Administrative Civil Liability Complaint No. R5-2016-0512

MALAGA COUNTY WATER DISTRICT
WASTWATER TREATMENT FACILITY
FRESNO COUNTY

Exhibit 1
Detailed Analysis of Individual Permit Component and CDO Violations

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Abbreviations and Acronyms

2004 SUO	Sewer Use Ordinance No. 01-13-2004
2008 CDO	Cease and Desist Order No. R5-2008-0032
2008 Permit	WDRs Order No. R5-2008-0033
ACL	Administrative Civil Liability
Basin Plan	*Water Quality Control Plan for the Tulare Lake Basin*
BOD	Biochemical Oxygen Demand
CFR	Code of Federal Regulations
CWA	Clean Water Act
Discharger	Malaga County Water District
IU	Industrial User
mg/L	Milligrams per Liter
MRP	Monitoring and Reporting Program No. R5-2008-0033
NPDES	National Pollutant Discharge Elimination System
N/A	Not Applicable
NOV	Notice of Violation
PCA	Pretreatment Compliance Audit
PCI	Pretreatment Compliance Inspection
ppm	Parts per Million
SIU	Significant Industrial User
SNC	Significant Non-Compliance
TRC	Technical Review Criteria
TRE	Toxicity Reduction Evaluation
TSS	Total Suspended Solids
WDRs	Waste Discharge Requirements
WWTF	Wastewater Treatment Facility

Exhibit 1
Detailed Analysis of Individual Permit Component and CDO Violations
Administrative Civil Liability Complaint No. R5-2016-0512
Malaga County Water District

Background and Introduction

In accordance with Waste Discharge Requirements ("WDRs") Order No. R5-2008-0033 (National Pollutant Discharge Elimination System ("NPDES") No. CA0084239)(the "2008 Permit") for the Malaga County Water District ("Discharger") Wastewater Treatment Facility ("WWTF"), Fresno County, the Discharger is required to ensure compliance with any existing or future pretreatment standard promulgated by the United States Environmental Protection Agency under section 307 of the Clean Water Act ("CWA"), or amendment thereto, for any discharge to the WWTF or its collection system. (2008 Permit, at p. 16, Provisions—Standard Provisions VI.A.2.g.) Furthermore, the 2008 Permit specifies that the Discharger shall implement the pretreatment functions required by 40 Code of Federal Regulations ("CFR") part 403. (2008 Permit, at p. 25, Provisions—Special Provisions—Special Provisions for Municipal Facilities (POTWs Only)—Pretreatment Requirements VI.C.5.a.) The pretreatment requirements of 40 CFR part 403 are therefore specifically incorporated into the requirements of the 2008 Permit. Both the 2008 Permit and Cease and Desist Order R5-2008-0032 (the "2008 CDO") were adopted by the Central Valley Regional Water Quality Control Board ("Central Valley Water Board") on 14 March 2008.

Violations 1 through 7 are violations of the 2008 Permit and of the federal pretreatment requirements of 40 CFR part 403. Violation 8 is a violation of the 2008 CDO. While each violation is discussed separately below, in total, Violations 1 through 7 demonstrate a systemic, pervasive and chronic failure in the Discharger's administration of pretreatment program. The Discharger has consistently violated pretreatment program requirements, despite at least seven attempts on the part of Central Valley Water Board staff, made over a five year period, to aid the Discharger in coming back into compliance. Cumulatively, the violations critically impair the Discharger's ability to implement the pretreatment program in accordance with state and federal law and thwart the oversight role of the Central Valley Water Board.

Steps 1 and 2 - Potential for Harm and Assessments for Discharge Violations

These steps are not applicable because none of violations considered herein are discharge violations. However, the non-discharge violations discussed below are very serious and warrant a substantial civil liability because they deprive the Central Valley Water Board of the opportunity to perform its regulatory function of assuring the protection of beneficial uses by masking the cause and potential magnitude of water quality impacts in relevant receiving waters.

While potential for harm is discussed for each category of individual violations below, the combined effect of the failure to adequately implement the pretreatment program, including failure to identify and address instances of significantly non-compliant levels of arsenic, barium, chromium, and copper, has likely contributed to copper and chromium concentrations in sludge at hazardous levels (Tab 0A), and repeated instances of chronic toxicity of the alga *Selenastrum capricornutum* in three-species chronic toxicity bioassays. (See Cal. Code Regs. tit. 22, § 66261.24.) (Tabs 0B; 0C; 0D) Specific factors contributing to inadequate characterization of

industrial user discharges, including failure to identify and specify appropriate sample locations and types in permits, failure to inspect and comprehensively sample industrial user facilities, failure to identify users in non-compliance, failure to respond to non-compliance with appropriate enforcement or other control measures, and failure to evaluate and understand the nature of contributing industrial processes and the need for slug control plans have, however, collectively rendered the available information regarding industrial discharges so deficient that a definitive determination of causes and environmental impacts cannot be made.

Violation No. 1: The Discharger Failed to Adopt Significant Industrial User Permits Containing the Minimum Requirements of the Pretreatment Program

The Discharger is required to issue individual permits or equivalent individual control mechanisms to its Significant Industrial Users ("SIUs") pursuant to 40 CFR section 403.8(f)(1)(iii). Pursuant to the 2008 Permit and 40 CFR part 403, permits issued by the Discharger to its SIUs must meet the minimum requirements in 40 CFR section 403.8(f)(1)(iii)(B). (2008 Permit, at p. 25, Provisions—Special Provisions—Special Provisions for Municipal Facilities (POTWs Only)—Pretreatment Requirements VI.C.5.a.ii.) Pursuant to those provisions, permits must specify effluent limits based on local limits, sampling location, correct sample type, and a statement of applicable civil and criminal penalties for violation of pretreatment requirements. (40 CFR § 403.8(f)(1)(iii)(B)(3)-(5) and 40 CFR § 403.12(g)(3).)

A. <u>The Discharger Failed to Set Effluent Limits Based on Local Limits for Oil and Grease in SIU Permits</u>

The Discharger is required to include effluent limits based on local limits in its SIU permits. (40 CFR § 403.8(f)(1)(iii)(B)(3).) The Discharger's Sewer Use Ordinance No. 01-13-2004 ("2004 SUO") (Tab 1A) Sections 2.4.02 through 2.4.03 contain the maximum limitations on wastewater discharges to the Discharger's WWTF. The Discharger's 2004 SUO established a local limit of 100 mg/l for oil and grease. The Discharger failed to include effluent limits for oil and grease based on that local limit in applicable SIU permits. In 2012, the Discharger changed the effluent limit for oil and grease from 100 ppm to 200 ppm in its permit issued to SIU Stratas Foods. (Tab 1D) By failing to include an effluent limit based on local limits for oil and grease in applicable SIU permits the Discharger failed to comply with the minimum permit requirements, and directly violated the Discharger's own 2004 SUO. Excessive levels of oil and grease contribute to creation of blockages in sanitary sewer pipelines and may cause or exacerbate sewage overflows. Additionally, oils and greases can adversely affect beneficial uses through reduced surface aeration of water, increased turbidity, clogging of gills, oily sheens and foaming, and off tastes and odors.

B. <u>The Discharger Failed to Set Effluent Limits Based on Local Limits for pH in SIU Permits</u>

The 2004 SUO establishes that the acceptable range for pH is 6.0 to 9.0 pH units. In the same 2012 Stratas Foods permit mentioned above, the Discharger also failed to include effluent pH limits based on local limits. Instead of the acceptable pH range of 6.0 to 9.0 established by the Discharger in the 2004 SUO, the permit specified an acceptable pH range of 6.0 to 10.5 for the discharge, directly violating the Discharger's own 2004 SUO. If discharges of elevated pH waste streams into the sanitary sewerage system are not adequately neutralized, before reaching the WWTF, the microbial population involved in the biological treatment process could be adversely affected, resulting in poorer plant performance. Should the pH remain elevated

through the time of discharge, the effluent upper pH limitation could be exceeded (as it was on 18, 19, 20, and 21 April 2008; 12 May 2008; 10 and 19 July 2008; 5 June 2009; and 2 July 2013 and could contribute to an exceedance of the *Water Quality Control Plan for the Tulare Lake Basin* ("Basin Plan") objective of 8.3.

C. The Discharger Failed to Include Sampling Location in SIU Permits

The Discharger is required to include sampling location in its SUI permits. (40 CFR § 403.8(f)(1)(iii)(B)(4).) From 2008 through 2013, the Discharger failed to consistently identify sampling location in SIU permits. (See for example Tab 1G) The 2010 Pretreatment Compliance Inspection ("PCI") *POTW Pretreatment Compliance Inspection Checklist* noted that sampling type and sampling location were missing from the Discharger's SIU permits. (Tab 1E)

The 2014 Pretreatment Compliance Audit ("PCA") *Final Summary Report* noted in Section 7.3 that the Discharger's SIU permits included a placeholder measurement location of "001," but that the location was not defined, described, or depicted in the permits. (Tab 1H) Other SIU permits completely lacked reference to sampling location. (See for example Tab 1I) Not only did the Discharger fail to adequately describe the sampling locations, the Discharger either did not know the sample locations or contributing waste streams or, knowingly failed to correct inappropriate location(s), as illustrated by the fact that the SIU PPG Industries stated, during the 2014 pretreatment audit, that self-monitoring samples were collected at a point that is downstream of where the facility's wastewater comingles with wastewater generated at the co-located Air Products and Chemicals, Inc. facility (2014 PCA *Final Summary Report*, at p. 38.) (Tab 2E)

Specifying the sampling location in industrial user permits ensures the accuracy, consistency, and representative nature of industrial wastewater samples. Unrepresentative results hinder both the Discharger and Central Valley Water Board staff from readily identifying sources of pollutants (*e.g*., copper, chromium) at or above hazardous waste concentrations in the WWTF sludge (see Tab 0A) and impedes their ability to adequately characterize waste, ascertain compliance, and respond appropriately. Unrepresentative, inadequate characterization of waste streams impaired or prevented, and continues to impair or prevent, the Discharger from reliably complying with the 2008 Permit and federal regulations, which require(d) the Discharger to provide the Central Valley Water Board with adequate notification regarding the characteristics of pollutants discharged into the WWTF. (2008 Permit, at p. D-9, Attachment D—Provisions—Standard Provisions VII.A.1-3; 40 CFR § 122.42(b)(1)-(3).) The 2008 Permit also requires that the Discharger ensure that incompatible wastes are not introduced to the treatment system. (2008 Permit, at p. 25, Provisions—Special Provisions—Special Provisions for Municipal Facilities (POTWs Only)—Pretreatment Requirements VI.C.5.a.iii.)

D. The Discharger Failed to Include Correct Sampling Type in SIU Permits

The Discharger is required to include sampling type in its SIU permits. (40 CFR § 403.8(f)(1)(iii)(B)(4); 2008 Permit, at p. 16, Provisions—Standard Provisions VI.A.2.g.) The Discharger's IUs are required to collect grab samples for pH and oil and grease, and, unless specific conditions are met, flow-proportional composite samples for all other analytes, including, biochemical oxygen demand ("BOD"). (40 CFR § 403.12(g)(3).) The Discharger specified sampling types in its SIU permits, which are contrary to those prescribed by the federal regulations.

From 2008 through 2013, the Discharger failed to consistently identify a sample type for flow, and failed to consistently specify the correct sample type for wastewater quality samples in SIU permits. (See for example Tab 1E) The 2015 PCI *Summary Report* noted in Section 6.5.1 (Tab 1O) that the 2014 Rio Bravo and 2015 Kinder Morgan permits reviewed as part of the PCI failed to identify flow sample type and identified flow sample type as "grab," respectively. As flow must be measured quantitatively in place, rather than sampled for qualitative analysis, specification of "grab" was incorrect. A subsequent review of SIU permits provided as part of pretreatment annual report submittals confirmed the SIU permits failed to specify flow monitoring type, specified "composite" as the sample type for pH, rather than grab, and repeatedly specified "grab" as the sample type for BOD and total suspended solids, rather than composite. (See for example Tab 1P and 1Q)

SIU permits lacking sampling type, sampling location, and a statement of applicable penalties (discussed below) are summarized in Table 1.

