



June 27, 2019

Thomas R. Allyn, MD, FACP  
Bindu M. Kamal, MD  
Lompoc Artificial Kidney Center, LLC  
127 West Pine Avenue  
Lompoc, CA 93436

### REVISED AND REISSUED RULING ON REQUEST FOR RECONSIDERATION

Dear Drs. Allyn and Kamal:

Thank you for meeting with me and City staff on June 25, 2019 (Meeting) regarding the Ruling I sent dated June 18, 2019. This Revised and Reissued Ruling on Request for Reconsideration (this Revised and Reissued Ruling) supersedes the June 18<sup>th</sup> Ruling and the dates for appeal pursuant to Lompoc Municipal Code (LMC) section 13.16.140 will be counted from the date of this Revised and Reissued Ruling.

In light of that Meeting, I have re-reviewed the request for reconsideration, dated May 29, 2019, and submitted by Ian M. Guthrie on behalf of the Lompoc Artificial Kidney Center, LLC (Kidney Center). This Revised and Reissued Ruling is issued pursuant to Lompoc Municipal Code (LMC) section 13.16.140.

#### FINDINGS:

1) **Water Softener:** According to information provided by the Kidney Center, its water softening device, which was installed in 1998, performs at 2,500 grains of hardness removed per pound of salt used for regeneration. That does not meet the standard of operation set in the LMC as follows:

- LMC 13.16.320 requires all water softening devices discharging to the City sanitary sewer to meet the California Health and Safety Code (HSC) specifications in Sections 116775 to 116795. HSC section 116790 states all softening devices installed prior to 1980 have a 4-year grandfathering period to meet the standard (*at least 2,850 grains of hardness removed per pound of salt used for regeneration*); otherwise, all water softener devices must meet the operational standard in cities that have salt loading limitations.
- The City is under salt loading limitations. The City currently has a 2011 NPDES permit (Order R3-2011-0211) (Order). The Order includes numerical effluent limits for salts constituents. Further, the Order states in Sections II.S and VI.C.3.a the City is subject to a salt loading Salinity Management Study and Plan and notes self-generating water softeners are of particular concern; therefore,



2011 is the latest date by which any water softeners (residential and commercial/industrial) installed after 1980 must perform at  $\geq 2,850$  grains of hardness removed per pound of salt used for regeneration, and 2015 is the latest date by which water softeners installed before 1980 must meet the standard. The City has timely filed for renewal of the Order, but it has not yet been issued by the local Regional Water Quality Control Board (RWQCB).

- HSC, subdivision 116785(b)(2) is not an applicable standard for the Kidney Center because those standards are only applicable to systems installed on or after January 1, 2000, or 2002, as specified.

The foregoing finding is contingent of City staff having a discussion with RWQCB staff to determine whether, pursuant to the requirements of Wastewater Discharge Permit I-0013, water softeners are prohibited in the City no matter what the grain of hardness removal performance is. If water softeners are not outright prohibited and the Kidney Center installs and maintains use of a water softener that performs at  $\geq 4,000$  grains of hardness removed per pound of salt used for regeneration, then the City will consider the Kidney Center is in compliance with the LMC regarding water softeners.

**2) Discharge of Infectious Wastes to the Sanitary Sewer:** The Kidney Center discharges human dialysis waste materials to the City sanitary sewer system. Such wastes, defined as *infectious waste* per LMC, subdivision 13.16.030. B, are prohibited from discharge from a medical facility to the public sewer by any means (LMC, subdivision 13.16.280 A). Further, LMC, subdivision 13.16.280. B requires infectious waste generated by medical facilities shall be handled in accordance with applicable provisions of California Code of Regulations, title 22, as amended, and Article V of Chapter 18 of the Santa Barbara County Code, and the applicable provisions of that Chapter.

**3) Monitoring Facilities:** The City concurs a representative monitoring location has not yet been designated for sampling the Kidney Center's end-of-pipe wastewater contribution to the sanitary sewer. LMC, section 13.16.390 requires adequate monitoring facilities be installed, operated, and maintained at the Kidney Center's expense.

