



OFFICE OF THE CITY MANAGER
City of Newport, Oregon
169 S.W. Coast Hwy.
Newport, OR 97365
541-574-0603
s.nebel@newportoregon.gov

MEMO

DATE: April 26, 2021
TO: Mayor and City Council
FROM: Spencer Nebel, City Manager

SUBJECT: Status Report for the Four-Week Period Ending Friday, April 23, 2021

The balance of my time over the past four weeks has been dominated by putting together the proposed budget that was provided to the Budget Committee on April 20. During the past few weeks, I have primarily worked on the budget from home, and used my office time to catch up on other details as time permitted. We are in a much stronger position, financially, this budget cycle due to some difficult decisions we made in last year's budget, and as a result of revenues coming in stronger than what was projected last year. The Budget Committee begins their deliberations on the proposed budget on April 27. I appreciate everyone's patience with not being able to respond to everything in a timely fashion as I complete this important annual task.

Highlights of activities over the last four weeks include the following:

- Participated in a conference call with the FAA and our airport consultant of record regarding the request from the Airport Advisory Committee to consider making application to the FAA to lower airport landing minimums. Currently, airport landing minimums are at three-quarters of a mile. Landing minimums relate to visibility for instrument landings at the airport. The Committee would like to reduce minimums to a half-mile. The instrument landings include a weather reporting facility such as our airport. Lowering the minimums would have significant impacts on adjacent land uses, as well as the layout of the airport, according to the information received from the FAA and call with our consultant of record. The request would require a re-do of certain of aspects of the Master Plan as it relates to the physical layout of taxiways and the airport apron areas. The Committee is requesting a proposal from our consultant of record of what costs are necessary to put in application for lowering minimums. If the Committee would like to proceed with this issue, the authorization would need to be done by Council to proceed with this request.
- Mike Cavanaugh and I reviewed the RFP for developing a business plan for the Parks and Recreation Department. This is out for bidding at this time.
- Participated in an ICMA virtual conference planning meeting regarding the Portland conference. Plans are proceeding with a live conference in Portland.

- Participated in a meeting with Chris Janigo, Derrick Tokos, Jason Malloy, and Elizabeth Adams from ODOT regarding the Moolack landslide repair that ODOT is doing. This includes draining a slump pond located next to the closed landfill to reduce the hydraulic pressure on the slide areas impacting US 101. For the most part, this work will be off the highway right-of-way.
- Met with Chris Janigo to discuss an update on the repairs of cracks that have resulted in leaks in the main swimming pool. Representatives of the firm that designed the pool and the contractor have met with City staff to review the problem and address the issue. The conclusion is that the leaks were occurring around the pool lights on the west side of the pool causing movement of soil creating settlement on the south end of the pool. Repairs are being made to the cracks that occurred in the pool. We will be determining responsibility for the issues that led to the original leaking. I will keep you updated on the progress on resolving both the leaking/crack issue, as well as responsibility for installation of the lights and cracking of the pool.
- Had meetings with Department Heads to wrap-up the capital outlay budget for the proposed budget.
- Met with Tia Cavender regarding the Dig Deep contract for this next year. I am proposing that we continue with Dig Deep Research for work relating to the dams, however, I am recommending that we reduce our efforts in other areas of work with Dig Deep Research for this year, due to financial constraints in the utility funds. We will be reviewing this part of the budget process.
- Barb James, David Allen, and I met to review the volunteer policy and program documents. Barb put together a comprehensive policy which has been reviewed by our liability carrier, CIS, to provide better protection to the City for volunteers of the City. We continue to rely on volunteers to conduct many important services to serve the public. We are hopeful this will be wrapped up and in place in the next month.
- Met with Derrick Tokos to review a number of Planning issues.
- Prepared agenda items for the April 5 City Council meeting.
- Participated in a routine Department Head meeting.
- Participated in the April 5 work session to talk about our policy on herbicides and pest management, and review the potential impact of the American Rescue Plan on the City. In addition, we had a discussion on enforcing camping on public property, as well as the role the City can play regarding camping on private property.
- Participated in the April 5 Council meeting.
- Presented Peggy O'Callaghan with a plaque recognizing her 21 years of service to the City. We wish Peggy well in her retirement and invited her back to the recognition dinner at the Employee Awards Banquet to formally celebrate her retirement.
- Peggy Hawker, Barb James, and I, met to review a job description for the Assistant City Manager/City Recorder position that is proposed in the budget. We would like to move forward with this process shortly after the new fiscal year begins, if approved by the Budget Committee.

