

ITEM: 6

SUBJECT: Malaga County Water District WWTF, Malaga, Fresno County

BOARD ACTION: *Consideration of an Administrative Civil Liability Order (ACLO)*

BACKGROUND: Malaga County Water District (Malaga) owns and operates the wastewater treatment facility (Facility), which provides sewerage for the unincorporated community of Malaga and its industrial users. Waste Discharge Requirements R5-2008-0033 (NPDES No. CA0084239), adopted on 14 March 2008, regulate the Facility's discharge of secondary-treated wastewater to unlined evaporation/percolation ponds as well as discharge of tertiary-treated wastewater to the Fresno Irrigation District Central Canal (Central Canal), a water of the United States. Prior to the adoption of the 2008 Permit, the Facility was regulated by WDRs Order 99-100 (NPDES No. CA0084239) adopted on 28 July 1999. The consideration of this Administrative Civil Liability (ACL) Order includes violations of effluent limitations from both the 1999 and the 2008 permits.

On 26 January 2006, the Central Valley Water Quality Control Board (Central Valley Water Board, or Board) adopted ACL Order R5-2006-0003 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.

Board staff reviewed Malaga's self-monitoring reports (SMRs) from 1 February 2004 to 13 March 2008, and on 21 November 2008, the Central Valley Water Board Assistant Executive Officer issued ACL Complaint R5-2008-0583 (2008 Complaint) for effluent limitation violations subject to MMPs in the amount of \$9,000 that occurred since the last assessment, with the first violation occurring on 28 February 2005.

On 30 December 2008, the Discharger submitted a signed waiver to waive its right to a hearing within 90 days of issuance of the 2008 Complaint. Further, Malaga requested that the \$9,000 in MMPs be applied toward compliance projects that were required by ACL Order R5-2006-0003. However, the last compliance project deadline per ACL Order R5-2006-0003 was 1 January 2009, which included an Executive Officer approved three month extension for completion of CP 7, the construction of the UV disinfection system. The UV system was not complete by 1 January 2009; therefore, the \$9,000 MMPs could not be applied to compliance projects that were already supposed to be complete.

On 8 July 2010, Central Valley Water Board staff sent Malaga a Notice of Violation (NOV) with a draft Record of Violations (ROV), prepared as part of a draft ACL, for effluent limitation violations subject to MMPs in the amount of \$60,000 that occurred within the review period of 14 March 2008 to 31 January 2010.

On 22 July 2010, Central Valley Water Board staff received Malaga's response submitted on its behalf by Mr. Neal Costanzo, Malaga's legal counsel. The response disputed, in part, BOD violations occurring in May and June of 2008. Board staff concurred with the disputed BOD violations along with a turbidity violation (12/31/2009) and, on 5 November 2010, sent a revised NOV/ROV for effluent limitation violations subject to MMPs in the amount of \$45,000.

On 6 January 2011, Mr. Costanzo responded on Malaga's behalf contesting the 5 November 2010 revised NOV/ROV in whole.

On 9 December 2011, Central Valley Water Board staff issued an NOV with an updated draft ROV for effluent limitation violations that occurred within the review period of 14 March 2008 through 30 October 2011 totaling \$63,000 in MMPs.

On 3 January 2012, Mr. Costanzo responded on Malaga's behalf contesting the 9 December 2011 NOV/ROV in whole.

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 (2013 Complaint) 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. The Hearing Procedures, which describe the process if the matter proceeds to a hearing, were sent on 3 May 2013 via email and certified mail. ACL Complaint R5-2013-0527 supersedes ACL Complaint R5-2008-0583 as the latter was never settled.

On Attachment A of the 2013 Complaint, Violation ID Violation ID 77169 (11M; pH; 9.0; pH units; 9.2) and 878012 (7M; TCO; 240; MPN/100 ml/L; DM; 1600) were inadvertently marked EXEMPT. They are chronic violations that are subject to MMPs. Attachment A to the 2013 Order has been corrected and \$6,000 has been added to the penalty amount bringing it to **\$78,000**

ISSUES:

California Water Code (CWC) Section 13385 requires that the Water Boards assess mandatory minimum penalties for serious and non-serious violations of NPDES permits. A mandatory minimum penalty of \$3,000 must be assessed for each serious violation, defined, in part, as any waste discharge that violates a Category 1 or Category 2 effluent limitation contained in the applicable waste discharge requirements by either 40% or 20%, respectively. A mandatory minimum penalty of \$3,000 must also be assessed for each non-serious or chronic violation whenever an effluent limitation is exceeded four or more times in any period of six consecutive months, not counting the first three violations.

Malaga's counsel submitted written objections to the Hearing Procedures. Malaga did not submit a signed form to waive its right to a

hearing within 90 days after being served with the ACL Complaint by the 24 May 2013 deadline provided in the Hearing Procedures.

In response to the Notice of Hearing, on 28 May 2013, Board staff received written comments from California Sportfishing Protection Alliance. CSPA objects to the dismissal of 108 purported electrical conductivity violations exempted from the ACL Complaint. The Prosecution Team disagrees that these daily sample results are violations. Central Valley Water Board staff entered the EC readings into the California Integrated Water Quality System (CIWQS) as violations, but the Prosecution Team subsequently determined that they should be dismissed.

The Prosecution Team's review of Malaga's SMRs indicates that the data has been correctly reported by Malaga, and that there is no legal reason or recognized statutory defense or exemption to the imposition of mandatory minimum penalties. Therefore, the Prosecution Team has brought this matter before the Board.

Under the CWC section 13385, the Water Board must at a minimum assess the recommended mandatory minimum penalty of \$3,000 per violation and may assess up to the statutory maximum of \$10,000 for each day in which the violation occurs. The Prosecution Team is recommending that the Board only assess the mandatory minimum penalty amount in this case.

RECOMMENDATION: Prosecution Team recommends that the Central Valley Water Board adopt the Administrative Civil Liability Order as proposed.

Mgmt. Review _____

Legal Review _____

Agenda Date _____

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