STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER DW 2020-XXXX-XXX

In the Matter of the Petitions for Reconsideration by

Mathew Steinberg, Administrator of Steinberg Matthew Trust
Owner and Operator of
Bloomingcamp Water System

Regarding Compliance Order No. DER-18R-008, as amended, and Citation No. ER-19C-003, issued by Stanislaus County Department of Environmental Resources as Local Primacy Agency

---

ORDER DENYING PETITIONS FOR RECONSIDERATION

BY THE BOARD:

1.0 INTRODUCTION

This matter comes before the State Water Resources Control Board (State Water Board or Board) following the issuance of a compliance order and citation by the Stanislaus County Department of Environmental Resources, Division of Environmental Health (County), acting as a local primacy agency under the California Safe Drinking Water Act, to Bloomingcamp Water System (Bloomingcamp). The compliance order and citation relate to Bloomingcamp's violation of the maximum contaminant level for nitrate. Bloomingcamp petitioned the Board to reconsider the County's decisions regarding the compliance order, and subsequently petitioned the Board to reconsider the County's issuance of the citation. In its plan for compliance, Bloomingcamp proposes to rely on bottled water permanently. Bloomingcamp's permanent or long-term reliance on bottled water is an inadequate means to comply with the California Safe Drinking Water Act and implementing regulations. For that reason, and the other reasons discussed below, we deny Bloomingcamp's petitions for reconsideration of the compliance order and citation.

2.0 FACTUAL AND PROCEDURAL BACKGROUND

Bloomingcamp is located outside the City of Oakdale and serves water to approximately three homes, a bakery, a shop, a cider barn, and public restrooms.[1] It serves six

[1] Bloomingcamp Technical Memorandum, May 9, 2019, p.1. Bloomingcamp's Conditional Domestic Water Supply Permit, dated March 28, 2018, indicates that

residents, four employees, and 25 or more customers at least 60 days out of the year.[2] It also hosts events.[3] It regularly serves at least 25 individuals daily at least 60 days out of the year and is a transient noncommunity water system.[4] (Health & Saf. Code, § 116275, subd. (o).) It operates under Conditional Domestic Water Supply Permit No. 2018-03-017.

The County is responsible for enforcing Bloomingcamp's compliance with the California Safe Drinking Water Act and implementing regulations (collectively, the Safe Drinking Water Act) in the County's capacity as a local primacy agency. (See Health & Saf. Code, § 116330.) The County's authority is delegated pursuant to a Local Primacy Delegation Agreement with the State Water Board, amended as of April 1, 2017.

The County issued Compliance Order No. DER-18-R-008 (Compliance Order) to Bloomingcamp on May 4, 2018, for violation of the maximum contaminant level (MCL) for nitrate. (Cal. Code Regs., tit. 22, § 64431.) Among other things, the Compliance Order required Bloomingcamp to submit a Corrective Action Plan (CAP) "identifying improvements to the water system designed to correct the water quality problem (violation of the nitrate MCL) and ensure that Bloomingcamp delivers water to consumers that meets primary drinking water standards."[5] The Compliance Order also notified Bloomingcamp that the County was authorized to issue a monetary penalty if Bloomingcamp failed to correct the violation.[6]

Over the following months, Bloomingcamp and the County discussed possible solutions to the nitrate contamination. On April 5, 2019, the County amended the Compliance Order to allow Bloomingcamp more time to submit a CAP. It also required Bloomingcamp to submit a Technical Memorandum discussing treatment options, including drilling a new well, consolidating with another water system, conventional treatment, point-of-entry treatment, and point-of-use treatment, and to recommend a solution.[7]

Bloomingcamp submitted a CAP on May 8, 2019 and a Technical Memorandum on the next day. In its Technical Memorandum, Bloomingcamp discussed various treatment options, including point-of-use treatment, which it proposed to install at its two public

---

Bloomingcamp serves water to seven connections, including two residences. Regardless of the number of service connections, there is no dispute that Bloomingcamp serves water to at least 25 people at least 60 days out of the year.

[2] See Bloomingcamp's Conditional Domestic Water Supply Permit, No. 2018-03-017.

[3] Bloomingcamp Technical Memorandum, May 9, 2019, p.1.

[4] Until 2018, Bloomingcamp was classified as a state small water system. The County reclassified Bloomingcamp as a public water system based on Bloomingcamp's reporting of the number of people it served daily. Even as a state small water system, Bloomingcamp may be required to comply with the nitrate MCL. (Cal. Code Regs., tit. 22, § 64213, subd. (d).)

[5] Compliance Order No., DER-18R-008, p. 7.

[6] *Id.* at p. 9.

