

Metropolitan Wastewater Management Commission



W.G.C.

partners in wastewater management

MEMORANDUM

DATE: May 13, 2008

TO: Board of Lane County Commissioners

FROM: Susie Smith, MWMC General Manager
Peter Ruffier, Wastewater Division Director

SUBJECT: RESPONSES TO COMMISSIONER'S REQUESTS FOR INFORMATION RELATED TO RATIFICATION OF THE METROPOLITAN WASTEWATER MANAGEMENT COMMISSION (MWMC) FY 08-09 REGIONAL WASTEWATER PROGRAM BUDGET AND CAPITAL IMPROVEMENTS PROGRAM (CIP).

ISSUE

On May 7th, staff and MWMC President Stewart presented the MWMC FY 08-09 Regional Wastewater Program Budget and CIP to the Board for consideration. Board ratification of the document is an annual obligation under the MWMC intergovernmental agreement (IGA). Board members asked a series of questions and requested that additional information be brought back for further consideration prior to Board action on the Budget and CIP. A follow-up meeting to discuss the additional action is scheduled for May 14, 2008. Responses to each of the expressed areas of concern or questions are provided below.

DISCUSSION

ISSUE 1: LANE COUNTY FAIRGROUNDS STORMWATER MANAGEMENT

Please see "Attachment A" to this cover memo, which provides a summary memo from Peter Ruffier, a Memorandum of Understanding between the City of Eugene and the Lane County Fairground Administration, and a 2001 City of Eugene memo that conveys staff's review of the Fairgrounds stormwater pollution plan and on the feasibility of diverting contaminated runoff to the wastewater collection system.

ISSUE 2: MWMC SDCs, ADEQUACY OF REVENUES TO ACHIEVE "FULL COST RECOVERY," AND REQUEST FOR MODIFICATION TO THE BUDGET TO DIRECT MWMC TO EVALUATE THE SDC METHODOLOGY IN FY 08-09.

Concerns were raised at the May 7th Board of Commissioners meeting that projected SDC revenues will not be adequate to fund SDC eligible capital expenditures after 2010. It was

requested that staff return with language modifying the Budget and CIP document to reflect that the MWMC will re-evaluate the SDC methodology in FY 08-09. This evaluation will determine changes that can be made to achieve the objectives of the Governing Bodies for full cost recovery and that fees and charges be established equitably, including equity between existing users of the system and future users of the system.

Two options have been prepared for Board consideration. Option One would be carried out through the Board Order, and then considered by the MWMC at its meeting on June 5th, at which time the final adoption of the FY 08-09 Budget and CIP is scheduled to occur. The Board direction would be included in the proposed resolution adopting the Budget and CIP. A revised draft Board Order is presented as "Attachment B" for the Board's consideration. Option One would require follow-up action only by the MWMC to finalize the Budget and CIP adoption process.

Option Two would be to request that the MWMC and the Governing Bodies modify the text of the FY 08-09 Budget and CIP to incorporate the Board's requested re-evaluation of the SDC methodology. Staff has identified page 23 of the Budget and CIP document under the SDC Reserves section as a potential appropriate location for such a "budget note." A suggested note would be:

"Note: During FY 08-09, the MWMC will re-evaluate the SDC methodology, which was last updated in 2004 for revenue adequacy and to determine whether the methodology fully meets the financial planning objectives of the MWMC 2005 Financial Plan and the MWMC IGA."

If the Board elects to pursue Option Two, the IGA provides for referral back to the MWMC for reconsideration. If the revision is acceptable to MWMC, the revised budget would be referred back to the Governing Bodies again for re-ratification. The next MWMC meeting is set for June 5th, which does not provide adequate time to conduct the referral process exactly as contemplated in the IGA.

In order to make Option Two work, staff would pursue a slightly modified referral process. Staff would prepare amended materials reflecting the Board's requested text revision for consideration by the two City Councils. If approved by the Councils, the proposed revision would be submitted to the MWMC for consideration on June 5th. If any of the Governing Bodies or the MWMC were to fail to enact the County-requested revisions, the dispute resolution process outlined in the IGA would be triggered.

Options One and Two would achieve the same objective. Option Two would add complexity and additional approval steps to the Budget and CIP adoption process. It also should be noted that the MWMC already has begun the SDC methodology review process, for the same reasons that have been raised by the Board of County Commissioners. The scope of work and contract for consulting services is being developed and the work is anticipated to begin this June. For these reasons, staff to the MWMC are recommending that the Board of Commissioners give consideration to Option One, reflected in the proposed revised Board Order (Attachment B).

ISSUE 3: OREGON RIVERWATCH (ORW) LITIGATION.

A series of questions was asked regarding the ORW litigation related to the nature of the

settlement, costs, and whether either party prevailed and why. "Attachment C" includes a copy of the Settlement Agreement, which was agreed to by the parties and approved by the Judge. The plaintiffs in the case claimed that the MWMC and the two Cities had violated the Clean Water Act by violating some of the discharge and reporting requirements in our National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit in several instances between 2000 and 2006 related to sanitary sewer overflows (SSOs). MWMC and the Cities vigorously deny that violations of the NPDES permit or the Clean Water Act have occurred, and the Department of Environmental Quality (DEQ) supported our defense and assisted in the settlement discussions on our behalf. The defendants' decision to settle was based on practical considerations regarding the costs of defending the case at trial. The legal costs for MWMC, Eugene and Springfield were estimated at \$319,000.

Also included in "Attachment C" is a copy of an Environmental Protection Agency (EPA) Request for Information and Compliance Order (Order) that was received by the MWMC on March 6, 2008. This Order claims several unauthorized discharges of raw sewage to waters of the United States from manholes along the collection system. The Order requires, among other things, that MWMC and the Cities "fully complete" the Wet Weather Flow Management Plan by January 1, 2010. While this Order is not appealable, our tracking and reporting shows some limited raw sewage discharges to the Willamette River from these manhole overflows during three large winter storm events. Under the circumstances, all were unavoidable and none had an adverse environmental impact. The Cities and the MWMC continue to work on the sewer system rehabilitation and treatment plant upgrades necessary to fully complete the WWFMP and comply with the deadline in the Order.

ISSUE 4: SPRINGFIELD UTILITY BOARD (SUB) ACCOUNT PROCESSING FEE.

A question was raised regarding the nature of the \$15 "processing fee" on the SUB monthly bill. SUB was contacted and confirmed this is a one-time fee for services related to starting up a new electric service or switching to a new customer. It is called an "account processing charge" and it relates to SUB's electrical portion of the bill. It is not related to City of Springfield or MWMC wastewater charges in any way. "Attachment D" is SUB's information on rates, policies and account start-ups.

REQUESTED ACTION

The Board of Commissioner is requested to ratify the FY 08-09 MWMC Budget and CIP either by approval of the Board Order included in the Board's May 7th meeting agenda packet or the revised Board Order included with this memo as Attachment B.

ATTACHMENT A

MEMORANDUM




Public Works
Wastewater Division

City of Eugene
410 River Avenue
Eugene, Oregon 97404
(541) 682-8600
(541) 682-8601 FAX

Date: May 12, 2008

To: Lane County Board of Commissioners

From: Peter Ruffier 
Director, Wastewater Division, City of Eugene

Subject: Lane County Fairgrounds Stormwater Management

This memo is provided in response to questions raised by the County Board of Commissioners regarding the discharge of stormwater from the Lane County Fairgrounds into the City of Eugene's sanitary sewer system.

Background

On May 7, 2008 the FY09 budget for the Metropolitan Wastewater Management Commission (MWWC) was presented to the County Board of Commissioners for ratification. During the Commissioner's discussion of the budget questions were asked about management of stormwater from the Lane County Fairgrounds- questions specifically related to the ability of the MWWC and the City of Eugene to accept stormwater from the Fairgrounds into the sanitary sewer system on a year-round basis.

Discussion

The Lane County Fairgrounds is located within the City of Eugene, and therefore falls under the City's stormwater management program as authorized by the Oregon Department of Environmental Quality via a NPDES stormwater permit issued pursuant to the federal Clean Water Act. In June, 2000 the Lane County Fairgrounds Administration and the City of Eugene signed a specific Memorandum of Agreement for management of stormwater from the Fairgrounds site. This agreement allowed for the discharge of contaminated stormwater from a portion of the Fairgrounds site to the City's sanitary sewer system during the period of June to September every year. In May, 2006 this time period was extended by two months at each end in response to a request from the Lane County Fairgrounds Director, thereby allowing for discharges to the local sanitary sewer system during May to October.

Under the applicable regulations of the Clean Water Act and the City's stormwater program, stormwater management at the Fairgrounds has historically been, and will continue to be, a matter for coordination between the City and the Fairgrounds Administration. The City of Eugene is charged with regulatory oversight of stormwater from the Fairgrounds under the auspices of the City's NPDES stormwater permit. The City also has operational and regulatory responsibility for the local sanitary sewer system, and any agreements for discharge of stormwater to the sanitary sewer system must be developed within the conditions and obligations the City has as a co-permittee to the NPDES wastewater permit for the regional wastewater program. Issues related to stormwater management at the County Fairgrounds are therefore a local matter not directly related to the regional wastewater program budget.

Historical Background

In 1995, citizen complaints about polluted discharges from the Fairgrounds to the Amazon Creek prompted discussions between the City and the Fairgrounds staff about stormwater management practices. Water quality samples taken at the time indicated severe contamination of the wash water and stormwater from the Fairgrounds reaching the Amazon. An ongoing series of complaints and ineffective site management practices over several years lead to a draft Notice of Violation from the City to the Fairgrounds in August of 1999. In May of 2000 the Sierra Club and CPA filed a notice of intent to sue the Fairgrounds under the citizen's lawsuit provisions of the Clean Water Act. The City and the Fairgrounds signed a Memorandum of Understanding in June 2000 in which the Fairground's Administration committed to the development and implementation of a stormwater pollution prevention plan for the Fairgrounds site. The plan was subsequently approved by the City in October of 2001, including the recommendation of structural improvements that would allow for stormwater discharges to the public wastewater system in conjunction with animal events occurring between June 15th and September 15th in any year.

