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March 17, 2005

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Return Receipt Requested
In Reply Refer To: CWA-307-9-05-36

Mr. Carl W. Mosher
Director
City of San Jose
Environmental Services Department
777 N. First Street, Suite 300
San Jose, California 95112

Dear Mr. Mosher:

Enclosed please find a Finding of Violation and Administrative Order (Order), which requires the City of San Jose to comply with the Federal pretreatment requirements. The U.S. Environmental Protection Agency, Region 9 (EPA) is issuing this Order in response to EPA's January and August, 2004 compliance inspections of industrial users (IUs) within the service area of the San Jose/Santa Clara Water Pollution Control Plant and to findings made by the Regional Water Quality Control Board's (RWQCB's) pretreatment compliance inspection (PCI) of San Jose's Pretreatment Program conducted by Tetra Tech, Inc. on January 12-15, 2004.

EPA performed inspections of IUs that discharge to San Jose in January 2004, due to EPA's concern that the San Jose's Pretreatment Program has weakened following a significant reduction in staff in 2001. EPA conducted additional inspections of IUs in August 2004 to confirm the findings made during the January 2004 inspections. The IU inspections and the findings made in the PCI report revealed that San Jose's Pretreatment Program had significant deficiencies, many of which result in inadequate or compromised treatment at the IUs, unidentified violations, and in January of this year, the identified pass-through of cyanide through the Water Pollution Control Plant into the South Bay.

As a result, the Order sets a time schedule to (1) correct permit errors by re-permitting all significant industrial users, (2) ensure industrial user compliance with the prohibition against bypassing treatment, (3) update its Sewer Use Ordinance, (4) reevaluate its local limits, (5) provide training to its inspectors, and (6) audit and make corrections to its compliance program. Detailed requirements necessary to comply are contained in the enclosed Order.

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The key dates for compliance activities in this Order are as follows:

KEY DATES	ADMINISTRATIVE ORDER CWA-307-9-04-XXX
June 30, 2005	(1) Submit inventory of Industrial Users. (2) Submit five revised SIU permits and fact sheets. (3) Propose a plan for remedying compliance monitoring inadequacies, including a plan to ensure Industrial User compliance with the bypass prohibition. (4) Submit analysis on budget, staffing, equipment needs of the pretreatment program. (5) Submit a description of proposed training plan. (6) Submit first progress report on Order deadlines, listed below.
October 31, 2005	Submit second progress report on Order deadlines.
January 31, 2006	Submit revised Sewer Use Ordinance and multijurisdictional agreements.
February 28, 2006	Submit third progress report on Order deadlines.
June 30, 2006	Submit technical evaluation of adequacy of local limits.
June 30, 2007	(1) Submit revised permits and fact sheets for all significant IUs. (2) Submit new local limits, if recalculation is necessary. (3) Submit results of internal audit of compliance monitoring plan.
August 31, 2007	Submit a schedule of activities which will remedy all inadequacies in compliance monitoring based on the findings an external audit.
* * *	Adopt local limits and ordinance within 60 days of obtaining approval.
* * *	Issue all pending permits within 180 days of obtaining approval.

We thank you for your cooperation during the IU inspections and the evaluation of your program. We look forward to working with you in making improvements to your Pretreatment Program. If you have any questions regarding this matter, please contact Greg Arthur at (415) 972-3504 or at arthur.greg@epa.gov or Margaret Masquelier at (415) 972-3536 or at masquelier.margaret@epa.gov.

Sincerely,

Original Signed By:

Alexis Strauss
Director, Water Division

Enclosure

cc: John Mukhar, P.E., City of San Jose
Lila Tang, San Francisco Bay RWQCB

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In the Matter of	)	
	)	
The City of San Jose	)	
NPDES permit No. CA0037842	)	
San Jose/Santa Clara Water Pollution Control	)	FINDING OF VIOLATION
Facility	)	
Pretreatment Program	)	AND ORDER FOR COMPLIANCE
	)	
Proceedings under Section 308(a) and 309(a)(3),	)	Docket No. CWA-307-9-05-36
(a)(4) and (a)(5)(A) of the Clean Water Act, as	)	
amended, 33 U.S.C. §§ 1318(a) and	)	
1319(a)(3), (a)(4) and (a)(5)(A)	)	

STATUTORY AUTHORITY

The following Finding of Violation and Order (Docket No. CWA-307-9-05-36) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to Sections 308(a) and 309(a)(3), (a)(4) and (a)(5)(A) of the Clean Water Act [33 U.S.C. §§ 1318(a) and 1319(a)(3), (a)(4) and (a)(5)(A)] (hereinafter the Act). This authority has been delegated by the Administrator to the Regional Administrator who has, in turn, delegated it to the Director of the Water Division of EPA Region 9.

FINDING OF VIOLATION

The Director of the Water Division of EPA Region 9 finds that the City of San Jose is in violation of the permit conditions in the National Pollutant Discharge Elimination System (NPDES) permit, No. CA0037842, issued to the City of San Jose. This Finding is made on the basis of the following:

1. CWA section 301(a), 33 U.S.C. § 1311(a), makes it unlawful for a person to discharge a pollutant from a point source into any navigable waters, defined as "waters of the United States" under CWA section 502(7), 33 U.S.C. § 1362(7), except in compliance with

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specific CWA sections, including Section 402, 33 U.S.C. § 1342.

2. The State of California has an EPA-approved National Pollutant Discharge Elimination System (NPDES) program and issues NPDES permits thorough its State Water Resources Control Board and nine Regional Water Quality Control Boards to point sources that discharge wastewater to "waters of the United States."