[7] Amendment No. 1 to Compliance Order No., DER-18R-008, p. 2.

restrooms.[8] To address the nitrate contamination in the bakery, Bloomingcamp proposed to rely on bottled water, saying, "The use of bottled water is standard in our society where many people drink only bottled water and would not drink the water from a public water system."[9] The CAP did not propose any treatment of the water served to the residences or other buildings.

On May 14, 2019, the County rejected Bloomingcamp's CAP and Technical Memorandum because, among reasons, Bloomingcamp proposed using bottled water to correct its nitrate MCL violation.[10] The County's letter advised Bloomingcamp of necessary revisions to the CAP and Technical Memorandum, including to "[r]emove the use of bottled water as a permanent solution."[11] The County amended the Compliance Order a second time to allow Bloomingcamp more time to submit a satisfactory CAP and Technical Memorandum. The County again notified Bloomingcamp that it was authorized to impose a monetary penalty for the continuing violation.[12]

Bloomingcamp submitted a revised CAP dated May 20, 2019 that was identical to the first CAP except that it corrected a misstatement in the first CAP that incorrectly identified Bloomingcamp as a non-transient non-community water system, rather than a transient non-community water system. The revised CAP continued to propose relying on bottled water and did not propose any treatment of the water served to the residences. On June 13, 2019, Bloomingcamp petitioned the State Water Board to reconsider the County's rejection of the CAP (First Petition). Bloomingcamp argued that the County erred in rejecting the CAP because the County did not consider Bloomingcamp's proposed reliance on point of use treatment. Bloomingcamp also alleged that the County erred by not considering the cost to Bloomingcamp of complying with the Safe Drinking Water Act.

On July 12, 2019, the County issued Citation No. DER-19C-003 (Citation), imposing a financial penalty on Bloomingcamp for its continued violation of the nitrate MCL and for failure to satisfy the terms of the Compliance Order, including but not limited to its failure to submit an acceptable CAP and to demonstrate that it notified the public of the nitrate

[8] Bloomingcamp Technical Memorandum, p.5; Bloomingcamp CAP, p. 2. In its Technical Memorandum, Bloomingcamp discussed the costs of each treatment option, including construction costs of $200,000 to consolidate with a nearby system, $100,000 for centralized ion exchange treatment, $50,000 to drill a new well, and $25,000 for centralized reverse osmosis treatment. It proposed two point-of-use devices at a cost of $500 per device, and bottled water costing $972/year.
[9] Bloomingcamp Water System Corrective Action Plan, p.2; Bloomingcamp Water System Technical Memorandum, p.5.
[10] May 14, 2019 letter from Karl Quinn, Environmental Health Manager, to Mathew Steinberg.
[11] *Id.* at 1.
[12] *Id*. at 2.

contamination. The County imposed a financial penalty of $12,000. It also required reimbursement for its enforcement costs in the amount of $1,508.[13]

On August 6, 2019, Bloomingcamp petitioned the State Water Board to reconsider the imposition of the financial penalty, arguing that it was improper for the County to impose a penalty while Bloomingcamp's First Petition was pending before the State Water Board, and that the penalty amount was excessive (Second Petition).

3.0 GROUNDS FOR RECONSIDERATION

Within thirty (30) days of issuance of an order or decision under authority delegated to an officer or employee of the Board under Article 8 (commencing with Section 116625) or Article 9 (commencing with Section 116650) of the California Safe Drinking Water Act (chapter 4 of part 12 of division 104 of the Health and Safety Code), an aggrieved person may petition the Board for reconsideration. (Health & Saf. Code, § 116701, subd. (a)(1).) The Board may refuse to reconsider the order or decision if the petition fails to raise substantial issues that are appropriate for review, may deny the petition upon a determination that the issuance of the order or decision was appropriate and proper, may set aside or modify the order or decision, or take other appropriate action. (*Id.*, subd. (d).)

The Board interprets section 116701 of the Health and Safety Code to apply to an order or decision by a county acting as local primacy agency. A local primacy agency acts under authority delegated by the Board to administer and enforce the California Safe Drinking Water Act for some systems in the county. (Health & Saf. Code, § 116330, subd. (a).) With respect to those systems, the county acts for the Board and is empowered with all the authority granted to the Board by the Safe Drinking Water Act. (*Id.*, subd. (f).)[14] Accordingly, an order or decision issued by a local primacy agency is equivalent to an order issued under authority otherwise delegated to an officer or employee of the Board. An aggrieved person may therefore petition the Board for reconsideration within thirty (30) days of an order or decision by a county acting as a local primacy agency pursuant to Section 116330 of the Health and Safety Code. As with orders or decisions of the Board, a petitionable order or decision of a county must have been made under authority of Article 8 (commencing with Section 116625) or Article 9 (commencing with Section 116650) of the California Safe Drinking Water Act.

