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Central Valley Regional Water Quality Control Board AUG 22 2014

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Office of Enforcement

SUPPLEMENTAL NOTICE OF VIOLATION

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VIOLATIONS OF CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD ORDER NO. R5-2008-0033; AND CEASE AND DESIST ORDER R5-2008-0032

Background

On 7 July 2014, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) issued a Notice of Violation (NOV) to Malaga County Water District (Malaga or District). Malaga has requested clarification of the violations alleged in the 7 July 2014 NOV. Malaga has received notification of these violations previously; however, in response to Malaga's request, the Central Valley Water Board provides this supplemental NOV to clarify the factual basis for each violation.

Please read this Supplemental Notice of Violation carefully. The Central Valley Water Board plans to pursue formal enforcement regarding these violations. Malaga is invited to contact the Central Valley Water Board staff by **2 September 2014** if Malaga seeks to discuss resolution of these violations.

Violations

1. Violation of Pretreatment Standards

Order No R5-2008-0033, Section 5: Special Provisions for Municipal Facilities (POTWs Only), subsection (a)(ii) states "The Discharger shall perform the pretreatment functions required by 40 CFR Part 403." The Central Valley Regional Water Board staff has determined that Malaga violated the following sections of 40 CFR 403.

a. Failure to adopt adequate legal authority as required by 40 CFR 403.8(f)(1).

40 CFR 403.8(f) requires Malaga to operate its Publicly Owned Treatment Works (POTW) pursuant to legal authority that enables it to do enumerated actions. Specifically:

(f) *POTW pretreatment requirements.* A POTW pretreatment program must be based on the following legal authority and include the following procedures. These authorities and procedures shall at all times be fully and effectively exercised and implemented.

(1) *Legal authority.* The POTW shall operate pursuant to legal authority enforceable in Federal, State or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of sections 307 (b) and (c), and 402(b)(8) of the Act and any regulations implementing those sections. Such authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by State law. At a minimum, this legal authority shall enable the POTW to:

(iv) Require (A) the development of a compliance schedule by each Industrial User for the installation of technology required to meet applicable Pretreatment Standards and Requirements and (B) the submission of all notices and self-monitoring reports from Industrial Users as are necessary to assess and assure compliance by Industrial Users with Pretreatment Standards and Requirements, including but not limited to the reports required in § 403.12. [Emphasis added].

On 13 January 2004, Malaga adopted Ordinance No. 01-13-2004 (2004 Ordinance). The 2004 Ordinance does not enable Malaga to require the development of a compliance schedule by each industrial user (IU) for the installation of technology required to meet applicable pretreatment standards and requirements.

On 18 February 2010, a Pretreatment Compliance Inspection (2010 PCI) of Malaga's approved Pretreatment Program was performed. Malaga was informed of the lack of a compliance schedule during the 18 February 2010 PCI and received the checklist identifying the deficiency during the exit interview on that date. The resulting Report (2010 PCI Report) noted that Malaga was required to have such compliance schedules (2010 PCI Report, pg. 4). Yet, on 25 February 2014, Malaga adopted a new ordinance (2014 Ordinance) that did not correct this inadequacy (this ordinance is misleadingly titled "Ordinance No. 2013-1," when in fact it was adopted in 2014).

Malaga has been non-complaint with the requirement of 40 CFR 403.8(f)(1)(iv) from 14 March 2008, when Order No R5-2008-0033 was issued to present.

b. Failure to adopt adequate permits as required by 40 CFR 403.8(f)(1)(iii)(B).

40 CFR 403.8(f)(1)(iii) requires Malaga to issue permits to its IUs. Specifically:

(iii) Control through Permit, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements. In the case of Industrial Users identified as significant under § 403.3(v), this control shall be achieved through individual permits or equivalent individual control mechanisms issued to each such User...

40 CFR 403.8(f)(1)(iii)(B) identifies the conditions the IU permits must contain. Specifically:

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]

From 2008 to 2013, Malaga's IU permits have not satisfied the requirements of 40 CFR 403.8(f)(1)(iii)(B), by failing to include local limits and/or relevant sampling requirements.¹

Malaga's 2008 and 2009 IU permits failed to identify sample locations and did not indicate sample type for all pollutants.

