

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

RECEIVED  
MAY 30 2023  
DEQ - Astoria

IN THE MATTER OF )  
CITY OF ESTACADA, ) MUTUAL AGREEMENT  
 ) AND FINAL ORDER  
 )  
PERMITTEE. ) CASE NO. WQ/M-NWR-2022-045

WHEREAS:

1. On November 6, 2010, the Department of Environmental Quality (Department or DEQ) issued National Pollutant Discharge Elimination System (NPDES) Waste Discharge Permit Number 101542 (Permit) to the city of Estacada (Permittee). The Permit authorizes the Permittee to construct, install, modify or operate wastewater treatment, control and disposal facilities (Facilities) and discharge adequately treated wastewaters into the Clackamas River, waters of the state, in conformance with the requirements, limitations and conditions set forth in the Permit. The Permit expired on September 30, 2015 but is administratively extended as Permittee made timely application for renewal.

2. Respondent has violated the Permit as follows:

Occurrence	Effluent Limit	Concentration in milligrams per liter (mg/L) or Loading in pound (lbs) or lbs/day
September 15, 2021	May 1 to October 31 Daily maximum ammonia concentration – 9.2 mg/L	10.4 mg/L
October 28, 2021	May 1 to October 31 Daily maximum ammonia concentration – 9.2 mg/L	13.3 mg/L
October 13, 2022	May 1 to October 31 Daily maximum ammonia concentration – 9.2 mg/L	17.3 mg/L

1	September 2021	May 1 to October 31 Monthly Average Ammonia Concentration – 3.6 mg/L	6.4 mg/L
2	October 2021	May 1 to October 31 Monthly Average Ammonia Concentration – 3.6 mg/L	10.3 mg/L
3	May 2022	May 1 to October 31 Monthly Average Ammonia Concentration – 3.6 mg/L	4.7 mg/L
4	June 2022	May 1 to October 31 Monthly Average Ammonia Concentration – 3.6 mg/L	4.3 mg/L
5	July 2022	May 1 to October 31 Monthly Average Ammonia Concentration – 3.6 mg/L	3.9 mg/L
6	October 2022	May 1 to October 31 Monthly Average Ammonia Concentration – 3.6 mg/L	10.5 mg/L
7	June 11, 2022	May 1 to October 31 Daily Maximum Chlorine Concentration – 0.10 mg/L	0.25 mg/L
8	December 21, 2021	November 1 to April 30 Daily Maximum TSS Loading – 180 lbs/d	214 lbs/d
9	January 5, 2022	November 1 to April 30 Daily Maximum TSS Loading – 180 lbs/d	239 lbs/d
10	November 22, 2022	November 1 to April 30 Daily Maximum TSS Loading – 180 lbs/d	288 lbs/d
11	Week of December 19, 2021	November 1 to April 30 Weekly Average TSS Loading - 135 lbs/d	201 lbs/d
12	Week of January 2, 2022	November 1 to April 30 Weekly Average TSS Loading - 135 lbs/d	189 lbs/d
13	Week of November 27, 2022	November 1 to April 30 Weekly Average TSS Loading - 135 lbs/d	166 lbs/d
14	Week of November 6, 2022	November 1 to April 30 Weekly Average TSS Loading - 135 lbs/d	256 lbs/d
15	January 2022	November 1 to April 30 Monthly Average BOD <sub>5</sub> loading - 90 lbs/d	94 lbs/d
16	November 2022	November 1 to April 30 Monthly Average BOD <sub>5</sub> Loading - 90 lbs/d	117 lbs/d
17	May 2022	May 1 to October 31 Monthly Average BOD <sub>5</sub> Loading – 45 lbs/d	64 lbs/d
18	January 15, 2022	November 1 to April 30 Daily Maximum BOD <sub>5</sub> Loading – 180 lbs	239 lbs
19	November 9, 2022	November 1 to April 30 Daily Maximum BOD <sub>5</sub> Loading – 180 lbs	256 lbs
20	Week of May 15 2022	May 1 to October 31 Weekly Average TSS Loading - 68 lbs/d	74 lbs/d
21	November 30, 2022	Daily Maximum <i>E. Coli</i> Bacteria Concentration – 406 organisms per 100 mL.	416 organisms per 100 mL
22			
23			
24			
25			
26			
27			

1 3. DEQ and Permittee recognize that until new or modified Facilities are constructed  
2 and put into full operation, Permittee may continue to violate the ammonia effluent limitations in  
3 the Permit.

4 4. DEQ and Permittee recognize that the Environmental Quality Commission has the  
5 authority to impose a civil penalty and to issue an abatement order for violations of conditions of  
6 the Permit. Therefore, pursuant to ORS 183.417(3), DEQ and Permittee settle those past  
7 violations referred to in Paragraph 2 by this Mutual Agreement and Order (MAO).

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

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

17  
18 FINAL ORDER:

19 The Environmental Quality Commission hereby enters a final order:

20 7. Requiring Permittee to comply with the following conditions:

21 A. By September 1, 2023, submit to DEQ for review and approval a Predesign  
22 Report for the city's new wastewater treatment plant.

23 B. Within 60 days of receiving DEQ comments on the Predesign Report, submit  
24 a revised Predesign Report consistent with DEQ comments.

