

Water:

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talk sometime today,” Smith emailed Whitman that day.

The two men did talk about the impending enforcement against the port, according to Smith.

The following day, DEQ went public with the fine, declaring in a statement that the port’s conduct was “reckless” because it had “intentionally applied” excessive amounts of nitrogen into a critical groundwater area.

The record fine

That \$1.3 million penalty is the largest DEQ has imposed for violating a state water permit, according to the agency’s enforcement database.

But DEQ could have gone further.

According to the notice, the Office of Compliance and Enforcement issues, the port could have received a fine of up to \$18,600 for each day it violated the permit.

That would have totaled more than \$21.6 million.

Like Duane Smith before him, DEQ hydrologist and chemist Chad Gubala was surprised at how low the final penalty was. He said he thought the Office of Compliance and Enforcement had “concluded the fine needed to be of a significant size for them to actually take it seriously, and to actually prompt them into spending money and spending time on treatment rather than just paying the ticket.”

But when Kieran O’Donnell, Compliance and Enforcement manager, got back to Gubala and Justin Sterger, DEQ environmental scientist, he told them, “Well, what I was able to get on this was 1.2 million,” Gubala recalled.

“We were disappointed at that size, but it was explained to us that, you know, the record fine for DEQ had actually just hit the papers,” Gubala said.

That was in October 2021, when a \$2.1 million fine was assessed on Malarkey Roofing for violating its



Kathy Aney for Oregon Capital Chronicle, File

Four industrial parks with data processing centers, an ethanol plant and food processors surround the Port of Morrow in Boardman.

air quality permit.

Whitman said in a recent interview that the agency wanted to make a point with the Port of Morrow with the size of the fine, which the port is now contesting. He said he had been briefed on the port’s permitting issues in 2017 and “things then went pretty quiet for a while.”

But the 2020 report showing nitrate levels continued to rise in the area caught his attention. He said he got more involved because of what he heard from staff.

“I was pretty unhappy, to be frank, when I heard about some of the levels of noncompliance on this permit,” Whitman said.

Meantime, outside influences exerted pressure on DEQ to relent on the tougher restrictions the agency was proposing.

The DEQ granted meetings to consider their pitches. One came from Jake Madison, a Boardman-area farmer who was getting wastewater from the port to irrigate his crops. DEQ employees sat through his Powerpoint presentation on why wastewater was good for agriculture. His slides made no reference to the impacts on drinking water.

Gubala said at the end of the presentation, Madison asked DEQ give the port six more months to review the proposed permit instead of advancing towards

putting it in place.

“Jake’s not an agent of the Port of Morrow, he was requesting this verbally, none of this was basically official, or I can’t speak to the legalities of it, but it was certainly highly irregular,” Gubala said.

Among those invited to a January meeting scheduled by the port with DEQ titled “DEQ Permit Review Meeting” were Madison and Dawson Quinton, a legislative aide to Smith. Gubala said in the end Madison was not allowed to come, but Quinton was there. Gubala said the port mostly discussed getting its new digester system up and running.

The process was straying from protocol, Gubala said, and such presentations should have been put into the public record, when DEQ puts proposed permit restrictions into a public comment period. Gubala was so concerned he independently consulted attorneys at the Oregon Department of Justice. He didn’t want to disclose what was discussed with them.

Sharing the prosperity message

Before the public could have its say, the board of the Port of Morrow scheduled an unusual joint session with the Morrow County Board of Commissioners. The purpose seemed to be to get local officials lined up behind the port’s drive to modify the restric-

tions, to speak in common terms for the port. They met April 13, at the port, two days before DEQ was going to open the port’s permit modifications to public comment.

Once again, Madison took a leading role.

“The whole point of this conversation is a regional approach to DEQ, to say you have to help us do better, and by you helping us do better, you don’t write stupid permits that we can’t comply with,” Madison told the group.

He said he and other farmers who receive the port’s wastewater see themselves as solutions to the area’s nitrate problem.

The group got advice on how to promote the port’s cause from Len Bergstein, a political consultant from Portland with Northwest Strategies who joined the meeting over Zoom.

The port hired Bergstein to help with its communications strategy to keep the message consistent: The port is working in the best interests of the region both environmentally and economically, and that it is working with DEQ to find solutions to the groundwater nitrate problem.

Bergstein said at the April meeting he was “going to try and line people up so that in fact DEQ understands that the regulations that they’re about to release have a significant impact on the shared prosper-

ity and success story that the community has had over all these years with the growth of high value crops.”

The conversation eventually turned to those not widely represented at the meeting — people who rely on the tainted groundwater for their home water. Many people with private wells in the area now rely on bottled water for cooking and drinking.