Under the General Discharge Prohibitions in the wastewater section of the Eugene City code stormwater is not allowed to be discharged into the sewer system. In the approval letter from the City to the Fairgrounds Director, the City outlined the context and conditions for allowing an exemption from this prohibition for stormwater discharges from the Fairgrounds to the sanitary sewer system:

As required by the DEQ, under the NPDES permit for the Eugene/Springfield Water Pollution Control Facility the City of Eugene is charged with the responsibility of reducing the inflow and infiltration problems within its local wastewater collection system. Therefore the City will only authorize stormwater discharges to the wastewater collection system in those limited circumstances where they provide important environmental and/or public health benefits, where they may be highly controlled, and where volume is minimized to only that necessary to satisfy the intended purpose. Within this context the City is willing to authorize limited stormwater discharges from the Fairground to the public wastewater system during the dry weather period of June 15th through September 15th. Such authorization is for the purpose of protecting water quality in Amazon Creek, addressing documented stormwater pollution problems associated with previous Fairground animal events, and is to acknowledge the inherent Fairground site design constraints that limit prevention of contaminated runoff to the stormwater system via other means. To this end, the City will require that such a collection system be designed to separate all contaminated runoff from uncontaminated runoff by diverting from this system all roof drains and other impervious areas not associated with animal activity. The City will also require that this system be designed to capture all runoff from those areas where animals may traverse, feed, unload, be washed, or may otherwise be present such that fecal material and urine could be transported by any means to the stormwater collection system. It must also incorporate measures that allow for continuous flow monitoring.

In its approval of the Stormwater Pollution Prevention Plan for the Fairgrounds, the City also presented the reasons for not allowing stormwater discharges to the local sanitary sewer system during the wet weather periods of the year. Primary among the reasons listed was limited hydraulic capacity of the local sewers to accept additional volumes of non-sanitary water without "exacerbating the existing basement flooding and surcharging problems" in this area of the wastewater system.

Options

The wet weather hydraulic capacity of the local sanitary sewer system was reassessed in 2006 in response to a request from the Fairgrounds Director to expand the operating period for discharges of stormwater to the sanitary system. Although \$500,000 had been invested over the intervening years by the City in improving the performance of the local sanitary collection system and containing and minimizing basement flooding, field observations and hydraulic modeling results confirmed that there is a continuing capacity problem in this area.

Excessive peak flow loadings to the sewer system during wet weather have long been an issue in the Eugene/Springfield area. In February of 2000 the MWMC adopted (and Eugene and Springfield Councils ratified) a Wet Weather Flow Management Plan (WWFMP) which outlined the activities and obligations of the regional wastewater partners to evaluate their sewer systems and maintain the systems to control inflow and infiltration (I/I). The U.S. EPA recently issued an Administrative Order to the MWMC and cities of Eugene and Springfield prohibiting sewer overflows and requiring completion of the commitments made in the Wet Weather Flow Management Plan. Pursuant to this Plan the City of Eugene invests approximately \$2 million per year in general sewer system assessment and rehabilitation directed at maintaining pipe integrity and reducing I/I. It is counterproductive to this investment to allow direct discharges of stormwater to the system. The EPA order also raises the legal and regulatory liability level for any sewer overflows.

For the reasons cited above, the options available to the Fairgrounds for extended animal events or operations through the wet weather periods of the year are limited to preventing stormwater from coming into contact with polluted materials, or to internally managing stormwater treatment. These options have been the subject of considerable study by the Fairgrounds Administration and others. Several consultants have been commissioned to evaluate pollution prevention and treatment strategies for stormwater from the Fairgrounds, and their findings are available in reports generated for the Fairgrounds and by the Horse, Animal, and Livestock Association (HALA). The strategies include roofing the livestock areas to prevent stormwater from reaching contaminated surfaces; on-site stormwater treatment via septic systems, wetland treatment, or an on-site treatment plant; and off-site treatment by trucking contaminated stormwater to a remote treatment facility. Estimates of the capital costs for these various strategies ranged from \$400,000 to nearly \$20 million, with operating costs highly variable depending upon which strategy was evaluated. Any decision by the Fairgrounds to implement one of these options would trigger a review and modification of the approved Stormwater Pollution Prevention Plan for the Fairgrounds.

Conclusion

Management of stormwater from the Lane County Fairgrounds falls under the City of Eugene's NPDES permit for stormwater. The current MOU for stormwater management between the City and the Fairgrounds allows for the discharge of contaminated stormwater from the Fairgrounds to the local sanitary sewer system within the period of May 15 to October 15 annually. This period cannot be extended due to limitations in the hydraulic capacity of the local sewer system. Options available to the Fairgrounds for extension of animal events and operations through the wet weather periods of the year include redirecting stormwater to prevent its pollution, or various approaches for on-site or off-site treatment. The capital costs for these options have been estimated to range from \$400,000 to nearly \$20 million.

Attachments

Memorandum of Understanding Between the Lane County Fairground Administration and the City of Eugene for Development and Implementation of a Stormwater Pollution Prevention Plan for the Lane County Fairgrounds.

Letter to Mike Gleason, Fairgrounds Director, re: City Staff Review of Second Draft Stormwater Pollution Prevention Plan and Information on Feasibility of Diverting Contaminated Storm Runoff to the Public Wastewater Collection System (October 8, 2001).

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE LANE COUNTY FAIRGROUND ADMINISTRATION
AND
THE CITY OF EUGENE
FOR
DEVELOPMENT AND IMPLEMENTATION OF A
STORMWATER POLLUTION PREVENTION PLAN
FOR
THE LANE COUNTY FAIRGROUNDS**

I. PURPOSE

The purpose of this memorandum is to document the understanding between the Lane County Fairground Administration and the City of Eugene regarding the prevention, correction, and enforcement of contaminated stormwater discharges at the Lane County Fairgrounds as a result of Fairgrounds operations and practices (as opposed to contaminated stormwater from neighboring properties coming on to the Fairgrounds); and the roles and responsibilities in the development, review, and implementation of a stormwater pollution prevention plan for all facilities, events, activities and operations at the Lane County Fairgrounds.

II. BACKGROUND

Over the past six years City of Eugene stormwater discharge compliance staff have documented numerous releases of contaminants to the private stormwater system of the Lane County Fairgrounds. These releases resulted from both operations and maintenance practices employed by fairground's staff as well as from activities and practices employed by users of the fairground's facilities. Examples include chemical-laden runoff from melting ice, paint, animal wastes, fire suppressant foam, detergents, and sanitary waste from mobile living trailers. Since the fairground's stormwater system outlets to Amazon Creek at multiple locations, these contaminants were released, either immediately or over an extended time frame, into the creek in direct violation of Eugene Municipal Code.

As part of their follow up to these releases, City of Eugene stormwater discharge compliance staff have attempted to work cooperatively with Fairground's operations staff in identifying practices and measures to prevent additional discharge violations. This has included instructing fairground's staff on the proper use and cleanup of the bi-valved animal wash stations. Both of these station require a level of initial manual operation in order to properly direct animal wash water to the wastewater system rather than to the stormwater system. However, despite these educational efforts, City staff have continued to document contaminated discharges to Amazon Creek from both operational site practices and improper operation of the wash stations.

In response to a public complaint, City of Eugene staff inspected stormwater facilities at fairground's on July 2, 1999, and again on July 13, 1999. During these inspections, City staff documented seven separate violations of Eugene Municipal Code 6.466(3). These included flushing contaminants from a small riding sweeper directly into a storm drain, discharging an unknown white substance to

Amazon Creek as a result of improper operation of one of the bi-valved wash stations, and discharging bacteria laden wash water as a result of improper operation of the other bi-valved wash station. In addition to the inspections, City staff also collected water samples from the discharge point of one of the bi-valved wash stations on July 16, 1999. Laboratory testing of the collected samples revealed the following level of contaminants.

Test	Results	Comments
Ammonia	1.4 mg/L	EPA considers anything > 1 mg/L "high"
Fecal Coliform	>600,000 per 100 mL	i.e. too numerous to count
E-Coli	1300 per 100 mL	
BOD	180 mg/l of Oxygen used per liter of this waste in 5 days	Raw sewage coming into the treatment plant averaged 100 mg/l (5 days) during May
Total phosphorus	4.6 mg/L	EPA Region 10 guidance level for surface waters is .1 mg/L.
Total Suspended Solids	320 mg/L	

According to established procedures for the enforcement of violations of section 6.446(3) of Eugene Municipal Code, City of Eugene stormwater discharge compliance staff prepared documents for the assessment of \$2000 in civil penalties for the seven violations documented on July 2, 1999, and July 13, 1999. Senior managers from the City of Eugene's Public Works Department then met with Lane County Fairgrounds managers on August 9, 1999 for the purpose of discussing these most recent violations, the possible assessment of civil penalties, and the recurring discharge compliance problems at the Fairgrounds. This Memorandum of Understanding is the product of that meeting.

III. PERTINENT FACTS

1. Section 6.446 (3) of the Eugene Municipal Code prohibits discharge into the city stormwater system of any substance other than stormwater, except discharges resulting from emergency fire fighting activities or authorized by written approval of the City Manager or designee.
2. The City of Eugene has the administrative authority to take enforcement action in the form of citations and assessment of civil penalties for violations of Municipal Code requirements.
3. The City of Eugene stormwater discharge compliance staff documented seven separate violations of Eugene Municipal Code 6.446 (3) resulting from operations and events at the Fairgrounds on July 2, 1999, and July 13, 1999.
4. These violations carried possible civil penalties against the Lane County Fairgrounds Administration in the amount of \$2000.
5. The Lane County Fairgrounds Administration acknowledges the existence of the documented violations and the seriousness of the recurring contaminated discharges to Amazon Creek.
6. On August 9, 1999, the Lane County Fairground Administration and the City of Eugene verbally agreed to enter into this Memorandum of Understanding regarding the assessment

of civil penalties and necessary actions for the prevention of additional contaminated stormwater discharges at the Fairgrounds.

IV. TERMS OF UNDERSTANDING

The City of Eugene and the Lane County Fairground Administration mutually understand the following.