3. The San Francisco Regional Water Quality Control Board (RWQCB), under the authority of Section 402(b) of the Act, as amended [33 U.S.C. § 1342(b)], issued NPDES permit No. CA0037842 in its Waste Discharge Requirements Order No. R2-2003-0085 (NPDES permit) to the City of San Jose on September 17, 2003 to become effective on that date, and set to expire on September 30, 2008. The NPDES permit authorizes and has authorized the discharge of treated wastewater from the San Jose/Santa Clara Water Pollution Control Plant (Treatment Plant) located at 700 Los Esteros Road, San Jose, Santa Clara County, California into the Artesian Slough, tributary of the Coyote Creek and of the South San Francisco Bay.

4. The Artesian Slough, Coyote Creek, and South San Francisco Bay are all waters of the United States as defined by the Act and its implementing regulations [33 U.S.C. § 1362(7); 40 CFR § 122.2].

5. Under Section 307(b) of the Act [33 U.S.C. § 1317(b)], EPA promulgated the general pretreatment regulations in the Code of Federal Regulations (CFR) at Title 40, Part 403 (40 CFR Part 403) that apply to Publicly Owned Treatment Works (POTWs) as well as to the industrial users that discharge their non-domestic wastewaters into the POTWs. The sewer collection system and wastewater treatment plant serving the City of San Jose qualify the City of San Jose as a POTW within the meaning of Section 307(b) of the Act [33 U.S.C. § 1317(b)] and the Federal pretreatment regulations in 40 CFR § 403.3(o).

6. The City of San Jose has a pretreatment program, which the RWQCB has approved pursuant to 40 CFR § 403.9 (Pretreatment Program) and Section E.5 of the NPDES

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permits states that the City of San Jose shall implement and enforce its approved pretreatment program in accordance with Federal pretreatment requirements contained in 40 CFR Part 403, pretreatment standards promulgated under § 307(b), § 307(c), and § 307(d) of the Act, and the requirements in Attachment K, "Pretreatment Requirements," of the NPDES permit. These pretreatment functions include, but are not limited to, the following:

a. Enforcement of National Pretreatment Standards in accordance with 40 CFR § 403.5 and § 403.6;

b. Implementation of its pretreatment program in accordance with legal authorities, policies, procedures, and financial provisions described in the general pretreatment regulations (40 CFR Part 403) and the City of San Jose's approved pretreatment program;

c. Submission of reports to EPA, the State Board and the RWQCB, as described in Attachment K, "Pretreatment Requirements";

d. Development and administration of the criteria set forth in 40 CFR § 403.8(b) and § 403.8(f) and to ensure Industrial User (IU) compliance with the Pretreatment Program. This condition includes, but is not limited to, the following requirements:

(i) Identify and regulate through appropriate control mechanisms, (e.g. permits), all IUs under correct Federal standards, as required at 40 CFR § 403.8(b), § 403.8(f)(1)(iii), and § 403.8(f)(2).

(ii) Conduct regular evaluations to determine if IUs need slug discharge control plans, as required at 40 CFR § 403.8(f)(2)(v) and § 403.8(b).

(iii) Develop inspection procedures and produce control mechanisms (e.g. permits) to ensure the proper location and frequency of sampling of IUs regulated wastewater so that it is representative of the reporting period and of

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a day of operation by, as required at 40 CFR § 403.8(f)(1)(iii), § 403.8 (f)(2), § 403.8(b), § 403.12(b)(5), and § 403.12(g)(3). Specifically, to ensure representative sampling, the City of San Jose must:

(A) Identify all regulated pollutants present in wastewater discharges, as required at 40 CFR § 403.8(b), § 403.8(f)(2)(ii), and § 403.12(g);

(B) Identify and monitor discharges from all regulated wastestreams, as required at 40 CFR § 403.8(b), § 403.8(f)(2)(v) and § 403.12(g);

(C) Determine sampling procedures and locations adequate to capture variabilities over each facility's operation day and reporting period, as required at 40 CFR § 403.8(b), § 403.8(f)(2)(v) and § 403.12(g).

(iv) Administer the pretreatment program to ensure IU compliance with the bypass prohibition at 40 CFR § 403.17(d), as required at 40 CFR § 403.8(b) and § 403.8(f).

(v) Conduct inspections of IUs including the review of on-site compliance documentation so the City of San Jose can determine IUs' compliance with Federal and local requirements, which is required at 40 CFR § 403.8(b) and § 403.8(f)(2)(v)-(vi).

(vi) Conduct inspections in a manner sufficient to identify all areas where wastewater could be discharged to the sewer, as required at 40 CFR § 403.8(b), § 403.(f)(2)(ii) and 40 CFR § 403.8(f)(2)(v).

(vii) Evaluate IU self-monitoring reports to ensure IUs are submitting the information required by 40 CFR § 403.12(e), as required by 40 CFR § 403.8(b) and § 403.8(f)(2).

(viii) Ensure that IUs meet the 24-hour notification requirement and 30-day resample requirement at 40 CFR § 403.12(g)(2), as required by 40 CFR § 403.8(b), § 403.8(f)(1)(iv), and 403.8(f)(2).

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(ix) Ensure IUs use correct analytical methods for analyzing samples of wastewater discharges for compliance determination, in accordance with 40 CFR § 403.12(g)(4), as required by 40 CFR § 403.8(b) and § 403.8(f)(2).

(x) Develop and implement procedures that ensure that the City of San Jose's inspections are conducted with sufficient care to collect information to produce evidence admissible in court, as required under 40 CFR § 403.8(b) and § 403.8(f)(2)(vi).

(xi) Provide records in a timely manner upon inspection by EPA and the RWQCB, as required by 40 CFR § 403.8(b), § 403.8(f)(2), and § 403.12(o)(2).

(xii) Ensure that IUs that are out of compliance with the Pretreatment Requirements return to compliance, as required at 40 CFR § 403.8(b) and § 403.8(f)(1)(vi).

