



Report to the City Council
Council Meeting of August 23, 2016

Agenda Section: New Business

Subject: Consideration and proposed approval of a resolution authorizing the City Manager to accept a conditional offer from the Regional Water Quality Control Board to settle alleged discharge violations at the wastewater treatment and reclamation plant through payment of mandatory penalty in the amount of \$15,000; and authorizing transfer of \$15,000 from the wastewater capital project fund to the wastewater operating fund to pay for the penalty

CEQA Status: Not a CEQA Project

Prepared By: Steven Palmer, PE, Director of Public Works/City Engineer

Approved By: Jennifer Phillips, City Manager

BACKGROUND

Beginning on March 2, 2016, the City's wastewater treatment and reclamation plant is operated under two new Regional Board Water Quality Control Board Orders R2-2016-0003 and R2-2016-0004. These Orders simultaneously implement new, more stringent effluent limitations; and allow the City to continue operating the plant under the old effluent limitations as long as the City is complying with the task and time schedule provided in Order R2-2016-0004. The first deadline the City must meet is to submit a Draft Feasibility Study that analyzes options to meet the new effluent limitations. This Draft Study is due to the Regional Board by September 1, 2016. Staff has reviewed a rough draft of the Draft Feasibility Study and the City will meet the September 1, 2016 deadline.

On August 4, 2016, the Regional Water Quality Control Board sent the City of St Helena a letter notifying the City of alleged violations of discharge limitations and a conditional offer to settle the violations through payment of \$15,000 in mandatory minimum penalties pursuant to Water Code section 13385 and 13385.1. The Regional Board is requiring a response from the City by September 5, 2016. This letter from the Regional Board is included as Attachment 2.

During the discharge of treated effluent to the Napa River between the dates of March 7-17, 2016, eight different instances of effluent limit violations were reported. One of the violations was an exceedance of the Total Coliform Daily Maximum of 240 MPN/100mL on March 8, 2016; the reported value was 1,600 MPN/100mL. There were numerous other samples taken that day that were well within the NPDES Permit effluent limits. Because of this, Staff believes that this sample was most likely contaminated through improper sampling technique. The other seven violations occurred because the daily reported values for pH were lower than the instantaneous minimum of 6.5 allowed by the NPDES permit. The reported value in the wastewater treatment plant effluent ranged from 6.1 to 6.4. Staff is evaluating the causes of this pH violation to determine the best way to prevent any future violations. Initial sampling data suggests that the pH of the influent wastewater is currently lower than what the wastewater treatment plant typically receives.

The total mandatory minimum penalty calculated by the Regional Board for these violations is \$15,000. The City can elect to have the penalty directed to the Regional Board Supplement Environmental Project (SEP) Fund to support the Regional Monitoring Program (RMP). The RMP collects data and communicates information about water quality in the San Francisco Bay Estuary, with the overarching goal to restore and protect beneficial uses of the region's waters. Funding for the RMP is managed by the non-profit San Francisco Estuary Institute, therefore the City penalty will be paid directly to the SEP Fund and not to the Regional Board.

Once the City accepts the conditional offer and submits to the Regional Board, the Regional Board will publish notice and allow at least 30 days for public comment. If no significant comments are received, then the Executive Director of the Regional Board will execute the agreement and the City will have 30 days to submit payment.

FISCAL IMPACT

This penalty was not included in this Fiscal Year's Operating Budget. Since there isn't any funding available in the wastewater reserves, funds will need to be transferred from the wastewater capital project fund. The current wastewater capital project fund balance is \$1,100,000, of which \$692,070 is programmed for expenditure in Fiscal Year 2016/2017 and the remainder will be expended in Fiscal Year 2017/2018. This action will reduce the amount of funding available for wastewater capital projects.

