

EXHIBIT D

City of Benton Harbor

Regulatory Status Update

1/23/2019

Action Level Exceedance (ALE) for Lead

Benton Harbor's 2018 lead and copper monitoring resulted in a lead ALE, declared in October 2018. Of the 30 residential lead samples taken, nine were over the current lead action level of 15 parts per billion (ppb). This resulted in a lead 90th percentile value of 22 ppb. The city has conducted public advisories and education as required by Act 399. They have offered free sampling to residents, and have to date received 335 sample results for lead and copper. So far, 54 are above the action level of 15 ppb for lead (no elevated copper levels).

A number of actions have been taken to investigate the increase in lead levels in the city, but no specific causes have been identified. Benton Harbor has no previous action level exceedance on record, does not currently add a corrosion inhibitor, and according to operational records has not experienced changes in source water or treatment.

The DEQ has also been working with the City and Elhorn Engineering to begin design and permitting of a phosphate corrosion inhibitor system to help build a passivation layer in the system.

Best Case Timeline: Phosphate system installed 2/15/19; passivation layer improved 5/15/19; ALE lifted 6/30/20; system optimized for corrosion control 12/31/20.

Worst Case Timeline: Phosphate system installed 5/1/19; passivation improved 8/1/19; ALE lifted 12/31/20; system optimized for corrosion control 7/1/21.

Significant Deficiencies and Administrative Consent Order (ACO)

[The DEQ] has been working with the city since the summer of 2018 to conduct a sanitary survey, and address concerns found in the survey (significant deficiencies). We have proposed a draft ACO to allow for a corrective action schedule, which the city has verbally agreed to *but not yet signed*. Our deadline for approval is 1/31/19. A non-inclusive list of significant deficiencies for correction follows:

- Move chemical feed point to proper location (design underway)
- Conduct a Rate Study, and streamline the Rate Collection Process
- Install metering capabilities on the finished water (design underway)
- Obtain adequate staffing levels at the water plant and distribution system
- Update cross connection program, consider hiring contractor for inspections/testing
- Install functioning chlorine analyzer at water plant

Comment [KA(1): You may want to revise the first sentence of this paragraph to clarify that these are separate from the lead issue.

"In addition to the lead concerns described above, DEQ has been working with the city on a separate issue since the summer of 2018 to address significant deficiencies found in a sanitary survey conducted by DEQ staff."

Next Steps (Regulatory Deadlines)

By January 31, 2019: enter into ACO for an alternative compliance schedule to significant deficiencies

By March 31, 2019: collect lead and copper sample from the entry point to distribution system

By March 31, 2019: submit a proposal for optimal corrosion control treatment or a corrosion control study.

2018 Violations

The city also accrued a number of violations of Act 399 in the 2018 calendar year [suggesting a lack of ability to operate the water system in compliance with the law and remain protective of public health] See the attached Compliance History timeline.

Comment [KA(2): Is this phrase essential? If not, can it be deleted and let the compliance record tell the story without us extending this opinion?