

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **FIBRO CORPORATION,**
4 a Washington corporation,

5 **Appellant,**

6 **v.**

7 **CITY OF TACOMA,** a Washington
8 Municipal corporation, through its
9 **ENVIRONMENTAL SERVICES**
10 **DEPARTMENT,**

11 **Respondent.**

FILE NO. HEX2021-006

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

12 **THIS MATTER** came before Jeff H. Capell, Hearing Examiner for the City of Tacoma
13 (the “City”), for a hearing on March 4, 2021.¹ The City’s Environmental Services Department
14 (“ES”) was represented by Chief Deputy City Attorney Chris Bacha. Appellant Fibro
15 Corporation (“FibroCorp”) was represented by its vice president Sharon Zhang.

16 Prior to the hearing, on January 25, 2021, a prehearing conference (the “PHC”) was
17 held before the Hearing Examiner in conformance with Tacoma Municipal Code (“TMC”)
18 12.08.675.H.1.

19 At the hearing, witnesses were placed under oath and testified. For Appellant
20 FibroCorp, Sharon Zhang was the sole witness. The City offered testimony from the
21 following witnesses:

¹ Due to National, State of Washington and City of Tacoma Proclamations of Emergency made in response to the COVID-19 virus, the City of Tacoma closed the Tacoma Municipal Building to the public until further notice on or around March 17, 2020. As a result, the public hearing in this matter was conducted virtually using Zoom teleconferencing with both internet and telephonic access.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

- 1 1. Mark Stafford, ES, Senior Source Control Representative;
- 2 2. Dan C. Thompson, Ph.D., ES, Business Operations Division Manager; and
- 3 3. Kurt Fremont, ES, Assistant Division Manager, Environmental Compliance.

4 In addition to testimony, exhibits from both sides were admitted and reviewed.

5 Based upon the evidence presented, the Hearing Examiner makes the following:

6 **FINDINGS OF FACT**

7 1. This appeal arises from FibroCorp’s having swept or pushed (via squeegee)
8 overflow water from its paper product operation at 3101 South Tacoma Way (the “Subject
9 Property”) into a City storm drain on December 2, 2020, and the City’s issuance of a Notice of
10 Violation (the “NOV”)² erroneously dated “this 21 day of 2020, 2020.”³ The NOV alleged five
11 separate violations of various permit conditions and/or storm water regulations at the Subject
12 Property. As part of the NOV, the City assessed a civil penalty of \$5,000 tied to its first alleged
13 violation—the discharge to the City storm drain. *Stafford Testimony, Fremont Testimony; Ex.*
14 *R-8.*

15 2. Both at the PHC, and prior to the presentation of cases at the hearing, FibroCorp
16 expressly stated that it was not challenging the issuance of the NOV, but rather was challenging
17 the amount of the civil penalty ES assessed, essentially turning the appeal and hearing into a
18 mitigation proceeding. *Zhang Testimony.*

19 3. FibroCorp is a startup company that began on the path to its current level of
20 operation in 2017. ES has had dealings with FibroCorp since some time in 2017, assisting it
21 with obtaining necessary permits and otherwise educating FibroCorp regarding compliance

² Notices of Violation may also be referred to generally herein as “NOVs.”

³ Presumably, the issuance date was actually December 21, 2020, although that was not established at the hearing. Under the circumstances, the date of issuance is neither elemental to the issue on appeal, nor is it otherwise material.

1 issues for its business model and its “no discharge” Industrial Wastewater Permit (the
2 “Permit”-- Exhibit R-1). FibroCorp’s business model is intended to be environmentally
3 friendly using recycled paper to create new products (such as food cartons) in a closed
4 production loop that, when functioning properly, has no discharge other than domestic
5 wastewater and normal household-type waste. After going through more than a year’s worth of
6 preparation, FibroCorp began actively operating its business in September 2019. *Zhang*
7 *Testimony, Stafford Testimony; Ex. A-6.*

