From: Berry, Charles <c_berry@ci.lompoc.ca.us>

Sent: Thursday, July 8, 2021 3:23 PM

To: Samir J. Abdelnour <SAbdelnour@hansonbridgett.com>

Cc: Christine Wong <cwong@algcorp.com>; Chon, Dong Hyun <d_chon@ci.lompoc.ca.us>; Moore, Julie <JMoore@ci.lompoc.ca.us>; Joseph Pannone <jpannone@awattorneys.com>; Melissa M.

Malstrom < MMalstrom@hansonbridgett.com>; Elliott Ripley < ERipley@algcorp.com>

Subject: RE: [EXTERNAL] Lompoc Kidney Center

*** EXTERNAL SENDER ***

Good afternoon, Samir, et al,

Thank you for your latest comments, although we are a bit taken aback by them. We thought we were moving forward toward a meaningful resolution for this significant public safety matter, but your emails of June 7 and 15, 2021, appear to be showing Lompoc Artificial Kidney Center (LAKC) is taking a step or two backward. Even with that being said, we will make one more attempt to provide a path for that needed resolution without the need to process the appeals. While not responding point-by-point to your comments, the below provides a complete response to them.

First and foremost, to date, LAKC has failed to meet, completely, the conditions previously communicated through our emails dated April 15 and May 14, 2021, respectively, for dissolving the need to complete the processing of LAKC's subject appeals. Based on all the foregoing, the City provides the following-response:

- 1. LAKC is obligated to comply with discharge permit I-013, issued on May 7, 2019; the permit is, has been and continues to be in full force during the appeal period. LAKC has been in non-compliance since issuance of discharge permit I-013. An appeal of a notice of violation does not relieve LAKC of its ongoing obligations to comply with its discharge permit.
 - a. It is LAKC's sole responsibility to demonstrate to City's satisfaction how changes in its

- operations will bring it into compliance. The City is not required or responsible, as one of your emails requests, to "ensure" any operational changes, proposed or actual, would bring LAKC into compliance.
- b. As previously stated, *substantial changes* in the waste stream must comply with the terms outlined in discharge permit I-013, Special Conditions. In this case, substantial changes can be considered operational modifications not addressed in your latest baseline monitoring report/industrial user permit application, or a significant (>/=20%) change to the quantity or quality of wastewater discharged from your facility or pollutants discharged in your wastewater. Because stopping use of the water softener significantly changes the facility's wastewater operations and likely results in a substantial change to the quality of the wastewater discharged, such a facility modification must be reported in advance to the City, under the terms outlined in discharge permit I-013 Section III.C.3.f.
- c. If LAKC is to bypass the water softener, proof of removal of the system will be required.
- d. Pursuant to email dated May 11, 2021, LAKC stated "LAKC will stop using its current water softener and has decided not to replace it at this time." Your email of June 7, 2021, seems to be saying that may not be the situation any longer. LAKC must clarify its intent regarding that replacement and/or removal.
- e. It would also be helpful if LAKC clarified the intent and purpose of the comment in your June 7, 2021, email, which stated "...LAKC must prioritize devoting its financial resources toward providing life-sustaining care to its patients."
- 2. LAKC has not yet responded to how it will comply with the requirement to install a representative sample point. The City retains explicit authority to determine the appropriate location for that sample point and the location currently proposed by LAKC is not adequate. The composite sampler to be used for those samples is irrelevant to discharge permit I-013's requirement for such a location. The provided representative sample point must provide 24/7 access for City to draw samples, with its test equipment, if and when it deems necessary.
 - a. LAKC shall provide to City an executed agreement and proposed location, for City's approval, for the flow and conductivity meters.
 - b. It would also be helpful if LAKC clarified the intent and purpose of the comment in your June 7, 2021, email regarding "vandalism."
- 3. Please also be advised, as we are sure you are aware, LAKC is solely responsible to ensure patient care, while also fully complying with the Clean Water Act requirements.
- 4. Lastly, if LAKC chooses not to respond to the email or does not, by July 26, 2021 completely and satisfactorily respond to this email, then the hearing on the subject appeals will go forward on August 17, 2021, with no further notice to LAKC or you.
- 5. With regard to the inquiry in your June 15, 2021, email regarding flow meters, please be advised five operations permitted by the City, must provide flow and/or conductivity meters.

We remain hopeful this matter can be amicably resolved; but time is running short to ensure the City is in compliance with its obligations under the Clean Water Act.

Thank you,

C.J.

