



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Los Angeles Regional Water Quality Control Board

May 9, 2012

Ms. Sharon Perlstein
City of West Hollywood
8300 Santa Monica Boulevard
West Hollywood, CA 90069

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Claim No. 7005 0390 0000 4138 6747

SETTLEMENT OFFER NO. R4-2012-0080-M: OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM RELATING TO VIOLATIONS OF THE NPDES PERMIT FOR THE CITY OF WEST HOLLYWOOD, NEW LIBRARY CONSTRUCTION, 619 NORTH SAN VICENTE BOULEVARD, WEST HOLLYWOOD, CALIFORNIA (ORDER NO. R4-2008-0032, NPDES PERMIT NO. CAG994004, CI NO. 9524)

Dear Ms. Perlstein:

This letter is to notify City of West Hollywood (hereinafter "Permittee or "you") of alleged violations of the California Water Code identified in the State Water Resources Control Board's water quality data system and to allow the Permittee to participate in the Los Angeles Regional Water Quality Control Board's (Regional Board) Expedited Payment Program for Effluent and/or Reporting Violations (Expedited Payment Program) to address liability that may be assessed pursuant to California Water Code sections 13385 and 13385.1.

NOTICE OF VIOLATION:

Based on information in the California Integrated Water Quality System (CIWQS) as of May 9, 2012, the Regional Board alleges that the Permittee has violated the effluent limitations, reporting violations, or California Water Code provisions identified in the Notice of Violation (NOV) attached as Exhibit "A". The Permittee will have the opportunity to address the alleged violations as discussed below.

STATUTORY LIABILITY:

Subdivisions (h) and (i) of California Water Code section 13385 require the assessment of a mandatory minimum penalty of three thousand dollars (\$3,000) for specified serious and chronic effluent limit and reporting violations. For the purposes of subdivision (h) of section 13385, failure to file a discharge monitoring report required pursuant to sections 13383 for each complete period of 30 days following the deadline for submitting the report constitutes a serious violation. The Permittee is subject to discretionary administrative civil liabilities of up to ten thousand dollars (\$10,000) for each day in which the violation occurs, plus ten dollars (\$10) for each gallon discharged but not cleaned up in excess of 1,000 gallons. These mandatory minimum penalties and discretionary administrative civil liabilities may be assessed by the

Regional Board beginning with the date that the violations first occurred.¹ The formal enforcement action that the Regional Board uses to assess such liability is an administrative civil liability complaint, although the Regional Board may instead refer such matters to the Attorney General's Office for prosecution. If referred to the Attorney General for prosecution, the Superior Court may assess up to twenty-five thousand dollars (\$25,000) per violation. In addition, the Superior Court may assess up to twenty-five dollars (\$25) per gallon discharged but not cleaned up in excess of 1,000 gallons.

OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM:

The Permittee can avoid the issuance of a formal enforcement action and settle the alleged violations identified in the attached NOV by participating in the Regional Board's Expedited Payment Program. Details of the proposed settlement are described below and addressed in the enclosed documents.

To promote resolution of these violations, the Regional Board makes this Conditional Offer. The Permittee may accept this offer, waive the Permittee's right to a hearing, and pay the mandatory minimum penalty of \$24,000 for the violations described in the NOV. If the Permittee elects to do so, subject to the conditions below, the Regional Board will accept that payment in settlement of any enforcement action that would otherwise arise out of the violations identified in the NOV. Accordingly, the Regional Board will forego issuance of a formal administrative complaint, will not refer the violations to the Attorney General, and will waive its right to seek additional discretionary civil liabilities for the violations identified in the NOV.

The Expedited Payment Program does not address or resolve liability for any violation that is not specifically identified in the NOV regardless of the date that the violation occurred.

PERMITTEE'S OPTIONS FOR RESPONSE TO OFFER:

If you accept this offer, please complete and return the enclosed "Acceptance of Conditional Resolution and Waiver of Right to Hearing; (proposed) Order" (Acceptance and Waiver) on or before **June 8, 2012**.

If the Permittee chooses to contest any of the violations alleged in the NOV, please identify the specific violation and the basis for the challenge (factual error, affirmative defense, etc.) on or before the due date specified above.

Responses contesting any of the violations alleged in the NOV shall be submitted as a pdf via email or CD to Ms. Barbara Guia bguia@waterboards.ca.gov, (213) 620-6361, and submitted by you under penalty of perjury.