1. The City will suspend the assessment of administrative civil penalties in the amount of \$2000 against the Lane County Fairground Administration for the stormwater discharge violations documented on July 2, 1999, and July 13, 1999.
2. In lieu of the assessment of the aforementioned administrative civil penalties, the City of Eugene and the Lane County Fairground Administration agree to the following responsibilities and requirements in order to prevent additional discharge of pollutants to the City stormwater system from facilities, events, activities and operations at the Lane County Fairgrounds.
 - a. Within one month of the effective date of this memorandum the Lane County Fairground Administration will obtain the services of a professional water quality consultant for the purpose of developing a stormwater pollution prevention plan for the Lane County Fairgrounds.
 - b. Within 3 months of the effective date of this memorandum the Lane County Fairground Administration will submit a draft stormwater pollution prevention plan to City of Eugene stormwater discharge compliance staff for their review and comment. At a minimum, this plan must address the requirements contained in Appendix A including the following areas of concern:
 - (1) animal washing activity and proper use/clean-up of the existing wash stations (including the possibility of permanently covering these and routing drainage to the wastewater system),
 - (2) vehicle or equipment washing/cleaning/servicing to on-site storm drains by Fairgrounds staff, event participants, or other users of the facility,
 - (3) impacts to the stormwater drainage system from storing new and used animal bedding,
 - (4) relocation of hose-bibs to the interior of the equestrian barn and the elimination of storm drains at existing hose-bib locations at equestrian barn,
 - (5) accumulation of manure and animal care related materials in or near storm drains to prevent bacteria contaminated discharges from these drains and,
 - (6) a stormwater drainage system maintenance schedule designed to reduce polluted discharges.
 - c. Upon approval and acceptance of the draft plan by City staff, Lane County

Fairground Administration will incorporate it as part of the Fairground's operating policy, and begin to immediately implement the provisions of the plan as specified.

d. The Lane County Fairground Administration will grant City of Eugene stormwater discharge compliance staff access to Fairgrounds facilities at all reasonable times in order to inspect the Fairground's stormwater system. These inspections will be for the express purpose of monitoring use of the Fairground's stormwater system as well as the impacts of that use. These inspections may involve the collection of stormwater samples for laboratory testing.

e. Due to an Intergovernmental Agreement between the City and County, some construction projects for the County, unlike other construction projects, are not routinely reviewed by City stormwater staff. Therefore, when any proposed construction or revision to Fairground's infrastructure or facilities pose the possibility for either positive or negative impacts to the public stormwater system, the Lane County Fairground Administration will notify City of Eugene stormwater discharge compliance staff of the proposed changes. At that time, the Lane County Fairground Administration will provide City stormwater discharge compliance staff reasonable opportunity to review plans for the proposed work. This notification and plan review shall take place prior to or at the same time as other required permitting and review processes.

f. For known sources of stormwater pollution at the Fairgrounds, the City will allow Lane County Fairgrounds Administration reasonable opportunity to correct the problems. Fairground's operations staff will provide City of Eugene stormwater discharge compliance staff with documented and conclusive evidence that the problems have been corrected.

g. City of Eugene stormwater discharge compliance staff will notify Fairground's operations staff as soon as possible after receipt of any complaint regarding improper stormwater discharges at the Fairgrounds.

3. Neither this memorandum nor the suspended assessment of civil penalties for the seven stormwater discharge violations shall preclude City enforcement actions against the Lane County Fairground Administration for any future stormwater discharge violations at the Fairgrounds. This includes the possible assessment of administrative civil penalties.

4. At the completion of the first year after this MOU is signed, the Fairgrounds shall prepare and forward to the City a report that includes the following information:

- a. information on educational efforts accomplished,
- b. known spills or releases to the stormwater system,
- c. how known spills or releases were mitigated,
- d. efforts taken, or to be taken, to ensure similar spills or releases are prevented,
- e. Best Management Practices (BMPs) currently in use at the facility,
- f. evaluation of the success of such BMP's and how this was measured,

g. any proposed changes to the Stormwater Management Pollution Prevention Plan.

Beginning at the end of the second year after this MOU is signed, the Fairgrounds shall meet annually with the City to review the implementation measures called for by this MOU. This annual review shall continue until the both parties agree that the review no longer is necessary.

V. EFFECTIVE DATE

This Memorandum of Understanding is effective when signed by both parties.

LANE COUNTY
FAIRGROUND ADMINISTRATION

CITY OF EUGENE
PUBLIC WORKS DEPARTMENT

Mike Gleason
Lane County Fairgrounds Director

Christine Andersen
Director of Public Works

Date

Date

4. Develop guidelines, establish practices and procedures, and establish an implementation schedule for a stormwater pollution prevention education program for Fairground's vendors, contractors, and organizers/sponsors. At a minimum this education program should include:
 - a) development of an information sheet or other materials about Fairgrounds stormwater pollution prevention requirements and the consequences for discharge violations,
 - b) demonstration of a mechanism for the dissemination of the information sheet or other materials to Fairgrounds vendors, contractors, and event organizers or sponsors,
 - c) posting of informational signs at all animal washing facilities and animal bedding storage areas describing their proper use/clean-up requirements,
 - d) permanent markers at, or the establishment of a schedule for recurring temporary marking of, on-site stormwater drains with a clear and easily readable pollution prevention message.

5. Include guidelines and establish procedures to notify appropriate agencies, including City of Eugene stormwater discharge compliance staff, for spills or other unforeseen incidents at the Fairgrounds facility. Such notification should be required for all incidents that may result in an improper discharge to the public stormwater system, including Amazon Creek.



October 8, 2001

City of Eugene
858 Pearl Street
Eugene, Oregon 97401
(541) 682-5262
(541) 682-6826 Fax

Mr. Mike Gleason
Director
Lane County Fairgrounds
796 W 13th Ave.
Eugene, OR 97402

RE: City Staff Review of Second Draft Stormwater Pollution Prevention Plan and Information on Feasibility of Diverting Contaminated Storm Runoff to the Public Wastewater Collection System

Dear Mike,

Thank you for submitting the second draft of a Stormwater Pollution Prevention Plan for the Lane County Fairgrounds. More comprehensive and detailed than the initial draft, this most recent submittal demonstrates the Fairground Administration's good faith in continuing to develop a stormwater pollution prevention plan as stipulated in the Memorandum of Understanding (MOU) between the City and the Lane County Fairground Administration of June 22, 2000. This letter is to provide you with City staffs' comments and suggestion regarding this latest draft of the plan as well as to provide the additional information you requested at your August 2nd meeting with the City Manager and Eugene Public Works managers.

Staff Review of Draft Stormwater Pollution Prevention Plan

Your June 15, 2001, submittal of two copies of the second draft to Public Works Maintenance Division staff honors the MOU commitment for the Fairground Administration to submit subsequent drafts of this plan to the City's stormwater discharge compliance staff for their review and comment. City staff have completed their review and feel that this second draft addresses the City's primary concerns with the initial draft and that it also incorporates almost all of staffs' suggestions for improvement. Although staff see this second draft as being very close to complete, they have identified several areas where minor development or detail is needed to fulfill the requirements of the MOU. Attachment A, *Staff Comments - Second Draft Stormwater Pollution Prevention Plan for Lane County Fairground*, lists staff comments and suggestions for your use toward refining the second draft into final plan form.

Feasibility of Storm Runoff Discharges to the Public Wastewater Collection System

After review of your draft plan, it is our opinion that the activities listed under the sub-section Structural BMP's would allow stormwater discharges to the public wastewater collection system in conjunction with specific animal events at the Fairground. In reference to the June 8th Interim Recommendation memorandum from the Fair Board's Animals-on-the-Fairgrounds Subcommittee, these specific animal events would be limited to a "dry period" from June 15th through September 15th, which would normally include both the 4H/FFA and Lane County Fairs. Such discharges would further be subject to City of Eugene approval and contingent upon the construction and appropriate operation of all necessary valving, collection, pumping, and flow monitoring systems.

As required by the DEQ, under the NPDES permit for the Eugene/Springfield Water Pollution Control Facility the City of Eugene is charged with the responsibility of reducing inflow and infiltration problems within its local wastewater collection system. Therefore, the City will only authorize stormwater discharges to the wastewater collection system in those limited circumstances where they provide important environmental and/or public health benefits, where they may be highly controlled, and where volume is minimized to only that necessary to satisfy the intended purpose. Within this context the City is willing to authorize limited stormwater discharges from the Fairground to the public wastewater system during the dry weather period from June 15th through September 15th. Such authorization is for the purpose of protecting water quality in Amazon Creek, addressing documented stormwater pollution problems associated with previous Fairground animal events, and is to acknowledge the inherent Fairground site design constraints that limit prevention of contaminated runoff to the stormwater system via other means. To this end, City will require that such a collection system be designed to separate all contaminated runoff from uncontaminated runoff by diverting from this system all roof drains and other impervious areas not associated with animal activity. The City will also require that this system be designed to capture all runoff from those areas where animals may traverse, feed, unload, be washed, or may otherwise be present such that fecal material and urine could be transported by any means to the stormwater collection system. It must also incorporate measures that allow for continuous flow monitoring.

It is the City's understanding that Fairgrounds management has commissioned URS Engineers to design the above referenced system. Upon review and acceptance of the system design by City staff, a connection will be allowed to the 36" diameter public wastewater main crossing the Fairground from east to west. Upon construction of the system as designed, the City will then generally authorize discharges during the above mentioned "dry period". However, there are specific limitations constraining the Fairground's discharge of stormwater to the wastewater system during the wet weather period of the year. As such, authorization for the generalized utilization of this new system during the remainder of the year will not be granted for the following reasons:

a) Hydraulic Limitation of the Public Wastewater Collection System During Wet Weather Periods (September 15th to June 15th)

The public wastewater collection line serving the Fairgrounds is a 36" diameter pipe with flow east to west across the property. This line tees at a manhole just west of the Fairgrounds at the intersection of 15th Ave. and Tyler St., where the flow then enters a 42" diameter line extending north along Tyler St. Upstream of this manhole a 24" diameter line collects discharge from the residential neighborhoods as far south of the Fairgrounds as 29th Ave.

During certain moderate or high rainfall storm events, the City has experienced significant surcharging problems in both the 42" and 24" diameter pipe systems in the aforementioned area. Problems have included private residence basement flooding, and surcharging manholes resulting in discharges to the street and discharges to the stormwater system at the old 10th & Tyler overflow site. To protect public health as well as to comply with NPDES permit requirements, the City has embarked on a number of projects over the past 5 years to both contain and minimize these problems. Improvements have included upgrading the Fillmore Pump Station, elimination of the 10th & Tyler overflow weir, construction of a by-pass line west of Tyler St along 14th Ave, and completion of several significant local system line rehabilitation projects. These projects have

represented well over \$500,000 of public investment in improving the performance of this system. However, despite the completion of these improvements, both field observations and hydraulic modeling results confirm there is a continuing capacity problem in this area. During normal wet weather operations there is no appreciable system capacity for handling stormwater runoff without exacerbating the existing basement flooding and surcharging problems. As such, the City will not authorize stormwater discharges to this basin during the aforementioned wet weather period.

b) Land Use Issues Related to Wet Weather Period Operations

Assuming for a moment that there was some measure of additional wet weather capacity in the wastewater systems upstream and downstream of the Fairground, the City would require the construction of some form of stormwater holding facility prior to authorizing any wet weather period discharges. This facility, such as a lagoon, would temporarily store the contaminated runoff allowing it to be discharged later, under controlled conditions based on the available capacity in the system. This would prevent peak storm flows from overloading the wastewater system during maximum capacity conditions. In this regard, the City would not authorize any facility improvement that was incapable of completely collecting and holding all runoff from those animal use areas described previously in this memo.