During the 2010 PCI, Malaga was informed of the sampling deficiencies and received the checklist identifying the deficiencies at the exit interview on that date. The 2010 PCI Report also noted that some permits did not specify a local limit for:

The iron limit in Calpine's permit is inconsistent with the limit established in Malaga's 2004 Ordinance. The iron limit in the permit is listed as 10 parts per million (milligrams per liter, mg/L), but the 2004 Ordinance specifies that the local limit for iron is 1 part per million. Therefore, Malaga is required to revise Calpine's permit to include the iron limit established in the 2004 Ordinance. See PCI Report, Section 6.2, Pg. 4.

After the 2010 PCI, Malaga added sample types and a sample location to its IU permits; however, the sample location is not defined or depicted in the permits.

¹ Malaga's IU permits, from 2008 to 2013, did not include a process for seeking a waiver for a pollutant neither present nor expected to be present in the discharge in accordance with 40 CFR 403.12(e)(2), or a specific waived pollutant in the case of an individual control mechanism.

On 6-7 January 2014, a Pretreatment Compliance Audit (2014 PCA) of Malaga's approved pretreatment program was performed. As a component of the 2014 PCA, the sampling locations listed in the permits were reviewed. According to the resulting report (2014 PCA Report):

Each of the permits reviewed stated that the permittee must monitor outfall 001. In addition, part 3.2(a) of the permits lists the measurement location as "001." However, this measurement location is not defined, described, or depicted in the permits. In order to ensure that samples are collected at the correct locations, the Malaga is required to include an adequate description of the sampling locations in the permits. For more information about the sampling locations at the facilities inspected as part of the audit, refer to section 9.3, Nondomestic Discharger Site Inspections Conducted during the Audit. PCA Report, Section 7.3, Pg. 15. [Emphasis added].

Some permits did not include local limits as required by 40 CFR 403.8(f)(1)(iii)(B)(3). The 2010 PCI Report and 2014 PCA Report also noted where local limits were absent:

According to the 2010 inspection report, the iron limit in Calpine's permit was inconsistent with the limit established in Malaga's 2004 Ordinance. The iron limit in the permit was listed as 10 mg/L, but the 2004 Ordinance specified that the local limit for iron was 1 mg/L. Therefore, Malaga was required to revise Calpine's permit to include the iron limit established in its 2004 Ordinance. In response to this requirement, Malaga stated that the District legal counsel and Contract Engineer will review the limits identified in the 2004 Ordinance [sic] and the individual significant industrial user (SIU) permits. If exceptions to the 2004 Ordinance [sic] are not allowed, the necessary modifications to limits will be incorporated into the updated sewer use ordinance (SUO) [sic].

According to the federal regulations at 40 CFR 403.8(f)(1)(iii)(B)(3), permits are required to include effluent limits. As a component of the 2014 PCA, the RockTenn CP, LLC (formerly Calpine Corrugated, LLC) permit was reviewed. The audit team determined that the effluent limit for iron is not included in the RockTenn permit. However, according to part 3.2 of the facility permit, RockTenn is required to collect a grab sample for iron in June from measurement location 001. Malaga is required to amend the RockTenn permit to include the effluent limits for parameters with which the facility is expected to comply. The permits must include the effluent limits in accordance with the federal regulations at 40 CFR 403.8(f)(1)(iii)(B)(3). See section 7.5, pg. 16.

In addition, in 2010, Malaga removed the local limit for iron and several metals in all five significant industrial users (SIU): PPG, Rio Bravo, Air Products, Statas Foods, and Smurfit.

Malaga has been non-complaint with the requirement of 40 CFR 403.8(f)(1)(iii) since 2008, when Malaga first issued non-compliant permits.

c. Failure to obtain Board approval for modification of local limits as required by 40 CFR 403.18.

40 CFR 403.18 provides procedures for substantial modifications of POTW pretreatment programs. 40 CFR 403.18(b)(2) defines "substantial modifications" as:

(2) Modifications that relax local limits, except for the modifications to local limits for pH and reallocations of the Maximum Allowable Industrial Loading of a pollutant that do not increase the total industrial loadings for the pollutant, which are reported pursuant to paragraph (d) of the section. Maximum Allowable Industrial Loading means the total mass of a pollutant that all Industrial Users of a POTW (or a subgroup of Industrial Users Identified by the POTW) may discharge pursuant to limits developed under §403.5(c). [Emphasis added].