(xiii) Require IUs, through the issuance of control mechanisms, to install pretreatment systems capable of treating wastewater in a manner sufficient to ensure compliance with Federal categorical standards, as required by 40 CFR § 403.8(b) and § 403.8(f)(1)(iv).

e. Continue to develop its local limits as necessary and effectively enforce such limits, as required at 40 CFR § 403.5(c).

7. The City of San Jose's 2003 Annual IU Pretreatment Compliance Report states that the City of San Jose's pretreatment program consists of 349 IUs. Of these 349 IUs, 158 are classified as Categorical Industrial Users (CIUs). CIUs are those facilities subject to the Categorical pretreatment standards under 40 CFR § 403.6 and 40 CFR Chapter I, Subchapter N.

8. On January 12-15, 2004 the RWQCB, with the assistance from Tetra Tech, Inc. (Tetra Tech), performed a Pretreatment Compliance Inspection (PCI) of the City of San Jose in

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order to evaluate its control of non-domestic wastewater discharges into the City of San Jose's sewers. The PCI consisted of the following:

a. On-site interviews with representatives from the City of San Jose;

b. A review of pretreatment program documentation including a review of the files for the following ten IUs: INTA Technologies, Maxim Integrated, Stephen's Meat Products, California Paperboard Products, Swift Metal Finishing, Cirexx Corporation, Prudential Overall Supply, Allergan, Inc., Celeritek, Inc., and Seagate Technologies;

c. Compliance inspections of the following twelve IUs: INTA Technologies, Maxim Integrated, Stephen's Meat Products, Analog Devices, California Paperboard Products, Swift Metal Finishing, Cirexx Corporation, Prudential Overall Supply, Allergan, Inc., Celeritek, Inc., M-Pulse Microwave, Inc., and Seagate Technologies; and

d. A report dated July 9, 2004 which documents the findings of the PCI (PCI report).

9. EPA inspectors Greg Arthur and Margaret Masquelier participated in the interview portion of the PCI and, concurrent with the Tetra Tech inspections, conducted independent compliance inspections of the following seven CIUs: Clean Harbors Environmental Services, Inc., Son Manufacturing, P.K. Selective Metal Plating, Inc., APTOS Corporation, Pacific Aerospace Services, Inc., ECS Refining, and A-1 Plating. Following these IU inspections, EPA requested monitoring data for these industries from the City of San Jose to evaluate the IUs' compliance with Federal limits. From February 2004 through August 2004, City of San Jose inspectors provided this data to EPA via email and US mail. In June of 2004, EPA generated inspection reports for each of these facilities, except ECS Refining.

10. On August 5-6, 2004, EPA conducted six additional compliance inspections of CIUs that discharge wastewater to the City of San Jose, including: Component Finishing, Inc., Nu

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Metal Finishing, Inc., CS Plating, Peninsula Metal Fabrication, Santa Clara Plating Co., Inc., and Anoplate/All Metal Plating, Inc. EPA generated inspection reports for the following facilities: Component Finishing, Inc., Nu Metal Finishing, Inc., Peninsula Metal Fabrication, and Santa Clara Plating Co., Inc.

11. From September 2 through November 3, 2004 EPA issued four Findings of Violation and Administrative Orders for Compliance (Orders), pursuant to Section 309(a) of the Act [33 U.S.C. § 1319(a)], to the following CIUs: Son Manufacturing, P.K. Selective Metal Plating, Inc., APTOS Corporation, and Pacific Aerospace Services, Inc. These Orders were issued to CIUs which were found to be out of compliance with Federal pretreatment regulations during the January 12-15, 2004 inspections. The Orders require the IUs to achieve and maintain compliance with the pretreatment regulations and submit monitoring and financial data to EPA.

12. **Based on the July 9, 2004 PCI report, EPA's January 12-15, 2004 compliance inspections, and EPA's August 5-6, 2004 compliance inspections, EPA finds that the City of San Jose has violated Provision 5.E of its NPDES permit, as issued on September 17, 2003, by failing to develop and/or implement its pretreatment program to ensure compliance by IUs with applicable pretreatment standards and requirements, which is required under 40 CFR § 403.8(b) and § 403.8(f), in the following manner:**

    a. *IUs were incorrectly identified, notified, and regulated through control mechanisms (e.g. permits), which is required at 40 CFR § 403.8(b), § 403.8(f)(1)(iii) and § 403.8(f)(2)(i)-(iii), in the following cases:*

        (i) Based on findings made during EPA's January and August 2004 inspections and Tetra Tech's PCI compliance inspections, EPA found that Swift Metal Finishing, A-1 Plating, P.K. Selective Metal Plating, Inc., Peninsula Metal Fabrication, Nu Metal Finishing, Santa Clara Plating, and Component

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Finishing were permitted incorrectly by the City of San Jose as existing source metal finishing facilities under 40 CFR Part 413. EPA determined that each of these facilities are new source metal finishing facilities and should be permitted under 40 CFR Part 433 by the City of San Jose. During the January 2004 inspections, EPA informed the City of San Jose that it would be necessary to reevaluate the classification of all metal finishing facilities permitted under 40 CFR Part 413. However, during EPA's follow-up inspections in August 2004, EPA found additional metal finishing facilities (Nu Metal Finishing, Peninsula Metal Fabrication, Santa Clara Plating, and Component Finishing) that were permitted under the standards at 40 CFR Part 413 but are new source metal finishing facilities and must be regulated by 40 CFR Part 433.

(ii) During EPA's January 12, 2004 inspection of Clean Harbors Environmental Services, Inc. (Clean Harbors), EPA found that Clean Harbors was incorrectly permitted by the City of San Jose under the metals subpart (Subpart A) of the centralized waste treatment (CWT) category rule at 40 CFR Part 437. During the inspection, EPA found that in addition to metal-bearing wastes, Clean Harbors also accepts oily and organic-bearing wastewaters on-site for treatment and thus must be permitted under and regulated by either Subparts A, B and C or Subpart D.