- Participated with Councilor Botello, Peggy Hawker, and Leslie Palotas, with the Ford Family Foundation and our 2040 Vision grant. Because of COVID-19, the amount of money spent from the grant was significantly reduced during this first year of the two-year grant. The Ford Family Foundation is willing to extend the use of these funds for a third year. I indicated that I would support the appropriation of our local share of \$25,000 for a third year to continue this process. The Foundation indicated they were pleased with the work Leslie, Peggy, and the Committee have done, as well as keeping the community vision in front of the public as a living document to help guide the community in the future.
- Participated in the bi-monthly implementation of the Watersmart Program We are working through security concerns that IT has with the way various programs interact with one another. We are trying to work this to assure we are not creating a vulnerability with our systems through access.
- Participated in our bi-monthly Emergency Coordinating Committee meeting. We are adjusting our occupancy limits based on Lincoln County moving to high risk. This has a minimal impact on our operations, with some adjustments at the Library and Recreation Center to meet the standards.
- Met with Public Works and Finance regarding the Public Works capital projects included in the proposed budget.
- Derrick Tokos, Chris Janigo, David Allen, Clare Paul, and I, met to prepare for the meeting with Central Lincoln PUD on franchise renewal. We will be having a work session with Council to discuss the status of our discussion with PUD on a new franchise.
- Had a follow-up meeting to complete the capital outlay budget with Public Works and Finance.
- Mayor Sawyer, Chris Janigo, and I, participated in a Zoom meeting with Congressman Schrader and his staff updating him on Big Creek Dam. We are requesting that Congress appropriate funds for dam repairs as part of the infrastructure bill being considered. Congressman Schrader is aware of the Big Creek Dam, and has had a site visit within the last year to see personally. He remains supportive to push for funding through stimulus or other means to assist with this project.
- Met with Mike Murzynsky to sort through a water billing issue with the Shilo Inn.
- Met with Jim Ferraris regarding the review he is conducting in Public Works. We expect a final report from him within the next 30 days.
- David Allen, Richard Dutton, and I, met to discuss the PUD's interest in using one of the city's under-bay conduit to replace a fiber optic line they currently have on the Yaquina Bay Bridge. Richard has spent an amount of time researching the history of the discussions relating to the underwater crossing. PUD was part of the discussion, but did not to participate in the project. There is very little in written records on this. Richard has spoken with the former City Engineer, Lee Ritzman, and former City Attorney, Chris Minor, who had fairly extensive files on the underwater crossing and had some information relating to PUD's non-participation of the project. We will meet with PUD the week of April 26 to continue this discussion.

- Mayor Sawyer, Chris Janigo, Clare Paul, and I, participated in a conference call with Senator Wyden's Washington office on Big Creek Dam. The focus of these calls has been to explain the need to incorporate funding for municipal dam replacement as part of any infrastructure bills being considered by Congress. Senator Wyden's staff expressed their full support for pushing this concept.
- Clare Paul, Mike Murzynsky, David Allen, and I, met with Tony DalPonte and Elizabeth Bingold regarding the water overbilling that was discovered by Pacific Seafood over a six-year period for their facility at 209 SW Bay Blvd. The error that occurred related to the use of an industrial compound water meter. One side of the compound meter was incorrectly recorded in our billing system. This generated water bills ten times the actual water use. Because there are multiple meters at this location, the error was not discovered by either Pacific Seafood, the Finance Department, or Water Department during this time period. This occurred at the time of the replacement of the meter, and perhaps it was assumed that the previous meter was significantly under reading water use at this facility. Since the time of the meter change out, the total water billing for this address was \$1.2 million. The actual billing should have been \$571,000. The overbilling for this account was \$695,000 over these six-year period. We have negotiated a settlement of these issues with Pacific Seafood, which results in a credit being issued to them on their various accounts with the City of \$250,000 for the fiscal year beginning July 1, 2021, and \$204,701 for the fiscal year beginning July 1, 2022. Pacific Seafood is willing to forgive the remaining amount of close to \$250,000 because of the effort the City is making to address water production issues to avoid a curtailment of water as experienced in 2020. We are appreciative of Pacific Seafood's willingness to work with us on this issue, and we will develop a press release expressing our appreciation for their commitment to help the City continue to improve our water system. Pacific Seafood has also been very supportive with the congressional delegation advocating for the funding for the Big Creek Dam replacement.
- Met with Dr. Ralph Breitenstein from the Public Health District regarding the joint effort being proposed between the hospital and the City for emergency water supply for the hospital facility. Originally, the hospital was looking at developing a storage facility on site that would function as part of the City's water system during but could be closed off in the event of an emergency to provide the hospital with water during a major emergency. Due to concerns over long-term maintenance costs and other activities, the hospital is shifting gears and building a seismically resilient pipeline from the main storage tanks to the hospital location. The Health District is considering an application to FEMA for funding this. The local share of the FEMA grant, if funded, would be significant at \$2 million. I indicated to Ralph that with the dam issues, and other utility issues, we would be looking toward the Health District to participate in a significant way in that local match. Ralph understands that, particularly in light of the fact that the dams may not survive a seismic event, and that has to be first priority for the City. We appreciate the Health District's thoughts on proceeding with this work.
- Prepared agenda items for the April 19 City Council meeting.
- Held a routine Department Head meeting.
- David Allen, Chris Janigo, Clare Paul, Andrew Grant, and I, met regarding a communication from the DEQ that imposes a civil fine on the City for a series of

