

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2016-0512

FOR ADMINISTRATIVE CIVIL LIABILITY IN THE MATTER OF

MALAGA COUNTY WATER DISTRICT  
MALAGA COUNTY WATER DISTRICT WASTEWATER TREATMENT FACILITY  
FRESNO COUNTY

This Complaint is issued to Malaga County Water District (hereafter "Discharger"), pursuant to California Water Code ("Water Code") sections 13350, 13268, and 13385, which authorize the imposition of administrative civil liability, and Water Code section 13323, which authorizes the Assistant Executive Officer to issue this Complaint. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements ("WDRs") Order No. R5-2008-0033 (NPDES No. CA0084239) (the "2008 Permit"), and Cease and Desist Order ("CDO") No. R5-2008-0032 (the "2008 CDO").

**THE ASSISTANT EXECUTIVE OFFICER OF THE CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD (CENTRAL VALLEY WATER BOARD OR BOARD) ALLEGES THE FOLLOWING:**

**BACKGROUND**

1. The Discharger is a county water district organized under Water Code section 30000 *et seq.* The Discharger provides domestic water, irrigation water, wastewater, parks and recreation, and solid waste collection services. The Discharger's powers and purposes are enumerated in Water Code sections 31144.7 through 31144.79 and include, in part, regulating, prohibiting, or controlling the discharge of pollutants, waste, or any other material into the Discharger's facilities by requiring its dischargers to obtain a permit from it prior to any discharge and by prohibiting the discharge of pollutants or other material which does or may cause a nuisance into its facilities without first obtaining a permit.
2. The Discharger owns and operates the Malaga County Water District Wastewater Treatment Facility ("WWTF" or "Facility"), a publicly-owned treatment works ("POTW") which provides sewerage service for the unincorporated community of Malaga and its industrial users. Secondary-treated wastewater is discharged to unlined evaporation percolation disposal ponds, and tertiary-treated wastewater is discharged to the Fresno Irrigation District Central Canal (Central Canal), a water of the United States.
3. The Central Canal is a distributary of the Kings River via the Fresno and Fancher Creek Canals and feeds into other canals and aqueducts to the south and to the west. The Central Canal is hydraulically connected to Fresno Slough which, during periods of heavy rain, drains to the San Joaquin River. Both the Fresno Slough and the San Joaquin River are waters of the United States.
4. The *Water Quality Control Plan for the Tulare Lake Basin, Second Edition*, ("Basin Plan") designates beneficial uses, establishes water quality objectives, contains implementation plans and policies for protecting waters of the basin, and incorporates by reference plans and policies adopted by the State Water Resources Control Board ("State Water Board"). Based on the Basin Plan, the beneficial uses of the Central Canal are municipal and domestic supply, agricultural supply, water contact recreation, and warm freshwater habitat. The beneficial uses of the

underlying groundwater are municipal and domestic supply, agricultural supply, industrial service supply, industrial process supply, water contact recreation, and non-contact water recreation.

