influent pump station, and removed the undersized section of the gravity pipe that conveyed flow to the plant. The pump station's increased flow capacity helped such that the collection system no longer surcharges during high rainfall events, however it was not sufficient to eliminate the need for out-of-season discharges. Thus, by failing to complete additional collection system improvements between 2013 and the date of this MAO, Permittee failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation of discharging without a permit between May 1 and October 31.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent took reasonable affirmative efforts to minimize the effects of the violation. Permittee has agreed to a schedule of requirements in Section II, Paragraphs 1 and 2 of the MAO which include collection system improvements intended to reduce infiltration and inflow, and will minimize the effects of the violation by reducing the need for any future out-of-season discharges.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because DEQ has insufficient information to calculate an economic benefit for these violations.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$1,500 + [(0.1 \times \$1,500) \times (6 + 0 + 4 + 4 + -3)] + \$\text{EB}$   
 $= \$1,500 + (\$150 \times 11) + \$0$   
 $= \$1,500 + \$1,650 + \$0$   
 $= \$3,150$

## EXHIBIT 4

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION: Violating a condition of a wastewater permit (*E. coli* limits), in violation of ORS 468B.025(2).
- CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0055(2)(a)(C).
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(C) because the stream dilution was 10 or more during the time of the *E. coli* limit exceedances.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

- "BP" is the base penalty, which is \$375 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) because Permittee has a NPDES permit for a wastewater treatment facility with a permitted flow of less than 2 million gallons per day.
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10 according to OAR 340-012-0145(2)(a)(C) and (D) and (b) because there was one Class I violation in Mutual Agreement and Final Order No. WQ/M-WR-14-092 and more than ten Class I violations in Case No. WQ/M-WR-2016-250.
- "H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).
- "O" is whether the violation was repeated or ongoing, and receives a value of 3 according to OAR 340-012-0145(4)(c) because there were from seven to 28 occurrences of the violation. There were seven *E. coli* limit violations from January 2017 to October 2021, as described in Exhibit A, Table 5.
- "M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. In Case No. WQ/M-WR-2016-250, Permittee was cited for five *E. coli* limit violations between 2013 and 2016. By failing to improve its water quality treatment process to remove sufficient bacteria from the facility effluent, Permittee failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in additional *E. coli* limit violations.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because DEQ has insufficient information to calculate an economic benefit for these violations.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$375 + [(0.1 \times \$375) \times (10 + 0 + 3 + 4 + 2)] + \$\text{EB}$   
 $= \$375 + (\$37.5 \times 19) + \$0$   
 $= \$375 + \$712.50 + \$0$   
 $= \$1,087.50$

EXHIBIT 5

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY  
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION: Violating a condition of a wastewater permit (Total chlorine residual limits), in violation of ORS 468B.025(2).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(1)

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(ii) because receiving stream flow at the time of the Total chlorine residual exceedances was twice the flow or more of the flow used to calculate the Water Quality Based Effluent Limit.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$750 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) because Permittee has a NPDES permit for a wastewater treatment facility with a permitted flow of less than 2 million gallons per day.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10 according to OAR 340-012-0145(2)(a)(C) and (D) and (b) because there was one Class I violation in Mutual Agreement and Final Order No. WQ/M-WR-14-092 and more than ten Class I violations in Case No. WQ/M-WR-2016-250.

"H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. There were sixty-five violations of the Total chlorine residual limit from March 2018 to March 2022, as described in Exhibit A, Table 6.

"M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. The sixty-five Total chlorine residual limit violations addressed in this MAO occurred over a four-year period between March 2018 and March 2022. By failing to revise its water quality treatment practices to consistently meet the Total chlorine residual limits, despite many violations that



occurred during this lengthy time period, Permittee failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in Total chlorine residual limit violations.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because DEQ has insufficient information to calculate an economic benefit for these violations.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$750 + [(0.1 \times \$750) \times (10 + 0 + 4 + 4 + 2)] + \$0$   
 $= \$750 + (\$75 \times 20) + \$0$   
 $= \$750 + \$1,500 + \$0$   
 $= \$2,250$

EXHIBIT 6

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY  
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION: Violating a condition of a wastewater permit (pH limits), in violation of ORS 468B.025(2).