8 4. On August 5, 2020, ES staff⁴ went to the Subject Property for a required, periodic
9 inspection relevant to FibroCorp’s Permit. During this inspection, ES staff noted several areas
10 where FibroCorp had compliance issues and memorialized these in an undated Pretreatment
11 Inspection Report (the “PIR”--Exhibit R-7).⁵ The PIR listed the following as “Compliance
12 Concerns” relating to FibroCorp’s Permit and operation:

- 13 1) The slug load discharge control plan does not contain current emergency
14 contact information.
- 15 2) The facility's tank farm does not comply with BMP A409, lacking secondary
16 containment.
- 17 3) Compressor condensate was observed discharging into a storm drain.
- 18 4) Empty totes were stored without caps on the discharge spout and with dried
19 fiber process slurry.
- 20 5) Housekeeping in the yard.
- 21 6) Storm water catch basin inserts full of sediment and debris.

Stafford Testimony; Ex. R-7.

5. The PIR listed the following “Required Actions” that FibroCorp needed to take

⁴ Specifically, Mark Stafford and Mark Schuler, an ES Source Control Representative.

⁵ Zhang testified that she was unfamiliar with the PIR herself, but she assumed that FibroCorp’s now departed CEO, Kevin Stangeland, had a copy, and it was her understanding that compliance issues in the PIR were being dealt with during the time leading up to issuance on the NOV and civil penalty. The PIR lists the date of the inspection, but gives no date for when the PIR was issued.

1 in order to address the above compliance issues:

- 2 1) Update the facility's slug load discharge control plan to reflect current
- 3 emergency contacts and their phone numbers.
- 4 2) Complete the secondary containment wall around the tank farm.
- 5 3) Cease the discharge of compressor condensate to the municipal storm sewer.
- 6 4) Store empty totes with caps on the discharge spouts, and in a manner that does
- 7 not contaminate storm water.
- 8 5) Increase housekeeping in the yard so that contaminated storm water does not
- 9 discharge to the municipal storm sewer.
- 10 6) Replace storm water catch basin inserts.

11 *Id.*

12 6. Relevant to the Compliance Concerns and Required Actions just set forth

13 above, the PIR stated the following:

14 Fibro Corp must take action IMMEDIATELY to improve housekeeping and

15 reduce the potential for contaminated storm water and process waste water from

16 entering the storm drains in the yard. Failure to do so will violate Tacoma

17 Municipal Code and the terms and conditions of the permittee's industrial

18 wastewater zero discharge permit. If FibroCorp does not take action immediately

19 to improve housekeeping and lower the potential for discharging contaminated

20 storm water to the municipal storm sewer, Environmental Services will be forced

21 to take enforcement actions that may include civil penalties. Environmental

Services expects that any action to improve housekeeping would include training staff on storm water discharge prohibitions.

22 *Id.*

23 Stafford testified that all of ES's concerns, as memorialized in the PIR, were conveyed to

24 FibroCorp's then CEO, Kevin Stangeland, at the conclusion of the inspection verbally, and

25 then mailed to FibroCorp by first class and certified mail.⁶

26 7. ES staff performed a follow up inspection at the Subject Property on October 5,

27 2020. During the inspection, FibroCorp produced a training log showing that facility staff had

⁶ Stafford even went so far as to read the certified mailing receipt number into the record, but oddly did not establish when that mailing took place. The mailing receipt was not submitted as an exhibit.

1 been trained as required by ES in the PIR. Both Stangeland and Jon Garner, FibroCorp’s plant
2 manager, were present during the inspection. *Stafford Testimony.*

3 8. On December 2, 2020, ES staff had business in the field near the Subject
4 Property, and so decided to take the opportunity to observe FibroCorp’s yard through the fence
5 initially from a vantage point outside. The weather was dry so there was no reason for areas of
6 the yard to be wet from rainfall. From their vantage point outside the yard, ES staff noticed a
7 large wet area coming from inside the FibroCorp plant leading to a storm drain. This was
8 around 2:30 pm. *Stafford Testimony; Ex. R-8.*