[13] Bloomingcamp must reimburse the County for the County's costs of enforcement. (Health & Saf. Code, § 116595.)

[14] Local primacy under the California Safe Drinking Water Act is in contrast from state primacy under the federal Safe Drinking Water Act. Under the federal act, a state seeking primacy must adopt its own laws and regulations that are no less stringent than federal requirements; the state cannot rely on a delegation from the United States Environmental Protection Agency to provide the necessary authority to enforce the federal act. (See 42 U.S.C. § 300-g-2; 40 C.F.R. § 142.11(a)(7)(i).)

4.0 DISCUSSION

4.1. The County's Rejection of Bloomingcamp's CAP was Appropriate and Proper

Bottled water is not a long-term solution to Bloomingcamp's nitrate contamination

The Safe Drinking Water Act requires any person who owns a public water system to ensure that "the system" complies with primary drinking water standards. (Health & Saf. Code, § 116555, subd. (a)(1).) A system under the Safe Drinking Water Act is limited to a system "for the provision of water for human consumption through pipes or other constructed conveyances." (Health & Saf. Code, § 116275, subd. (h).) Bottled water is not part of Bloomingcamp's water system, which consists of the well and pipes through which it distributes water to its users.[15] Bloomingcamp's compliance with the Safe Drinking Water Act requires that *its system* meet primary drinking water standards, which Bloomingcamp would fail to achieve through the addition of bottled water.

Other provisions of the Health and Safety Code emphasize this point. Section 116450 requires water systems to recommend that their customers use of bottled water upon the direction of the local health department or the State Water Board "until the [Board] concludes that there is compliance with its standards or requirements."[16] Subdivision (c)(2) of former section 116277 allows schools, when shutting down drinking water fountains or faucets due to lead contamination, to provide bottled water "as a short-term remedy."[17] Subdivision (b)(1) of section 116475 permits the expenditure of funds from the Emergency Clean Water Grant Fund to pay for bottled water in emergencies. Section 116766 allows expenditures from the Safe and Affordable Drinking Water Fund for the provision of replacement water, "as needed, to ensure immediate protection of health and safety as a short-term solution."[18] These provisions indicate that bottled water is a short-term tool for emergency situations and is not an appropriate long-term solution to a contaminated water supply.

This is consistent with the federal regulations under the federal Safe Drinking Water Act, which expressly prohibit public water systems from using bottled water to achieve compliance with an MCL.[19] Like the Health and Safety Code provisions cited above, the federal regulation distinguishes compliance with an MCL from emergency situations by adding that "[b]ottled water may be used on a temporary basis to avoid unreasonable risk to health."

---

[15] Bottled water is similarly not a "water source," which consists of a groundwater source (i.e., a well) or a surface water intake. (Cal. Code Regs., tit. 22, § 64402.10.)
[16] Health and Safety Code, §§ 116450, subds. (e)-(f).
[17] Section 116277 was repealed by operation of law on January 1, 2020. (See Stats. 2017, ch. 746.)
[18] Health and Safety Code, §§ 116766, subd. (a)(3), 116767, subd. (q).
[19] 40 C.F.R. § 141.101.

Bloomingcamp did not propose using bottled water on only a temporary basis. It proposed the long-term use of bottled water to achieve compliance with the nitrate MCL. The County therefore properly rejected the CAP.

Bloomingcamp must provide safe drinking water to all users

Contrary to Bloomingcamp's allegations in its First Petition, the County did not fail to consider Bloomingcamp's proposed use of point-of-use treatment. Rather, Bloomingcamp did not propose point-of-use treatment for all points of use. In its CAP, it proposed point-of-use for the restrooms only. It did not propose treatment for the water it serves to the homes and buildings other than the bakery, and proposed to supply the bakery with bottled water. In the County's letter to Bloomingcamp rejecting the CAP and Technical Memorandum, the County told Bloomingcamp to "[p]ropose a permanent and adequate method for provision of water…for *all users* of the water supplied by Bloomingcamp." (italics added.)[20] Bloomingcamp did not do so. Instead, it proposed bottled water for the bakery and did not propose any treatment for the residences.

It appears that Bloomingcamp argued that *but for* the restrooms and bakery, it would not be a public water system or state small water system, and that treatment is only necessary for the water it serves to its users who "cause" it to become a regulated water system. This is a misapprehension of the Safe Drinking Water Act's requirements. A public water system must provide safe drinking water to all users to whom it provides water for human consumption, regardless of which users might have caused it to become a public water system. This is especially clear in light of the Legislature's declaration of the human right to water, which states that it is "the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.[21] Because Bloomingcamp did not propose a solution to the nitrate contamination for all users, the County's rejection of the CAP was appropriate and proper.

