

ORIGINAL

RESOLUTION 2009 - 89

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF SUNNYSIDE, WASHINGTON, APPROVING
AGREEMENT ALLOWING WASTE DISCHARGE BETWEEN
SUNNYSIDE AND DELTA PETROLEUM CORPORATION**

WHEREAS, Delta Petroleum Corporation and the City have reached an agreement concerning the disposal by Delta Petroleum Corporation of potassium chloride solution into the City's sewer system and wastewater treatment plant;

WHEREAS, pursuant to this agreement, Delta Petroleum Corporation has agreed to pay the City an amount of \$0.05 per gallon of potassium chloride solution disposed of through the City's sewer system and wastewater treatment plant,

WHEREAS, the City has consulted with its waste water engineers, with CH2M Hill, and with its Washington State Department of Ecology Permit Manager, all of whom have agreed that the discharge of this material is not harmful to the operation of the plant, nor will it violate the City's NPDES Discharge Permit.

WHEREAS, the approval of this agreement may generate approximately \$20,000.00 for the City's sewer reserve fund;

WHEREAS, the City Council finds and determines that approval of such agreement is in the best interests of residents of the City of Sunnyside, and will promote the general health, safety and welfare.

**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF
THE CITY OF SUNNYSIDE, WASHINGTON**, as follows:

Section 1. That the "Agreement Allowing Wastewater Discharge," a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, is hereby approved; and the City Manager is hereby authorized to execute and administer this agreement for and on behalf of the City of Sunnyside.

Section 2. This Resolution shall be effective upon passage, approval and signatures hereon as required by law.

PASSED this 26th day of October, 2009.



JAMES RESTUCCI, MAYOR PRO TEM

ATTEST:



DEBORAH A. ESTRADA, CITY CLERK

APPROVED AS TO FORM:

MENKE JACKSON BEYER EHLIS & HARPER, LLP
ATTORNEYS AT LAW



WSBA # 3817

AGREEMENT ALLOWING WASTE DISCHARGE

Agreement made October ____, 2009, between the City of Sunnyside (the "City" or "Sunnyside") and Delta Petroleum Corporation ("Delta") a corporation organized and existing under the laws of the State of Delaware.

RECITALS

- A. Sunnyside operates a wastewater treatment plant ("WWTP") and sewer system in the City of Sunnyside, Yakima County, Washington.
- B. Sunnyside is knowledgeable about its WWTP and sewer system and understands what waste and/or chemicals can be disposed of at or in their facilities.
- C. Delta has paid all fees and dues required to conduct business in the State of Washington and is engaged in the business of drilling for natural gas and is in the process of drilling an exploratory well at the following location:
Gary 31-23 well; NE1/4SW1/4 Section 31, T6N, R22E W.M.
- D. In the course of conducting completion operations on the exploratory well described above Delta has an excess amount of unused potassium chloride ("KCL") solution that requires disposal.
- E. Delta desires to dispose of the KCL described in C, into the sewer system and WWTP of Sunnyside.
- F. Delta is relying upon Sunnyside's expertise in the disposal of the KCL.

In consideration of the matters described above, and of the mutual benefits and obligations set forth in this agreement, the parties agree as follows:

SECTION I
DISCHARGE OF WASTE

Sunnyside grants to Delta the right to discharge into its sewer system and WWTP unused KCL solution as described above. Said discharge is allowed under either of the following circumstances and is wholly contingent upon not causing an adverse impact to Sunnyside's WWTP:

EXHIBIT "A"

A. Discharge at 6% solution: If Delta elects to discharge at a 6% solution of KCL, it is agreed that Delta will discharge no more than 18,000 gallons per day ("gpd") of KCL for the first three (3) days of discharge. Delta shall discharge the KCL at a manhole or pumping station specified by Sunnyside which is upstream from the WWTP. The KCL shall be discharged from a tanker at an introductory flow rate of no more than 300 gallons per minute ("gpm"). After the third (3rd) day of pumping, and after obtaining written consent from Sunnyside, Delta may increase the total volume to 30,000 gpd at the 6% solution with the flow rate remaining at no more than 300 gpm.

B. Discharge at 20% solution: If Delta elects to discharge at a 20% solution of KCL, it is agreed that Delta will discharge no more than 12,000 gpd of KCL for the first three (3) days of discharge. Delta shall discharge the KCL at a manhole or pumping station specified by Sunnyside which is upstream from the WWTP. The KCL shall be discharged from a tanker at an introductory rate of no more than 200 gpm. After the third (3rd) day of pumping, and after obtaining written consent from Sunnyside, Delta may increase the total volume to 18,000 gpd at the 20% solution and the flow rate shall remain at no more than 200 gpm.

