

**JOURNAL OF COMMISSION SPECIAL WORK SESSION**  
**January 29, 2014**

City Commission Special Work Session  
Civic Center, Gibson Room 212

Mayor Winters presiding

**CALL TO ORDER:** 2:00 p.m.

City Commissioners present: Michael J. Winters, Bill Bronson, Fred Burow, Bob Jones, and Bob Kelly.

**STAFF PRESENT:** City Manager; City Attorney; Director of Public Works and Water Plant Supervisor; and the City Clerk.

**1. BRIEFING – PROPOSED ENVIRONMENTAL PROTECTION AGENCY (EPA) CONSENT DECREE**

City Manager Greg Doyon introduced the City's retained attorney, Alan Joscelyn, of Gough, Shanahan, Johnson & Waterman; Public Works staff: Director Jim Rearden, Water Plant Supervisor Mike Jacobson, Utilities Supervisor Mike Judge, Environmental Program Coordinator Chris Sorenson, and Environmental Compliance Technician Randall Rappe.

Manager Doyon reported that Attorney Joscelyn will provide an overview of the proposed joint Consent Decree with Malteurop and the Environmental Protection Agency (EPA). The Consent Decree is a negotiated settlement to a complaint filed by the Department of Justice (DOJ) on behalf of the Environmental Protection Agency against the City of Great Falls and Malteurop. The City was cited for failing to take appropriate enforcement action against H<sub>2</sub>S in the City's sewer. The City disagrees with that assertion and the Consent Decree is a means to remedy EPA's issues with both Malteurop and the City.

Manager Doyon pointed out that:

- The Consent Decree addresses gas in the sewer, not discharge into the river.
- The City tried to work with the EPA before it was cited to remedy the problem.
- The City hired engineers to assist with problem resolution.
- There was concern about the EPA's methodology regarding H<sub>2</sub>S acceptable levels.
- Two techniques, including Bioxide in 2006 and SuperOxygenation in 2009, have been used effectively.
- The current proposal in the Consent Decree includes an alternate main from Malteurop to the gravity line. The City has concerns with this proposal that it won't address the issue.
- This does not have to do with Malteurop's water or sewer service agreements.

He further reported that the EPA added FOG (Fat, Oil & Grease), CMOM (Capacity, Management, Operations & Management), I&I (Infiltration & Inflow) and SSO (Sanitary Sewer Overflow) requirements in the Consent Decree that did not directly relate to the H<sub>2</sub>S issue. The compliance requirements are burdensome and will be costly to meet. He asked Attorney Joscelyn to discuss the legal, technical and practical aspects of the Consent Decree and to answer any questions the Commission may have. To meet the EPA's deadline, the Consent Decree will be placed on the Commission's next agenda for ratification.

Attorney Joscelyn reported that, like other municipalities of any size, the City of Great Falls has a Public Works Department which operates a sewer system and a wastewater treatment plant which treats the wastewaters collected by the sewer system, and then discharges the treated water to the Missouri River. The federal Clean Water Act (CWA) contains provisions relating to these kinds of systems, which the CWA describes as POTWs or Publicly Owned Treatment Works.

The CWA recognizes that the municipalities which own and operate these POTWs have the primary authority and responsibility for operation of the POTWs, but it also contains provisions which regulate how the cities do this. Generally speaking POTWs are designed for treatment of domestic wastes, but also need to deal with discharges of industrial wastes. The CWA creates a pretreatment program which deals with discharges of industrial wastes into POTWs. The primary concern of the pretreatment program is, because POTWs are set up mostly to deal with domestic wastes, to ensure that industrial wastes are reviewed and pre-treated, when necessary, so they are not discharging wastes which will cause problems with the POTWs treatment works by interfering with those treatment processes or causing pass through of chemicals into the POTWs discharges.

In some states, the state water control agency, which is the DEQ in Montana, are the approval authority which has supervisory and enforcement responsibilities over the POTWs. In Montana, however, Montana's pretreatment program has not been approved by EPA, so EPA is the approval authority. EPA has the responsibility and authority for working with staff of POTWs to ensure that they are properly operating the POTW and properly administering the pretreatment regulations. The fact that EPA is the approval authority in Montana is how the City happens now to be dealing with EPA in this proposed Consent Decree. The events which lead to the proposed Consent Decree go back to the 2005-2006 time frame, and actually even further back than that. EPA has, for at least twenty years, had a national initiative to reduce discharges of wastes from POTWs to waterways of the U.S.

