

# **EXHIBIT 8**

JK

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OUR FILE NO. 03024-005

July 21, 2010

**SENT VIA U.S. MAIL/FACSIMILE: 445-5910**

Jo Anne Kipps, Senior Engineer  
California Regional Water Quality Control Board  
Central Valley Region  
1685 E Street  
Fresno, CA 93706

RECEIVED

JUL 26 2010

RWQCB-OVR  
FRESNO, CALIF.

**Re: Notice of Violation and Draft Record of Violations for Assessment of Mandatory Minimum Penalties, Malaga County Water District Wastewater Treatment Facility (NPDES CA0084239, RM 374009), Fresno County**

Dear Ms. Kipps:

Your purported Notice of Violation and "Draft" Record of Violations for Assessment of Mandatory Minimum Penalties against Malaga County Water District has been referred to me for a response. Your notice states that the Assistant Executive Officer of the Central Valley Regional Water Quality Control Board proposes to issue a complaint pursuant to California Water Code §13385 for violation of Waste Discharge Requirements Order R5-2008-0033. You indicate that the complaint proposes an administrative civil liability of \$60,000 in mandatory minimum penalties under the aforementioned Water Code provision for effluent limitation violations occurring during the period between March 14, 2008, and January 31, 2010. You demand a review of the "accuracy" of an enclosed attachment which is a "draft" purporting to list the violations for those dates. You demand comments or corrections by July 22, 2010, and indicate in the letter that regardless of whatever comments Malaga may make, you nevertheless "plan to transmit the complaint for public review after that date."

Your proposal to issue a complaint based on these purported violations is baseless. The Attachment A to your letter is completely inaccurate. It is clear that you are not in any sense undertaking to act "pursuant to California Water Code §13385" as you claim, because the purported violations you list are not appropriately categorized or did not occur. Please be advised that should you issue a complaint based on these purported violations, that Malaga will initiate a lawsuit to enjoin your agency from threatening and/or initiating

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these baseless complaints that are patently not issued in accordance with mandatory requirements of Water Code §13385.

The attachment is inaccurate in the following respects: The first three pH violations listed (April 18, 19 and 20, 2008) are improperly characterized as "chronic." A violation is chronic only if the discharger violates the effluent limitations four or more times in any six consecutive months. Your attachment discloses no such chronic violation.

With respect to the purported violations for May 28, June 10 and June 29, 2008, our records indicate that the effluent BOD concentrations for those dates were within applicable limitations and do not support your contrary conclusions. We have no data, and we believe you have none either, that shows any such violation.

Our records show that the total coliform limit and bromoform limits on October 17, 2008, and November 18, 2008, were exceeded, but there is absolutely no basis for characterizing these violations as "chronic" for the reasons noted above. The settleable solids violations as set forth in the attachment for August 28 and August 30, 2009, do conform to what is shown in our records. However, settleable solids are not an item identified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, so that there is no basis whatsoever for characterizing these violations as "serious."

With respect to the three electroconductivity results for August 12, 13, and 14, 2009, you were previously advised in the annual report that the test results were apparently erroneous as demonstrated by extreme differences of results on these three days from all other days during the month of August. These "violations" did not occur. There was, quite simply, an error in testing. Finally, effluent turbidity on December 31, 2009, did exceed the applicable limit, but there is no basis for characterizing this violation as "chronic" for the reasons noted above. Effluent pH on December 7, 2009, exceeded the applicable limit, but again, there is no basis for characterizing or classifying this violation as "chronic" and this is clearly established by the fact that the previous pH violation on June 5, 2009, was deemed "exempt."

As noted, we view the threatened complaint and the imposition of penalties as utterly baseless and in direct contravention of the applicable law which regulates your agency's ability to act to administratively assess penalties or fine violations. Issuance of a complaint on the basis of these purported violations will be met with a filing in the Superior Court for a writ of mandate aimed at requiring your agency to conform with its mandatory obligations under the law with respect to such administrative proceedings. It is obvious that in order to make the determinations purportedly made by the attachment which includes the "record of violations," that you did not have this matter reviewed by an attorney who could have very easily told you that your attempts to mis-characterize violations, or to claim that violations occurred when, in fact, they did not, is directly contrary to the provisions of the

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very statute you are attempting to proceed under. We would suggest that your agency be a little more careful in making determinations that result in the issuance of this type of threat. You are not immune from liability for taking these types of actions which are directly contrary to the provisions of the statute. It is obvious that the Central Valley Region of the California Regional Water Quality Control Board has, in the past, and continues to target the Malaga County Water District without basis or reason, and apparently for the purpose of forcing it to discontinue operation of its wastewater treatment facilities in favor of a consolidation of those treatment activities with the City of Fresno. That fact is made clear by the rather impertinent letter of July 7, 2010, from the Executive Officer, Pamela C. Creedon which was very inappropriately copied to officials at the City of Fresno. That letter, also, will be responded to in due course. The response is not going to be accompanied by any payment because none is due. Interestingly, that letter states that the Notice of Violation you issued on the following day, July 8, 2010, is based upon a review of the District's self-monitoring reports. Our review of those same reports discloses that your determinations of violations and any basis for imposing any penalty, mandatory or otherwise, is simply non-existent.

Very truly yours,

**COSTANZO & ASSOCIATES**

Neal E. Costanzo

NEC/tm

cc: Michael Taylor  
Russ Holcomb  
Pamela Creedon