RECOMMENDED ACTION

Approve a resolution authorizing the City Manager to accept a conditional offer from the Regional Water Quality Control Board to settle alleged discharge violations at the wastewater treatment and reclamation plant through payment of mandatory penalty in the amount of \$15,000; directing that this penalty be paid to the RMP SEP Fund; and authorizing the transfer of \$15,000 from the wastewater capital project fund (773) to the Fiscal Year 2016/2017 operating fund (571-5029-2143) to pay for the penalty.

Alternatively, the City can elect to protest the penalty, request a public hearing, and present evidence to contest the allegations at the public hearing in front of the Regional Board.

ATTACHMENTS

1. Resolution
2. Conditional Offer to Settle Violations of NPDES Permit CA0038016

CITY OF ST. HELENA

RESOLUTION No. 2016-

Resolution Authorizing the City Manager to Accept a Conditional Offer from the Regional Water Quality Control Board to Settle Alleged Discharge Violations at the Wastewater Treatment and Reclamation Plant through Payment of Mandatory Penalty in the Amount of \$15,000; and Authorizing Transfer of \$15,000 from the Wastewater Capital Project Fund to the Wastewater Operating Fund to Pay for the Penalty

RECITALS

- A. The City of St. Helena Wastewater Treatment and Reclamation Plant (WWTRP) is operated under Regional Water Quality Control Board (RWQCB) Orders R2-2016-0003 and R2-2016-0004; and
- B. On August 4, 2016, the RWQCB sent the City of St Helena a letter notifying the City of alleged violations of discharge limitations and a conditional offer to settle the violations through payment of \$15,000 in mandatory minimum penalties pursuant to Water Code section 13385 and 13385.1; and
- C. These alleged violations are primarily due to daily reported values for pH in the discharge to the Napa River ranged from 6.1 to 6.4, which are lower than the effluent limit minimum pH value of 6.5; and
- D. The City can direct the penalty to fund the Regional Monitoring Program (RMP) Supplemental Environmental Project (SEP) which collects data and communicates information about water quality in the San Francisco Bay Estuary, with the overarching goal to restore and protect beneficial uses of the region's waters; and
- E. The Regional Board is requiring a response from the City by September 5, 2016; and
- F. Once the City accepts the conditional offer and submits to the Regional Board, the Regional Board will publish notice and allow at least 30 days for public comment; and
- G. If no significant comments are received, then the Executive Director of the Regional Board will execute the agreement and the City will have 30 days to submit payment; and
- H. This penalty was not included in this Fiscal Year's Operating Budget; and
- I. Adequate funds are not available from the City's wastewater reserve account to pay the penalty.

RESOLUTION

The City Council of the City of St. Helena hereby resolves as follows:

1. The City Manager is authorized to accept a conditional offer from the Regional Water Quality Control Board to settle alleged discharge violations at the wastewater treatment and reclamation plant through payment of mandatory penalty in the amount of \$15,000; and
2. Directing that this penalty be paid to the Regional Monitoring Program Supplemental Environmental Project Fund; and
3. Authorizing the transfer of \$15,000 from the wastewater capital project fund (773) to the Fiscal Year 2016/2017 operating fund (571-5029-2143) to pay for the penalty.

Approved at a Regular Meeting of the St. Helena City Council on August 23, 2016, by the following vote:

Mayor Galbraith: _____
Vice Mayor White: _____
Councilmember Crull: _____
Councilmember Dohring: _____
Councilmember Pitts: _____

APPROVED:

ATTEST:

Alan Galbraith, Mayor

Cindy Black, City Clerk



San Francisco Bay Regional Water Quality Control Board

August 4, 2016
File: CW-258386
Regulatory Measure: 407966

City of St. Helena
Mr. Michael Sample, Manager (via email only to: michaels@cityofsthelena.org)
1480 Main Street
St. Helena, CA 94574

Subject: Conditional Offer to Settle Violations of NPDES Permit CA0038016

Facility: City of St. Helena Wastewater Treatment and Reclamation Plant
1 Chaix/Thomann Lane
St. Helena, Napa County

Dear Mr. Sample:

This letter notifies the City of St. Helena (Discharger) of alleged violations of discharge limitations, and provides the Discharger the opportunity to settle the violations through payment of \$15,000 in mandatory minimum penalties pursuant to Water Code section 13385 and 13385.1. Please reply by **September 5, 2016**.

