



To: Dundee City Council

From: Greg Reid, City Engineer

Date: 12/6/2022

**Re: Oregon DEQ TMDL Quarterly Update
TMDL Report and Stream, Wetland & Riparian Protection Ordinance**

Current Actions

TMDL Report: Since the last update to Council regarding our Total Maximum Daily Load (TMDL) plan, City staff continues to implement the requirements of the TMDL plan including the preparation of newsletter articles related to stormwater, water quality facility and construction erosion control inspections, stormwater inlet inspection and cleaning and a variety of other activities required by the TMDL plan.

City staff has also revised the City's TMDL plan to incorporate the new mercury TMDL required by DEQ. The updated plan was submitted to DEQ in September of 2022 and is still being reviewed by DEQ for completeness. DEQ anticipates that their review of the mercury TMDL implementation will be completed sometime before the 2022 annual report to be submitted by City staff to DEQ by February 28, 2023. See the attached email from DEQ.

The status of the enforcement action taken by DEQ against the City is still pending with City staff having signed the settlement agreement (attached) with DEQ which includes the requirement to adopt a Stream, Riparian and Wetland Area Protection ordinance and pay a civil penalty of \$17,986. In order to reduce the dollar amount paid to DEQ by 80%, the City has agreed to perform a supplemental environmental project (SEP). City staff has currently submitted the SEP application to DEQ for a project to expand the water quality facilities being constructed as part of the SW 9th Street and SW Alder Street project to provide water quality treatment for the untreated upstream flows that drain through this storm system. DEQ has indicated that the proposed SEP is approvable but needs additional information to provide final approval.

Stream & Riparian Area Protection Ordinance Status: City Council previously provided approval of the hiring of an environmental consultant, Pacific Habitat, to perform a third party review of the areas to be protected and ordinance to be adopted. At this time, a site visit has been performed to review the potential habitat areas and the consultant is performing further investigations to identify significant habitats to be protected and will recommend protection areas for the City's consideration.

From: GRAMLICH Nancy H * DEQ
Sent: Monday, November 28, 2022 10:21 AM
To: City Engineer
Cc: GOLDRICH-MIDDAUGH Grace * DEQ; Steve Dahl
Subject: City of Dundee

Hello City of Dundee,

I realized I forgot to follow-up on the 2022 annual report for 2021 progress. Again, thank you for the report submittal.

The DEQ approved mercury plan updates, combined with the five-year review in 2023, will be used to evaluate overall implementation and reporting completeness for ~~2018-2023~~. The mercury plan update submittal is being reviewed by Grace who is cc'd on this email. She will be coordinating with you. DEQ's goal is to complete the mercury plan review before the Feb 28 2023 report submittal.

Sincere Regards,

Nancy Gramlich
(she/her/hers)

Willamette Basin Coordinator
Western Region – Salem Office
4026 Fairview Industrial Dr SE
Salem, OR 97302

Phone 503-378-5073 Mobile 503-701-8983
nancy.h.gramlich@deq.oregon.gov

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3
4 IN THE MATTER OF
5 CITY OF DUNDEE,

6 Respondents.

)
) MUTUAL AGREEMENT
) AND FINAL ORDER

)
) CASE NO. WQ/M-WR-2020-184

7 WHEREAS:

8 1. On April 2, 2021, the Department of Environmental Quality (DEQ) issued Notice of
9 Civil Penalty Assessment and Order (Notice) to Respondent. DEQ assessed a \$17,986 civil penalty
10 against Respondent for violations alleged in the Notice.

11 2. On April 23, 2021, Respondent filed a timely request for hearing.

12 I. AGREEMENT

13 Respondent and DEQ hereby agree that:

14 1. This Mutual Agreement and Final Order (MAO) shall be effective upon the date
15 fully executed.

16 2. Pursuant to OAR 340-012-0030(19) and OAR 340-012-0145(2), the violations
17 alleged in the Notice and as amended by this MAO, will be treated as prior significant actions in the
18 event a future violation occurs.

19 3. Respondent waives any and all rights and objections Respondent may have to the
20 form, content, manner of service and timeliness of the Notice; to a contested case hearing and
21 judicial review of the Notice; and to service of a copy of this MAO.

22 4. This MAO resolves all civil claims of DEQ, based upon the facts alleged, for the
23 violations expressly alleged in the Notice as amended by the MAO. This MAO is not intended to
24 limit, in any way, DEQ's right to proceed against Respondent in any forum for any past or future
25 violations not expressly settled herein.