(iii) During EPA's January 14, 2004 inspection of ECS Refining, EPA found that the City of San Jose did not categorize ECS Refining in a timely manner nor were the Federal categorical limits in the facility's permit applied correctly. The Federal categorical standards for the secondary silver recovery at 40 CFR Part 421 became effective in June 29, 1984. ECS began silver recovery operations in 1990 and the facility was not permitted under the applicable

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Federal categorical standards until August 1, 1992. In addition, during the closing conference following EPA's inspection of the facility, EPA found that the City of San Jose incorrectly applied concentration limits to ECS Refining's wastewater discharge. The Federal categorical standards at 40 CFR Part 421 are published as mass-based standards and POTWs may convert these mass limits to concentration limits in industries' permits by using the facility's average process wastewater flow. Instead of using the average process wastewater flow, the City of San Jose incorrectly used the maximum process wastewater flow in calculating the concentration limits. This resulted in the City of San Jose regulating the facility's wastewater discharges under incorrect limits.

b. *Evaluations have not been conducted as necessary to determine if IUs need a slug discharge control plan, which is required by 40 CFR § 403.8(b) and § 403.8(f)(2)(v), in the following cases:*

(i) The July 9, 2004 PCI report documents that approximately one-half of the IU files reviewed did not contain evidence of biennial slug discharge control evaluations. The report specifically identifies that Cirexx Corporation, INTA Technologies, and Prudential Overall Supply are three examples of IUs whose files did not contain the evaluations.

(ii) The July 9, 2004 PCI report documents that California Paperboard had a slug discharge of "basic red" dye on April 30, 2003 and it did not have a slug discharge control plan to respond to this discharge. In addition, after the spill, the City of San Jose did not require that the facility submit a slug discharge control plan.

(iii) During a review of three previous inspections and audits of the City of San Jose's pretreatment program, EPA found that in a PCI conducted by the

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RWQCB dated December 14, 1998, the RWQCB reported that the City of San Jose was not biennially evaluating all IUs for the need of a slug discharge control plan.

c. *Inspection procedures and IU permits are not sufficient to ensure sampling is representative of the reporting period and day of operation, as required at 40 CFR § 403.8(b), § 403.8(f)(1)(iii) and (f)(2)(v), § 403.12(b)(5), and § 403.12(g)(3), since:*

(i) All regulated pollutants were not monitored for at the following IUs, as required at 40 CFR § 403.8(b), § 403.8(f)(2)(ii), and § 403.12(g):

(A) Based on a review of information submitted by PK Selective Inc. in response to EPA's Order issued to the facility on September 2, 2004, EPA found that the facility had total toxic organics (TTOs) on-site but the City of San Jose did not require it sample for TTOs nor submit a solvent management plan as required by both 40 CFR § 413.14 (the original and incorrect category the facility was permitted under) and § 433.17 (the correct category).

(B) During EPA's January and August 2004 inspections, EPA found that the following CIUs had not been monitoring nor treating for cyanide in cyanide-bearing streams as required by 40 CFR § 413.14 and § 433.17: PK Selective, Inc., A1 Plating, and Nu Metal Finishing.

(C) During EPA's January 12, 2004 inspection of Clean Harbors, EPA found that the facility has not been monitoring for all Federally required parameters. It received wastewaters, which are classified under Subparts A, B, and C of the CWT category rule (40 CFR 437), but the City of San Jose only required the facility sample for Subpart A constituents. The wastestreams should have been monitored for constituents under Subparts

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A, B, and C or Subpart D at 40 CFR Part 437. Though the City of San Jose had begun evaluating what sampling requirements applied to the facility prior to EPA's inspection, it did not complete the evaluation and require necessary monitoring in a timely manner.

(D) According to the PCI report dated July 9, 2004, California Paperboard was not performing analysis for TTOs for all compliance monitoring events, which is required by 40 CFR § 403.12(g).

(ii) All wastestreams from the following IUs were not identified and monitored for, which is required by 40 CFR § 403.8(b), § 403.8(f)(2)(v), and § 403.12(g):

(A) During EPA's January 12, 2004 inspection of Clean Harbors Environmental Services, Inc., EPA found that the facility discharges untreated, contaminated groundwater to the City of San Jose. The City of San Jose had not determined the source of the contamination in this wastewater, evaluated the characteristic pollutants of this wastestream, nor required the facility to monitor for any potential pollutants of concern from the wastestream.

(B) During EPA's January 13, 2004 inspection of Son Manufacturing, EPA found that the facility discharges contaminated mop water, which is used to clean process area and is a regulated wastestream, and the City of San Jose did not require sampling or treatment of this wastewater prior to discharge to the City of San Jose's sewers.

(iii) Wastewater from the following IUs was diluted as a substitute for treatment, which is prohibited under 40 CFR § 403.6(d):

(A) During EPA's January 12, 2004 inspection of Clean Harbors Environmental Services, Inc., EPA found that the facility did not

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segregate wastestreams prior to sampling nor had the facility met the equivalent treatment requirement at 40 CFR Part 437. Thus, EPA finds the City of San Jose was allowing the facility to dilute its process wastewater as a substitute for treatment by commingling dissimilar wastestreams. Compliance samples were taken of commingled process wastewater from wastestreams subject to regulation under different Subparts of the Federal regulations, which gives an inadequate representation of pollutants present in process wastewater generated on-site.

(B) During EPA's January 14, 2004 inspections of PK Selective, Inc. and Aptos Corporation, EPA found that both facilities were diluting process wastewaters as a substitute for treatment by running rinses continuously and not treating wastewater to remove metals. Samples collected of diluted process wastestreams gives an inadequate representation of pollutants present in wastewater generated on-site.