Those meeting that day suggested yet more well testing. They also suggested seeking money to provide homeowners with filtering systems to screen out the nitrate.

No one volunteered the port, the farmers, the food processors or any of the polluters to help fund such a project.

Instead, the group agreed to turn to the state and federal government for money so thousands could again safely drink water from their taps.

The request is pending.

— Oregon Capital Chronicle developed this story in collaboration with the Catalyst Journalism Project at the University of Oregon School of Journalism and Communication. Catalyst brings together investigative reporting and solutions journalism to spark action and response to Oregon’s most perplexing issues. To learn more visit catalystjournalism.uoregon.edu or follow the project on Twitter @UO_catalyst.

Help:

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The next step coming up is to seek bids from third parties to operate PATH.

Smith explained PATH would require a general building with offices, plus common areas, showers and meal facilities. Also, it would need at least 12 sleeping units to “assist people in moving to permanent housing,” he said.

Just what the housing will look like is a question. The lot is empty, but Shafer said PATH could use huts or some type of small manufactured homes.

The facility would need onsite staffing at all hours and provide wrap-around services — basic medical, dental and vision services and transportation assistance for the residents. Behavioral health or substance abuse services should be part of a plan as well, along with care coordination, case management and assistance with educational services.

Shafer said there are local organizations with experience in this area, such as CAPECO — Community Action Program of East Central Oregon — or Stepping Stones in Hermiston, which in 2020 proposed using Conestoga huts to shelter homeless residents.

Smith told the groups at the meeting the city of Umatilla would issue the request for bids for the process, and a committee of Umatilla County, Umatilla and Hermiston would review submissions. A contract would go before the Umatilla City Council for approval.

Smith also said he expects more discussions between now and when PATH would operate.

— East Oregonian news editor Phil Wright contributed to this report.

Education:

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effectively. Instead, some candidates for governor and state lawmakers have said the state should cut back on standardized testing. And the Legislature dropped requirements that schools help all students demonstrate proficiency in writing and math before giving them diplomas.

Oregon’s education department has a crucial role to play in holding school districts accountable for improving student learning outcomes, auditors insisted. They told the governor, state board and Legislature that is unlikely to happen without action on their part.

Low-graduation rates

The Oregon Department of Education has a well-documented history of focusing on school districts’ processes rather than the results schools achieve for students, they wrote. And its timidity about stating which forms of spending are effective and which are not, along with its reliance on superficial signs of adherence to important educational standards, suggests the \$1 billion-plus-per-year from a new corporate tax for education could be put to suboptimal



East Oregonian, File

Sixth-grader Lilly Miller reaches into a jar in December 2017 to touch a preserved human brain at Sunridge Middle School, Pendleton. Oregon leaders’ laissez-faire approach to public school spending and results puts the state at risk of wasting public investments and failing to improve student success, state auditors warned Tuesday, May 24, 2022. The state education agency doesn’t do much if anything when schools fail to deliver, including for students of color or students living in poverty.

use, auditors found.

“Our audits have consistently found issues with (the Oregon Department of Education’s) ... effective, timely intervention when districts or schools struggle,” they wrote. “State leaders need to monitor how the agency itself is performing and intervene when necessary to ensure student success does, in fact, increase.”

Oregon’s graduation rate remains among the lowest in the nation, they noted.

Oregon is on its fourth try at improving K-12 education

since the 1990s, after leaders abandoned the previous strategies, auditors said. Certificates of initial mastery, the Oregon Education Investment Board and its Achievement Compacts are among the high-profile efforts that past governors and lawmakers instituted — then abandoned before they took full effect, the auditors wrote. The idea behind the master certificates was that schools would have to ensure students mastered reading, writing, math and other academic skills to graduate, but that never happened.

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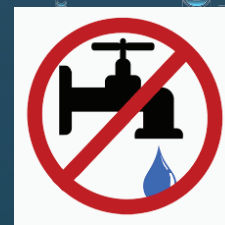
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Port of Morrow “Reckless”⁽³⁾

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Know Your Rights

- 1 East Oregonian, Tuesday May 10, 2022
- 2 East Oregonian, Tuesday May 10, 2022 (Emphasis added)
- 3 DEQ, Jan. 11, 2022 (\$1.3M fine)

Attorneys licensed in California. Lawyer Ad. Investigations ongoing.
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Scramble for Scholarships Friday, June 10th

..... 1pm Shotgun Start

Big River Golf Course - Umatilla

Golfers of all skill levels are invited to participate in the 29th annual Scramble for Scholarships Golf Tournament. Four person teams can sign up together or individual pairings can be made by the tournament committee. Your \$100 entry fee covers green fees, a box lunch, BBQ Dinner, and makes a charitable donation to the Foundation to use in awarding scholarships to local students pursuing careers in a medical field.

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