5. The Discharger's February 2010 *Water, Sewer, & Solid Waster Rate Study Final Report* found that non-residential sewage comprises approximately 92 percent of the influent to the WWTF.
6. The federal Clean Water Act ("CWA"), section 307(b), and 40 Code of Federal Regulations ("CFR") part 403, require POTWs such as the Discharger to develop an acceptable industrial pretreatment program. A pretreatment program is required to prevent the introduction of pollutants that interfere with treatment plant operations or sludge disposal, and prevent pass through of pollutants that exceed water quality objectives, standards or permit limitations. Pretreatment requirements are imposed pursuant to 40 CFR part 403.
7. On 6 October 2004, as required by CDO No. 5-01-001 and WDRs Order No. 99-100, the Discharger submitted its industrial pretreatment program and a draft ordinance amending its Municipal Code to the Central Valley Water Board. The State Water Board's Office of Chief Counsel deemed the ordinance adequate on 29 December 2005.
8. On 14 March 2008, the Central Valley Water Board issued the 2008 Permit to regulate, in part, the discharge of secondary-treated wastewater from the Facility to evaporation percolation ponds and tertiary-treated wastewater from the Facility to the Central Canal. The 2008 Permit, which approved the Discharger's pretreatment program, took effect upon issuance.
9. On 14 March 2008, the Central Valley Water Board also issued the 2008 CDO, which rescinded CDO 5-01-001 and required the Discharger to cease the discharge of waste in violation, or threatened violation, of the 2008 Permit pursuant to a time schedule that includes interim deadlines to bring the Discharger back into compliance with its 2008 Permit.
10. On 18 February 2010, United States Environmental Protection Agency ("U.S. EPA") contractor Tetra Tech, Inc., on behalf of the Central Valley Water Board, performed a pretreatment compliance inspection ("2010 PCI") of the Facility. The Discharger's representatives were present during the inspection and were verbally informed of non-compliance issues and program deficiencies. A *POTW Pretreatment Compliance Inspection Checklist*, which identified those issues and deficiencies, was provided to the Discharger's staff during the PCI exit interview on 18 February 2010. The Tetra Tech, Inc. inspector discussed the non-compliance issues and program deficiencies with the Discharger's staff in detail during the exit interview. Despite receiving both verbal and written notice of the non-compliance issues and program deficiencies observed by Tetra Tech, Inc. on 18 February 2010, the Discharger indicated in its 2010, 2011, and 2012 Annual Pretreatment Reports that it had not made the recommended changes or corrected the deficiencies. In those reports, the Discharger stated that it was waiting for a formal copy of the 2010 PCI *Summary Report* before making the changes.
11. On 16 August 2010, the Discharger was issued a Notice of Violation ("NOV") for violations of the 2008 CDO. On 12 April 2012, the Discharger was issued an NOV for violations associated with the 2008 CDO and pretreatment program violations.
12. On 12 July 2012, Central Valley Water Board and State Water board staff conducted a follow-up inspection to the 2010 PCI. On 6 September 2013, Central Valley Water Board staff transmitted the reports to the Discharger for both the 2010 PCI and the 12 July 2012 follow-up inspection via an NOV. The NOV noted that on 5 December 2012, Tetra Tech, Inc. staff had confirmed to Central Valley Water Board staff that the inspector had conducted an exit interview during the 2010

PCI and had reviewed a checklist identifying each deficiency with Discharger personnel. The NOV requested that the Discharger address and document all deficiencies identified in the 2010 PCI *Summary Report* in the 2013 Annual Pretreatment Report due 28 February 2014 and that the Discharger submit monthly progress reports documenting progress toward compliance.

13. On 6 and 7 January 2014, PG Environmental, LLC, a U.S EPA contractor acting on behalf of the Central Valley Water Board performed a Pretreatment Compliance Audit ("2014 PCA" or "2014 Audit") of the Discharger's pretreatment program. The Discharger's representatives were present during the 2014 PCA and were verbally informed of multiple instances of non-compliance found during the 2014 PCA. The *Final Summary Report* of the 2014 PCA, which identified non-compliance issues and program deficiencies, and an NOV were provided to the Discharger on 14 February 2014. The NOV noted agreement with the contract inspector's findings, cited specific findings within the 2014 PCA *Final Summary Report* as violations of the 2008 Permit, and requested a report of the Discharger's plans to correct the violations by 14 March 2014. The NOV further noted that many of the violations and deficiencies were significant and chronic violations that had been brought to the Discharger's attention in previous correspondence.
14. On 7 July 2014, the Discharger was issued an NOV for violations of pretreatment standards, monitoring and reporting requirements, and the 2008 CDO. The NOV noted the Central Valley Water Board's staff intent to pursue formal enforcement and requested a meeting with the Discharger. On 18 August 2014, in response to a request from the Discharger, a supplemental NOV was issued providing a detailed basis for each violation cited in the 7 July 2014 NOV.
15. On 25 and 26 March 2015, Central Valley Water Board and PG Environmental, LLC staff performed a pretreatment compliance inspection ("2015 PCI"). The Discharger's representatives were present during the 2015 PCI and were verbally informed of multiple instances of non-compliance found during, and at the end of, the 2015 PCI. The *Summary Report* of the 2015 PCI, which identified non-compliance issues and program deficiencies, was transmitted to the Discharger on 10 September 2015.

