

SAN BERNARDINO MUNICIPAL WATER DEPARTMENT

POLICIES & PROCEDURES MANUAL

POLICY 100.010 - NEWMARK GROUNDWATER SUPERFUND SITE INSTITUTIONALCONTROLS IMPLEMENTATION POLICY

Date: July 2021
Revision No: 1
Supersedes: September 1, 2009
First Adopted: September 6, 2011

POLICY:

The purpose of this policy is to provide guidance and implement the provisions of San Bernardino Municipal Code Chapter 13.25.

San Bernardino Municipal Code Chapter (SBMC) 13.25 was implemented to protect and manage the United States Environmental Protection Agency's (USEPA's) Interim Remedy, set forth in the Records of Decision for the Newmark Operable Unit and the Muscoy Operable Unit. Specifically, the City intends to regulate artificial recharge within and extraction of water from the Permit or Management Zone so as to prevent interference with, interruption of, or degradation of the performance of the Interim Remedy.

The Department will implement the provisions of San Bernardino Municipal Code Chapter 13.25 within the Permit or Management Zone, as defined by the map incorporated into Chapter 13.25.

1. APPLICATIONS FOR PERMITS

As used in this policy, "Applicant" shall have the same meaning as that term is defined in SBMC 13.25.020.

A. Applications for Extraction Permits

Applications to construct new extraction wells are to be filed by the landowner or project proponent and shall be signed by the applicant or by a responsible corporate officer.

Applications for extraction wells within the Permit or Management Zone shall provide the following information, at a minimum:

1. A plot plan showing the using survey coordinates location for the well, and legal description,

with respect to the following items within a radius of fivehundred feet from the well:

- a. Property lines, including ownership;
 - b. Sewage or waste disposal systems or works forcarrying or containing sewage or waste;
 - c. intermittent or perennial, natural or artificial bodies of water or watercourses;
 - d. approximate drainage pattern of the property;
 - e. Other wells, including abandoned wells;
 - f. Access road(s) to well site;
2. Additional information as follows:
- a. Total depth proposed;
 - b. Elevations of perforations, to the extent they areprojected at the time of application;
 - c. Total capacity;
 - d. Projected annual production;
 - e. Methodology for drilling;

For purposes of the review process, SBMWD will assume that the wellwill be pumped at maximum capacity 24 hours a day 7 days a week, unless the project proponent demonstrates that pumping will be at a lesser rate and annual volume and gives enforceable assurances ofthose limitations.

The permit term shall be thirty (30) years, with a presumption that renewal will occur provided that SBMWD has determined that a newextraction well will enhance the Interim Remedy.

B. Applications for Spreading Permits

Applications for spreading water for recharge are to be filed bythe entity that will be managing the spreading activities.

Applications for spreading water within the Permit or Management Zone shall provide the following information, at a minimum:

1. The location(s) where the spreading will occur;
2. The total volume that is being spread over thepermit period;

3. Annual schedule for spreading activities during the permit period including projected annual volumes for each spreading area;
4. Estimated quarterly volumes for the permit period; and
5. Flow rate, if capable of estimation.

The permit term shall be five (5) years.

C. Application for Rehabilitation of Wells Increasing Capacity

Applications for rehabilitation of wells, including the replacement of equipment, are required if the rehabilitation increases the rated capacity of the well as equipped above the rated capacity as it existed on January 1, 2005.

Applications for rehabilitation of wells within the Permit or Management Zone shall provide the following information at a minimum:

1. Total depth;
2. Depth and type of casing used;
3. Depth of perforations;
4. Well log;
5. Methodology for rehabilitation;
6. Projected total capacity;
7. Projected annual production
8. Planned changes to well construction, including modifications to the depth of the well, distribution of well perforations, changes in screen and casing materials;

The permit term shall be thirty (30) years, with a presumption that renewal will occur provided that SBMWD has determined that a rehabilitated extraction well will not adversely affect the Interim Remedy.

2. REVIEW PROCESS

Fees for review of applications shall be established by resolution of the water Board. In addition to fees, applicants will be required to pay the direct costs related to using the Newmark Groundwater Flow Model to assess the proposed project and to interface with USEPA and DTSC during their technical review of the application.

