

## **ATTACHMENT D – STANDARD PROVISIONS**

### **I. STANDARD PROVISIONS – PERMIT COMPLIANCE**

#### **A. Duty to Comply**

1. The Discharger must comply with all of the terms, requirements, and conditions of this Order. Any noncompliance constitutes a violation of the Clean Water Act and the California Water Code and is grounds for enforcement action; permit termination, revocation and reissuance, or modification; denial of a permit renewal application; or a combination thereof. (40 C.F.R. § 122.41(a); Wat. Code, §§ 13261, 13263, 13265, 13268, 13000, 13001, 13304, 13350, 13385.)
2. The Discharger shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if this Order has not yet been modified to incorporate the requirement. (40 C.F.R. § 122.41(a)(1).)

#### **B. Need to Halt or Reduce Activity Not a Defense**

It shall not be a defense for a Discharger in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Order. (40 C.F.R. § 122.41(c).)

#### **C. Duty to Mitigate**

The Discharger shall take all reasonable steps to minimize or prevent any discharge in violation of this Order that has a reasonable likelihood of adversely affecting human health or the environment. (40 C.F.R. § 122.41(d).)

#### **D. Proper Operation and Maintenance**

The Discharger shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Discharger to achieve compliance with the conditions of this Order. Proper operation and maintenance also include adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems that are installed by a Discharger only when necessary to achieve compliance with the conditions of this Order. (40 C.F.R. § 122.41(e).)

#### **E. Property Rights**

1. This Order does not convey any property rights of any sort or any exclusive privileges. (40 C.F.R. § 122.41(g).)
2. The issuance of this Order does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations. (40 C.F.R. § 122.5(c).)

## **F. Inspection and Entry**

The Discharger shall allow the Colorado River Basin Water Board, State Water Board, USEPA, and/or their authorized representatives (including an authorized contractor acting as their representative), upon the presentation of credentials and other documents, as may be required by law, to (33 U.S.C. § 1318(a)(4)(B); 40 C.F.R. § 122.41(i); Wat. Code, §§ 13267, 13383):

1. Enter upon the Discharger's premises where a regulated facility or activity is located or conducted, or where records are kept under the conditions of this Order (33 U.S.C. § 1318(a)(4)(B)(i); 40 C.F.R. § 122.41(i)(1); Wat. Code, §§ 13267, 13383);
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Order (33 U.S.C. § 1318(a)(4)(B)(ii); 40 C.F.R. § 122.41(i)(2); Wat. Code, §§ 13267, 13383);
3. Inspect and photograph, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order (33 U.S.C. § 1318(a)(4)(B)(ii); 40 C.F.R. § 122.41(i)(3); Wat. Code, §§ 13267, 13383); and
4. Sample or monitor, at reasonable times, for the purposes of assuring Order compliance or as otherwise authorized by the Clean Water Act or the Water Code, any substances or parameters at any location. (33 U.S.C. § 1318(a)(4)(B); 40 C.F.R. § 122.41(i)(4); Wat. Code, §§ 13267, 13383.)

## **G. Bypass**

1. Definitions
  - a. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. (40 C.F.R. § 122.41(m)(1)(i).)
  - b. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities, which causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production. (40 C.F.R. § 122.41(m)(1)(ii).)
2. Bypass not exceeding limitations. The Discharger may allow any bypass to occur which does not cause exceedances of effluent limitations, but only if it is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions listed in Standard Provisions – Permit Compliance I.G.3, I.G.4, and I.G.5 below. (40 C.F.R. § 122.41(m)(2).)
3. Prohibition of bypass. Bypass is prohibited, and the Colorado River Basin Water Board may take enforcement action against a Discharger for bypass, unless (40 C.F.R. § 122.41(m)(4)(i)):
  - a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage (40 C.F.R. § 122.41(m)(4)(i)(A));

- b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance (40 C.F.R. § 122.41(m)(4)(i)(B)); and
  - c. The Discharger submitted notice to the Colorado River Basin Water Board as required under Standard Provisions – Permit Compliance I.G.5 below. (40 C.F.R. §122.41(m)(4)(i)(C).)
  - d. The Colorado River Basin Water Board may approve an anticipated bypass, after considering its adverse effects, if the Colorado River Basin Water Board determines that it will meet the three conditions listed in Standard Provisions – Permit Compliance I.G.3 above. (40 C.F.R. § 122.41(m)(4)(ii).)
4. Notice
- a. Anticipated bypass. If the Discharger knows in advance of the need for a bypass, it shall submit a notice, if possible at least 10 days before the date of the bypass. As of December 21, 2020 all notices must be submitted electronically by the Discharger to the initial recipient, as defined in 40 C.F.R. section 127.2(b), in compliance with this section and 40 C.F.R. part 3 (including, in all cases, subpart D of part 3), section 122.22, and 40 C.F.R. part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, the Discharger may be required to report electronically if specified by a particular permit or if required to do so by state law. (40 C.F.R. § 122.41(m)(3)(i).)
  - b. Unanticipated bypass. The Discharger shall submit notice of an unanticipated bypass as required in Standard Provisions - Reporting V.E below (24-hour notice). As of December 21, 2020 all notices must be submitted electronically by the Discharger to the initial recipient, as defined in 40 C.F.R. section 127.2(b), in compliance with this Section and 40 C.F.R. part 3 (including, in all cases, subpart D of part 3), section 122.22, and 40 C.F.R. part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, the Discharger may be required to report electronically if specified by a particular permit or if required to do so by state law. (40 C.F.R. § 122.41(m)(3)(ii).)