### REGULATORY CONSIDERATIONS

16. **Pretreatment Program Requirements:** The Discharger is required to comply with the federal pretreatment requirements of 40 CFR part 403. Standard Provision VI.A.2.g at p. 16 of the 2008 Permit requires that "[t]he Discharger shall ensure compliance with any existing or future pretreatment standard promulgated by USEPA under Section 307 of the CWA or amendment thereto, for any discharge to the municipal system." Special Provision VI.C.5.a.ii at p. 25 of the 2008 Permit, states that "(t)he Discharger shall perform the pretreatment functions required by 40 CFR Part 403."
  - a. The Discharger is required to issue individual permits to its Significant Industrial Users ("SIUs").
    - i. 40 CFR section 403.3 (v)(1) defines Significant Industrial User to mean the following:
      - (i) All Industrial Users<sup>1</sup> subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N; and
      - (ii) Any other Industrial User that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, non-contact cooling and

<sup>1</sup> The term Industrial User or User means a source of indirect discharge. (40 CFR § 403.3(j).)

boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW Treatment plant; or is designated as such by the Control Authority on the basis that the Industrial User has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or requirement (in accordance with 40 CFR 403.8(f)(6)."

ii. 40 CFR section 403.8(f)(1)(iii)(B) requires the Discharger to issue permits:

"(B) Both individual and general control mechanisms must be enforceable and contain, at a minimum, the following conditions:

- (1) Statement of duration (in no case more than five years);
- (2) Statement of non-transferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;
- (3) Effluent limits, including Best Management Practices, based on applicable general Pretreatment Standards in part 403 of this chapter, categorical Pretreatment Standards, local limits, and State and local law;
- (4) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored (including the process for seeking a waiver for a pollutant neither present nor expected to be present in the Discharge in accordance with § 403.12(e)(2), or a specific waived pollutant in the case of an individual control mechanism), sampling location, sampling frequency, and sample type, based on the applicable general Pretreatment Standards in part 403 of this chapter, categorical Pretreatment Standards, local limits, and State and local law;
- (5) Statement of applicable civil and criminal penalties for violation of Pretreatment Standards and requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadlines;
- (6) Requirements to control Slug Discharges, if determined by the POTW to be necessary." [emphasis added].

b. The Discharger is required to analyze self-monitoring reports.

- i. 40 CFR section 403.8(f)(2)(iv) requires the Discharger to receive and analyze self-monitoring reports and other notices submitted by Industrial Users in accordance with the self-monitoring requirements in 40 CFR section 403.12.

c. The Discharger is required to sample the effluent from each SIU at least once a year.

- i. 40 CFR section 403.8(f)(2)(v) requires the Discharger to inspect and sample the effluent from each SIU at least once a year. The provision provides an exception to that requirement, which is not applicable here.

d. The Discharger is required to publish a list of Industrial Users in significant non-compliance.

- i. 40 CFR section 403.8(f)(2)(viii) requires that the Discharger:

“Comply with the public participation requirements of 40 CFR part 25 in the enforcement of National Pretreatment Standards. These procedures shall include provision for at least annual public notification in a newspaper(s) of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW of Industrial Users which, at any time during the previous 12 months, were in significant noncompliance with applicable Pretreatment requirements. For the purposes of this provision, a Significant Industrial User (or any Industrial User which violates paragraphs (f)(2)(viii)(C), (D), or (H) of this section) is in significant noncompliance if its violation meets one or more of the following criteria:” [emphasis added].