Table 1 - Selected Significant Industrial User Permit Deficiencies

Significant Industrial User[1]	Permit No.	Year[2]	Sample Type[3,4,5]	Sample Location[3]	Applicable Penalties Statement[3]
Calpine/Smurfit/RockTenn	1001	2008	No	Yes	No
		2009	No	Yes	No
		2010	Yes	No	No
		2011	Yes	No	No
		2012	Yes	No	No
		2013	No	No	No
Rio Bravo	1005	2008	No	No	No
		2009	No	No	No
		2010	No	No	No
		2011	No	No	No
		2012	No	No	No
		2013	No	No	No
Stratas Foods	1008	2008	No	Yes	No
		2009	No	Yes	No
		2010	No	No	No
		2011	No	No	No
		2012	No	No	No
		2013	No	No	No
Kinder Morgan SFPP	1025	2008	No	No	No
		2009	No	No	No
Wholesale Equipment of Fresno	1030	2008	No	No	No
		2009	No	No	No
PPG Industries	1038	2008	No	No	No
		2009	No	Yes	No
		2010	Yes	No	No
		2011	Yes	No	No
		2012	Yes	No	No
		2013	Yes	No	No
Air Products and Chemical	1140	2008	Yes	No	No

Significant Industrial User[1]	Permit No.	Year[2]	Sample Type[3,4,5]	Sample Location[3]	Applicable Penalties Statement[3]
		2009	Yes	No	No
		2010	Yes	No	No
		2011	Yes	No	No
		2012	Yes	No	No
		2013	Yes	No	No

[1] Permits for Lester Lube, Inc. dba Fresno Truck Wash, Speedy (formerly Moga) Truck Wash, Fifth Wheel Truck Stop, and Imperial Truck Wash not provided.
[2] 2014 significant industrial user permits not provided
[3] No = indicates missing, incomplete, or incorrect element
[4] Includes correct specification of grab or composite sample
[5] Water quality monitoring sample type

E. The Discharger Failed to Include a Statement of the Applicable Civil and Criminal Penalties

The Discharger is required to include a statement of applicable civil and criminal penalties in its SIU permits. (40 CFR § 403.8(f)(1)(iii)(B)(5).) The 2010 PCI *POTW Pretreatment Compliance Inspection Checklist* noted that a statement of the applicable civil and criminal penalties was missing from the Discharger's SIU permits. (Tab 1E) From at least 2008 through 2013, the Discharger failed to reference the applicable civil or criminal penalty authorities or include a description of the applicable penalties in its permits. (See for example Tab 1F)

F. The Discharger Failed to Establish and Implement Permits

The Discharger failed to meet the basic requirement of having an individual control mechanism in place for its SIUs pursuant to 40 CFR section 403.8(f)(1)(iii). As documented in the 2014 PCA *Final Summary Report*, Discharger representatives informed the auditors during the 2014 PCA that all of its SIU permits were expired and, thus, invalid. (Tab 1J) Furthermore, during a 2012 inspection, Water Board staff found that the Discharger's SIU permits were signed by the Discharger consulting engineer rather than by authorized Discharger staff. (Tab 2C) Pursuant to Water Code section 13385 subdivisions (a)(6) and (c), a violation of these pretreatment requirements subjects the Discharger to administrative civil liability in an amount of up to $10,000 for each day in which the violation occurs.

Step 3 – Per Day Factor for Non-Discharge Violations

Step 3 of the Enforcement Policy's penalty calculation methodology directs the Central Valley Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

Potential for Harm: The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential threat to beneficial uses or for harm. (Enforcement Policy, at p. 16.)

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.

The Discharger's failure to adopt industrial user permits containing the minimum requirements, such as the inclusion in the SIU permits of effluent limits based on local limits and sampling requirements, had the potential to harm beneficial uses. The inclusion of effluent limits based on local limits in industrial user permits ensures that pollutants introduced into a wastewater treatment plant by industrial users do not cause "pass through[1]" or "interference[2]." By implementing local limits in industrial user permits, the Discharger is better able to ensure that industrial influent loading to its WWTF headworks can be adequately treated in order to avoid pass through and interference and meet the effluent limits in its NPDES permit, thereby, protecting receiving water quality.

Furthermore, specifying the sampling location in industrial user permits ensures the accuracy, consistency, and representative nature of industrial wastewater samples. Unrepresentative results hinder both the Discharger and Central Valley Water Board staff from readily identifying sources of pollutants (*e.g*., copper, chromium) at or above hazardous waste concentrations in the WWTF sludge (see Tab 2C) and impedes their ability to adequately characterize waste, ascertain compliance, and respond appropriately. Proper sampling protocol is critical to determine whether industrial users are complying with the pretreatment program and to understand the characteristics of the waste entering the collection system and WWTF. Given the foregoing discussion, the Potential for Harm is determined to be **moderate**, as the characteristics of the violations present a substantial threat to beneficial uses. (Ibid.)

Deviation from Requirement: Federal regulations and the 2008 Permit require the Discharger to develop and implement industrial pretreatment permits with specified components. (40 CFR § 403.8(f)(1)(iii)(B); 2008 Permit, at p. 25, Provisions—Special Provisions—Special Provisions for Municipal Facilities (POTWs Only)—Pretreatment Requirements— VI.C.5.a.) Permits issued by the Discharger to its industrial users do not comply with the minimum requirements. The Discharger failed to issue permits that specified effluent limits based on local limits, sampling location, correct sample type, and a statement of applicable civil and criminal penalties for violation of pretreatment requirements. (40 CFR § 403.8(f)(1)(iii)(B)(3)-(5) and 40 CFR § 403.12(g)(3).) In addition, the Discharger failed in several instances to meet the basic requirement of having an individual control mechanism in place for its SIUs. (40 CFR § 403.8(f)(1)(iii).) While permits issued by the Discharger have included some of the required elements, several of the core purposes of having individual control mechanisms in place were rendered ineffective by the omission of critical information. Therefore, the Deviation from the Requirement is determined to be **moderate** as the requirements have been rendered partially compromised. (Ibid.)

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[1] "Pass through" means a discharge which exits a wastewater treatment plant to waters of the United States in quantities or concentrations, which alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the wastewater treatment plant's NPDES permit. (40 CFR § 403.3(p).)

[2] "Interference" means a discharge which, alone or in conjunctions with a discharge or discharges from other sources, both inhibits or disrupts the wastewater treatment plant, its treatment processes or operation, or its sludge processes, use or disposal; and therefore is a cause of a violation of any requirement of the wastewater treatment plant's NPDES permit or of the prevention of sewage sludge use or disposal in compliance with section 405 of the Clean Water Act, Resource Conservation and Recovery Act, the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act. (40 CFR § 403.3(k).)

Per Day Factor: Applying a Potential for Harm of moderate and an Extent of Deviation of moderate results in a factor of **0.40**. (Enforcement Policy, at p. 16, Table 3.)

Days of Violation: The Discharger failed to adopt SIU permits that met the minimum pretreatment program requirements from at least the adoption of the 2008 Permit on 14 March 2008 through 2014, as documented by the 2014 PCA. (Tabs 1H-1J) The total days of violation are 13,736 [(658 x 2) + (2,484 x 5)]. The Discharger had seven SIUs in 2008, two of which were no longer designated as SIUs in the 2010 Annual Pretreatment Report.

- The period of violation is 658 days for each of the two SIUs that were de-designated after 2009 (from the adoption of the 2008 Permit on 14 March 2008 through the end of the calendar year in 2009).
- The period of violation is 2,484 days for each of the remaining five SIUs (from the adoption of the 2008 Permit through the end of the 2014 calendar year).

Multiple Day Violations: For violations that are assessed a civil liability on a per day basis, the initial liability amount should be assessed for each day up to 30 days. For violations that last more than 30 days, the daily assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if any, resulting from the violation. (Enforcement Policy, at p. 18.) In this case, the failure to have adequate individual control mechanisms in place for each SIU resulted in no economic benefit that can be measured on a daily basis, though the Discharger may have experienced a programmatic cost savings from failing to comply with the minimum pretreatment requirements, there is no discrete daily cost associated with the violations.[3] Therefore, the alternate approach for calculating multiday violations may be applied, and liability shall not be less than an amount calculated based on the initial Total Base Liability Amount for the first day of the violation, plus an assessment for each five-day period of violation until the 30th day, plus an assessment for each 30 days of violation. (Ibid.) Under this approach, the minimum number of days of violation is 494 [(27 x 2) + (88 x 5)]. Although it is within the Board's discretion to find that the days of violation lie anywhere between 494 and 13,736, the Prosecution Team recommends that the Board choose to apply the minimum number allowed under the Enforcement Policy of 494.

Violation No. 1 - Initial Liability Amount

The initial liability amounts for the violations calculated on a per-day basis are as follows:

494 days x $10,000 X 0.40

Total Initial Liability = $1,976,000

[3] Although the economic benefit model relies on specific date ranges associated with compliance, non-compliance, and penalty payment to calculate an appropriate benefit, these dates are used solely to determine the effective discount rate applied to the one-time expense. Therefore, no discrete daily economic benefit is realized, only compounding interest based on the expected penalty payment date.

Step 4 – Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's compliance history.

Culpability: **1.3**

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 and 1.5, with a lower multiplier for accidental incidents, and a higher multiplier for intentional or negligent behavior. (Enforcement Policy, at p. 17.) A factor of 1.3 is appropriate for this violation. The Discharger was notified of its failure to include the appropriate sampling location and sampling type during the 2010 PCI and in the concurring 6 September 2013 Notice of Violation, which transmitted the 2010 PCI *Summary Report*. The PCI inspector noted that the permits did not specify the appropriate sampling location and instructed the Discharger to implement corrective action by including a specific description of where the sampling point is located (Tab 1K). During the 2014 PCA, auditors again made findings regarding the Discharger's failure to include specific sampling location descriptions in its six SIU permits (Tab 1L). With each annual SIU permit reissuance (Tab 1N), the Discharger had the opportunity to correct this deficiency. During the 2015 PCI, inspectors verified that these minimum requirements were still not met in the Kinder Morgan permit. (2015 PCI, Section 6.3.) (Tab 1M) In summary, the Discharger was reminded of the elements required in industrial user permits six times, including verbally during 18 February 2010 PCI, the 6/7 January 2014 PCA, and the 25/26 March 2015 PCI, and in writing in a Notice of Violation ("NOV") dated 6 September 2013, the *Final Summary Report* for the 6/7 January 2014 PCA transmitted by NOV on 14 February 2014, and in a 7 July 2014 NOV (supplemented on 18 August 2014). The continued failure to comply despite knowledge of the lack of compliance suggests a negligent, if not willful, disregard of the requirements.

Cleanup and Cooperation**: 1.2**

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. (Enforcement Policy, at p. 17.) The Discharger was assessed a multiplier value of 1.2 based on the lack of cooperation exhibited by the Discharger in returning to compliance. During the 2010 PCI, the Discharger received notice of the SIU permit deficiencies. However, the Discharger continued to knowingly disregard the requirements and did not come into compliance. The 2014 PCA *Final Summary Report* (Tab 1C; Tab 1H; Tab 1J; Tab 1L) and the 2015 PCI *Summary Report* (Tab 1M) noted continued deficiencies in the permits issued to SIUs. The Discharger has recently made efforts to improve by hiring an Environmental Compliance Inspector whose responsibilities include, in part, assistance with permit drafting. Therefore, a multiplier of 1.2 is appropriate.

History of Violations**: 1.1**

The Enforcement Policy states that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this. (Enforcement Policy, at p. 17) In this case, a multiplier of 1.1 should apply because there is a history of violations, which have been fully adjudicated. In 2006 (ACL R5-2006-0003) and 2013 (ACL R5-2013-0090) the Central Valley Water Board issued Administrative Civil Liability Orders to the Discharger for violations of the Discharger's 2008 Permit.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Total Initial Liability Amount determined in Step 3.

Violation No. 1 –Total Base Liability Amount

Total Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability

$1,976,000 x 1.3 x 1.2 x 1.1 = $3,390,816

Statutory Maximum Civil Liability for Violation No. 1 =$137,360,000
Liability at Collapsed Days (494) Prior to Per Day and Conduct Factor Application= $4,940,000
Total Base Liability Amount for Violation No. 1 = $3,390,816

Violation No. 2: The Discharger Failed to Inspect and Sample the Effluent of Significant Industrial Users Annually

Pursuant to the federal regulations and the 2008 Permit, the Discharger is required to inspect and sample the effluent of SIUs at least once a year. (40 CFR § 403.8(f)(2)(v); 2008 Permit, at p. 25, Provisions—Special Provisions—Special Provisions for Municipal Facilities (POTWs Only)—Pretreatment Regulations VI.C.5.a.ii.) The federal regulations require a POTW to maintain records of all information resulting from monitoring, including compliance and enforcement activities. (40 CFR § 403.12(o).) The 2008 Permit also requires the Discharger to retain records of all monitoring information for a period of at least three years from the date of the sample, measurement, report or application. (2008 Permit, at p. D-5, Attachment D—Standard Provisions—Records IV.A.) From 2008 through 2014 the Discharger failed to comply with these requirements. The 2008 through the 2012 Annual Pretreatment Reports state that many facilities were sampled, but do not identify which SIUs were sampled or provide sampling results. Those five annual pretreatment reports state that facilities requiring permit renewals were inspected, but provide no documentation of those inspections or indication of which specific facilities were inspected. (See for example Tab 2A) The 2010 PCI *POTW Pretreatment Compliance Inspection Checklist* (Tab 2B) as well as the 2010 PCI *Summary Report* (Tab 2G) note that the Discharger was not able to provide documentation of annual inspections or sampling. The conclusory statements that samples were taken and inspections took place fail to satisfy the requirements of the federal regulations.

In 2012, State Water Board and Central Valley Water Board staff visited Stratas Foods and PPG Industries, two of the Discharger's SIUs. Representatives from both SIUs stated that a pretreatment inspection of the facility had never been conducted by the Discharger. (Tab 2C) Based on the information available in the 2013 Annual Pretreatment Report, it appears that the Discharger did inspect each SIU in 2013, but failed to sample one of them. According to Table 2 of the Discharger's 2014 Annual Pretreatment Report, the Discharger inspected all ten SIUs, but failed to sample five (Stratas Foods, RockTenn, Rio Bravo, PPG Industries, and Air Products) of its SIUs in 2014. (Tab 2D) Annual SIU sampling events are summarized in Table 2.