9 9. As a result of this observation, ES staff went to the facility entrance and asked to
10 be allowed to inspect. FibroCorp obliged, and ES staff met with Garner. He informed ES staff
11 that there was a spill from a white water (potable water plus a sizing agent and paper pulp) tank
12 around 8:00 am that same day that had been pushed to the storm drain thinking the water was
13 clean and not a prohibited discharge. ES staff reminded FibroCorp that its Permit prohibits
14 discharge to the City’s storm water system even from this type of tank and further educated
15 FibroCorp on this point. ES staff instructed FibroCorp to report the discharge to the State
16 Department of Ecology (“Ecology”), which FibroCorp did. FibroCorp had not reported the
17 discharge to the City prior to the City’s independent discovery. ES instructed FibroCorp to
18 have the drain professionally cleaned. FibroCorp did so, but not until December 22, 2020. ES
19 testimony pointed to the twenty-day period between the discharge and the drain cleaning as an
20 indicator of FibroCorp’s lack of diligence and therefore a factor in its decision to assess the
21 \$5,000 civil penalty. FibroCorp testified that December 22, 2020 was the soonest it could get

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

1 professionals to the Subject Property to perform the cleaning. *Stafford Testimony, Zhang*
2 *Testimony; Ex. A-5, Ex. R-8.*

3 10. The City has an obligation under its National Pollutant Discharge Elimination
4 System (NPDES) permit, the Tacoma Municipal Code, and state Ecology regulations to
5 enforce water quality conditions in the City of Tacoma. City witnesses testified that if the City
6 does not vigorously enforce water quality regulations, there can be consequences, such as water
7 quality degradation, harm to aquatic life, lower oxygen levels in water bodies discharged to,
8 third party lawsuits, and enforcement actions from the federal and state government. *Thompson*
9 *Testimony, Fremont Testimony.* The City did not establish any express consequence of not
10 imposing a \$5,000 penalty in this instance even after a direct question from the Examiner in
11 that regard.

12 11. The City issues around twelve NOV's in a given year. Over the last five years, the
13 City has issued a maximum \$5,000 penalty three times. *Fremont Testimony.*

14 12. Fremont testified that there are many factors that are part of determining the
15 assessment of a civil penalty. He testified that normally ES would look to the Enforcement
16 Response Matrix found at section 8.1 of ES's Stormwater Compliance Policy (the "SCP"--
17 Exhibit R-13).⁷ The Enforcement Response Matrix list eight criteria. The penalty or
18 enforcement-related provisions of the SCP (sections 8.0, 8.1 and 8.2) begin by stating:

19 Both the Courts and the Environmental Hearings Boards have ruled that civil
20 penalties are not "punitive." Rather, they are enforcement tools that provide an
21 economic motivation to change behavior and ensure compliance with the law.
Such actions are aimed at securing correction of environmental regulatory
violations and to deter future violations. It is not the function of a civil penalty to
punish the violator.

⁷ The SCP begins by stating "This document augments Tacoma Municipal Code Section 12.08.200 *Enforcement Procedures.*"

1 13. Fremont testified that, in the present case, ES chose to waive application of the
2 Enforcement Response Matrix because ES felt the FibroCorp discharge qualified it for the
3 “significant noncompliance” category under SCP section 8.0 which ties to TMC 12.08.010.
4 TMC 12.08.010 provides the following definition:

5 “Significant noncompliance” with requirements for discharges to the storm
6 drainage system or receiving water exists when an instance of noncompliance or
Code violation meets one or more of the following criteria:⁸

7 1. Any discharge or potential discharge of a pollutant that has caused or may
8 cause a threat to human health, public safety or the environment, or that has
resulted in the exercise of emergency authority to halt or prevent such a
9 discharge;

10 2. Failure to complete a required corrective action within 30 days after the
scheduled date required in a Notice of Violation, Corrective Action, or other
11 enforcement document.

12 3. Any other violation or group of violations that the Director determines will
13 adversely affect the operation and implementation of the City’s Stormwater
Management Program or its NPDES permit.