40 CFR 403.18(c) outlines the approval procedures for substantial modifications. Specifically:

- (1) the POTW shall submit to the Approval Authority a statement of the basis for the desired program modification, a modified program description, or such other documents the Approval Authority determines to be necessary under the circumstances.
- (2) The Approval Authority shall approve or disapprove the modification based on the requirements of §403.8(f) and using the procedures in §403.11(b) through (f), except as provided in paragraphs (c) (3) and (4) of this section. The modification shall become effective upon approval by the Approval Authority. [Emphasis added].

Malaga relaxed or eliminated numerous local limits for its SIUs without obtaining approval from the Central Valley Water Board. For example:

- **2008 and 2009:** Malaga relaxed the local limit for iron from 1 ppm to 2 ppm for Air Products.
- **2009:** Malaga relaxed the local limit for Iron for Calpine from 1 ppm to 10 ppm.
- **2010:** Malaga removed the local limit for iron and several metals in all SIUs; PPG, Rio Bravo, Air Products, Statas Foods, and Smurfit.
- **2012:** Malaga changed the local limit for oil/grease from 100 mg/L to 200 mg/L for Statas (Stratas proceeded to violate the original limit in 2013).

Malaga violated the requirement of 40 CFR 403.18 in each of the instances identified above.

d. Failure to sample Significant Industrial Users once per year as required by 40 CFR 403.8(f)(2)(v).

40 CFR 403.8(f)(2)(v) requires Malaga to “[i]nspect and sample the effluent from each Significant Industrial User at least once a year.”

Malaga identified the following SIUs:

- **2008:** Kinder Morgan Energy, PPG, Rio Bravo, ADM, Air Products, Calpine, Wholesale Equipment of Fresno.
- **2009:** PPG, Rio Bravo, Air Products, Calpine, Statas Foods.
- **2010:** PPG, Rio Bravo, Air Products, Statas Foods, Smurfit.
- **2011:** PPG, Rio Bravo, Air Products, Statas Foods, Rock Tenn.

Malaga failed to sample its SIUs' effluent from 2008 to 2011 for all pollutants of concern. Malaga's representatives stated in the 2010 PCI and the 2014 PCA that the SIUs are regularly sampled for electrical conductivity (EC); however, Malaga did not have any data or reports to support this statement.

Malaga sampled its IUs in 2012. However, Malaga did not sample its SIUs to satisfy 40 CFR 403.8(f)(2)(v), but rather was required to conduct a Toxicity Reduction Evaluation (TRE) because Malaga exceeded its chronic toxicity limits in 2012. This exceedance triggered sampling of all IUs that discharge industrial waste to the WWTF per R5-2008-0033, VI.C.2.a. i. – iv. However, this data was not included in Malaga's 2012 Annual Pretreatment Report.

The Annual Pretreatment Reports require the sampling results to be included, but Malaga did not include any such data in its 2008-2012 Annual Pretreatment Reports. 40 CFR 403.8(f)(2)(v) provides an exception for the sampling requirement; however, Malaga's SIUs do not qualify for it.

Malaga violated the requirement of 40 CFR 403.8(f)(2)(v) from 2008-2011.

e. Failure to publish list of users in significant non-compliance as required by 40 CFR section 403.8 (f)(2)(viii).

40 CFR 403.8(f)(2) states:

(2) Procedures. The POTW shall develop and implement procedures to ensure compliance with the requirements of a Pretreatment Program. At a minimum, these procedures shall enable the POTW to:

(vii) 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:

(A) Chronic violations of wastewater Discharge limits, defined here as those in which 66 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits, as defined by 40 CFR 403.3(l);

(B) Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR 403.3(l) 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 Standard or Requirement as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative Standard)

- that the POTW 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 45 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 may include a violation of Best Management Practices, which the POTW determines will adversely affect the operation or implementation of the local Pretreatment program.

Malaga and its IUs have submitted laboratory reports, which identifies significant non-compliance as defined in 40 CFR 403.8(f)(2)(vii)(A)-(H) from at least one IU or SIU for the following years:

- **2009:** Fresno Truck Wash.
- **2010:** Fresno Truck Wash, Fifth Wheel.
- **2011:** Fresno Truck Wash.
- **2012:** Fresno Truck Wash, Fifth Wheel, ADM/Stratas, Kinder Morgan, Inland Star, GreenTec, Western State Glass.
- **2013:** Fresno Truck Wash, Fifth Wheel, ADM/Stratas, Inland Star, Moga, Western State Glass.

