



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Darryl Von Raesfeld

SUBJECT: SEE BELOW

DATE: 03-15-10

Approved

Date

3/16/10

COUNCIL DISTRICT: City-Wide

**SUBJECT: ACCEPTANCE OF CIVIL PENALTIES: STATE OF CALIFORNIA V.
EQUILON ENTERPRISES LLC, ET AL**

RECOMMENDATION

Adopt a resolution authorizing the City Manager to sign and submit a Declaration for Acceptance of Funds, in the amount of \$200,000 in September 2012, from Final Judgment in the People of the State of California v. Equilon Enterprises LLC, et al for the enforcement of the California Health and Safety Code for Underground Storage of Hazardous Substances.

OUTCOME

Acceptance of the civil penalties will permit the City of San José to receive \$200,000 in September 2012 for use in enforcing the California Health and Safety Code for Underground Storage of Hazardous Substances.

BACKGROUND

The State Attorney General brought suit in the name of the People of the State of California on behalf of numerous local jurisdictions against Equilon Enterprises LLC, doing business as Shell Oil Products US, et al, for violating requirements imposed by the California Health and Safety Code, governing the operation and maintenance of underground storage tanks and systems, and the handling of hazardous wastes and substances generated by company owned facilities in the State. Although denying the allegations, the defendants agreed to take the actions set forth in the Order and Final Judgment, dated November 6, 2009, and entered in the Alameda County Superior Court (Alameda County Superior Court Case No. RG09475973). As part of that Order and Final Judgment, the City of San José Fire Department is eligible to receive \$200,000 in civil penalties in September 2012, if it continues to perform responsibilities as a Participating Agency in the Certified Unified Program Agency (CUPA) program.

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ANALYSIS

The San José Fire Department is eligible to receive \$200,000 in civil penalties in September 2012 as part of the Order and Final Judgment. To receive these funds, the City must be a Participating Agency in the Certified Unified Program Agency (CUPA) program, establish a special account for the deposit of these funds, and submit a Declaration for Acceptance of Funds within 90-days from the date of notification, January 6, 2010, a copy of which is attached. In accordance with the Final Judgment, these funds will be restricted to enforcing the activities of Chapter 6.7 of the California Health and Safety Code (Underground Storage of Hazardous Substances).

Under an agreement with the County of Santa Clara, the San José Fire Department currently enforces Chapter 6.7 as a Participating Agency in the Certified Unified Program Agency (CUPA) program. The Department is contemplating modifying the agreement with the County so that at the time of distribution of the funds the City may no longer be enforcing this program, in which case it may not be eligible to retain these funds. It is recommended, however, that the City submit the Declaration of Acceptance of Funds, as required by the Final Judgment. This would ensure that the City will be eligible to receive these funds if, at that time, the City is a Participating Agency in CUPA, enforcing Chapter 6.7 of the California Health and Safety Code. A special account for hazardous materials judgments, which meets the required criteria, exists for this use.

If the City does not submit the declaration within the 90-day timeline, the City's share of civil penalties will be distributed to the State Water Pollution Cleanup and Abatement Account. If, prior to the time of distribution of these civil penalties, the City is no longer enforcing Chapter 6.7 of the California Health and Safety Code, the City shall inform the State of California, Department of Justice of this fact and the Department of Justice will determine how these civil penalties are to be reallocated.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: Email, Website Posting, Community Meetings, Notice in appropriate newspapers.)**

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This does not meet any of the above criteria, but it is posted on the City's website as part of the March 30, 2010 Council Agenda.

COORDINATION

This memorandum and Declaration for Acceptance of Funds from Final Judgment in the People of the State of California v. Equilon Enterprises LLC, et al. have been coordinated with the City Manager's Budget Office and City Attorney's Office.

COST SUMMARY/IMPLICATIONS

If the City of San José continues its responsibilities as a Participating Agency in the CUPA program, it will receive \$200,000 in September 2012. The use of these funds is restricted to enforcing Chapter 6.7 of the California Health and Safety Code within the City's jurisdiction pursuant to Chapter 6.11 of the California Health and Safety Code.

CEQA

CEQA: Not a project.


DARRYL VON RAESFELD
Fire Chief

For questions please contact Michael Murtiff, Program Manager, at (408) 535-7694.

DVR:jl:jl
Attachment

ATTACHMENT

DECLARATION FOR ACCEPTANCE OF FUNDS FROM FINAL JUDGMENT IN
THE PEOPLE OF THE STATE OF CALIFORNIA V. EQUILON ENTERPRISES LLC, *et al.*
Alameda County Superior Court, Case No. RG09475973

On behalf of the City of San José Fire Department (“the Organization”), I am authorized to agree to the following terms for the acceptance of civil penalties funds to be disbursed pursuant to the terms of the Final Judgment in the above-referenced civil action. Pursuant to the terms of the Final Judgment, the total amount of funds that the Organization will receive is \$200,000, which is to be paid in September of 2012.

The Organization shall use all civil penalties received to fund the activities of the Organization in enforcing Chapter 6.7 of the California Health and Safety Code within our jurisdiction pursuant to Chapter 6.11 of the California Health and Safety Code. We have provided an identified special account for the deposit of these civil penalties funds, and have provided that special account information to the Payment Administrator under the Final Judgment.

IT IS SO AGREED.

I declare under penalty of perjury under the laws of the State of California that the above statements are of my own knowledge and are true and correct

Executed in San José, California, this _____ day of _____, 2010.

Jennifer A. Maguire
Budget Director
City of San José