issues relating to chlorination of cleaned wastewater that is piped back across the bay and discharged at the Nye Beach outflow. The wastewater plant affluent did not meet the daily maximum of 406 organisms per 100 millimeters of treated affluent due to failure in the chlorination system. Part of the citation relates to modifications that were made regarding the chlorine pumps without specific DEQ authorization. There are other situations that occurred during this same period that are cited, with some being fined and others not. We are going to appeal the civil penalty. Part of the fining process is based on the consent agreement the City entered relating to the Agate Beach wastewater discharges that occurred regularly prior to the implementation of the new system. This has an impact of significantly increasing fines for issues that occur after the fact. That being said, there are portions of the fine that we would not appeal. We will keep you informed, and once prepared, will share a copy of the appeal with you. Wastewater Treatment Plant Superintendent, Andrew Grant, and Clare Paul, has taken steps to address the specific issues that relate to the findings in the attached order. Unfortunately, we had a different issue occur with the chlorine pumps when there was an airlock and an alarm failure that occurred the prior weekend. When these situations occur, we report them immediately to DEQ and provide proper public notice as required as our discharge permit.

- Participated in a City Council work session discussing large animals in the city, and an executive session to consider property transactions.
- Participated in the April 19 City Council meeting.
- At the April 19 City Council meeting, Councilor Parker requested an update on the easement across the ponds at the SE 40th Street. The City Council authorized condemnation to move forward with the acquisition of an easement across the ponds. The parties have agreed to the easement. The easement has been recorded and conveyed to the City.
- Conducted interviews with three candidates for the position of city engineer. The interview process was a day-long endeavor with candidates being interviewed by a technical panel of public engineers, a staff panel, and a panel of community interests that interact with the engineering department. I conducted the fourth interview, and in addition, there was a written exercise, a tour of the city, and a customer service exam that was required. I believe we have a good pool of candidates for the city engineer position, and Barb James and I are evaluating the results from all of the participants in the interview process to make an offer. Once we make an offer to a candidate, we can then proceed with a background check on that candidate. I appreciate everyone's efforts in participating in this process. Panelists from the technical panel included Stephanie Reid, Lincoln City Engineer, Jeff McConnell, Corvallis City Engineer, and Savannah Crawford, ODOT Area Manager. The citizen panel included John Connor from the hospital, and Freddy Saxton from Advantage Real Estate. The department head panel included Barb James, Derrick Tokos, Mike Murzynsky, Clare Paul, and Steve Stewart with a city tour being provided Mike Cavanaugh and Andrew Grant.
- Peggy Hawker, Richard Dutton, and I, participated in a meeting to look at upgrades to the audio-visual system in the Council Chambers and Conference Room A to better facilitate hybrid meetings in the future. This includes expanding the sound system so that we can spread people around the Council Chambers and/or

conference room and have adequate sound for those who are participating remotely in these processes. This has been included in the proposed budget for the coming year.