- ii. 40 CFR section 403.8(f)(2)(viii)(A)-(H) defines significant non-compliance as:

- “(A) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;
- (B) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);
- (C) Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);
- (D) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under paragraph (f)(1)(vi)(B) of this section to halt or prevent such a discharge;
- (E) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;
- (F) Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- (G) Failure to accurately report noncompliance;

(H) Any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.”

e. The Discharger is required to determine whether or not a slug control plan is necessary for each SIU.

i. 40 CFR section 403.8(f)(2)(vi) requires the POTW to:

“(vi) Evaluate whether each such Significant Industrial User needs a plan or other action to control Slug Discharges. For Industrial Users identified as significant prior to November 14, 2005, this evaluation must have been conducted at least once by October 14, 2006; additional Significant Industrial Users must be evaluated within 1 year of being designated a Significant Industrial User. For purposes of this subsection, a Slug Discharge is any Discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch Discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW’s regulations, local limits or Permit conditions. The results of such activities shall be available to the Approval Authority upon request. Significant Industrial Users are required to notify the POTW immediately of any changes at its facility affecting potential for a Slug Discharge. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

(A) Description of discharge practices, including non-routine batch Discharges;

(B) Description of stored chemicals;

(C) Procedures for immediately notifying the POTW of Slug Discharges, including any Discharge that would violate a prohibition under § 403.5(b) with procedures for follow-up written notification within five days;

(D) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response;”

17. **Monitoring and Reporting Program (“MRP”) Requirements:** Standard Provision VI.A.2.g at p. 16 of the 2008 Permit requires that “[t]he Discharger shall ensure compliance with any existing or future pretreatment standard promulgated by USEPA under Section 307 of the CWA or amendment thereto, for any discharge to the municipal system.” Special Provision VI.C.5.a.ii at p. 25 of the 2008 Permit states that “(t)he Discharger shall perform the pretreatment functions required by 40 CFR Part 403.” Water Code sections 13267 and 13383 authorize the Central Valley Water Board to require technical and monitoring reports. Provision VI.B at p. 18 of the 2008 Permit, requires the Discharger to “comply with the MRP [Monitoring and Reporting Program] and any revisions thereto (Attachment E of this Order).”

a. Annual Pretreatment Reports. 40 CFR section 403.12(i) requires that the Discharger provide the Central Valley Water Board with an annual pretreatment report that briefly describes the

program activities, and includes specified elements. The 2008 Permit's MRP, Reporting Requirement X.D.4 at p. E-17, requires submittal of an annual pretreatment report by 28 February of each year:

"Annual Pretreatment Reporting Requirements. The Discharger shall submit annually a report to the Regional Water Board, with copies to USEPA Region 9 and the State Water Board, describing the Discharger's pretreatment activities over the previous 12 months. In the event that the Discharger is not in compliance with any conditions or requirements of this Order, including noncompliance with pretreatment audit/compliance inspection requirements, then the Discharger shall also include the reasons for noncompliance and state how and when the Discharger shall comply with such conditions and requirements."

The MRP to the 2008 Permit, Reporting Requirement X.D.4.a-h at pp. E-17-18, describes the required components of the annual pretreatment report, which include, but are not limited to, a summary of analytical results, a discussion of upset, interference, or pass-through incidents, the cumulative number of industrial users that the Discharger has notified regarding baseline monitoring reports and the cumulative number of industrial user responses, an updated list of industrial users with compliance characterizations, a summary of inspection and sampling activities, a summary of compliance and enforcement activities, a description of significant changes in operating the pretreatment program, and a summary of the annual pretreatment budget.

- b. Quarterly Pretreatment Reports. The 2008 Permit, Reporting Requirement X.D.4.d at pp. E-18-19 of the MRP, requires the following:

"A report describing the compliance status of each industrial user characterized by the descriptions in items iii. through vii. above shall be submitted for each calendar quarter **within 21 days of the end of the quarter**. The report shall **identify the specific compliance status** of each such industrial user and shall also identify the compliance status of the POTW with regards to audit/pretreatment compliance inspection requirements. If none of the aforementioned conditions exist, at a minimum, a letter indicating that all industries are in compliance and no violations or changes to the pretreatment program have occurred during the quarter must be submitted. The information required in the fourth quarter report shall be included as part of the annual report. This quarterly reporting requirement shall commence upon issuance of this Order."

