

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2013-0090

FOR MANDATORY MINIMUM PENALTIES
IN THE MATTER OF

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

This Order is issued to Malaga County Water District (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability (ACL). This Order is based on findings that the Discharger violated effluent limitations of Waste Discharge Requirements (WDRs) Order 99-100 and R5-2008-0033 (NPDES No. CA0084239).

The Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds the following:

1. The Discharger owns and operates the Malaga County Water District Wastewater Treatment Facility (Facility), which provides sewerage for the unincorporated community of Malaga and its industrial users. Non-domestic sewage comprises approximately 90 percent of the influent flow to the Facility. Malaga discharges its effluent in one of two ways: 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.
2. 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 the Fresno Slough that drains to the San Joaquin River during periods of heavy rain. The Fresno Slough and the San Joaquin River are both waters of the United States.
3. On 28 July 1999, the Central Valley Water Board issued WDRs Order 99-100 (1999 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 Central Canal. On 14 March 2008, the Central Valley Water Board issued WDRs Order R5-2008-0033 (2008 Permit), which prescribes new requirements for the discharge. The 2008 Permit rescinded WDRs Order 99-100, except for enforcement purposes. The WDRs included a Monitoring and Reporting Program and Standard Provisions.
4. On 14 March 2008, the Central Valley Water Board issued Cease and Desist Order R5-2008-0032, which rescinded Cease and Desist Order 5-01-001 and requires the District to cease and desist discharging wastes in violation and threatened violation of WDRs R5-2008-0033.

5. On 26 January 2006, the Central Valley Water Quality Control Board (Central Valley Water Board, or Board) adopted ACL Order R5-2006-0003 (2006 ACL Order) for effluent limitation violations subject to mandatory minimum penalties (MMPs) in the amount of \$1,107,000 that occurred within the review period of 1 February 2000 through 30 June 2004, with the last violation identified on 18 January 2004.
6. On 21 November 2008, the Central Valley Water Board Assistant Executive Officer issued the Discharger ACL Complaint R5-2008-0583 (2008 Complaint) assessing \$9,000 in mandatory minimum penalties (MMPs) pursuant to CWC section 13385(i) for effluent limitation violations of the 1999 Permit that occurred at its Facility within the review period of 1 February 2004 to 13 March 2008, with the first violation occurring on 28 February 2005.
7. On 30 December 2008, the Discharger submitted a signed waiver to waive its right to a hearing within 90 days of issuance of the Complaint and requested that the \$9,000 in MMPs be applied toward compliance projects that were required by the 2006 ACL Order. The 2006 ACL Order allowed \$975,835.00 to be permanently suspended as having been spent by the District for completion of Compliance Projects 1.a and 3 of the 7 proposed compliance projects as defined in the Order. The remaining \$131,165 would be permanently suspended if the District satisfactorily completed all or a combination of Compliance Projects 4, 5, 6, and 7, which totaled or exceeded the remaining MMP amount. The last compliance project deadline per the 2006 ACL Order was 1 January 2009. The 1 January 2009 deadline was not met. Therefore, the \$9,000 MMPs could not be applied to compliance projects that were already supposed to be complete - making this request null and void.
8. On 8 July 2010, Central Valley Water Board staff issued a Notice of Violation (NOV) and draft Record of Violations (ROV) for 20 effluent limitation violations of the 2008 Permit totaling \$60,000 in MMPs. The alleged violations cited in the ROV occurred within the review period of 14 March 2008 to 31 January 2010. The ROV requested a response from the Discharger by 22 July 2010.
9. On 22 July 2010, the Discharger's legal counsel responded contesting the 8 July 2010 NOV/ROV. The response disputed, in part, BOD violations occurring in May and June of 2008.
10. On 5 November 2010, after reviewing the Discharger's comments, Board staff concurred with the Discharger's contention that the May and June 2008 BOD violations were incorrect along with a turbidity violation dated 12/31/2009. Board staff issued a Revised NOV/ROV identifying fifteen effluent limitation violations subject to \$45,000 in MMPs that occurred within the review period of 14 March 2008 to 31 January 2010.
11. On 6 January 2011, the Discharger's legal counsel responded contesting the 5 November 2010 revised NOV/ROV.

