

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ORDER NO. R5-2008-_____

CEASE AND DESIST ORDER
REQUIRING MALAGA COUNTY WATER DISTRICT
MALAGA WASTEWATER TREATMENT FACILITY
FRESNO COUNTY
TO CEASE AND DESIST FROM
DISCHARGING WASTE CONTRARY TO REQUIREMENTS

The California Regional Water Quality Control Board, Central Valley Region, (hereafter Regional Water Board) finds that:

1. The Malaga County Water District (hereafter Discharger) owns and operates a wastewater treatment facility (WWTF) serving the unincorporated community of Malaga south of the City of Fresno, along State Highway 99.
2. The WWTF provides sewerage service to approximately 1000 residents and various light industries. Discharge from the WWTF was regulated by Waste Discharge Requirements (WDRs) Order No. 99-100 until 13/14 March 2008. The WWTF consists of a 1.2 mgd activated sludge secondary treatment system with dissolved air flotation/primary clarification, aeration basins, and three secondary clarifiers, and a tertiary treatment component. Order No. 99-100 authorized discharge of up to 0.35 mgd of disinfected tertiary treated wastewater to the Central Canal. The portion of the 1.2 mgd not further treated to tertiary levels is discharged to evaporation/percolation ponds (ponds).
3. On 17 November 2006, the Discharger submitted a Report of Waste Discharge (RWD) that rated the capacity of the tertiary treatment component at 0.45 mgd. An accompanying water balance at 0.8 mgd monthly average influent flow calculates about 0.42 mgd as being justifiable for sustainable disposal by evaporation and percolation in the ponds.
4. On 13 March 2008, the Regional Water Board adopted WDRs Order No. R5-2008-_____, NPDES Permit No. CA0084239, to renew and replace WDRs Order No. 99-100. Order No. R5-2008-_____ sets discharge flow limitations (Effluent Limitation IV.A.1) of 0.45 mgd to the Central Canal, 0.85 mgd to the ponds, and 1.2 mgd total.
5. WDRs Order No. R5-2008-_____ includes, in part, the following prohibitions and provisions:

Discharge Prohibitions, III.A.-C., which state:

- A. Discharge of pollutants or wastewater at a location or in a manner or of a character substantively different from that described in the Findings is prohibited.
- B. The by-pass or overflow of wastes from the Facility is prohibited, except as allowed by federal Standard Provisions I.G. and I.H. (Attachment D).
- C. Creation of a condition of pollution or nuisance, as defined in Section 13050 of the California Water Code, is prohibited.

Provision VI.C.4.a.ii, which states:

Ponds shall have sufficient capacity to contain all wastewater volume generated annually that cannot be reliably and consistently disposed of by evaporation and percolation from the ponds, or discharged at Discharge Point D-001, including ancillary inflow and infiltration and design seasonal precipitation. Design seasonal precipitation shall be based on total annual precipitation using a return period of 100 years, distributed monthly in accordance with historical rainfall patterns.

Provision VI.C.4.a.iii, which states:

Prior to the onset of the rainy season of each year, available pond storage capacity shall at least equal the design volume necessary to comply with the previous paragraph.

Provision VI.C.4.a.iv, which states:

The Discharger shall maintain and operate all ponds sufficient to protect the integrity of containment levees and prevent overtopping or overflows. Unless a California civil engineer certifies (based on design, construction, and conditions of operation and maintenance) that less freeboard is adequate, the operating freeboard in any pond shall never be less than two feet (measured vertically)...

Provision VI.C.6.k, which states:

Physical facilities shall be designed and constructed according to accepted engineering practice and shall be capable of full and consistent compliance with this Order when properly operated and maintained...

Standard Provision I.D, which states:

The Discharger shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Discharger to achieve compliance with the conditions of this Order. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures...

Standard Provision III.A, and Monitoring and Reporting Program, General Monitoring Provision I.A, which state, respectively, the following:

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. (40 CFR 122.41(j)(1).)

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. All samples shall be taken at the monitoring locations specified below and, unless otherwise specified, before the monitored flow joins or is diluted by any other waste stream, body of water, or substance. Monitoring locations shall not be changed without notification to and the approval of this Regional Water Board.

6. Self-monitoring reports (SMRs) for January 2005 through July 2007 submitted by the Discharger reveal that the minimum freeboard requirement of two feet was not satisfied approximately 75% of the time during that period.
7. The water balance of Finding 3 demonstrates that pond evaporation and infiltration capacity is significantly less than design representations and the effluent flow limitation to the ponds of 0.85 mgd.