Table 2 – Significant Industrial Users Sampled by Malaga County Water District

Significant Industrial User	Permit No.	Samples Collected By Discharger						
		2008	2009	2010	2011	2012	2013	2014
Calpine/Smurfit/RockTenn	1001	[1]	Yes	No	No	Yes	Yes	No
Rio Bravo	1005	[1]	Yes	Yes	Yes	Yes	Yes	No
Stratas Foods	1008	[1]	Yes	Yes	Yes	Yes	Yes	No
Kinder Morgan SFPP	1025	[1]	[1]	N/A[2]	N/A[2]	N/A[2]	N/A[2]	No
Wholesale Equipment of Fresno	1030	[1]	[1]	N/A[2]	N/A[2]	N/A[2]	N/A[2]	N/A[2]
Fifth Wheel Truck Stop	1037	[1]	N/A[2]	N/A[2]	N/A[2]	N/A[2]	N/A[2]	Yes
PPG Industries	1038	[1]	Yes	Yes	Yes	Yes	Yes	No
Lester Lube, Inc. dba Fresno Truck Wash	1095	[1]	N/A[2]	N/A[2]	N/A[2]	N/A[2]	N/A[2]	Yes
Speedy (formerly Moga) Truck Wash	1098	[1]	N/A[2]	N/A[2]	N/A[2]	N/A[2]	N/A[2]	Yes
Air Products and Chemical	1140	[1]	Yes	No	No	Yes	No	No
Imperial Truck Wash	1205	[1]	N/A[2]	N/A[2]	N/A[2]	N/A[2]	N/A[2]	Yes

[1] Information provided insufficient to determine
[2] Not applicable; not significant industrial user at the time

The 2008 Permit requires that samples and measurements taken for the purpose of monitoring be representative of the monitored activity. (2008 Permit, at p. D-4, Attachment D—Standard Provisions, III.A Standard Provisions—Monitoring.) The 2014 PCA Final Summary Report noted that the Discharger's compliance sample collection location for PPG Industries was located where PPG's wastewater comingles with the wastewater of Air Products and Chemicals, Inc. (2014 PCA *Final Summary Report*, at p. 38.) (Tab 2E) The 2014 PCA Final Summary Report also noted that the Discharger was collecting samples from SIU Stratas Foods at a location where the facility's domestic wastewater was diluting the facility's industrial wastewater flow. (2014 PCA *Final Summary Report*, Section 14.1.) (Tab 2E) Thus, not only did the Discharger fail to consistently sample all SIUs annually, samples from at least two of its SIUs were taken from locations that do not meet the 2008 Permit's requirement that samples and measurements taken for the purpose of monitoring be representative of the monitored activity. (2008 Permit, at p. D-4. Attachment D—Standard Provisions—Monitoring III.A.) The 2015 PCI *Summary Report* (Tab 2I) noted that while the General Manager stated that the Discharger conducts compliance sampling at its SIUs at least once per year, the sampling data on file did not include the results of any monitoring conducted by the Discharger.

Pursuant to Water Code section 13385 subdivisions (a)(6) and (c), a violation of the requirements to inspect and sample the effluent of SIUs annually subjects the Discharger to administrative civil liability in an amount of up to $10,000 for each day in which the violation occurs.

Step 3 – Per Day Factor for Non-Discharge Violations

Step 3 of the Enforcement Policy's penalty calculation methodology directs the Central Valley Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

Potential for Harm: The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm or threat to beneficial uses. The Discharger's failure to sample SIUs at least once a year prevents the Discharger from knowing the levels at which pollutants of concern are entering its WWTF, thereby impairing its ability to timely identify and address potential adverse impacts to both the WWTF's ability to treat wastewater (*i.e*., interference) and the receiving water itself (*i.e.*, pass-through). By failing to sample its SIUs at least once a year, the Discharger impedes the Central Valley Water Board's efforts to assess the potential impacts and risks to water quality posed by the Discharger, and circumvents the Central Valley Water Board from ensuring that the Discharger is implementing its approved pretreatment program. Because the violation thwarts both the Discharger's and the Central Valley Water Board's ability to identify water quality risks, the violation has the potential to exacerbate the presence and accumulation of, and the related risks associated with, pollutants of concern. Therefore, the Potential for Harm is **major** because the characteristics of the threat indicate a very high potential for harm to beneficial uses. (Enforcement Policy, at p. 16.)

Deviation from Requirement: The Extent of Deviation from applicable requirements is **major** because the intended effectiveness of the requirement has been rendered ineffective. (Ibid.) In addition to failing to collect samples on an annual basis (Tab 2D), the Discharger, on some occasions, collected unrepresentative samples from comingled locations, which is documented in the 2014 PCA *Final Summary Report*. (Tab 2E) Sampling by the Discharger is necessary to confirm compliance with pretreatment standards, to verify self-monitoring data reported by the industrial user, to support potential enforcement actions, to support permit re-issuance, and to identify problems associated with sample locations and industrial user sampling practices. The Discharger's failure to collect proper samples on an annual basis rendered the purposes of the requirement ineffective in its essential functions.

Per Day Factor: Applying a Potential for Harm of major and an Extent of Deviation of major results in a factor of **0.70**. (Enforcement Policy, at p. 16, Table 3.)

Days of Violation: 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. The days of violation have been assessed as 15 (one day of violation for each instance in which the Discharger failed to sample an SIU during a given year).

Violation No. 2 - Initial Liability Amount

The initial liability amounts for the violations calculated on a per-day basis are as follows:

15 days x $10,000 X 0.70

Total Initial Liability = $105,000

Step 4 - Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's compliance history.

Culpability: **1.3**
A culpability multiplier of 1.3 has been applied. In February of 2010, the Discharger was notified in the PCI *POTW Pretreatment Compliance Inspection Checklist* that it was required to sample its SIUs once a year and that it had not met that requirement. (Tab 2B) Despite knowledge of the annual sampling and inspecting requirements since at least that time, the Discharger continued to commit violations for the years 2010 and 2011. (See for example Tab 2F) The Discharger was provided notice of the requirement to conduct annual sampling of its industrial users on at least six occasions, including verbally during the 18 February 2010 PCI, the 6/7 January 2014 PCA, and the 25/26 March 2015 PCI, and in writing in an NOV dated 6 September 2013 and attached *Final Summary Report* for the 2010 PCI, the *Final Summary Report* for the 6/7 January 2014 PCA transmitted by NOV on 14 February 2014, and in a 7 July 2014 NOV (supplemented on 18 August 2014). The Discharger's disregard of its obligations even after having been notified on at least six occasions warrants a high culpability multiplier. (Enforcement Policy, at p. 17 [higher multiplier for intentional and negligent behavior].)

Cleanup and Cooperation: **1.3**
For cleanup and cooperation, the Enforcement Policy suggests an adjustment that should result in a multiplier between 0.75 and 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation. (Enforcement Policy, at p. 17.) The Discharger was provided with notice that it was in violation of the sampling and inspection requirements in 2010 when it received the 2010 PCI *POTW Pretreatment Compliance Inspection Checklist* (Tab 2B). In 2012, the Discharger exceeded its chronic toxicity limits, which triggered the requirement that it develop a Toxicity Reduction Evaluation ("TRE") Report to determine the source of the toxicity exceedance. It was not until that additional onus that the Discharger conducted more comprehensive sampling of its SIUs. Still, the Discharger failed to come into compliance. It was provided with notice of deficiencies in 2013 when it received the 2010 PCI *Summary Report* (Tab 2G), in 2014 when it received the 2014 PCA *Final Summary Report* (Tab 2H) and in the aforementioned NOVs. With each notice, the Discharger was provided with an opportunity to come into compliance. Despite numerous opportunities to correct the deficiencies, the Discharger continued to disregard the requirement, as documented by the 2014 Annual Pretreatment Report, in which the Discharger reported that it failed to collect samples from six of its SIUs. After being on notice that it was in violation of the requirements for over five years, the Discharger finally made some efforts to improve by hiring an Environmental Compliance Inspector in 2014 to assist with sampling and inspections, among other responsibilities.(Tab 2J) Accordingly, a 1.3 has been applied.

History of Violations: **1.1**
A factor of 1.1 is appropriate for this violation; the same circumstances described for Violation No. 1 are applicable to this violation.

Step 5 - Determination of Total Base Liability Amount
The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 3.

Violation No. 2 - Total Base Liability Amount

Total Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability

$105,000 x 1.3 x 1.3 x 1.1 = $195,195

Because the maximum civil liability for this violation is $150,000 (15 days of violation x the statutory maximum of $10,000 per day), the total base liability is capped at that amount.

Statutory Maximum Civil Liability for Violation No. 2 = $150,000
Total Base Liability Amount for Violation No. 2 = $150,000

Violation No. 3: The Discharger Failed to Publish its List of Industrial Users in Significant Non-Compliance with Pretreatment Requirements

Pursuant to federal regulations and the 2008 Permit, the Discharger is required to, at least annually, publish a list of its industrial users which, at any time during the previous 12 months, were in Significant Non-Compliance ("SNC") with applicable pretreatment program requirements. (40 CFR § 403.8(f)(2)(viii); 2008 Permit, at p. 25, Provisions—Special Provisions—Special Provisions for Municipal Facilities (POTWs Only)—Pretreatment Requirements VI.C.5.a.ii.e.) The Discharger has not complied with this requirement.

SNC is defined to include "[c]hronic 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)." (40 CFR § 403.8(f)(2)(viii)(A)-(B).)

Pretreatment Standards or Requirements are defined to include "any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307 (b) and (c) of the Act, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to §403.5." (40 CFR § 403.3(l).) Where a POTW develops specific prohibitions or limits on pollutant or pollutant parameters, those limits are deemed Pretreatment Standards. (40 CFR § 403.5(d).)

A. Calpine

Significant Industrial User Calpine (also known as Smurfit and RockTenn) was in SNC for the first half of 2011. Its single arsenic result for the first half of 2011 was reported as 5.2 mg/l, in excess of the limit of 5.0 mg/l. The result constitutes 100% of the measurements taken in that six-month period, thereby achieving SNC under 40 CFR section 403.8(f)(2)(viii)(A). (Tab 3A)

Calpine's single barium result for the first half of 2011 was reported as 56 mg/l, in excess of the limit of 10 mg/l. The result exceeds the TRC and constitutes 100% of the measurements taken in that six-month period, thereby achieving SNC under both 40 CFR section 403.8(f)(2)(viii)(A) and 40 CFR section 403.8(f)(2)(viii)(B). (Tab 3A)

Calpine was also in SNC for the second half of 2011. Calpine's single barium result for the second half of 2011 was reported as 78 mg/l, in excess of the limit of 10 mg/l. The result exceeds the TRC and constitutes 100% of the measurements taken in that six-month period, thereby achieving SNC under both 40 CFR section 403.8(f)(2)(viii)(A) and 40 CFR section 403.8(f)(2)(viii)(B). (Tab 3A)

Calpine's single chromium result for the first half of 2011 was reported as 10 mg/l, in excess of the limit of 5 mg/l. The result exceeds the TRC and constitutes 100% of the measurements taken in that six-month period, thereby achieving SNC under both 40 CFR section 403.8(f)(2)(viii)(A) and 40 CFR section 403.8(f)(2)(viii)(B). (Tab 3A)

Calpine's single chromium result for the second half of 2011 was reported as 10 mg/l, in excess of the limit of 5 mg/l. The result exceeds the TRC and constitutes 100% of the measurements taken in that six-month period, thereby achieving SNC under both 40 CFR section 403.8(f)(2)(viii)(A) and 40 CFR section 403.8(f)(2)(viii)(B). (Tab 3A)

Calpine's single copper result for the first half of 2011 was reported as 9.9 mg/l, in excess of the limit of 5 mg/l. The result exceeds the TRC and constitutes 100% of the measurements taken in that six-month period, thereby achieving SNC under both 40 CFR section 403.8(f)(2)(viii)(A) and 40 CFR section 403.8(f)(2)(viii)(B). (Tab 3A)

Calpine's single copper result for the second half of 2011 was reported as 65 mg/l, in excess of the limit of 5 mg/l. The result exceeds the TRC and constitutes 100% of the measurements taken in that six-month period, thereby achieving SNC under both 40 CFR section 403.8(f)(2)(viii)(A) and 40 CFR section 403.8(f)(2)(viii)(B). (Tab 3A)

B. Stratas Foods

Significant Industrial User Stratas Foods was in SNC for the first half of 2009 and the second half of 2012 pursuant to 40 CFR section 403.8(f)(2)(viii)(B) for oil and grease violations, as shown below. (Tab 3B)

Table 3 - Stratas Foods Oil and Grease Significant Non-Compliance

Stratas Foods Sample Event	Oil and Grease Monthly Average (mg/l)	% over 100 mg/l Local Limit[1]	40% TRC Exceeded?	% Exceeding in 6-Month Period	SNC?
Jul-2009	127	27	No	17 (TRC) 66 (limit)	Yes
Aug-2009	147	47	Yes		
Sep-2009	82	N/A	No		
Oct-2009	102	2.0	No		
Nov-2009	62	N/A	No		
Dec-2009	111	11	No		
Jul-2012	84	N/A	No	50 (TRC)	Yes
Aug-2012	92	N/A	No		

Stratas Foods Sample Event	Oil and Grease Monthly Average (mg/l)	% over 100 mg/l Local Limit[1]	40% TRC Exceeded?	% Exceeding in 6-Month Period	SNC?
Sep-2012	166	66	Yes		
Oct-2012	217	117	Yes		
Nov-2012	132	32	No		
Dec-2012	152	52	Yes		
[1] Limitation period not specified in Sewer Use Ordinance, but specified as monthly in permit.					

