



1 wish to settle those past violations referred to in Paragraph 3 and to limit and resolve the future  
2 violations referred to in Paragraph 4 in advance by this Mutual Agreement and Order (MAO).

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

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

13 NOW THEREFORE, it is stipulated and agreed that:

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

15 A. Requiring Permittee to comply with the following compliance order to  
16 initiate a three-phase solution that will address the public conveyance system, the connections from  
17 private systems, and implement early action projects as soon as feasible in accordance with the  
18 following schedule:

19 (1) Phase I – Public Systems: By May 1, 2012, complete a preliminary field  
20 investigation and condition assessments of the public sewer infrastructure in the Burlingame  
21 Basin related to the SSO point at SW DeWitt Street and SW 25<sup>th</sup> Avenue and provide the DEQ a  
22 summary of the findings.

23 (a) January 1, 2013: Complete evaluation of alternatives; design and bid  
24 early action projects identified in the Phase I field investigation to remove stormwater from the  
25 sanitary system.

26 (b) November 1, 2013: Implement proposed early action projects to  
27 remove stormwater from the sanitary system.

1 (c) November 1, 2014: Implement additional early action projects to  
2 remove stormwater from the sanitary system after evaluating the performance of projects  
3 constructed in 2013.

4 (2) Phase II – Private Systems: By May 1, 2015, complete a private system  
5 investigation program in the Burlingame Basin and provide the DEQ a summary of the findings  
6 and initial recommended actions for early implementation or inclusion in Phase III.

7 (3) Phase III – Integrated Basin-wide System: By May 1, 2016, evaluate the  
8 improvements in SSO control at SW DeWitt obtained by the Phase I and Phase II early action  
9 projects as measured over the winters of 2014 and 2015 and provide the DEQ an updated report  
10 characterizing the results and status of achieving SSO control.

11 (a) By September 1, 2016, develop and summarize alternatives to address  
12 any remaining SSO problem sources at SW DeWitt in order to comply with the Permit. The  
13 summary must be submitted to the DEQ.

14 (b) By December 1, 2016, submit an engineering predesign report with 30%  
15 design drawings to implement the chosen basin-wide alternatives that integrate the public and  
16 private solutions. Include a schedule for final design and construction of remaining projects  
17 necessary to meet the requirements of the NPDES permit.

18 4. Beginning June 1, 2012, submit an annual report for the previous year  
19 (May 1 to April 30) that includes a summary of: project activities , sanitary sewer events  
20 (controlled or uncontrolled) that occurred in the Burlingame area in the previous year and  
21 progress in meeting the compliance dates established in the MAO.

22 B. Requiring Permittee, upon receipt of a written notice from the Department for  
23 any violations of this MAO, to pay a civil penalty of \$1,600 for each day of each violation of the  
24 schedule of compliance set forth in Paragraph 8A.

25 C. Imposing upon Permittee a civil penalty of \$75,000 for the violations listed in  
26 Paragraph 10.a below.

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1 D. In accordance with the Department's Internal Management Directive on  
2 Supplemental Environmental Projects (SEPs), the Department agrees to mitigate the \$75,000 total  
3 civil penalty to \$15,000 on the condition that Permittee satisfactorily completes a SEP approved by  
4 the Department. Respondent shall submit an approvable SEP proposal to the Department within 30  
5 days of the full execution of this MAO. An approved SEP project will be incorporated into this  
6 MAO by amendment. If Respondent fails to timely submit an approvable SEP the portion of the  
7 civil penalty subject to mitigation, \$60,000 will immediately become due and owing.

8 E. Payment of the portion of the civil penalty not subject to mitigation, \$15,000, is  
9 due 30 days from the date this MAO is fully executed. The penalty shall be paid by check or  
10 money order made payable to the "Oregon State Treasurer" and sent to: Business Office,  
11 Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.

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

26 10. The violations set forth in Paragraphs 3 and 4 above are expressly settled herein  
27 without penalty, except the following are expressly settled herein with penalty:

1           a.       On January 15, 2011, the manhole near the intersection of SW DeWitt and  
2 SW 25<sup>th</sup> Avenue had a SSO.

3           b.       On February 28, 2011, the manhole near the intersection of SW DeWitt  
4 and SW 25<sup>th</sup> Avenue had a SSO.

5           c.       On March 12, 2011, the manhole near the intersection of SW DeWitt and  
6 SW 25<sup>th</sup> Avenue had a SSO.

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

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

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

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

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

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1 16. All reports, notices and other communications required under or relating to this  
2 MAO should be directed to WQ Permit Section, DEQ Northwest Region Office, 2020 SW 4<sup>th</sup>  
3 Avenue, Suite 400, Portland, Oregon 97201, phone number 503-229-5263. The contact person  
4 for Permittee shall be Matt Criblez, City of Portland BES Environmental Compliance Division  
5 Manager, 6543 N Burlington Avenue, Bldg 217, Portland, OR 97203, phone number 503-823-  
6 9803.

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

10 18. Any stipulated civil penalty imposed pursuant to Paragraph 8.B shall be due upon  
11 written demand. Stipulated civil penalties shall be paid by check or money order made payable  
12 to the "Oregon State Treasurer" and sent to: Business Office, Department of Environmental  
13 Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204. Within 21 days of receipt of a  
14 "Demand for Payment of Stipulated Civil Penalty" Notice from the Department, Permittee may  
15 request a hearing to contest the Demand Notice. At any such hearing, the issue shall be limited  
16 to Permittee's compliance or non-compliance with this MAO. The amount of each stipulated  
17 civil penalty for each violation and/or day of violation is established in advance by this MAO  
18 and shall not be a contestable issue.

19 19. This MAO shall terminate on the date the final compliance task in Paragraph 8A  
20 above is to be completed. However, the provisions requiring payment of stipulated civil  
21 penalties for which a penalty demand is made will continue until such payment is made.

22 **PERMITTEE**

23  
24 Nov. 9, 2011  
25 Date

26 Dean Marriott  
27 Dean Marriott  
Director  
City of Portland Bureau of Environmental Services

///



# Oregon

John A. Kitzhaber, MD, Governor

## Department of Environmental Quality

Headquarters  
811 SW Sixth Avenue  
Portland, OR 97204-1390  
(503) 229-5696  
FAX (503) 229-6124  
TTY: 711

December 5, 2011

City of Portland  
c/o Jan V.V. Betz  
Office of the City Attorney  
City Hall, Suite 430  
Portland, OR 97204

Re: Mutual Agreement and Order  
In the Matter of:  
City of Portland  
WQ/M-NWR-11-091  
Multnomah County

Dear Ms. Betz:

Please find enclosed a copy of the fully executed Mutual Agreement and Order. If you have any questions, please call me at 503-229-5950.

Sincerely,

Jeff Bachman  
Office of Compliance and Enforcement

Enclosure

cc: Business Office, DEQ  
Lyle Christensen, Northwest Region, DEQ  
Water Quality Division, HQ