In order for the Fairground to construct a holding facility, such as lagoon, that could temporarily store contaminated stormwater runoff to allow for the delayed release to the public wastewater collection system, the following City land use and nuisance code provisions will need to be addressed:

1. *On-site Parking Requirements* - Land use code provisions specify the conditions, the number, and the type of on-site parking spaces required for PL zoned regional destination property such as the Fairgrounds. In order to construct any new facilities that would have an impact on existing on-site parking, the Fairgrounds would need to perform a comprehensive parking analysis using methodology established in the recently adopted Land Use Code Update. This would entail documentation of the net loss of existing spaces created by proposed new construction, including additional spaces that may be required as a result of new facilities, and a plan for mitigating for any net loss through the construction of additional spaces or by other means provided for by code. Planning and Development Department records indicate that the Fairground currently meets City Code requirements for the number of on-site parking spaces in relation to existing facilities. However, the graveled area north of the livestock pavilion, although not in compliance with normal parking space code requirements, has been granted a waiver as a *legal, non-conforming use* in meeting the Fairground's parking requirements. As such any construction that would impact parking in this area would also require a comprehensive parking analysis.
2. *Nuisance Code Issues* - In addition to the land use issue regarding required parking, a holding lagoon constructed on Fairground property would need to address several other issues in order to remain in compliance with City nuisance code provisions. Among these are:

Section 6.010(b)3 states that any open pit, quarry, cistern, or other excavation without safeguards or barriers to prevent use by children is considered a public nuisance. Staff believe that a holding lagoon large enough to serve the intended purpose would fit this description and, as such, measures for limiting access to the facility by children would need to be taken into account,

Section 6.010(f) states that premises that are in a state or condition as to cause an offensive odor or unsanitary condition may be declared a public nuisance. With the close proximity of residential property surrounding the Fairgrounds, consideration would need to be given to any possible offensive odors that may be associated with the open storage of manure contaminated runoff,

Section 6.010(h) states that an accumulation of stagnant or impure water which affords, or might afford, a breeding place for mosquitos or other insects is considered a public nuisance. As the contaminated runoff to be stored in such a facility easily meets a definition of impure water, concern should be given to prevent any conditions that would encourage the breeding of insects.

It is City staffs' opinion that a holding facility large enough to serve the intended purpose would most likely represent an attractive nuisance and public health risk and would be difficult to construct and manage in a manner that did not violate provisions of the City's nuisance code.

c) Estimated City SDC charges for possible discharges

Again citing the May 18th URS memo to Mike Gleason, four alternatives were examined for managing stormwater runoff from the Fairgrounds. Although we believe Alternative #1, the discharge of paved areas and wash rack discharges to the wastewater system, is unfeasible during wet weather, it is still considered a viable option during the dry weather season, basically June 15th through September 15th. Therefore staff evaluated SDC charges associated with this alternative only in regard to the estimated total runoff for the 3 months of dry weather when such discharges could be considered hydraulically feasible. With this in mind, City staff evaluated the projected increases in wastewater and stormwater volumes associated with each of these four alternatives, and have estimated SDC charges to be the following:

Alternative #1 (paved area & wash rack discharges to wastewater system during dry weather)	Local wastewater SDC	\$48,600	
	Regional wastewater SDC		<u>\$47,900</u>
			\$96,500

Alternative #2 (roof livestock areas for year round use, draining roofs to stormwater system and the wash racks to the wastewater system)	Local wastewater SDC	\$34,100	
	Regional wastewater SDC	\$34,600	
	Stormwater SDC		<u>\$20,200</u>
			\$88,900

Alternative #3 (on-site treatment)
No estimated SDC as this alternative does not propose any increase in discharges to either the wastewater or stormwater systems.

Alternative #4 (off-site treatment)
SDC's not applicable for this alternative

For additional detail on SDC calculations and assumption, please refer to Attachment B.

Hopefully this information together with the attachments will allow Fairgrounds management to complete and implement a stormwater pollution prevention plan for this site. In order to ensure we keep moving forward on this project, we would request that you submit a revised draft of the plan that addresses the City's comments (see Attachment A) prior to December 15, 2001.

Please let me know if I can be of any additional assistance to you.

Sincerely,



Jim R. Johnson
City Manager

Attachments: A. *Staff Comments - Second Draft Stormwater Prevention Plan for Lane County Fairground*
B. *Estimated SDCs, Lane County Fairgrounds Stormwater Management Options*

cc: Kurt Corey
Jeff Lankston
Peter Ruffier
Michelle Cahill
Johnny Medlin

Attachment A

Staff Comments - Second Draft Stormwater Pollution Plan for Lane County Fairground

Following are City staffs' concerns and suggestions identified in review of the Second Draft Stormwater Pollution Prevention Plan as submitted to the City on June 15, 2001.

1. As identified in section 2.1.3, site specific stormwater system map(s) are incomplete and, as such, the plan does not fully address requirements of the DEQ Guideline Document for the Preparation of NPDES Stormwater Pollution Control Plan. An accurate and comprehensive site map of the Fairground's stormwater system is a critical element for development of effective stormwater BMP's and for mitigation of spills and other improper stormwater discharges. A completed stormwater system map is still needed for the plan to meet the requirements of the MOU.
2. Within section 2.2.1 are a number of tables describing various categories of stormwater BMPs that includes a column showing their status as either a current practice or as a planned activity. However, no information is provided regarding the proposed time frame for implementing those identified as planned activities. For the plan to provide Fairground staff clear direction on the priority of implementing these BMPs, the tables should be amended to include either a target date for implementation of each planned BMP or else a brief description of particular mechanism(s) or situation(s) that would trigger their implementation.
3. Within section 2.2.1, under the subheading of *Specific Activity*, in the table dealing with *Non-animal Activities* (pg.28), item *a.* (related to pavement and parking lot washing), staff would like to see the text amending to include the provision that no chemicals nor hot water will be used when conducting this activity.
4. Within *Appendix B: Spill Prevention and Response Plan (draft)*, under the section dealing with response to large spills, the plan should specify which position(s) on Fairground staff is responsible to arrange for those contractual services that are necessary to stop, clean-up and/or mitigate for any such incidents.
5. Within *Appendix B: Spill Prevention and Response Plan (draft)*, the Emergency Information fact sheet needs to be completed for those items labeled "to be determined".
6. Finally, City staff suggest that the section labeled *Attachment: Fairground Chronology* be deleted from the plan itself. Although this may have proved relevant in the early development of this plan, it is now out of date and does not contribute to the usefulness or effectiveness of the plan for those staff who are charged with implementation.

Attachment B

Estimated Systems Development Charges, Lane County Fairgrounds Stormwater Management Options, 2001
 Alternatives per URS memo to Fairgrounds Manager Mike Gleason, dated May 18, 2001

System	Alternative #1 Dry Weather Flow, June 15 through September 15 (drain unroofed impervious area & washtrucks to ww)	Alternative #2 Roof Livestock Areas for year-round use (drain new roofed areas to sw & washtrucks to ww)	Alternative #3 On-site Treatment	Alternative #4 Off-site Treatment
Transportation	N/A	N/A	N/A	N/A
Stormwater	N/A	Charge per sq.ft. for roofing of N. Parkway gravel area* routed to the sw system.	Could result in fee if discharge from a wetland or on-site treatment plant routed to sw system.	N/A
Parks	N/A	N/A	N/A	N/A
Wastewater, Regional	Determine average daily flow for washrack areas and unroofed pavement routed to ww system. \$34,100 + \$13,800 = \$47,900	Determine average daily flow for washrack areas routed to ww system. \$34,600	Could result in fee if discharge from a wetland or on-site treatment plant routed to ww system.	N/A
Wastewater, Local	Determine average daily flow for washrack areas and unroofed pavement routed to ww system. \$34,600 + \$14,000 = \$48,600	Determine average daily flow for washrack areas routed to ww system. \$34,100	Could result in fee if discharge from a wetland or on-site treatment plant routed to ww system.	N/A
Estimated Totals	\$96,500	\$68,900		

* All other areas proposed to be roofed are already impervious (paved) and assumed to drain to the sw system.
 URS states that pretreatment is not required since "... stormwater runoff is presumed to be moderate to low strength."

Alternative #1

Washrack flow = 1.53 MG/year.

Dry Weather = June 15 through September 15 = 93 days
 93 day average runoff volume = 1.53 MG / 93 = 16,452 gal/day.
 16,452 x \$2.07 = \$34,055.64 = **local wastewater SDC**
 16,452 x \$2.10104 = \$34,566.31 = **regional wastewater SDC**

Unroofed pavement flow (278,691 sq.ft = 6.5 acres)

Total volume average precipitation, June 1 through September 30 = 3.73 inches (Analysis of Hourly Precipitation Data from 1949 - 1996; data available per month only.)
 122 day average runoff volume = 3.73 inches x 27,000 gallons/acre-inch x [(6.4 x 0.95) + (2.8 x 0.7)] = 809,708 gallons/122 days = 6,637 gal/day.
 6,637 x \$2.07 = \$13,738.59 = **local wastewater SDC**
 6,637 x \$2.10104 = \$13,944.60 = **regional wastewater SDC**

Alternative #2

Washrack flow = 1.53 MG/year. (Same analysis as above)

16,452 x \$2.07 = \$34,055.64 = **local wastewater SDC**
 16,452 x \$2.10104 = \$34,566.31 = **regional wastewater SDC**

New Impervious Surface, Roof over North Gravel Parking Area
 120,077 sq.ft. x \$0.168 = \$20,172.94 = **stormwater SDC**

\$0.168 is current cost per square foot impervious surface area.

ATTACHMENT B

NOW, THEREFORE, IT IS HEREBY ORDERED that the County, as one of the Governing Bodies;

1. Requests that MWMC re-evaluate the SDC Methodology during FY 08-09 to determine whether changes to the SDC Methodology are necessary to meet the objectives of the Financial Plan, and with particular attention to achieving full cost recovery of capital project expenses in a manner that achieves equity between newly connected and previously connected users for their total contributions toward the Regional Sewerage Facilities; and
2. Ratifies the MWMC Budget subject to the condition that MWMC indicate, through its final action adopting the MWMC Budget, its agreement to complete the SDC Methodology re-evaluation as requested; and
3. If MWMC does not agree to conduct the requested SDC Methodology re-evaluation, the County objects to the MWMC Budget and requests that MWMC reconsider its action pursuant to the "Reconsideration and Mediation" process as described in Section 16 of the Agreement.