#### **H. Upset**

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the Discharger. An upset does not include noncompliance to the extent caused by operational error,

improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. (40 C.F.R. § 122.41(n)(1).)

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Standard Provisions – Permit Compliance I.H.2 below are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review. (40 C.F.R. § 122.41(n)(2).)
2. Conditions necessary for a demonstration of upset. A Discharger who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that (40 C.F.R. § 122.41(n)(3)):
  - a. An upset occurred and that the Discharger can identify the cause(s) of the upset (40 C.F.R. § 122.41(n)(3)(i));
  - b. The permitted facility was, at the time, being properly operated (40 C.F.R. § 122.41(n)(3)(ii));
  - c. The Discharger submitted notice of the upset as required in Standard Provisions – Reporting V.E.2.b below (24-hour notice) (40 C.F.R. § 122.41(n)(3)(iii)); and
  - d. The Discharger complied with any remedial measures required under Standard Provisions – Permit Compliance I.C above. (40 C.F.R. § 122.41(n)(3)(iv).)
3. Burden of proof. In any enforcement proceeding, the Discharger seeking to establish the occurrence of an upset has the burden of proof. (40 C.F.R. § 122.41(n)(4).)

## **II. STANDARD PROVISIONS – PERMIT ACTION**

### **A. General**

This Order may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Discharger for modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any Order condition. (40 C.F.R. § 122.41(f).)

### **B. Duty to Reapply**

If the Discharger wishes to continue an activity regulated by this Order after the expiration date of this Order, the Discharger must apply for and obtain a new permit. (40 C.F.R. § 122.41(b).)

### **C. Transfers**

This Order is not transferable to any person except after notice to the Colorado River Basin Water Board. The Colorado River Basin Water Board may require

modification or revocation and reissuance of the Order to change the name of the Discharger and incorporate such other requirements as may be necessary under the Clean Water Act and the Water Code. (40 C.F.R. § §122.41(l)(3); 122.61.)

### **III. STANDARD PROVISIONS – MONITORING**

- A.** Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. (40 C.F.R. § 122.41(j)(1).)
- B.** Monitoring must be conducted according to test procedures approved under 40 C.F.R. part 136 for the analyses of pollutants unless another method is required under 40 C.F.R. chapter 1, subchapter N. Monitoring must be conducted according to sufficiently sensitive test methods approved under 40 C.F.R. part 136 for the analysis of pollutants or pollutant parameters or as required under 40 C.F.R. chapter 1, subchapter N or O. For the purposes of this paragraph, a method is sufficiently sensitive when:
  - 1. The method minimum level (ML) is at or below the level of the most stringent effluent limitation established in the permit for the measured pollutant or pollutant parameter, and either the method ML is at or below the level of the most stringent applicable water quality criterion for the measured pollutant or pollutant parameter or the method ML is above the applicable water quality criterion but the amount of the pollutant or pollutant parameter in the facility's discharge is high enough that the method detects and quantifies the level of the pollutant or pollutant parameter in the discharge; or
  - 2. The method has the lowest ML of the analytical methods approved under 40 C.F.R. part 136 or required under 40 C.F.R. chapter 1, subchapter N for the measured pollutant or pollutant parameter.

In the case of pollutants or pollutant parameters for which there are no approved methods under 40 C.F.R. part 136 or otherwise required under 40 C.F.R. chapter 1, subchapters N or O, monitoring must be conducted according to a test procedure specified in this Order for such pollutants or pollutant parameters. (40 C.F.R. §§ 122.21(e)(3), 122.41(j)(4), 122.44(i)(1)(iv).)