C. PPG Industries

Significant Industrial User PPG Industries was in SNC for electrical conductivity ("EC") for the second half of 2012 (see Table 4) (Tab 3C), and in SNC for copper in the second half of 2010. (Tab 3D)

Table 4 - PPG Industries Electrical Conductivity Significant Non-Compliance

PPG Industries Sample Event	EC Result (μmhos/cm)	Monthly Average (μmhos/cm)	% over 1,000 μmhos/cm local limit	20% TRC Exceeded?	% Exceeding in 6-Month Period	SNC?
Jul-2012	14,000	14,000	1,300	Yes	67 (TRC) 67 (limit)	Yes
Aug-2012	750	750	N/A	No		
Sep-2012	--	--	N/A	N/A		
Oct-2012	1,000 7,900 15,000	7,967	700	Yes		
Nov-2012	--	--	N/A	N/A		
Dec-2012	--	--	N/A	N/A		

The single copper result for the second half of 2010 was 21 mg/l. The copper result exceeds the effluent limitation of 5 mg/l and the TRC and constitutes 100% of the measurements taken in that six-month period, thereby achieving SNC under both 40 CFR section 403.8(f)(2)(viii)(A) and 40 CFR section 403.8(f)(2)(viii)(B).

D. Summary of SIUs in SNC

The 2010 PCI *POTW Pretreatment Compliance Inspection Checklist* identified that the Discharger did not publish a list of industrial users in SNC. (Tab 3E) At the 2014 PCA, a Discharger representative stated that it does not publish notices of facilities in SNC and that it was unaware if any of the SIUs were in SNC in 2013. (Tab 5B) On 26 March 2015, at the 2015 Pretreatment Compliance Inspection, representatives of the Discharger similarly stated it had never evaluated whether its SIUs were in SNC. (Tab 3F) Table 5 summarizes the years in which SIUs were in SNC.

Table 5 - Summary of SIUs in Significant Non-Compliance

Significant Industrial User	Permit No.	In Significant Non-Compliance						
		2008	2009	2010	2011	2012	2013	2014
Calpine/Smurfit/RockTenn	1001	1	Yes	Yes	Yes	1	1	1
Rio Bravo	1005	1	1	1	1	1	1	1

Significant Industrial User	Permit No.	In Significant Non-Compliance						
		2008	2009	2010	2011	2012	2013	2014
Stratas Foods	1008	[1]	[1]	[1]	[1]	[1]	[1]	[1]
Kinder Morgan SFPP	1025	[1]	[1]	[1]	[1]	[1]	[1]	[1]
Wholesale Equipment of Fresno	1030	[1]	[1]	[1]	[1]	[1]	[1]	[1]
Fifth Wheel Truck Stop[2]	1037	[1]	[1]	[1]	[1]	[1]	[1]	[1]
PPG Industries	1038	[1]	[1]	Yes	[1]	Yes	[1]	[1]
Lester Lube, Inc. dba Fresno Truck Wash[2]	1095	[1]	[1]	[1]	[1]	[1]	[1]	[1]
Speedy (formerly Moga) Truck Wash[2]	1098	[1]	[1]	[1]	[1]	[1]	[1]	[1]
Air Products and Chemical	1140	[1]	[1]	[1]	[1]	[1]	[1]	[1]
Imperial Truck Wash[2]	1205	[1]	[1]	[1]	[1]	[1]	[1]	[1]

[1] Insufficient data to determine additional instances of SNC
[2] Deemed significant industrial user by 29 October 2014

The Discharger failed to publish a list of industrial users in SNC in 2009, 2010, 2011, and 2012. Pursuant to Water Code section 13385 subdivisions (a)(6) and (c), the Discharger's violation of the requirement that it publish a list of industrial users in SNC subjects it to administrative civil liability in an amount of up to $10,000 for each day in which the violation occurs.

Step 3 – Per Day Factor for Non-Discharge Violations

Step 3 of the Enforcement Policy's penalty calculation methodology directs the Central Valley Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

Potential for Harm: The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm or threat to beneficial uses. In this case, to the Discharger's failed to publish a list of users in SNC. That publication would have provided notice to the community that may be affected by the incidents of non-compliance. While the requirement to provide such notice plays an important role in providing the public with information, the failure to do so does not pose a significant potential for harm to beneficial uses. The Potential for Harm is **minor** because the characteristics of the threat indicate a minor potential for harm. (Enforcement Policy, at p. 16.)

Deviation from Requirement: The Extent of Deviation from applicable requirements is **major** because the intended effectiveness of the requirement has been completely compromised. (Ibid.) The purpose of the requirement, in part, is to comply with the public participation requirements of 40 CFR part 25. By failing, over at least a five-year period, to publish a list of Industrial Users which were in SNC, the intended effectiveness of the requirement was rendered completely ineffective.

Per Day Factor: Applying a Potential for Harm of minor and an Extent of Deviation of major results in a factor of **0.30**. (Enforcement Policy, at p. 16, Table 3.)

Days of Violation: There are four years in which the Discharger was required and failed to publish notice of users in SNC. The days of violation have been calculated as 4 (1 violation per

each instance at least one SIU was in SNC during a given year). Therefore, the maximum penalty for this violation is $40,000.

Violation No. 3 - Initial Liability Amount

The initial liability amounts for the violations calculated on a per-day basis are as follows:

4 days x $10,000 X 0.30 = $12,000

Total Initial Liability = $12,000

Step 4 - Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's compliance history.

Culpability: **1.3**

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 and 1.5, with a lower multiplier for accidental incidents, and a higher multiplier for intentional or negligent behavior. (Enforcement Policy, at p. 17.) In this case, a culpability multiplier of 1.3 is appropriate. In February of 2010, the Discharger was notified in the 2010 PCI *POTW Pretreatment Compliance Inspection Checklist* (Section III)(Tab 3E) that it was required, at least annually, to publish a list of its industrial users which, at any time during the previous 12 months, were in SNC with applicable Pretreatment requirements, and that it had not met that requirement. Despite having knowledge that it had failed to act with the due standard of care, the Discharger continued to disregard the requirement for four more years. Thus, the Discharger acted at least negligently in committing the violation.

Cleanup and Cooperation: **1.3**

For cleanup and cooperation, the Enforcement Policy suggests a multiplier between 0.75 and 1.3, with the lower multiplier where there is a high degree of cleanup and cooperation. (Enforcement Policy, at p. 17.) The Discharger did not cooperate with the Central Valley Water Board despite being provided with ample notice of the violations and opportunities to remedy them. Therefore, a 1.3 has been assigned for this factor. The Discharger was notified in the September 2013 NOV (Tab 2C) and attached 2010 PCI *Summary Report* (Tab 3G) that it had failed to comply with the public notification requirements. That NOV required the Discharger to take corrective actions by February 2014. The Discharger did not comply in response to that NOV. In January of 2014 at the PCA exit interview and again in February of 2014, when the Discharger was sent the 2014 PCA *Final Summary Report*, the Discharger was again notified that it was in violation of the public notice requirements. During discussions as a component of the 2015 inspection, the Discharger representatives stated that they had not performed calculations to determine if any of its SIUs were in SNC for the 2014/2015 year, (Tab 3F) which are necessary in order to comply with the public notice requirements. The continued failure to comply with the requirements despite being reminded of them both verbally and in writing warrants the application of a 1.3.

History of Violations: **1.1**

A factor of 1.1 is appropriate for this violation; the same circumstances described for Violation No. 1 are applicable to this violation.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 3.

Violation No. 3 - Total Base Liability Amount

Total Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability

$12,000 x 1.3 x 1.3 x 1.1 = $22,308

Statutory Maximum Civil Liability for Violation No. 3 = $40,000
Total Base Liability Amount for Violation No. **3 = $22,308**

Violation No. 4: The Discharger Failed to Evaluate Whether a Slug Control Plan is Necessary for Each SIU and Produce Them Upon Request

Pursuant to 40 CFR section 403.8(f)(2)(vi), the Discharger is required to develop and implement procedures to evaluate whether each of its Significant Industrial User needs a plan or other action to control Slug Discharges, as defined. The federal regulations specify that the Discharger conduct an evaluation at least once by October 14, 2006 for Industrial Users ("IUs") identified as significant prior to November 14, 2005. For IUs identified as significant after that date, the Discharger is required to conduct a slug evaluation within 1 year of the IU being designated as significant. 40 CFR section 403.8(f)(2)(vi) requires that the Discharger make the results of slug evaluations available to the Central Valley Water Board upon request.

The federal regulations require that slug control plans 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 Discharger 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.

The 2010 PCI states that the Discharger had not performed slug evaluations for any of its SIUs. (Tab 3G) In October of 2013, the Discharger sent a form to its SIUs asking them to determine whether they needed a slug evaluation. The 2014 Pretreatment Compliance Audit, however, concluded that those forms did not constitute slug evaluations. (Tab 4A) The Discharger stated in its 2013 Annual Pretreatment Report that a slug evaluation was performed for Air Products, but none of the other SIUs. (Tab 4B) The third quarterly pretreatment report in 2014 includes a discussion of factors considered in developing a "Slug" Discharge Plan for the newly re-designated SIU Kinder Morgan. (Tab 4C) However, the 2015 PCI *Summary Report* documents that the Discharger fails to differentiate between the terms "slug" and "batch" (Tab 1O) and specifically cites the Kinder Morgan plan as an example. (Tab 4F)

As noted in the 2010 PCI (*POTW Pretreatment Compliance Inspection Checklist*, at pp. 15 and 21) (Tab 4D, Tab 1E), and the 2014 PCA (Tab 4A), the Discharger hads not complied with the requirement to conduct slug evaluations. The Discharger was asked at both the 2010 PCI and the 2014 PCA to provide the results of it slug evaluations. The Discharger was unable to produce slug evaluation results on those occasions. At the 2015 PCI on 26 March 2015, however, Discharger representatives stated that there were no records of slug evaluations ever having been conducted by the Discharger. (Tab 4E)

For SIU Air Products, the Discharger reported in its 2013 Annual Pretreatment Report that it conducted a slug evaluation, but was unable to produce the results of the evaluation upon request, as required by 40 CFR section 403.8(f)(2)(vi), at the 2014 PCA. Evaluations for the other SIUs have also not been produced to date. Pursuant to Water Code section 13385 subdivisions (a)(6) and (c) a violation of those requirements subjects the Discharger to administrative civil liability in an amount of up to $10,000 for each day in which the violation occurs.

Step 3 – Per Day Factor for Non-Discharge Violations

Step 3 of the Enforcement Policy's penalty calculation methodology directs the Central Valley Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

Potential for Harm: The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm or threat to beneficial uses. (Enforcement Policy, at p. 16.) The Discharger's failure to comply with the slug evaluation requirements has the potential to harm beneficial uses.

The purpose of the slug evaluation requirement is to ensure that the Discharger determines which facilities have a high potential for Slug Discharges and whether control plans or other actions are necessary to prevent interference and pass-through at such facilities. The Discharger's failure to assess the need for slug control plans impairs the Discharger's ability to timely develop and implement plans to prevent or mitigate potential adverse impacts to both the WWTF's ability to treat wastewater (*i.e.*, interference) and the receiving water itself (*i.e.*, pass-through) due to non-routine, episodic discharges, which has the potential to harm beneficial uses and degrade water quality. While slug control plans are a critical prevention measure in mitigating adverse impacts during non-routine discharges, the need for such plans to be implemented is likely infrequent. Given the foregoing discussion, the Potential for Harm is determined to be **minor**, as the characteristics of the violations present a minor potential for harm to beneficial uses. (Ibid.)

Deviation from Requirement: 40 CFR section 403.8(f)(2)(vi) requires the Discharger to evaluate at least once, within specified time periods, whether each SIU needs a slug control plan or other action to control Slug Discharges and produce those evaluations upon request. The Discharger failed to conduct that evaluation for at least seven of its SIUs. While the Discharger reported conducting an evaluation for SIU Air Products, it was unable to produce results of that evaluation upon request as required by law. Furthermore, during the 25/26 March 2015 PCI, inspectors found it necessary to thoroughly discuss the definition of a Slug Discharge with Discharger personnel suggesting that Discharger personnel were not even familiar with the term's actual meaning. (Tab 1O) Given the foregoing information, it cannot be concluded that the Discharger has even complied with the requirement partially. The Deviation from

Requirement is determined to be **major** as the requirement has been rendered ineffective in its essential function. (Ibid.)

Per Day Factor: Applying a Potential for Harm of minor and an Extent of Deviation of major results in a factor of **0.35**. (Enforcement Policy, at p. 16. Table 3.)

Days of Violation: The Discharger has failed to comply with the requirement to perform slug evaluations and produce them upon request. The Discharger reported in its 2008 Annual Pretreatment Report that it had 7 SIUs. It did not indicate that any of the SIUs were newly designated as such. Therefore, the Discharger had, at the most, until 1 January 2009 to evaluate whether a slug control plan was necessary for those SIUs. It was documented at the PCI on 18 February 2010 that the Discharger had not conducted slug evaluations for any of its SIUs (Tab 3G) and was unable to produce them upon request. At both the 2014 PCA and the 2015 PCI, the Discharger was unable to produce the results of any Slug Discharge evaluations.

- The period of violation is 365 days for each of the two SIUs that were no longer designated as such in the 2010 Annual Pretreatment Report (from 1 January 2009 through the end of the 2009 calendar year).
- The period of violation is 2,222 days for each of the remaining five SIUs (from the adoption through the rescission of the 2008 Permit.
- The total days of violation are 11,840 [(365 x 2) + (2,222 x 5)].

