California Regional Water Quality Control Board

Los Angeles Region

Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

Linda S. Adams
Agency Secretary

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Arnold Schwarzenegger
Governor

August 3, 2010

Ms. Katherine Rubin
Manager of Wastewater Quality and Compliance
City of Los Angeles - DWP
111 North Hope Street
Los Angeles, CA 90012-2607

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Claim No. 7005 1820 0001 2684 1980

SETTLEMENT OFFER NO. R4-2010-0134-M: OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM RELATING TO VIOLATIONS OF THE NPDES PERMIT FOR CITY OF LOS ANGELES – DWP, FIRST STREET TRUNKLINE PROJECT, LOS ANGELES, CA (ORDER NO. R4-2008-0032, NPDES PERMIT NO. CAG994004, CI NO. 9036)

Dear Ms. Rubin:

This letter is to notify City of Los Angeles - DWP (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 August 2, 2010, 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 $3,000 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 liability for any violation that is not specifically identified in the NOV.

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 **September 2, 2010**.

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

[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.) Further, the Permittee has not been substantially prejudiced by the passage of time between the date(s) that the Permittee reported the violations identified on Exhibit A and the date of this letter. The Permittee was aware of the violations at the time it reported them to the Regional Board. Regional Board staff's limited enforcement resources and competing enforcement priorities provide a rational explanation for the delay. In fact, the delay has actually benefited the Permittee because it extended the time before payment of the mandatory minimum penalties is due. For these reasons, any delay is not unreasonable.

before the due date specified above. The Regional Board staff will evaluate the contested violation and take one of two actions:

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 Chief Deputy 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 Chief Deputy 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 Chief Deputy 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 $3,000 liability shall be paid by cashiers or certified check for $3,000 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.

Should you have any questions about this Conditional Offer or Notice of Violation, please contact Enforcement Unit staff Mr. Russ Colby at (213) 620-6373 regarding this matter.

Sincerely,

Samuel Unger

Samuel Unger, P.E.
Interim Executive Officer

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

cc: Mayumi Okamoto, Office of Enforcement, State Water Resources Control Board

Settlement Offer No. R4-2010-0134-M
CI No. 9036, NPDES Permit No. CAG994004

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

City of Los Angeles - DWP
Settlement Offer No. R4-2010-0134-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 Los Angeles – DWP (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 Deputy Executive Officer. The Permittee agrees to pay the penalties required by California Water Code section 13385, in the sum of $3,000 (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:

Russ Colby, 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 Chief Deputy Executive Officer, will be published as required by law for public comment.

If no comments are received within the notice period that cause the Regional Board Chief Deputy Executive Officer to question the Expedited Payment Amount, the Regional Board Chief Deputy 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 Chief Deputy 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 $3,000 liability shall be paid by a cashiers or certified check for $3,000 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 Chief Deputy 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 Los Angeles – DWP

By: _____ (Signed Name) _____ 9/2/10 (Date)

JAMES B McDANIEL (Printed or typed name) SR. ASST. GENERAL MANAGER (Title)

IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13385

Date: _____

By: _____
Deborah J. Smith
Chief Deputy Executive Officer

APPROVED AS TO FORM AND LEGALITY
CARMEN A. TRUTANICH, CITY ATTORNEY

SEP 01 2010

BY _____
MICHELLE LYMAN
DEPUTY CITY ATTORNEY

EXHIBIT "A" - NOTICE OF VIOLATION
Effluent Limit Violations

Date	Monitoring Period	Violation Type	Parameter	Reported Value	Permit Limit	Units	Pollutant Category	% Exceeded	Serious/ Chronic	Water Code Section 13385	Penalty
01/16/09	1st Quarter 2009	Monthly Average	TSS	91.3	50	mg/L	1	83%	Serious	(h)1	$3,000
										Total	**$3,000**