14 Fremont testified that he and ES determined that criteria 2 and 3 above were met, and that they
15 believed 1 was met also, but could not prove it.⁹ Fremont testified that the analysis leading to
16 the determination that criterion 3 was met was “more philosophical” in that the adverse effect
17 on the City’s Stormwater Management Program would come from not enforcing for the
18 perceived violation of criterion 2 because the City has to show FibroCorp and the state and
19 federal oversight agencies that it is serious about enforcement. From testimony it was quite
20 clear that the City is concerned about presenting a serious countenance regarding its
21 enforcement to the Environmental Protection Agency and Ecology, as well as to the overall

⁸ Numbering maintained as in the original TMC text.

⁹ No evidence was offered to show that criterion 1 was met.

1 environmental community. *Fremont Testimony.*

2 14. It was also clear from ES testimony that it felt very frustrated regarding its history
3 and informal prior process with FibroCorp. That notwithstanding, there is nothing in the record
4 to show that FibroCorp had been issued any prior NOV's. There is also nothing in the record
5 showing that any informal notice of noncompliance was ever given to FibroCorp prior to ES
6 issuing the PIR in August of 2020. *Stafford Testimony, Fremont Testimony; Ex. R-7, Ex. R-8.*

7 15. In addition to the forgoing, ES testified that the close proximity in time between
8 ES's October contacts with FibroCorp and the discharge on December 2, 2020, also played a
9 role in deciding to assess FibroCorp a \$5,000 civil penalty. *Fremont Testimony.*

10 16. ES also testified that it does not consider the \$5,000 civil penalty assessed here to
11 be a maximum penalty because ES could have issued civil penalties on any or all of the five
12 noticed violations in the NOV, but chose to only issue a civil penalty for one of the five.
13 *Fremont Testimony.*

14 17. Zhang testified that the COVID-19 pandemic has been very hard on its employees
15 and its continuity of operations. FibroCorp has had multiple positive COVID cases during the
16 pandemic causing protocols to kick in and employees in whole shifts to be quarantined. In
17 order to maintain production, new workers had to be hired and training of these new workers
18 admittedly lagged. The training lag had a detrimental effect on FibroCorp's product quality—
19 causing the loss of a major customer—as well as causing the malfunction that led to the tank
20 overflow and discharge to the City's storm water system documented in the NOV. In addition
21 to the foregoing, Stangeland resigned as FibroCorp's CEO in November, 2020 with only the

1 customary two weeks' notice. Zhang testified that FibroCorp has been more or less
2 overwhelmed in its efforts to stay in business, and has had to take out loans and reduce
3 compensation.

4 18. Right after the discharge, Zhang called Stafford for assistance in training
5 FibroCorp's new plant manager regarding compliance issues, which Stafford did, and for
6 which Zhang expressed FibroCorp's gratitude. Shortly after the discharge, FibroCorp began
7 completing trenches around the pulping area to divert any spills back into FibroCorp's system.
8 FibroCorp has completed a retaining wall around its tanks to prevent any potential spills from
9 going into the storm drains. Work on this retaining wall was begun prior to the discharge.
10 FibroCorp has extended roof awnings to keep rain water out of the area of compressor
11 equipment that could possibly add contaminants to rain water on its way to the City's storm
12 water system. FibroCorp had the affected storm drain professionally cleaned, as required by the
13 City, at the earliest date that FibroCorp could get cleaners to the Subject Property. FibroCorp
14 has completed a conveyor system for better conveyance of finished products into the shipping
15 area allowing all raw materials to be stored inside the building thereby eliminating any chance
16 they would get into the City's storm water system. Lastly, FibroCorp has created a better
17 system for documenting spills and keeping track of monthly inspections and training in
18 compliance with its Accident Spill Prevention Plan (ASPP). On cross-examination from Zhang,
19 Stafford testified that all of ES's required corrective actions have been completed. *Zhang*
20 *Testimony, Stafford Testimony; Ex. A-1~A-6.*

21 19. ES witness Fremont testified that ES did not know of the various circumstances

1 FibroCorp offered as mitigation factors prior to the hearing except for the retaining wall being
2 underway. In response to questioning from City legal counsel, he testified that even if he had
3 known of these factors, ES would not have been amenable to any mitigation of the \$5,000 civil
4 penalty because in his view nothing in Zhang’s testimony constituted mitigation. He further
5 clarified that, in his view, FibroCorp’s actions to come into compliance with the items listed in
6 the PIR and NOV cannot be considered mitigating factors because they were already required
7 before the discharge and subsequent issuance of the NOV.