SBMWD will review applications on presentation to SBMWD to determine if the applicant has signed the application and affirmed that all representations made in the application are accurate. If the application is not signed and affirmed, the application shall be deemed incomplete until signed and affirmed. SBMWD will require payment of an application fee to cover charges incurred as a result of the review of the application and supporting documents.

SBMWD will review applications to determine if the applicant has provided all necessary information. The review to determine if there is additional information required will be completed within ten (10) business days. The applicant will be provided with written notice that the application is incomplete.

When SBMWD has confirmed that the application is complete, it will provide written notice to the applicant in the form of a Cost Letter and a signed and confirmed application. The Cost Letter will be issued to the applicant outlining further fees to be paid including the fee for running the Newmark Groundwater Flow Model to process the application to completion. The applicant shall then submit a copy of the completed application to USEPA and DTSC at addresses to be provided by SBMWD. SBMWD will begin review of the application after notice to the applicant that the application is complete and after receipt of payment in full of all fees listed in the Cost Letter. SBMWD will then make a determination whether the proposed project will interfere with, interrupt, or degrade the performance of the Interim Remedy using the "Newmark Groundwater Flow Model," as amended, modified and updated.

This determination will be made in writing as a "Proposed Decision." The Proposed Decision shall be provided to the applicant no later than **150 calendar days** after the date of the notice to applicant that the application is complete and all applicable fees at that time are paid in full. If SBMWD determines that the proposed project may reasonably be expected to interfere with, interrupt, or degrade the performance of the Interim Remedy,

SBMWD will issue a Proposed Decision rejecting the application. If the Proposed Decision recommends issuance of a permit, it may include terms and conditions for the approval, including, but not limited to, mitigation or remedial activities or monitoring. If the permit is rejected, the applicant may propose modifications to the proposed project, including changes in well location, well construction well capacity and annual production volumes. Proposed modifications will undergo technical review including usage of the Newmark Groundwater Flow Model and will require additional fees and direct costs.

Simultaneous with providing the Proposed Decision to the applicant, SBMWD will provide the Proposed Decision to the USEPA, the State of California Department of Toxic Substances Control (DTSC), along with all supporting documentation on which the Proposed Decision is based. USEPA and DTSC shall then have thirty (30) calendar days to comment on or object in writing on the Proposed Decision.

If USEPA or DTSC does not comment or object in writing within thirty (30) days after submission by SBMWD of the Proposed Decision and the supporting documentation, SBMWD will issue a permit to the applicant, if that is the recommendation.

If either USEPA or DTSC objects to a permit application, certification, Proposed Decision or to the modeling work or supporting documentation on which a Proposed Decision is based, USEPA, DTSC and SBMWD, as the case may be, shall consult for a period not to exceed (sixty) 60 days, in order to resolve any material differences between them or among them. SBMWD shall not issue a permit over the unresolved objections of either USEPA or DTSC.

If the applicant disputes a decision denying a permit, imposing conditions on a permit, it may avail itself of the procedures outlined in SBMC Section 13.25.060.

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3. PERMIT ISSUANCE

The permit term for new extraction wells and for rehabilitated wells shall be for thirty (30) years. The permit term for spreading activities shall be for five (5) years.

SBMWD may specify in the permit that a new extraction well or rehabilitated well enhances the Interim Remedy. If so, SBMWD will presume that renewal of the permit should occur.

The permit shall be conditioned on the grant to USEPA, DTSC and SBMWD, their contractors and representatives, of access to the wells or spreading basins, as the case may be, and related areas, for the purpose of verifying compliance with the permit.

The permit shall be conditioned on USEPA's, DTSC's and SBMWD's right to inspect and copy documents and records regarding the applicant's permitted operations, upon reasonable notice.

The permit may be modified, suspended or revoked if USEPA, DTSC or SBMWD determine during the permit period that the permitted activities interfere with, compromise, endanger or detrimentally affect the Interim Remedy.

SBMWD may require a bond or letter of credit, in a form satisfactory to the General Manager of the Water Department, a form of which is attached to this procedure, in a sum reasonably calculated to assure compliance with any condition in the permit.

The applicant shall provide to SBMWD a certificate of insurance naming SBMWD, the City of San Bernardino, USEPA and DTSC as additional insureds for general liability in an amount of not less than Twenty-Five Million Dollars (\$25,000,000.00), or such lesser amount as the General Manager, in his or her sole discretion, may determine is adequate based on evidence provided by the applicant or other publicly available information that such insurance is not commercially available. For self-insured entities, sufficient proof of liability insurance shall be required.