Multiple Day Violations: For violations that are assessed a civil liability on a per day basis, the initial liability amount should be assessed for each day up to 30 days. For violations that last more than 30 days, the daily assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if any, resulting from the violation. (Enforcement Policy, at p. 18.) In this case, the failure to evaluate the need for a slug control plan resulted in no economic benefit that can be measured on a daily basis, though the Discharger may have experienced a programmatic cost savings from failing to comply with the minimum pretreatment requirements. Therefore, the alternate approach for calculating multiday violations may be applied, and liability shall not be less than an amount calculated based on the initial Total Base Liability Amount for the first day of the violation, plus an assessment for each five-day period of violation until the 30th day, plus an assessment for each 30 days of violation. (Ibid.) Under this approach, the minimum number of days of violation is 436 [(18 collapsed days x 2 SIUs) + (80 collapsed days x 5 SIUs)]. Although it is within the Board's discretion to find that the days of violation lie anywhere between 436 and 11,840, the Prosecution Team recommends that the Board choose to apply the minimum number allowed under the Enforcement Policy of 436.

Violation No. 4 - Initial Liability Amount

The initial liability amounts for the violations calculated on a per-day basis are as follows:

436 days x $10,000 X 0.35

Total Initial Liability = $1,526,000

Step 4 – Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's compliance history.

Culpability: **1.3**

A factor of 1.3 is appropriate for this violation. The manner in which the Discharger should have acted is defined by the 40 CFR part 403, which establishes the minimum time frames by which the Discharger must conduct a slug evaluation for each SIU and specifies that the Discharger must produce the evaluation results upon request. The Discharger was reminded of the slug control plan requirement verbally during the 18 February 2010 PCI, during the 6/7 January 2014 PCA (Tab 4A), and in writing in the *Summary Report* for the 2010 PCI transmitted with the 4 September 2013 NOV (Tab 4D; Tab 1E; Tab 3G). The Discharger was informed of the inadequacy of its industrial user self-evaluation approach in the final report for the 6/7 January 2014 PCA transmitted by NOV on 14 February 2014. The continued failure to comply with the requirement despite repeated notice suggests that the Discharger's actions or lack thereof, were carried out with gross negligent.

Cleanup and Cooperation: **1.3**

This factor reflects the extent to which the Discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. (Enforcement Policy, at p. 17.) The Discharger was given a multiplier value of 1.3 because of its lack of cooperation in returning to compliance. The Discharger had the opportunity to return to compliance when notified of the violation in a 7 July 2014 NOV (supplemented on 18 August 2014) (Tab 8K). Yet, at the 2015 PCI, representatives for the Discharger confirmed that slug evaluations had never been performed. This demonstrates a willful disregard of the law. A multiplier of 1.3 is appropriate to reflect the Discharger's lack of cooperation in returning to compliance.

History of Violations: **1.1**

A factor of 1.1 is appropriate for this violation; the same circumstances described for Violation No. 1 are applicable to this violation.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Total Initial Liability Amount determined in Step 3.

Violation No. 4 - Total Base Liability Amount

Total Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability

$1,526,000 x 1.3 x 1.3 x 1.1 = $2,836,834

Statutory Maximum Civil Liability for Violation No. 4 =$118,400,000
Liability at Collapsed Days (436) Prior to Per Day and Conduct Factor Application= $4,360,000
Total Base Liability Amount for Violation No. 4 = $2,836,834

Violation No. 5: The Discharger Failed to Comply with Annual Pretreatment Reporting Requirements

Pursuant to federal requirements and the 2008 Permit, the Discharger is required to file annual pretreatment reports. (40 CFR § 403.12(i); 2008 Permit, at p. 25, Provisions—Special Provisions—Special Provisions for Municipal Facilities (POTWs Only)—Pretreatment Requirements VI.C.5.a.ii; 2008 Permit, at p. E-17, Attachment E—Monitoring and Reporting Program—Reporting Requirements—Other Reports—Annual Pretreatment Reporting Requirements X.D.4.) 40 CFR section 403.12(i) requires that the Discharger provide the Central Valley Water Board with an annual pretreatment report describing its program activities, which must include, at a minimum, an updated list, as specified, of its Industrial Users, a summary of each Industrial User's compliance status, a summary of compliance and enforcement activities, a summary of changes to the Discharger's pretreatment program that were not previously reported to the Central Valley Water Board, and any other relevant information requested by the Central Valley Water Board. The 2008 Permit Monitoring and Reporting Program ("MRP") has additional annual pretreatment report requirements. Pursuant to the MRP, the Discharger is required to include in its annual pretreatment report a summary of analytical results from sampling of influent, effluent, and sludge for pollutants that USEPA has identified under Section 307(a) of the CWA which are known or suspected to be discharged by industrial users. (2008 Permit, at p. E-17, Attachment E--Monitoring and Reporting Program—Reporting Requirements—Other Reports—Annual Pretreatment Reporting Requirements X.D.4.) The Discharger is required to include a summary, including conclusions or results, of industrial user annual sampling and inspecting activities. The Discharger must 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.

A. <u>The Discharger Failed to Include a Summary of Analytical Results for Influent, Effluent, or Sludge</u>

Since at least the adoption of the 2008 Permit, the Discharger has failed to meet the annual pretreatment report requirements. From 2008 through 2012, the Discharger did not include analytical results for influent, effluent, or sludge in its annual pretreatment reports. (See for example Tab 5A) In the annual pretreatment reports for those years the Discharger included a statement that "[a]nalytical results for pollutants indentified [sic] in §307(a) of the Clean Water Act and 40 CFR 401.15 are limited. The industries served by the Malaga County Water District are generally not identified as dischargers of these pollutants." (See for example Tab 5A) Yet, permits issued by the Discharger to several of its SIUs included limits and required sampling for a range of heavy metals, listed in §307(a) of the CWA and 40 CFR section 401.15. (See for example Tab 5E)

B. <u>The Discharger Failed to Include a Summary of Upset, Interference, or Pass-Through Incidents</u>

The MRP requires that the Discharger include in its annual pretreatment reports a discussion of upset, interference, or pass-through incidents at the treatment plant, which the Discharger knows or suspects were caused by its industrial users. (2008 Permit, at p. E-18, Attachment E—Monitoring and Reporting Program—Reporting Requirements—Other Reports—Annual Pretreatment Reporting Requirements X.D.4.b.) The Discharger is required to discuss the reasons why the incidents occurred, the corrective actions taken and, if known, the name and address of, the IUs responsible. The Discharger is also required to 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 non-compliance with sludge disposal requirements.

Beginning in at least 2010, the Discharger failed to fully comply with this requirement. In its 2010, 2011, and 2012 Annual Pretreatment Reports, the Discharger indicates that it experienced or may have experienced upset, interference, and pass-through events. (See for example Tab 2F) The Discharger fails to include in the annual pretreatment reports a review of the applicable pollutant limitations to determine whether additional limitations or changes may be necessary to prevent pass-through, interference, or non-compliance with sludge disposal requirements. (See for example Tab 2F)

C. The Discharger Failed to Include a Summary of Industrial User Compliance Status

Both the federal regulations and the MRP require the Discharger to include in its annual pretreatment reports an updated list of its industrial users with IU names and addresses. (40 CFR § 403.12(i); 2008 Permit, at p. E-18, Attachment E—Monitoring and Reporting Program—Reporting Requirements—Other Reports—Annual Pretreatment Reporting Requirements X.D.4.d.) The Discharger is required to list the noncategorical industrial users that are subject to local limitations. The Discharger is required to characterize the compliance status through the year of record for 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 section 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 and identifying the compliance status of the Discharger with regard to audit/pretreatment compliance inspection requirements must be included in the annual pretreatment report or, 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 included with the annual pretreatment report.

The Discharger failed to accurately report compliance status with the required characterizations. In 2010, 2011, and 2012, the Discharger failed to characterize IUs who caused pass-through, or interference and were, therefore, in SNC. (See for example Tab 2F) For those IUs identified as being noncompliant, the Discharger failed to note whether the user was on a compliance schedule. (Tab 5A)

D. The Discharger Failed to Include a Summary of Inspection and Sampling Activities

The Discharger is required, pursuant to the MRP, to include in its annual pretreatment report a summary of the inspection and sampling activities it has conducted during the past year to gather information and data regarding its IUs. (2008 Permit, at p. E-19, Attachment E-Monitoring and Reporting Program—Reporting Requirements—Other Reports—Annual Pretreatment Reporting Requirements X.D.4.e.) The Discharger is required to include in that summary the names and addresses of IUs subjected to surveillance, an explanation of whether and how often those IUs were inspected or sampled, and the conclusions or results from the inspections and sampling for each IU.

The Discharger failed to fully meet this requirement for the annual pretreatment reports dating from at least 2008 through 2013. In the 2008 through 2012 Annual Pretreatment Reports, the Discharger does not explicitly list or otherwise identify any of the IUs that it inspected, except to state that facilities requiring permit renewals were inspected (See for example Tab 2A). In the 2013 Annual Pretreatment Report, the Discharger provided most of the required information for the Class I IUs (*i.e.*, the SIUs). The Discharger, in those reports, also does not provide the frequency of inspections or include any inspection results. (See for example Tab 2A) The Discharger was unable to produce inspection reports at the 2010 PCI (2010 PCI *Summary Report*, Section 7.2.) (Tab 2G)

E. <u>The Discharger Failed to Include a Summary of Annual Pretreatment Budget</u>

The MRP requires that the Discharger include in its annual pretreatment reports a summary of the annual pretreatment budget, including the cost of pretreatment program functions and equipment purchases. (2008 Permit, at p. E-17, Attachment E—Monitoring and Reporting Program—Reporting Requirements—Other Reports—Annual Pretreatment Reporting Requirements X.D.4.h.) In its annual pretreatment reports from 2008 through 2013, the Discharger failed to comply with this requirement. From 2008 through 2013, the Discharger states solely that the pretreatment program budget is a part of the overall sewer budget for Malaga County Water District. (See for example Tab 5A) During the 2014 PCA, a Discharger representative stated that the budget was not specifically broken down by program, indicating that there was no way to identify resources strictly dedicated to pretreatment program. (2014 PCA *Final Summary Report*, paragraph 25.)(Tab 5B) The Discharger does not include the cost of pretreatment program functions and equipment purchases in any of those reports.

F. <u>The Discharger Failed to Include Requisite Signature and Certification</u>

Pursuant to the 2008 Permit, annual pretreatment reports must be signed and certified, as specified, by either a principal executive officer or ranking elected official, or its duly-authorized representative, as defined. (2008 Permit, at p. D-6, Attachment D—Standard Provisions—Reporting—Signatory and Certification Requirements V.B.) The Discharger failed to certify its annual pretreatment reports from 2008 through 2013. Furthermore, the 2008 Annual Pretreatment Report was signed by its consulting engineer, who does not meet the definition of a duly-authorized representative. (Tab 5C)

G. <u>The Discharger Failed to Submit Annual Pretreatment Reports By Due Date</u>

In addition to the annual pretreatment report deficiencies cited above, the Discharger has violated the annual pretreatment report requirements by failing to submit those reports on time. The Discharger submitted its 2008 Annual Pretreatment Report due 28 February 2009 over one month late on 3 April 2009. The 2009 Annual Pretreatment Report due 28 February 2010 was not submitted until 7 May 2012, after Central Valley Water Board staff had sent a Notice of Violation in April of that year citing the late annual pretreatment report as a violation. (Tab 5D) The 2012 Annual Pretreatment Report was due 28 February 2013 and received 7 March 2013. Summaries of annual pretreatment report receipt status and deficiencies are provided in Table 6 and Table 7, respectively.

Table 6 - Annual Pretreatment Report Submittal Status

Reporting Year	Date Due	Date Received	Days Late
2008	28-Feb-2009	3-Apr-2009	34
2009	28-Feb-2010	7-May-2012	799
2010	28-Feb-2011	24-Feb-2011	--
2011	28-Feb-2012	9-Mar-2012	10
2012	28-Feb-2013	7-Mar-2013	7
2013	28-Feb-2014	26-Feb-2014	--
2014	28-Feb-2015	27-Feb-2015	--

Table 7 - Annual Pretreatment Report Deficiencies

Monitoring and Reporting Program X.D.4 Annual Pretreatment Reporting Requirements	CWA 307(a) Results	Upset/Interference/Pass-Through	Baseline Notification Count	Baseline Monitoring Requirements	Consistent Compliance	Inconsistent Compliance	Significant Non-Compliance	Complied with Schedule	Noncompliant; No Schedule	Status Unknown	Inspection and Sampling Activities	Compliance/Enforcement	Program Changes	Annual Budget	Certification
				4.d – Industrial User Compliance											
Report Year	4.a	4.b	4.c	i	ii	iii	iv	v	vi	vii	4.e	4.f	4.g	4.h	
2008	No	Yes	No	No	No	No	No	No	No	No	No	Yes	Yes	No	No
2009	No	Yes	No	No	No	No	No	No	No	No	No	Yes	Yes	No	No
2010	No	Yes	No	No	No	No	No	No	No	No	No	Yes	Yes	No	No
2011	No	Yes	No	No	No	No	No	No	No	No	No	Yes	Yes	No	No
2012	No	Yes	No	No	Yes	Yes	No	No	No	No	No	Yes	Yes	No	No
2013	Yes	Yes	No	Yes	Yes	Yes	No	No	No	No	No	Yes	Yes	No	No
2014	No	Yes	No	Yes	Yes	Yes	[1]	No	No	Yes	No	Yes	Yes	Yes	Yes

[1] Insufficient data provided to independently determine instances of SNC
No = indicates missing, incomplete, or incorrect element

Pursuant to Water Code section 13385 subdivisions (a)(6) and (c), a violation of the annual pretreatment report requirements subjects the Discharger to administrative civil liability in an amount of up to $10,000 for each day in which the violation occurs.