NOTICE OF VIOLATION

The Assistant Executive Officer alleges that the Discharger has violations identified in Exhibit A attached hereto and incorporated herein by reference. The Discharger has the opportunity to address the alleged violations as discussed below.

STATUTORY LIABILITY

Water Code sections 13385(h) and (i) require the assessment of a mandatory minimum penalty of \$3,000 for specified serious and other effluent limit violations. Failure to file a discharge monitoring report required pursuant to section 13383 for each complete period of 30 days following the deadline for submitting the report constitutes a serious violation. The Discharger is also subject to discretionary administrative civil liabilities of up to \$10,000 for each day in which the violation occurs, plus \$10 for each gallon discharged but not cleaned up in excess of 1,000 gallons. These mandatory minimum penalties and discretionary administrative civil liabilities may be assessed by the Regional Water Board or the State Water Board (collectively Water Boards), beginning with the date that the violations first occurred.¹ The formal enforcement action the Water Boards use to assess such liability is an administrative civil liability complaint

¹ Please note that there are no statutes of limitation that apply to administrative proceedings to assess mandatory minimum penalties. See *City of Oakland v. Public Employees' Retirement System*, (2002) 95 Cal.App.4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.) Additionally, the State Water Resources Control Board has determined that the equitable doctrine of laches does not apply to mandatory minimum penalties. (State Water Board Order Nos. 2013-0053, 2013-0054, 2013-0055, 2013-0099.)

followed by a public hearing, although the Water Boards may instead refer such matters to the Attorney General's Office for prosecution. If referred to the Attorney General for prosecution, the Superior Court may assess up to \$25,000 per violation. In addition, the Superior Court may assess up to \$25 per gallon discharged but not cleaned up in excess of 1,000 gallons.

CONDITIONAL OFFER TO SETTLE

The Discharger can avoid the issuance of a formal enforcement action and settle the alleged violations identified in Exhibit A by accepting this conditional offer. Details of this offer are described below, as well as in the "Acceptance of Conditional Resolution and Waiver of Right to Hearing" (Acceptance and Waiver) enclosed herewith.

This offer does not address liability for any violation that is not specifically identified in Exhibit A.

OPTIONS FOR RESPONSE TO OFFER

If the Discharger chooses to accept this offer, then it must complete and return the enclosed Acceptance and Waiver on or before the reply date specified in the first paragraph of this letter. Note that when we receive the Acceptance and Waiver, this notice and offer will become a proposed settlement and a part of the Regional Water Board files that are available to the public. The Acceptance and Waiver will then be posted for a 30-day public notice period. Based on comments received, the Executive Officer will decide whether to accept this proposed settlement. If acceptable, the Executive Officer will counter-sign the Acceptance and Waiver and an invoice will be sent to you for payment.

If the Discharger chooses to contest the violation, or any of the violations, alleged in Exhibit A, please identify the specific violation and the basis for the challenge (factual error, affirmative defense, etc.) on or before the reply date specified in the first paragraph of this letter. Regional Water Board staff will evaluate each contested violation and take one of two actions:

- 1) Determine that the violation warrants dismissal and dismiss the alleged violation in the California Integrated Water Quality System (CIWQS) database, take no further action against the Discharger for the alleged violation, and notify the Discharger of that determination; or
- 2) Determine that the alleged violation is meritorious and notify the Discharger of that determination. The Discharger will then have 30 days from the date of the determination to accept settlement for that violation through a mandatory minimum penalty. If The Discharger chooses not to accept, or makes no reply to the determination, it should expect to be contacted regarding formal enforcement action for the contested violations. In a formal enforcement action, information received by Regional Water Board staff during a formal investigation and assessment of the violation, as well as staff costs associated with pursuing additional enforcement, may increase the liability amount beyond that which is set forth in this conditional offer.