### **IV. STANDARD PROVISIONS – RECORDS**

- A.** The Discharger shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this Order, and records of all data used to complete the application for this Order, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Colorado River Basin Water Board Executive Officer at any time. (40 C.F.R. § 122.41(j)(2).)
- B.** Records of monitoring information shall include:
  - 1. The date, exact place, and time of sampling or measurements (40 C.F.R. § 122.41(j)(3)(i));

2. The individual(s) who performed the sampling or measurements (40 C.F.R. § 122.41(j)(3)(ii));
  3. The date(s) analyses were performed (40 C.F.R. § 122.41(j)(3)(iii));
  4. The individual(s) who performed the analyses (40 C.F.R. § 122.41(j)(3)(iv));
  5. The analytical techniques or methods used (40 C.F.R. § 122.41(j)(3)(v)); and
  6. The results of such analyses. (40 C.F.R. § 122.41(j)(3)(vi).)
- C.** Claims of confidentiality for the following information will be denied (40 C.F.R. § 122.7(b)):
1. The name and address of any permit applicant or Discharger (40 C.F.R. § 122.7(b)(1)); and
  2. Permit applications and attachments, permits and effluent data. (40 C.F.R. § 122.7(b)(2).)

## **V. STANDARD PROVISIONS – REPORTING**

### **A. Duty to Provide Information**

The Discharger shall furnish to the Colorado River Basin Water Board, State Water Board, or USEPA within a reasonable time, any information which the Colorado River Basin Water Board, State Water Board, or USEPA may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Order or to determine compliance with this Order. Upon request, the Discharger shall also furnish to the Colorado River Basin Water Board, State Water Board, or USEPA copies of records required to be kept by this Order. (40 C.F.R. § 122.41(h); Wat. Code, §§ 13267, 13383.)

### **B. Signatory and Certification Requirements**

1. All applications, reports, or information submitted to the Colorado River Basin Water Board, State Water Board, and/or USEPA shall be signed and certified in accordance with Standard Provisions – Reporting V.B.2, V.B.3, V.B.4, and V.B.5 below. (40 C.F.R. § 122.41(k).)
2. All permit applications shall be signed by either a principal executive officer or ranking elected official. For purposes of this provision, a principal executive officer of a federal agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of USEPA). (40 C.F.R. § 122.22(a)(3).)
3. All reports required by this Order and other information requested by the Colorado River Basin Water Board, State Water Board, or USEPA shall be signed by a person described in Standard Provisions – Reporting V.B.2 above, or by a duly authorized representative of that person. A person is a duly authorized representative only if:
  - a. The authorization is made in writing by a person described in Standard Provisions – Reporting V.B.2 above (40 C.F.R. § 122.22(b)(1));

- b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) (40 C.F.R. § 122.22(b)(2)); and
- c. The written authorization is submitted to the Colorado River Basin Water Board and State Water Board. (40 C.F.R. § 122.22(b)(3).)
4. If an authorization under Standard Provisions – Reporting V.B.3 above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Standard Provisions – Reporting V.B.3 above must be submitted to the Colorado River Basin Water Board and State Water Board prior to or together with any reports, information, or applications, to be signed by an authorized representative. (40 C.F.R. § 122.22(c).)
5. Any person signing a document under Standard Provisions – Reporting V.B.2 or V.B.3 above shall make the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.” (40 C.F.R. § 122.22(d).)

6. If documents described in Standard Provisions – V.B.1, V.B.2, or V.B.3 are submitted electronically by or on behalf of the NPDES-regulated facility, any person providing the electronic signature for such documents shall meet all relevant requirements of Standard Provisions – Reporting V.B, and shall ensure that all of the relevant requirements of 40 C.F.R. part 3 (including, in all cases, subpart D of part 3) (Cross-Media Electronic Reporting) and 40 C.F.R. part 127 (NPDES Electronic Reporting Requirements) are met for that submission. (40 C.F.R § 122.22(e).)

### **C. Monitoring Reports**

1. Monitoring results shall be reported at the intervals specified in the Monitoring and Reporting Program (Attachment E) in this Order. (40 C.F.R. § 122.41(l)(4).)
2. Monitoring results must be reported on a Discharge Monitoring Report (DMR) form or forms provided or specified by the Colorado River Basin Water Board

- or State Water Board. As of December 21, 2016 all reports and forms must be submitted electronically by the Discharger to the initial recipient, as defined in Standard Provisions – Reporting V.J, in compliance with this section and 40 C.F.R. part 3 (including, in all cases, subpart D of part 3), section 122.22, and 40 C.F.R. part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, the Discharger may be required to report electronically if specified by the permit or if required to do so by state law. (40 C.F.R. § 122.41(l)(4)(i).)
3. If the Discharger monitors any pollutant more frequently than required by this Order using test procedures approved under 40 C.F.R. part 136, or another method required for an industry-specific waste stream under 40 C.F.R. subchapter N, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the Colorado River Basin Water Board or State Water Board. (40 C.F.R. § 122.41(l)(4)(ii).)
  4. Calculations for all limitations, which require averaging of measurements, shall utilize an arithmetic mean unless otherwise specified in this Order. (40 C.F.R. § 122.41(l)(4)(iii).)