<u>Step 3 – Per Day Factor for Non-Discharge Violations</u>

Step 3 of the Enforcement Policy's penalty calculation methodology directs the Central Valley Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

Potential for Harm: The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm or threat to beneficial uses. (Enforcement Policy, at p. 16.) The annual pretreatment report requirements exist to provide the Central Valley Water Board with information necessary to evaluate the operation of the Discharger's pretreatment program, in order to protect the health and safety of the public and environment. By failing to comply with the minimum annual pretreatment report requirements, the Discharger inhibits its ability and the ability of the Central Valley Water Board to timely identify and provide feedback regarding deficiencies in the Discharger's implementation of its pretreatment program and, potentially, to prevent and properly address risks to beneficial uses. By providing information on the compliance status of industrial users, the annual pretreatment report serves an important role in identifying problems with compliance and ensuring that they are appropriately addressed. By failing to comply with the minimum annual pretreatment report requirements, the Discharger inhibits its ability and the ability of the Central Valley Water Board to prevent and properly address risks to beneficial uses. Given the foregoing discussion, the Potential for Harm is determined to be **moderate**, as the characteristics of the violations present a substantial threat to beneficial uses and the circumstances of the violations indicate a substantial potential for harm to beneficial uses. (Ibid.)

Deviation from Requirement: The Discharger has not complied with the annual pretreatment report requirements of 40 CFR section 403.12(i), Provision VI.C.5.a.ii of the 2008 Permit, or Provision X.D.4 of the MRP. Submissions made pursuant to these requirements have been intermittent, untimely, and materially deficient. Therefore, the Deviation from the Requirements is determined to be **moderate,** as the requirements have been partially compromised. (Ibid.)

Per Day Factor: Applying a Potential for Harm of moderate and an Extent of Deviation of moderate results in a factor of **0.35**. (Enforcement Policy, at p. 16, Table 3.)

Days of Violation: Annual pretreatment reports received for 2008 through 2012 were materially deficient. The period of violation for each of the five materially deficient annual pretreatment reports is 365 days and runs from the first date on which the report was deemed late or substantially deficient through the date on which the next year's report was due.

Multiple Day Violations: For violations that are assessed a civil liability on a per day basis, the initial liability amount should be assessed for each day up to 30 days. For violations that last more than 30 days, the daily assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if any, resulting from the violation. (Enforcement Policy, at p. 18.) In this case, the failure to file annual pretreatment reports results in no economic benefit that can be measured on a daily basis. Therefore, the alternate approach for calculating multiday violations may be applied, and liability shall not be less than an amount calculated based on the initial Total Base Liability Amount for the first day of the violation, plus an assessment for each five day period of violation until the 30th day, plus an assessment for each 30 days of violation. (Ibid.) Under this approach, the minimum number of days for each of the five annual pretreatment reports is 18. Although it is within the Board's discretion to find that the days of violation lie anywhere between 18 and 365, the Prosecution Team recommends that the Board choose to apply the minimum number allowed under the Enforcement Policy of 18 for each of the five annual pretreatment reports deemed substantially deficient.

Violation No. 5 - Initial Liability Amount

The initial liability amounts for the violations calculated on a per-day basis are as follows:

2008: 18 days x $10,000 X 0.35
2009: 18 days x $10,000 X 0.35
2010: 18 days x $10,000 X 0.35
2011: 18 days x $10,000 X 0.35
2012: 18 days x $10,000 X 0.35

Total Initial Liability = $315,000

Step 4 – Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's compliance history.

Culpability: **1.3**

The manner in which a reasonably prudent person would have acted is defined by 40 CFR part 403 and the 2008 Permit. Those requirements establish the minimum components that must be included in the Discharger's annual pretreatment reports. The Discharger was notified of deficiencies in its annual pretreatment reports in a 12 April 2012 NOV. (Tab 5D) After receiving notice in 2012 of overdue annual pretreatment reports, the Discharger continued to submit reports that failed to meet the minimum requirements. A factor of 1.3 is appropriate for this violation given that the Discharger acted at least negligently in failing to submit timely and complete annual pretreatment reports.

Cleanup and Cooperation**: 1.2**

The Discharger was given a multiplier value of 1.2 because of its lack of cooperation in returning to compliance. The Discharger was notified of specific material deficiencies in its annual pretreatment reports in an 18 August 2014 Supplemental NOV. (Tab 8K) The 2014 Annual Pretreatment Report, received in February 2015, improved upon prior submittals by including a higher proportion of required elements, but continued to be materially deficient. Therefore a 1.2 is appropriate here.

History of Violations**: 1.1**

A factor of 1.1 is appropriate for this violation; the same circumstances described for Violation No. 1 are applicable to this violation.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Total Initial Liability Amount determined in Step 3.

Violation No. 5 - Total Base Liability Amount

Total Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability

$315,000 x 1.3 x 1.2 x 1.1 = $540,540

Statutory Maximum Civil Liability for Violation No. 5	=	$18,250,000
Liability at Collapsed Days (90) Prior to Per Day and Conduct Factor Application	=	$900,000
Total Base Liability Amount for Violation No. 5	**=**	**$540,540**

Violation No. 6: The Discharger Failed to File Quarterly Pretreatment Reports

Pursuant to the requirements of the 2008 Permit, the Discharger is required to submit quarterly pretreatment reports. (2008 Permit, at p. 25, Provisions—Special Provisions—Special Provisions for Municipal Facilities (POTWs Only)—Pretreatment Requirements VI.C.5.a.ii; 2008 Permit, at p. E-18, Attachment E—Monitoring and Reporting Program—Reporting Requirements—Other Reports—Annual Pretreatment Reporting Requirements X.D.4.d.) Within 21 days of the end of each quarter, the Discharger is required to submit a report that describes the compliance status of each industrial user characterized by the following: 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. The information required in the fourth quarter report must be included in the Discharger's annual pretreatment report.

In addition to identifying the specific compliance status of each industrial user, the Discharger in the quarterly pretreatment report must identify the compliance status of the POTW with regard to audit and pretreatment compliance inspection requirements. In the absence of such conditions, at a minimum, the Discharger must submit a letter indicating that all industries are in compliance and no violations or changes to the pretreatment program have occurred during the quarter.

In addition, pursuant to the 2008 Permit, quarterly pretreatment reports must be signed and certified, as specified, by either a principal executive officer or ranking elected official, or its duly authorized representative, as specified. (2008 Permit, at p. D-6, Attachment D—Standard Provisions—Reporting—Signatory and Certification Requirements V.B.5.)

A. The Discharger Failed to Identify Compliance Status of Each Industrial User

The Discharger's quarterly pretreatment reports are deficient and/or inaccurate in a number of ways. With the exception of Fresno Truck Wash, the Discharger fails to identify in its quarterly pretreatment reports that industrial users were in non-compliance. (See for example Tab 6A) Yet, data submitted by the Discharger's industrial users and reported by the Discharger in the monitoring data contained in its annual pretreatment reports (See Tab 3) indicates otherwise. For example, in 2012 and 2013, that data shows that industrial users were in non-compliance for all four quarters of 2012 and in the first quarter of 2013. The industrial users that were in

non-compliance and not identified in the quarterly pretreatment reports include, but are not limited to, Stratas Foods, Rio Bravo Fresno, Cemex, EM Tharp dba Golden State Peterbilt, Roger's Truck, Kinder Morgan, PPG, Fifth Wheel Truck Stop, Coca Cola, Western State Glass, GreenTec, Fresno Truck Center, Inland Star, and Penske. (Tab 6B; also see Tab 3)

In addition, the Discharger did not report that Fresno Truck Wash was in non-compliance until the first quarter of 2011. The Discharger, however, drafted Administrative Complaint 2010-01 for Fresno Truck Wash in 2010, which states that Fresno Truck Wash had been in non-compliance since early 2009. (Tab 6C) The 2009 and 2010 quarterly pretreatment reports stated erroneously that all industrial users were in compliance. (Tab 6D; Tab 6E)

Although insufficient data were provided for 2008 and 2014 to fully evaluate compliance, at a minimum, the Discharger failed to identify SIUs in SNC (iv) as shown in Table 5 and in inconsistent compliance with effluent limits (iii) and SNC (iv) on at least the following occasions (Table 8):

Table 8 – Significant Industrial Users in Non-Compliance

Significant Industrial User	Permit No.	Significant Industrial Users In Inconsistent Compliance					
		2009[1]	2010	2011	2012	2013	2014
Calpine/Smurfit/ RockTenn	1001	Q1:EC Q3: EC Q4: EC	SA1: As, Ba	SA1: Cr, Cu SA2: Ba, Cr, Cu	--	--	--
Rio Bravo	1005	--	--	--	Q4: EC	Q1,2,3,4: EC	missing data
Stratas Foods	1008	Q1: O&G Q3: O&G Q4: O&G	Q1: O&G	--	Q1: O&G, pH Q2: O&G, pH Q3: O&G, pH Q4: O&G	Q2: O&G, pH Q3: O&G Q4: O&G, pH	Q2: O&G Q3: pH
Kinder Morgan SFPP	1025	no data provided	no data provided	[2]	[2]	[2]	[3]
Wholesale Equipment of Fresno	1030	no data provided	no data provided	[2]	[2]	[2]	[2]
Fifth Wheel Truck Stop	1037	[2]	[2]	[2]	[2]	[2]	Q4: EC
PPG Industries	1038	--	SA2: Cu, Fe	--	Q2: EC Q3: EC	Q2: EC Q4: Fe	--
Lester Lube, Inc. dba Fresno Truck Wash	1095	[2]	[2]	[2]	[2]	[2]	[3]
Speedy (formerly Moga) Truck Wash	1098	[2]	[2]	[2]	[2]	[2]	[3]
Air Products and Chemical	1140	--	--	--	--	--	no data provided
Imperial Truck Wash	1205	[2]	[2]	[2]	[2]	[2]	[3]

Significant Industrial User	Permit No.	Significant Industrial Users In Inconsistent Compliance					
		2009[1]	2010	2011	2012	2013	2014

[1] No data provided in 2008.
[2] Not significant industrial user at this time
[2] No data provided for dates subsequent to SIU designation/re-designation
Q = quarter; SA = undated semi-annual result, quarter unknown; SA1 = January - June; SA2 = July - December
As = arsenic; Ba = barium; Cr = chromium; Cu = copper; EC = electrical conductivity; Fe = iron; O&G = oil and grease

B. The Discharger Failed to Submit Quarterly Pretreatment Reports by the Due Date

Since 2008, the Discharger has violated the quarterly pretreatment report requirements of the 2008 Permit by submitting both late and deficient reports. The quarterly pretreatment reports for the second quarter of 2008 through the first quarter of 2010 were not submitted until May of 2012, following the issuance of a 12 April 2012 NOV, which cited the quarterly pretreatment report violations. The first quarterly pretreatment report for 2009, which was not cited in the 12 April 2012 NOV due to an oversight has, to date, not been received by the Central Valley Water Board. The quarterly pretreatment reports from the second quarter of 2010 through the third quarter of 2011, the quarterly pretreatment report for the second quarter of 2013, and the quarterly pretreatment reports for the second and third quarters were all submitted after the due dates specified in the 2008 Permit, at Reporting Requirement X.D.4.d of the Monitoring and Reporting Program (pp. E-18 – E-19). To date, the Discharger has not submitted first quarterly pretreatment reports for 2009 or 2014.

C. The Discharger Failed to Include the Requisite Certification

The Discharger failed to certify its quarterly pretreatment reports with the required certification statement until the second quarter of 2014. (See for example Tab 6D; 6E) The Discharger received notices of inadequate quarterly pretreatment reports in April 2012 (Tab 5D), and in July and August of 2014. (Tab 8K; Tab 8L) Deficiencies and receipt status are summarized in Table 9, below.

Table 9 - Quarterly Pretreatment Reports, Receipt Status and Deficiencies

Quarter	Date Due	Date Received	Days Late	Contains Certification	Identifies All Noncompliant IUs	Discusses PCA/PCI Compliance Status[2]
2008Q2	21-Jul-2008	7-May-2012	1,386	No	no data	N/A
2008Q3	21-Oct-2008	7-May-2012	1,294	No	no data	N/A
2009Q1	21-Apr-2009	not rec'd	2,111	--	--	N/A
2009Q2	21-Jul-2009	7-May-2012	1,021	No	No	N/A
2009Q3	21-Oct-2009	7-May-2012	929	No	No	N/A
2010Q1	21-Apr-2010	7-May-2012	747	No	No	N/A
2010Q2	21-Jul-2010	20-Sep-2010	61	No	No	N/A
2010Q3	21-Oct-2010	18-Nov-2010	28	No	--	N/A
2011Q1	21-Apr-2011	20-May-2011	29	No	SA[1]	N/A
2011Q2	21-Jul-2011	18-Jul-2011	0	No	No	N/A
2011Q3	21-Oct-2011	31-Oct-2011	10	No	SA[1]	N/A
2012Q1	21-Apr-2012	20-Apr-2012	0	No	No	N/A
2012Q2	21-Jul-2012	20-Jul-2012	0	No	No	N/A
2012Q3	21-Oct-2012	18-Oct-2012	0	No	No	N/A
2013Q1	21-Apr-2013	18-Apr-2013	0	No	--	N/A

Quarter	Date Due	Date Received	Days Late	Contains Certification	Identifies All Noncompliant IUs	Discusses PCA/PCI Compliance Status[2]
2013Q2	21-Jul-2013	7-Aug-2013	17	No	No	N/A
2013Q3	21-Oct-2013	21-Oct-2013	0	No	No	No
2014Q1	21-Apr-2014	not rec'd	285	--	--	--
2014Q2	21-Jul-2014	24-Jul-2014	3	Yes	No	Yes
2014Q3	21-Oct-2014	29-Oct-2014	8	Yes	No	Yes

[1] Semi-annual results provided without sample date. Exact quarter of non-compliance unknown.
[2] Identification of compliance status with regards to PCA or PCI requirements could not take place until the findings of the first PCA or PCI conducted were conveyed to the Discharger. The Discharger received verbal notice of the PCI results during the exit interview on 18 February 2010. This assessment, however, takes the conservative approach of using the written transmittal in 2013 as the date by which the PCI compliance status discussion was required in the Quarterly Pretreatment Reports.