As a part of that initiative EPA personnel have been taking a close look at municipal waste discharges nationwide, including those in Montana. That close look consisted to a large part in reviewing the regular reports the City files with EPA and the Montana DEQ about accidents or incidents in the daily operation of the system, such as backups, overflows, and clogged sewers. Part of what is going on in this Consent Decree is cleaning up, so to speak, of allegations by EPA that these instances of incidents experienced by the City in the operation of its system constituted violations of the Clean Water Act and its regulations and the City's discharge permit allowing the discharge from the treatment plant to the river.

This Consent Decree also addresses issues that have arisen with respect to consequences of discharges from the Malting Plant. The plant doesn't discharge anything commonly considered to be dangerous chemicals, but it discharges wastewater that has organic content from the washing of barley and also has sulfate minerals.

If this wastewater was discharged into a normal gravity flow sewer, generally, it wouldn't cause a problem in the sewer. But in this case, the physical facts are that the first part of the sewer line from the Malt Plant, called a force main, means it is uphill and has to be pumped. Still, no problem in usual circumstances, but when the Malt Plant stops discharging for any reason the pumps stop and the water in the line sits in place. Under those circumstances, which don't happen often, the sulfate and organic wastes can use up the available oxygen and then generate hydrogen sulfide gas, H<sub>2</sub>S. Finding H<sub>2</sub>S in sewer systems isn't unusual, it happens in various circumstances, but it's something EPA keeps an eye on, because H<sub>2</sub>S is toxic in sufficient concentrations, and therefore can pose risks to worker safety.

The potential for H<sub>2</sub>S to be formed as a result of the Malt Plant discharge into the force main first started to come to light in the 2005-2006 time frame, and that started a three-way course of dealings among the City, the Malt Plant and EPA, as everybody reacted to the situation. On the practical side, it ultimately led to the Malt Plant installing two systems to inject oxygen into its discharge to address the problem by preventing the formation of the H<sub>2</sub>S. On the regulatory side it led to the City taking regulatory action against the Malt Plant and to EPA issuing the City two administrative compliance orders setting out what EPA wanted the City to do in responding to the H<sub>2</sub>S issues. In June, 2010, EPA sent the City a violation letter that addressed both the system operational issues and the H<sub>2</sub>S issues.

In summary, the EPA alleges that the City has failed to administer and enforce its pretreatment program adequately and failed to provide EPA with required notices, information, and reports, in violation of the City's MPDES permit and two EPA Administrative Orders.

The proposed Consent Decree provides for the City to pay a civil penalty of \$200,000, with \$120,000 of that paid in cash, over three years, and the balance in the form of a commitment to build a supplemental environmental project, a hydrodynamic separator to treat storm water. The cash payments get divided between EPA and the State of Montana. The proposed Consent Decree calls for Malteurop to pay a civil penalty of \$500,000 when the Consent Decree is signed and effective. For perspective, the EPA's first demand to the City was for a civil penalty of \$500,000.

He also reviewed the Consent Decree compliance requirements, including implementation of a pretreatment program, monitoring for Hydrogen Sulfide, corrosion prevention and monitoring, worker safety precautions, sanitary sewer overflow prevention, and reporting.

Attorney Joscelyn recommend that the City Commission authorize execution of the proposed Consent Decree on behalf of the City. Approval will mean that all of the EPA's allegations and concerns going back to 2005, and all of its compliance orders and violation letters, will be

resolved. The alternative, litigating the issues, will likely result in the same compliance provisions and a higher civil penalty being imposed by a court, and would mean significant litigation costs. If the Commission authorizes signing of the Consent Decree, then the DOJ will file a Complaint in the U.S. District Court outlining all of its allegations of violations of CWA responsibilities, and will simultaneously file the approved Consent Decree with the Court.

Director Rearden discussed the sequence of events since 2005 when H<sub>2</sub>S was first detected and what was done to resolve the issue. He displayed a map and reported that the system was originally designed for future growth in the area.

After discussion about the City responding in good faith to a technical problem, and the EPA responding with enforcement and a fine, Commissioner Bronson offered to draft a letter from the Commission to the congressional delegation urging them to start a process nationwide to shift the emphasis from enforcement to technical assistance.

**ADJOURN**

There being no further discussion, Mayor Winters adjourned the special work session of January 29, 2014, at 3:12 p.m.