- Along with Mayor Sawyer, Chris Janigo, and I, participated in a presentation on the Big Creek Dam to Aaron Davis and Alexa Williams, staff members for the US House Transportation and Infrastructure team. We had a good presentation to bring them up to speed with the need for federal investment in public dams. There seems to be willingness to recognize that this is an area that needs to have adequate funding.
- Participated in day-long interviews for the public works director position. Three candidates were interviewed in the same method we utilized for the city engineer position the day before. The panelists on the department head panel included Barb James, Jason Maxon, Mike Murzynsky, Clare Paul, and Steve Stewart. The technical panel included Roy Kinion of the Lincoln County Public Works, Jeff Blaine, Public Works and Community Development Director for the City of Albany, and on the citizen panel we had Tim Kauffman from Lincoln County School District, Bob Farrington from Central Coast Excavating, and Adam Denlinger, General Manager from Seal Rock Water District. The tour guides were Mike Cavanaugh and Andrew Grant. Barb James and I will be reviewing the results of the interviews and will hopefully be in a position to make an offer early in the week. Like the city engineer position, it is subject to a comprehensive background check.
- Mike Murzynsky and I met regarding concerns over the issuance of a business license for food delivery service. It appears that the business license we received is different from the concerns expressed by hotel and restaurant owner who indicated that their restaurant was listed on the website, but they have no agreement with the delivery service company. We are continuing to investigate that issue.
- Mike Murzynsky and I participated on Newport Today on KNPT to talk about the proposed budget and how people can review the budget and involve themselves in providing comments to the Budget Committee on the proposed budget.
- David Allen, Peggy Hawker, Mike Cavanaugh, Jim Guenther, and I, participated in a meeting regarding depositions that will be taken from Jim Guenther and I Friday, April 30, regarding a slip and fall matter on the Ocean to Bay Trail.
- David Allen, Peggy Hawker, Derrick Tokos, Lance Vanderbeck, and I, met to review a proposal from Alan Wells for a lease of airport property outside the fence. This is an item that we are presenting to the Airport Advisory Committee, and ultimately, to the City Council for future consideration.
- Richard Dutton, Mike Murzynsky, Clare Paul, and I, met in a bi-monthly meeting for the implementation of our Watersmart Program.
- Clare Paul, Chris Janigo, David Allen, and I, met regarding the utility system that failed as a result of the landslide on 73rd Street. There is a temporary section of main that has been set up, however, we will need to look toward a permanent solution to that area. The question raised is, what financial responsibility should the City have to correct this situation, and what responsibility lies on the property owners to address a long-term solution for the sanitary sewer system that failed and put back into temporary operation. We will continue to evaluate options and how to proceed.

- Held a bi-monthly meeting with Mike Murzynsky.
- Peggy Hawker, Mike Cavanaugh, Jim Guenther, Chris Janigo, and I, met with the attorney to provide responses for the upcoming deposition. One of the depositions being taken is of the City organization itself. We need to compile information to respond to the questions raised by the attorneys litigating this case.
- Participated in a retirement Board of Trustees meeting with Columbia Trust. Andrew Haggerty is the portfolio manager for the City's retirement. He indicated that the City retirement investment funds have grown at the rate of 31.54% for the past twelve months. In the last quarter, the portfolio has seen about 2% growth. The market is expected to continue growing in the foreseeable future. The chance of a recession is significantly lower than earlier forecasts. In the market, things change rapidly, and I believe we have a balanced investment plan which has allowed us to see significant growth, and is conservative enough to protect investments during economic downturns.
- Mike Murzynsky and I met with the Budget Committee Chair, Mike Kerton, to prepare for the Tuesday budget review.
- Barb James, Clare Paul, and I, met to conclude a response to a complaint from an employee of the Public Works Department regarding actions by another Public Works employee. We have met with both employees involved, and will be issuing a letter with our findings, including some coaching advice to avoid future similar conflicts.
- Barb James, Jason Malloy, and I, met regarding the PERS Retire/Rehire Program. I will be providing a report to the City Council at the May 17 meeting on this policy.
- Barb James and I met to review the findings from the interviews including the written exercise and customer service assessments that we did for the candidates for these positions. We hope to make an offer this week for these.

Upcoming Events:

- The first Budget Committee meeting is April 27 at 5 PM.
- I plan to take May 4,5 and 6 as vacation days.
- May 7 is the League of Oregon Cities' 2021 Spring Symposium. This is focusing on emergency management. Please contact Melanie if you would like to register for this event. Unfortunately, I will not be able to participate in this virtual event.
- The second Budget Committee meeting is set for May 18 at 5 PM.
- The third Budget Committee meeting is May 25 at 6 PM.
- Monday, May 31, City Hall will be closed in observance of Memorial Day.
- July 6-9, I plan to attend the OCCMA Summer Conference in Bend (in -person or virtually)
- Tuesday, July 20 through August 10 I will be taking vacation time to drive to Michigan. During this time, Peggy Hawker will be serving as acting city manager. Council has excused my attendance from the August 2 City Council meeting.
- Monday, September 6, City Hall will be closed in observance of Labor Day.
- October 3-6, I plan to attend the ICMA Annual Conference in Portland, OR.
- October 21-23 is the 96th League of Oregon Cities Annual Conference in Bend.
- Thursday, November 11, City Hall will be closed in observance of Veteran's Day.