CLASSIFICATION: This is a Class III violation pursuant to OAR 340-012-0055(3)(b)(B).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(C) because the dilution of the pH limit exceedances was 10 or more.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$250 for a Class III, minor magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(C) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) because Permittee has a NPDES permit for a wastewater treatment facility with a permitted flow of less than 2 million gallons per day.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10 according to OAR 340-012-0145(2)(a)(C) and (D) and (b) because there was one Class I violation in Mutual Agreement and Final Order No. WQ/M-WR-14-092 and more than ten Class I violations in Case No. WQ/M-WR-2016-250.

"H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. There were ten violations of the pH limit, from March 2018 to February 2022, as described in Exhibit A, Table 7.

"M" is the mental state of the Respondent, and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. As the responsible party for the Permit, Permittee reasonable should have known of the pH range limit.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as

described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because DEQ has insufficient information to calculate an economic benefit for these violations.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$250 + [(0.1 \times \$250) \times (10 + 0 + 4 + 2 + 2)] + \$\text{EB} \\ &= \$250 + (\$25 \times 18) + \$0 \\ &= \$250 + \$450 + \$0 \\ &= \$700 \end{aligned}$$

## EXHIBIT 7

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION:** Failing to monitor, in violation of 468B.025(2), Schedule B, Condition 1 of the 2006 Permit, and Schedule B, Condition 3 of the 2021 Permit.
- CLASSIFICATION:** This is a Class I violation pursuant to OAR 340-012-0055(1)(o).
- MAGNITUDE:** The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.
- CIVIL PENALTY FORMULA:** The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) because Permittee has a NPDES permit for a wastewater treatment facility with a permitted flow of less than 2 million gallons per day.
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10 according to OAR 340-012-0145(2)(a)(C) and (D) and (b) because there was one Class I violation in Mutual Agreement and Final Order No. WQ/M-WR-14-092 and more than ten Class I violations in Case No. WQ/M-WR-2016-250.
- "H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).
- "O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. As described in Section I, Paragraphs 26-34 of the MAO, Permittee failed to monitor on 191 occasions from January 2017 and March 2022.
- "M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. In Case No. WQ/M-WR-2016-250, Permittee was cited for multiple Schedule B monitoring violations that occurred

between 2013 and 2016. By failing to improve its monitoring practices following those missed monitoring events and citation by DEQ, Permittee failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in additional monitoring violations.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent took reasonable affirmative efforts to minimize the effects of the violation. Since the Pre-Enforcement Notice issued by DEQ in July 2021, the City requested training from DEQ regarding permit requirements, hired a Level IV wastewater treatment plant operator to act as the system supervisor, and improved monitoring procedures, including adopting the use of a DEQ-developed spreadsheet for DMR reporting.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$455. This is the amount Respondent gained by avoiding spending \$480 to collect and analyze the samples required by the 2006 Permit and the 2021 Permit. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$1,500 + [(0.1 \times \$1,500) \times (10 + 0 + 4 + 4 + -3)] + \$455$   
 $= \$1,500 + (\$150 \times 15) + \$455$   
 $= \$1,500 + \$2,250 + \$455$   
 $= \$4,205$

## EXHIBIT 8

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION: Failing to comply with DEQ's requirements for reporting and making false statements on a required report, in violation of OAR 340-045-0015(5)(d).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(1)(b).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) because Permittee has a NPDES permit for a wastewater treatment facility with a permitted flow of less than 2 million gallons per day.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and initially receives a value of 10 according to OAR 340-012-0145(2)(a)(C) and (D) and (b) because there was one Class I violation in Mutual Agreement and Final Order No. WQ/M-WR-14-092 and more than ten Class I violations in Case No. WQ/M-WR-2016-250. According to OAR 340-012-0145(2)(d)(A)(i), this amount is reduced by 2 because all the formal enforcement actions in which prior significant actions were cited were issued more than three years before the date the current violations occurred. Thus, the value of P is 8.

