

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

3    IN THE MATTER OF:	)	MUTUAL AGREEMENT
	)	AND ORDER
4    CITY OF LAKE OSWEGO	)	NO. WQ/M-NWR-06-073
	)	CLACKAMAS COUNTY
5	)	

6   WHEREAS:

7           1. Oregon law prohibits the discharge of raw sewage into waters of the state. Pursuant  
8 to Oregon Revised Statute (ORS) 468B.080 (1) No sewage shall be discharged into or in any  
9 other manner be allowed to enter the waters of the state from any building or structure unless the  
10 sewage has been treated in a manner approved by the Oregon Department of Environmental  
11 Quality (the Department). ORS 468B.050(1)(a) prohibits any discharge of wastes that enters  
12 waters of the state, either without a waste discharge permit or from a discharge point not  
13 authorized by a waste discharge permit. Oregon Administrative Rule (OAR) 340-041-0009(2)  
14 prohibits the discharge of raw sewage to waters of the state.

15           2. The City of Lake Oswego (the City) has reported sewage overflows from manholes as  
16 a result of intermittent surcharging within the Lake Interceptor dating back to 1983. The most  
17 recently reported discharges of raw sewage to waters of the state occurred during December of  
18 2005, January of 2006, November of 2006, December of 2006 and January of 2007. Most of the  
19 untreated wastewater released joined storm water flow and eventually entered Oswego Lake, or  
20 the Willamette River, waters of the state.

21           3. Because of the Lake Interceptor's capacity limitations, the Department and the City  
22 recognize that during periods of heavy rainfall, manholes will overflow again, and the City will  
23 be in violation of ORS 468B.080(1), ORS 468B.050(1)(a) and OAR 340-041-0009(2). The  
24 City's remedial course of action will include a construction project for addressing the Lake  
25 Interceptor capacity issue. This construction project will involve replacing the current Lake  
26 Interceptor with either a new, gravity-drained interceptor across Oswego Lake ("In-Lake

1 Option”) or a new series of force mains and pumping stations around the north end of Oswego  
2 Lake (“Around-the-Lake Option”). The Lake Oswego City Council will select one of these as  
3 the replacement for the current Lake Interceptor.

4 4. The Department and the City recognize that the Environmental Quality Commission  
5 has the power to impose a civil penalty and to issue an abatement order for violations of Oregon  
6 law. Therefore, pursuant to ORS 183.415(5), the Department and the City wish to settle those  
7 past violations referred to in Paragraph 2 and to limit and resolve the future violations referred to  
8 in Paragraph 3 in advance by this Mutual Agreement and Order (MAO).

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

11 NOW THEREFORE, it is stipulated and agreed that:

12 6. The Environmental Quality Commission shall issue a final order:

13 A. Requiring the City to comply with the following schedule and conditions:

14 (1) By no later than February 8, 2007, initiate formal negotiations with the  
15 Lake Oswego Corporation regarding the timing and duration of the drawdown of Oswego Lake  
16 necessary for the construction of either Lake Interceptor replacement option. The City will  
17 notify the Department that it has commenced formal negotiations within three business days  
18 thereafter.

19 (2) By no later than February 28, 2007, provide to the Department the Final  
20 Phase I Pre-design Report for the Lake Interceptor replacement project. Phase I of the Pre-  
21 design Report will further describe the In-Lake Option.

22  
23 (3) By no later than July 16, 2007, provide to the Department the Final Phase  
24 II Pre-design Report for the Lake Interceptor replacement project. Phase II of the Pre-design  
25 report will describe the Around-the-Lake Option, provide a comparison of the In-Lake Option to  
26 the Around-the-Lake Option and will include engineering recommendations on the options.

1  
2 (4) By no later than August 7, 2007, the Lake Oswego City Council will  
3 select either the In-Lake Option or the Around-the-Lake Option for the Lake Interceptor  
4 replacement project. The City will notify the Department of the City Council's decision within  
5 three business days thereafter.

