



MEMORANDUM

To: Mayor and City Councilors
From: Rich Olson, City Manager
Date: August 8, 2013
Re: Consideration – Execution of Informal Settlement Agreement with Department of Labor

BACKGROUND:

On December 5, 2012, a compliance officer with the North Carolina Department of Labor, Division of Occupational Safety and Health, conducted an inspection of the City's water and waste water treatment plants. During the inspection, three (3) violations were observed. They are:

1. The process safety program and manuals at the water and waste water treatment plants were incomplete.
2. The City's written operating procedures did not contain all the necessary elements needed to comply with state and federal laws at the water and waste water treatment plants.
3. The City did not evaluate the contractor the City uses for compliance issues.

On May 22, 2013, the City received from the North Carolina Department of Labor an Informal Settlement Agreement, which called for the City to pay a fine of \$18,900. Pursuant to administrative rules, the City requested an informal telephone conference call with Mr. Thomas O'Connell, the Compliance Supervisor. That conference call was held on June 18, 2013. After a thorough discussion, staff was able to have the penalty reduced from \$18,900 to \$12,285.

ANALYSIS:

Attached, you will find a copy of the Informal Settlement Agreement between the City and the North Carolina Department of Labor. Pursuant to the agreement, the City's fine has been reduced to \$12,285. The City will be required to rewrite our Process Safety Manual and provide additional training to our employees. Paul Fredette has hired Municipal H₂O to rewrite the manual and provide the additional training required.

The Finance Committee discussed this matter during their meeting held on August 8, 2013 and recommends approval.

STAFF RECOMMENDATION:

By motion, authorize execution by Mayor Joseph W. Peel of the North Carolina Department of Labor Informal Settlement Agreement, as presented.

RCO/vdw

**NORTH CAROLINA DEPARTMENT OF LABOR
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH**

OSH INSPECTIONS NO. 316595180

Informal Settlement Agreement

This Contract and Agreement is entered into by and between the Division of Occupational Safety and Health, North Carolina Department of Labor (hereinafter "OSH Division"), and the following Employer:

City of Elizabeth City
(hereinafter "the Employer")

The OSH Division and the Employer specifically agree to the following items:

1. The Employer maintains a place of business and/or jobsite at the following address:

309 E. Colonial Avenue, Elizabeth City NC 27909

2. On 12/5/2012, an OSH Division compliance officer conducted an inspection at a worksite where one or more of the Employer's employees were performing work.

3. Based upon that inspection, the OSH Division issued a Citation and Notification of Penalty to the Employer (hereinafter referred to as a NCOSHA-2 on 5/22/2013 , alleging a violation(s) of the Occupational Safety and Health Act of North Carolina and/or the standards and regulations promulgated thereunder.

4. This Agreement modifies for settlement purposes only the aforementioned NCOSHA-2 for settlement purposes only:

<u>CITATION</u>	<u>ITEM</u>	<u>OLD PENALTY</u>	<u>NEW PENALTY</u>	<u>COMMENTS</u>
1	1(a-d)	\$6300.00	\$4095.00	Penalty Reduction
1	2(a-d)	\$6300.00	\$4095.00	Penalty Reduction
1	3	<u>\$6300.00</u>	<u>\$ 4095.00</u>	Penalty Reduction
		\$18,900.00	\$12,285.00	35% Reduction

Citation items listed in the original NCOSHA-2 which are not hereby modified shall remain in effect.

5. In consideration of this Agreement, the Employer agrees to:

- a. Pay the total penalty assessment of \$ **12,285.00**; and
- b. Certify it has abated the above-referenced Citation Items and has provided appropriate abatement evidence required by 29 CFR 1903.
- c. Waive its rights under the Occupational Safety and Health Act of North Carolina, N.C.G.S. §§95-126 to N.C.G.S. §§95-155, to contest any citation item(s), penalty(ies), or abatement date(s) listed on the NCOSHA-2 before the Safety and Health Review Board of North Carolina and/or any other tribunal.
- d. The Employer will update the Process Safety Program, including conducting periodic safety meetings with covered employees. During such meetings, employees should be able to communicate safety suggestions or complaints to their supervisor or other management representative. The Employer agrees that all employees who make suggestions or complaints to their supervisor (or management representative) shall have the same protection provided employees under the Retaliatory Employment Discrimination Act at Article 21, Chapter 95 of the North Carolina General Statutes;
- e. The Employer will conduct process safety management training, as necessary to ensure, that all covered employees are adequately trained in the recognition and avoidance of hazards associated with their work environment. This training shall include, but is not limited to, the hazards identified during the above referenced inspection;
- f. The Employer will ensure that safety and health rules and regulations are