"H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. As described in Section I, Paragraph 41 and Exhibit A, Table 8 to the MAO, there were more than 28 occurrences of the violation.

"M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. According to OAR 340-012-

0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. In Case No. WQ/M-WR-2016-250, Permittee was cited for failing to comply with DEQ's requirements for reporting by making false representations in its monitoring reports. Specifically, that case addressed an issue where Permittee submitted DMRs required by the permit containing pH measurements despite the fact that the pH of neither the influent nor the effluent had been measured by the Facility operators. By failing to adequately supervise the operators, and ensure consistent monitoring and accurate reporting, Permittee failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in additional reporting violations.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent took reasonable affirmative efforts to minimize the effects of the violation. After learning of additional reporting violations addressed in this MAO, Permittee dismissed its wastewater treatment plant operator. In addition, since July 2021, the City requested training from DEQ regarding permit requirements, hired a Level IV wastewater treatment plant operator to act as the system supervisor, and improved monitoring procedures, including adopting the use of a DEQ-developed spreadsheet for DMR reporting.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because DEQ has insufficient information to calculate an economic benefit for this violation.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$1,500 + [(0.1 \times \$1,500) \times (8 + 0 + 4 + 4 + -3)] + \$0$   
 $= \$1,500 + (\$150 \times 13) + \$0$   
 $= \$1,500 + \$1,950 + \$0$   
 $= \$3,450$

# **Exhibit A**



**EXHIBIT A**

**Table 1.** BOD<sub>5</sub> Concentration Limit Violations

<b>Monitoring Period</b>	<b>Limit</b>	<b>Reported Value</b>	<b>Percentage Over Limit</b>	<b>Violation Class</b>
March 2020	30 mg/L monthly average	48 mg/L monthly average	60%	Class I
February 2022	30 mg/L monthly average	33.0 mg/L monthly average	10%	Class III

**Table 2.** BOD<sub>5</sub> Percent Removal Limit Violations (less than 85% minimum removal efficiency)

<b>Monitoring Period</b>	<b>Reported Value</b>
November 2016	68.5%
December 2016	58.7%
January 2017	62%
May 2017	62%
December 2017	67%
January 2018	58.5%
February 2018	64%
March 2018	1.92%
April 2018	71%
November 2018	82%
December 2018	67%
March 2019	29%
April 2019	71%
January 2020	79.8%
March 2020	74.7%
April 2020	83.9%
March 2021	81.8%

<b>Monitoring Period</b>	<b>Reported Value</b>
November 2021	83.3%
December 2021	83.2%
February 2022	81.1%
March 2022	84.0%

**Table 3.** TSS Percent Removal Limit Violations (less than 65% minimum removal efficiency)

<b>Monitoring Period</b>	<b>Reported Value</b>
November 2016	55%
December 2016	48.2%
January 2017	55%
February 2017	42%
May 2017	63%
December 2017	42.5%
January 2018	61%
February 2018	60.5%
March 2018	15.6%
April 2018	51%
March 2019	38%
April 2019	62%
February 2021	60.4%

**Table 4.** Out-of-season discharges

<b>Month</b>	<b>Days of discharge</b>	<b>Total discharge for month</b>
May 2022	26 day	9.45 million gallons
June 2022	30 days	8.51 million gallons
July 2022	19 days	2.75 million gallons