Dated this _____ day of May, 2008

Chair, Lane County Board of Commissioners

**IN THE MATTER OF RATIFYING THE FY 08-09 METROPOLITAN WASTEWATER PROGRAM
BUDGET AND CAPITAL IMPROVEMENTS PROGRAM AS APPROVED BY THE
METROPOLITAN WASTEWATER MANAGEMENT COMMISSION**

ATTACHMENT C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

OREGON RIVERWATCH,
Plaintiff,

Civ. No. 06-6246-AA

ORDER

v.

METROPOLITAN WASTEWATER
MANAGEMENT COMMISSION, et al.,
Defendants.

AIKEN, Judge:

Before the court are the parties' settlement agreement and request for entry of dismissal and motions by the United States for leave to participate as amicus curiae and to allow comments on the proposed settlement between the parties. Based on Magistrate Judge Coffin's order during settlement proceedings in this case, the United States' motions to participate as amicus curiae and to apply a 45-day review period (doc. 48) are GRANTED. Accordingly, the court has considered the United States' comments.

1 - ORDER

In its comments, the United States asserts that the proposed settlement agreement fails to address the environmental harms alleged in plaintiff's complaint. The United States argues that the injunctive relief obtained is negligible and does not warrant the amount of attorney fees to be paid to plaintiff. However, the United States does not seek disapproval of the settlement agreement or additional injunctive relief. Rather, the United States requests that the court place plaintiff "on notice" and include language that any settlement agreement under the Clean Water Act (CWA) constitutes a "consent decree" subject to review and comment by the United States, and that settlement agreements with limited injunctive relief are subject to heightened judicial scrutiny. I decline to require this language in the settlement agreement.

First, I find that the issue of whether the parties' settlement agreement constitutes a "consent decree" within the meaning of the CWA - thus entitling the United States the opportunity to comment - is now moot. The court did not enter judgment before the United States was given an opportunity to comment, and those comments have been considered. Therefore, the United States has been afforded the same rights that it would have been entitled to if the settlement agreement was deemed a consent decree under the CWA. I do not find this issue to be "capable of repetition yet evading review" if parties to a CWA settlement agreement do not oppose the submission of comments by the United

States. In such cases, the United States is afforded its right to comment, and in cases of disagreement, the issue then would be ripe for resolution.

Second, I do not find it necessary to include language that CWA settlement agreements (or consent judgments) with limited injunctive relief are subject to "heightened" judicial scrutiny. A settlement agreement or consent judgment under the CWA is reviewed to determine whether it is "fair, reasonable and equitable and does not violate the law or public policy," regardless of whether such standard is enunciated in the terms of the agreement. See Sierra Club v. Electronic Controls Design, 909 F.2d 1350, 1355 (9th Cir. 1990). Further, while I appreciate and recognize the United States' concerns, it provides no legal authority to support a heightened standard of judicial review for specific settlement agreements or consent decrees.

Upon review of the settlement agreement in this case, particularly §§ 4.1-4.6, I find that it meets the standard articulated in Electronic Controls Design. Notably, the United States does not assert substantive changes or additions to the agreement, and the agreement was reached after several judicial mediation sessions. Moreover, as emphasized by the United States, it is not bound by the agreement between the parties and may bring its own enforcement action if deemed necessary.

///

3 - ORDER

Accordingly, plaintiff's case is HEREBY DISMISSED with prejudice, and each party shall bear its own costs. This court shall retain jurisdiction over any and all claims for enforcement of the settlement agreement.

IT IS SO ORDERED.

Dated this 20 day of September, 2007.

/s/ Ann Aiken
Ann Aiken
United States District Judge

SETTLEMENT AGREEMENT

PARTIES:

Oregon River Watch, an Oregon nonprofit corporation
570 E. 40th
Eugene, OR 97405

(Plaintiff)

and

City of Eugene, an Oregon municipal corporation (Eugene)
City Hall
777 Pearl Street, Room 105
Eugene, OR 97401

City of Springfield, an Oregon municipal corporation (Springfield)
225 5th Street
Springfield, OR 97477

Metropolitan Wastewater Management Commission,
an Oregon intergovernmental entity (MWMC)
225 5th Street
Springfield, OR 97477

(Collectively Defendants)

RECITALS:

- A. MWMC is a local intergovernmental entity that was created in 1977 pursuant to an intergovernmental agreement between Eugene, Springfield and Lane County. MWMC's general functions are to construct, operate and maintain regional sewerage facilities to serve the Eugene-Springfield metropolitan area (Regional System).
- B. Eugene and Springfield each own, operate and maintain separate local systems to collect sewage from residential, commercial and industrial users and transport it to the Regional System for treatment and disposal (Local Systems).
- C. The Regional System and Local Systems are collectively referred to herein as the "Overall System."
- D. The Oregon Department of Environmental Quality (DEQ) issued Defendants an NPDES permit (Permit) that authorizes discharges of

- treated wastewater and, in certain circumstances, untreated wastewater from the Overall System.
- E. According to Defendants, the Eugene Wastewater Division, developed and implemented an Environmental Management System (EMS) for the Water Pollution Control Facility which is part of the Regional System. An EMS is a system to identify, assess, and pro-actively manage activities that have an impact on the environment.
 - F. Plaintiff filed an action against Defendants in the United States District Court, District of Oregon, (case number 06-0246-AA) under the citizen suit provision of the Clean Water Act (CWA) alleging that Defendants have been violating the CWA (Action).
 - G. Defendants vigorously deny that they have violated the CWA.
 - H. The Parties consider it desirable that this litigation be settled and dismissed on the merits with prejudice and without costs in order to avoid further expense.
 - I. The Parties, through their counsel, have made a thorough investigation of the facts and circumstances relevant to the position of each. In connection with the investigation, the Parties have conducted such discovery as deemed appropriate, including the inspection of documents and the taking of depositions. In evaluating the settlement provided for herein, the Parties and their counsel have considered the expense and length of time necessary to prosecute the litigation through trial, the defenses asserted by and available to the Parties, the uncertainties of the outcome of this litigation, the substantial benefit provided by the proposed settlement, and the fact that resolution of the litigation by trial will likely be submitted for appellate review, as a consequence of which it could be several years before there is a final adjudication of the litigation.
 - J. Based upon these considerations, the Parties and their counsel have engaged in arms-length negotiations in an attempt to compromise on matters at issue in the litigation. At the conclusion of the negotiations, the Parties concluded it is in their best interests to settle the litigation on the terms set forth in this Agreement. Although Lane County has been dismissed from this Action and is not a Party to this Agreement, it was previously named as a Defendant in Plaintiffs' Complaint and Lane County is, therefore, an express third party beneficiary of this Agreement.
 - K. This Agreement is to be interpreted consistently with the Oregon State Bar Association's Rules of Professional Conduct (12-1-06).

AGREEMENT:

1. Recitals. The Recitals are incorporated into and made a part of this Agreement
2. Effective Date. This Agreement shall be effective upon its execution by the Parties.
3. Dismissal of Action. On the Effective Date, Plaintiff will dismiss the Action with prejudice and without costs or attorneys fees to any Party.
4. Contributions and Designations.
 - 4.1 Regional Water Pollution Control Facility Performance Audit. Eugene will select and contract with a third-party auditor to conduct a performance audit of the operation and maintenance of the Regional Water Pollution Control Facility for the calendar year 2007 and in the manner required for the EMS to remain compliant with ISO 14001. To the extent applicable to the operation and maintenance of the Regional Water Pollution Control Facility, the performance audit conducted pursuant to this Section 4.1 will also be conducted in substantial compliance with the requirements for the Category "National Pollutant Discharge Elimination System Permits" as identified on page 33 of the "Protocol for Conducting Environmental Compliance Audits for Municipal Facilities under U.S. EPA's Wastewater Regulations," dated December, 2000. EPA 300-B-00-016.
 - 4.2 Permit Compliance Officer and SOPPs. Within 12 months after the Effective Date, each Defendant will designate one or more employees as a permit compliance officer for the Defendant making the designation. Each permit compliance officer will take such measures as he or she, in his or her sole discretion, deems appropriate to develop and recommend standard operating procedures and practices (SOPPs) to promote compliance with the Permit. Such measures shall include developing and conducting such staff training as the applicable Defendant, in its sole discretion, deems appropriate for the staff members being trained.
 - 4.3 Watershed Restoration Project. Within 60 days after the Effective Date, MWMC will contribute \$65,000 to the Long Tom Watershed Council (Council) to be used by the Council to fund project number 2 as described in the Council's letter to Roy Haber dated June 11, 2007, a copy of which is attached to this Agreement as Exhibit 1.
 - 4.4 SSO Flow Estimation. Defendants will estimate the volume of any discharge from the emergency overflow devices at the Willakenzie Pump Station, Fillmore Pump Station and Old Springfield Wastewater

Treatment Plant Pump Station pursuant to the SOPPs that are attached to this Agreement as Exhibit 2.

4.5 Notice of Bypasses and SSOs. For a period of one year from the Effective Date, Defendants will provide Plaintiff with a copy of any written notice provided to DEQ upon the occurrence of any Bypass, as defined in Schedule F Section B.3.a.(1) of the Permit, or any Overflow, as defined in Schedule F Section B.6.a.(1) of the Permit.

4.6 Notice of CIP Change. MWMC will provide Plaintiff with a copy of any revision to MWMC's capital improvement plan (CIP) for the implementation of MWMC's 2004 Facilities Plan if the revision changes the projected completion date of any peak-flow capital improvement project on the CIP to a date that is after January 1, 2010.

4.7 Attorney Fees. Except as stated herein, each Party shall bear its own attorneys fees, costs and expenses. Within 30 days after the dismissal of the Action, MWMC shall pay Plaintiff the sum of \$120,000 as a contribution to Plaintiff for attorneys fees and costs incurred in relation to this Action. The funds shall be made payable to Oregon River Watch.

5. Settlement and Release of Claims.

5.1 Release. Plaintiff, on behalf of itself, its directors, officers, members, agents, successors and assigns, and any other person or organization acting under the direction or control of Plaintiff or its directors, officers, members, agents, successors, and assigns, releases and forever discharges Defendants and Lane County, their officials, officers, employees, agents, attorneys, successors and assigns, and any other person acting on Defendants' or Lane County's behalf, from all claims preceding and up to the Effective Date, known or unknown, Plaintiff may have against Defendants or Lane County, including but not limited to the matters alleged in the Complaint or Plaintiff's Supplemental 60-Day Notice Letter to Defendants dated April 4, 2007.