- Thursday, November 25 and Friday, November 26 City Hall will be closed due to the Thanksgiving holiday.
- Thursday, December 23 City Hall will be closed half-day due to the Christmas holiday, and all day on Friday, December 24.

Attachments:

- Councilor Parker requested an update on the scotch broom removal at the airport. Attached is a report provided by Airport Director, Lance Vanderbeck, on work completed to date.
- Attached is the communication from the Department of Environmental Quality regarding the notice of civil penalty assessment and order relating to chlorination issues with the City's wastewater affluent. As indicated in the report, we will be drafting a letter of appeal for some of the fines included in this report.
- Attached is a report from Chief Malloy regarding the vandalism at the Fishermen's Memorial. At this point, the department has not had any leads on who committed the vandalism. They are continuing to work on this effort.

I hope everyone has a great week.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "S. Nebel".

Spencer R. Nebel, City Manager

cc: Department Heads



STAFF REPORT
Spencer Nebel

Meeting Date: TBD

Title: Scotch Broom Removal

Prepared by: Lance Vanderbeck, Airport Director

Background Information:

On February 16, 2021 at 1 p.m. staff meet with Councilor Parker, Councilor Jacobi, and City Manager Spencer Nebel for a walking discussion of Scotch Broom removal at the airport. Several areas along the fence line on 84th street were discussed. Since then airport staff has started removal of Scotch Broom in this area and other areas around airport property.

I provide pictures of the areas that staff has been able to get some of the Scotch Broom removed since February 16.

Across from FedEx.



Across from FedEx II



South of FBO



South of FBO



By FedEx Apron



By FedEx apron



By FedEx apron



Looking south, standing west of FedEx Apron.



Fence line behind box hangars



Field north of 84th street, west of FedEx building.



Field west of USCG base.



Road to T-hangars next to USCG base



Back area east of fence line.



Back Area east of fence line of runway 20



Back area looking west, standing by NPD gun range road.



Recommendation: For staff to continue to remove scotch broom when staffing and time allows.



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
(503) 229-5696
FAX (503) 229-5100
TTY 711

April 9, 2021

CERTIFIED MAIL: 7017 0530 0000 7760 5073

City of Newport
c/o David Allen, City Attorney
169 SW Coast Hwy
Newport, OR 97365

Re: Notice of Civil Penalty Assessment and Order
Case No. TYPE #

DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$28,400 for causing pollution of waters of the state when the city discharged non-disinfected wastewater to the Pacific Ocean on December 21 and 22, 2019, and for disconnecting backup chlorine pumps from its wastewater treatment system without prior DEQ approval. Your disconnection of the backup pumps resulted in a non-disinfected wastewater discharge when the primary chlorine pump failed. In addition, DEQ penalized you for discharging raw sewage to the Pacific Ocean on January 12, 2021 in violation of a state water quality standard. Finally, DEQ cited you, without penalty, for an additional discharge of non-disinfected wastewater to the Pacific Ocean on January 29, 2021, discharging raw sewage to the ground surface on February 16, 2021 and for exceeding the chlorine effluent limit in your permit on February 13, 2021.

Wastewater must be disinfected in order to kill human disease-causing bacteria present in wastewater that is discharged to public waters. Discharge of non-disinfected wastewater and raw sewage by Newport created a public health risk as the Pacific Ocean off Newport's beaches is used for water-contact recreation. These violations, taken together, cause concern about Newport's management of its wastewater collection, treatment and disposal system.

If you wish to appeal this matter, DEQ must receive a request for a hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your request to DEQ Office of Compliance and Enforcement:

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – DEQappeals@deq.state.or.us

Via fax – 503-229-5100

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review and refer to it when discussing this case with DEQ.

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor instead of paying a penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

If you have any questions, please contact Jeff Bachman at 503-229-5950 or toll free in Oregon at 800-452-4011, extension 5950.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Steve McMillan, Western Region, DEQ
Ranei Nomura, Western Region, DEQ
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:
CITY OF NEWPORT,
a municipality of the state of Oregon,
Respondent.

) NOTICE OF CIVIL PENALTY
) ASSESSMENT AND ORDER
)
) CASE NO. WQ/M-WR-2020-168
)

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS Chapters 183 and 468B and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011 and 012.