8 20. Any conclusion of law herein which may be more properly deemed or considered
9 a finding of fact is hereby adopted as such.

10 Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

11 **CONCLUSIONS OF LAW**

12 1. The Hearing Examiner has jurisdiction over the parties and the subject matter
13 of this case pursuant to TMC 1.23.050.B.18 and TMC 12.08.675.H and I.

14 2. The Hearing Examiner’s review of this matter is *de novo*. *TMC 1.23.060*.

15 3. The Appellant bears the “[b]urden to establish, by a preponderance of the
16 evidence, that the matter is consistent or inconsistent with applicable legal standards and the
17 lower decision should be reversed or otherwise modified.” *TMC 1.23.070.C*.

18 4. As referenced above at Finding of Fact (“FoF”) 2, FibroCorp did not challenge the
19 issuance of the NOV and the allegations made therein. Given that, there is no question the City
20 had the authority to issue a civil penalty based upon the NOV. *TMC 12.08.675.D*. The issue of
21 whether the amount of the civil penalty should be waived or mitigated remains, however.

1 5. TMC 12.08.675.I governs the “Assessment of Civil Penalties” and provides the
2 following:

3 Civil penalties assessed by the Director shall be in accordance with the provisions
4 of this section. Civil penalties shall be reasonably calculated to achieve
5 reviewing a civil penalty assessed by the Director, the Hearing Examiner shall
6 consider the following factors:¹⁰

7 1. Whether the person against whom the notice of civil violation was issued
8 responded to staff attempts to contact that person, and whether the person against
9 whom the notice of civil violation was issued cooperated with efforts to correct
10 the violation;

11 2. Whether the person against whom the notice of civil violation was issued failed
12 to appear at the hearing;

13 3. Whether the violation was a repeat violation;

14 4. Whether the person against whom the notice of civil violation was issued
15 showed due diligence and/or substantial progress in correcting the violation;

16 5. Whether a genuine code interpretation issue exists; and

17 6. Any other relevant factors.

18 6. Interestingly, the above criteria that the Hearing Examiner is to consider in
19 reviewing a civil penalty do not necessarily correlate with the factors that ES considered from
20 both the TMC and the SCP in determining its assessment.¹¹ This specific provision of the TMC
21 does control, however, in the Examiner’s review and determination of the issue on appeal here,
and each will now be considered in turn.

7. *Whether the person against whom the notice of civil violation was issued
responded to staff attempts to contact that person, and whether the person against whom the
notice of civil violation was issued cooperated with efforts to correct the violation.*

¹⁰ Numbering maintained as in the original TMC text.

¹¹ *FoF 12, FoF 13.*

1 FibroCorp presented/elicited testimony showing that it is in compliance with the City's
2 "Required Actions" from the PIR and the NOV.¹² There is no evidence in the record showing
3 that FibroCorp did not respond to or cooperate in any material way with the City in arriving at
4 its currently compliant position once the NOV was issued. The language of TMC 12.08.675.I.1
5 limits the Examiner's consideration to the time period after issuance of the NOV. ES testified
6 that it was frustrated by events leading up to the issuance of the NOV, and further frustrated
7 that its informal efforts had not achieved complete compliance. ES's frustration is
8 understandable. When one's education and occupation is devoted to the protection of certain
9 subject matter, and that person sees a violation of the subject matter committed, it is difficult to
10 not take such a violation at least a little bit personally. Nonetheless, compliance is the mandate
11 over punishment, both from ES's policies¹³ and from TMC 12.08.675.I.

