



Administrative Report

N.3., File # 20-1569

Meeting Date: 10/20/2020

To: MAYOR AND CITY COUNCIL
From: TED SEMAAN, PUBLIC WORKS DIRECTOR

TITLE

DISCUSSION AND POSSIBLE ACTION REGARDING REPORT ON REGIONAL WATER QUALITY CONTROL BOARD'S SETTLEMENT OFFER FOR ALLEGED 2016, 2017, 2018 & 2019 PERMIT WATER QUALITY VIOLATIONS

EXECUTIVE SUMMARY

On May 16, 2018, the City received a Settlement Offer from the Regional Water Quality Control Board (Board) for alleged Seaside Lagoon discharge water quality violations of the NPDES Permit and a Notice of Violation for the 2016 and 2017 operating seasons. Since receipt of that notice, the City has implemented permit requirements including a metals source identification study, challenged the Permit's basis for water quality limitations, met with Board staff to discuss modifications to the Permit and resolve erroneous alleged violations, hired an engineering consultant to review operational design and identify potential modifications for upgrades for improved compliance, and formally requested permit modifications.

On March 4, 2020, the City received a letter from the Board denying all requested permit modifications, and on September 4, 2020 the City received another letter from the Board including a Settlement Offer for alleged violations for the 2016, 2017, 2018 and 2019 operating seasons, for a mandatory minimum fine of \$285,000. Staff is seeking City Council direction as they prepare a response to the Settlement Offer and is recommending the that City agree to the expedited Payment Program and accept the waiver of Right to Hearing, proposing that the \$285,000 fine be approved as a Supplemental Environmental Project (SEP) to begin the planning, engineering design and permitting for a project at Seaside Lagoon that will eliminate effluent discharge into King Harbor, thereby improving the water quality of the receiving water. A response is due to the Board by November 4, 2020.

BACKGROUND

Seaside Lagoon operates every summer and, because it discharges water to the harbor, is considered a permitted activity under NPDES regulations. The Lagoon was closed for the 2020 operating season due to the COVID-19 crisis. Seaside Lagoon has been operating under a renewable NPDES Permit on a five-year cycle since 1999. The current Permit requires that the City demonstrate compliance each year through a combination of de-chlorination treatment, Lagoon effluent monitoring, and reporting. Each Permit cycle, the Permit has become more stringent while the facility infrastructure continues to age. Due to age and design of the facility, the water quality

control mechanisms added over the years are fairly primitive and cannot achieve the water quality corrections required by recent permits. The City has struggled more each year to operate the facility in a way that complies with the tightening regulations.

On September 2, 2017, the Regional Board adopted Waste Discharge Requirements set forth in RWQCB NPDES No. CA0064297, Permit Order No. R4-2017-0178 and TSO No. R4-2017-0179 for the continued operation of Seaside Lagoon. The TSO was issued to allow time (five years from issue) for the City to bring the facility into full compliance, by understanding the sources of pollutants and developing solutions to prevent their discharge, which may include a more robust water treatment program or a change in operation to eliminate the discharge into the Harbor. A treatment system would require construction of a costly, automated, and complex facility that would be difficult to site and expensive to construct and operate.

On May 16, 2018, the City received a Settlement Offer for Violations of the Seaside Lagoon's NPDES Permit and Notice of Violation (NOV) for the 2016 and 2017 seasons including a fine of \$66,000. On July 27, 2018, the City sent the Board a letter contesting the violations and NOV. On July 12, 2019, City staff and Board staff met to discuss issues and concerns associated with the Permit and Settlement Offer. On September 18, 2019 the City sent the Board a letter requesting modifications to the Lagoon's Permit, specifically requesting modifications to the Permit's total residual chlorine limits to reflect the limits included in the Basin Plan. On March 4, 2020, the City received a letter from the Board denying the request and increasing the fine amount to \$285,000 which includes alleged violations for the 2018 and 2019 operating seasons. The table below shows the summary of alleged violations for daily maximum and monthly average exceedances.

Summary of Effluent Limit Alleged Exceedances

Pollutant	2016	2017	2018	2019
Oil & Grease	0	0	14	6
pH	0	0	5	1
TSS	0	0	4	0
Indicator Bacteria	0	0	17	7
Residual Chlorine	16	6	13	0
Turbidity	0	0	1	0
Mercury	0	0	0	7

Staff cannot yet account for the dramatic increase in exceedances in 2018, especially of pollutants long thought to be under control, other than the increased sampling frequency requirement from one time per week to three times per week for several constituents in the 2017 Permit. The operation of the Seaside Lagoon does not contribute to oil and grease, pH swings, and TSS. More study is required but may not ever reveal the source of the higher concentrations of these in 2018 and 2019.