The requirement to publish a list of significant non-compliant users was triggered in each of these years, yet Malaga did not publish reports in these years as required by 40 CFR 403.8 (f)(2)(viii).

f. Failure to develop an enforcement response plan as required by 40 CFR 403.8(f)(5).

40 CFR 403.8(f)(5) states:

The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum:(i) Describe how the POTW will investigate instances of noncompliance;(ii) Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;(iii) Identify (by title) the official(s) responsible for each type of response;(iv) Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in 40 CFR 403.8 (f)(1) and (f)(2). [Emphasis Added].

The 2004 Ordinance adopted by Malaga is silent regarding an enforcement response plan (ERP). The 2014 PCA Report noted that Malaga did not have an enforcement response plan in the 2004 Ordinance. Furthermore, the audit noted the deficiency in Malaga's draft 2013 Ordinance. Specifically, the 2014 PCA Report noted that:

The federal pretreatment regulations at 40 CFR 403.8(f)(5) require the District to develop and implement an ERP. This plan must contain detailed procedures indicating how the District will investigate and respond to instances of industrial user noncompliance. During initial conversations with the District, the District representative was unsure if the District had implemented an ERP. During the audit, the EPA audit team had discussions with the District's Contract Engineer who stated that the District's ERP was a component in the District's 2013 draft sewer use ordinance. A cursory review of the District's 2013 draft sewer use ordinance determined that the ERP was located in section 3.08.010. This section states that the District shall develop and implement an ERP which should include a description of how the District will investigate noncompliance, describe escalating enforcement, identify officials responsible for each response, and adequately reflect the District's primary responsibility to enforce all applicable pretreatment requirements and standards. However, section 3.08.010 of the District's 2013 draft sewer use ordinance does not specifically identify how the District will investigate and respond to instances of industrial user noncompliance, or who is responsible for implementing the enforcement action. The District is required to develop and implement an ERP as stated at the federal regulations at 40 CFR 403.8(f)(5). PCA Report, Pg. 30. [Emphasis added].

Despite the audit, on 25 February 2014, Malaga adopted the 2014 Ordinance which does not contain an enforcement response plan. Specifically, the 2014 Ordinance states:

3.08.010 ENFORCEMENT RESPONSE PLAN.

In addition to all other enforcement procedures provided in this District Code, the District shall develop and implement an enforcement response plan (ERP). The ERP shall contain detailed procedures indicating how the District will investigate and respond to instances of industrial user noncompliance. The ERP may be adopted and amended by resolution of the Board of Directors and shall contain, at a minimum, the following:

1. A description of how the District will investigate instances of noncompliance;
2. Describe the types of escalating enforcement responses the District will take in response to all anticipated types of Industrial User violations and the time periods within which response will take place;
3. Identify (by title) the official(s) responsible for each type of response; and
4. Adequately reflect the District's primary responsibility to enforce all applicable Pretreatment Requirements and Standards as detailed in 40 CFR 403.8(f)(1) and (f)(2).

The ERP, as adopted and amended by Resolution of the Board of Directors, shall be incorporated by this reference into this District Code. [emphasis added].

By Malaga's letter of 2 April 2014 to the Central Valley Water Board, Malaga asserted:

As part of the process of adopting a new SUO, the District developed an ERP which was approved by resolution of the Board of Directors immediately following adoption of the new SUO. (A copy of the ERP is attached hereto as Exhibit I, and incorporated by this reference).

There are two incorrect statements made in Malaga's above statement. First, at the time the letter was sent, Malaga had not adopted an ERP. Second, no ERP was attached to the letter, as stated.

By Malaga's letter of 1 May 2014 to the Central Valley Water Board, Malaga provided an enforcement response plan to Central Valley Water Board staff.

Malaga violated the requirement of 40 CFR 403.8(f)(5) from 2008 thru 30 April 2014. Moreover, Malaga's 1 April 2014 letter misled the Central Valley Water Board staff and falsely stated that it had complied with this requirement.

g. Failure to evaluate whether a Slug control plan is needed as required by 40 CFR 403.8(f)(2)(vi).