8. The SMRs indicate a trend of increasing influent flow in 2007 that also exceeds the base flow used in the water balance of Finding 3. The average monthly influent flow rate for the first eight months of 2007 was 0.87 mgd, and in September it was 1.02 mgd.
9. Findings 6 through 8 indicate that influent flow to the WWTF is greater than what can be discharged to the Central Canal (0.45 mgd) and to the ponds consistent with the terms of the Order (0.42 mgd). Though this could be corrected over time based on the increased discharge to Central Canal, the increase will not likely accommodate greater influent flows as experienced in 2007. The Discharger's current total disposal capacity is about 0.87 mgd, which is less than the 1.2 mgd total specified in the effluent limitation and less than current total flow. This circumstance places the Discharger in violation or threatened violation of Provision VI.C.4.a.ii (lack of adequate pond capacity), Provision VI.C.4.a.iii (available seasonal storage capacity), and Provision VI.C.4.a.iv (a minimum of two feet of operating freeboard), and/or threatened violation of Effluent Limitation IV.A.1.a (0.45 mgd to Central Canal).
10. The situation in Finding 9 continues the failure to maintain adequate operating freeboard in ponds and the risk of overtopping or a breach of levees. The WWTF ponds are adjacent to the Central Canal, several businesses, and the main railroad line for the Santa Fe Railroad and Amtrak. Overflow of discharge of undisinfected secondary treated wastewater from the ponds to the Central Canal would adversely affect its beneficial use for unrestricted agricultural supply. Overflow to area businesses (as occurred in 2000) or to the railroad right-of-way would cause or threaten to create a nuisance condition. The Discharger is in threatened violation of Prohibitions III.A.(unauthorized discharge location), III.B. (bypass of treatment or overflow), and III.C. (nuisance).
11. Though most wastewater treatment facilities typically have some over-design and component redundancy, these are generally to provide a safety factor for emergencies and contingencies. In the case of Malaga, significant treatment components have been out of service for extended periods. Secondary clarifier No. 1 has been out of service for approximately one year. Secondary clarifier No. 3 has been out of service for approximately 20 years. The combination dissolved air floatation unit/primary clarifier has been out of service for three years. The current actual treatment capacity of the WWTF as reported by the Discharger's engineer is 0.863 mgd in the current configuration. In September, the average influent flow rate reported was 1.02 mgd, 85% of the WWTF design capacity and over the current actual capacity. In addition, the WWTF currently lacks buffer capacity for contingencies.
12. Finding No. 11 indicates that the Discharger is in violation or threatened violation of Standard Provision I.D (proper maintenance and operation).
13. Staff inspection of 31 October 2007 confirmed that flow metering included measurement of recirculated flow from the grit washer and thus is not representative of actual influent flow. This effects the water balance assumptions as well as influent flow records. Non-representative flow metering violates or threatens to violate Standard Provision III.A and Monitoring and Reporting Program, General Monitoring Provision I.A.

14. California Water Code, Section 13301, states, in part, that:

When a regional board finds that a discharge of waste is taking place or threatening to take place in violation of requirements or discharge prohibitions prescribed by the regional board or the state board, the board may issue an order to cease and desist and direct that those persons not complying with the requirements or discharge prohibitions (a) comply forthwith, (b) comply in accordance with a time schedule set by the board, or (c) in the event of a threatened violation, take appropriate remedial or preventive action. In the event of an existing or threatened violation of waste discharge requirements in the operation of a community sewer system, cease and desist orders may restrict or prohibit the volume, type, or concentration of waste that might be added to such system by dischargers who did not discharge into the system prior to the issuance of the cease and desist order. Cease and desist orders may be issued directly by a board, after notice and hearing, or in accordance with the procedure set forth in Section 13302.

15. Title 23, California Code of Regulations (CCR), Section 2232(d), states:

Whenever a regional board finds that the waste treatment or disposal facilities of a discharger will reach capacity within four years and that adequate steps are not being taken to address the capacity problem, it shall adopt a time schedule or other enforcement order. Such action shall be preceded by notice and a hearing.

16. California Water Code, Section 13267, states, in part, that:

(a) A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement or authorized by this division, may investigate the quality of any waters of the state within this region.