18. **Cease and Desist Order Requirements:** The 2008 CDO, Task 3.a at p. 6, requires the Discharger to evaluate WWTF treatment and disposal capacity and identify short-term and long-term measures to secure adequate treatment and disposal capacity, as specified below:

"Submit the results of a study evaluating the WWTF treatment and disposal capacity and proposing a work plan and time schedule to implement short-term and long-term measures to ensure compliance with waste discharge requirements. Study results shall include evaluations of, but not limited to, short-term measures necessary to comply with Order No. R5-2008-0033, implementation of appropriate ongoing operations and maintenance, and

long-term measures to meet WWTF treatment and disposal needs through at least 2028. The time schedule for short-term measures shall not exceed **14 March 2011**. The technical report shall include actions to generate appropriate population and WWTF flow projections and their rationale."

19. **Water Code section 13268:** The Discharger's failure to timely submit monitoring and technical reports required by the 2008 CDO and the 2008 Permit subjects it to civil liabilities under Water Code section 13268.
  - a. Water Code section 13268, subdivision (a)(1) states: "Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor, and may be liable civilly in accordance with subdivision (b)."
  - b. Water Code section 13268, subdivision (b)(1) states: "Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs."
20. **Water Code section 13385:** The Discharger's violations of its pretreatment program are subject to civil liabilities under Water Code section 13385.
  - a. Water Code section 13385(a)(2) states, in part, "A person who violates...a waste discharge requirement...issued pursuant to this chapter...shall be liable civilly in accordance with this section."
  - b. Water Code section 13385(a)(3) states, in part, "A person who violates...a requirement established pursuant to Section 13383...shall be liable civilly in accordance with this section."
  - c. Water Code section 13385(a)(5) states, in part, "A person who violates...a requirement of Section 307 of the federal Clean Water Act...shall be liable civilly in accordance with this section."
  - d. Water Code section 13385(a)(6) states, in part, "A person who violates...a requirement imposed in a pretreatment program approved pursuant to waste discharge requirements issued under Section 13377 or approved pursuant to a permit issued by the administrator...shall be liable civilly in accordance with this section."
  - e. Water Code section 13385(c)(a) states, in part, "Civil liability may be administratively imposed by the state board or a regional board...in an amount not to exceed...ten thousand dollars (\$10,000) for each day in which the violation occurs."
21. **Water Code section 13350:** The Discharger's violations of its CDO are subject to civil liabilities under Water Code section 13350.
  - a. Water Code section 13350(a) states, in relevant part, "[a] person who violates a cease and desist order...shall be liable civilly, and remedies may be proposed, in accordance with subdivision (e)."
  - b. Water Code section 13350(e)(1) states, in relevant part, that a regional board may impose civil liability administratively on a daily basis not to exceed five thousand dollars (\$5,000) for each day the violation occurs.

22. Pursuant to Water Code sections 13385(e) and 13327, in determining the amount of any civil liability imposed under Water Code section 13385(c), the Central Valley Water Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters that justice may require. These factors are considered in detail in Attachments A (with Exhibits 1) and B, which are attached hereto and incorporated herein by this reference.
23. On 17 November 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy ("Enforcement Policy"). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code sections 13327 and 13385(e). The Enforcement Policy requires that liability be assessed, at a minimum, at a level that recovers the economic benefit that result from the actions or lack thereof that constitute the violation, plus ten percent.
24. This administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment A. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
25. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the Water Code not addressed herein.
26. Issuance of this Administrative Civil Liability Complaint is an enforcement action, and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 *et seq.*), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

#### **SUMMARY OF ALLEGED VIOLATIONS AND MAXIMUM AND MINIMUM ADMINISTRATIVE CIVIL LIABILITY**

27. The violations and corresponding proposed penalty amounts that are summarized here are described in detail in Attachment A. The maximum penalties represent the statutory maximum imposed per day pursuant to Water Code section 13385 and Water Code section 13350, respectively. The minimum penalties are based on the Enforcement Policy's requirement to assess a liability of at least the amount of economic benefit associated with the violation plus ten percent. The proposed penalties take into account the factors prescribed under Water Code 13385(e) and the Enforcement Policy.
28. The Regional Water Boards, acting by and through their Assistant Executive Officers, have broad discretion to determine the number of violations in a penalty action. (*See e.g., Borden Ranch Partnership v. United States Army Corps of Engineers* (9<sup>th</sup> Cir. 2001) 261 F.3d 810, 817-818 [discussing different approaches federal courts have allowed USEPA to take when determining number of violations depending on underlying factual circumstances].) Here, although each distinct violation of the Code of Federal Regulations' and 2008 Permit's pretreatment program requirements *could be* the basis for a distinct violation and, accordingly, civil liability, the Assistant