40 CFR 403.8(f)(2)(vi) requires Malaga 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.

Per the 2010 PCI Report and 2014 PCA Report, Malaga has not done this evaluation. In October 2013, Malaga sent an evaluation to its SIUs regarding slug discharges; however, this evaluation was dependent on the SIUs volunteering of information. In addition, it was not performed within one year of Malaga designating the user as an SIU, and thus not in compliance with 40 CFR 403.8(f)(2)(vi).

Malaga violated the requirement of 40 CFR 403.8(f)(2)(vi) from 2008 to present.

2. Violation of Monitoring and Reporting Requirements

Malaga is required to comply with the Monitoring and Reporting requirements established in R5-2008-0033 - MRP (X)(D)(4). Central Valley Regional Water Board staff has determined that Malaga has violated these requirements by:

a. Failure to file adequate Annual Pretreatment Reports in violation of MRP (X)(D)(4) for the years 2008-2013.

R5-2008-0033 - MRP (X)(D)(4) [Pg. E-17] states:

The Discharger shall submit annually a report 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. [Emphasis added].

R5-2008-0033 - MRP (X)(D)(4) specifies the following annual reporting requirements for Malaga's Pretreatment Program (Pg. E-17 thru E-20). Specifically:

Annual Pretreatment Reporting Requirements. The Discharger shall submit annually a report to the Regional Water Board, with copies to US EPA 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.

An annual report shall be submitted by **28 February** and include at least the following items:

- a. A summary of analytical results from representative, flow proportioned, 24-hour composite sampling of the POTW's influent and effluent for those pollutants EPA has identified under Section 307(a) of the CWA which are known or suspected to be discharged by industrial users.

Sludge shall be sampled during the same 24-hour period and analyzed for the same pollutants as the influent and effluent sampling and analysis. The sludge analyzed shall be a composite sample of a minimum of 12 discrete samples taken at equal time intervals over the 24-hour period. Wastewater and sludge sampling and analysis shall be performed at least annually. The discharger shall also provide any influent, effluent or sludge monitoring data for non-priority pollutants which may be causing or contributing to Interference, Pass-Through or adversely impacting sludge quality. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR 136 and amendments thereto.

- b. A discussion of Upset, Interference, or Pass-Through incidents, if any, at the treatment plant, which the Discharger knows or suspects were caused by industrial users of the POTW. The discussion shall include the reasons why the incidents occurred, the corrective actions taken and, if known, the name and address of, the industrial user(s) responsible. The discussion shall also include a review of the applicable pollutant limitations to determine whether any additional limitations, or changes to existing requirements, may be necessary to prevent Pass-Through, Interference, or noncompliance with sludge disposal requirements.
- c. The cumulative number of industrial users that the Discharger has notified regarding Baseline Monitoring Reports and the cumulative number of industrial user responses.
- d. An updated list of the Discharger's industrial users including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The Discharger shall provide a brief explanation for each deletion. The list shall identify the industrial users subject to federal categorical standards by specifying which set(s) of standards are applicable. The list shall indicate which categorical industries, or specific pollutants from each industry, are subject to local limitations that are more stringent than the federal categorical standards. The Discharger shall also list the non-categorical industrial users that are subject only to local discharge limitations. The Discharger shall characterize the compliance status through the year of record of each industrial user by employing the following descriptions:
 - i. complied with baseline monitoring report requirements (where applicable);
 - ii. consistently achieved compliance;

- iii. inconsistently achieved compliance;
- iv. significantly violated applicable pretreatment requirements as defined by 40 CFR 403.8(f)(2)(vii);
- v. complied with schedule to achieve compliance (include the date final compliance is required);
- vi. did not achieve compliance and not on a compliance schedule; and
- vii. compliance status unknown.

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.