#### **D. Compliance Schedules**

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this Order, shall be submitted no later than 14 days following each schedule date. (40 C.F.R. § 122.41(l)(5).)

#### **E. Twenty-Four Hour Reporting**

1. The Discharger shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the Discharger becomes aware of the circumstances. A report shall also be provided within five (5) days of the time the Discharger becomes aware of the circumstances. The report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. (40 C.F.R. § 122.41 (l)(6)(i).)
2. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described above (with the exception of time of discovery) as well as the type of event (combined sewer overflows, sanitary sewer overflows, or bypass events), type of sewer overflow structure (e.g., manhole, combined sewer overflow outfall), discharge volumes untreated by the treatment works treating domestic sewage, types of human health and environmental impacts of the sewer overflow event, and whether the noncompliance was related to wet weather. As of December 21, 2020 all reports related to combined sewer



- overflows, sanitary sewer overflows, or bypass events must be submitted electronically by the Discharger to the initial recipient, as defined in Standard Provisions – Reporting V.J, in compliance with this Section and 40 C.F.R. part 3 (including in all cases, subpart D of part 3), section 122.22, and 40 C.F.R. part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, the Discharger may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this Section by a particular permit or if required to do so by state law.
3. The following shall be included as information that must be reported within 24 hours under this paragraph (40 C.F.R. § 122.41(l)(6)(ii):
    - a. Any unanticipated bypass that exceeds any effluent limitation in this Order. (40 C.F.R. § 122.41(l)(6)(ii)(A).)
    - b. Any upset that exceeds any effluent limitation in this Order. (40 C.F.R. § 122.41(l)(6)(ii)(B).)
  4. The Colorado River Basin Water Board may also require the Discharger to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section. (40 C.F.R. § 122.41(l)(6)(i).)

#### **F. Planned Changes**

The Discharger shall give notice to the Colorado River Basin Water Board as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required under this provision only when (40 C.F.R. § 122.41(l)(1)):

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in section 122.29(b) (40 C.F.R. § 122.41(l)(1)(i)); or
2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this Order. (40 C.F.R. § 122.41(l)(1)(ii).)
3. The alteration or addition results in a significant change in the Discharger's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan. (40 C.F.R. § 122.41(l)(1)(iii).)

#### **G. Anticipated Noncompliance**

The Discharger shall give advance notice to the Colorado River Basin Water Board or State Water Board of any planned changes in the permitted facility or activity that may result in noncompliance with this Order's requirements. (40 C.F.R. § 122.41(l)(2).)

#### **H. Other Noncompliance**

The Discharger shall report all instances of noncompliance not reported under Standard Provisions – Reporting V.C, V.D, and V.E above at the time monitoring reports are submitted. The reports shall contain the information listed in Standard Provision – Reporting. Section V.E above. (40 C.F.R. § 122.41(l)(7).)

#### **I. Other Information**

When the Discharger becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Colorado River Basin Water Board, State Water Board, or USEPA, the Discharger shall promptly submit such facts or information. (40 C.F.R. § 122.41(l)(8).)

#### **J. Identification of the Initial Recipient for NPDES Electronic Reporting Data**

The owner, operator, or the duly authorized representative of an NPDES-regulated entity is required to electronically submit the required NPDES information (as specified in appendix A to 40 C.F.R. part 127) to the appropriate initial recipient, as determined by USEPA, and as defined in 40 C.F.R. section 127.2(b). USEPA will identify and publish the list of initial recipients on its website and in the Federal Register, by state and by NPDES data group [see 40 C.F.R. section 127.2(c)]. USEPA will update and maintain this listing. (40 C.F.R. § 122.41(l)(9).)

### **VI. STANDARD PROVISIONS – ENFORCEMENT**

- A.** The Colorado River Basin Water Board is authorized to enforce the terms of this permit under several provisions of the Water Code, including, but not limited to, sections 13268, 13385, 13386, and 13387.

### **VII. ADDITIONAL PROVISIONS – NOTIFICATION LEVELS**

#### **A. Publicly-Owned Treatment Works (POTWs)**

All POTWs shall provide adequate notice to the Colorado River Basin Water Board of the following (40 C.F.R. § 122.42(b)):

1. Any new introduction of pollutants into the POTW from an indirect discharger that would be subject to sections 301 or 306 of the CWA if it were directly discharging those pollutants (40 C.F.R. § 122.42(b)(1)); and
2. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of adoption of the Order (40 C.F.R. § 122.42(b)(2));
3. Adequate notice shall include information on the quality and quantity of effluent introduced into the POTW as well as any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW. (40 C.F.R. § 122.42(b)(3).)