

April 14, 2023

City of Newport Testimony

Re: Wastewater System Improvement Capital Funding

Joint Committee on Ways & Means

Dear Co-Chairs Steiner & Sanchez and Members of the Joint Committee on Ways & Means:

For the record, I am City Councilor CM Hall representing the City of Newport.

This week, the City is submitting a Capital Request Form to the Legislative Fiscal Office for consideration in the 2023-2025 budget to help pay for the construction of three high priority, compliance-related wastewater projects in Newport.

The City is requesting \$7.65M in capital construction funds to help replace aging wastewater infrastructure for our community. This amount would provide our community with 50% of the total projected costs of \$15.3M. The City is financing the other \$7.65M through one of the state's existing loan programs supplemented by federal infrastructure funding through the BIL. During this past fiscal year, the City has used \$475,000 of operating funds in unanticipated repairs and costs to keep the wastewater system functioning.

Some background on the project:

The City's wastewater improvements have been put on hold for a decade due to lack of funding.

The problem has resulted in the City being fined by the Oregon Department of Environmental Quality (DEQ) for violations from contamination events that occurred in 2021. Those violations were a direct result of the aging wastewater infrastructure proposed to be replaced in this project request.

The City's wastewater treatment facilities are at or beyond their operating life and certain systems are beginning to fail. Based on critical wastewater systems assessments commissioned by the City in 2021, Newport's City Council identified several systems that are either failing, or on the verge of failure, risking environmental damage and fines from ODEQ. Based on these findings, the Newport City Council authorized funding in 2022 to conduct a comprehensive master plan regarding wastewater infrastructure

improvements currently needed. That work is still underway, and will be completed later this year.

In the meantime, the City currently faces fines from the ODEQ for water quality discharge violations from contamination events that occurred two years ago, and that are ongoing. Those violations are the direct result of aging infrastructure, and antiquated system design. New chemical control facilities will be constructed to correct the systemic design issues exacerbated by the aging infrastructure system.

The timing of this project and the financing to support it is critically urgent because the likelihood of equipment failure is imminent. Specifically, the City's sludge handling facilities, and in particular the centrifuges have been operating beyond their design capacity for years and have been rebuilt multiple times. Both centrifuges must run to keep up with demand. Currently, one centrifuge is out of service and out for repair, while the remaining centrifuge is being manned by a public works employee for 24 hours per day. If the remaining centrifuge goes down while we await the other one to return, the plant has only four days capacity until it will no longer be able to operate. If the plant cannot process sludge, raw or partially treated effluent discharge into the Pacific Ocean would result. The new centrifuge proposed in this scope would eliminate this risk of failure and inability to process its wastewater.

The City has violated its waste discharge permit for chlorine residual discharge to the Pacific Ocean seven times in the past two years, with each violation carrying a \$10,000 minimum fine. In May 2023, the City expects a new NPDES permit that will lower the limits for chlorine residual, resulting in the inevitable possibility of this violation occurring on a monthly basis at a cost of \$10,000 per month. The new de-chlorination project proposed in this scope would eliminate this violation from occurring.

Another way in which this project is urgent is to help protect the health and safety of City staff working on the mechanical screens at the Northside Plant and at the WWTP headworks that no longer function properly and require operators to manually clean the screens daily (raw sewage, rags, wipes, plastics, etc) exposing the operators to toxic and dangerous physical and environmental conditions. Part of the funding the City is seeking is for new screens that function properly and eliminate the dangerous operating conditions for public works staff.

We respectfully request the Committee's support of the City's \$7.65M capital funding request to help address critical life, health and safety needs of Newport's residents.



