



## City Council Agenda Item

**City Council Meeting Date:** August 3, 2021

**TO:** Jim Throop, City Manager

**FROM:** Charles J. Berry, Utility Director  
c\_berry@ci.lompoc.ca.us

**SUBJECT:** Approve Proposed Text of Amendments to Sewer Use Ordinance and Proposed Fats, Oils, and Grease (FOG) Control Program Policy for Submission to U.S. Environmental Protection Agency for Review Pursuant to City's Administrative Order on Consent

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### **Recommendation:**

Staff recommends the City Council:

- 1) Review the proposed text of amendments to the City's Sewer Use Ordinance (SUO) (Attachment 1) and proposed Fats, Oils, and Grease (FOG) Control Program Policy (Attachment 2), and direct staff to submit these documents no later than August 23, 2021, for review by the U.S. Environmental Protection Agency (EPA) in response to Paragraphs 37 and 39 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) with the EPA Region IX on September 2, 2020, for violations of the Clean Water Act (CWA) (Attachment 3). The violations identified stretched from June 2015 to June 2020, and involved effluent discharges, monitoring and reporting, operation and maintenance, pretreatment, and FOG 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 to 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 SUO located in Chapter 13.16 of the Lompoc Municipal Code (LMC). In Paragraph 36 of the AOC, the City was 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 (Attachment 4) detailing proposed changes to the pretreatment program, including specific proposed revisions to the SUO. EPA responded on March 2, 2021, with a formal letter approving certain proposed changes and disapproving certain proposed changes.

On April 20, 2021, the City Council reviewed and approved an updated Summary Document for submission to EPA, which addressed the disapproved components of the original Summary Document (Attachment 5). EPA responded on June 24, 2021, with a formal letter approving the updated Summary Document (Attachment 6).

Now the City must submit the actual proposed text of the SUO amendments and the FOG Control Program, consistent with the approved Summary Document. Per Paragraph 37 of the AOC, the City must submit within 60 days (i.e. by August 23, 2021):

*An updated proposed pretreatment SUO for review and written approval.*

Further, per Paragraph 39 of the AOC, the City must submit within 60 days:

*Its proposed FOG Control Program to U.S. EPA and the Central Coast Regional Board for review and written approval.*

Therefore, by August 23, 2021, the City must submit a proposed SUO and FOG Control Program addressing the concerns outlined in the AOC and in accordance with the Pretreatment program changes approved in the updated Summary Document. Staff has prepared proposed amendments to the City's SUO and FOG Control Program for City Council review and consideration (Attachments 1 and 2).

### **Discussion:**

The City's proposed changes to the SUO, in response to the applicable findings of Paragraph 33 of the AOC and as specified in the Summary Document, 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) Part 403, update outdated provisions related to the pretreatment program, and resolve AOC findings, make the following revisions to the SUO:
  - 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 Publicly owned treatment works (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. Clarification of the implementation of the extra-strength wastewater surcharge program (for extra-strength concentrations for pollutants already established in the current SUO – biochemical oxygen demand [BOD] and total suspended solids [TSS]);
  - k. Update of conditions controlling discharge of water softening waste to clarify how the water softener conditions in the SUO are currently implemented;
  - l. Addition of authority for administrative fines; and
  - m. Per the optional program provisions established in the 2005 Streamlining Rule changes to the general pretreatment regulations at 40 CFR Part 403, the addition of authority to issue general permits; authority to implement monitoring waivers for pollutants not expected to be present; and clarification of authority to require users to implement best management practices (BMPs).
- 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.

The City's proposed FOG Control Program, as authorized by the addition of Article 9 in the updated SUO addressing control of FOG-discharging facilities and as implemented

through the proposed FOG Control Program Policy document, in response to the applicable findings of Paragraph 34 of the AOC, the requirements of Paragraph 39 of the AOC, and as specified in the Summary Document, which EPA has found acceptable, addresses the following:

- 1) As specified in Article 9 in the amended SUO, establishes the legal authority to control the discharge of FOG into the wastewater collection system, including the ability to implement a permit and enforcement program for defined commercial and industrial sources, including food service establishments;
- 2) As specified in Article 9 in the amended SUO, requires 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). As approved by EPA in the Summary Document, restaurants and other food service establishments that discharge a de minimis amount of FOG are those engaged only in reheating, hot holding, assembly, or mixing of ready-to-eat food products;
- 3) As specified in the FOG Control Program policy document, provides guidelines for appropriate devices to control the discharge of FOG into the wastewater collection systems;
- 4) As specified in the FOG Control Program policy document, establishes standards and conditions to control and prevent FOG from causing Pass-Through or Interference with POTW treatment processes, including:
  - a. Description of minimum standards for FOG control device management, operations and maintenance standards, and BMPs, that address onsite record keeping requirements, cleaning frequency, cleaning standards, use of additives, and ultimate disposal;
  - b. Description of compliance inspection protocols, including scheduling, inspection report forms, and inspection record keeping requirements to ensure that FOG control devices are being managed, operated, and maintained in accordance with the established management, operation and maintenance standards, or BMPs;
  - c. Description of a FOG compliance assistance and enforcement program, including specific enforcement mechanisms, to ensure compliance with the FOG Control Program; and
  - d. Description of a comprehensive public education program directed at reducing the amount of FOG entering the collection system from residences.

As required in AOC Paragraph 39.g, the City's updated Pretreatment Program policy document addresses in its staffing and budgeting section the resources planned to be allocated to implementing the formal FOG control program. Further, as required in AOC Paragraph 39.h, the City is in the process of updating its list of currently operating FSEs. Other commercial FOG generators, such as auto-care facilities, are being considered for

August 3, 2021

Sewer Use Ordinance Amendments and FOG Control Program

Page 5 of 6

inclusion of the FOG Control Program in the future. In parallel with the development of the formal FOG Control Program and as required by the AOC Paragraph 39, the City is updating its Sewer System Management Plan (SSMP) Element 7: Fats, Oils, and Grease (FOG) Control Program. The revisions to the SSMP will reflect the proposed FOG ordinance and FOG control policy provisions and will be finalized once EPA has approved the proposed FOG Control Program.

Per the terms of the AOC Paragraph 44, the EPA must approve all aspects of the amended SUO and the FOG Control Program before such changes may be actually adopted into the Lompoc Municipal Code and the City's Pretreatment Program. Once EPA has approved the proposed Pretreatment program changes, the City shall make the necessary changes to the relevant pretreatment program documents and policies, including the Pretreatment Program Policy document, SUO, FOG Control Policy document, and relevant portion of the SSMP. Staff will present the full text of the finalized 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 proposed SUO amendments and proposed FOG Control Program Policy document, provide input on any desired revisions, and direct staff to submit the Updated Summary Document by August 23, 2021 for EPA's review, in compliance with Paragraphs 37 and 39 of the AOC.

Respectfully submitted,

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Charles J. Berry, Utility Director

**APPROVED FOR SUBMITTAL TO THE CITY COUNCIL:**

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Jim Throop, City Manager

- Attachments:
- 1) Proposed SUO
  - 2) Proposed FOG Control Program Policy document
  - 3) Administrative Order on Consent, Docket No. CWA-309(a)-20-006
  - 4) Summary of Proposed Pretreatment Program and SUO Changes document, submitted to EPA November 24, 2020
  - 5) Revised Summary of Proposed Pretreatment Program and SUO Changes document, submitted to EPA April 26, 2021
  - 6) Letter from EPA dated June 23, 2021
  - 7) Enforcement Response Plan