**4) Effluent Meter:** Once the monitoring facilities described in 3), above, are installed and proper monitoring does not show two consecutive quarters of compliance by the Kidney Center, then, pursuant to Wastewater Permit I-0013 requirements at Section II.A.1 and within 30 days after written notice from the Director, the Kidney Center shall install and maintain an appropriate effluent meter that continuously measures flow and conductivity.

**5) Reporting Frequency:** The City can revise the reporting frequency in the Kidney Center Wastewater Permit I-0013 Section III.C.2 from Monthly to Quarterly as follows:



"2. Quarterly Compliance Reports – Shall be submitted to the City of Lompoc's Wastewater Division as follows:

Reporting Requirements		
Time Period Covered	Report Name	Report Due By
January – March	Quarterly	April 15 <sup>th</sup>
April – June	Quarterly	July 15 <sup>th</sup>
July – September	Quarterly	October 15 <sup>th</sup>
October – December	Quarterly	January 15 <sup>th</sup> of the following year

Quarterly reports would be required to be submitted using the form included in Appendix A and shall be typewritten or written legibly in ink. Reports must address increments of progress that relate to Section III.C.1. Each report shall indicate the minimum, maximum, and average flow and conductivity measured via continuous meter during the reporting period, and include all other sampling results received during the reporting period.

If two consecutive quarterly reports show compliance with the Kidney Center is in compliance with the requirements of Wastewater Discharge Permit I-0013, then no additional quarterly reporting will be required, unless the City determines the Kidney Center is not complying with the requirements of Wastewater Discharge Permit I-0013.

**REVISED AND REISSUED RULING:** Based upon the foregoing findings, your subject request for reconsideration is denied and you must comply with the requirements set forth in this Revised and Reissued Ruling.

**ALTERNATIVE DETERMINATION #1:**

The City appreciates the Kidney Center has determined (i) it can operate without a water softener system and is prepared to remove it and (ii) if using unsoftened water creates significant problems for the membranes of the Kidney Center's reverse osmosis (RO) system, the Kidney Center will have an exchange tank softening system installed, similar to dialysis centers in the cities of Riverside and Santa Clarita, which discharge into streams. If that removal is completed within 60 days after the date of this Revised and Reissued Ruling and the following conditions are timely and consistently met, then I agree the need for a wastewater permit for the Kidney Center would be obviated. Those conditions are as follows:



- a. If RWQCB indicates Wastewater Discharge Permit I-0013 does not prohibit water softeners, then ensure each and every water softening device used at the Kidney Center performs at  $\geq 4,000$  grains of hardness removed per pound of salt used for regeneration. Documentation, as reasonably determined by the City's Water Resource Protection Technician, of the Kidney Center's compliance with all applicable requirements shall be submitted to the City within 30 days after the date of this Revised and Reissued Ruling.
- b. Ensure infectious wastes generated at the Kidney Center are properly disposed. If the Kidney Center is discharging infectious wastes to the sanitary sewer, then such discharges shall cease within a reasonable time approved by the Director and within 30 days after the date of this Revised and Reissued Ruling the Kidney Center shall submit documentation, reasonably acceptable to the Director, committing the Kidney Center to comply with this subsection.
- c. Designate a sampling point that is representative of the Kidney Center's end-of-pipe discharges to the City's sanitary sewer. The Kidney Center shall submit documentation of the proposed sampling point to the City within 10 days after the date of this Revised and Reissued Ruling. Upon approval by the City, the Kidney Center will install/construct such devices as necessary to allow for monitoring activities in accordance with LMC, section 13.16.390 at the approved sampling point within 60 days after receiving the City's approval.
- d. Install an effluent meter that meets all permit requirements, if required as indicated in 4), above. Documentation of the Kidney Center's compliance with the effluent meter requirements shall be submitted to the City within 30 days after compliance with 4), above, if applicable.
- e. Comply with the revised reporting frequencies as specified above. As noted previously, the Kidney Center does not have an appropriate effluent meter or sampling point at this time and therefore cannot conduct the required sampling. If the Kidney Center timely meets all the above specified compliance dates, then the monitoring and reporting requirements in the wastewater discharge permit Sections III.A.1&2 and III.C.2 are hereby waived until installation of appropriate devices and/or equipment is complete and adequate documentation of such activities have been received by the City. Permit monitoring and reporting requirements as specified in Sections III.A.1&2 and III.C.2 shall be reinstated upon installation of appropriate devices and/or equipment (e.g., when the effluent meter is installed and activated, when the sampling point has been installed). Permit requirements not addressed in these sections remain in effect and continue to be enforceable.
- f. If, for a consecutive period of 190 days the timely reporting conducted by the City and Kidney Facility shows the wastewater created by the Kidney Center meets federal and state mandates, then the City will rescind the requirement



