



**Item:** Motion to consider Calumet Montana Refining, Inc.'s (CMR's) appeal of conditions attached to MPDES discharge permit, authorize appointment of a hearing official to conduct the appeal, and consideration of stay request pending the hearing

**From:** Sara R. Sexe, City Attorney

**Initiated By:** Sara R. Sexe, City Attorney

**Presented By:** Sara R. Sexe, City Attorney

**Action Requested:** Commission's acceptance of CMR's appeal, authorize appointment of a hearing official to conduct prehearing activity and a hearing, after which the hearing official will provide a recommendation to the Commission for final decision, and grant a stay pending the appeal procedures and Commission decision.

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**Suggested Action:**

1. Commissioner moves:  
  
"I move the City Commission (accept/not accept) for review CMR's appeal of the conditions of the MPDES permit."  
  
Mayor calls for a second, discussion, public comment, and calls for the vote.  
  
And
2. If Motion fails, nothing further is taken and MPDES permit stands as issued; or
3. If Motion is successful, then:
  - a. "I move the City Commission (grant/not grant) Calumet Montana Refining, Inc.'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."
  - b. Mayor calls for a second, discussion, public comment, and calls for the vote.  
  
And

4. "I move the City Commission (authorize/not authorize) appointment of a hearings officer to conduct prehearing procedures and hearing and thereafter make a recommendation to the City Commission."

Mayor calls for a second, discussion, public comment, and calls for the vote.

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### **Background:**

The City of Great Falls (City) was cited by the Environmental Protection Agency (EPA) on June 23, 2010, wherein the EPA alleged that the City failed to properly enforce certain provisions of the Clean Water Act and failed to properly administer the sanitary sewer collection system. A detailed summary of the EPA allegations, negotiations among the parties, (including Malteurop America, Inc.) and the proposed consent decree was discussed by the City's legal counsel at the City Commission's work session on Wednesday, January 29, 2014. The Consent Decree was ordered to be entered by the United States District Court for the District of Montana, Great Falls Division, on April 14, 2014 in *United States of America and State of Montana v. The City of Great Falls, MT and Malteurop North America, Inc.*, United States District Court, Montana, Cause No. CV-14-16-GF-BMM, United States Department of Justice Reference Number 90-5-1-108955.

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 (subject to, and contingent upon, EPA approval) to control H<sub>2</sub>S. Accordingly, after receiving input and direction from EPA representatives, the Public Works Department - Environmental Division, submitted the proposed CMR permit with modified limits and conditions to the EPA, which, in turn, approved the limits. (See January 16, 2015 letter attached.) 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. (See April 14, 2015 letter attached as Exhibit 3 to the June 15, 2015 letter referenced below.) 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. (See letter attached as Exhibit 2 to the June 15, 2015 letter referenced below.)

CMR has requested that the City Commission hear its appeal of the modified limits and conditions, and has requested a stay pending that appeal. (See June 15, 2015 letter attached.)

The Official Code of the City of Great Falls (OCCGF) 13.2.030 provides in part:

The purpose of Title 13 is to provide standards to safeguard life, health, property and public welfare of the inhabitants of the City **and for the purpose of controlling the use of the water, sewer and storm drain systems** by regulating

and managing the design, quality of materials, construction, location and maintenance. . . .

(Emphasis supplied.)

The City Code further provides:

The rules and regulations of the City set out in Title 13 are made a part of the contract with every individual, firm or corporation who takes water or connects to the City water/sewer system, and every such individual, firm or corporation agrees, in making an application for water, sewer or storm drainage to be bound thereby.

In all cases wherein by the rules set out in this Chapter any discretion is vested in City personnel, such discretion shall be subject to the control of the Great Falls City Commission.

OCCGF 13.2.020. Thus the Commission has authority to hear CMR's appeal of the issuance of the MPDES permit. Article II, Section 3 of the Charter of the City of Great Falls provides:

On a majority vote of the whole number of the City Commission, the City Commission may review, inquire, and investigate any operation, management decision, administrative function or other affairs of the City. The City Commission may compel the attendance and testimony of witnesses and the production of books and records by issuance of a subpoena.

**Staff Recommendation:**

The Commission is recommended by staff to:

1. accept, and undertake, review of the administrative determination and modified permit,
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.

**Fiscal impact:** If the recommendation is accepted, the City will incur the costs of the appointed hearing officer and preparing its case.

**Alternatives:** The City Commission can decline to hear CMR's appeal; in such case, the issuance of the permit would stand, and CMR may appeal the action to a court of competent jurisdiction.

**Attachments:** January 16, 2015 letter  
March 15, 2015 Public Notice  
June 15, 2015 letter with attachments

**cc:** Paul Skubinna, City of Great Falls Environmental Division Supervisor  
Cathy Laughner, Attorney for Calumet Montana Refining, Inc.