

## STAFF REPORT

**AGENDA ITEM:** City Council Guidance Regarding California Department of Public Health Enforcement Letter for Failure to Comply with Secondary Drinking Water Standard for Manganese for Well #15.

**MEETING DATE:** July 7, 2009

**PREPARED BY:** Richard N. Warne, City Manager

**REVIEWED BY:** Richard N. Warne, City Manager

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### RECOMMENDATION:

Provide staff with guidance regarding California Department of Public Health enforcement letter for failure to comply with secondary drinking water standard for manganese for Well #15. Staff needs City Council's guidance to respond to the California Department of Public Health's enforcement letter because there are no funds available in the Water Enterprise Fund to either (1) go through the process to apply for a nine-year waiver in accordance with Section 64449.2, Title 22, California Code of Regulations; or (2) install a well-head treatment system for removal of the manganese from the water produced by Well #15. The City Engineer's preliminary estimate for a treatment system for Well #15 at \$1 million.

### BACKGROUND:

City staff received a letter, attached hereto, from the California Department of Public Health ("DPH"), dated May 28, 2009, notifying the City that the DPH completed a review of manganese monitoring results conducted by the City for the City's Well #15 and found that manganese concentrations in Well #15 **exceeded the aesthetic, not health related**, secondary drinking water standards for manganese. The letter went on to detail the options available to the City, to either apply for a waiver which would allow the City to continue using the well as an active source of water supply, or to install a treatment system for removal of the manganese. The letter concluded by stating that the City had until June 19, 2009, to submit a written response to the letter and provide a plan and timeline for addressing the secondary drinking water standard exceedance. Failure to comply with the letter's directive could result in administrative penalties.

The letter states that failure to comply with its directives will result in the issuance of a citation for noncompliance, which could include administrative penalties. The administrative penalty for violation of a secondary drinking water standard is a civil penalty not to exceed **one thousand dollars (\$1,000) for each day** that the violation continues beyond the date specified for correction in the citation. (Health and Safety Code § 116650, subd. (e)(2).) If the City continues to be in violation, the Department of Health Services may issue an order requiring the installation of purification or treatment works. (Health and Safety Code § 116655.) Continued violations may result in penalties including greater fines. (Health and Safety Code § 116725.) It is in the City's best interest to respond to the DPH's letter as requested.

## **DISCUSSION:**

The City has two options with respect to responding to the DPH's letter: (1) apply for a nine-year waiver in accordance with Section 64449.2, Title 22, California Code of Regulations; or (2) install a treatment system for removal of the manganese from the water produced by Well #15. **The City Engineer's preliminary estimate for the well-head treatment for manganese is \$1 million.**

To apply for a nine-year waiver the City must conduct and submit a study to the Department of Health Services within one year of violating the secondary drinking water standard including the following:

- Water system complaint log and other evidence of customer dissatisfaction, such as a log of calls to the county health department.
- Engineering report evaluating the alternatives and costs for bringing the water system into compliance with the secondary drinking water standard, including the option of sequestering the manganese (treating the manganese such that its aesthetic impact is reduced or eliminated), with a recommendation for the most cost effective and feasible approach by the engineer preparing the report.
- Customer survey distributed to all of the water system's customers including the following:
  - Estimated costs to individual customers of the most cost-effective alternatives presented in the engineering report
  - The query: "Are you willing to pay for manganese reduction treatment?"
  - The query: "Are you willing to pay for manganese sequestering treatment?"
  - The query: "Do you prefer to avoid the cost of treatment and live with the current water situation?"
  - The statement: "If you do not respond to this survey, the City of Livingston will assume that you are in support of the reduction treatment recommended by the engineering report."
- A brief report (agenda, list of attendees, transcript) of a public meeting held by the City to which customers were invited, and at which both the tabulated results of the customer survey and the engineering report were presented with a request for input from the public.

At least 50% or more of the billed customers must respond to the survey or else the survey must be conducted again within three months. The City must achieve a 50% response rate on the survey to be eligible for the waiver.

If the customer survey indicates that the percentage of billed customers that voted for manganese reduction treatment and manganese sequestering treatment exceeds the percentage of billed customers that voted for avoiding the cost of treatment, the City shall implement the reduction treatment or the sequestering treatment depending on which receive a higher percentage of votes.

If a waiver is applied for, 50% or more of the customers respond to the survey as required above, and the majority of customers voted to avoid the cost of treatment and live with the current water quality situation, the waiver stands without issue.