CONDITIONS FOR REGIONAL WATER BOARD ACCEPTANCE OF RESOLUTION

Federal regulations require the Regional Water Board to publish and allow the public at least 30 days to comment on any settlement of an enforcement action addressing an NPDES permit violation (40 C.F.R. § 123.27(d)(2)(iii)). Upon receipt of the Discharger's Acceptance and

Waiver, Regional Water Board staff will publish a notice of the proposed settlement of the violations.

If we receive no comments within the 30-day period and there are no new material facts available to the Regional Water Board, the Executive Officer will execute the Acceptance and Waiver as a stipulated order assessing the uncontested mandatory minimum penalty amount pursuant to Water Code section 13385 and/or 13385.1.

If, however, significant comments are received in opposition to the proposed settlement, this offer may be withdrawn. In that case, we will also treat as withdrawn the Acceptance and Waiver, and address the alleged violations in a formal liability assessment proceeding. At the liability assessment hearing the Discharger will be free to make arguments as to the alleged violations, and the acceptance of this conditional offer will not in any way be binding or used as evidence against the Discharger. The Discharger will be provided with further information on the liability assessment proceeding.

In the event that the Executive Officer executes the Acceptance and Waiver, payment of the settlement amount shall be due within 30 calendar days after. In accordance with Water Code section 13385(n)(1), funds collected pursuant to Water Code sections 13385 and 13385.1 shall be deposited in the State Water Pollution Cleanup and Abatement Account (CAA). Failure to pay the penalty within the required time period may subject the Discharger to further liability.

OPPORTUNITY FOR SUPPLEMENTAL ENVIRONMENTAL PROJECT

In lieu of paying all of the settlement amount to the State Water Pollution Cleanup and Abatement Account, the Discharger may elect to apply a portion to fund a supplemental environmental project (SEP).^{2,3}

There is currently one SEP option available: the SEP Fund to supplement the Regional Monitoring Program (RMP). This SEP Fund will supplement RMP studies that would not otherwise be conducted through the Regional Water Board's annually approved RMP cost allocations. The guiding principal of the RMP is to collect data and communicate information about water quality in the San Francisco Estuary in support of management decisions to restore and protect beneficial uses of the region's waters. Information about the RMP is at <http://www.sfei.org/rmp>. Funding for the RMP is managed and administered by the non-profit San Francisco Estuary Institute. No funds will go to the Regional Water Board.

The Discharger also may choose to pay the total settlement amount to the State Water Pollution Cleanup and Abatement Account. These options are represented in the enclosed Acceptance and Waiver.

² Pursuant to the State Water Board Enforcement Policy (2010) and Water Code section 13385(1)(1), the portion to a SEP may exceed more than 50 percent of the penalty if the penalty is less than or equal to \$15,000; however, if the penalty exceeds \$15,000, the portion to a SEP may not exceed \$15,000 plus 50 percent of the penalty that exceeds \$15,000.

³ See State Water Board Policy on Supplemental Environmental Projects (2009) (http://www.waterboards.ca.gov/rwqcb5/water_issues/enforcement/sep_policy_2009.pdf).

REGIONAL WATER BOARD CONTACT

Please send your reply to the attention of Farhad Azimzadeh, either by email or U.S. mail. If you want to discuss or have questions regarding this matter, please contact Farhad Azimzadeh at (510) 622-2310 or Farhad.Azimzadeh@waterboards.ca.gov.

Sincerely,



Dyan Whyte
Assistant Executive Officer

Enclosures: (1) Acceptance and Waiver
(2) Exhibit A - Notice of Violation

ORDER NO. R2-20 _____
ACCEPTANCE OF CONDITIONAL RESOLUTION
AND WAIVER OF RIGHT TO HEARING

City of St. Helena

City of St. Helena Wastewater Treatment and Reclamation Plant
1 Chaix/Thomann Lane, St. Helena, Napa County
NPDES Permit CA0038016, Regulatory Measure ID 407966

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the Regional Water Quality Control Board (Regional Water Board), City of St. Helena (Discharger) hereby accepts the conditional offer to settle alleged violations through payment of mandatory minimum penalties (Conditional Offer) and waives the right to a hearing before the Regional Water Board to dispute the alleged violations set forth in Exhibit A attached hereto and incorporated herein by reference.