Executive Officer declines to take that approach based on the unique facts of this case. This is the first administrative civil liability complaint for violations of a pretreatment program the Central Valley Water Board has undertaken. While there is little evidence showing a direct connection between the violations and environmental harm, for many years the Discharger demonstrated a wholesale disregard of its regulatory obligations in the face of numerous reminders from staff. While in the last two years, under a new General Manager, some positive changes in the pretreatment program have begun, many deficiencies persist or remain to be corrected. The violations of various Code of Federal Regulation and 2008 Permit requirements described below amount to complete and systematic failure by the Discharger to develop and implement a pretreatment program. Essentially, and for the limited purpose of this particular proceeding only, the Assistant Executive Officer has elected to treat all of the Code of Federal Regulation and 2008 Permit pretreatment violations as a single, group violation – Violation 1. Violation 2 addresses the Discharger's separate and distinct violations of the Central Valley Water Board's 2008 CDO.

**Violation 1: Failure to Implement a Legally Sufficient Pretreatment Program.**

**A.** The Discharger failed to control the contribution to the POTW by each significant industrial user through individual permits that meet the minimum requirements of the pretreatment program pursuant to 40 CFR section 403.8(f)(1)(iii)(B). The Discharger has failed to have the required or adequate permits in place from at least the adoption of the 2008 Permit. The Discharger had seven SIUs in 2008, two of which were de-designated after 2009.

**B.** The Discharger failed to inspect and sample its SIUs once a year as required by 403.8(f)(2)(v). In 2008, the Discharger did not sample five of its SIUs. In 2010, the Discharger failed to sample two of its SIUs. In 2011, the Discharger failed to sample two of its SIUs. In 2013, the Discharger failed to sample one of its SIUs. In 2014, the Discharger failed to sample five of its SIUs.

**C.** The Discharger failed to publish a list of users in significant non-compliance as required by 40 CFR section 403.8 (f)(2)(viii). The Discharger failed to comply with the publication requirement over at least a four year period from 2009 and 2012. Throughout that four-year period, there were multiple instances in which an SIU was in significant non-compliance during the given year.

**D.** The Discharger failed to evaluate whether a slug control plan is necessary for each SIU and produce them upon request as required by 40 CFR section 403.8 (f)(2)(vi). To date, the Discharger has not produced an evaluation, despite requests at the 2010 PCI, the 2014 PCA, and the 2015 PCI.

**E.** The Discharger failed to file materially sufficient annual pretreatment reports pursuant to the requirements of 40 CFR section 403.12(i), Provision VI.C.5.a.ii at p. 25 of the 2008 Permit, and Provision X.D.4 at pp. E-17-20 of the Monitoring and Reporting Requirements of the 2008 Permit.

**F.** The Discharger failed to file adequate quarterly pretreatment reports pursuant to the requirements of Provision VI.C.5.a.ii at p. 25 of the 2008 Permit, and Provision X.D.4.d at pp. E-18-19 of the MRP of the 2008 Permit. The Quarterly Pretreatment Reports for the first quarters of 2009 and 2014 have, to date, not been received. The rest of the Quarterly Pretreatment Reports from the second quarter of 2008 (due 21 July 2008) through the first quarter of 2010 (due 21 April 2010) were not received until 7 May 2012. Aside from the two missing reports, all of the Quarterly Pretreatment Reports from the adoption through the rescission of the 2008 Permit (18 in total) are materially deficient based on lack of requisite certification, lack of accurate IU compliance status discussion, or other grounds, as discussed in detail in Attachment A and Exhibit 1.