However, if 50% or more of the customers respond, and the majority of the votes are for either a manganese reduction or sequestering treatment, an issue arises as the customers would then be charged by the City for the cost of such treatment as an increase to their water bill. For this increase to be adopted, the City would have to provide notice to the customers of the increase, conduct a public hearing, and not receive written protests from over 50% of the property owners.

There are several problems with this approach. First, are are unsure whether 50% or more of the Customers would respond. Second, any rate increase would by subject to Proposition 218.

As stated above, there are two options that the City can take in response to the DPH's letter. It can choose not to apply for a waiver and simply install the treatment system for the removal of manganese. Alternatively, the City may apply for a waiver, in which case the customers may choose to have a treatment system installed and bear such costs which, again, would be subject to Proposition 218, or to continue to receive the water that exceeds the secondary drinking water standard for manganese.

#### **FISCAL IMPACT**

The City Engineer's preliminary estimate for manganese well-head treatment at Well #15 is approximately #1 million. The costs for applying for completing an engineer's report and going through the waiver process are unknown at this time.

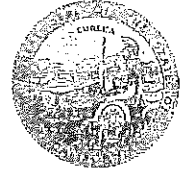
#### **ATTACHMENTS:**

California Department of Public Health Enforcement Letter dated May 28, 2009.



MARK B HORTON, MD, MSPH  
Director

State of California—Health and Human Services Agency  
California Department of Public Health



ARNOLD SCHWARZENEGGER  
Governor

May 28, 2009

System No.: 2410004

Mrs. Kathryn Reyes,  
Water System Manager  
City of Livingston  
P.O. Box 308  
Livingston, CA 95334

**ENFORCEMENT LETTER No. 03-11-09E-048**  
**Failure to Comply with Secondary Drinking Water Standard for Manganese**

The Department recently completed a review of the manganese monitoring results for the City of Livingston's Well No. 15. The City began quarterly monitoring in 2008 because the concentration of manganese in the water produced by Well No. 15 exceeded the secondary drinking water standard for manganese, 0.05 mg/L. The Department directed the City to begin quarterly monitoring of the water produced by Well No. 15. The City complied with the requirement to increase the monitoring frequency. The results of the manganese monitoring results for the City's Well No. 15 are summarized below:

Sample Date	Manganese Concentration, mg/L
4/30/08	0.061
10/28/08	0.062
12/30/08	0.067
3/31/09	0.065
<b>Running Annual Average (RAA)</b>	<b>0.064</b>

The water system is in violation of Section 64449, of Title 22, California Code of Regulations (CCR), which requires the manganese concentration to be less than or equal to the secondary drinking water standard for manganese, 0.05 mg/L.

Mrs. Reyes  
May 28, 2009  
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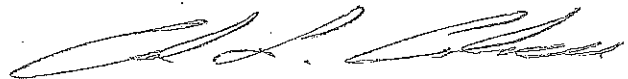
According to Section 64449.2, Title 22, CCR, the City qualifies for a waiver which will allow the City to continue to use the well as an active source of supply. To apply for a waiver, the City must satisfy the requirements of Section 64449.2(b) through (g). One of the requirements for obtaining a waiver is to conduct a study and evaluate various alternatives and allow the consumers to vote on whether or not they prefer a treatment system to be installed for removal of the manganese or continue to receive water that exceeds the manganese MCL. A copy of Section 64449.2, Title 22, CCR, is enclosed for your reference.

The other alternative is for the City to install a treatment system for removal of the manganese from the water produced by Well No. 15.

Your water system has been billed at the Department's current hourly rate for the time spent on this issue since this is an enforcement action for noncompliance with the regulations. By June 19, 2009, you must submit a written response to this enforcement and provide a plan and time schedule for addressing the secondary drinking water standard exceedance for manganese at Well No. 15. Failure to comply with the directives in this enforcement letter will result in the issuance of a citation for noncompliance which could include administrative penalties.

If you have any questions regarding this matter, please contact our office at (559) 447-3300.

Sincerely,



Carl L. Carlucci, P.E.  
Senior Sanitary Engineer  
SOUTHERN CALIFORNIA BRANCH  
DRINKING WATER FIELD OPERATIONS

Enclosure

cc: Merced County Environmental Health Department

**§64449.2. Waivers for Secondary MCL Compliance.**

(a) If the average of four consecutive quarters of sample results for a constituent that does not have a primary MCL is not greater than three times the secondary MCL or greater than the State Notification Level, an existing community water system is eligible to apply for a nine-year waiver of a secondary MCL in Table 64449-A, for the following:

- (1) An existing source; or
- (2) A new source that is being added to the existing water system, as long as:
  - (A) The source is not being added to expand system capacity for further development; and
  - (B) The concentration of the constituent of concern in the new source would not cause the average value of the constituent's concentration at any point in the water delivered by the system to increase by more than 20%.