12. On 9 December 2011, Central Valley Water Board staff issued an NOV with an updated draft ROV for alleged effluent violations that occurred within a review period of 14 March 2008 through 30 October 2011 totaling \$63,000 in MMPs.
13. On 3 January 2012, the Discharger's legal counsel responded contesting the 9 December 2011 NOV/ROV.
14. Board staff updated the review of Malaga's SMRs to include SMRs through 31 December 2012, and on 1 May 2013, the Executive Officer issued ACL Complaint R5-2013-0527 for effluent limitation violations subject to MMPs in the amount of \$72,000. The 2013 Complaint withdrew the 2008 Complaint and included violations that occurred within the review period of 1 February 2004 through 31 December 2012 as identified in Attachment A to the 2013 Complaint.
15. On 28 May 2013, the Discharger's legal counsel responded stating that any enforcement action relative to the violations listed on Attachment A is barred by operation of law.
16. Board staff has determined that the Discharger is out of compliance with several other components of its NPDES Permit and other Board Orders. Enforcement actions for outstanding enforcement orders and violations not subject to mandatory minimum penalties are under consideration by management and will be handled in separate enforcement actions. The adoption of this ACL Order does not preclude the Central Valley Water Board from taking enforcement on other violations not subject to mandatory minimum penalties.
17. CWC §13385(h)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.
18. CWC §13385 (h)(2) states:

For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.
19. CWC §13385 subdivision (i)(1) states, in part:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

 - A) Violates a waste discharge requirement effluent limitation.

- B) Fails to file a report pursuant to Section 13260
- C) Files an incomplete report pursuant to Section 13260
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

20. CWC section 13385(k) states:

(1) In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a publicly owned treatment works serving a small community, the state board or the regional board may elect to require the publicly owned treatment works to spend an equivalent amount towards the completion of a compliance project proposed by the publicly owned treatment works, if the state board or the regional board finds all of the following:

(A) The compliance project is designed to correct the violations within five years.

(B) The compliance project is in accordance with the enforcement policy of the state board, excluding any provision in the policy that is inconsistent with this section.

(C) The publicly owned treatment works has prepared a financing plan to complete the compliance project.

(2) For the purposes of this subdivision, "a publicly owned treatment works serving a small community" means a publicly owned treatment works serving a population of 10,000 persons or less, a rural county, or a reasonably isolated and divisible segment of a larger municipality where the population of the segment is 10,000 persons or less, with a financial hardship as determined

21. CWC section 13323 states, in part:

Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or have failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

22. WDRs Order 99-100 General Discharge Specification B.2 states, "effluent shall have a pH between 6.0 and 9.0 pH units."

23. WDRs Order 99-100 General Discharge Specification B.3 states, "effluent EC shall not exceed that of source water plus 500 $\mu\text{mhos/cm}$ or 1000 $\mu\text{mhos/cm}$, whichever is less."

24. WDRs Order 99-100 Discharge 001 (Central Canal) Specification C.3 states, in part, "effluent turbidity shall not exceed a monthly average of 2 NTU and a daily maximum of 5 NTU.

25. WDRs Order R5-2008-0033 Effluent Limitations and Discharge Specifications A.2 states, "Effluent shall not as an average monthly EC, exceed the monthly flow-weighted average

of EC in the source water plus 500 µmhos/cm, or a total of 1,000 µmhos/cm, whichever is more stringent.