(b)(1) In conducting an investigation specified in subdivision (a), the regional board may require that any ... citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, ... or who proposes to discharge wastes within its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

17. The technical reports required by this Order are necessary to insure proper oversight of whether the Discharger complies with this Cease and Desist Order and Waste Discharge Requirements, and does not endanger public health and safety. The Discharger operates the facility that discharges the waste subject to this Order.

18. Cease and Desist Order No. 5-01-001, adopted on 26 January 2001, required the Discharger to complete installation of tertiary treatment units and disinfection equipment, to implement a pretreatment program, and to complete a sludge management plan.

19. The Discharger completed the tasks required by Cease and Desist Order No. 5-01-001 and rescission is appropriate. The Discharger nonetheless is discharging waste and threatening to discharge waste in violation and threatened violation of WDRs Order No. R5-2008-_____ and issuance of an order to cease and desist is appropriate.

20. The issuance of this Order is an enforcement action by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, Section 15321(a)(2).
21. On **13/14 March 2008**, in Rancho Cordova, California, after due notice to the Discharger and all other affected persons, a public hearing was held and evidence received to consider a Cease and Desist Order.
22. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board to review the action in accordance with, Title 23, California Code of Regulations, Sections 2050 through 2068. The petition must be received by the State Water Resources Control Board, Office of Chief Counsel, P.O. Box 100, Sacramento, CA, 95812-0100, within 30 days of the date on which the Regional Water Board action took place. Copies of the law and regulations applicable to filing petitions are available at www.waterboards.ca.gov/water_laws/index.html and also will be provided upon request.

IT IS HEREBY ORDERED that, pursuant to sections 13301 and 13267 of the California Water Code, Cease and Desist Order No. 5-01-001 is rescinded and the Malaga County Water District, its agents, successors, and assigns, shall:

1. Cease and desist discharging wastes in violation and threatened violation of Waste Discharge Requirements Order No. R5-2008-_____.
2. Modify the WWTF flow measurement methods to provide reliable and representative metering for influent flow to the WWTF:

<u>Task</u>	<u>Compliance Date</u>
a. Submit a work plan and proposed implementation schedule for improvement of WWTF influent flow metering.	30 days following Order adoption
b. Implement the improvement plan.	30 days following Executive Officer approval of work plan and implementation schedule in Task a., but by no later than 6 months following Order adoption.
c. Complete modifications and submit a technical report certifying that the modifications were completed as planned and properly calibrated.	By no later than 1 year following Order adoption

3. 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. Compliance with this item shall be achieved in accordance with the following tasks and time schedule:

<u>Task</u>	<u>Compliance Date</u>
a. Submit the results of a study evaluating the WWTF treatment and disposal capacity and proposing a work plan and time schedule to implement short-term and long-term measures to ensure compliance with waste discharge requirements. Study results shall include evaluations of, but not limited to, short-term measures necessary to comply with Order No. R5-2008-_____, implementation of appropriate ongoing operations and maintenance, and long-term measures to meet WWTF treatment and disposal needs through at least 2028. The time schedule for short-term measures shall not exceed (3 years from adoption date of Order.) The technical report shall include actions to generate appropriate population and WWTF flow projections and their rationale.	90 days following Order adoption
b. Implement work plan and time schedule.	30 days following Executive Officer approval of work plan and time schedule in Task a.
c. Submit status reports on progress.	Annually
d. Complete implementation of short-term measures and submit a technical report certifying modifications were completed as designed.	In accordance with approved time schedule but not to exceed 3 years after adoption date of Order
e. Comply with WDRs Order No. R5-2008-_____.	60 days after completion of Task d.
f. Submit a Report of Waste Discharge for completion of long-term measures.	At least 180 days prior to expiration of WDRs Order No. R5-2008-_____.

4. All technical reports required herein that involve planning, investigation, evaluation, or design, or other work requiring interpretation and proper application of engineering or geologic sciences, shall be prepared by or under the direction of persons registered to practice in California pursuant to California Business and Professions Code, sections 6735, 7835, and 7835.1. To demonstrate compliance with Title 16, CCR, sections 415 and 3065, all technical reports must contain a statement of the qualifications of the responsible registered professional(s). As required by these laws, completed technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.
5. If, in the opinion of the Executive Officer, the Discharger violates this Order, she may refer the matter to the Attorney General for judicial enforcement or, alternately issue a formal complaint for Administrative Civil Liability.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on _____.

PAMELA C. CREEDON, Executive Officer