2023-25 CAPITAL FUNDING REQUEST

PROJECT INFORMATION FORM

Legislative Fiscal Office
900 Court St. NE, H-178
Salem, OR 97301



CONTACT INFORMATION FOR RECIPIENT ORGANIZATION

Legal Name City of Newport, OR

Organization Type Municipality Federal Tax ID Number 936002222

Address 169 SW Coast Highway 101

City Newport State OR Zip Code 97365

Contact Person Spencer Nebel

Contact Phone 541-574-0603 Contact Email S.Nebel@newportoregon.gov

PROJECT INFORMATION

Project Name Wastewater System Capital Improvements for Compliance

Project Description

The City has an urgent need to address the condition of certain components of the wastewater treatment and conveyance system (i.e. Northside De-Chlorination Project; Influent Pump Station Pipe Replacement; WWTP Centrifuge / Solids Processing System Replacement; and Capacity Improvement, Safety & Risk Mitigation Project). The City does not have adequate capacity to pay for these or other improvements & therefore is pursuing 2 funding sources: an ODEQ CWSRF Loan for \$7.65M (also eligible for federal BIL principal forgiveness); and Oregon Legislature 2023-25 Lottery Bond — Econ Dev Grant for \$7.65M.

Project Location Vance Avery Wastewater Treatment Facility, South Beach, Newport, OR 97365

Project Schedule (Please describe the project's readiness, including planned start and end dates and any remaining permits, approvals, or other steps that must be completed prior to beginning.)

The project is currently in the master planning process. Preliminary design estimates were provided by the engineering firm preparing the Wastewater Facilities Master Plan. Design and permitting work will occur in 2024 and 2025. Construction will occur in 2025 and 2026.

PROJECT BUDGET

Estimated Project Cost

Construction/Renovation	<u>\$13,800,000</u>
Site Improvements	<u>0</u>
Land Acquisition	<u>0</u>
Architectural and Engineering Fees	<u>\$1,500,000</u>
Equipment	<u>0</u>
Contingencies	<u>0</u>
Other Costs (specify) _____	<u>0</u>
Other Costs (specify) _____	<u>0</u>
Estimated Total Project Costs	<u>\$15,300,000</u>

Amount Requested \$7,650,000 **Percent of Total Project Cost** 50%

Type of Funding Requested Lottery Bond - Economic Development

Matching Funds

State Funds (source) <u>CWSRF Point Source Loan</u>	<u>\$4,650,000</u>
Federal Funds (source) <u>Est.BIL Principal Forgiveness</u>	<u>\$1,500,000</u>
Private/Other Grants	<u>---</u>
Donations/Gifts	<u>---</u>
Other Revenues/Financing (source) <u>SRF Principal Forgiveness</u>	<u>\$1,500,000</u>
Other Revenues/Financing (source) _____	<u>---</u>
Total Matching Funds	<u>\$7,650,000</u>

OTHER INFORMATION

Grants financed through the issuance of bonds are not available until bonds are sold. Multiple factors impact the timing of sales; however, many sales often occur during the last six months of the biennium (Oregon's biennial budget begins on July 1 of odd-numbered years and runs through June 30 of the next odd-numbered year). Significant decreases in revenues or changes in financial conditions subsequent to authorization may also delay or prevent the issuance of bonds, which means that the approved projects or grants would also be delayed or not funded.

Public works projects, including any project that uses \$750,000 or more of public funds for constructing, reconstructing, painting or performing a major renovation on a road, highway, building, structure or improvement of any type, may be subject prevailing wage requirements. Grant recipients must comply with prevailing wage rate laws and should consult the Oregon Bureau of Labor and Industries to determine whether a project is subject to prevailing wage.

Please return the completed form and any supporting documentation to:

Walt Campbell, Principal Legislative (Bonds) Analyst
walt.campbell@oregonlegislature.gov



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

City of Newport
Case No. WQ/M-WR-2020-168
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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

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 CITY OF NEWPORT,) ASSESSMENT AND ORDER
a municipality of the state of Oregon,)
5 Respondent.) CASE NO. WQ/M-WR-2020-168

6
7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
9 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
10 ORS Chapters 183 and 468B and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011 and
11 012.

