

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM OF LAW
MS 59**

(619) 533-5800

DATE: April 15, 2008

TO: Alejandra Gavaldon, Policy Advisor, Mayor's Office

FROM: City Attorney

SUBJECT: Fluoridation Funding Offer from First 5 Commission – **Supplemental Memo**

INTRODUCTION

This Memorandum is a supplement to our Memorandum dated March 27, 2008 concerning the Fluoridation Funding Offer from the First 5 Commission. This office recently received updated information from Water Department [Department] staff which reduces the chance that the City will violate certain permitting requirements, as will be explained below.

LEGAL ANALYSIS

I. Additional Issues and Potential Legal Impacts Arising From Fluoridation.

A. NPDES.

As discussed our previous Memorandum, the City must continue to meet its NPDES permit requirements after fluoridation is added and there is no legal exception for the addition of fluoride mandated by the Act. However, according to staff, the City can continue to comply with its NPDES permitting requirements for ocean discharge and reclaimed water at its Point Loma and South Bay Plants following fluoridation.

Department and MWWD staff conducted a summary evaluation of the potential impacts on the wastewater treatment and disposal operations of MWWD by increased levels of fluoride in the wastewater that may result from fluoridation of the domestic water supply. As to Facility operations, staff concludes there will be no impact (*i.e.*, no interference or inhibition to operations at its facilities).

At the Point Loma, North City and South Bay Plants, fluoridation will not impact NPDES permit compliance for ocean discharge, as fluoride effluent is not regulated at those locations. Nor is fluoride regulated by sludge disposal regulations.

However, the Department will need to regularly monitor fluoride levels to ensure compliance with the Waste Discharge Requirements [WDR] for the distribution of reclaimed water from the South Bay Water Reclamation Plant. The regulations for reclaimed water at that facility contain a 30-day average concentration limit of 1.0 mg/l for fluoride. The City's domestic water currently averages about 0.25 mg/l of fluoride and the Department proposes to augment that amount in order to achieve a nominal concentration of about 0.8 mg/l in the fluoridated product.

According to Department staff, approximately 50% of the inflow to the South Bay Plant is coming from areas served by either the Otay or Helix Water Departments, which have provided fluoridated water since December 2007, with the remainder coming from Sweetwater, Cal-American and the City. The concentration of fluoride is volume weighted (*i.e.* 50% of flow at 0.8 and 50% of flow at 0.3 would result in a concentration at the South Bay Plant of 0.55 mg/l), and is not strictly additive. When the City begins to fluoridate, the majority of the area providing inflow to the South Bay Plant will be receiving optimally fluoridated water. When this happens, the fluoride concentrations at the South Bay Plant will increase to almost 0.8 mg/l. Therefore, the concentration should never exceed 0.8 mg/l unless there is a fluoride overfeed in one of the water supplies or there is an industrial discharger who is adding fluoride into the system. In either event, the concentration of fluoride would be flow weighted.

CONCLUSION

The processes at the South Bay Plant do not significantly remove fluoride and the reclaimed water currently runs between 0.4 to 0.6 mg/l fluoride. As the Act makes no mention of covering costs for expenses related to complying with NPDES or WDR permits (nor is there case law or agency opinion on the subject), the City would need to either (1) obtain a waiver of the fluoride discharge limits for the South Bay Plant, or (2) accept responsibility for costs associated with preventing a potential violation, such as the flow weighting method described by Department staff.

MICHAEL J. AGUIRRE, City Attorney

By

Raymond C. Palmucci
Deputy City Attorney