SBMWD reserves the right to revoke the permit on discovery of any material misrepresentation or failure to disclose material facts in the application for the permit.

A condition of each permit shall be the requirement that applicant provide at least quarterly reports to SBMWD, written information as specified in the permit.

A condition of each permit shall be the requirement that the applicant maintain all records related to the permitted activities for a period of not less than five (5) years from the date of expiration of the permit.

4. PERMIT MODIFICATION, SUSPENSION OR REVOCAION

If SBMWD determines that there is an immediate and serious threat posed by the applicant's activities to the Interim Remedy and its performance in accordance with the SOW, Consent Decree or RODs, SBMWD may order the applicant to cease or reduce its permitted operations and show cause why the permit should not be modified, suspended or revoked.

In addition, the permit may be revoked upon the determination of the SBMWD General Manager of any of the following:

- A. Misrepresentation or failure to disclose material facts in the application;
- B. Falsifying or making misrepresentations on any reports submitted to SBMWD, whether as part of the application, as a condition of the permit, or as submitted voluntarily by the applicant;
- C. Operating the permitted well or spreading activity beyond the limits set in the approved permit application.
- D. Tampering with monitoring equipment subject to the permit;
- E. Refusing or obstructing SBMWD or its designee, or USEPA or DTSC, or their designees timely access to the permitted sites and operations, and records of those operations;
- F. Failure to pay fines;
- G. Failure to meet compliance schedules;
- H. Failure to file timely reports or to respond to requests for reports, sampling data, monitoring activities or cooperation with the Interim Remedy for the Newmark Superfund Site;
- I. A material change of conditions adversely affecting remedial performance or public health or safety.

In the event the activities of the applicant, or applicant's agents, contractors, licensees, lessees or employees are deemed by SBMWD to interfere with, compromise, endanger or detrimentally affect the Interim Remedy, or otherwise threaten public health, safety or the environment, SBMWD's General Manager may revoke or suspend the permit and compel applicant to cease all activities covered by the permit until either a hearing is held before the Water Board, pursuant to Chapter 13.25, for applicant to demonstrate why the permit should not be modified or

revoked, or applicant and the General Manager reach a mutually acceptable resolution.

5 . ENFORCEMENT

SBMWD may issue an Administrative Order to applicants in the event that SBMWD determines the applicant is in violation of the permit or any condition therein. Generally, an Administrative Order may be issued for violations that do not pose an immediate and serious threat to the Interim Remedy. However, continuing violations after issuance of an Administrative Order may give rise to cause for a Cease and Desist Order, or for reference for criminal prosecution.

SBMWD may, at its discretion, issue a Cease and Desist Order if a determination is made that the violation poses an immediate and serious threat to the Interim Remedy and that it is likely the applicant will continue with such violation.

An Administrative Order may be appealed to the General Manager. An Administrative Order may contain an assessment of civil penalties up to \$1,000 per day, not to exceed, in the aggregate, \$25,000. If Applicant disputes the Administrative Order, then it shall timely request a hearing before the General Manager within fifteen (15) days of service of the Administrative Order. This proceeding shall be informal, but shall provide the alleged violator an effective opportunity to dispute the material facts. The General Manager's decision following the appeal of the Administrative Order shall be final.

A Cease and Desist Order may be appealed to the Water Board. A Cease and Desist Order may contain an assessment of damages and civil penalties up to \$10,000 per violation per day and actual damages. If Applicant disputes the Cease and Desist Order, then it shall timely request a hearing before the Water Board, pursuant to SBMC Section 13.25.060. The Water Board may, at its discretion, appoint a neutral hearing officer in the event of material disputed facts. Any hearing will be conducted on the record and shall provide for the right of cross-examination and shall be conducted in accordance with the rules of evidence, to the extent practical for an administrative hearing. Nonetheless, probative evidence will not be excluded on the basis of a hearsay objection.

Failure to comply with a Cease and Desist Order is a separate violation that may subject applicant to additional fines, penalties

and referral to the City Attorney's office for criminal prosecution.

Policy Review

Board Approved:

9/1/2009

Minor changes (HR) GM Approved:

7/2021