From: Samir J. Abdelnour <<u>SAbdelnour@hansonbridgett.com</u>>

Sent: Thursday, June 10, 2021 1:24 PM

To: Berry, Charles < <u>c berry@ci.lompoc.ca.us</u>>

Cc: Christine Wong <<u>cwong@algcorp.com</u>>; Chon, Dong Hyun <<u>d_chon@ci.lompoc.ca.us</u>>; Moore, Julie <<u>JMoore@ci.lompoc.ca.us</u>>; Pannone, Joseph <<u>jpannone@awattorneys.com</u>>; Melissa M.

Malstrom < MMalstrom@hansonbridgett.com > Subject: RE: [EXTERNAL] Lompoc Kidney Center

Thank you.

Samir J. Abdelnour		
Partner		
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The foregoing applies even if this notice is embedded in a message that is forwarded or attached.

From: Berry, Charles < <u>berry@ci.lompoc.ca.us</u>>

Sent: Tuesday, June 8, 2021 2:50 PM

To: Samir J. Abdelnour < <u>SAbdelnour@hansonbridgett.com</u>>

Cc: Christine Wong <<u>cwong@algcorp.com</u>>; Chon, Dong Hyun <<u>d_chon@ci.lompoc.ca.us</u>>; Moore, Julie <<u>JMoore@ci.lompoc.ca.us</u>>; Pannone, Joseph <<u>jpannone@awattorneys.com</u>>; Melissa M.

Malstrom < <u>MMalstrom@hansonbridgett.com</u>> **Subject:** RE: [EXTERNAL] Lompoc Kidney Center

Samir,

City responds as follows:

The hearing will be continued to the August 3, 2021 meeting to accommodate Dr. Kamal. The City is in disagreement with LAKC's responses and reserves right to comment and will do so via follow-up email.

Regards,

C.J. Berry Utility Director City of Lompoc 100 Civic Center Plaza Lompoc, CA 93436 805-875-8299 c berry@ci.lompoc.ca.us



From: Samir J. Abdelnour <<u>SAbdelnour@hansonbridgett.com</u>>

Sent: Monday, June 7, 2021 4:12 PM

To: Berry, Charles < <u>berry@ci.lompoc.ca.us</u>>

Cc: Christine Wong <<u>cwong@algcorp.com</u>>; Chon, Dong Hyun <<u>d_chon@ci.lompoc.ca.us</u>>; Moore, Julie <<u>JMoore@ci.lompoc.ca.us</u>>; Pannone, Joseph <<u>ipannone@awattorneys.com</u>>; Melissa M.

Malstrom < MMalstrom@hansonbridgett.com>
Subject: RE: [EXTERNAL] Lompoc Kidney Center

C.J.,

LAKC responds to your May 14, 2021 email as follows:

1. LAKC proposes to bypass the current water softener in its dialysis treatment process, if doing so will ensure that LAKC's discharges to the City sewer system comply with applicable limits. Although bypassing the water softener does not impact the safety or effectiveness of dialysis treatment, it will result in greater discomfort for patients receiving the treatment. It will also result in increased costs to LAKC for more frequent replacement of the filters used during the reverse osmosis exchange process. However, the increased cost of replacing filters more frequently is still lower than the cost to upgrade to a new water softener, and LAKC must prioritize devoting its financial resources toward providing life-sustaining care to its patients. LAKC disagrees that it is required to request a modification to the permit to bypass its water softener, as use of the water softener is not required under the permit issued by the City on May 8, 2019, and in any event, the parties dispute about whether the permit has taken effect

remains unresolved.

- 2. The Lompoc Municipal Code defines "Composite sample" as "a series of grab samples collected at equal intervals and combined proportional to flow, . . ., or a series of equal volume grab samples taken at varying time intervals, in order to determine the average pollutant concentration during the compositing period." (MC 13.16.030) LAKC has arranged to rent a Composite Portable Sampler that will collect a 24-hour "test" composite sample in compliance with MC 13.16.030. Due to the ongoing COVID-19 pandemic, scheduling this test sample collection has taken longer than expected, and because of continued and worsening vandalism issues in Lompoc that have directly impacted LAKC, we have had to devote additional resources to address security issues related to the 24-hour collection period. Once the test sample collection has been completed, we will provide additional information as requested by the City on the viability of this method for future composite sample collection. In addition, LAKC is currently obtaining proposals for installation of a flow and conductivity meter on the lateral sewer line, as requested by the City.
- 3. See response 2.
- 4. LAKC proposes to defer further discussion on this issue until we finish working through the issues in items 1 and 2 above.

LAKC requests that the June 15, 2021 appeal hearing be further continued as the parties continue working toward resolution of these issues. In addition, LAKC CEO Dr. Bindu Kamal will be away from June 11-20 and will not be available to attend the appeal hearing on June 15.

Thank you,		
Samir		

Samir J. Abdelnour

Partner

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