The 2017 renewed Lagoon Permit provides the City time to study the potential pollutant sources and causes of historical exceedances, and if necessary, install the appropriate treatment systems to

ultimately comply with final effluent limits by May 31, 2022. The new Permit requirements include monitoring and control of a broad category of pollutants known as metals. The current operation and infrastructure of the Lagoon offers no opportunity to reduce and/or eliminate metals in the water. The only current treatment implemented is through a combination of chlorination (as required by the County Health Department) and de-chlorination (prior to discharge), which does not address metals. The new Permit provides the City time to study the potential pollutant sources and causes, and if necessary, install the appropriate treatment systems since consistent compliance with the proposed effluent limits for copper, selenium, silver, thallium, and zinc is uncertain. The Permits require full compliance with the final effluent limits by May 31, 2022.

The City is currently compliant with all Permit Compliance Schedules by filing the required plans and reports with the Regional Board. In addition to the on-going extensive monitoring and reporting requirements, the City has performed many additional tasks including developing a Toxicity Reduction Evaluation Workplan, a Stormwater Pollution Prevention Plan and Spill Contingency Plan, and a metals source identification workplan. The City has also developed "Evaluation, Sampling & Analysis" protocols, conducted a sunblock survey, and made modifications to the sampling location.

In response to the compliance issues and concerns, on October 15, 2019, the City Council approved an agreement with engineering consultant PACE to investigate the Lagoon for potential short and long-term water quality treatment improvements and to explore alternative operational methods for the existing facility in anticipation of the upcoming decommissioning of the AES power plant. After the AES power plant is decommissioned, it is unknown how reliably the water intake system currently in use by Seaside Lagoon will function. An alternate method of managing the Seaside Lagoon's water supply will provide opportunities to address water quality issues that continue to be problematic for the facility as it operates under its NPDES discharge permit. PACE completed the preliminary study and determined that a closed loop recirculating system is feasible. The City Council may wish to consider other solutions to eliminate discharge from the facility that may also qualify as a SEP. Measure C requirements notwithstanding, the Board may consider any solution that reduces or eliminate discharge as SEP eligible. Determination that a project qualifies to be a SEP and what portion of the fine can be directed to a SEP is a Board decision. Therefore, staff recommends that the City respond to the Regional Board and agree to the expedited Payment Program and accept the waiver of Right to Hearing, conditioned upon the \$285,000 fine being considered as eligible towards a SEP, which the City will submit at a later date.

Alternatively, the City Council may wish to not accept the Settlement Offer. If the City does not accept then the Regional Board is expected to begin an enforcement proceeding as they have done previously. The City would have the ability to challenge it in front of the Regional Board members. The potential fines can be much greater but the City would also have the opportunity to challenge each of the assessed penalties individually. In the City Attorney's experience, the Regional Water Board members tend to rely heavily on its staff but the City has had success when it could prove individual exceedances were based on incorrect information (taken during the wrong tidal period, etc.). If unfavorable, the City can also appeal the Regional Board's decision to the State Water Board. After the City has exhausted all administrative appeals, it can then sue the State Water Board over the assessment. That's the process the City did before when the suit settled in mediation.

COORDINATION

The Public Works Department has coordinated with the City Attorney's office and the City Manager's office in preparation of this report.

FISCAL IMPACT

The total cost of the Settlement Offer is \$285,000 if the City Council elects to accept it. The source of funding for fines has come from Community Services Seaside Lagoon account, which is funded by the Tidelands Fund. If a portion of the Settlement Offer is accepted for a SEP project, then funding from another CIP project underwritten by the Tidelands Fund could be re-appropriated or a new appropriation could be made from the fund balance. Staff would return with this request for an appropriation when the Regional Board renders a decision on the SEP.

The cost to not accept the Settlement Offer and follow the path of formally challenging the alleged violations cannot be known at this time but could be expected to be considerable if the City finds it necessary to sue the State Water Board.

APPROVED BY:

Joe Hoefgen, City Manager

ATTACHMENTS

1. LARWQCB Seaside Lagoon Letter of May 16, 2018
2. LARWQCB Seaside Lagoon Letter of March 4, 2020
3. LARWQCB Seaside Lagoon Letter of September 4, 2020