

Special City Commission Meeting

Mayor Winters presiding

**CALL TO ORDER:** 5:00 PM

Civic Center – Commission Chambers Room 206

**ROLL CALL:** City Commissioners present: Michael Winters, Bob Jones, Bill Bronson, Fred Burow, and Bob Kelly. Also present were the City Manager, City Attorney, Director of Public Works, Environmental Division Supervisor, and the City Clerk.

### **NEW BUSINESS**

1. **CONSIDERATION OF WHETHER TO ACCEPT CALUMET MONTANA REFINING, INC.'S APPEAL OF CONDITIONS ATTACHED TO MPDES DISCHARGE PERMIT, AUTHORIZE APPOINTMENT OF A HEARING OFFICIAL, AND CONSIDERATION OF STAY REQUEST PENDING HEARING.**

City Attorney Sara Sexe stated this special meeting is for Commission action under the City Charter to evaluate, investigate, or review administrative determinations by a department.

The City of Great Falls was cited by the Environmental Protection Agency (EPA) in 2010, wherein the EPA alleged that the City failed to properly enforce certain provisions of the Clean Water Act. A detailed summary of the allegations was discussed at a City Commission work session approximately a year and a half ago, and the process of entering into a Consent Decree was done with the EPA, Montana DEQ, and Malteurop.

Under paragraph nine of the Consent Decree, the City is under obligation to review all Significant Industrial Users (SIU) to the City's publicly owned treatment works (POTW) and identify those that generate hydrogen sulfide (H<sub>2</sub>S). Then the City is to issue modified permits to those SIUs identified with conditions. The modified permits are subject to and contingent upon EPA approval under the Consent Decree provisions.

Accordingly, after receiving input and direction from EPA representatives, the Public Works Department Environmental Division submitted the proposed Calumet Montana Refining, Inc.'s (CMR's) permit with modified limits and conditions to the EPA, which, in turn, approved the limits. On March 15, 2015, the City provided public notice in the *Great Falls Tribune* of its Intent to Modify and Reissue the Permit to Discharge Industrial Wastewater to the City's POTW. The only comments received to such Permit were timely filed by CMR. The City took final action on the permit on May 19, 2015, whereby it provided a response to all substantive comments received during the public comment period. CMR has requested that the City Commission hear its appeal of the modified limits and conditions, and has requested a stay pending that appeal.

The Official Code of the City of Great Falls (OCCGF) 13.2.030 provides the process by which an evaluation such as this is undertaken. A majority vote of the City Commission is required to review and investigate a management decision or administrative function.

Because of the technical and complicated nature of the issues listed in the permit and the objections to the permit, staff makes the following recommendations:

- (1) accept, and undertake, review of the administrative determination and modified permit. The alternative would be to have the permit stand and likely enter into litigation, as has been discussed with CMR's counsel;
- (2) grant a stay, effective June 15, 2015, of the three permit requirements enumerated and contested by the appeal, pending the conclusion of the appeal process of the City Commission; and,
- (3) allow staff to mutually agree with CMR as to an appropriately qualified hearing officer, request that hearings officer to conduct prehearing activity and a hearing and make a recommendation to the Commission for final decision.

Attorney Sexe stated the Commission can decline to hear the appeal, and the issuance of the permit would stand.

Attorney Sexe introduced Environmental Division Supervisor Paul Skubinna and CMR representative Catherine Laughner.

CMR Health, Safety, and Environmental Manager Hadley Bedbury discussed why the EPA recommendation is technically flawed due to a lack of understanding of the pH and other conditions. In addition, the process of treating hydrogen sulfide requires a higher pH treatment.

Mr. Bedbury discussed the complicated solution involved in the vapor phase of the process. He noted there are multiple parties in the sewer system and questioned why CMR is the only party asked to conduct a study of the complex situation.

Mr. Bedbury stated CMR would like to work out a sulfide specific solution with the City.

City Manager Greg Doyon noted EPA is setting the tone on the technical aspect and enforcement.

Attorney Sexe noted there has been indication the City would try to work with CMR to achieve EPA approved permit modifications if a stay was approved by the Commission.

Commissioner Kelly questioned the benefit to the City to incur costs for a third party to represent CMR's issues.

Ms. Laughner responded that she would explore the option of CMR sharing the costs.

**Commissioner Bronson moved, seconded by Commissioner Kelly, that the City Commission accept for review CMR's appeal of the conditions of the MPDES permit.**

Mayor Winters asked if there was any discussion amongst the Commissioners.

Commissioner Bronson concurred with Attorney Sexe that a hearing officer should be selected to give both sides the opportunity to have more discussion to come to a resolution to satisfy EPA.

Commissioner Burow also expressed concern that the City incur the costs in the matter.

Mayor Winters asked if there were any comments from the public.

**Ron Gessaman**, 1006 36<sup>th</sup> Avenue NE, advised caution after reviewing CMR's plans for the conceptual basic engineering design of the upgrade of the wastewater treatment plant since the City holds the permit. He does not support the City allowing CMR an opportunity to reduce requirements on material sent to the wastewater treatment plant. He questioned why CMR has not talked with EPA and the City since the decree was signed. EPA regulations do not prevent anyone from talking with them without a stay.

**Aart Dolman**, 3016 Central Avenue, discussed the City's fiduciary responsibility as public servants to protect the water of the Missouri River and not take unnecessary risks on the expenditure of money.