26. WDRs Order R5-2008-0033 Effluent Limitations and Discharge Specifications A.4 states, "Effluent shall not exhibit a pH of less than 6.5 or greater than 8.3 standard units.
27. WDRs Order R5-2008-0033 Effluent Limitations (Table 6) – Discharge Point D-001 (Tertiary Treatment) B.1.a states, in part:

TABLE 6. EFFLUENT LIMITATIONS				
Parameter	Units	Effluent Limitations		
		Average Monthly	Average Weekly	Maximum Daily
CONVENTIONAL POLLUTANTS				
Biochemical Oxygen Demand (BOD ₅) @ 20°C	mg/L	10	15	30
	lbs/day ¹	38	56	113
Total Suspended Solids (TSS)	mg/L	10	15	30
	lbs/day ¹	38	56	113
Settleable Solids	ml/L	0.1	--	0.2
PRIORITY POLLUTANTS				
Bromoform	µg/L	4.3	--	8.6
NON-CONVENTIONAL POLLUTANTS⁴				
Ammonia Nitrogen, Total (as N) (May-October) ³	mg/L	0.8	--	1.1
	lbs/day ¹	3.0	--	4.1
Ammonia Nitrogen, Total (as N) (November -April) ³	mg/L	0.4	--	0.6
	lbs/day ¹	1.5	--	2.3
Turbidity	NTU	2	--	5 ²

1. Based on a design flow of 0.45 mgd
2. 5 NTU more than 5% of the 24-hour period, 10 NTU at any time
3. Effective 19 May 2010. In interim, see Table 7
4. Effective 1 November 2008, if the Discharger certifies to the Executive Officer in writing that the ultraviolet system is operational and chlorine is no longer being used for disinfection purposes or detected in the influent, the Executive Officer may, at her discretion, notify the Discharger that these effluent limitations and associated monitoring are suspended.

28. WDRs Order R5-2008-0033 Effluent Limitations – Discharge Point D-001 (Tertiary Treatment) B.1.b states, “Percent Removal: The average monthly percent removal of BOD and total suspended solids shall not be less than 90 percent.”
29. WDRs Order R5-2008-0033 Effluent Limitations – Discharge Point D-001 (Tertiary Treatment) B.1.e states, “Total coliform Organisms. Effluent total coliform organisms shall not exceed: i. 2.2 most probably number (MPN)/100 mL as a 7-day median; ii. 23 MPN/100 mL more than once in any month; and iii. 240 MPN/100 ml at any time.”
30. WDRs Order R5-2008-0033 Effluent Limitations – Discharge Point D-001 (Tertiary Treatment) B.2 states, “Interim Effluent Limitations – The interim effluent limitation in Table 7 shall apply in lieu of the final effluent limitations specified for the same parameters in Table 6 until the effective date of the final effluent limitations as specified in footnotes 3 and 4, Table 6:

TABLE 7. INTERIM EFFLUENT LIMITATIONS			
Parameter	Units	Effluent Limitations	
		Average Monthly	Maximum Daily
Ammonia	mg/L	--	1.3
Bromoform	µg/L	--	28

31. According to the Discharger’s self-monitoring reports covering the period from 1 February 2004 through 13 March 2008, the Discharger committed eight violations of effluent limitations for turbidity, EC, and pH of Order 99-100; three of which are subject to MMPs. Attachment A to this Order summarizes these violations.
32. According to the Discharger’s self-monitoring reports covering the period from 14 March 2008 through 31 December 2012, the Discharger committed twenty-five violations of effluent limitations for EC, pH, total ammonia nitrogen (as N), Bromoform, total coliform organisms, BOD, Settleable solids, TSS, and turbidity of Order 2008-0033; twenty-two of which are subject to MMPs. Attachment A to this Order summarizes these violations.
33. On Attachment A of the 2013 Complaint, Violation ID 771679 (11M; pH; 9.0; pH units; 9.2) and Violation ID 878012 (7M; TCO; 240; MPN/100 ml/L; DM; 1600) were inadvertently marked EXEMPT. They are chronic violations and subject to MMPs. Attachment A to this Order has been corrected and \$6,000 has been added to the penalty amount bringing it to \$78,000.
34. General statutes of limitations do not apply to this administrative proceeding. The statutes of limitations that refer to “actions” and “special proceedings” and that are contained in the California Code of Civil Procedure apply to judicial proceedings, not administrative proceedings. Courts evaluating the issue have consistently found that

general statutes of limitations do not apply to administrative proceedings, including enforcement proceedings.