The County appropriately rejected the CAP and required compliance with the Safe Drinking Water Act's MCL without consideration of Bloomingcamp's specific compliance costs

Lastly, Bloomingcamp raises concerns about the cost of treating its water, which it says would cause financial damages and the loss of jobs.[22] The State Water Board recognizes that there are costs of complying with the Safe Drinking Water Act for businesses operating public water systems. Local land use decisions have resulted in fragmented water service territories that lack economies of scale.[23] Bloomingcamp's

[20] May 14, 2019 letter from County to Bloomingcamp, p.2.
[21] Wat. Code, § 106.3. We note that Bloomingcamp did not propose treatment of the water it serves to the users with the greatest potential exposure to nitrate contamination: the residents.
[22] First Petition, p. 2.
[23] Bloomingcamp currently operates a quarter mile from a nearby community water system, OID-Oakdale Rural Water System #1. See Bloomingcamp Technical Memorandum, May 9, 2019, p. 3.

business faces a $25,000 cost to construct centralized treatment, according to its Technical Memorandum. Alternatively, it can install numerous point-of-use devices at $500 per device.[24] The County's charge as local primacy agency for enforcement of the Safe Drinking Water Act is not to weigh in on these business decisions, but to ensure that whichever option Bloomingcamp pursues is protective of public health. There is no evidence in the record that the County dismissed an acceptable method of treatment in lieu of a more expensive method. Because Bloomingcamp proposed no treatment for part of its system and bottled water for another, the County was correct to reject Bloomingcamp's CAP.

4.2. The County's Issuance of the Citation

Bloomingcamp's Second Petition seeks reconsideration of Citation No. DER-19C-003, which imposed a monetary penalty of $12,000 and required reimbursement of the County's enforcement costs in the amount of $1,508.

Bloomingcamp argues that the $12,000 penalty amount was excessive and that it was improperly issued while the First Petition was pending.

The County exercised its discretion in determining the amount of the penalty. The State Water Board is reluctant to modify that exercise of discretion unless there was an abuse of discretion or error in law.[25] Reviewing the Citation, the State Water Board finds no such abuse of discretion or other error requiring reconsideration or adjustment of the penalty. The Citation was based on multiple violations: failure to meet the nitrate MCL, failure to submit proof of public notification of the nitrate MCL exceedance, failure to submit a satisfactory revised CAP pursuant to the Compliance Order, and failure to submit a report showing actions taken to comply with the CAP. Considering this history of violation, a $12,000 penalty was not excessive.

Similarly, the issuance of the citation while the First Petition was pending was not an abuse of discretion or based on an error in law. A petition for reconsideration does not automatically stay an enforcement action. A petition for reconsideration of a compliance order – if successful – ordinarily would provide a basis for reconsideration of a penalty based in part on violation of that compliance order, yet a public water system that fails to comply during the pendency of a petition for reconsideration does so at its own risk. If Bloomingcamp did not wish to incur that risk, it could have complied with the Compliance Order by submitting an adequate CAP (i.e., one that did not propose long-term reliance on bottled water and that addressed the contamination of water served to all users), while also petitioning the State Water Board for review of the County's

[24] See Bloomingcamp's cost estimates in the Technical Memorandum. Centralized and point-of-use treatment entail additional costs for operations and maintenance.
[25] Cf. SWRCB Order WQO 2003-0004 at p. 5. [In reviewing a regional water quality control board's order imposing administrative civil liability, the State Water Board affords substantial discretion to the regional water board].

rejection of the prior CAP. Submission of an adequate CAP would not have deprived Bloomingcamp of an opportunity to petition the State Water Board.

We also note that the County issued the Citation after repeatedly informing Bloomingcamp of its ongoing violation and the inadequacy of its CAP and Technical Memorandum. In addition, two-thirds of the amount of the penalty was for Bloomingcamp's failure to submit proof of public notification of the nitrate contamination. For these reasons, the Board finds that the County's issuance of the Citation during the pendency of the First Petition was not an abuse of discretion or based on an error in law.

Bloomingcamp is statutorily required to reimburse the County for its enforcement costs unless the State Water Board or County exercises its discretion to waive all or part of such invoice. (Health & Saf. Code, § 116577.) The County's requirement that Bloomingcamp reimburse the County's enforcements costs was not an abuse of discretion or based on an error in law.

We therefore decline to set aside or modify the Citation.

5.0 CONCLUSION

The Board denies Bloomingcamp's petitions for reconsideration.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on _____.

_____

Jeanine Townsend
Clerk to the Board