The Discharger agrees that Exhibit A shall serve as a complaint pursuant to Article 2.5 of the Water Code and that no separate complaint is required for the Regional Water Board to assert jurisdiction over the alleged violations through its Assistant Executive Officer. The Discharger agrees to pay the penalties authorized by Water Code sections 13385 and 13385.1, which shall be deemed payment in full of any civil liability pursuant to Water Code section 13385 that otherwise might be assessed for the violations described in Exhibit A. The Discharger understands that this Acceptance and Waiver waives its right to contest the allegations in Exhibit A and the amount of civil liability for such violations.

The Discharger understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in Exhibit A.

Upon execution by the Discharger, the Acceptance and Waiver shall be returned to:

California Regional Water Quality Control Board, San Francisco Bay Region
NPDES Wastewater Enforcement Section
Attention: Farhad Azimzadeh
1515 Clay Street, Suite 1400
Oakland, California 94612

The Discharger understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Regional Water Board to publish notice of and provide at least 30 days for public comment on any proposed resolution of an enforcement action. Accordingly, this Acceptance and Waiver, prior to execution by the Executive Officer of the Regional Water Board, will be published as required by law for public comment.

If no comments are received within the notice period which causes the Executive Officer of the Regional Water Board to reject the settlement amount, the Executive Officer will execute the Acceptance and Waiver. Resolution of these violations by the Regional Water Board will preclude State Water Resources Control Board (State Water Board) action for the same violations.

The Discharger understands that if significant comments are received in opposition to the Conditional Offer, the offer may be withdrawn. In that circumstance, the Discharger will be advised of the withdrawal and an administrative civil liability complaint may be issued and the

matter may be set for a hearing before the Regional Water Board or the State Water Board. For such a liability hearing, the Discharger understands that this Acceptance and Waiver executed by the Discharger will be treated as a settlement communication and will not be used as evidence in that hearing.

The Discharger understands that funds collected for violations of effluent limitations and reporting requirements pursuant to section 13385 and 13385.1 shall be deposited in the State Water Pollution Cleanup and Abatement Account.

The Discharger understands that in lieu of full payment of the assessed mandatory minimum penalty to the State Water Pollution Cleanup and Abatement Account, it may elect to pay a portion towards a supplemental environment project (SEP). There is currently only one SEP option, which is the SEP Fund to supplement the Regional Monitoring Program (RMP). This SEP Fund will supplement RMP studies that would not otherwise be conducted through the Regional Water Board's annually approved RMP cost allocations. The guiding principal of the RMP is to collect data and communicate information about water quality in the San Francisco Estuary in support of management decisions to restore and protect beneficial uses of the region's waters. Information about the RMP is at <http://www.sfei.org/rmp>. Funding for the RMP is managed and administered by the non-profit San Francisco Estuary Institute. No funds will go to the Regional Water Board. The Regional Water Board will consider the Discharger to have fulfilled its obligation for this SEP after its contribution to the SEP Fund has been received by the Institute. To select this option, place a "✓" or "✗" in the box below. By selecting this option, the Discharger agrees to pay the amount indicated below to the SEP Fund. Selection of this SEP Fund option does not change the total amount the Discharger will pay.

