

NEAL E. COSTANZO
MICHAEL G. SLATER

LAW OFFICES
COSTANZO & ASSOCIATES
A PROFESSIONAL CORPORATION
575 E. LOCUST AVENUE
SUITE 115
FRESNO, CALIFORNIA 93720-2928
(559) 261-0163

FAX (559) 261-0706
OUR FILE NO. 03024-005

May 10, 2012

SENT VIA U.S. MAIL/EMAIL: jwalsh@waterboards.ca.gov

Warren W. Gross, Senior Engineering Geologist
California Regional Water Quality Control
Board, Central Valley Region
1685 E. Street
Fresno, CA 93706

Re: Notice of Violation Dated April 12, 2012

Dear Mr. Gross:

Malaga County Water District received your purported Notice of Violation dated April 12, 2012. They have referred it to me for a response because the Notice is premised on a complete disregard of the law that regulates the ability of your agency to issue such notices. The notice is based on clearly fabricated factual allegations.

It is unclear from the notice, as is normally the case with respect to correspondence we receive from you, what it is you are attempting to do by the issuance of this supposed Notice of Violation, and whether there is any violation of the type you refer to in the notice. As you know, Malaga has been the recipient of numerous notices of violation, issued by you, based upon purported, but nonexistent, violations of the very same cease and desist order you reference in this letter and dating back to the issuance of the order. We have consistently responded to these notices of violation by pointing out that your claims are demonstrably incorrect. Each time we respond to one of your purported notices of violation, we never receive any response back from you or your agency.

While your agency does have the authority to impose fines for violations of statute, regulation, or orders statutes and regulations also prescribe what is and is not a violation and the procedures that must be employed to provide notice of a violation and a proposed fine that comport with applicable requirements of Constitutional due process and give the proposed citee appropriate and complete notice and an opportunity to be heard. Your purported notices of violation never conform to any of these requirements and yet they always threaten the imposition of fines. We have advised you previously that your issuance of these purported notices of violations is unlawful and in excess of your agency's authority. We have advised you repeatedly that if you do not stop the issuance of the supposed notices of violation, we will be forced to file in court the appropriate petition for writ of mandate in addition to an administrative complaint directed against you personally. You have failed to heed any of these warnings and appear to be bent on persisting in the

practice of unlawfully threatening the Malaga County Water District with some form of unspecified sanction.

A review of the various items (numbered 1 through 18) in your letter, to the extent the detail disclosed in that letter permits, should demonstrate for you clearly that what you are doing by issuing these notices of violation is making blatantly false misrepresentations for the purpose of advancing an ulterior, but not so very carefully hidden agenda. In the interests of brevity, the items below correspond to the numbered "violations" listed in your letter.

REPORT REQUIREMENTS

1. TRE Workplan. We agree. The TRE workplan was required by the terms of the order referenced in your letter to be submitted by June 12, 2008. Malaga submitted that report on June 19, 2008. Unless there was an extension, this would mean that the report was submitted 7 days late. You conclude it was submitted 89 days late. Because the 7 day tardy report is a violation that occurred, if at all, more than three years ago, it is not a matter about which the Board may lawfully complain at this point. There is a statute of limitations that applies to your agency. It is precluded from making a determination that a violation occurred, and cannot pursue the violation more than three years after the violation is claimed to have occurred.

We suspect that an extension was provided for submission of this report, but given the fact that your supposed violation is premised upon something that happened far longer than three years ago, we are not going to expend the resources to search our files to determine whether that extension was or was not provided. The violation, if it occurred, simply cannot be pursued by your agency consistent with the requirements of law. Your agency provided comments in response to the TRE report submitted on June 19, 2008, and the District timely responded to those comments by submitting a revised TRE Workplan on September 3, 2008. That workplan was approved by your agency on March 17, 2009. How you conclude the report was submitted 89 days late is a mystery. The mystery, however, is not one that the District is going to make any attempt to resolve, because it simply does not matter. A violation occurring in 2008 simply cannot be pursued.

2. BPTC Workplan and Schedule. The order referred to in your letter does indeed require the BPTC Workplan and Schedule be submitted by September 14, 2008. The District submitted that workplan on July 24, 2008. It supplemented the report on September 9, 2008. Your agency required revisions to what had been submitted and the District responded to those comments on or about October 23, 2009. There is no conceivable violation here. Even if there were, it happened too long ago for your agency to pursue. These facts are indicative of the improper motivation that resulted in the issuance of this particular notice of violation and the prior notices of violation authored by you.

3. Groundwater Monitoring System. Again, the workplan referred to in this item of your letter was submitted prior to the deadline and supplemented thereafter. You repeatedly refer to letters issued by your agency as determinations that the reports are incomplete. That is not what they are. They are simply requests for additional information or corrections or changes to the report that was submitted that were all complied with, in timely fashion. Once again, there is absolutely no basis in fact for your supposed determination of a violation.

4. Quarterly Pretreatment Reports. From the description given in your letter, it is impossible to determine what it is you are referring to as having been not received. With respect to those Pretreatment Reports you indicate were not received at any time prior to April 2010, the lack of receipt cannot be treated as a violation, assuming it occurred at all, because it happened too long ago. With respect to those pretreatment reports you indicate not having received after that date, you need to go back and look at your file. We believe you received each and every one of these reports. The making of false representations in support of a purportedly official notice of violation and apparent attempt to impose some sort of fine or sanction is unlawful and perhaps criminal. If you are requesting that we submit something to you that has not been previously submitted, then you need to apprise us of that fact. Otherwise, we will assume that this item of your letter is yet another false allegation that need not be responded to.