**Table 5.** *E. coli* Limit Violations

<b>Monitoring Period</b>	<b>Limit (organisms / 100 mL)</b>	<b>Reported Value (organisms / 100 mL)</b>	<b>Amount Over Limit</b>	<b>Violation Class</b>
January 9, 2017	Single sample Max – 406	2420	6 times	II
February 16, 2017	Single sample Max – 406	2420	6 times	II
November 27, 2017	Single Sample Max - 406	816	2 times	III
November 27, 2018	Single Sample Max - 406	2420	6 times	II
February 21, 2019	Single sample Max - 406	517	1.3 times	III
March 7, 2019	Single Sample Max - 406	727	1.8 times	III
October 2021	Monthly geometric mean - 126	135	1.1 times	III

**Table 6.** Total Chlorine Residual Violations

<b>Monitoring Period</b>	<b>Compliance Evaluation Limit</b>	<b>Number of days exceeded</b>
March 2018	0.10 mg/L	1
January 2019	0.10 mg/L	16
February 2019	0.10 mg/L	10
December 2019	0.10 mg/L	8
April 2020	0.10 mg/L	1
November 2021	0.05 mg/L	6
December 2021	0.05 mg/L	4
January 2022	0.05 mg/L	9
February 2022	0.05 mg/L	3
March 2022	0.05 mg/L	7

**Table 7.** pH Limit Violations

<b>Date</b>	<b>Reported Value</b>
March 29, 2018	9.2
January 21, 2021	9.4
January 28, 2021	9.3
January 31, 2021	9.9
March 4, 2021	9.2
March 11, 2021	9.1
March 14, 2021	9.3
March 18, 2021	9.2
February 22, 2022	9.1
February 24, 2022	9.1

**Table 8.** Inaccurate reporting

Monitoring Period	Incorrect Reporting
May 2021	No work time recorded at treatment plant on two days, but influent data and lagoon depth still reported.
June 2021	No work time recorded at treatment plant on two days, but influent data and lagoon depth still reported.
July 2021	No work time recorded at treatment plant on six days, but influent data and lagoon depth still reported.
August 2021	Minimum influent pH incorrectly entered into NetDMR.
October 2021	Chlorine usage always reported as the same value.
November 2021	<p>11/24 - No hours, chlorine usage or chlorine residual reported on benchsheet, but chlorine usage and residual appear on spreadsheet.</p> <p>NetDMR errors:</p> <ul style="list-style-type: none"> <li>• Maximum influent pH entered as 8.7 vs. 7.7 on spreadsheet</li> <li>• TSS weekly load and concentration entered incorrectly</li> <li>• Average chlorine residual entered incorrectly.</li> </ul> <p>Chlorine usage always reported as the same value.</p> <p>Multiple chlorine residuals missing on benchsheet, but present on spreadsheet.</p> <p>Multiple chlorine residuals mis-entered on spreadsheet, including some masking violations noted above.</p> <p>Multiple values of effluent pH mis-entered on spreadsheet.</p> <p>Temperature mis-entered on spreadsheet 1 day.</p> <p>pH mis-entered on spreadsheet 2 days.</p>
December 2021	<p>Spreadsheet not attached in NetDMR.</p> <p>Chlorine usage always reported as same value on benchsheet.</p> <p>Chlorine usage/residual not reported on 3 days on benchsheet.</p> <p>Chlorine usage/residual reported on 5 days when no hours at plant recorded.</p> <p>Monthly average chlorine residual reported as 0.0 despite multiple days above that value.</p>
January 2022	<p>Chlorine usage always reported as same value.</p> <p>Chlorine usage not shown on benchsheet on 4 days, but reported on spreadsheet.</p>