5.2 Covenant Not to Sue. Plaintiff, its officers, staff, members, agents, successors and assigns, and any organization under the control of Plaintiff, its officers, staff, members, agents, successors and assigns and each of them will not file, commence, maintain or prosecute any lawsuit against any of the Defendants or Lane County seeking relief for alleged violation of the CWA or violation of current or future NPDES permits, or similar permits, for actions or inactions occurring during the period beginning on the Effective Date and ending 10 years after the Effective Date. Plaintiff will not support other lawsuits, by providing financial or legal assistance, personnel time or other affirmative actions, against any of the Defendants or Lane County that may be proposed by other groups or individuals who

would rely upon the citizen suit provision of the CWA to challenge any of the Defendants' or Lane County's compliance with the CWA or current or future NPDES permits, or similar permits. This Agreement may be pleaded as a full and complete defense and bar to, and may be used as a basis for an injunction against, any action, or other proceeding which is in breach or violation of the provisions of this Section.

5.3 Specific Performance. The release set forth in this Agreement is not conditioned upon timely compliance by Defendants with the payment and other obligations of this Agreement. The exclusive judicial remedy of Plaintiff, its officers, staff, members, agents, successors and assigns, and any organization under the control of Plaintiff, its officers, staff, members, agents, successors and assigns, for breach of this Agreement by Defendants shall be an action in the Eugene Division of federal court with jurisdiction over this matter for specific performance of this Agreement. The U.S. District Court of Oregon, Eugene Division, retains jurisdiction over this Agreement for that purpose. However, such action may not be commenced prior to complying with the requirements of Section 5.4

5.4 Mediation. The Parties shall provide notice to the other in writing of any action or omission by the other they believe to be in violation of this Agreement. Within 30 days after receipt of such notice, the Party receiving the notice may respond to the notice in writing. If, thereafter, the Parties still dispute compliance with this Agreement, within an additional 30 days the Parties will meet and confer in a good faith attempt to resolve their disputes hereunder. If the Parties cannot informally resolve the dispute, they will make a good faith effort to mediate the dispute in accordance with the mediation procedures of United States Arbitration and Mediation of Oregon, Inc. or any other mediation process mutually agreed upon by the Parties. The cost of such mediation shall be shared equally by the Parties. In the event the Party corrects the action or omission that the other contends constitutes a violation of this Agreement prior to the completion of the mediation process, no action shall be commenced in any court. This Section does not apply to Defendants' obligation to contribute to Plaintiff's attorney fees under Section 4.7.

5.5 Redisclosure Limitation. Plaintiff will not provide documents previously provided, or provided in the future under the terms of this Agreement, to Plaintiff by Defendants to any third person or organization, notwithstanding that some or all of the documents provided may be public records otherwise subject to public disclosure.

5.6 Denial of Liability. Neither this Agreement nor the action taken hereunder shall constitute an admission by Defendants of the validity of any legal or factual position asserted by Plaintiff, nor of the existence of any violation of the CWA or any rule or regulation promulgated

thereunder, nor any violation of the Permit, nor of any violation of any applicable Oregon law, rule or regulation regarding any of the matters referenced in this Agreement, all of which are denied by Defendants.

6. General Provisions.

6.1 No Joint Venture or Third Party Liability. In entering into this Agreement, Defendants shall be deemed to be exercising discretionary governmental functions and responsibilities for public purposes, and nothing in this Agreement is intended to circumscribe the proper exercise of discretion by Defendants in their performance of this Agreement or otherwise. Neither anything in this Agreement nor any of the actions by Defendants pursuant to this Agreement shall be construed as creating a joint venture or other active involvement by Defendants with Plaintiff or any other organization, entity or governmental agency which would give rise to a claim by a third party against Defendants for injury or damages arising out of the activities of Plaintiff or any other organization, entity, or governmental agency.

6.2 Severability. In the event any interpretation of a provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be deemed deleted, and the remainder of this Agreement shall be construed to be in full force and effect.

6.3 Proper Party. Plaintiff represents and warrants that there are no other persons or entities from whom a release should be obtained for any of the claims released by this Agreement.

6.4 Corporate Existence. Plaintiff represents and warrants that it is a nonprofit corporation duly organized and legally existing under the laws of the State of Oregon. Plaintiff has all requisite corporate power and authority to enter into this Agreement and to perform its obligations thereunder.

6.5 Authorization. Plaintiff represents and warrants that the execution, delivery, and performance of this Agreement have been duly authorized and approved by its board of directors and that the Agreement constitutes a valid and binding agreement of Plaintiff, enforceable in accordance with its terms.

6.6 Cooperation. All Parties will cooperate in implementing the terms of this Agreement including, but not limited to, signing any documents that may be reasonably necessary to carry out the terms of this Agreement. This also includes cooperation in seeking approval from the court, Department of Justice (DOJ) and the Environmental Protection Agency

(EPA) in the event the court, DOJ, or EPA determines that it desires to review this Agreement.

6.7 Mandatory Dismissal. If an action is filed by Plaintiff or its directors, officers, members, agents, successors or assigns, or any other person acting under the direction or control of Plaintiff or its directors, officers, members, agents, successors and assigns asserting a claim that is released herein, any defendant shall be entitled to an order of the court dismissing such action with prejudice and without need to establish any fact, other than that the claim asserted was released by this Agreement.

6.8 Change of Facts. It is understood by the Parties that the facts under which this Agreement is made may hereafter prove to be other than or different from facts now known by any Party or believed by any Party to be true. Each of the Parties expressly accepts and assumes the risk of the facts proving to be different and each of the Parties agrees that all of the terms of this Agreement shall be in all respects effective and not subject to termination or rescission by any such difference of facts.

6.9 No Assignment. Plaintiff represents and warrants that there has been no assignment or transfer of any interest in any claims which are being released herein.

6.10 Construction. This Agreement will not be construed as if it had been prepared by one of the Parties, but rather as if all Parties have prepared this agreement.

6.11 Acknowledgment. The Parties, and each of them, acknowledge that:

6.11.1 They have been represented by independent legal counsel of their own choice throughout all negotiations which preceded the execution of this Agreement, and that they have executed this Agreement, and any other documents in connection with it, only after consultation with independent legal counsel.

6.11.2 They have carefully and thoroughly read this Agreement and any other documents executed herewith in their entirety and fully understand their terms and effects.

6.11.3 Their legal counsel has explained to them the effect and import of this Agreement, including without limitation the releases and waivers contained herein.

6.11.4 They have executed this Agreement, and any other documents executed herewith, voluntarily, willingly and without acting

under duress. The Parties acknowledge that no person has made any promise, representation or warranty, whatever, express or implied, not contained herein, concerning the subject matter hereof, to induce such Parties to execute this instrument and further acknowledge that they are not executing this instrument or any other documents executed herewith in reliance upon any promise, representation or warranty not contained herein.

6.12 Binding Effect. This Agreement is binding upon the Parties and their agents, successors and assigns.

6.13 Entire Agreement. This Agreement is the entire agreement among the Parties with regard to the subject matter hereof, and this Agreement may only be amended in writing, signed by all Parties.

Dated: June 22, 2007 Oregon River Watch
By: [Signature]
Its: Attorney

Dated: June 19, 2007 City of Eugene
By: [Signature]
Its: City Manager

Dated: June 18, 2007 City of Springfield
By: [Signature]
Its: City Manager

Dated: June 21, 2007 Metropolitan Wastewater Management Commission
By: [Signature]
Its: General Manager

APPROVED AS TO FORM:

Dated: June 22, 2007 By: [Signature]
Jack Silver Roy S. Haber
Of The Law Office of Jack Silver
Representing Oregon River Watch

Dated: June 19, 2007


By: Jens Schmidt
Jens Schmidt
Of Harrang Long Gary Rudnick P.C
Representing the City of Eugene

Dated: June 18, 2007

By: David Wade
David Wade
Of Gartland, Nelson, McCleery, Wade &
Wallach, P.C.
Representing the City of Springfield

Dated: June 20, 2007

By: G. David Jewett
G. David Jewett
Of Thorp, Purdy, Jewett,
Urness & Wilkinson, P.C.
Representing the Metropolitan Wastewater
Management Commission



Action Through Understanding

Coordinator
 Dana Erickson
 (541) 683-6578

Stewardship & Outreach
 Jenna Gammill
 (541) 683-6949

Projects & Monitoring
 Cindy Thieman
 (541) 683-2989

Steering Committee

Lower Long Tom
 Brent Sidles
 Eric Freepson

Recording Secretary
 Tony Secada

Upper Long Tom
 Will Borskiell
 Vice Chair
 Ric Ingham
 Vice Chair
 Gary Nolan

Amazon
 Peg Boulav
 Sarah Medary
Corporate Secretary
 Tina Ferley
Treasurer

At Large
 Ryan Colley
 Rich Reeves
 Corey Johnson
 Jim Pendergrass
Chair
 Rich Margerum
Par-Chair

751 S. Dimebo
 Eugene, OR 97402
 Fax: 683-6098
 www.longtom.org

June 11, 2007

Roy S. Haber
Oregon River Watch
Electronic Mail
<haberpo@cyber-dyne.com>

Dear Mr. Haber:

River Watch inquired of the Long Tom Watershed Council what would be important actions to improve water quality in the Long Tom River Watershed that could be achieved with \$65,000. The Council has identified two major possibilities.

1) Toxics monitoring:

In our discussion with the people at the DEQ water chemistry labs we have learned that we could get a substantial understanding of the situation in Amazon Creek for this amount. This would address a major gap in the data we currently have available to prioritize our conservation recommendations and our own restoration actions.

The sampling plan would depend on the questions we ask. The Council would be interested in asking something akin to what we did for our recently completed water quality study - What are the sources of pollution and what are their relative contributions. We would want to emphasize "actionable data," and to capture the urban component.

First we would do a coarse analysis on land use and potential pollution sources in order to hone in on the most likely toxics polluting Amazon Creek and where they come from. We'd also decide whether we need some points in the Long Tom River "receiving waters" or to capture the agriculture contribution in order to integrate with the likely upcoming Willamette Toxics study or distinguish the contribution from different sectors if that's important to make the data more meaningful.