12 Regarding this criterion, ES testified that it felt FibroCorp acted too slowly after
13 issuance of the NOV to get the storm drain cleaned. FibroCorp testified that December 22,
14 2020 was the earliest it could obtain the required cleaning services and the Examiner finds no
15 reason to doubt FibroCorp's testimony. Although this delay was not ideal, given the business
16 climate in our current pandemic-influenced circumstances, the Examiner cannot conclude that
17 FibroCorp bore any fault in the delay, or that the delay should be grounds for a high civil
18 penalty. Such an approach would be punitive in any event. The amount of the penalty assessed
19 had no role in getting the drain cleaned any sooner.

20 FibroCorp cooperated with ES staff the day of the discharge by allowing them to
21 inspect what they observed initially off the premises, and by seeking additional training from

¹² FoF 18.

¹³ See FoF 12 and the language therein quoted from the SCP section 8.0, which reference state law as well.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

1 the City immediately after the discharge.¹⁴ Assessment (without actual payment) of the \$5,000
2 civil penalty achieved the compliance that the City had been seeking prior to the hearing.
3 FibroCorp was working on compliance even before the NOV was issued.¹⁵ The City was out of
4 sorts with FibroCorp because all of its “Required Actions” had not been completed prior to the
5 discharge incident¹⁶ and issuance of the NOV. In all fairness however, the PIR’s Required
6 Actions were always going to take some time to complete, especially in a COVID-impacted
7 economy. The City’s demanded time frame of “immediately”¹⁷ for completing the Required
8 Actions did not provide a realistic notice function to FibroCorp of the time period within which
9 it had to comply in order to avoid the issuance of an NOV, nor was *immediate* compliance a
10 realistic expectation on the City’s part, in any event.

11 Where, as here, the violator complies with corrective measures entirely prior to the
12 hearing, the civil penalty seemingly becomes entirely punitive except to the extent that the
13 dollar amount has some deterrent effect on any future violations. The Examiner concludes that,
14 under the facts presented here, this criterion indicates a lesser civil penalty is warranted.

15 8. *Whether the person against whom the notice of civil violation was issued failed to*
16 *appear at the hearing.*

17 FibroCorp appeared at both the PHC and the hearing. A failure to appear would have
18 indicated the possible need for greater encouragement toward compliance through the amount
19 of the civil penalty. Given FibroCorp’s timely attendance at both, there is certainly nothing that
20 moves the needle toward additional penalties, or even maintaining the maximum penalty

21 ¹⁴ FoF 9 and FoF 18.

¹⁵ FoF 18. At a minimum, FibroCorp was working to get its retaining wall completed prior to the NOV.

¹⁶ The discharge itself is also understandably grounds for the City to be out of sorts with FibroCorp.

¹⁷ FoF 6; Ex. R-7.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

1 already assessed. The City already imposed the highest authorized amount, even if it only did
2 so once.¹⁸ FibroCorp’s attendance and contrite presentation at the hearing indicate that a lesser
3 fine will serve the non-punitive purposes of the TMC and the SCP.

4 9. *Whether the violation was a repeat violation.*

5 There was no repeat violation here. The City issued only one NOV. Yes, the violations
6 tack back to the issuance of the PIR and FibroCorp was not progressing with its compliance at
7 the City’s desired speed. Nonetheless, the City issued only one NOV and compliance has now
8 been achieved. This criterion does not indicate a need for maximum penalties as a compliance
9 tool, except perhaps as a reminder to stay in compliance so that repeat violations do not occur.

10 10. *Whether the person against whom the notice of civil violation was issued showed*
11 *due diligence and/or substantial progress in correcting the violation.*

12 Again, FibroCorp is now in compliance. The Examiner understands the City’s
13 frustration with events prior to issuance of the NOV, but this criterion asks the question
14 relevant to “the person against whom the notice of civil violation was issued” and thereby
15 limits the time period for evaluating due diligence and substantial progress to post issuance of
16 the NOV. The criterion does not require complete compliance prior to the hearing,¹⁹ but that is
17 what FibroCorp achieved. The NOV and civil penalty assessed therein achieved their
18 compliance purpose.