The Regional Board staff will evaluate the contested violation and take one of the two actions:

¹ Please note that there are no statutes of limitation that apply to administrative proceedings to assess mandatory minimum penalties. See *City of Oakland v. Public Employees' Retirement System*, (2002) 95 Cal.App.4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)

- 1) The Regional Board staff will determine that the violation is not supported, expunge the alleged violation from the CIWQS database, take no further action against the Permittee for the alleged violation, and notify the Permittee of that determination. The Permittee will be given thirty (30) days from the date of receipt of the Regional Board staff determination to complete and return the Acceptance and Waiver for the remainder of the violations; or
- 2) The Regional Board staff will determine that the alleged violation is meritorious, and will notify the Permittee of that determination. The Permittee will be given thirty (30) days from the date of receipt of the Regional Board staff determination to complete and return the Acceptance and Waiver.

If the Permittee chooses not to make a payment in response to the Regional Board staff's determination, the Permittee should expect to be contacted regarding formal enforcement action that will be initiated with regard to the contested violations. In a formal enforcement action, the liability amount sought and/or imposed may exceed the liability amount set forth in this Conditional Offer. Moreover, the cost of enforcement is a factor that can be considered in assessing the liability amount.

CONDITIONS FOR REGIONAL BOARD ACCEPTANCE OF RESOLUTION:

Federal regulations require the Regional Board to publish and allow the public thirty (30) days to comment on any settlement of an enforcement action addressing NPDES permit violations (40 C.F.R. section 123.27(d)(2)(iii)). Upon receipt of the Permittee's Acceptance and Waiver, the Regional Board staff will publish a notice of the proposed resolution of the violations.

If no comments are received within the 30-day comment period, and unless there are new material facts that become available to the Regional Board, the Regional Board Executive Officer will execute the Acceptance and Waiver as a stipulated order assessing the uncontested mandatory minimum penalty amount pursuant to Water Code sections 13385 and 13385.1.

If, however, significant comments are received in opposition to the settlement, this Offer may be withdrawn. In that case, the Permittee's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. In that case, the violations will be addressed in a liability assessment proceeding. At the liability assessment hearing the Permittee will be free to make arguments as to any of the alleged violations, and the Permittee's agreement to accept this conditional offer will not in any way be binding or used as evidence against the Permittee. The Permittee will be provided with further information on the liability assessment proceeding.

In the event the Acceptance and Waiver is executed by the Regional Board Executive Officer, full payment of the assessed amount shall be due within ten (10) calendar days after the Permittee's receipt of the notice of the Regional Board Executive Officer's execution. In accordance with California Water Code section 13385(n)(1), funds collected for violations of effluent limitations and reporting requirements pursuant to section 13385 shall be deposited in the State Water Pollution Cleanup and Abatement Account. Accordingly, the \$24,000 liability shall be paid by cashiers or certified check for \$24,000 made out to the "State Water Pollution Cleanup and Abatement Account". Failure to pay the full penalty within the required time period may subject the Permittee to further liability.

Sharon Perlstein
City of West Hollywood

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May 9, 2012

Should you have any questions about this Conditional Offer or Notice of Violation, please contact Enforcement Unit staff Ms. Barbara Guia at (213) 620-6361 or at bguia@waterboards.ca.gov regarding this matter.

Sincerely,



Paula Rasmussen
Assistant Executive Officer

Enclosures:

Exhibit "A" - Notice of Violation
Acceptance of Conditional Resolution and Waiver of Right to Hearing; (proposed) Order

cc: Vanessa Young, Office of Enforcement, State Water Resources Control Board [via e-mail]



CITY OF WEST HOLLYWOOD

CITY HALL
8300 SANTA MONICA BLVD.
WEST HOLLYWOOD, CA
90069-6216
TEL: (323) 848-6460
FAX: (323) 848-6562
email: parevalo@weho.org

OFFICE OF THE CITY MANAGER

PAUL AREVALO
CITY MANAGER

June 7, 2012

Ms. Paula Rasmussen, Assistant Executive Officer
Ms. Barbara Guia, Enforcement Unit
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

RE: SETTLEMENT OFFER NO. R4-2012-0080-M:
OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM
RELATED TO VIOLATIONS OF THE NPDES PERMIT FOR THE
CITY OF WEST HOLLYWOOD, NEW LIBRARY CONSTRUCTION,
619 NORTH SAN VICENTE BLVD,
WEST HOLLYWOOD, CALIFORNIA
(ORDER NO. R4-2008-0032, NPDES PERMIT NO. CAG994004, CI NO. 9524)

Dear Ms. Rasmussen and Ms. Guia:

This letter is in response to the abovementioned Settlement Offer to the City of West Hollywood dated May 9, 2012.