35. Related to the concept of statute of limitations is an equitable principal of laches. Laches is a court-made, equitable doctrine based on the principle that those who neglect their rights may be barred from obtaining relief in equity. It is a defense by which a court denies relief to a claimant who has unreasonably delayed or been negligent in asserting a claim, when that delay or negligence has prejudiced the party against whom relief is sought. The defense of laches requires unreasonable delay plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay. Laches is not available where it would nullify an important policy adopted for the benefit of the public. Further, it is well-settled that the burden to establish laches lies with the party raising it.
36. In this case, where there has been a violation subject to statutory mandatory penalties and unless an affirmative defense is proven, the Legislature has imposed an affirmative duty to impose the penalties, thereby depriving the water boards of their discretion to reduce the mandatory minimum penalty. Laches is not recognized as an affirmative defense and may not be invoked to avoid the imposition of mandatory minimum penalties.
37. Issuance of this Administrative Civil Liability Order to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 1532(a)(2).
38. In accordance with CWC §13385(i), the total amount of the mandatory minimum penalty for 26 effluent limitation violations is \$78,000. (See Attachment A).

IT IS HEREBY ORDERED THAT:

1. Malaga County Water District, its agents, successors and assigns, shall be assessed an Administrative Civil Liability in the amount of **\$78,000.**

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date that this Order becomes final, except that if the thirtieth day following the date that this Order becomes final falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality
or will be provided upon request.

I, Kenneth D. Landau, Assistant Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 25 July 2013.

Original signed by:

Kenneth D. Landau,
Assistant Executive Officer

Attachment A: Record of Violations

**ATTACHMENT A
RECORD OF VIOLATIONS**

Malaga County Water District, Wastewater Treatment Facility

Record of violations (1 February 2004- 31 December 2012)

MANDATORY MINIMUM PENALTIES

(Data reported under Monitoring and Reporting Program No. 99-100 and R5-2008-0033)

<u>Violation ID¹</u>	<u>Violation Date</u>	<u>Violation Type²</u>	<u>Violation Description³</u>	<u>MMP Type⁴</u>
696644	07/02/2007	OEV	7M; EC; 784; umhos/cm; M; 820	EXEMPT
696696	08/09/2007	OEV	8M; EC; 1000; umhos/cm; DM; 1033	EXEMPT
771676	08/10/2007	OEV	8M; pH; 9.0; pH units; I; 9.2	EXEMPT
771679	11/25/2007	OEV	11M; pH; 9.0; pH units; I; 9.2	CHRONIC
771678	12/03/2007	OEV	12M; EC; 782; umhos/cm; DM; 820	CHRONIC
771680	12/10/2007	OEV	12M; EC; 1000; umhos/cm; DM; 1700	CHRONIC
748354	02/15/2008	OEV	2M; EC; 816; umhos/cm; DM; 1100	CHRONIC
867973	3/31/2008	OEV	3M; EC; 813; umhos/cm; AM; 825	CHRONIC
868013	4/18/2008	OEV	4M; pH; 6.5-8.3; SU; IM; 8.5	CHRONIC
868014	4/19/2008	OEV	4M; pH; 6.5-8.3; SU; IM; 8.9	CHRONIC
868015	4/20/2008	OEV	4M; pH; 6.5-8.3; SU; IM; 9.0	CHRONIC
868016	4/21/2008	OEV	4M; pH; 6.5-8.3; SU; IM; 8.9	CHRONIC
868098	7/16/2008	CAT1	7M; NH3-N; 1.3; mg/L; DM; 2.5	SERIOUS
868022	7/19/2008	OEV	7M; pH; 6.5-8.3; SU; IM; 9.1	CHRONIC
868021	7/30/2008	OEV	7M; EC; 891; umhos/cm; AM; 911	CHRONIC
868097	10/14/2008	CAT2	10M; Bromoform; 28; ug/L; DM; 36	SERIOUS
868095	10/17/2008	OEV	10M; TCO; 240; MPN/100 ml/L; DM; 300	CHRONIC
868101	11/17/2008	CAT2	10M; Bromoform; 28; ug/L; DM; 32	CHRONIC
868102	06/05/2009	OEV	6M; pH; 6.5-8.3; SU; IM; 8.6	EXEMPT ⁵
868104	07/08/2009	OEV	7M; BOD; 15; mg/L; AW; 19	EXEMPT
868105	07/08/2009	OEV	7M; BOD; 56; lbs/day; AW; 61.8	EXEMPT
868109	08/28/2009	CAT1	8M; SS; 0.2; ml/L; DM; 7.5	SERIOUS
868106	08/30/2009	CAT1	8M; SS; 0.1; ml/L; AM; 0.29	SERIOUS
868112	12/7/2009	OEV	12M; pH; 6.5-8.3; SU; IM; 8.5	CHRONIC