(C) During a review of Pacific Aerospace Services' compliance samples provided to EPA by the City of San Jose after the January 2004 inspections, EPA found the facility's wastewater discharges demonstrate a high variability in pollutant concentrations, which reflects that the facility either dilutes wastewater as a substitute for treatment or does not correctly operate its treatment system. The sampling conducted by the City of San Jose and Pacific Aerospace Services, Inc.'s were not representative of the reporting period due to these findings.

d. *The Pretreatment Program has not been administered to ensure compliance by the IUs with the prohibition against the bypassing of treatment, as set forth in the bypass provision at 40 CFR § 403.17(d), as required by 40 CFR § 403.8(b) and §*

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403.8 (f), because:

(i) During EPA's January and August 2004 inspections, EPA identified the following facilities which had the ability to bypass as a substitute for treatment: Clean Harbors Environmental Services, Inc., ECS Refining, PK Selective, Inc., Nu Metal Finishing, CS Plating, and Santa Clara Plating. The City of San Jose was not aware bypass routes existed at these facilities until after EPA's inspections. The City of San Jose had not undertaken necessary actions to identify and ensure IUs were not using the bypass routes instead of treating the wastewater.

(ii) Based on the discharge monitoring reports the City of San Jose submitted to the RWQCB, the City of San Jose exceeded the Water Quality Criteria (WQC) for cyanide on at least two occasions on January 25 and 26, 2005. The City of San Jose discharged wastewater from the San Jose/Santa Clara Water Pollution Control Plant which had cyanide in concentrations of 30 μg/L and 8 μg/L. The WQC for total cyanide is 1.0 μg/L. Untreated industrial wastewater discharges from cyanide-bearing metal finishing lines are the principle likely sources of cyanide passing through the aeration and disinfection steps of a secondary wastewater treatment plant, like the San Jose/Santa Clara Water Pollution Control Plant.

e. *Inspection procedures of pretreatment processes and on-site facility records are inadequate to determine IUs' compliance with Federal and local requirements, as required at 40 CFR § 403.8(b) and § 403.8(f)(2)(v)-(vi), in the following cases:*

(i) In the PCI report dated July 9, 2004, Tetra Tech reported that during the site inspection of Swift Metal Finishing, the facility's pH meter had not been properly calibrated; thus compliance with Federal and local pH limits could not be assessed.

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(ii) During EPA's August 5, 2004 inspection of CS Plating, EPA found the facility's pH meter was not functioning and it appeared the pH meter had not been used for an extended period of time as the display panel of the meter had a thick film on it and the pH readings were illegible. The facility discharges high-strength, untreated acids and bases to a tank that discharges through the sample point. The City of San Jose could not adequately assess the IUs compliance with Federal standards since the facility's compliance monitoring system was nonfunctional.

(iii) During EPA's January 14, 2004 inspection of PK Selective, Inc., EPA reviewed a random sample of pH recording strips from the continuous pH meter maintained by the facility. EPA found numerous pH violations which the City of San Jose was not aware of since staff was not reviewing the pH charts during inspections and because the facility was not reporting the violations to the City of San Jose.

(iv) During EPA's August 5, 2004 inspection of CS Plating, a representative from CS Plating stated that sludges from the facility's treatment process are hauled off-site and manifested. Waste manifests provide evidence that sludge is generated from the treatment process and can be used to verify that a facility is treating its wastewater properly. Upon EPA's review of the manifests, EPA found that the last manifest in the facility's records was dated October 29, 1992. EPA finds that the City of San Jose has not used adequate inspection procedures to assure that CS Plating maintains compliance with the Federal metal finishing discharge regulations since inspectors have not been reviewing the hazardous waste manifests at CS Plating and have not required that the facility keep current hazardous waste manifest records on file.

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f. *Inspection procedures were not conducted in a manner to identify all areas where wastewater could be discharged to the sewer, which is required under 40 CFR § 403.8(b) and § 403.8(f)(2)(ii) and as part of the slug evaluation plan at 40 CFR § 403.8(f)(2)(v), as is evidenced below:*

(i) The July 9, 2004 PCI report documents that during an inspection, a City of San Jose inspector stated that is not his practice to evaluate hazardous waste storage or chemical storage areas. The City of San Jose cannot evaluate the potential for pollutants to enter the collection system if all areas where wastewater is generated and chemicals are stored are not inspected.

g. *IU compliance evaluation is inadequate since IU self-monitoring report submittals are not evaluated for correctness and completeness, which is required by 40 CFR § 403.8(b), § 403.8(f)(2) and § 403.12(e), in the following cases:*

(i) Based on a review of Clean Harbors' self monitoring reports sent to EPA by the City of San Jose, EPA found that Clean Harbors' 90-day status report did not contain the required analytical results for mercury. The City of San Jose did not follow up regarding Clean Harbors' incomplete report, because it had not determined the information was missing. In addition, in earlier baseline monitoring results collected by Clean Harbors and submitted to EPA by the City of San Jose, mercury was present in the facility's discharges in elevated levels. EPA concludes that the City of San Jose did not adequately evaluate this report as is required.

(ii) In response to the Order issued to Pacific Aerospace on September 28, 2004, EPA received a self-monitoring report from Pacific Aerospace dated December 21, 2001,which the facility had prepared for the City of San Jose. This report showed the facility discharged wastewater with the concentration

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of cadmium at 0.14 mg/L, which was in violation of the Federal standard 0.11 mg/L at 40 CFR § 433.17. EPA requested the violation history of Pacific Aerospace from the City of San Jose following the inspection of the facility, and the City of San Jose was not able to provide record of this violation or any enforcement response to this violation from its compliance history. EPA concludes that either the City of San Jose was not evaluating the reports for correctness and completeness or it did not keep accurate records of the facility's violations and enforcement response to these violations.

h. *IU compliance evaluation is inadequate since the City of San Jose has not ensured IUs meet the 24-hour notification requirement and 30-day resample requirement at 40 CFR § 403.12(g)(2), as required by § 403.8(b), § 403.8(f)(1)(iv), and § 403.8(f)(2), in the following cases:*

(i) The 24-hour notification requirement provides that IUs must report violations of effluent limits within 24-hours of discovery. During a review of compliance data provided by the City of San Jose following EPA's January 2004 inspections, EPA found that three facilities (A-1 Plating, PK Selective, and Aptos Corporation) of seven reviewed had violations which were not reported to the City of San Jose within 24-hours of discovery. The City of San Jose has not followed up with these facilities to inform them that they are in violation of this requirement.