**G.** The Discharger failed to analyze reports from its SIUs pursuant to the requirements in 40 CFR section 403.8(f)(2)(iv). The first documentation of the Discharger’s failure to adequately receive and analyze self-monitoring reports was at the 2010 PCI, during which auditors noted that the Discharger had failed to analyze self-monitoring reports from 2009.

The Discharger failed to implement key components of its pretreatment program from the adoption of the 2008 Permit on 14 March 2008 through the rescission of the 2008 Permit on 31 January 2015. The period of violation totals 2,515 days. The maximum liability for this violation is \$25,150,000. The recommended total base liability for this violation is \$775,368.

**Violation 2:** Failure to Submit Treatment and Disposal Capacity Study and Propose a Workplan as Required By the 2008 CDO.

The Discharger failed to submit a report required by the 2008 CDO evaluating WWTF treatment and disposal capacity and to propose a workplan identifying short and long-term measures to secure adequate treatment and disposal capacity for the volume, type and concentrations of wastes in influent. The Discharger failed to comply with these 2008 CDO requirements since 14 June 2008, the first date of non-compliance in regard to Task 3 of the 2008 CDO, through 4 December 2014 when the 2008 CDO was rescinded and replaced. The period of violation totals 2,365 days, which the Prosecution Team recommends reducing to 1,640 days as detailed in Attachment A. The maximum penalty for this violation is \$8,200,000. The recommended total base liability for the violation is \$261,360.

29. The total maximum liability for the two violations described above is **\$33,350,000**. The minimum liability is **\$781,721**. Based on a consideration of the factors in Water Code sections 13385(e) and 13327, this Complaint is for one million thirty-six thousand seven hundred and twenty-eight dollars (**\$1,036,728**).

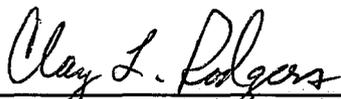
Violation	Minimum Liability <sup>2</sup>	Maximum Liability	Recommended Liability
Violation 1: Failure to implement legally adequate pretreatment program (2,515 days of violation, collapsed to 89) Potential for Harm: moderate Deviation from Requirement: major Per Day Factor: 0.55 Culpability: 1.3 Cooperation and Cleanup: 1.2 History of Violations: 1.1	\$777,193	\$25,150,000	\$775,368
Violation 2: Failure to submit CDO-required reports (1,640 days of violation, collapsed to 60) Potential for Harm: major Deviation from Requirement: moderate Per Day Factor: 0.55 Culpability: 1.5 Cooperation and Cleanup: 1.0 History of Violations: 1.2	\$4,528	\$8,200,000	\$261,360
Totals:	\$781,721	\$33,350,000	\$1,036,728
<b>Proposed Liability Amount:</b>	<b>\$1,036,728</b>		

<sup>2</sup> Minimum liability is based on Enforcement Policy’s requirement to assess economic benefit plus ten percent.

**MALAGA COUNTY WATER DISTRICT IS HEREBY GIVEN NOTICE THAT:**

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an administrative civil liability in the amount of **\$1,036,728**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **21/22 April 2016**, unless the Discharger does one of the following by **16 February 2016**:
  - a. The Discharger waives the hearing by completing the attached form (checking off the box next to Option 1) and returning it to the Central Valley Water Board, along with payment of the proposed civil liability; or
  - b. The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option 2 on the attached form, and returning it to the Board along with a letter describing the issues to be discussed; or
  - c. The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option 3 on the attached form, and returning it to the Board along with a letter describing the issues to be discussed.
3. If a hearing on this matter is conducted, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

  
\_\_\_\_\_  
CLAY L. RODGERS, Assistant Executive Officer

1/27/2016  
\_\_\_\_\_  
(Date)

Attachment A: Calculations for Pretreatment Violations (and Exhibits 1 and 2)  
Attachment B: Economic Benefit Table

**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Malaga County Water District (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2016-0512 (hereinafter Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing."

**(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full)**

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board
- b. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **(\$1,036,728)** by check that references "ACL Complaint R5-2016-0512" made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Central Valley Water Board by **16 February 2016**
- c. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

**(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

**(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

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(Print Name and Title)

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(Date)

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(Signature)