The City of West Hollywood constructed a new library at 619 N. San Vicente Boulevard, and dewatering was necessary during portions of the construction project. Therefore, on July 20, 2009, the Regional Water Quality Control Board issued an NPDES Permit and Waste Discharge Requirements for the dewatering operation at the library site. The City's subcontractor, Hydroquip Pump and Dewatering Corp., managed the dewatering and testing operations for the project, and the City's contract project manager and the subcontractor were responsible for complying with regulatory obligations. The dewatering operation began in September 2009 and notice was sent to your office to terminate the Permit in May 2011. During that time period, dewatering was only required intermittently, during the months of September 2009, October 2009, December 2009, January 2010, April 2010, March 2011, and April 2011.

The May 9, 2012 Notice of Violation ("NOV") and Settlement Offer alleges three late reporting violations and six effluent limit violations related to the library project. Prior to receipt of the NOV, the City had no knowledge of these alleged permit violations. The City has executed the attached Acceptance of Conditional Resolution and Waiver of Rights to Hearing ("Acceptance") because the City's subcontractor, Hydroquip Pump and Dewatering Corp., is paying the \$24,000 in penalties. The City admits no wrongdoing by settling this matter, and accepts this settlement, provided that these NOV allegations will not be used against the City



CITY OF WEST HOLLYWOOD

in the future as evidence of City wrongdoing. The attached Acceptance affects only the settlement of claims that are denied and contested, and nothing contained herein should be construed as an admission of liability, all of which liability is expressly denied. Please post this letter with the Acceptance for the public comment period, and note that I have added a disclaimer to the Acceptance explaining that the City admits no wrongdoing by settling this matter.

Regarding the alleged Effluent Limit Violations from March 2011, the City's subcontractor, Hydroquip Pump and Dewatering Corp., has recently reported that the construction contractor's excavation work had disturbed the dewatering equipment at the time the sample was taken. This disruption likely caused any isolated incident of higher than normal levels of Turbidity, Settleable Solids, and Total Suspended Solids. All of the other groundwater samples taken before and after March 2011 demonstrate levels below the regulatory limits. Thus, any increase in Turbidity, Settleable Solids, and Total Suspended Solids would have been a brief and isolated incident, and were not indicative of an on-going problem with the project or a significant threat to public health or welfare. The alleged exceedances were not for bacteria, hydrocarbons, or other toxic chemicals. Based on the City's far upstream location, any exceedances would have caused a negligible impact to the Santa Monica Bay.

I would like to assure the Board that the City is conscientious about water quality and has allocated significant staff time and resources to implement pollution mitigation programs to improve water quality.

If you require any further information or have questions regarding the information provided, please do not hesitate to contact me or Sharon Perlstein, City Engineer, at (323) 848-6383.

Sincerely,

Paul Arevalo
City Manager

Enclosures:

- Acceptance of Conditional Resolution and Waiver of Right to Hearing Form



Settlement Offer No. R4-2012-0080-M
CI No. 9524, NPDES Permit No. CAG994004

**ACCEPTANCE OF CONDITIONAL RESOLUTION
AND WAIVER OF RIGHT TO HEARING; (proposed) ORDER**

City of West Hollywood
Settlement Offer No. R4-2012-0080-M
NPDES Permit No. CAG994004

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the Los Angeles Regional Water Quality Control Board (Regional Board), City of West Hollywood (Permittee) hereby accepts the "Offer to Participate in Expedited Payment Program" and waives the right to a hearing before the Regional Board to dispute the allegations of violations described in the Notice of Violation (NOV), which is attached hereto as Exhibit "A" and incorporated herein by reference.

The Permittee agrees that the NOV shall serve as a complaint pursuant to Article 2.5 of the California Water Code and that no separate complaint is required for the Regional Board to assert jurisdiction over the alleged violations through its Chief Prosecutor. In agreeing to accept the Conditional Resolution and waive its right to a hearing, the Permittee does not admit to causing the alleged violations and denies liability for the alleged violations in the NOV. However, the Permittee agrees to pay the penalties required by California Water Code section 13385, in the sum of \$24,000 (Expedited Payment Amount), which shall be deemed payment in full of any civil liability pursuant to Water Code sections 13385 and 13385.1 that otherwise might be assessed for the violations described in the NOV. The Permittee understands that this Acceptance and Waiver waives the Permittee's right to contest the allegations in the NOV and the amount of civil liability for such violations.