21 ¹⁸ In a compliance-based paradigm, the Examiner finds very little persuasion in ES’s reasoning that a single
\$5,000 assessment is not a maximum penalty and is reasonable because the City could have assessed a lot more.
FoF 16.

¹⁹ The same is true under TMC 12.08.675.H.2 which provides that “The hearing before the Hearing Examiner may
be canceled if the person to whom a notice of civil violation is issued agrees in writing to comply with the
requirements of the notice.”

1 FibroCorp the severity of its offense, and to show to the City’s regulatory overseers (state and
2 federal) that the City takes enforcement seriously. That is a punitive approach.

3 After reviewing the civil penalty against the criteria tasked to the Examiner under TMC
4 12.08.675.I, and with an eye to compliance rather than punishment, FibroCorp’s request for
5 mitigation is not without merit. The City assessed \$5,000. Of that amount, \$2,000 is hereby
6 suspended, but remains imposed.

7 For the sake of deterring future violations and out of deference to the City’s original
8 determination, the Examiner upholds \$3,000 of the original assessment as payable. If
9 FibroCorp has no further storm water discharge and/or Permit violations for a period of two
10 years from the date of this Decision, the suspended amount of \$2,000 will expire. If there are
11 additional violations, this matter may be brought back before the Hearing Examiner to consider
12 re-imposing all or part of that suspended amount, together with whatever other measures are
13 appropriate to the new violation. The unsuspended \$3,000 shall be payable in accordance with
14 TMC 12.08.675.F.

15 **DATED** this 22nd day of March, 2021.

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18 _____
19 **JEFF H. CAPELL, Hearing Examiner**
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**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

1 **RECONSIDERATION/APPEAL OF EXAMINER’S DECISION**

2 **RECONSIDERATION:**

3 Any aggrieved person or entity having standing under the ordinance governing the matter,
4 or as otherwise provided by law, may file a motion with the Office of the Hearing
5 Examiner requesting reconsideration of a decision or recommendation entered by the
6 Examiner. A motion for reconsideration must be in writing and must set forth the alleged
7 errors of procedure, fact, or law and must be filed in the Office of the Hearing Examiner
8 within 14 calendar days of the issuance of the Examiner's decision/recommendation, not
9 counting the day of issuance of the decision/recommendation. If the last day for filing the
10 motion for reconsideration falls on a weekend day or a holiday, the last day for filing shall
11 be the next working day. The requirements set forth herein regarding the time limits for
12 filing of motions for reconsideration and contents of such motions are jurisdictional.
13 Accordingly, motions for reconsideration that are not timely filed with the Office of the
14 Hearing Examiner or do not set forth the alleged errors shall be dismissed by the Examiner.
15 It shall be within the sole discretion of the Examiner to determine whether an opportunity
16 shall be given to other parties for response to a motion for reconsideration. The Examiner,
17 after a review of the matter, shall take such further action as he/she deems appropriate,
18 which may include the issuance of a revised decision/recommendation. (*Tacoma Municipal*
19 *Code 1.23.140*)

20 **APPEAL OF EXAMINER’S DECISION TO MUNICIPAL COURT:**

21 **NOTICE**

In regard to appeals of the Examiner’s above decision, TMC 12.08.675.L provides the following:

L. Appeal to Municipal Court.

If the Hearing Examiner orders any person to pay a civil penalty, that person may appeal, in the form of a trial de novo, to the Tacoma Municipal Court.

1. The Tacoma Municipal Court shall hear the case according to the Civil Rules for Courts of Limited Jurisdiction, and applicable local rules of the Court.

2. Appeal shall be taken by filing in the Tacoma Municipal Court a notice of appeal within 14 days of the Hearing Examiner’s order. The person filing the appeal shall also, within the same 14 days, serve a copy of the notice of appeal on the Hearing Examiner, the Director, the City Attorney, and shall file an acknowledgment or affidavit of service in the Tacoma Municipal Court.