



City Council Agenda Item

City Council Meeting Date: April 20, 2021

TO: Jim Throop, City Manager

FROM: Charles Berry, Utility Director
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SUBJECT: Approval of Summary of Proposed Amendments to Sewer Use Ordinance and Wastewater Pre-Treatment Program, in Response to U.S. Environmental Protection Agency's Administrative Order on Consent

Recommendation:

Staff recommends the City Council:

- 1) Review the summary of proposed amendments to the City's Sewer Use Ordinance and Wastewater Pre-Treatment Program (Updated Summary Document), and direct staff to submit the Updated Summary Document by May 1, 2021 to the U.S. Environmental Protection Agency (EPA) in response to Paragraph 36 of the EPA's Administrative Order on Consent, Docket No. CWA-309(a)-20-006; or
- 2) Provide alternate direction.

Background:

The City entered into an Administrative Order on Consent (AOC) (Attachment 1) with the EPA Region IX on September 2, 2020, for violations of the Clean Water Act (CWA). The violations identified stretched from June 2015 to June 2020, and involved effluent discharges, monitoring and reporting, operation and maintenance, pretreatment, and fats, oils and greases violations of the Regional Wastewater Reclamation Plant's (WRP's) National Pollutant Discharge Elimination System (NPDES) wastewater permit requirements. In the AOC, the City voluntarily agreed to a series of corrective actions to address current violations and prevent future violations. One of the corrective actions involves updating the City's Pretreatment Program, a program required under the NPDES permit, which necessitates updating the City's Sewer Use Ordinance (SUO), which is located in Chapter 13.16 of the Lompoc Municipal Code (LMC). In Paragraph 36 of the AOC, the City is required to provide to EPA:

A description of all substantive changes it proposes to make to its Pretreatment Program, including, but not limited to, any substantive change

in its Pretreatment SUO, program administration, program structure, monitoring requirements, and program funding. Lompoc shall seek and obtain written approval from EPA before making any such change(s).

Staff submitted a proposed summary document on November 24, 2020, detailing proposed changes to the pretreatment program, including specific proposed revisions to the SUO (Attachment 2).

On March 2, 2021, EPA sent to the City a formal letter approving certain proposed changes and disapproving certain proposed changes (Attachment 3).

By May 1, 2021, the City must submit an updated Summary Document listing a summary of the amendments the City wishes to propose to the SUO and the Pre-Treatment Program. Staff has prepared a draft Updated Summary Document for City Council review and consideration (Attachment 4).

Discussion:

The City's proposed changes to the SUO and Pre-Treatment Program, which EPA has found acceptable, are the following:

- 1) To come into compliance with the updates to the federal Pretreatment Program regulations at *Title 40 of the Code of Federal Regulations* (CFR), update outdated provisions related to the pretreatment program, and resolve AOC findings, the following revisions to the SUO are proposed:
 - a. Addition and update of definitions of common pretreatment terms;
 - b. Clarification of authority to deny or condition new or increased contributions to Lompoc's POTW per 40 CFR 403.8(f)(1)(i);
 - c. Addition of specific prohibitions at 40 CFR 403.5(b) and clarify authority to prohibit discharges according to City-specific conditions;
 - d. Clarification of authority to include conditions in industrial user wastewater discharge permits per 40 CFR 403.8(f)(1)(iii)(B)(6);
 - e. Inclusion of authority to take enforcement actions in accordance with the City's ERP per 40 CFR 403.8(f)(5) and update enforcement action provisions;
 - f. Update of industrial user notification requirements, including for changes affecting potential for slug discharge per 40 CFR 403.8(f)(2)(vi) and notification and resampling requirements for effluent violations per 40 CFR 403.12(g)(2);
 - g. Addition of industrial user reporting requirements as per 40 CFR 403.12(c), (e), and (h);
 - h. Clarification of monitoring (sampling and analysis) requirements as per 40 CFR 403.12(g)(2) and (3);
 - i. Update of authorized signatory requirements as per 40 CFR 403.12(l)(1);
 - j. Addition of authority for administrative fines;
 - k. Addition of authority to issue general permits; and

- I. Increase the time to appeal a decision, action, or determination made by the Director from 15 business days to 20 business days.
- 2) To clarify implementation of the Pretreatment Program in extra-jurisdictional areas, addition of Article 8 in the SUO addressing regulation of waste received from other jurisdictions; and
- 3) To authorize implementation of a formal FOG-control program, in conformance with the City Sanitary Sewer Management Plan and to resolve findings in the AOC, addition of Article 9 in the SUO addressing control of FOG-discharging facilities, including a revision to require restaurants and other food service establishments that discharge more than a de minimis amount of FOG to install grease removal devices (i.e., traps or interceptors). Those discharging only a de minimis amount of FOG (defined as those engaged only in reheating, hot holding, assembly, or mixing of ready-to-eat food products) will not require a grease removal device.