893428	07/08/2010	CAT1	7M; NH3-N; 0.8; mg/L; AM; 2.8	SERIOUS
896916	07/08/2010	CAT1	7M; NH3-N; 1.1; mg/L; DM; 2.6	SERIOUS
878012	07/09/2010	OEV	7M; TCO; 240; MPN/100 ml/L; DM; 1600	CHRONIC
893443	11/15/2010	CAT1	11M; TSS; 15; mg/L; AW; 17	CHRONIC
893444	11/30/2010	CAT1	11M; TSS; 90%; % removal; AM; 85%	CHRONIC
893442	11/30/2010	CAT1	11M; TSS; 10; mg/L; AM; 14	SERIOUS
912164	03/24/2011	OEV	3M; Turbidity; 2; NTU; AM; 2.7	CHRONIC
912555	03/30/2011	CAT1	3M; NH3-N; 0.4; mg/L; AM; 0.5.	SERIOUS

- 1 Violation ID in CIWQS
- 2 Abbreviations used in this table are defined in table of abbreviations below.
- 3 Violation Descriptions are coded as follows: Reporting period (e.g., 4M = April); constituent or parameter (e.g., pH, Flow); effluent limitation; units; limitation period; and reported result.
- 4 Chronic non-serious and serious violations are subject to MMPs. The first three non-serious violations within a six-month period are exempt.
- 5 More than a six-month break of effluent limitation violations subject to MMPs; thus, chronic count resets.

Abbreviation Definition

ACL	Administrative Civil Liability
AM	Average Monthly
AW	Average Weekly
BOD	Biochemical Oxygen Demand
CAT1	Violation of Group 1 effluent limitation as defined in Enforcement Policy
CAT2	Violation of Group 2 effluent limitation as defined in Enforcement Policy
CIWQS	California Integrated Water Quality System database
DM	Daily Maximum
EC	Electrical conductivity
IM	Instantaneous maximum
M	Monthly
MMP	Mandatory minimum penalty
MPN	Most Probable Number
NH3-N	Ammonia as nitrogen
NTU	Nephelometric turbidity unit
OEV	Other effluent violation as defined in Enforcement Policy
SS	Settleable solids
SU	Standard unit (for pH)
TCO	Total coliform organisms

<u>MMP VIOLATION TYPE</u>	<u>VIOLATION PERIOD</u> <u>2/01/04 TO 31 December 2012</u>
Group 1 Serious Violations Subject to MMPs	7
Group 2 Serious Violations Subject to MMPs:	1
Chronic (non-serious) Violations Subject to MMPs:	18
Exempt Violations:	6
Total Violations Subject to MMPs:	26

Mandatory Minimum Penalty = 26 violations x \$3,000 = \$78,000