6 (5) By no later than August 10, 2007, the City will commence formal  
7 negotiations with landowners to obtain property interests necessary for the construction of the  
8 Lake Interceptor replacement project selected by the City Council. The City will notify the  
9 Department that it has commenced formal negotiations within three business days thereafter.

10 (6) The City will endeavor to obtain all property interests necessary for the  
11 construction of the Lake Interceptor replacement project selected by the City Council by no later  
12 than June 1, 2009. In the event the City believes it will be unable to obtain all necessary  
13 property interests by June 1, 2009, it will provide notice, no later than April 1, 2009, to the  
14 Department of the interests it will be unable to obtain by that time and the reasons for the delay.

15 (7) The City will endeavor to obtain all permits and authorizations necessary  
16 for the construction of the Lake Interceptor replacement project selected by the City Council by  
17 no later than October 1, 2008. In the event the City believes it will be unable to obtain all  
18 necessary permits and authorizations by October 1, 2008, it will provide notice, no later than  
19 August 1, 2008, to the Department of the permits and authorizations it will be unable to obtain  
20 by that time and the reasons for the delay.

21 (8) By no later than September 1, 2008, the City will submit to the  
22 Department fifty-percent complete design plans and specifications for the Lake Interceptor  
23 replacement project selected by the City Council.

24 (9) By no later than June 30, 2009, the City will submit to the Department  
25 final design plans and specifications for the Lake Interceptor replacement project selected by the  
26 City Council. The Department will make its best efforts, given the limitations on the availability

1 of its staff, to promptly to review the final design plans and specifications.

2 (10) By no later than October 1, 2009, the City will commence construction of  
3 the Lake Interceptor replacement project selected by the City Council. The City will notify the  
4 department that construction has commenced within three business days thereafter.

5 (11) Within two weeks of the date of Department approval of the final design  
6 plans and specifications for the Lake Interceptor replacement project, the City and Department  
7 will meet to review and agree on a construction completion schedule for the Lake Interceptor  
8 replacement project. If the Department and the City agree to a completion schedule, this MAO  
9 will be amended pursuant to Paragraph 10 to incorporate the agreed-upon construction  
10 completion schedule. If the Department and the City are unable to agree to a construction  
11 completion schedule, this MAO will terminate on October 1, 2009.

12 B. Requiring the City to provide quarterly reports via electronic mail to the  
13 Department on the status of its compliance with schedule set forth in Paragraph 6.A above.

14 C. Requiring the City to provide the Department with a copy of their ongoing  
15 contingency plan for addressing overflow events (overflow response plan) by February 22, 2007.  
16 The overflow response plan should detail steps that will be taken by the City to mitigate these  
17 events and to notify the public regarding them.

18 D. Requiring the City, upon receipt of a written notice from the Department for any  
19 violations of this MAO, to pay a civil penalty in the amount of \$250 for each day of each  
20 violation of the compliance schedule set forth in Paragraph 6.A, 6.B and 6.C.

21 7. If any event occurs that is beyond the City's reasonable control and that causes or  
22 may cause a delay or deviation in performance of the requirements of this MAO, the City shall  
23 immediately notify the Department verbally of the cause of delay or deviation and its anticipated  
24 duration, the measures that have been or will be taken to prevent or minimize the delay or  
25 deviation, and the timetable by which the City proposes to carry out such measures. The City  
26 shall confirm in writing this information within five (5) working days of the onset of the event.

1 It is the City's responsibility in the written notification to demonstrate to the Department's  
2 satisfaction that the delay or deviation has been or will be caused by circumstances beyond the  
3 control and despite due diligence of the City. If the City so demonstrates, the Department shall  
4 extend times of performance of related activities under this MAO as appropriate. Circumstances  
5 or events beyond the City's control include, but are not limited to, acts of nature, unforeseen  
6 strikes, actions or inactions of federal, state or local governmental agencies other than the City,  
7 lawsuits filed against the City or that the City is required to file relating to the Lake Interceptor  
8 replacement project, work stoppages, fires, explosion, riot, sabotage, or war. Increased cost of  
9 performance or consultant's failure to provide timely reports may not be considered  
10 circumstances beyond the City's control.