EPA disapproved the following proposed changes:

- 1) The proposed formal establishment of a high-strength wastewater surcharge program, as there was not enough detail regarding which pollutants would be addressed under the high-strength surcharge program;
- 2) The proposed addition of authority to implement monitoring waivers for pollutants not expected to be present, as there was not enough detail regarding how the pollutant monitoring waivers will be issued;
- 3) The proposed clarification of authority to require users to implement best management practices (BMPs), as there was not enough detail regarding the authority clarification and the BMPs; and
- 4) All proposed SUO amendments requested by the City Council in connection with the September 3, 2019, and November 5, 2019, hearings on the Lompoc Artificial Kidney Center's wastewater permit appeal.

The proposed Updated Summary Document incorporates all of the changes that EPA approved and addresses each of the disapprovals as follows:

- 1) The Updated Summary Document removes all of the SUO amendments requested by the City Council in connection with the September 3, 2019, and November 5, 2019, hearings on the Lompoc Artificial Kidney Center's wastewater permit appeal. EPA disapproved the proposed changes to the definitions of *domestic wastewater*, *infectious waste*, *industrial waste*, and *medical waste* because the City had proposed to provide exclusions of regulating liquid dialysate. EPA noted "dialysate is more properly described as an "industrial wastewater," because "domestic wastewater" originates from activities typical of a household such as restroom usage, washing, bathing, food preparation, and laundry. Dialysate wastewater, by contrast, originates

from a commercial, non-residential facility that treats hundreds of individuals.” However, the Updated Summary Document updates those definitions as follows:

- a) The current SUO definition of domestic wastewater in LMC 13.16.030.B reads: *Domestic wastewater* means wastewater from residences and other premises derived from personal use of water for washing or sanitary purposes. A broader term should be exchanged for *domestic wastewater* to encompass both solid and liquid wastes that are discharged to the sewer, and the definition of *domestic wastes and sewage* should read: *Domestic wastes or sewage* means waste and wastewater generated from the ordinary living processes of humans or household operations, and of such character as to allow satisfactory disposal to, and treatment in, the POTW or by means of a private disposal system;
 - b) The definition of *infectious waste*, subpart e, is updated to clarify that only the solid materials portion of the waste shall be considered infectious, reading (with inserted text bolded): Human dialysis **solid** waste materials, including arterial lines and dialyzable membranes; and
 - c) *Medical waste* (which is not currently defined in the SUO) is defined as: isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, X-ray processing wastes, and radioactive waste.
- 2) The EPA’s March 2 letter disapproved the proposed changes to the conditions controlling discharge of water softening waste and revision to criteria for allowable water softeners that would provide more exceptions to the existing water softener requirements, potentially allowing greater quantities of salts pollutants to be discharged to the City’s WRP. A local limits reevaluation would need to be conducted to determine whether the additional loadings of salts pollutants could be processed by the WRP without exceeding the WRP’s effluent limits for sodium, chloride, and total dissolved solids. Although the City plans to address those parameters in its upcoming local limits evaluation, the evaluation is not complete and, as such, the City cannot determine at this time whether loosening regulations on salts pollutants sources, such as water softeners, is advisable.

The Updated Summary Document removes the proposed water softener changes, but adds text to clarify how the current water softener regulation in the SUO is implemented (with revisions in bold and strikeout text): “It is unlawful to install, replace, or enlarge apparatus for softening all or any part of the water supply to any **domestic, commercial, or industrial** premises **within City jurisdiction**, when such apparatus is an ion-exchange softener or demineralizer of the type that is regenerated on the site of use with the regeneration wastes being discharged to the ground, ~~storm drain,~~ or City sewerage system, unless said softener or demineralizer **used for domestic, commercial, or industrial operations** meets or exceeds the standards specified in California Health and Safety Code sections 116775 to 116795, relating to water softening or conditioning...”

The Updated Summary Document also removes the authorization for water softener waste to be discharged to storm drains to conform with the requirements of the Statewide General Permit for Stormwater Discharges Associated with Industrial Activities. The General Permit does not allow for water softening waste to be discharged as an authorized non-stormwater discharge into the storm drain system, so this modification brings City regulations in line with Statewide requirements. As such, this modification increases the stringency of City regulations and are expected to be approved by EPA.

- 3) EPA disapproved the proposed formal establishment of a high-strength wastewater surcharge program, because enough detail was not provided in the original summary document. The extra-strength wastewater surcharge program is already authorized in the current SUO, but implementation of the program is not adequately described and, as such, the surcharge program is not currently active. In LMC subdivision 13.16.030.B the SUO defines “extra-strength concentration” of wastewater, meaning any wastewater discharges containing concentrations of total suspended solids (TSS) or biochemical oxygen demand (BOD) greater than 300 mg/L. The ordinance also references a “service charge” for discharges of extra-strength sewage (TSS and BOD greater than 300 mg/L) in both LMC subdivisions 13.16.030.B and 13.16.410.B.1.