12 II. FINDINGS OF FACT

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

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

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

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

24 5. On December 18, 2019, Respondent's primary chlorine pump became inoperable and due to
25 the backup pumps being disconnected, Respondent's treatment system was incapable of disinfecting
26 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)(l). 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, Manager
9 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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (10 + 0 + 0 + 4 + (-3))] + \$0 \\ &= \$4,000 + (\$400 \times 11) + \$0 \\ &= \$4,000 + \$4,400 + \$0 \\ &= \$8,400 \end{aligned}$$

City of Newport Wastewater Treatment Plant

prepared by Gus Glaser on 6/23/2022

Violations not cited in N

Violations Summary

Violation Date	Violation Description	Violation cited in 8-29-2020 PEN	Violation cited in 4-9-2021 Notice of Civil Penalty Assessment and Order	Parameter	Permit Limit
12/18/2019	Disconnect backup chlorine pumps	YES	YES		
12/21/2019	No effluent chlorination	YES	YES		
12/22/2019	No effluent chlorination	YES	YES		
3/16/2020	Fecal coliform exceedance	YES	NO	Fecal Coliform Bacteria	<=406 organisms/100 ml
1/12/2021	SSO	NO	YES		
1/29/2021	fecal coliform limit exceedance	NO	YES	Fecal Coliform Bacteria	<=406 organisms/100 ml
2/13/2021	chlorine residual Exceedance	NO	YES	Chlorine, total residual	<=0.47 mg/l
4/17/2021	fecal coliform limit exceedance	NO	NO	Fecal Coliform Bacteria	<=406 organisms/100 ml
4/18/2021	No Effluent Chlorination	NO	NO		
4/19/2021	fecal coliform limit exceedance	NO	NO	Fecal Coliform Bacteria	<=406 organisms/100 ml
4/19/2021	No Effluent Chlorination	NO	NO		
7/25/2021	SSO	NO	NO		
8/1/2021	fecal coliform limit exceedance	NO	NO	Fecal Coliform Bacteria	<=406 organisms/100 ml

8/1/2021	No Effluent Chlorination	NO	NO		
11/11/2021	chlorine residual exceedance	NO	NO	Chlorine, total residual	<0.47 mg/l
11/12/2021	chlorine residual exceedance	NO	NO	Chlorine, total residual	<0.47 mg/l
11/13/2021	chlorine residual exceedance	NO	NO	Chlorine, total residual	<0.47 mg/l
12/3/2021	SSO	NO	NO		
12/11/2021	SSO	NO	NO		
1/3/2022	chlorine residual exceedance	NO	NO	Chlorine, total residual	<0.47 mg/l
7/18/2022	fecal coliform limit exceedance	NO	NO	Fecal Coliform Bacteria	<=406 organisms/100 ml
10/17/2022	chlorine residual Exceedance	NO	NO	Chlorine, total residual	<0.47 mg/l
10/23/2022	chlorine residual Exceedance	NO	NO	Chlorine, total residual	<0.47 mg/l
10/24/2022	chlorine residual Exceedance	NO	NO	Chlorine, total residual	<0.47 mg/l
11/6/2022	chlorine residual Exceedance	NO	NO	Chlorine, total residual	<0.47 mg/l
12/5/2022	SSO	NO	NO		
12/27/2022	chlorine residual Exceedance	NO	NO	Chlorine, total residual	<0.47 mg/l

1/10/2023 - 1/12/2023	Discharge to a locations not allowed by the permit	NO	NO		
12/28/2022- 1/10/2023	SSO	NO	NO		

IOCPAAO

Result	Percent Over	Noncompliance Reporting Form (NRF) Submitted for violation	NRF Complete
		YES	YES
		YES	YES
6,000	1378%	YES	YES
>2000 CFU/100 ml	392%	NO	NO
0.48 mg/l	2%		
>2000 CFU/100 ml	392%	YES	YES
589,000 gallons (over two days)		YES	YES
10100 CFU/ 100 ml	2388%	YES	YES
		YES	YES
39,000 gallons to Yaquina Bay			
>2000 CFU/100 ml	392%	YES	YES

Notes

City suspects that a former employee intentionally left a valve open that flooded the dry well. However, there is no evidence. May have been operator error.