Select appropriate box (and fill in blanks if appropriate):

- I choose to pay a portion of the assessed liability to the RMP SEP Fund.
- \$ 15,000** Maximum allowable portion that can be paid to the SEP Fund.
- \$ _____ Leave blank unless the Discharger chooses to pay less than the maximum allowable to the SEP Fund; in this case, then indicate the amount to be paid to the SEP Fund.
- \$ _____ Indicate the amount to be paid to the State which is \$0.0 unless the Discharger has chosen to pay less than the maximum allowable to the SEP Fund. If the Discharger has chosen to pay less than the maximum allowable to the SEP Fund, then enter the amount to be paid to the State, which shall be the balance of the total assessed mandatory minimum penalty and the amount the Discharger chooses to pay to the SEP Fund.
- \$ 15,000** Total assessed mandatory minimum penalty. This amount must equal the sum of the above, either lines 1 plus 3, or lines 2 plus 3.
- I choose to pay the total assessed mandatory minimum liability in full to the State Water Pollution Cleanup and Abatement Account.

The Discharger understands that once the Acceptance and Waiver is executed by the Executive Officer of the Regional Water Board, payment no later than 30 days after the date of the Executive Officer's signature is a condition of this Acceptance and Waiver. If the Discharger does not select the SEP Fund option above, the Discharger shall pay the total assessed civil liability in full to the State Water Pollution Cleanup and Abatement Account. If the Discharger selects the SEP Fund option, then the Discharger shall pay the portion not paid towards the SEP Fund to the State Water Pollution Cleanup and Abatement Account and pay the balance to the San Francisco Estuary Institute for the SEP Fund. The Regional Water Board will send an invoice for any payment that is due for the SEP Fund. Payment to the State Water Pollution Cleanup and Abatement Account must be submitted in accordance with an invoice for payment from the State Water Board.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Discharger in the making and giving of this Acceptance and Waiver.

City of St. Helena

By: _____
Printed or typed name Title

Signature Date

Note: Please return the signed Acceptance and Waiver with Exhibit A, together.

IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13385

By: _____
Bruce H. Wolfe Date
Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region

EXHIBIT A
Notice of Violation

Discharger: City of St. Helena

City of St. Helena Wastewater Treatment and Reclamation Plant
 1 Chaix/Thomann Lane, St. Helena, Napa County
 NPDES Permit CA0038016

The following table lists alleged violations for which the Discharger is subject to civil liabilities pursuant to Water Code sections 13385 and 13385.1. The table lists the mandatory minimum penalty (MMP) that applies.

No	CIWQS Violation ID No.	Date of Occurrence	Effluent Limitation Violation Description (Unit)	Effluent Limit	Reported Value	Percent a Group I or Group II Pollutant is over Effluent Limitation	Type of Exceedance	CWC Section 13385(h) and/or (i) Required MMP
1	985679	12/22/2014	Cyanide, Total (as CN) 30-Day Average	15	16	7%	C1	
2	1006976	03/07/2016	pH Instantaneous Minimum (SU)	6.5	6.4		C1	
3	1006971	03/08/2016	Total Coliform Daily Maximum (MPN/100 mL)	240	1,600		C2	
4	1006973	03/09/2016	pH Instantaneous Minimum (SU)	6.5	6.4		C3	
5	1006977	03/10/2016	pH Instantaneous Minimum (SU)	6.5	6.1		>C3	\$3,000
6	1006975	03/14/2016	pH Instantaneous Minimum (SU)	6.5	6.3		>C3	\$3,000
7	1006979	03/15/2016	pH Instantaneous Minimum (SU)	6.5	6.4		>C3	\$3,000
8	1006978	03/16/2016	pH Instantaneous Minimum (SU)	6.5	6.2		>C3	\$3,000
9	1006972	03/17/2016	pH Instantaneous Minimum (SU)	6.5	6.2		>C3	\$3,000
Total								\$15,000

Legend for Table:

CIWQS = California Integrated Water Quality System database used by the Water Boards to manage violation and enforcement activities.

Violation ID = Identification number assigned to a permit exceedance in CIWQS.

C = Count – The number that follows represents the number of exceedances in the past 180 days, including this violation. A count greater than three (> C3) means that a penalty under Water Code section 13385(i) applies.

S = Serious, which means that a penalty under Water Code section 13385(h) applies when an effluent limitation is exceeded 40 percent or more for a Group I pollutant or 20 percent or more for a Group II pollutant.

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