There being no one further to address the Commission, Mayor Winters called for the vote.

Motion carried 4-1 (Commissioner Burow dissenting).

**Commissioner Kelly moved, seconded by Commissioner Jones, that the City Commission grant CMR's request for a stay of the three permit requirements or modified conditions of the MPDES permit pending hearing on appeal and final decision of the Commission.**

Mayor Winters asked if there was any discussion amongst the Commissioners.

Commissioner Burow questioned why CMR cannot have a discussion with EPA without a stay.

Attorney Sexe responded that, as of the date of the modified permit, the modifications became effective. If there is not compliance, enforcement action by the City against CMR is required by the provisions of the Consent Decree.

Attorney Sexe stated the City is in the process of trying to determine if some of the proposals made by CMR are reasonable for the City to talk with EPA. The stay holds off the enforcement of the modification during the period of time until the Commission holds a hearing to determine if the modification requests are reasonable. Without a stay, the permit must be enforced as of June 15, 2015, when it was provided to CMR.

Commissioner Burow noted CMR has been constantly running a fan to come into compliance in the short term. He questioned if that can continue, without a stay, during the discussions.

Attorney Sexe noted there has been increased effort by CMR to ensure the H<sub>2</sub>S levels are within EPA guidelines since 2011. Because of the 2014 Consent Decree, the City has been required to increase the permit requirements. She believes CMR has been in compliance

regarding H<sub>2</sub>S but not the pH levels. The pH levels are the increased requirements required by EPA. The stay motion concerns the modifications to the permit that were completed this year.

Environmental Division Supervisor Paul Skubinna explained the three conditions of the permit that CMR has appealed include the pH issue, the continuous operation of the blower, and the slug control plan. By granting the stay, effective June 15, 2015, those three conditions of the modified permit would be stayed; the other conditions of the permit as it stood prior to the modifications would go into effect.

Commissioner Kelly questioned if the City has the authority for the stay, and if EPA denies the arguments, does the City risk a relationship with EPA and possible fines for the City and Calumet for not being in compliance from the time the stay was granted to when the hearing is held.

Attorney Sexe responded that she would argue part of the City's required enforcement action is providing an opportunity for appeal.

Discussion followed on the timeline for obtaining a hearing officer and receiving a recommendation.

Commissioner Bronson believes that if the stay is granted, as part of continuing reporting requirements, EPA will be informed and let the City know if there is a problem.

Attorney Sexe added that she does not believe penalties under the Consent Decree would be applicable because the City is required to undertake the enforcement process. The City is making effort to ensure the rights of those entities being regulated are upheld, while trying to remain compliant with the Consent Decree.

Mr. Skubinna stated that he spent 11 years as a Montana DEQ regulator, and he believes the Consent Decree obligates the City to issue the permit within a reasonable amount of time, and respond to any substantive comments received through the issuing process. He believes the City is in the administrative process to issue the permit.

Mayor Winters asked if there were any comments from the public.

**Ron Gessaman**, 1006 36<sup>th</sup> Avenue NE, stated the restrictions in the modified permit are to ensure the City does not violate the Consent Decree. He does not believe there is assurance that CMR can operate consistently to ensure the City is protected.

**Aart Dolman**, 3016 Central Avenue, believes the letter from Ms. Laughner indicates the burden is placed on the Commission. He is concerned with the exception because accidents happen and the City would be accountable.

There being no one further to address the Commission, Mayor Winters called for the vote.

Motion carried 5-0.

**Commissioner Bronson moved, seconded by Commissioner Jones, that the City Commission authorize the appointment of a hearings officer to conduct prehearing procedures and hearing and thereafter make a recommendation to the City Commission, with the stipulation that the cost of the hearings officer be borne equally by the City and CMR.**

Mayor Winters asked if there was any discussion amongst the Commissioners.

Commissioner Bronson expressed appreciation for the public comments, but believes those comments pertain to the merits of the dispute.

Commissioner Burow expressed concern that sharing the cost of the hearings officer may be in conflict with the best interests of the City.

Attorney Sexe believes that sharing the cost of the hearings officer would provide objectivity and apply due process to all parties involved.

Mayor Winters questioned if the shared costs would be a problem with CMR.

Ms. Laughner responded that she could not make a commitment on behalf of CMR, but noted mediations are handled with shared costs.

Mayor Winters asked if there were any comments from the public.

**Ron Gessaman**, 1006 36<sup>th</sup> Avenue NE, questioned the cost and the fund that would be used. He was concerned that a precedent may be set for using the City's appeal process. He believes the costs could be split initially, but CMR should have to pay the entire cost if EPA does not give merit to the appeal.

Manager Doyon noted the sewer fund would pay the costs.

There being no one further to address the Commission, Mayor Winters called for the vote.

Motion carried 5-0.

### **PETITIONS AND COMMUNICATIONS**

#### **2. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS**

- A. Ron Gessaman**, 1006 36<sup>th</sup> Avenue NE, expressed concern that the last two Commission meetings have 28 and 20 agenda items with complicated issues. He appealed to the Commission to provide direction to staff to not put the Commission in that position again.

### **ADJOURNMENT**

There being no further business to come before the Commission, **Commissioner Bronson moved, seconded by Mayor Winters, to adjourn the special meeting of July 23, 2015, at 6:12 p.m.**

Motion carried 5-0.

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Mayor Michael J. Winters

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City Clerk Lisa Kunz

Special Minutes Approved: August 4, 2015