II. FINDINGS OF FACT

1. At all relevant times, Respondent operated a domestic wastewater collection, treatment and disposal system authorized by a National Pollutant Discharge Elimination System Permit (Permit) issued and administered by DEQ.

2. The Permit authorized Respondent to operate the system and discharge to waters of the state adequately treated wastewater only in conformance with all requirements, conditions and limitations of the Permit.

3. As part of its treatment process, Respondent uses chlorine to kill bacteria in its wastewater (disinfect) prior to discharge.

4. At some time prior to December 18, 2019, Respondent disconnected from its system back up chlorine pumps that were intended to ensure wastewater disinfection in the event its primary chlorine pump became inoperable.

5. On December 18, 2019, Respondent's primary chlorine pump became inoperable and due to the backup pumps being disconnected, Respondent's treatment system was incapable of disinfecting wastewater prior to discharge to the Pacific Ocean on December 21 and 22.

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1 6. Respondent's Permit limits the concentration of fecal coliform bacteria in its discharged
2 wastewater to a daily maximum of 406 organisms per 100 milliliters (mL) and a monthly geometric
3 mean of 126 organisms per 100 mL.

4 7. Fecal coliform is limited in wastewater discharges because it is indicator of the presence of
5 human disease-causing bacteria in treated domestic wastewater.

6 8. Fecal coliform bacteria is present in non-disinfected domestic wastewater at concentrations
7 of approximately 1,000,000 organisms per 100 mL

8 9. Schedule F, Condition D.1 of the Permit states: "No construction, installation, or
9 modification involving disposal systems, treatment works, sewerage systems, or common sewers shall
10 be commenced until the plans and specifications are submitted to and approved by the Department."

11 10. Respondent did not obtain DEQ approval prior to disconnecting its backup chlorine pumps
12 from its treatment system.

13 11. On January 12, 2021, Respondent discharged approximately 730 gallons of raw sewage
14 from its Nye Beach Pump Station to the Pacific Ocean.

15 12. OAR 340-045-0009(3) states: "Raw Sewage Prohibition: No sewage may be discharged into
16 in a manner the Department approved or otherwise allowed by these rules."

17 13. On January 29, 2021, a chlorine pump discharge check valve in Respondent's treatment
18 system failed causing a loss of chlorination that led to a discharge of non-disinfected wastewater to the
19 Pacific Ocean.

20 14. On or about February 16, 2021, a landslide damaged a sewage collection line in the vicinity
21 of NW 73rd Court in Newport resulting in a discharge of raw sewage to ground surface.

22 15. ORS 468B.050(1) states: "...[W]ithout holding a permit from the Director of the
23 Department of Environmental Quality ... a person may not: ... (b)Construct, install, modify or operate
24 any disposal system or part thereof or any extension or addition thereto."

25 16. ORS 468B.005(1) states disposal system "means a system for disposing of wastes, either by
26 surface or underground methods and includes municipal sewerage systems, domestic sewerage
27 systems, treatment works, disposal wells and other systems."

1 17. ORS 468B.005(7) states that sewerage system “means pipelines or conduits, pumping
2 stations, and force mains, and all other structures, devices, appurtenances and facilities used for
3 collecting or conducting wastes to an ultimate point for treatment or disposal.”

4 18. Schedule A, Condition 1.a(3) of the Permit limits the chlorine concentration in
5 Respondent’s effluent to 0.47 milligrams per liter (mg/L).

6 19. On February 13, 2021, Respondent discharged effluent with a chlorine concentration of 0.48
7 mg/L

8 III. CONCLUSIONS

9 1. Respondent violated ORS 468B.025(1)(a) by causing pollution of waters of the state.
10 Specifically, Respondent discharged human disease-causing bacteria, a pollutant pursuant to ORS
11 468B.005(5), to the Pacific Ocean, waters of the state pursuant to ORS 468B.005(10), in concentrations
12 far in excess of those allowed in its Permit, as described in Section II, Paragraphs 3-8. These are Class
13 I violations, according to OAR 340-012-0055(1)(a). DEQ assesses a \$10,400 civil penalty for these
14 violations.

15 2. Respondent violated ORS 468B.025(2) by violating a condition of its Permit. Specifically,
16 Respondent violated Schedule F, Condition D.1 of its Permit by disconnecting its backup chlorine pumps
17 from its treatment system without prior approval from DEQ. This is a Class I violation according to OAR
18 340-012-0055(1)(g). DEQ assesses a \$9,600 civil penalty for this violation.