25 C. By May 1, 2024, submit to DEQ for review and approval a Final Design  
26 Report for the new wastewater treatment plan.

27 D. Within 60 days of receiving DEQ comments on the Final Design Report,

1 submit a revised Final Design Report consistent with DEQ comments.

2 E. September 1, 2026, complete construction and commissioning of the new  
3 wastewater treatment plant in accordance with the approved Final Design.

4 F. Requiring Permittee to meet the following effluent limitations, measured as  
5 specified in the Permit, until September 1, 2026:

6 (1) Daily Maximum Ammonia Concentration as follows: During the  
7 months of September – 12.5 mg/L and October – 18.4 mg/L.

8 (2) Monthly Average Ammonia Concentration as follows: During the  
9 months of May – 6.7 mg/L, June – 5.3 mg/L, July 4.9 mg/L, September 11.8 mg/L and October –  
10 16.9 mg/L.

11 G. Requiring Permittee, upon receipt of a written Penalty Demand Notice from  
12 DEQ, to pay the following civil penalties:

13 (1) \$600 for each day of violation of the corrective action schedule set  
14 forth in Paragraphs 7.A-E, above.

15 (2) \$300 for each exceedance of an interim effluent limit in Paragraph 7.F,  
16 above.

17 H. Requiring Permittee to pay a total civil penalty of \$4,825 for the violations  
18 listed in Paragraph 2, above. The civil penalty calculations are attached as Exhibits 1-3.

19 I. In accordance with DEQ's Internal Management Directive on Supplemental  
20 Environmental Projects (SEPs), DEQ agrees to mitigate the \$4,825 civil penalty to \$965 on the  
21 condition Respondent completes the attached approved SEP by October 1, 2023. Respondent  
22 agrees to refrain from using the value of the SEP as a tax deduction or as part of a tax credit  
23 application; and, whenever Respondent publicizes the SEP or the results of the SEP, Respondent  
24 will state in a prominent manner that the project was undertaken as settlement of a DEQ  
25 enforcement action. Respondent will be deemed to have completed the SEP when DEQ receives  
26 the following documentation: A report from Antfarm, Inc., confirming that it received at least  
27 \$3,860 from Respondent and expended the money as described in the SEP proposal. The portion of

1 | the civil penalty not subject to mitigation through the SEP must be paid when Respondent submits  
2 | this MAO to DEQ for signature. Payment must be made by check or money order payable to  
3 | "State Treasurer, State of Oregon" and send it to the DEQ, Revenue Section, 700 NE Multnomah  
4 | Street, Suite 600, Portland, Oregon 97232.

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

19 |       9. Effluent limit violations referred to in Paragraph 3 that do not exceed the interim  
20 | effluent limits in Paragraph 7.F will be addressed per DEQ's Enforcement Guidance Internal  
21 | Management Directive in effect at the time of the violation.

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

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

1 12. Regarding the schedule set forth in Paragraphs 7.A-E, above, Permittee  
2 acknowledges that Permittee is responsible for complying with that order regardless of the  
3 availability of any federal or state grant monies.

4 13. The terms of this MAO may be amended by mutual agreement of the Department  
5 and Permittee.

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

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

16 16. All reports, notices and other communications required under or relating to this  
17 MAO should be directed to Mike Pinney, Water Quality Section, DEQ Northwest Regional  
18 Office, 700 NE Multnomah Street, Suite 600, Portland, OR 97232, 503-229-5310. The contact  
19 person for Permittee shall be Melanie Wagner, City Manager, City of Estacada, PO Box 958,  
20 Estacada, OR 97023, 503-630-8275.

21 17. Permittee acknowledges that it has actual notice of the contents and requirements of  
22 this MAO and that failure to fulfill any of the requirements hereof will constitute a violation of  
23 this MAO and subject Permittee to payment of civil penalties pursuant to Paragraph 7.G, above.

24 18. Any stipulated civil penalty imposed pursuant to Paragraph 7.G shall be due upon  
25 written demand. Stipulated civil penalties shall be paid by check or money order made payable  
26 to the "Oregon State Treasurer" and sent to: Business Office, Department of Environmental  
27 Quality, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232. Within 20 days of

1 receipt of a "Demand for Payment of Stipulated Civil Penalty" Notice from DEQ, Permittee may  
2 request a hearing to contest the Demand Notice. At any such hearing, the issue shall be limited  
3 to Permittee's compliance or non-compliance with this MAO. The amount of each stipulated  
4 civil penalty for each violation and/or day of violation is established in advance by this MAO  
5 and shall not be a contestable issue.

6 19. This MAO terminates on September 1, 2026. However, Permittee remains liable  
7 for stipulated penalties for any violations of the MAO occurring during the period the MAO was  
8 in effect and demanded pursuant to Paragraph 18.

9  
10 CITY OF ESTACADA

11  
12 May 25, 2023 Melanie Wagner  
13 Date Melanie Wagner  
14 City Manager

15  
16 **DEPARTMENT OF ENVIRONMENTAL QUALITY**  
17 **and ENVIRONMENTAL QUALITY COMMISSION**

18 6/2/2023  
19 Date 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  
27