(ii) The 30-day resample requirement provides that IUs in violation of effluent limits resample within 30 days of the sample taken that was in violation. During a review of compliance data provided by the City of San Jose following EPA's January 2004 inspections, EPA found that the following four facilities, of seven facilities reviewed, were not resampled within 30 days of

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finding they were in violation of Federal or local standards: A-1 Plating, PK Selective, ECS Refining, and Son Manufacturing. The City of San Jose did not ensure that required resampling was conducted at these facilities and that the facilities were aware of this requirement.

i. *IU compliance evaluation is inadequate since the City of San Jose has not ensured correct analytical methods are used for analyzing wastewater samples in accordance with 40 CFR § 403.12(g)(4) to evaluate IU compliance with Federal and local effluent limits, which is required under 40 CFR § 403.8(b) and § 403.8(f)(2), in the following cases:*

(i) Tetra Tech reported in the PCI report dated July 9, 2004 that solid waste methods were used to analyze samples collected of wastewater discharged from California Paperboard for compliance assessment. Solid waste methods are not approved by EPA for the analysis of wastewater in assessing compliance with Federal pretreatment standards. The City of San Jose inspectors were not aware of this instance until Tetra Tech inspectors informed them of the error during the PCI.

(ii) Tetra Tech reported in the PCI report dated July 9, 2004 that Cirexx Corporation is required to monitor for TTOs and, based on the inspection report dated May 8, 2003, the facility did not analyze for all constituents since it used Method 624 instead of Method 625. The City of San Jose was not aware of this instance until it was noted in the PCI report.

j. *Procedures are not adequate to ensure that the City of San Jose's inspections are conducted with sufficient care to collect information to produce evidence admissible in court, as required under 40 CFR § 403.8(b) and § 403.8(f)(2)(vi), based on the facts set forth in Paragraphs 12.c. through 12.h.*

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k. *Procedures are not adequate, or are not implemented adequately, to ensure records requested by EPA, as part IU compliance determination following EPA's January 12-15, 2004 inspections, were provided in a timely manner, which required at 40 CFR § 403.8(b), § 403.8 (f)(2), and § 403.12 (o)(2), in the following cases*:

(i) EPA requested data from the City of San Jose regarding Clean Harbors Environmental Services, Inc., and the City of San Jose was unable to provide this data for over two months.

(ii) Son Manufacturing's self-monitoring reports and records of 24-hour notification could not be located by the City of San Jose when requested by EPA. In addition, due to absence of documentation, it could not be determined if the City of San Jose followed its enforcement response plan, which is part of its Pretreatment Program, in response to Son Manufacturing's violation of Federal standards.

(iii) The City of San Jose was unable to provide self-monitoring reports and reporting information for ECS Refining until approximately six months after EPA's request of this information. The City of San Jose stated the facility was given a verbal warning for a violation on May 23, 2003 but the inspector explained that there was an absence of documentation to verify if this had actually occurred.

(iv) The City of San Jose could not locate documentation to verify if samples were collected within 30-days of a violation at Aptos Corporation when this information was requested by EPA.

(v) In Tetra Tech's PCI report, dated July 7, 2004, Tetra Tech made the following findings: "[The City of San Jose's] documentation of inspections is weak,"

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(Finding 15) and "In four of ten files reviewed, inspectors could find only one record of compliance monitoring per year. Without proper documentation, the inspection team was unable to determine whether [The City of San Jose] was in compliance with its approved pretreatment program."(Finding 11) Even though the City of San Jose was able to provide the missing documentation in its August 24, 2004 response to the PCI report, the City of San Jose was unable to provide documentation in a timely manner.

(vi) During the PCI interview process, the City of San Jose stated to EPA and Tetra Tech inspectors that it was having difficulty locating IU compliance documentation since the City of San Jose had recently moved the location of its administrative offices. EPA has reviewed three historic reports which evaluated the City of San Jose's pretreatment program. The following findings were made which demonstrate that the City of San Jose has had chronic difficulties in tracking IU compliance documentation:

(A) A PCI report conducted by the RWQCB dated December 14, 1998, states: "Requirement 2: The [City of San Jose] must take more care in filing documents" and "Requirement 3: The [City of San Jose] must provide better documentation that its procedures, for determining an Industrial User's compliance status, is being followed," and "Requirement 4 :The [City of San Jose] must ensure that inspection reports are prepared and appropriately filed for each and every inspection at its Industrial Users."

(B) The RWQCB conducted a PCI and generated a report on November 12, 1996 which states: "Requirement 1: The [City of San Jose] must use more care filing documents," "Requirement 2 :The [City of San Jose] must ensure current files contain copies of permits, amendments and fact sheets,"

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and "Requirement 3: The [City of San Jose] must ensure that self-monitoring requirements, including required sampling frequency, are included in its permits."