The ordinance, however, does not otherwise discuss the implementation of these extra-strength wastewater charges, and these charges are not currently assessed on any users. The City has strong economic interest to be able to implement this previously authorized program as necessary. The Updated Summary Document has been amended to include text describing how extra-strength wastewater shall be determined (including an example formula for calculating surcharges), how dischargers will be notified and billed, and the location of approved rates to be used in the surcharge calculation. No changes have been proposed to revise the existing definitions of, or references to, extra-strength concentrations, and only BOD and TSS are being considered for the extra-strength wastewater surcharge program at this time. Although these modifications could be considered a substantial program modification as defined by 40 CFR 403.18, because they will change how the pretreatment program is implemented for extra-strength users, the legal authority to determine extra-strength dischargers is already established in the ordinance and the proposed modifications largely serve to clarify how the existing program is to be implemented.

- 4) The EPA disapproved the proposed addition of authority to implement monitoring waivers for pollutants not expected to be present because there was not enough detail in the original summary document regarding how the pollutant monitoring waivers would be issued. The concept of allowing monitoring waivers for pollutants not expected to be present was introduced in the 2005 Streamlining Rule changes to the general pretreatment regulations at 40 CFR Part 403. Pretreatment programs considering implementing those optional monitoring waivers were required to include all the relevant regulatory language from 40 CFR Part 403 into their SUOs and were

highly encouraged to develop standard operating procedures (SOPs) for implementing those waivers. The proposed changes to the City's SUO in the original summary document intended to reflect those required changes and included all relevant text related to those waivers as specified in EPA's 2007 *Model Pretreatment Ordinance*.

Therefore, the Update Summary Document describes how the proposed SUO will contain several proposed provisions to be included related to those waivers. The Updated Summary Document notes that, in support of those proposed revisions, the City has developed an SOP describing how the waivers will be implemented. All the proposed changes related to those waivers reflect the federal pretreatment regulations and, as such, are not considered to be a substantial program modification.

- 5) The EPA disapproved the proposed clarification of authority to require users to implement BMPs because there was not enough detail regarding the modification. Allowing use of BMPs for controlling certain pollutants in discharges to the POTW was another concept introduced in the 2005 Streamlining Rule changes to the general pretreatment regulations at 40 CFR Part 403. Pretreatment programs considering implementing the optional BMPs were required to include all the relevant regulatory language from 40 CFR Part 403 into their SUOs and were highly encouraged to develop SOPs for implementing those BMPs. The proposed changes to the City's SUO reflect the required changes and include all relevant text related to BMPs as specified in EPA's 2007 *Model Pretreatment Ordinance*.

Therefore, the Updated Summary Document describes how the proposed SUO will contain several proposed provisions to be included throughout the City's SUO related to use of the BMPs. The Updated Summary Document notes that the City has developed an SOP describing how applicable BMPs will be developed and implemented for industrial users. All the proposed changes related to the BMP program reflect the federal pretreatment regulations and, as such, are not considered to be a substantial program modification.

Per the terms of the AOC, the EPA must approve all aspects of the Updated Summary Document before such changes may be actually adopted in the Sewer Use Ordinance and Pre-Treatment Program. Once EPA has approved the changes, the City shall make the necessary changes to the relevant pretreatment program documents and policies, including the SUO. Staff will present the full text of the proposed SUO to the City Council for final adoption.

Fiscal Impact:

Failure to comply with the terms of the AOC can result in liability for statutory civil penalties under CWA Section 309(d), 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by the EPA, a United States District Court may impose such penalties if the court determines that the City has violated the CWA and failed to comply with the terms of the AOC. In determining the amount of any penalty, the court will consider the seriousness

of the violations, the economic benefit (if any) resulting from the violations, any history that the City may have of such violations, **any good faith efforts that the City has made to comply with legal requirements** [emphasis added], the economic impact a penalty may have upon the City, and such other matters as justice may require.

Therefore, it is in the City's best economic interest to make good faith efforts to comply with requirements and guidance provided by EPA in the matter of this AOC, as failure to comply, or even the perception of failure to comply, with AOC requirements, can result in substantial financial penalties for the City. Although numeric penalties are not prescribed in the City's NPDES permit for all permit violations, an example of a penalty is given in its permit, Order No. R3-2011-0211, NPDES No. CA0048127, Attachment D, Section I.A.F.1: "Any person failing to file a report of waste discharge or other report as required by this permit shall be subject to a civil penalty not to exceed \$5,000 per day."

Conclusion:

Staff recommends the City Council review the summary of proposed SUO amendments and Pre-Treatment Program changes in the Updated Summary Document, provide input on any desired revisions, and direct staff to submit the Updated Summary Document to EPA by May 1, 2021, in compliance with Paragraph 36 of the AOC.

Respectfully submitted,

Charles Berry, Utility Director

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL:

Jim Throop, City Manager

- Attachments:
- 1) Administrative Order on Consent, Docket No. CWA-309(a)-20-006
 - 2) Summary of Proposed Pre-Treatment Program and SUO Changes document, submitted to EPA November 24, 2020
 - 3) Letter dated March 2, 2021 from EPA
 - 4) Updated Summary Document