Monitoring Period	Incorrect Reporting
	<p>Chlorine residual not shown on benchsheet on 6 days, but reported on spreadsheet.</p> <p>Chlorine residual on benchsheet does not match spreadsheet on 4 days.</p> <p>Stream flow not shown on benchsheet on 6 days, but reported on spreadsheet.</p> <p>Weekly BOD/TSS concentrations and loading not correctly entered into NetDMR.</p>
February 2022	<p>Chlorine usage always reported as same value.</p> <p>Chlorine usage not shown on benchsheet on 2 days, but reported on spreadsheet.</p> <p>Chlorine residual not shown on benchsheet on 2 days, but reported on spreadsheet.</p> <p>Weekly BOD/TSS concentrations and loading not correctly entered into NetDMR.</p> <p>Stream flow not shown on benchsheet on 3 days, but reported on spreadsheet.</p> <p>Effluent pH recorded as 9.1 on benchsheet on 2 days, reported on spreadsheet as '0.0' and '8.1'.</p> <p>Effluent flow, pH and temperature discrepancies between benchsheet and spreadsheet.</p>

## **Exhibit B**



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## MEMORANDUM

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DATE August 2, 2022

TO Becka Puskas ; DEQ  
Andy Ullrich ; DEQ  
Jon Gasik ; DEQ  
Mary Camarata ; DEQ

CC Jennifer Bragg ; City of Yoncalla

FROM Jesten Brenner, PE ; Dyer Partnership

PROJECT NAME Yoncalla Wastewater Facilities Plan – Collection System Improvements.

PROJECT NO. 142.13

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This Memorandum is provided in response to the Oregon Department of Environmental Quality's (DEQ) request to identify short term inflow and infiltration (I/I) projects for the City of Yoncalla's (City) collection system to mitigate infiltration and inflow.

The request noted that the following items are to be included in this report:

- Summarize existing information on collection system deficiencies.
- Recommend near term priority projects based on information available.
- Propose a budget of each of the recommended projects.

The planning and implementation of collection system improvements are a stipulation for DEQ to issue a Mutual Agreement and Order (MAO). The MAO is intended to resolve current and prior violations and to establish temporary wastewater discharge permit parameters that the City can achieve until a new wastewater treatment plant is constructed, or a new process is implemented. The findings of the Wastewater Facilities Plan (WWFP) that is currently in development will determine the most economical and feasible way for the city of Yoncalla to reach their National Pollutant Discharge Elimination System (NPDES) discharge permit limits.

### Section 1.0

Historically, the existing collection system has struggled with I/I and surcharging under heavy rain events. Between 2002 and 2011 the City of Yoncalla implemented a yearly lateral repair and replacement program and invested \$500,000 in 2006 for major repairs. Due to the efforts of the City, the amount of I/I was reduced by a measurable amount. However, during the information gathering phase of the previous Wastewater Facilities Plan (The Dyer Partnership, 2013), it was indicated that even after the repair and replacement efforts, both the inflow and infiltration rates are higher than the acceptable Environmental Protection Agency (EPA) criteria.

To identify the areas that contributed the most I/I, a smoke test and flow monitoring was performed. The smoke testing showed that the majority of possible sources were from open cleanouts. A number of service laterals were



also identified as potential sources as well as a small number of connected catch basins or leaking manholes. The flow monitoring tests indicated that I/I was occurring throughout the collection system but some areas were found to contribute a higher percentage. The cause of these contributions were leaking manholes, leaking lateral connections, and poor pipe conditions. These areas were the primary focus for the WWFP and the improvements proposed were meant to address these deficiencies.

Since the previous WWFP was published the only collection system improvement project that has been completed was the new sewer pump station on Halo Trail. This project replaced the wastewater treatment facility's influent pump station, and removed the undersized section of the gravity pipe that conveyed flow to the plant. The pump station's increased flow capacity helped immensely as the collection system no longer surcharges during high rainfall events.

The City has performed some TVing of the collection system but no other major improvements or repairs have been completed based on those findings. The results of the TVing confirmed much of the other findings from the previous smoke tests and flow monitoring. The most recent TVing records that were reviewed showed several instances of leaking joints, root intrusion, or other issues that can contribute to additional I/I. The areas of concern identified in the sewer line recordings are encompassed in the improvement projects identified in the previous WWFP.