(C) The RWQCB conducted an audit of the City of San Jose's pretreatment program by hiring a consultant, SAIC, which generated a report on March 14, 1986 which states: "the [City of San Jose] should develop more formalized procedures for tracking monitoring activities," "The inspectors need to formally document all of their Industrial User inspections and visits," and "the inspection staff needs to log calls and document site visits and organize files to make accessibility easier."

l. *Remedies are not obtained from IUs that fail to comply with pretreatment standards and requirements, which is required under 40 CFR § 403.8(b) and § 403.8(f)(1)(vi), in the following case:*

(i) Based on a review of Pacific Aerospace's compliance history and the City of San Jose's response to the facility's chronic violations of Federal and local standards, EPA finds that the City of San Jose has not performed adequate enforcement response to bring the facility into compliance.

m. *Procedures are inadequate to ensure IUs install technology required to meet applicable pretreatment standards and requirements, which is required under 40 CFR § 403.8(b) and § 403.8(f)(1)(iv), in the following cases:*

(i) During EPA's January 2004 inspections, EPA found that PK Selective, APTOS Corporation, and Son Manufacturing are regulated under the Federal categorical standards and the City of San Jose had not required that these facilities install treatment technologies that would ensure that they would maintain compliance with the applicable standards.

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13. **Based on the July 9, 2004 PCI report, EPA's January 12-15, 2004 compliance inspections, and EPA's August 5-6, 2004 compliance inspections, EPA finds that the City of San Jose has violated 40 CFR § 403.8(b) and § 403.8(f)(4) by failing to continue to develop specific local limits as necessary to implement National Pretreatment Standards listed in 40 CFR § 403.5(a)(1), (b), as required at 40 CFR § 403.5(c)(1).**

a. *Based on EPA's files and information from phone calls with the RWQCB, EPA discovered that local limits have not been assessed since 1993. Since this time, changes in its NPDES permit and in the IU population warrants a reassessment of the limits.*

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Taking these Findings into consideration and considering the potential environmental and human health effects of the violations and all good faith efforts to comply, EPA has determined that compliance in accordance with the following requirements is reasonable. Pursuant to Section 308(a) and 309(a)(3), (a)(4) and (a)(5)(A) of the Act [33 U.S.C. §§ 1318(a) and 1319(a)(3), (a)(4) and (a)(5)(A)], the City of San Jose is ordered to comply with the following requirements:

1. *Legal Authority*

By **January 31, 2006**, the City of San Jose shall submit a revised sewer use ordinance, copies of all multi-jurisdictional agreements, and an accompanying report. The report must include (i) a description of what changes were made to the ordinance, (ii) a description of what grants the City of San Jose the authority to enforce in its contributing jurisdictions and any supporting documentation to this, and (iii) a description of which parts of the City of San Jose's ordinance that have not yet been adopted by contributing jurisdictions. The sewer use ordinance shall be submitted as a final draft ready for

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adoption and implementation by EPA or the RWQCB, and must include, but not be limited to, an evaluation of all areas the City of San Jose committed to review in its August 24, 2004 response to the PCI.

2. *Local Limits*

By June 30, 2006, at the end of the City of San Jose's 2005-2006 budget cycle, the City of San Jose must submit a report for EPA and RWQCB approval with a technical evaluation of the adequacy of its local limits to protect the treatment plant, collection system, and sewer workers and ensure the City of San Jose meets its NPDES permit limits and the requirements at 40 CFR § 403.5(c)(1), § 403.8(b), and § 403.5(f)(4). This technical evaluation must include: analyses necessary to recalculate the maximum headworks loading for the wastewater treatment plant, the maximum pollutant levels protective of the collection system, and a reevaluation of the method employed to allocate allowable loadings to the users. If the results of this evaluation demonstrates that the City of San Jose's local limits are not adequate to protect the treatment plant, collection system, and sewer workers and ensure the City of San Jose will meet its NPDES permit limits and applicable regulations, then the City of San Jose must calculate new local limits based on the findings of this evaluation by **June 30, 2007.**

3. *Non-Domestic Users Inventory*

By June 30, 2005, the City of San Jose shall submit a current inventory listing each IU and zero-discharging CIU as well as procedures the City of San Jose will use to update its IU survey on a regular basis. The inventory must indicate the following for each IU and zero-discharging CIU:

a. Whether it qualifies as a significant industrial user;

b. The average and peak flow rates;

c. The SIC code;

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d. The pretreatment technology in place, and;

e. The local permit status.

4. *Permits and Fact Sheets*

By June 30, 2007, City of San Jose shall submit a detailed description of its permitting procedures and shall submit revised fact sheets and a draft permits for each significant IU. The revised permits will be issued to the IUs upon approval of the local limits (if revision is needed) and revised ordinance by EPA or the RWQCB. The permits and fact sheets must contain the following information for each significant IU and zero-discharging CIU:

a. The industry name, address, owner or plant manager;

b. The permit expiration date (not to exceed five years in duration);

c. A description of the facility including the products made or services provided, building names, the process in each building, and when current operations began;

d. A detailed facility map;

e. The identification of each sewer connection;

f. A description of the contributing wastestreams that comprise each identified non-domestic discharge into the sewers;

g. The pretreatment processes in operation at each identified non-domestic discharge to the sewers and an evaluation of whether the treatment system is adequate to ensure the facility's wastewater discharges will achieve compliance with the Federal and local limits;

h. The classification by Federal point source category and the reasons justifying this classification;

i. The applicable Federal categorical pretreatment standards (adjusted if necessary to account for dilution), supporting production and flow data (if

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necessary), and the compliance sampling point(s) where the standards apply. Also include self-certification statements allowed pending the approved toxic organics monitoring plan;

j. The pollutants of concern and the compliance sampling point(s) where the local limits apply;

k. A site map indicating the locations of all compliance sampling point(s), sewer connections, and sewer laterals;

l. The sampling frequency by regulated pollutant for each compliance sampling point, and the supporting statistical rationale, to ensure that the sampling is representative of the wastewater discharge variabilities over the reporting period;

m. The sampling protocol by regulated pollutant for each compliance sampling point to ensure that the samples collected to determine compliance with Federal standards are representative of the sampling day's discharge.

n. A written evaluation determining if the facility needs to have a slug discharge control plan.