107,000 gallons		YES	YES
0.57 mg/l	21%	YES	YES
0.50 mg/l	6%	YES	YES
0.50 mg/l	6%	YES	YES
6,000 gallons to BIC Creek			
100 gallons, not discharged to water			
0.57 mg/l	21%	YES	YES
1900 CFU	368%	YES	No
0.68 mg/l	45%	YES	YES
0.75 mg/l	60%	YES	YES
0.7	49%	YES	YES
0.50 mg/l	6%	YES	YES
300 gallons, to drainage ditch			
0.57 mg/l	21%	NO	NO

This line cleaned twice per year. So, meets the 5 year criteria for cleaning. Accordingly, WR believes this was BRC. WR has reviewed the maintenance records. All expected maintenance was done. WR believes that this was unforeseeable and beyond Newport's reasonable control. Has made corrective actions to reduce temperature in the pump station.

No impact to waterways. BE: I think this can likely be removed from this list

5.5 MG released to Yaquina Bay			
4.3 MG released mainly to bioswale			

See OERS #2023-0077. Chlorine levels were approximately 0.24 mg/L

Release was mainly contained to a bioswale, and regular testing of the bay occurred during this time

City of Newport Wastewater Treatment Plant

prepared by Gus Glaser on 6/23/2022

Violations not cited in NOCPAAO

Violations Summary

Violation Date	Violation Description	Violation cited in 8-29-2020 PEN	Violation cited in 4-9-2021 Notice of Civil Penalty Assessment and Order	Parameter	Permit Limit	Result	Percent Over	Noncompliance Reporting Form (NRF) Submitted for violation	NRF Complete
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1/12/2021	SSO	NO	YES						
1/29/2021	fecal coliform limit exceedance	NO	YES	Fecal Coliform Bacteria	<=406 organisms/100 ml	>2000 CFU/100 ml	392%	NO	NO
2/13/2021	chlorine residual Exceedance	NO	YES	Chlorine, total residual	<=0.47 mg/l	0.48 mg/l	2%		
4/17/2021	fecal coliform limit exceedance	NO	NO	Fecal Coliform Bacteria	<=406 organisms/100 ml	>2000 CFU/100 ml	392%	YES	YES
4/18/2021	No Effluent Chlorination	NO	NO			589,000 gallons (over two days)		YES	YES
4/19/2021	fecal coliform limit exceedance	NO	NO	Fecal Coliform Bacteria	<=406 organisms/100 ml	10100 CFU/100 ml	2388%	YES	YES
4/19/2021	No Effluent Chlorination	NO	NO					YES	YES
7/25/2021	SSO	NO	NO			39,000 gallons to Yaquina Bay			
8/1/2021	fecal coliform limit exceedance	NO	NO	Fecal Coliform Bacteria	<=406 organisms/100 ml	>2000 CFU/100 ml	392%	YES	YES

Notes

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8/1/2021	No Effluent Chlorination	NO	NO			107,000 gallons		YES	YES
11/11/2021	chlorine residual exceedance	NO	NO	Chlorine, total residual	<0.47 mg/l	0.57 mg/l	21%	YES	YES
11/12/2021	chlorine residual exceedance	NO	NO	Chlorine, total residual	<0.47 mg/l	0.50 mg/l	6%	YES	YES
11/13/2021	chlorine residual exceedance	NO	NO	Chlorine, total residual	<0.47 mg/l	0.50 mg/l	6%	YES	YES
12/3/2021	SSO	NO	NO			6,000 gallons to BIC Creek			
12/11/2021	SSO	NO	NO			100 gallons, not discharged to water			
1/3/2022	chlorine residual exceedance	NO	NO	Chlorine, total residual	<0.47 mg/l	0.57 mg/l	21%	YES	YES
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11/6/2022	chlorine residual Exceedance	NO	NO	Chlorine, total residual	<0.47 mg/l	0.50 mg/l	6%	YES	YES
12/5/2022	SSO	NO	NO			300 gallons, to drainage ditch			
12/27/2022	chlorine residual Exceedance	NO	NO	Chlorine, total residual	<0.47 mg/l	0.57 mg/l	21%	NO	NO

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12/28/2022- 1/10/2023	SSO	NO	NO			4.3 MG released mainly to bioswale			

See OERS #2023-0077. Chlorine levels were approximately 0.24 mg/L

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