5. Annual Pretreatment Reports. The basis on which you characterize two reports as having been received late is not disclosed. That you claim to not have received a report in February of 2010 should have been brought to the District's attention within a reasonable period of time thereafter. It was not. With respect to these particular reports, and the pretreatment reports you claim to have not received in Item 4 of your letter, you do not indicate one way or another whether you wish to receive a report that you claim not to have received. Please advise us what it is you are seeking by these items so that we may comply, to the extent that is warranted by law.

Your Notice of Violation is light on detail and heavy on conclusions. We cannot evaluate your conclusions without the proper information. Because the dates on which you refer as having received a report does not coincide with the dates our records show the report having been submitted, it is simply not possible to respond to claims that the 2008, 2010, and 2011 reports were submitted late. Further, from our records it does appear that any report not timely submitted was submitted in accordance with an agreement with your agency on extending the due date. We note that you indicate that you did not receive a 2009 report. We have no way of determining whether or not you in fact received this or any other report that you claim not to have received.

6. Biosolids Reports. You indicate several biosolid reports were not received between 2009 and 2011. Those reports are included in the annual reports submitted to your agency. You have received them. You acknowledge receipt of the 2011 biosolids report and claim based on an attached email that this report was deemed incomplete. The

attached email is simply not reasonably susceptible to that interpretation. The email simply, and only states that "some additional information is needed" which is described in the email. You deceptively fail to acknowledge that the email was responded to. Again, this claimed "violation" never occurred and that is apparent from material in your possession.

7. Treatment Facility Study, Workplan and Schedule. There was no response to what was submitted on December 8, 2009. Again, there have been numerous communications with your agency by which deadlines set by the order you refer to have been extended. This is apparently why there was never any complaint by your agency, until your April 12, 2012, letter, about the timeliness of a report received October 9, 2009, nearly four years prior. Needless to say, even if there had been a violation, it is far too late to raise the purported violation now and your agency is precluded by law from attempting to do so.

8. Influent Flow Metering. The response applicable to Item 7 of your letter applies with equal force to Item 8.

9. Certification of Influent Flow of Metering Improvements. Again, the response to Item 7 of your letter is applicable to Item 9.

10. Short Term and Long Term Measures. You indicate that a revised report requested on September 24, 2009, was not received. It is apparent that you are mischaracterizing the September 24, 2009, correspondence from your agency as there is an October 27, 2009, letter to your agency from the District responding to that letter. We cannot discern from your letter what it is you are claiming was "not received," because the claim that something was not received is premised upon a misrepresentation of what occurred.

11. Short Term Measures Completion. You indicate that "short term measures" were not completed as required by March 14, 2011. Yet, you acknowledged receiving the District's April 29, 2011 report which you mischaracterize in Item 11 of your letter. That report apprised you that the March 14, 2011, deadline would not be met, because of funding delays caused by the State of California making it impossible to complete those measures by that due date. This is the first complaint we have received, a year later, about the reported impossibility of meeting that deadline. The fact that the State of California withholds funding for improvements specifically authorized to be made only with that funding cannot possibly amount to any violation of any requirement of any order. If you wish to charge this as a violation or seek some sort of fine or sanction, you need to do so in the manner required by your regulations, which you consistently ignore. Malaga will respond accordingly.

Items 12 through 18 of your letter are indecipherable. Items 12 through 14 do not specify any purported violation occurring at any particular time. We cannot discern what it is you are referring to when you say there have been "24 violations" of "exceeding the EC

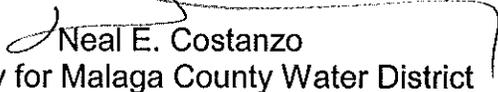
. . . Limitation," for example, occurring on unspecified dates, or disclosed by unspecified documents. We presume you are simply referring, once again, to the standard "Attachment A" that has accompanied all prior notices of violation we have received from you. Items 15 and 16 refer to the period between March 14, 2008, and January 31, 2012, without identifying any particular violation occurring on any particular date. Again, we presume this is a reference to your prior "Attachment A." You will note that you received, consistently, responses to each and every one of those purposed notices of violation that you apparently attempt to repeat here. The same is true of Item 17, apparently, since we cannot determine what violations you are referring to from the reference that they occurred sometime in "2008 and 2009."

Even you should be able to recognize that a "notice of violation" as provided for by your agency's regulations, is something that is legally required to provide precise, accurate notice of an alleged violation and a meaningful opportunity to respond. Your April 12, 2012, letter does none of that. If you are attempting to identify some violation, and impose some requirement or sanction, the law requires that you specifically identify the alleged violations and actually provide a meaningful opportunity to respond. Without any precise identification of any of the violations referred to in Items 12 through 18 of your letter, the District cannot intelligently respond.

We have repeatedly advised you that you are acting in excess of your agency's jurisdiction and in direct violation of your own agency's regulations relating to how it is required to address what are claimed to be violations of any requirement or order of the regional board. Your persistent issuance of what are effectively meaningless notices of violation is, itself, a violation of law. We would welcome the opportunity to address with you, face to face, whatever legitimate concerns or complaints your agency has about Malaga's wastewater treatment and discharge activities; but, we very obviously cannot, and will not, continue to respond to your apparently unauthorized issuance of notices of violation that make absolutely no sense. The next notice of violation we receive which is issued by you will be responded to by a petition either in the Superior Court or before the Regional Water Quality Control Board which seeks to specifically restrain you and your agency from disregarding the requirements you are obligated to observe by law.

Very truly yours,

COSTANZO & ASSOCIATES


Neal E. Costanzo
Attorney for Malaga County Water District

NEC/js

cc: Michael Taylor
Russ Holcomb