C. Discharge at a percentage between 6% and 20% solution: If Delta elects to discharge KCL solution that has a percentage that is between 6% and 20%, Sunnyside shall instruct Delta on the discharge rate and location. Sunnyside shall have the authority to adjust the introductory rate as necessary.

Sunnyside reserves the right to immediately halt any discharge of KCL by Delta into the City's sewer system and WWTP if the City in its sole discretion believes such discharge is adversely impacting its sewer system and/or WWTP or is in violation of any laws, regulations or permits related thereto.

SECTION II **CONSIDERATION**

In consideration of the rights and privileges granted in Section One, Delta shall pay to Sunnyside a fee of \$0.05 per gallon of KCL solution, regardless of concentration, discharged into its sewer system and WWTP. It shall be Delta's obligation to monitor all discharges and provide a daily written accounting to Sunnyside of the total discharge that day.

SECTION III
INDEMNITY AND HOLD HARMLESS

Delta agrees to indemnify and hold harmless Sunnyside, its officers and employees from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit and costs and expenses incidental thereto (including cost of defense, settlement and reasonable attorney's fees) ("Indemnified Costs"), caused by or resulting from any negligent or willful act or omission of Delta, its agents or employees in connection with Delta's disposal of KCL into the Sunnyside sewer system and WWTP, or resulting from the breach by Delta of any of the agreements, representations, or warranties of Delta contained in this Agreement; provided, however, that Delta shall not indemnify Sunnyside or any of its officers or employees from any Indemnified Costs to the extent caused by or resulting from any negligent or willful act or omission of Sunnyside or any of its officers, employees, agents or contractors. This indemnity obligation shall survive the expiration or termination of this Agreement subject to any applicable statute of limitation.

SECTION IV
DAMAGES

Sunnyside may at their discretion and cost conduct a laboratory analysis of the KCL solution. Provided that Delta has discharged in accordance with this agreement and as instructed by Sunnyside, once the KCL has been successfully discharged into Sunnyside's sewer system, it shall become the sole responsibility of Sunnyside and Sunnyside shall be solely liable for any direct or indirect environmental damage resulting from the KCL. In the event that Delta discharges any KCL solution in excess of the amounts as stated in Section One (A) or (B) or in a way that is contrary to the instructions of Sunnyside, such discharge shall be a breach by Delta and subject to the indemnity and hold harmless provision of Section III.

SECTION V
GOVERNING LAW

This agreement shall be valid to the extent permitted by, and shall be construed according to all applicable statutes and regulations of the State of Washington, as they now exist or may later be amended.

SECTION VI
BINDING EFFECT

EXHIBIT "A"

The terms and conditions of this agreement shall inure to the benefit of, and shall be binding on, the parties and their respective heirs, executors, administrators, successors and assigns.

SECTION VII
DISPUTE RESOLUTION

Any dispute, in any way, arising out of or related to this Agreement (including any amendments or extensions), or the breach or termination thereof, shall be settled by binding arbitration held in Portland, OR in accordance with the then-current American Arbitration Association Rules. If the parties are unable to agree upon an arbitrator within 30 days of the notice from one party to the other party of an intent to arbitrate an issue, an arbitrator will be appointed in accordance with the then-current American Arbitration Association Rules. Costs of the arbitrator shall be shared equally by the parties. Each party shall be responsible for its own attorney fees.

SECTION VIII
INVOICES

A monthly invoice for payment will be submitted by Sunnyside and received by Delta within 90 days of the last day of relevant calendar month. No amounts will be paid for invoices received after such 90-day period. Invoices must (i) be submitted to Delta's electronic invoicing system (currently Oildex) or by email to invoice@deltapetro.com, and (ii) satisfy all other reasonable requirements imposed by Delta, such as inclusion of a field ticket signed and dated by an authorized Delta representative. Payment of undisputed amounts shall be due no later than 45 days following receipt of a properly submitted invoice.

In Witness Whereof, the undersigned have executed this Agreement Allowing Waste Disposal as of the date first above written.

CITY OF SUNNYSIDE

DELTA PETROLEUM CORPORATION

By: _____
JAMES L. BIRDGES
Interim City Manager

By: _____
JOHN WALLACE
President & COO

ATTEST:

By: _____
DEBORAH ESTRADA, City Clerk

APPROVED AS TO FORM:

By: 
MENKE, JACKSON, BEYER
EHLIS & HARPER, LLC, City Attorneys