11 8. Regarding all past reported violations, including those set forth in Paragraph 2 above,  
12 all of which are expressly settled herein with a civil penalty pursuant to ORS 468.140 of  
13 \$54,000, the City and the Department hereby waive any and all of their rights to any and all  
14 notices, hearing, judicial review, and to service of a copy of the final order herein. The penalty  
15 of \$54,000 referred to herein may be reduced by an amount up to \$43,200 through performance  
16 of a Supplemental Environmental Project ("SEP") accepted by the Department. Penalty  
17 reduction is subject to the Department's approval of a SEP proposal within 120 days of the  
18 execution of this MAO. If the Department does not approve of a SEP proposal within 120 days  
19 of the execution of this MAO, the balance of the civil penalty previously subject to mitigation,  
20 \$43,200, will immediately become due and owing. The Department reserves the right to enforce  
21 this order through appropriate administrative and judicial proceedings.

22 9. Regarding the potential for future violations set forth in Paragraph 3 above, the City  
23 and the Department hereby waive any and all of their rights to any and all notices, hearing,  
24 judicial review, and to service of a copy of the final order herein, provided the City has followed  
25 their overflow response contingency plan. In addition the City must provide the Department with  
26 oral notification either directly or through the Oregon Emergency Response System (OERS @1-

1 800-452-0311) of each occurrence within 24 hours and a written description of actions taken  
2 within 5 days of the conclusion of the overflow. The Department reserves the right to enforce  
3 this order through appropriate administrative and judicial proceedings.

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

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

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

17 13. All reports, notices and other communications required under or relating to this MAO  
18 should be directed to Lyle Christensen, DEQ Water Quality Northwest Regional Office, 2020  
19 SW 4<sup>th</sup> Avenue, Portland, Oregon 97201, phone number (503) 229-5295. The contact person for  
20 the City shall be Joel Komarek, City Engineer, PO Box 369, Lake Oswego, Oregon 97034,  
21 phone number (503) 635-0270.

22 14. The City acknowledges that it has actual notice of the contents and requirements of  
23 the MAO and that failure to fulfill any of the requirements hereof would constitute a violation of  
24 this MAO and subject the City to payment of civil penalties pursuant to Paragraph 6.D above.

25 15. Any stipulated civil penalty imposed pursuant to Paragraph 6.D shall be due upon  
26 written demand. Stipulated civil penalties shall be paid by check or money order made payable

1 to the "Oregon State Treasurer" and sent to: Business Office, Department of Environmental  
2 Quality, 811 SW Sixth Avenue, Portland, Oregon 97204. Within 21 days of receipt of a  
3 "Demand for Payment of Stipulated Civil Penalty" Notice from the Department, the City may  
4 request a hearing to contest the Demand Notice. At any such hearing, the issue shall be limited  
5 to the City's compliance or non-compliance with this MAO. The amount of each stipulated civil  
6 penalty for each violation and/or day of violation is established in advance by this MAO and  
7 shall not be a contestable issue.

8 16. Providing the City has paid in full all stipulated civil penalties pursuant to Paragraph  
9 15 above, this MAO shall terminate 60 days after the City demonstrates full compliance, through  
10 and including completion of construction, with the requirements of the schedule set forth in  
11 Paragraph 6.A above, unless terminated earlier pursuant to provisions of 6. A. (11) above.

12  
13 The City of Lake Oswego

14 2-7-07  
15 Date

Judie Hammerstad  
16 Judie Hammerstad, Mayor

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

17 2/7/07  
18 Date

Jane K. Hickman  
19 Jane K. Hickman, Administrator  
20 Office of Compliance and Enforcement

**FINAL ORDER**

21 **IT IS SO ORDERED:**

**ENVIRONMENTAL QUALITY COMMISSION**

22  
23  
24 2/7/07  
25 Date

Jane K. Hickman  
26 Jane K. Hickman, Administrator  
Office of Compliance and Enforcement  
Department of Environmental Quality  
Pursuant to OAR 340-11-136(1)