



Linda S. Adams
Acting Secretary for
Environmental Protection

California Regional Water Quality Control Board
North Coast Region
Geoffrey M. Hales, Chairman

www.waterboards.ca.gov/northcoast
5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403
Phone: (877) 721-9203 (toll free) • Office: (707) 576-2220 • FAX: (707) 523-0135



Edmund G. Brown Jr.
Governor

April 7, 2011

Mr. Duane V. Rigge, City Manager
City of Fortuna
621 Eleventh Street
Fortuna, CA 95540

Dear Mr. Rigge:

Subject: Order No. R1-2011-0050 Offer To Participate In Expedited Payment Program Relating To Violations Of NPDES Permit No. R1-2007-0007

File: WDID NO. 1B83135OHUM

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

NOTICE OF VIOLATION:

Based on information in the California Integrated Water Quality System (CIWQS) from January 1, 2008 through October 31, 2010 the Regional Water Board alleges that the Permittee has violated the effluent limitations, reporting violations, or 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 \$3,000 for specified serious and chronic

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effluent limit violations. 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 a Regional Water Quality Control Board (Regional Water Board) or the State Water Board (collectively "the Water Boards"), beginning with the date that the violations first occurred¹. The formal enforcement action which the Water Boards use to assess such liability is an administrative civil liability complaint, although the Water Boards 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 Water Boards' 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 Water 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 as indicated on Exhibit A, for the violations described in the NOV. If the Permittee elects to do so, subject to the conditions below, the Regional Water 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 Water 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 as subject to mandatory minimum penalties regardless of the date that the violation occurred.

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.)

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 thirty (30) days from the date of this letter. The Acceptance and Waiver will be held, pending a 30-day public notice period, and then will be countersigned by the Executive Officer and returned to you with an invoice for payment.

If you contest some but not all of the violations identified in the attached NOV, you may elect to reserve the right to address the contested matters and resolve any uncontested violations through the payment of the mandatory minimum penalty for each uncontested violation. If you choose this option, please communicate with the staff contact identified below to discuss the mechanism for memorializing that election on or before the due date.

If you choose to contest any of the violations alleged in the NOV, please identify the specific violation(s) and the basis for the challenge (factual error, affirmative defense, etc.) on or before the due date. The Regional Water Board staff will evaluate the contested violation and take one of two actions:

- 1). The Regional Water Board staff will determine that the violation is not supported, expunge the alleged violation from the CIWQS data base, take no further action against the Permittee for the alleged violation, and notify the Permittee of that determination;
- 2). The Regional Water 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 Water Board staff determination, to submit a supplemental Expedited Payment for those violations. If the Permittee chooses not to make a payment in response to the 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 which can be considered in assessing the liability amount.

CONDITIONS FOR REGIONAL WATER BOARD ACCEPTANCE OF RESOLUTION:

Federal regulations require the Regional Water Board to publish and allow the public thirty (30) days to comment on any settlement of an enforcement action addressing NDPES permit violations (40 C.F.R. section 123.27(d)(2)(iii)). Upon receipt of the

Permittee's Acceptance and Waiver, the Regional Water Board staff will post a notice of the proposed resolution of the violations at:

http://water100.waterboards.ca.gov/rb1/adopted_orders/

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

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 unresolved 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 Executive Officer, payment of the assessed amount shall be due and payable to the Regional Water Board as specified on the invoice that will accompany the Permittee's receipt of the notice of the Executive Officer's execution. The payment period is thirty (30) days. Failure to pay the penalty within the required time period may subject the Permittee to further liability.

Should you have any questions about the Notice of Violation or the Conditional Offer, please contact Nancy Negley at nnegley@waterboards.ca.gov or (707) 576-2657 regarding this matter.

Sincerely,

Luis Rivera
Assistant Executive Officer

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CERTIFIED MAIL

Enclosures. – Exhibit "A" - Notice of Violation
Acceptance of Conditional Resolution

California Environmental Protection Agency