## **Section 2.0**

Reviewing the data available provided sufficient information to develop a scope for the improvement projects. Since none of the recommended improvement projects from the WWFP were completed, the first phase of improvements should be similar in scope to those previously identified. Additional improvement project can be considered after these improvements are completed and the I/I reduction is determined.

There are a number of separate potential projects that the City could pursue and it is our opinion that the projects be combined into one to reduce costs for advertising and administration. The different aspects of the work are as shown below:

- Replacement or repair of four manholes.
  - Replace two manholes due to root intrusion and damaged bases.
  - Repair two manholes by re-grouting leaking pipe connections.
- Replacement of roughly 515 lineal feet of 8" gravity sewer lines.
  - These lines were identified to be in poor conditions and needed replacement.
  - Locations for pipe repair include the gravity sewer line in the alley between Anne St and Bridge St and a section of sewer pipe along 1<sup>st</sup> St between Alder and Eagle Valley Rd.
- Lining of 3,025 lineal feet of gravity sewer lines.
  - These lines were identified to be in poor condition and had leaking laterals.
  - Locations for lining include a section of Hayhurst Rd, Williams Rd, Applegate Ave, and the alley between Birch and Cedar.
- Additional Television evaluation of roughly 3800 lineal ft of gravity sewer lines.
  - Areas of evaluation include the higher potential I/I areas as determined in the previous WWFP. This will identify more possible issues that the City can focus their yearly I/I improvement efforts or additional infrastructure projects on.

The locations of the improvements are included in this document as Attachment B.

**Section 3.0**

The budget for the projects as listed in section 2.0 is \$562,800. This cost includes all engineering work (developing plans and specification and managing construction), contingencies, and administration costs. The breakdown of the associated costs are included in this document as Attachment A.

Any findings based on the television findings shall be used to develop yearly maintenance and repair plans and won't necessarily be incorporated into this projects' scope.

Feel free to contact me if you should have any questions.

END OF MEMORANDUM

## ATTACHMENT A

<b>City of Yoncalla</b>					July 7, 2022
<b>Construction Cost Estimate</b>					
<b>I/I Improvements</b>					
Item	Description	Unit	Quantity	Unit Cost	Total Cost
1	Constr. Facilities & Temp Controls	LS	1	\$ 42,000	\$ 42,000
2	Temporary Protection and Direction of Traffic	LS	1	\$ 8,000	\$ 8,000
3	Misc. Demolition & Site Preparation	LS	1	\$ 25,000	\$ 25,000
4	Foundation Stabilization	CY	50	\$ 50	\$ 2,500
5	8" Inversion Lining	LF	2775	\$ 75	\$ 208,125
6	Service Lateral Reinstatement	EA	15	\$ 600	\$ 9,000
7	8" Gravity Repair and Replacement - Class C backfill	LF	300	\$ 125	\$ 37,500
8	Additional Television inspection	LF	3775	\$ 5	\$ 18,875
9	Service Laterals	LF	300	\$ 75	\$ 22,500
10	Manhole Repair - Seeping Joint (1-18, 6-24)	EA	2	\$ 1,500	\$ 3,000
11	Manhole Replacement (4-3, 5-15)	EA	2	\$ 9,000	\$ 18,000
12	Drainage and Cleaning sumps	EA	4	\$ 1,250	\$ 5,000
13	Asphalt Pavement Repair and Replacement	TON	35	\$ 180	\$ 6,300
14	Landscaping	LS	1	\$ 5,000	\$ 5,000
				<b>Construction Subtotal</b>	<b>\$ 410,800</b>
				20% Engineering	\$ 82,000
				15% Contingency	\$ 62,000
				2% Administration	\$ 8,000
				<b>Construction Total</b>	<b>\$ 562,800</b>

### ATTACHMENT B