for the Kidney Center to have a wastewater discharge permit. If at any time the City determines the Kidney Center is not meeting those requirements, then a wastewater permit shall again be required. In order to verify the foregoing requirements are being met, the City, upon 24-hours' written notice to the Kidney Center, will be allowed to take periodic samplings of the Kidney Center's wastewater until the above-stated 190-day period has ended. Each time that notice is provided, the City can conduct the sampling on any date within 30 days after that particular notice, to ensure an accurate sampling is obtained.

#### **ALTERNATIVE DETERMINATION #2:**

If the Kidney Center requests the City Council to amend LMC, subdivision 13.16.030 B. to exclude human dialysis waste materials from the definition of Infectious waste, then the City Manager and Utility Director will support that request. The Utility Director shall also seek the necessary and required approval from the RWQCB for approval of that change. If, in each of their sole discretion, the RWQCB and City Council approve that change to the definition of Infectious waste and the Kidney Center does all the following:

1. Informs the City of any changes to the Kidney Center wastewater processing,
2. Informs the City if there is any changes to operations, such as the addition of shifts or increase in patients seen,
3. Obtains appropriate building permits from the City,
4. Recognizes random sampling and inspections can still occur at any point and
5. Provides proof for two consecutive quarters of compliance in all areas of concern, as discussed in this Revised and Reissued Ruling.

then the Kidney Center will be deemed to have met the City's wastewater requirements. Until that change is effective, the Kidney Center must comply with this Revised and Reissued Ruling or Alternative Determination #1.

#### **CONCLUSION**

The Kidney Center is required to fulfill the conditions set forth above pursuant to this Revised and Reissued Ruling or Alternative Determination #1 by the dates specified therein. Please respond at the address below in writing and within 15 business days after receipt of this Revised and Reissued Ruling, addressing the specific steps you have taken or will take to address the requirements stated in this Revised and Reissued Ruling or Alternative Determination #1. If the Kidney Center desires to request the City Council to amend LMC according to Alternative Determination #2, that request should be addressed with the response to this Revised and Reissued Ruling or Alternative



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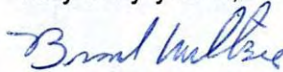
Determination #1. Be advised, if you file an appeal as described below, then the 15-day period set forth above will be held in abeyance during the pendency of that appeal.

City of Lompoc  
Attn: Wastewater Division  
Water Resources Protection Technician  
100 Civic Center Plaza  
Lompoc, CA 93436

You may appeal this Revised and Reissued Ruling to the City Council by submitting a written appeal to the City Clerk within 10 working days after the date of this Revised and Reissued Ruling. That appeal shall be heard and decided by the City Council within 60 days after receipt of your timely request. (LMC, section 13.16.140.)

Please note the City is corresponding with you concerning this matter with the understanding you are authorized representatives of the Kidney Center. If that is not the case, then please inform me immediately.

Very truly yours,



Brad Wilkie  
Utility Director

c: Jim Throop, City Manager  
Stacey Haddon, City Clerk  
Jeff Malawy, City Attorney  
Katrina Dorsey, Water Resource Protection Technician  
Teri Schwab, Paralegal/Legal Assistant  
Ian M. Guthrie, Esq.