- e. A summary of the inspection and sampling activities conducted by the Discharger during the past year to gather information and data regarding the industrial users. The summary shall include:
 - i. the names and addresses of the industrial users subjected to surveillance and an explanation of whether they were inspected, sampled, or both and the frequency of these activities at each user; and
 - ii. the conclusions or results from the inspection or sampling of each industrial user.
- f. A summary of the compliance and enforcement activities during the past year. The summary shall include the names and addresses of the industrial users affected by the following actions:
 - i. Warning letters or notices of violation regarding the industrial users' apparent noncompliance with federal categorical standards or local discharge limitations. For each industrial user, identify whether the apparent violation concerned the federal categorical standards or local discharge limitations.
 - ii. Administrative orders regarding the industrial users noncompliance with federal categorical standards or local discharge limitations. For each industrial user, identify whether the violation concerned the federal categorical standards or local discharge limitations.
 - iii. Civil actions regarding the industrial users' noncompliance with federal categorical standards or local discharge limitations. For each industrial user, identify whether the violation concerned the federal categorical standards or local discharge limitations.
 - iv. Criminal actions regarding the industrial users noncompliance with federal categorical standards or local discharge limitations. For each industrial user, identify whether the violation concerned the federal categorical standards or local discharge limitations.
 - v. Assessment of monetary penalties. For each industrial user identify the amount of the penalties.
 - vi. Restriction of flow to the POTW.
 - vii. Disconnection from discharge to the POTW.
- g. A description of any significant changes in operating the pretreatment program which differ from the information in the Discharger's approved Pretreatment Program including, but not limited to, changes concerning: the program's administrative structure, local

industrial discharge limitations, monitoring program or monitoring frequencies, legal authority or enforcement policy, funding mechanisms, resource requirements, or staffing levels.

- h. A summary of the annual pretreatment budget, including the cost of pretreatment program functions and equipment purchases.

Malaga has consistently submitted deficient reports every year. The following are a few examples of Malaga's failure to satisfy the above requirement:

- Requirements 1.d. i-vii, and h. were not included in the 2008 - 2013 Annual Pretreatment Reports;
- Requirements 1. e. i.-ii were not included in the 2008-2012 Annual Pretreatment Reports, and the information included in the 2013 Annual Pretreatment Report to satisfy the same requirement was incomplete.
- Requirement 1.e.ii: the 2008 Annual Pretreatment Report did not contain any sampling data conducted by either Malaga or the IUs.

The list of all reporting deficiencies from 2008 to 2013 is quite extensive. The Central Valley Water Board has not requested that Malaga submit revised reports, because Malaga does not possess the missing information per the 2010 PCI and the 2014 PCA Reports.

Malaga's pretreatment program was inspected in 2010 and numerous instances of noncompliance were identified. Malaga was informed of the deficiencies during the 2010 PCI and received the checklist identifying the deficiencies during the exit interview on that same date. Per R5-2008-0033 - MRP (X)(D)(4), Malaga is required to include "the reasons for noncompliance and state how and when the Discharger shall comply with such conditions and requirements." Malaga did not provide that information in its 2011 Annual Pretreatment Report. Similar deficiencies were noted in the 2014 PCA Report. Again, per R5-2008-0033 - MRP (X)(D)(4), Malaga was required to include in its next report, due 28 February 2014, why it was not in compliance and the plan for achieving compliance. Malaga did not do so.

Lastly, Malaga has never certified its Annual Pretreatment Reports with the required certification statement per the Federal Standard Provisions, Attachment D, Section V.B of Malaga's NPDES permit. Malaga violated R5-2008-0033 - Attachment D-Standard Provisions, Section V.B.1-4. from 2008 to 2013 by submitting incomplete Annual Pretreatment Reports to the Central Valley Water Board without certification.

Malaga has violated the requirements of R5-2008-0033 - MRP (X)(D)(4) from 2008 to present.

b. Failure to file adequate quarterly pretreatment reports in violation of MRP

(X)(D)(4)(d) for the quarters Q1-Q3 2008, Q1-Q3 2009,. Q1-Q3 2010, Q1-Q3 2011, Q1-Q3 2012, Q1-Q3 2013, and Q1-Q2 2014.

R5-2008-0033, MRP (X)(D)(4)(d) [p. E-18-19]: provides:

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. Pg. E-18-19. [Emphasis added].

The Quarterly Pretreatment Reports submitted were all inadequate and Q1-Q2 2008, Q1-Q3- 2009, Q1-Q3 2010, Q1 and Q3 2011, Q2 2013, and Q1 -Q2 2014 reports were late (some up to 4 years past due).