The Permittee understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the NOV.

Upon execution by the Permittee, the completed Acceptance and Waiver shall be returned to:

Barbara Guia, Enforcement Unit
Expedited Payment Program
Regional Water Quality Control Board, Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, California 90013

The Permittee understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Regional Board to publish notice of and provide at least 30 days for public comment on any proposed resolution of an enforcement action addressing NPDES permit violations. Accordingly, this Acceptance and Waiver, prior to execution by the Regional Board Executive Officer, will be published as required by law for public comment.

Settlement Offer No. R4-2012-0080-M
CI No. 9524, NPDES Permit No. CAG994004

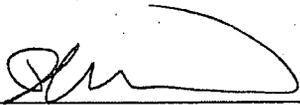
If no comments are received within the notice period that cause the Regional Board Executive Officer to question the Expedited Payment Amount, the Regional Board Executive Officer will execute the Acceptance and Waiver.

The Permittee understands that if significant comments are received in opposition to the Expedited Payment Amount, the offer on behalf of the Regional Board to resolve the violations set forth in the NOV may be withdrawn. In that circumstance, the Permittee will be advised of the withdrawal and an administrative civil liability complaint may be issued and the matter may be set for a hearing before the Regional Board. For such a liability hearing, the Permittee understands that this Acceptance and Waiver executed by the Permittee will be treated as a settlement communication and will not be used as evidence in that hearing.

The Permittee further understands that once the Acceptance and Waiver is executed by the Regional Board Executive Officer, the full payment required by the deadline set forth below is a condition of this Acceptance and Waiver. In accordance with California Water Code section 13385(n)(1), funds collected for violations of effluent limitations and reporting requirements pursuant to section 13385 shall be deposited in the State Water Pollution Cleanup and Abatement Account. Accordingly, the \$24,000 liability shall be paid by a cashiers or certified check for \$24,000 made out to the "State Water Pollution Cleanup and Abatement Account". The payment must be submitted to the Regional Board no later than ten (10) calendar days after the date the Permittee receives written notice that the Regional Board Executive Officer has executed this Acceptance and Waiver.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Permittee in the making and giving of this Acceptance and Waiver.

City of West Hollywood

By: 
(Signed Name)

7.1.12
(Date)

Paul Arevalo
(Printed or typed name)

City Manager
(Title)

IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13385

Date: _____

By: _____
Samuel Unger, P.E.
Executive Officer

EXHIBIT "A" - NOTICE OF VIOLATION

City of West Hollywood
CI No. 9524

Effluent Limit Violations

Date	Monitoring Period	Violation Type	Parameter	Reported Value	Permit Limit	Units	Pollutant Category	% Exceeded	Serious/Chronic	Water Code Section 13385	Penalty
03/18/11	1st Quarter 2011	Daily Maximum	Turbidity	200	150	NTU	OEV	33%	Chronic	(i)1	\$0
03/18/11	1st Quarter 2011	Daily Maximum	Total Suspended Solids	300	150	mg/l	1	100%	Serious	(h)1	\$3,000
03/18/11	1st Quarter 2011	Daily Maximum	Settable Solids	1.1	0.3	ml/L	1	267%	Serious	(h)1	\$3,000
03/31/11	1st Quarter 2011	Monthly Maximum	Turbidity	200	50	NTU	OEV	300%	Chronic	(i)1	\$3,000
03/31/11	1st Quarter 2011	Monthly Maximum	Total Suspended Solids	300	50	mg/l	1	500%	Serious	(h)1	\$3,000
03/31/11	1st Quarter 2011	Monthly Maximum	Settable Solids	1.1	0.1	ml/L	1	1000%	Serious	(h)1	\$3,000
										Total	\$15,000

* Violations occurred prior to effective date of CWC section 13385(h) and (i)

** Staff Calculation

EXHIBIT "A" - NOTICE OF VIOLATION

Late Reporting Violations

Reporting Period	Violation Type	Due Date	Received Date	Days Late	# of Complete 30-Day Periods	Serious/Chronic	Water Code Section 13385	Amount Per 30-Day Period	Penalty
4th Quarter 2009	Late Report	02/14/2010	03/23/2011	402	13	Serious	(h)(1)	-	\$3,000
1st Quarter 2010	Late Report	05/15/2010	03/23/2011	312	10	Serious	(h)(1)	-	\$3,000
2nd Quarter 2010	Late Report	08/15/2010	03/23/2011	220	7	Serious	(h)(1)	-	\$3,000
							Total		\$9,000
							Settlement Total		\$24,000