Pursuant to Water Code section 13385 subdivisions (a)(6) and (c), a violation of the annual pretreatment report requirements subjects the Discharger to administrative civil liability in an amount of up to $10,000 for each day in which the violation occurs.

Step 3 – Per Day Factor for Non-Discharge Violations

Step 3 of the Enforcement Policy's penalty calculation methodology directs the Central Valley Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

Potential for Harm: The Discharger's failure to submit quarterly pretreatment reports to the Central Valley Water Board had the potential to harm beneficial uses. The quarterly pretreatment report requirements exist to provide the Central Valley Water Board with information necessary to evaluate the operation of the Discharger's pretreatment program. By providing information on the compliance status of industrial users, the quarterly pretreatment report serves a role in identifying problems with compliance and ensuring that they are appropriately addressed. By failing to comply with the minimum quarterly pretreatment report requirements, the Discharger inhibits the ability of the Central Valley Water Board to identify and address risks to beneficial uses. Given the foregoing discussion, the Potential for Harm is determined to be **minor**, as the characteristics of the violations present a minor potential for harm. (Enforcement Policy, at p. 16.)

Deviation from Requirement: The Discharger is required to submit quarterly pretreatment reports. (2008 Permit, at p. 25, Provisions—Special Provisions—Special Provisions for Municipal Facilities (POTWs Only)—Pretreatment Requirements C.5.a.ii; 2008 Permit, at p. E-18, Attachment E—Monitoring and Reporting Program—Reporting Requirements—Other Reports—Annual Pretreatment Reporting Requirements X.D.4.d.) The reports submitted by the Discharger, which were not submitted timely, contained inaccurate characterizations of compliance, failed to contain the requisite certification in all but two cases and, as such, are materially deficient. Therefore, the Deviation from the Requirements is determined to be **moderate** as the requirements have been partially compromised. (Ibid.)

Per Day Factor: Applying a Potential for Harm of moderate and an Extent of Deviation of moderate results in a factor of **0.30**. (Enforcement Policy, at p. 16, Table 3.)

Days of Violation: The first quarterly pretreatment report for 2009 and the quarterly pretreatment report for the first quarter of 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, and considering the fourth quarterly reports for each year as part of the annual pretreatment report for the same year, all of the quarterly pretreatment reports from the adoption through the rescission date 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 discussed above.

- The period of violation for the quarterly pretreatment report for the first quarter of 2009 is 2,111 days and runs from 22 April 2009 (the first date on which the report was deemed late or substantially deficient) through the rescission of the 2008 Permit (to date the report has not been received).
- The period of violation for the quarterly pretreatment report for the first quarter of 2014 is 285 days and runs from 22 April 2014 (the first date on which the report was deemed late or substantially deficient) through the rescission of the 2008 Permit (to date the report has not been received).
- The period of violation for each of the other 18 quarterly pretreatment reports is 90 days and runs from the date after which they were due until the date on which the next quarter's report became due.
- The total period of violation is 4,016 [(90 x 18) + 285 + 2,111)]

Multiple Day Violations: For violations that are assessed a civil liability on a per day basis, the initial liability amount should be assessed for each day up to 30 days. For violations that last more than 30 days, the daily assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if any, resulting from the violation. (Enforcement Policy, at p. 18.) In this case, the failure to submit quarterly pretreatment reports results in no economic benefit that can be measured on a daily basis, though the Discharger may have experienced a programmatic cost savings from failing to comply with those requirements. Therefore, the alternate approach for calculating multiday violations may be applied, and liability shall not be less than an amount calculated based on the initial Total Base Liability Amount for the first day of the violation, plus an assessment for each five day period of violation until the 30th day, plus an assessment for each 30 days of violation. (Ibid.)

- For the quarterly pretreatment report for the first quarter of 2009, the minimum days of violation under this alternative approach is 76.
- For the quarterly pretreatment report for the first quarter of 2014, the minimum days of violation under this alternative approach is 15.
- For the remaining 18 quarterly pretreatment reports, the minimum days of violation under this alternative approach is 9 days.

The minimum number of days under this approach is 253 [(9 x 18) + 76 + 15)]. Although it is within the Board's discretion to find that the days of violation lie anywhere between 253 and 4,016, the Prosecution Team recommends that the Board choose to apply the minimum allowed under the Enforcement Policy of 253.

Violation No. 6 - Initial Liability Amount

The initial liability amounts for the violations calculated on a per-day basis are as follows:

2008 Q2:	9 days x $10,000 X 0.30	2011 Q3:	9 days x $10,000 X 0.30
2008 Q3:	9 days x $10,000 X 0.30	2012 Q1:	9 days x $10,000 X 0.30
2009 Q1:	76 days x $10,000 X 0.30	2012 Q2:	9 days x $10,000 X 0.30
2009 Q2:	9 days x $10,000 X 0.30	2012 Q3:	9 days x $10,000 X 0.30
2009 Q3:	9 days x $10,000 X 0.30	2013 Q1:	9 days x $10,000 X 0.30
2010 Q1:	9 days x $10,000 X 0.30	2013 Q2:	9 days x $10,000 X 0.30
2010 Q2:	9 days x $10,000 X 0.30	2013 Q3:	9 days x $10,000 X 0.30
2010 Q3:	9 days x $10,000 X 0.30	2014 Q1:	15 days x $10,000 X 0.30
2011 Q1:	9 days x $10,000 X 0.30	2014 Q2:	9 days x $10,000 X 0.30
2011 Q2:	9 days x $10,000 X 0.30	2014 Q3:	9 days x $10,000 X 0.30

Total Initial Liability = $759,000

Step 4 – Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's compliance history.

Culpability: **1.3**

A factor of 1.3 is appropriate for this violation. The manner in which the Discharger should have acted is defined by the 40 CFR part 403 and the 2008 Permit, which establish in detail the minimum components that must be included in the Discharger's Quarterly Pretreatment Reports. The Discharger received notices of inadequate or late pretreatment reports in April 2012 (Tab 5D), and in July and August of 2014. (Tab 8K; 8L) A factor of 1.3 is appropriate for this violation given that the Discharger acted at least negligently in failing to submit timely and complete quarterly pretreatment reports.

Cleanup and Cooperation: **1.3**

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. (Enforcement Policy, at p. 17.) The Discharger was given a multiplier value of 1.3 based on the lack of cooperation exhibited by the Discharger in returning to compliance. While the Discharger began to submit quarterly pretreatment reports in a timelier manner after receiving the April 2012 NOV, the reports submitted continued inaccurate or misleading requisite information and were materially deficient. Following the 7 July 2014 NOV, the Discharger began including in its quarterly pretreatment reports the required certification and discussion of pretreatment program compliance status components, but omitted the required industrial user compliance status component, which it had previously included in prior reports. Furthermore, Quarterly Pretreatment Reports for the 1st quarters of 2009 and 2014 have not been submitted to date.

History of Violations: **1.1**

A factor of 1.1 is appropriate for this violation; the same circumstances described for Violation No. 1 are applicable to this violation.

Step 5 - Determination of Total Base Liability Amount
The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Total Initial Liability Amount determined in Step 3.

Violation No. 6 - Total Base Liability Amount

Total Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability

$759,000 x 1.3 x 1.3 x 1.1 = $1,410,981

Statutory Maximum Civil Liability for Violation No. 6 = $40,160,000
Liability at Collapsed Days (253) Prior to Per Day and Conduct Factor Application= $2,530,000
Total Base Liability Amount for Violation No. 6 = $1,410,981

Violation No. 7: The Discharger Failed to Analyze Self-Monitoring Reports

Pursuant to the federal regulations and the 2008 Permit, The Discharger is required to analyze self-monitoring reports and other notices submitted by Industrial Users in accordance with the self-monitoring requirements in 40 CFR section 403.12. (40 CFR § 403.8(f)(2)(iv); 2008 Permit, at p. 25, Provisions—Special Provisions—Special Provisions for Municipal Facilities (POTWs Only)—Pretreatment Requirements VI.C.5.a.ii.)

The Discharger has failed to comply with this requirement since at least 2010. The 2010 PCI Checklist documented that the Discharger had failed to identify reporting violations and to identify discharge violations. (*POTW Pretreatment Compliance Inspection Checklist*, Section III.) (Tab 2B) The 2010 PCI *Summary Report* also documented the Discharger's failure to review and analyze reports submitted by SIUs. (Tab 3G)

File review during the 2015 PCI revealed that the Discharger had failed to analyze the self-monitoring reports, as there was no indication that the Discharger identified potential violations or took enforcement action for the instantaneous sample results that exceed the industrial user permitted limits. (Tab 4E) The failure to analyze self-monitoring reports is further exhibited by statements made regarding SNC during the 2015 PCI. During the 2015 PCI, the Discharger's General Manager stated that calculations regarding SNC were not performed for the SIUs during 2014. (2015 PCI, Section 2.3.1.) (Tab 3F)

Pursuant to Water Code section 13385 subdivisions (a)(6) and (c), a violation of this requirement subjects the Discharger to administrative civil liability in an amount of up to $10,000 for each day in which the violation occurs.

Step 3 – Per Day Factor for Non-Discharge Violations
Step 3 of the Enforcement Policy's penalty calculation methodology directs the Central Valley Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

Potential for Harm: The Discharger's failure to receive and analyze self-monitoring reports poses an egregious threat to beneficial uses. The receipt and analysis requirements ensure that

the Discharger is implementing the practices necessary to properly regulate the disposal of industrial wastewater, protect the physical structures and safety of operation of its collection and treatment system, and to comply with its approved pretreatment program. The analysis of self-monitoring reports serves an important role in identifying problems with compliance and ensuring that they are appropriately addressed. By failing to comply with the minimum receipt and analysis requirements, the Discharger inhibits its ability and the ability of the Central Valley Water Board to prevent and properly address risks to beneficial uses. Specifically, failure to analyze industrial user monitoring reports effectively precluded the Discharger from complying with other pretreatment program requirements, such as accurately discussing industrial user compliance characterizations in quarterly and annual pretreatment reports, and identifying and publicly noticing instances of industrial user SNC. Given the foregoing discussion, the Potential for Harm is determined to be **major**, as the characteristics of the violations present a high potential for harm. (Enforcement Policy, at p. 16.)

Deviation from Requirement: The Discharger is required to receive and analyze self-monitoring reports. (40 CFR § 403.8(f)(2)(iv); 2008 Permit, at p. 25, Provisions—Special Provisions—Special Provisions for Municipal Facilities (POTWs Only)—Pretreatment Requirements VI.C.5.a.ii.) Inspections and audits from 2010 through 2015 show that the Discharger has repeatedly failed to meet this requirement. Therefore, the Deviation from the Requirements is determined to be **major** as the requirement has been rendered ineffective in its essential function. (Ibid.)

Per Day Factor: Applying a Potential for Harm of moderate and an Extent of Deviation of moderate results in a factor of **0.85**. (Enforcement Policy, at p. 16, Table 3.)

Days of Violation: The first documentation of the Discharger's failure to adequately receive and analyze self-monitoring reports was at the 2010 PCI. (Tab 2B) During the 2010 PCI, auditors noted that the Discharger had failed to analyze self-monitoring reports from 2009. Continued failure to review SIU self-monitoring reports was confirmed during the 2015 PCI. The period of violation totals 2,222 days and runs from 1 January 2009 through the rescission of the 2008 Permit on 31 January 2015, inclusive.

Multiple Day Violations: For violations that are assessed a civil liability on a per day basis, the initial liability amount should be assessed for each day up to 30 days. For violations that last more than 30 days, the daily assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if any, resulting from the violation. (Enforcement Policy, at p. 18.) In this case, the failure to require, receive and analyze self-monitoring reports results in no economic benefit that can be measured on a daily basis, though the Discharger may have experienced a programmatic cost savings from failing to comply with those requirements. Therefore, the alternate approach for calculating multiday violations may be applied, and liability shall not be less than an amount calculated based on the initial Total Base Liability Amount for the first day of the violation, plus an assessment for each five-day period of violation until the 30th day, plus an assessment for each 30 days of violation. (Ibid.) Under this alternative approach, the minimum days of violation total 80. Although it is within the Board's discretion to find that the days of violation lie anywhere between 80 and 2,222, the Prosecution Team recommends that the Board choose to apply the minimum number allowed under the Enforcement Policy of 80.

Violation No. 7 - Initial Liability Amount

The initial liability amounts for the violations calculated on a per-day basis are as follows:

80 days x $10,000 X 0.85

Total Initial Liability = $680,000

Step 4 – Adjustment Factors
There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's compliance history.