26 5. Respondent releases and waives any and all claims of any kind, known or unknown,
27 past or future, against the State of Oregon or its agencies, instrumentalities, employees, officers, or

1 agents, arising out of the matters and events relating to the matter set out in the Notice and this
2 MAO. Any and all claims includes but is not limited to any claim under 42 USC § 1983 et seq.,
3 any claim under federal or state law for damages, declaratory, or equitable relief, and any claim for
4 attorney's fees or costs.

5 6. This MAO shall be binding on Respondent and its respective successors, agents, and
6 assigns. The undersigned representative of Respondent certifies that he or she is fully authorized to
7 execute and bind Respondent to this MAO. No change in ownership, corporate or partnership status
8 of Respondent, or change in the ownership of the properties or businesses affected by this MAO
9 shall in any way alter Respondent's obligation under this MAO, unless otherwise approved in
10 writing by DEQ through an amendment to this MAO.

11 7. Verifiable electronic, facsimile, or scanned signatures on this MAO shall be treated
12 the same as original signatures.

13 8. If Respondent fails to satisfactorily complete the requirements contained in Section
14 II, paragraph 2 upon receipt of a written Penalty Demand Notice from DEQ, Respondent shall pay a
15 civil penalty of \$600 for each day of each violation of this MAO until such violation is corrected.

16 9. Within twenty (20) days of receipt of a Penalty Demand Notice from DEQ,
17 Respondent may contest the Penalty Demand Notice. Respondent agrees that the issue shall be
18 limited to Respondent's compliance or noncompliance with this MAO. The amount of the
19 stipulated civil penalty is established in advance by this MAO and is not a contestable issue.

20 10. In accordance with DEQ's Internal Management Directive on Supplemental
21 Environmental Projects (SEPs), DEQ agrees to mitigate the \$17,986 civil penalty to \$3,597 and
22 Respondent agrees to apply for and satisfactorily complete a DEQ-approved SEP proposal as set
23 forth below. Respondent agrees to refrain from using the value of the SEP as a tax deduction or as
24 part of a tax credit application; and, whenever Respondent publicizes the SEP or the results of the
25 SEP, Respondent will state in a prominent manner that the project was undertaken as settlement of a
26 DEQ enforcement action. Respondent will be deemed to have completed the SEP when DEQ
27 receives a final report documenting the completion of the SEP.

1 II. FINAL ORDER

2 The Environmental Quality Commission hereby enters a final order:

3 1. Imposing upon Respondent a total civil penalty of \$17,986 for the violations alleged
4 in the Notice and as amended by this MAO, \$3,597 of which is due upon execution of this MAO,
5 and the remainder to be paid according to paragraph 3, below.

6 2. Requiring Respondent to comply with the following schedule and conditions:

7 a. Adopt ordinance(s) to protect riparian, stream and wetland areas within
8 Respondent's jurisdiction by January 1, 2024.

9 b. Submit monthly status reports, due by the 15th of every month beginning the
10 month following execution of this MAO, on Respondent's progress towards ordinance development
11 and adoption to DEQ via email to: Nancy Gramlich <Nancy.H.Gramlich@deq.oregon.gov> .

12 3. Within 30 days of Respondent signing the MAO, submit to DEQ a Supplemental
13 Environmental Project (SEP) application that meets DEQ's SEP approval criteria (as described in
14 DEQ's Internal Management Directive on Supplemental Environmental Projects) and proposes to
15 contribute no less than \$14,389 towards a SEP that will provide water quality treatment and
16 improvements within the City and be completed prior to January 1, 2024.

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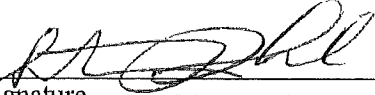
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1 4. Within 30 days of completion of the SEP or January 1, 2024, Respondent must
2 provide DEQ a final report describing completion of the SEP; otherwise, the remaining civil penalty
3 (\$14,389) is due and owing to DEQ.

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5 CITY OF DUNDEE (RESPONDENT)

6
7 10/18/22
Date


Signature
Steve Dahl
Name (print)
City Administrator
Title (print)

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13 DEPARTMENT OF ENVIRONMENTAL QUALITY and
14 ENVIRONMENTAL QUALITY COMMISSION

15 _____
Date

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