enforced, through Employer established disciplinary procedures. The Employer will maintain records of all disciplinary actions associated with safety and health issues at each location. These records will be released to the OSH Division upon request; and

g. The Employer through its management representatives will conduct required process safety management inspections at all covered locations used by employees and maintain required process safety management documentation.

6. The parties agree that this Agreement is a full and final settlement of all the claims set out in the underlying NCOSHA-2, and that it is an unappealable Final Order of the Commissioner that is subject to the provisions of NCGS §95-133(b) and §95-141.

7. The parties agree to bear their own attorneys' fees, costs and other expenses incurred to date in this matter.

8. This Agreement shall be prominently posted at or near such place(s) any violation(s) referred to in the original citation occurred and in close proximity to that original citation.

9. EFFECT OF FAILURE TO COMPLETE AGREEMENT

a. The Employer agrees that the above-recited amendments, and reductions of the items and associated proposed penalties listed on the NCOSHA-2 are in consideration for and conditioned upon the Employer completing and continuing all the promises, abatements and actions the Employer has undertaken in this Agreement.

i. If the OSH Division determines that the Employer has failed to complete and/or continue any of the promises, abatements or actions the Employer has agreed to undertake in this agreement, it is understood and agreed by the Employer that the OSH Division may seek a final order upholding the violations, penalties and abatement deadlines as these were alleged in the citations, issued on 5/22/2013.

ii. If the OSH Division determines that the Employer has failed to complete and continue any of the promises, abatement and actions the Employer has undertaken in this Agreement, the OSH Division will provide written notice to that effect to the Employer, in the same manner as prescribed for the original issuance of citations and penalties in N.C. Gen. Stat. § 95-137(a) and (b), notifying the Employer that the OSH Division is reinstating all or some of the citations, penalties and/or abatement deadlines as these were alleged and assessed on 5/22/2013.

b. Upon receipt of notice of reinstatement from the OSH Division, the Employer has the same right to contest the reinstated citations, penalties and abatement deadlines, as provided in N.C. Gen. Stat. § 95-137(b), and the Employer has the same duties regarding any such contestment as provided in that section.

i. If, after receiving notice from the OSH Division of its intent to reinstate any citations, penalties, and/or abatement deadlines, the Employer does not contest in the manner and within the time allowed by N.C. Gen. Stat. § 95-137(b), it is understood that the reinstated citations, penalties and/or abatement deadlines will become a final order pursuant to the provisions of that section, and the OSH Division may file such final order with the clerk of superior court, pursuant to N.C. Gen. Stat. § 95-141.

ii. Any reinstatement of citations and penalties under this paragraph shall not be considered to be a new issuance of citations and penalties based upon the underlying inspection. The OSH Division's election to reinstate any or all citations, penalties and abatement deadlines pursuant to this paragraph will have the effect of nullifying the compromises and reductions the OSH Division has agreed to in this Agreement, and the citations, penalties and abatement deadlines will be considered to have been issued as of 5/22/2013.

iii. The Employer hereby waives, and agrees not to assert, any defenses it may have with regard to the statute of limitations or with regard to any time for the issuance of citations, penalties and abatement deadlines by the OSH Division.

WHEREFORE, the undersigned parties enter into and execute this Agreement.

This the ____ day of _____, 2013.

For the OSH Division:
North Carolina Department of Labor

For the Employer:

Signature

Signature

Thomas OConnell
Safety and Health District Compliance Supervisor

Print Name / Title

Inspection numbers: 316595180 City of Elizabeth City (PSM) S3119/A3237