(b) To apply for a waiver of a secondary MCL, the community water system shall conduct and submit a study to the Department within one year of violating the MCL that includes the following:

- (1) The water system complaint log, maintained pursuant to section 64453(a), along with any other evidence of customer dissatisfaction, such as a log of calls to the county health Department;

- (2) An engineering report, prepared by an engineer registered in California with experience in drinking water treatment, that evaluates all reasonable alternatives and costs for bringing the water system into MCL compliance and includes a recommendation for the most cost-effective and feasible approach;

- (3) The results of a customer survey distributed to all the water system's billed customers that has first been approved by the Department based on whether it includes:

- (A) Estimated costs to individual customers of the most cost-effective alternatives presented in the engineering report that are acceptable to the Department based on its review of their effectiveness and feasibility;

- (B) The query: "Are you willing to pay for (*identify constituent*) reduction treatment?";

- (C) The query: "Do you prefer to avoid the cost of treatment and live with the current water quality situation?"

- (D) The statement: "If you do not respond to this survey, (*insert system name*) will assume that you are in support of the reduction treatment recommended by the engineering report."

- (4) A brief report (agenda, list of attendees, and transcript) of a public meeting held by the water system to which customers were invited, and at which both the tabulated results of the customer survey and the engineering report were presented with a request for input from the public.

(c) A community water system may apply for a waiver for iron and/or manganese if, in addition to meeting the requirements in Subsection (b), an average of four consecutive quarter results for the source has not exceeded a State Notification Level for iron and/or manganese. In addition, the system shall include sequestering, as follows:

- (1) As one of the alternatives evaluated in the Engineering Report;
- (2) In the customer survey as a query: "Are you willing to pay for iron

and/or manganese sequestering treatment?”

(d) Unless 50% or more of the billed customers respond to the survey, the community water system shall conduct another survey pursuant to Subsections (b) or (c) within three months from the date of the survey by sending the survey out to either all the customers again, or only the customers that did not respond to the survey. The water system shall not be eligible for a waiver until it achieves at least a 50% response rate on the survey.

(e) If the customer survey indicates that the percentage of billed customers that voted for constituent reduction treatment and the number of billed customers that did not respond to the survey at all exceeds 50% of the total number of billed customers, the community water system shall install treatment, except as provided in Subsection (f), within three years from the date the system completed the customer survey, pursuant to a schedule established by the Department.

(f) For iron and/or manganese MCL waiver applications, if the percentage of survey respondents that voted for constituent reduction treatment plus the percentage of survey respondents that voted for sequestering exceeds the percentage that voted to avoid the cost and maintain the current water quality situation, the community water system shall implement either constituent reduction treatment or sequestering, on the basis of which was associated with the higher percentage result. If the highest percentage result is for sequestering, the system shall submit a sequestering implementation and assessment plan to the Department that includes:

- (1) A description of the pilot testing or other type of evaluation performed to determine the most effective sequestering agent for use in the system's water;
- (2) The sequestering agent feed rate and the equipment to be used to insure that the rate is maintained for each source;
- (3) An operations plan; and
- (4) The projected cost of sequestering including capital, operations and maintenance costs.

(g) To apply for renewal of a waiver for a subsequent nine years, the system shall request approval from the Department at least six months prior to the end of the current waiver period. The renewal request shall include all monitoring and treatment operations data for the constituent for which the waiver had been granted and any related customer complaints submitted to the water system. Based on its review of the data and customer complaints, the Department may require the water system to conduct another customer survey pursuant to this section before making a determination on the waiver renewal.

#### **§64449.4. Use of Sources that Exceed a Secondary MCL and Do Not Have a Waiver.**

A source that exceeds one or more of the secondary MCLs in Table 64449-A and does not have a waiver may be used only if the source meets the requirements in Section 64414, and the community water system:

- (a) Meters the source's monthly production and submits the results to the Department by the 10th day of the next month;

(b) Counts any part of a day as a full day for purposes of determining compliance with Section 64414(c);

(c) As a minimum, conducts public notification by including information on the source's use (dates, constituent levels, and reasons) in the Consumer Confidence Report (Sections 64480 through 64483);

(d) Provides public notice prior to use of the source by electronic media, publication in a local newspaper, and/or information in the customer billing, if the situation is such that the water system can anticipate the use of the source (e.g., to perform water system maintenance); and

(e) Takes corrective measures such as flushing after the source is used to minimize any residual levels of the constituent in the water distribution system.