19 3. Respondent violated ORS 468B.025(1)(b), which prohibits the discharge of wastes to waters of the
20 state that cause a violation of a state water quality standard, by discharging raw sewage, a waste pursuant
21 to ORS 468B.005(9), to the Pacific Ocean, a water of the state pursuant to ORS 468B.005(10), in violation
22 of the water quality standard codified as OAR 340-041-0009(3) as described in Section II, Paragraphs 11
23 and 12, above. This is a Class I violation, according to OAR 340-012-0055(1)(b). DEQ assesses an \$8,400
24 civil penalty for this violation.

25 4. Respondent violated ORS 468B.025(1)(a) by causing pollution of waters of the state.
26 Specifically, Respondent discharged human disease-causing bacteria, a pollutant pursuant to ORS
27 468B.005(5), to the Pacific Ocean, waters of the state pursuant to ORS 468B.005(10), in concentrations

1 far in excess of those allowed in its Permit, as described in Section II, Paragraph 13. This is a Class I
2 violation, according to OAR 340-012-0055(1)(a). DEQ does not assess a civil penalty for this violation.

3 5. Respondent violated ORS 468B.025(2) by violating a condition of the Permit by discharging raw
4 sewage to the ground surface as described in Section II, Paragraphs 14-17. Respondent's Permit does not
5 authorized discharge of raw sewage to ground surface. This is a Class II violation pursuant to OAR 340-
6 012-0053(2). DEQ does not assess a civil penalty for these violations.

7 6. Respondent violated ORS 468B.025(2) by violating a condition of the Permit. Specifically, on
8 February 13, 2021, Respondent discharged effluent with a chlorine concentration of 0.48 mg/L in violation
9 of Schedule A, Condition 1.a(3) of the Permit. This is a Class I violation pursuant to OAR 340-012-
10 0055(1)(i). DEQ does not assess a civil penalty for this violation.

11 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

12 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
13 hereby ORDERED TO:

14 1. Pay a total civil penalty of \$28,400. The determination of the civil penalties are attached as
15 Exhibits 1, 2, and 3 and are incorporated as part of this Notice.

16 If you do not file a request for hearing as set forth in Section V below, your check or money
17 order must be made payable to "State Treasurer, State of Oregon" and sent to the **DEQ, Business**
18 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

19 2. Within 180 days of the effective date of this Order, submit to DEQ an Emergency
20 Response and Notification Plan (ERNP) that includes measures to protect public health from overflows,
21 bypasses or upsets that may endanger public health. At a minimum the plan must include mechanisms
22 to: a) ensure the permittee is aware, to the greatest extent possible, of such events, and b) ensure
23 notification of appropriate personnel and ensure they are immediately dispatched for investigation and
24 response.

25 3. Within 45 dates of receiving DEQ comments to the ERNP, revise the plan consistent
26 with DEQ comments and resubmit to DEQ.

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1 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

2 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
3 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
4 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
5 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
6 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
7 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
8 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
9 it to **503-229-5100** or email it to **DEQappeals@deq.state.or.us**. An administrative law judge
10 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
11 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
12 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
13 you may represent yourself. If you are a corporation, partnership, limited liability company,
14 unincorporated association, trust or government body, you must be represented by an attorney or a duly
15 authorized representative, as set forth in OAR 137-003-0555.

16 Active duty Service members have a right to stay proceedings under the federal Service
17 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
18 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
19 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
20 Department does not have a toll free telephone number.

21 If you fail to file a timely request for hearing, the Notice will become a final order by default
22 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
23 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
24 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates

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1 the relevant portions of its files, including information submitted by you, as the record for purposes of
2 proving a prima facie case.
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6 4/9/2021
7 Date

8 Kieran O'Donnell
9 Kieran O'Donnell, Manager
10 Office of Compliance and Enforcement
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EXHIBIT 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION NO. 1** Causing pollution of waters of the state in violation of ORS 468B.025(1)(a).
- CLASSIFICATION:** This is a Class I violation pursuant to OAR 340-012-0055(1)(a).
- MAGNITUDE:** The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.
- CIVIL PENALTY FORMULA:** The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(i) because Respondent's facility has a permitted flow of more than 2 million gallons per day (mgd) but less than 5 mgd.
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10 according to OAR 340-012-0145(2)(a) because Respondent has prior significant actions consisting of more than 9 Class I equivalent violations as established in Case Nos. WQ/M-WR-2018-145, WQ/M-WR-2018-133 and WQ/M-WR-15-204.
- "H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).
- "O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because there were two occurrences of the violation, on December 21 and 22, 2019.
- "M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. The standard of care requires Respondent to have backups for all critical systems, including the chlorination system. By disconnecting its back up chlorine pumps from its system, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation or the effects of the violation could not be corrected or minimized.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 as DEQ has insufficient information to arrive at a reasonable estimate of any avoided or delayed compliance costs.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$4,000 + [(0.1 \times \$4,000) \times (10 + 0 + 2 + 4 + 0)] + \0
 $= \$4,000 + (\$400 \times 16) + \$0$
 $= \$4,000 + \$6,400 + \$0$
 $= \$10,400$