By June 30, 2005, as an interim measure to the requirements of this paragraph, the City of San Jose must submit five completed significant IU permits for EPA review that satisfy the conditions of this paragraph.

5. *Compliance Monitoring*

By June 30, 2005, the City of San Jose must submit a report, which will evaluate the causes of all inadequacies in compliance monitoring identified in paragraph 12 of the Findings of this Order and will specifically delineate a plan by which the City of San Jose plans to remedy these inadequacies. The plan must include specific milestone activities and a time schedule for completing these activities. This evaluation must be conducted

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and the report must be prepared by an independent, third party that is qualified in evaluating such matters.

After March 1, 2007 and before June 30, 2007, the City of San Jose must conduct an external audit, performed by an independent, third party, which evaluates the effectiveness of the measures imposed as part of the plan required in this paragraph. The results of this second audit must be submitted by **June 30, 2007.**

By August 31, 2007, the City of San Jose must submit a schedule of activities which specifically delineate how the City of San Jose will remedy all inadequacies in compliance monitoring based on the results of the audit, due on June 30, 2007.

6. *Enforcement of the Bypass Prohibition*

By **June 30, 2005**, the City of San Jose must submit a plan which will describe how it will ensure IU compliance with the Federal provision that prohibits IUs from bypassing pretreatment necessary to comply with permit effluent limits in 40 CFR § 403.5(d). This plan shall include, but not be limited to: a description of how it will identify facilities that have the potential to bypass treatment on an ongoing basis, detect bypass events, deter bypassing, and enforce the bypass prohibition. This plan shall also include a detailed schedule, including specific milestone dates, of how it will conduct surveillance monitoring activities in order to identify any facilities suspected of violating this pretreatment condition, and a method by which the City of San Jose will inform IUs of the City of San Jose's surveillance monitoring presence.

7. *Resources*

By June 30, 2005, the City of San Jose must describe updated budget, staffing and equipment needs of its pretreatment program. This shall include a detailed description of how staff hours will be allocated to rewrite all permits and fact sheets required by paragraph 4 of this Order, incorporate the surveillance monitoring program in paragraph 6

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of this Order, employ the remedies set forth in the plan required by paragraph 5 of this Order, and conduct all routinely scheduled compliance monitoring activities on an ongoing basis.

8. **Sixty days after receiving approval** of its revised ordinance and local limits (if revised) the City of San Jose shall adopt and implement its revised ordinance and local limits (if revised).

9. **One hundred and eighty days after receiving approval** of its revised ordinance and local limits (if revised) the City of San Jose shall issue all pending permits to its significant IUs.

10. **By June 30, 2005**, the City of San Jose shall submit a description and schedule of a training plan by which staff will be informed and updated on all relevant procedures of compliance monitoring, enforcement, and record-keeping procedures of its pretreatment program.

11. **By June 30, 2005, October 31, 2005, and February 28, 2006**, the City of San Jose shall submit a progress report that outlines the actions that have been completed to date in preparing for submission of the items required by this Order.

12. All reports submitted pursuant to this Order shall be signed by a principal executive officer of the City of San Jose and shall include the following self-certifying statement:

    I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I certify that all wastewater samples analyzed and reported herein are representative of the ordinary process wastewater flow from this facility. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

13. All submissions shall be mailed to the following addresses:

    U.S. ENVIRONMENTAL PROTECTION AGENCY

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75 Hawthorne Street
San Francisco, California 94105
Attn: Greg Arthur (WTR-7)

REGIONAL WATER QUALITY CONTROL BOARD
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street Suite 1400
Oakland, California 94612
Attn: Ms. Lila Tang, NPDES Permit Division

14. The information required herein must be provided notwithstanding its possible characterization as confidential business information or trade secrets. EPA has promulgated regulations to protect the confidentiality of the business information it receives. These regulations are set forth in 40 C.F.R. Part 2. A claim of business confidentiality may be asserted in the manner specified by 40 C.F.R. § 2.203(b) for part or all of the information requested. EPA will disclose business information covered by such a claim only as authorized under 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the business information at the time EPA receives it, EPA may make it available to the public without further notice.

15. This Order is not and shall not be interpreted to be an NPDES permit under Section 402 of the Act [33 U.S.C. § 1342], nor shall it in any way relieve the City of San Jose of obligations imposed by the Act, or any other Federal or State law. The request for information included in this Order is not subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act because it is not a "collection of information" within the meaning of 44 U.S.C. § 3502(3) and 5 CFR § 1320.5(c) because it is directed to fewer than ten persons. Furthermore, it is exempt from OMB review under the Paperwork Reduction Act because it is an administrative action against a specific entity [44 U.S.C. § 3518(c)(1)(B) and 5 CFR § 1320.4(a)(2)].

16. Issuance of this Order is not an election by EPA to forego any available remedies under the law, including without limitation any administrative, civil, or criminal action to seek

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penalties, fines, or other appropriate relief under the CWA. EPA reserves all rights and remedies, legal and equitable, available to enforce any violation cited in this Order and to enforce this Order.

17. CWA section 309(a), (b), (d) and (g), 33 U.S.C. § 1319(a), (b), (d) and (g), provides administrative and/or civil judicial relief for failure to comply with the Order and/or certain provisions of the CWA, including without limitation sections 301, 307 and 308, 33 U.S.C. §§ 1311, 1317 and 1318, the NPDES permit. In addition, CWA section 309(c), 33 U.S.C. § 1319(c), provides criminal sanctions for negligent or knowing violations of the CWA, and for knowingly making false statements.

18. This Order takes effect upon signature.

March 17, 2005 *Original Signed By:*

Date

Alexis Strauss
Director
Water Division

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