Culpability: **1.3**
A factor of 1.3 is appropriate for this violation. The standard of care with which the Discharger should have acted is established in the 40 CFR part 403 and the 2008 Permit. The Discharger was given notice of its failure to meet the receipt and analysis requirement during the 2010 PCI (Tab 2B; Tab 3G). The 2014 PCA *Final Summary Report* reiterated the requirement to analyze monitoring reports. (Tab 4A) Yet, the Discharger's failure to comply with the requirement was again documented in detail during the 2015 PCI. (Tab 4E; 3F) In continuing to violate the receipt and analysis requirements despite notice, the Discharger's actions demonstrate gross negligence at best.

Cleanup and Cooperation: **1.4**
This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. (Enforcement Policy, at p. 17.) The Discharger was given a multiplier value of 1.4 because of the lack of cooperation exhibited by the Discharger in returning to compliance. The 2015 PCI *Summary Report* noted three instances of non-compliance by Stratas Foods in August 2014. (Tab 4E) Nevertheless, the third 2014 quarterly pretreatment report failed to accurately identify the industrial user's compliance status, which demonstrates the Discharger's continued failure to analyze monitoring reports. (Tab 7A) Despite being provided with multiple opportunities to come into compliance, the Discharger continued to fail to require, receive, and analyze self-monitoring reports as exhibited by the 2015 PCI findings, which show that the Discharger is still out of compliance.

History of Violations: **1.1**
A factor of 1.1 is appropriate for this violation; the same circumstances described for Violation No. 1 are applicable to this violation.

Step 5 - Determination of Total Base Liability Amount
The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Total Initial Liability Amount determined in Step 3.

Violation No. 7 - Total Base Liability Amount

Total Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability

$680,000 x 1.3 x 1.4 x 1.1 = $1,361,360

Statutory Maximum Civil Liability for Violation No. 7	=	$22,220,000
Liability at Collapsed Days (80) Prior to Per Day and Conduct Factor Application	=	$800,000
Total Base Liability Amount for Violation No. 7	**=**	**$1,361,360**

Violation No. 8: The Discharger Failed to Submit Study Results Required by Cease and Desist Order No. R5-2008-0032

The 2008 CDO, Task 3(a), 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 for the volume, type, and concentrations of wastes in influent projected through at least 2028. In order to meet that requirement, the Discharger is required 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. The study must include evaluations of, but not limited to, ongoing operations and maintenance, and long-term measures to meet WWTF treatment and disposal needs through at least 2028. The 2008 CDO requires that technical reports submitted in accordance with this requirement include actions to generate appropriate population and WWTF flow projections and their rationale. The 2008 CDO required the Discharger to submit the results of the study evaluating treatment and disposal capacity and propose the work plan described in Task 3(a) by 13 June 2008.

On 25 July 2008, over a month past due, Provost and Pritchard Consulting Group, on behalf of the Discharger, submitted a *Study Evaluating Treatment and Disposal Facilities* to fulfill the requirements of Task 3(a). (Tab 8A) In a memorandum and letter, dated 19 August 2009 (Tab 8B) and 24 September 2009 (Tab 8C) respectively, Central Valley Water Board staff informed the Discharger that the study was materially deficient and requested a revised study by 27 October 2009. The letter and memorandum cited deficiencies and required corrective actions including, but not limited to, revising short-term and long-term flow projections, revising the work plan for expansion of design capacity, including reclamation proposals, revising consolidation, and updating work plan and time-schedules.

By letter dated 28 April 2011, the Discharger submitted a report to comply with Task 3(d). (Tab 8D) That report, however, indicated that not all the short-term measures had been completed, as required. The report did not include long-term measures or a revised work plan, and did not remedy the deficiencies in the 28 July 2008 report. The report did not bring the Discharger into compliance with Tasks 3(a) or 3(d). The cover letter for that report incorrectly stated that the Discharger had not received a response to the work plan submitted on 25 July 2008. (Tab 8D) On 12 April 2012, Central Valley Water Board staff issued a NOV citing the Discharger's failure to comply with Tasks 3(a) and 3(d) of the 2008 CDO. (Tab 5D)

On 19 August 2013, Central Valley Water Board staff again sent the Discharger a letter requesting that it submit technical information regarding disposal capacity by 3 October 2013,

which was originally due 13 June 2008. (Tab 8B) In summary, the letter requested that the Discharger address whether the discharge to the Central Canal will cease, provide an estimate of the pond disposal capacity after pond maintenance was performed in 2008 and thereafter, revise influent flow projections, provide the status of land acquisition for additional disposal ponds, and provide the status of alternative disposal measures. On 10 October 2013, Central Valley Water Board staff called the Discharger's Board President requesting an update on the response due 3 October 2013. (Tab 8F) On 10 October 2013, Central Valley Water Board staff received by e-mail a memorandum dated 23 September 2013 from the Discharger's consulting engineer written to the Discharger requesting additional information in order to prepare a response to the Central Valley Water Board's letter. (Tab 8G)

On 21 October 2013, Central Valley Water Board staff sent the Discharger's General Manager an email to again inquire on the status of the Discharger's response. (Tab 8H) On 29 October 2013, the Discharger submitted a deficient and late response. (Tab 8I) The Discharger admitted in its response that it had not yet developed a schedule to isolate one or more ponds to confirm and monitor percolation capacity, and that follow-up reports would be forthcoming.

On 7 July 2014, Central Valley Water Board staff sent the Discharger a NOV, which cited, in part, the Discharger's failure to comply with Task 3 of the 2008 CDO. (Tab 8J) On 18 August 2014, Central Valley Water Board staff sent the Discharger a Supplemental NOV, which again cited, in part, the Discharger's failure to comply with the 2008 CDO Task 3. (Tab 8K)

After the Discharger learned its flow limit had been restricted in its proposed revised permit, the Discharger submitted technical data in November 2014 and January 2015 in order to confirm pond disposal capacity. The 2008 CDO was rescinded on 4 December 2014 and tasks not complied with in the 2008 CDO were carried over to CDO R5-2014-0146 and to Waste Discharge Requirements R5-2014-0145 (NPDES No. CA 0084239).

The Discharger violated the 2008 CDO by failing to submit an adequate and complete study of its treatment and disposal capacity and a workplan to address treatment and disposal capacity issues from 13 June 2008 through the rescission of the CDO on 4 December 2014, for a total of **2,365 days**. However, based on the interactions between Central Valley Water Board staff and the Discharger recited above, the Prosecution Team recommends "tolling" the days of violation during the 387-day period between the 28 July 2008 date upon which the Discharger's initial report was submitted and the 19 August 2009 date upon which staff notified Discharger in writing that the report was deficient. Prosecution staff further recommends "tolling" the days of violation for the 351-day period between the 28 April 2011 date upon which Discharger submitted a revised report and the 12 April 2012 date upon which staff issued a Notice of Violation documenting the deficiencies in the revised report. Other than these two time periods, Discharger was on written notice that its report was overdue, incomplete and insufficient to meet the directives of the 2008 CDO. Accordingly, the Prosecution Team recommends calculating the civil liability for Violation 2 on the basis of **1,640** days of violation.

Pursuant to Water Code section 13350, a violation of those requirements is subject to administrative civil liability in an amount of up to $5,000 for each day in which the violation occurs.

Step 3 – Per Day Factor for Non-Discharge Violations

Step 3 of the Enforcement Policy's penalty calculation methodology directs the Central Valley Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

Potential for Harm: The Discharger's failure to comply with Task 3 of the CDO in a timely manner hindered Central Valley Water Board staff's efforts to assess disposal capacity for the renewal of the Discharger's NPDES permit, which delayed issuance of the Permit.

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.

The 2008 CDO was issued, in part, because the Discharger discharged and threatened to discharge waste in violation of the 2008 Permit. In addition, a number of conditions at the WWTF relating to minimum freeboard requirements, pond evaporation and percolation capacity, increasing influent flow and base flow, and total disposal capacity, were found to create a risk of overtopping and levee breach. The Discharger's WWTF ponds are adjacent to the Central Canal, several businesses, and the main railroad line for the Santa Fe Railroad and Amtrak. Overflow of undisinfected secondary treated wastewater from the ponds to the Central Canal would adversely affect its beneficial use for unrestricted agricultural supply, water contact recreation, and municipal and domestic supply due to excessive pathogen loading. Overflow of the ponds to area businesses, which occurred in 2000, or to the railroad right-of-way would cause or threaten to create public health risks and a nuisance condition. (Tab 8L)

The Discharger's actions in failing to meet the 2008 CDO requirements pose a high potential for harm to beneficial uses. Given the foregoing discussion, the Potential for Harm is determined to be **major**. (Enforcement Policy, at p. 16.)

Deviation from Requirement: The 2008 CDO required the Discharger to submit specified study results to the Central Valley Water Board. While the Discharger submitted documents pursuant to the 2008 CDO requirements, those submissions were materially deficient and late. Therefore, the Deviation from the Requirements is determined to be **moderate** as the requirements have been partially compromised. (Ibid.)

Per Day Factor: Applying a Potential for Harm of moderate and an Extent of Deviation of moderate results in a factor of **0.55**. (Enforcement Policy, at p. 16, Table 3.)

Days of Violation: The Discharger has failed to comply with the 2008 CDO requirements since 14 June 2008, the first date of non-compliance with Task 3, through 4 December 2014. The period of violation totals 2,365 days, but as indicated above, the Prosecution Team recommends reducing this number to 1,640 days based on two periods where it believes the Central Valley Water Board should exercise its discretion to equitably toll the violation period.

Multiple Day Violations: For violations that are assessed a civil liability on a per day basis, the initial liability amount should be assessed for each day up to 30 days. For violations that last more than 30 days, the daily assessment can be less than the calculated daily assessment,

provided that it is no less than the per day economic benefit, if any, resulting from the violation. (Enforcement Policy, at p. 18.) In this case, the failure to comply with the 2008 CDO results in an economic benefit that cannot be measured on a daily basis, though the Discharger may have experienced a programmatic cost savings from failing to comply with the requirements. Therefore, the alternate approach for calculating multiday violations may be applied, and liability shall not be less than an amount calculated based on the initial Total Base Liability Amount for the first day of the violation, plus an assessment for each five-day period of violation until the 30th day, plus an assessment for each 30 days of violation. (Ibid.) Under this approach, assuming the Central Valley Water Board agrees with the Prosecution Team's recommendation to equitably toll the violation period, the minimum days of violation total 60. Although it is within the Board's discretion to find that the days of violation lie anywhere between 60 and 2,365, the Prosecution Team recommends that the Board choose to apply the minimum number of days allowed under equitable tolling and the Enforcement Policy of 60.

Violation No. 8 - Initial Liability Amount

The initial liability amounts for the violations calculated on a per-day basis are as follows:

60 days x $5,000 X 0.55

Total Initial Liability = $165,000

Step 4 – Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's compliance history.

Culpability: **1.2**

A factor of 1.2 is appropriate for this violation. The Discharger knew of the 2008 CDO requirement as it was granted the opportunity to comment on those tasks prior to the 2008 CDO adoption date. In addition, as evidenced by the 23 September 2013 Memorandum (Tab 8G) from the Discharger's consultant, the Discharger had notice of the specific regulatory requirements which remained to be met. The Discharger's knowledge of the material inadequacy of its submissions is demonstrated by the fact that those deficiencies were discussed in a series of correspondence between the Discharger and Central Valley Water Board staff. (Tab 8B; 8C; 8E; 8F; 8J; 8K) A reasonably prudent person would have complied with the 2008 CDO requirements in a timely manner. The Discharger knowingly disregarded the requirements associated with Task 3.

Cleanup and Cooperation: **1.2**

For non-discharge violations, efforts towards cleanup are not applicable. Beginning in September 2009, Central Valley Water Board contacted the Discharger through phone calls, email, and letters, in attempts to retrieve the requisite information and bring the Discharger into compliance. (Tab 8B; 8C; 8E; 8F; 8J; 8K) The Discharger had multiple opportunities to correct the violation, yet failed to work cooperatively with Central Valley Water Board staff to achieve the common goal of compliance and failed to submit the technical information required pursuant to Task 3 of the 2008 CDO. The Prosecution Team recommends a 1.2.

History of Violations**: 1.1**
A factor of 1.1 is appropriate for this violation. In 2001, the Central Valley Water Board issued CDO 5-01-001 due to pond capacity issues and due to the overflow of the ponds to neighboring businesses in 2000. The issuance of the 2008 CDO stemmed, in part, from the Discharger's ongoing failure to comply with the 2001 CDO. Therefore, the application of a 1.1 is appropriate.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Total Initial Liability Amount determined in Step 3.

Violation No. 8 –Total Base Liability Amount

Total Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability

$165,000 x 1.2 x 1.2 x 1.0 = $261,360

Statutory Maximum Civil Liability for Violation No. 8 = $8,200,000
Liability at Collapsed Days (60) Prior to Per Day and Conduct Factor Application = $300,000
Total Base Liability Amount for Violation No. 8 = $261,360

COMBINED TOTAL BASE LIABILITY AMOUNT FOR VIOLATIONS 1 THROUGH 8

Violation No. 1:	$3,390,816	Violation No. 5:	$540,540
Violation No. 2:	$150,000	Violation No. 6:	$1,410,981
Violation No. 3:	$22,308	Violation No. 7:	$1,361,360
Violation No. 4:	$2,836,834	Violation No. 8:	$261,360

Statutory Maximum Civil Liability for all Violations = $344,780,000
Combined Total Base Liability Amount for All Violations = $10,009,839