Then we could do a study to discover details involving:

- * a set of pesticides most commonly used in urban and agriculture (USGS studies already indicate which herbicides and insecticides we would want to look for and which ones not to bother measuring as they have not been detected in national studies),
- * a set of metals
- * a suite of pharmaceuticals, flame retardants, and personal care products (some of which are endocrine disruptors such as Bisphenol A)

This would take one year, use volunteers, and could commence as early as spring

EXHIBIT 1
1 OF 3

2008 We'd want to integrate with the Willamette River Toxics Monitoring Package so that our data would be most meaningful. They will be conducting monitoring all over the Willamette River basin but not able to focus on any one sub-basin like Long Tom River, let alone a tributary to that such as Amazon Creek.

We are not able to say how many sites we could include for the funding mentioned because the cost is based on so many variables: number and type of pollutants, sampling frequency, type of medium (water column, sediment, fish tissue). The Watershed Assessment people from DEQ would sit on our Technical Team and advise us on sampling design, like they did for our Water Quality Monitoring Program. We are excited at the potential collaboration and ability to answer a huge hole in our understanding of the Amazon Creek and Long Tom River toxics situation.

Related to this are two other potentials. First, to participate in a Pesticide Stewardship Partnership with DEQ. There are currently five around the state: Clackamas, Hood River, Walla Walla, Yamhill, and Pudding River in which DEQ grants some funds to aid citizen-monitoring. None are in our area or even the Upper Willamette. None receive enough funds to do as full a study as we think is necessary. This has been a program focused on agricultural monitoring and we would like to capture both the urban and agriculture signatures. Secondly, there is an outside chance we can bring in some USGS match funding for our area also.

2) Restoration:

The Council has conducted a restoration program since 2001, implementing and monitoring 22 successful projects that address water quality:

- > streamside vegetation restoration (removing invasives, planting natives),
- > wetland restoration,
- > fencing riparian areas and providing off-stream watering where necessary,
- > floodplain restoration,
- > placement of large wood (traps sediment, creates spawning and rearing habitat),
- > removal of fish passage barriers (removing culverts and dams and/or replacing them with bridges if necessary),
- > upland oak savannah and prairie restoration.

If we were to apply these funds to this program in Amazon Creek we have three main sub-options. First, for restoration projects that benefit water quality we would be able to bring in substantial matching funds, most likely from Oregon Watershed Enhancement Board. We have a 100% success rate in securing these funds.

Second is to address a major lack we have - the ability to get Technical Assistance funds for the engineering designs we need to make substantial changes to streams. This might be necessary for work in an urbanized area such as Amazon Creek.

EXHIBIT 1
2 OF 3

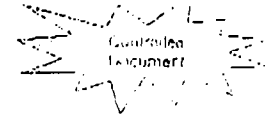
Another option in our restoration program is to focus on the priority "Reach 3" area as identified by the Metro Waterways Study. The limiting factor in this option is the significant cost of restoration in an urban area like this. We would likely explore the possibility of leveraging additional funds to conduct this work before turning to other options.

In conclusion, we consider either of these main actions an important step in improving the water quality in the Willamette River via improved understanding or direct action in Long Tom River and/or Amazon Creek.

Sincerely,

/de/
Dana Erickson

EXHIBIT 1
3 OF 3



CITY OF EUGENE - WASTEWATER DIVISION
Procedure

Subject:	Estimation of Overflow Volume - Willakenzie Emergency Outfall No. 003		Document No:	WW-
Last Reviewed By:	Dave Breitenstein	Date Prepared:	6/14/07	Revision No.:
Approved By:			Date Approved:	

Purpose

The purpose of this procedure is to provide the method for estimating the volume of overflow for NPDES Waste Discharge Permit reporting requirements.

Scope

The scope of this procedure covers estimation of overflow volume from Outfall No. 003 that is located near Willakenzie Pump Station

Definitions

- Overflow - means the diversion and discharge of waste streams from any portion of the wastewater conveyance system including pump stations, through a designed overflow device or structure, other than discharges to the wastewater treatment facility
- WPCF - Water Pollution Control Facility

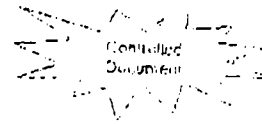
Procedure (Include reporting requirements and precautionary steps in this section)

<u>Accountability:</u>	<u>Method:</u>
Pump Station Operator	Enter Date and Time in Pump Station Log when overflow gate is opened. Make log entries for all subsequent dates and times of any changes made to overflow gate position. Make log entry of Date and Time that overflow gate is closed.
Pump Station Operator	Report all overflow gate operation changes to Console Operator
Console Operator	Observe flow trend and obtain flow data values from DCS WPCF Influent Flow Trend. Estimate overflow volume as follows: WPCF Influent Flow at time immediately before gate is opened - WPCF Influent Flow after trend shows change following gate adjustment or closure = Rate of Willakenzie Overflow, million gallons per day Total Overflow Volume = $\frac{\text{Total minutes gate is open} \times \text{rate of flow, mgd}}{1440 \text{ minutes/day}}$ In the event of any intermediate gate position changes during overflow event, identify change of influent flow and adjust rate of flow accordingly. Perform above calculation for each period of time between gate position adjustments. Add volumes for all periods for total overflow volume estimate

Procedure
Calculation of Controlled Overflow Volume - Willakenzie

Page 1 of 1
EXHIBIT 2
1 OF 3

Document No: WW Rev. No. 2
Revised Date



CITY OF EUGENE - WASTEWATER DIVISION
Procedure

Subject:	Estimation of Overflow Volume -- Fillmore Overflow Outfall No. 006		Document No:	WW-
Last Reviewed By:	Dave Breitenstein	Date Prepared:	6/14/07	Revision No.:
Approved By:			Date Approved:	

Purpose

The purpose of this procedure is to provide the method for estimating the volume of overflow for NPDES Waste Discharge Permit reporting requirements

Scope

The scope of this procedure covers the estimation of overflow volume from Outfall No. 006 that is located near Fillmore Pump Station.

Definitions

- Overflow – means the diversion and discharge of waste streams from any portion of the wastewater conveyance system including pump stations, through a designed overflow device or structure, other than discharges to the wastewater treatment facility
- WPCF – Water Pollution Control Facility

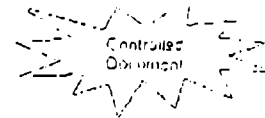
Procedure (Include reporting requirements and precautionary steps in this section)

<u>Accountability:</u>	<u>Method:</u>
Pump Station Operator	Enter Dates and Times in Pump Station Log when overflows are initiated from "A" or "B" side of Fillmore Pump Station.
Division Staff	Estimation of Overflow Volume from A Side: "A" Side has two pumps rated at total of 2,200 gpm each $\# \text{ of pumps} \times 2,200 \text{ gpm} \times \text{total minutes of overflow duration} = \text{overflow volume}$
	Estimation of Overflow Volume from "B" Side: "B" Side has two pumps rated at total of 7,300 gpm each $\# \text{ of pumps} \times 7,300 \text{ gpm} \times \text{total minutes of overflow duration} = \text{overflow volume}$
	Total Overflow Volume "A" Side overflow gallons + "B" Side overflow gallons = Total overflow gallons

Procedure
Calculation of Controlled Overflow Volume - Fillmore

Page 2 of 3

Document No. WW- Rev. No. 2
Revised Date:



CITY OF EUGENE - WASTEWATER DIVISION
Procedure

Subject:	Estimation of Overflow Volume – Old Springfield WWTP PS Overflow Outfall No. 010	Document No:	WW-
Last Reviewed By:	Dave Breitenstein	Date Prepared:	6/15/07
Approved By:		Revision No.:	
		Date Approved:	

Purpose

The purpose of this procedure is to provide the method for estimating the volume of overflow for NPOES Waste Discharge Permit reporting requirements.

Scope

The scope of this procedure covers estimation of overflow volume from Outfall No. 010 that located where the City of Springfield's wastewater treatment plant had been before it was demolished.

Definitions

- Overflow – means the diversion and discharge of waste streams from any portion of the wastewater conveyance system including pump stations, through a designed overflow device or structure, other than discharges to the wastewater treatment facility
- WPCF – Water Pollution Control Facility

Procedure (Include reporting requirements and precautionary steps in this section)

<u>Accountability:</u>	<u>Method:</u>
Pump Station Operator	Enter Dates and Times in Pump Station Log when overflows are initiated from the Springfield WWTP Pump Station. Indicate whether overflow is pumped overflow or gravity overflow.
Division Staff	Estimation of Pumped Overflow Volume: Each of two pumps has rated flow capacity of 5,900 gpm each $\# \text{ of pumps} \times 5,900 \text{ gpm} \times \text{total minutes of overflow duration} = \text{Overflow Volume in Gallons}$

Procedure
Calculation of Controlled Overflow Volume – Springfield PS

Page 1 of 1
EXISTENT 2
3 OF 3

Document No: WW- Rev. No 2
Revised Date:



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

8 - MAR 2008

RECEIVED

MAR - 6 2008

ESD/WW/MC

Reply To: OCE-133

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Peter Ruffier, Wastewater Division Director
Metropolitan Wastewater Management Commission
225 5th Street
Springfield, Oregon 97477

Re: Request for Information and Compliance Order – Docket No. CWA-10-2008-0057

Dear Mr. Ruffier:

On December 13 and 14, 2003, January 17, 2006, and December 25 and 27, 2006, the wastewater treatment facility (Facility) owned and operated by the Metropolitan Wastewater Management Commission, City of Eugene, and City of Springfield (collectively referred to as "Respondents") had several unauthorized discharges of raw sewage to waters of the United States from manholes along the collection system. As a result, EPA is issuing this Request for Information and Compliance Order (Order). The Order requires Respondents to implement the Wet Weather Flow Management Plan (dated August 27, 2001) as approved by the Oregon Department of Environmental Quality, by January 1, 2010.

Should you have any legal questions about this letter, please contact Courtney Hamamoto, Assistant Regional Counsel, at (206) 553-1477. Technical questions may be directed to Robert Grandinetti, Compliance Officer, Office of Compliance and Enforcement, at (509) 376-3748.

Sincerely,

Michael A. Bussell, Director
Office of Compliance and Enforcement

cc: Keith Anderson, ODEQ – Eugene Office
Les Carlough, ODEQ - Headquarters
Neil Mullane, ODEQ - Headquarters

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:) Docket No. CWA-10-2008-0057
)
Metropolitan Wastewater Management)
Commission, City of Eugene, and)
City of Springfield,) **REQUEST FOR INFORMATION**
) **AND COMPLIANCE ORDER**
)
Respondents.)