EXHIBIT 2

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION 2: Violating a condition of a wastewater permit (Schedule F, Section D, Condition 1 of the Permit) in violation of ORS 468B.025(2).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(g).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(i) because Respondent's facility has a permitted flow of more than 2 mgd, but less than 5 mgd.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10 according to OAR 340-012-0145(2)(a) because Respondent has prior significant actions consisting of more than 9 Class I equivalent violations as established in Case Nos. WQ/M-WR-2018-145, WQ/M-WR-2018-133 and WQ/M-WR-15-204.

"H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing, and receives a value of 0 according to OAR 340-012-0145(4)(a) because DEQ has insufficient information as to when the backup chlorination pumps were disconnected to determine the number of days of violation.

"M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. The requirement to receive DEQ approval before modifying Respondent's treatment system is an express condition of the Permit. In failing to take action to comply with the requirement, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation or the effects of the violation could not be corrected or minimized.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 as DEQ has insufficient information to arrive at a reasonable estimate of any avoided or delayed compliance costs.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$4,000 + [(0.1 \times \$4,000) \times (10 + 0 + 0 + 4 + 0)] + \0
 $= \$4,000 + (\$400 \times 14) + \$0$
 $= \$4,000 + \$5,600 + \$0$
 $= \$9,600$

EXHIBIT 3

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION NO. 3 Discharging a waste that caused an exceedance of the state water quality standard for bacteria in violation of ORS 468B.025(1)(b).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(b).
- MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(i) because Respondent's facility has a permitted flow of more than 2 million gallons per day (mgd) but less than 5 mgd.
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10 according to OAR 340-012-0145(2)(a) because Respondent has prior significant actions consisting of more than 9 Class I equivalent violations as established in Case Nos. WQ/M-WR-2018-145, WQ/M-WR-2018-133 and WQ/M-WR-15-204.
- "H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).
- "O" is whether the violation was repeated or ongoing, and receives a value of 0 according to OAR 340-012-0145(4)(a) because there was once occurrence of the violation. The violation occurred on January 12, 2021.
- "M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to timely replace the pump drives in the pump station that caused the violation, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent took reasonable affirmative efforts to minimize the effects of the violation. Respondent posted warning signs in the affected areas.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 as DEQ has insufficient information to arrive at a reasonable estimate of any avoided or delayed compliance costs.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$4,000 + [(0.1 \times \$4,000) \times (10 + 0 + 0 + 4 + (-3))] + \0
 $= \$4,000 + (\$400 \times 11) + \$0$
 $= \$4,000 + \$4,400 + \$0$
 $= \$8,400$

From: Jason Malloy
Sent: Tuesday, April 20, 2021 9:12 AM
To: Spencer Nebel
Subject: Report

I heard Council request information on the vandalism at Fisherman's Memorial. I reviewed the report, which was taken on 4/11/21. The damage occurred during the night between 4/10 and 4/11. The damage totaled an estimated \$1,950.00. The officer did not identify a suspect, or any information that would lead to a suspect.

The officer's report summary stated,

SOMEONE(S) DESTROYED THE FISHERMAN MEMORIAL SANCTUARY; BROKE ONE OF THE WINDOWS, BROKE MANY VASES, AND PICTURE FRAMES. THERE WAS GLASS FROM BROKEN BOTTLES ALL OVER THE GROUND THROUGHOUT THE MEMORIAL. THERE WAS FOOD AND GARBAGE AS WELL STREWN ABOUT. THE BROKEN WINDOW WAS ESTIMATED AT \$1200, AND AROUND \$500 IN DAMAGED ITEMS FROM THE MEMORIAL. CLEAN UP WAS ESTIMATED AROUND \$250.00. NO SUSPECTS 13 PHOTOS UPLOADED.

Thank you,
Jason

Jason Malloy
Chief of Police
City of Newport
169 SW Coast Highway
Newport, Oregon 97365
541.574.3348 office
541.574.0643 fax
www.newportpolice.net