With the exception of Fresno Truck Wash, Malaga's Quarterly Pretreatment Reports state that no IUs were in significant non-compliance. This is not true according to the data submitted by Malaga's IUs and by Malaga in its Annual and Quarterly Pretreatment Reports to the Central Valley Water Board. For example in 2012 and 2013, the data shows Malaga had IUs in significant non-compliance in all four quarters of 2012 and the first quarter of 2013. The IUs that were in significant non-compliance and not mentioned in the Quarterly Pretreatment Reports include Kinder Morgan, PPG, Western State Glass, Moga, GreenTec, and Inland Star. In addition, Malaga did not start reporting significant non-compliance for Fresno Truck Wash until the first quarter 2011. However, according to Administrative Complaint 2010-01 issued by Malaga to Fresno Truck Wash in 2010, Fresno Truck Wash had been in significant non-compliance since early 2009. Yet, Malaga did not start reporting Fresno Truck Wash in its Quarterly Pretreatment Reports until the first quarter 2011. The 2009 and 2010 Quarterly Pretreatment Reports erroneously state that all IUs were in compliance.

In addition, first and second quarter 2014 Quarterly Pretreatment Reports, which were due on April 21 and July 21, 2014, have not been submitted to the Central Valley Water Board, nor has a letter for either quarter been submitted by Malaga stating that a quarterly report was not needed. Malaga received notice of inadequate pretreatment reports in February 2010, April and July 2012, September 2013, January, February, and July 2014. Yet, to date, Malaga has not submitted its first and second Quarterly Pretreatment Reports for 2014.

Additionally, Malaga has never certified its Quarterly Pretreatment Reports with the required certification statement per the Federal Standard Provisions, Attachment D, Section V.B of Malaga's NPDES permit.

Malaga violated No R5-2008-0033, MRP (X)(D)(4)(d) from 2008 to 2013 by submitting incomplete reports to the Central Valley Water Board without certification.

3. Violation of Cease and Desist Order R5-2008-0032

CDO R5-2008-0032 Ordered item 3.a. required Malaga, by 13 June 2008, to:

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.

On 24 July 2008, Malaga submitted a work plan for completing the disposal capacity evaluation. On 24 September 2009, Central Valley Water Board staff informed Malaga that the work plan was inadequate and requested a revised work plan by 27 October 2009.

In April 2011, Central Valley Water Board staff called Malaga's Consulting Engineer and informed him that the report was past due. On 29 April 2011, Malaga submitted a report, which included short-term measures, but not long-term measures or a revised work plan. In addition, the cover letter for this report incorrectly stated that Malaga had not received a response to the work plan submitted on 24 July 2008.

On 12 April 2012, Central Valley Water Board staff issued an NOV identifying the report as delinquent.

On 19 August 2013, Central Valley Water Board staff sent Malaga a letter again requesting, in part, technical information regarding disposal capacity with an administrative date of 3 October 2013.

On 10 October 2013, Central Valley Water Board staff called Malaga's Board President requesting an update on the response that was due by 3 October 2013. The President indicated that Malaga was in possession of a memorandum from its consulting engineer that addressed four of the five items requested by Central Valley Water Board staff in the 19 August 2013 letter. The President offered to send Water Board staff the memorandum while the Discharger worked on its response.

On 10 October 2013, Central Valley Water Board staff received the memorandum, which was essentially a memorandum from Malaga's consulting engineer to Malaga requesting additional information to prepare a response to

Central Valley Water Board's letter.

On 21 October 2013, Central Valley Water Board staff sent Malaga's General Manager an email to again inquire on the status of Malaga's response. On 22 and 24 October 2013 Malaga's General Manager e-mailed Central Valley Water Board staff stating Malaga would send a response soon.

On 29 October 2013, Malaga finally submitted a response, 26 days past the administrative deadline and incomplete. Of the five items listed in the Central Valley Water Board 19 August 2013 letter, Malaga only fully addressed one. The other items only included vague information, whereas the Central Valley Water Board letter requested information on specific actions Malaga had completed. The response did not contain the needed technical information regarding disposal capacity.

Malaga violated CDO R5-2008-0032 from 24 September 2009, the date of Central Valley Water Board's letter informing Malaga that it had not submitted a complete report, to present. The unavailability of this information has hindered Central Valley Water Board staff in assessing current disposal capacity for the renewal of Malaga's NPDES permit.

Conclusion

The Central Valley Water Board plans to pursue formal enforcement regarding the above violations. Central Valley Water Board staff invites a response by **2 September 2014** if Malaga would like to discuss resolution of these matters. For questions regarding this NOV, contact Jill Walsh at (559) 445-5130 or jill.walsh@Waterboards.ca.gov.



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