STATUTORY AUTHORITY

1. The following FINDINGS AND CONCLUSIONS are made and ORDER issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Sections 308 and 309(a) of the Clean Water Act ("Act"), 33 U.S.C. §§ 1318 and 1319(a). This authority has been delegated to the Regional Administrator for EPA Region 10 and has been redelegated to the Director of the Office of Compliance and Enforcement.

FINDINGS

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any

1 pollutant into the waters of the United States by any person except in accordance with other
2 specified sections of the Act, including Section 402, 33 U.S.C. § 1342.

3 3. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of
4 EPA may issue permits under the National Pollutant Discharge Elimination System (“NPDES”)
5 program for the discharge of any pollutant into the waters of the United States upon such specific
6 terms and conditions as the Administrator may prescribe.

7 4. Pursuant to Section 402(b), a State may administer its own NPDES permit
8 program for discharges into navigable waters within its jurisdiction upon approval by the
9 Administrator of EPA. EPA has approved the State of Oregon’s NPDES permit program.
10 Therefore, within the State of Oregon, the Oregon Department of Environmental Quality
11 (“ODEQ”) issues NPDES permits to point sources pursuant to the Act.

12 5. Although ODEQ issues NPDES permits in the State of Oregon, EPA retains the
13 authority to take an enforcement action pursuant to Section 309 of the Act, 33 U.S.C. § 1319.
14 *See* 33 U.S.C. § 1342(i).

15 6. Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides that the Administrator
16 may issue a compliance order when the Administrator finds that a person is in violation of any
17 permit condition that implements various sections of the Act.

18 7. The Metropolitan Wastewater Management Commission, City of Eugene, and
19 City of Springfield (“Respondents”) operate a domestic wastewater treatment facility and
20 collection system (“Facility”) located at 410 River Avenue in Eugene, Oregon. Respondents are
21 “persons” within the meaning of Section 502(5) of the Act, 33 U.S.C. §1362(5).

22 8. NPDES Permit No. OR-03122-4 (“Permit”) was issued to Respondents and
23 became effective on May 1, 2002. The Permit expired on May 1, 2007. The Permit specified the
24 conditions under which Respondents were authorized to discharge effluent from the Facility.

1 ODEQ received a NPDES permit application from Respondents on July 21, 2006, in compliance
2 with Schedule F, Section A.4 of the Permit. As a result, the Permit has been administratively
3 extended and will remain in effect until a new Permit is issued for the Facility.

4 9. The Facility is authorized to discharge treated effluent from Outfall 001 or Outfall
5 001A into the Willamette River. The Willamette River is a "water of the United States" within
6 the meaning of 40 C.F.R. § 122.2. Outfall 001 and Outfall 001A are "point sources" within the
7 meaning of 40 C.F.R. § 122.2.

8 10. Pursuant to Schedule D, Section 9 of the Permit, ODEQ approved the Facility's
9 Wet Weather Flow Management Plan, dated August 27, 2001.

10 11. Schedule F, Section B.6.c of the Permit states that "[u]ncontrolled overflows are
11 prohibited where wastewater is likely to escape or be carried in to waters of the State by any
12 means." Therefore, any discharges from overflow point sources in the collection system are
13 unauthorized discharges in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

14 12. On or about December 13 and 14, 2003, there were three unauthorized discharges
15 from the following manholes: (a) a manhole overflow at 17th and Grant; (b) a manhole overflow
16 at 30th and Ferry; and (c) a manhole overflow at 26th and Monroe.

17 13. On or about January 17, 2006, there were ten unauthorized discharges from the
18 following manholes: (a) three manhole overflows at 17th and Hayes (Manhole # 4770, 4771,
19 and 4758); (b) a manhole overflow at 17th and Pearl (Manhole # 5419); (c) a manhole overflow
20 at 19th and High Street (Manhole # 17472); (d) a manhole overflow at 3060 Harlow Road
21 (Manhole # 9581); (e) a manhole overflow at Ironwood Street (Manhole # 13400); (f) a manhole
22 overflow at 14th and City View (Manhole # 4823); (g) a manhole overflow at 2510 W. 14th
23 Avenue (Manhole # 4834); and (h) a manhole overflow at Wilkie Street (Manhole # 9090).

24 14. On or about December 25 and 27, 2006, there were three unauthorized discharges
25

1 from the following manholes: (a) a manhole overflow at Ohio Street; (b) a manhole overflow at
2 Sugar Pine Loop; and (c) a manhole overflow at 1199 Terry Street.

3 15. The manholes set forth in Paragraphs 12-14, above, are "point sources" within the
4 meaning of 40 C.F.R. § 122.2.

5 16. The manholes discharged raw sewage into Amazon Creek, the Willamette River,
6 Debrick Slough, and the A2 Channel. Amazon Creek, the Willamette River, Debrick Slough,
7 and the A2 Channel are "waters of the United States" within the meaning of 40 C.F.R. § 122.2.

8 17. The discharges set forth in Paragraphs 12-14, above, are unauthorized discharges
9 in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

10
11 **REQUEST FOR INFORMATION AND COMPLIANCE ORDER**

12 18. Based upon the foregoing FINDINGS and pursuant to Sections 308 and 309(a) of
13 the Act, 33 U.S.C. §§ 1318 and 1319(a), it is hereby ORDERED as follows:

14 19. Upon the effective date of this Order, Respondents shall cease discharging from
15 all uncontrolled overflow point sources.

16 20. By January 1, 2010, Respondents shall fully complete the Wet Weather Flow
17 Management Plan as approved by ODEQ on August 27, 2001.

18 21. By July 1st of each year between the date of this ORDER and the implementation
19 of the Wet Weather Flow Management Plan, Respondents shall submit an annual report
20 describing the Facility's progress in implementing the Wet Weather Flow Management Plan by
21 January 1, 2010. At a minimum, the annual report must include:

22 a. the Wet Weather Flow Management Plan activities that were implemented
23 in the previous year; and

24 b. all overflow information from the previous year. This overflow
25

1 information must include uncontrolled overflows and any emergency outfall
2 overflows, the volume of the overflow(s), the location of the overflow(s), the size
3 of the storm event(s), and whether the overflow(s) reached a water of the U.S.

4 The annual reports shall be sent to the address set forth in Paragraph 23, below.

5 22. In the event Respondents are unable to comply with the requirements of this
6 ORDER, Respondents shall, within 10 days of becoming aware of such inability, provide the
7 following:

8 a. A summary of the specific reasons why Respondents are unable to comply
9 with the requirement;

10 b. A summary of all actions taken by Respondents or others that
11 Respondents allege demonstrate "good faith efforts" to comply with the
12 requirement; and

13 c. The expected date and required activities by which Respondents will
14 comply with the requirement.

15 23. Submittals required by this ORDER shall be submitted to:

16 U.S. Environmental Protection Agency
17 309 Bradley Boulevard, Suite 115
18 Richland, Washington 99352
19 Attn: Robert Grandinetti

20 TERMINATION

21 24. Upon the full completion of the Wet Weather Facility Plan, this ORDER shall
22 terminate.

23 SANCTIONS

24 25. Notice is hereby given that violation of, or failure to comply with, any of the
25 provisions of the foregoing ORDER may subject Respondents to (1) civil penalties of up to

1 \$32,500 per day of violation pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d); (2)
2 administrative penalties of up to \$11,000 per day for each violation, pursuant to Section 309(g)
3 of the Act, 33 U.S.C. § 1319(g); or (3) civil action in federal court for injunctive relief pursuant to
4 Section 309(b) of the Act, 33 U.S.C. § 1319(b).

5 26. Nothing in this ORDER shall be construed to relieve Respondents of the
6 requirements to fully comply with other applicable federal, state, or local laws and requirements.
7 EPA reserves the right to take enforcement action as authorized by law for any violation of this
8 ORDER, and for any future or past violations of the Permit or any other applicable legal
9 requirements.

10
11 Dated this 3rd day of March, 2008.

12
13
14 

15 Michael A. Bussell, Director
16 Office of Compliance and Enforcement

ATTACHMENT D

Rates and Policies

[Electric Rates](#) [Water Rates](#) [Wholesale Fiber Rates](#)

SUB's mission is to keep utility rates affordable for all customers. To that end, SUB customers enjoy some of the rates in the nation, and some of the very lowest in Oregon. See below for more information on:

Electric Rates Residential Electricity Rate (effective 05-1-06)

Basic charge: \$9.00 per month, PLUS
Usage charge: 4.63 cents per kilowatt hour

Fees:

Service charge to start/switch service: \$15*

Service charge to stop service: \$0

*A refundable security deposit may be required

See How to Start, Stop or Transfer Service for more information

For a detailed electric rate schedule, [click here](#), or call SUB's billing department at 744-3795 for more information

Water Rates

Residential Water Rate inside city limits (effective 1-1-08):

Basic charge: \$6.90 per month for 3/4" meter inside city limits, PLUS
Usage charge: varies by number of units of water consumed (one unit is 748 gallons)

- First 100 units = \$ 0.928 per unit
- Units 101 and over = \$ 0.896 per unit

Note: the typical residential customer uses about 11 units/month

Summer Irrigation Rate (effective 1-1-08):

To encourage water conservation during peak demand months, a Summer Irrigation Rate is in effect for bills rendered June through September. The basic charge remains the same; however, units* of water are charged using this rate:

First 11 units = \$ 0.994 per unit
Units 12-100 = \$ 1.565 per unit
Units 101 and over = \$ 0.960 per unit

* One unit equals 748 gallons of water

For a detailed water rate schedule, [click here](#) or call SUB's billing department at 744-3795 for more information.

For information on how to conserve water during the hot summer months, [click here](#).

Wholesale Fiber Rates

A copy of SUB's dark fiber rates schedule is located [here](#). If you need additional information, call the Resource Management department at 744-3779.

How To Start and Stop Service

Starting or Transferring Service

To start utility service or to transfer your account to a new address, call 746-9599 or come to SUB's main office at 250 A Street at least one business day before you'd like service to begin or to be transferred to your new address. Generally, you can be connected by 5:00 pm of the first full working day following your request.



There is a \$15 account processing charge to start or switch service.

You may or may not be required to post a security deposit; it depends on several factors. If a security deposit is required, SUB has alternatives to requiring payment. For example, your security deposit could take the form of a letter of satisfactory credit from your previous utility, or you could get a qualified co-signer. A co-signer must be a SUB customer and have had satisfactory credit for two years. You may also want to ask a customer service rep about the utility credit score option.

