

**ORDER NO. R2-2014-1016**

**ACCEPTANCE OF CONDITIONAL RESOLUTION  
AND WAIVER OF RIGHT TO HEARING**

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

The Successor Agency agrees that the attached Exhibit A shall serve as a complaint pursuant to Article 2.5 of the California Water Code (CWC) and that no separate complaint is required for the Regional Water Board to assert jurisdiction over the alleged violations through its Assistant Executive Officer. The Successor Agency agrees to pay the penalties authorized by CWC section 13385, which shall be deemed payment in full of any civil liability pursuant to the CWC sections 13385 and 13385.1 that otherwise might be assessed for the violations described in the attached Exhibit A.

The Successor Agency understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the attached Exhibit A.

Upon execution by the Successor Agency, the Acceptance and Waiver shall be returned to:

Expedited Payment Program  
California Regional Water Quality Control Board, San Francisco Bay Region  
NPDES Enforcement Section, Regulatory Measure ID No. 394237  
Attention: Farhad Azimzadeh  
1515 Clay Street, Suite 1400  
Oakland, California 94612

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

If no comments are received within the notice period which causes the Executive Officer of the Regional Water Board to reconsider the Expedited Payment Amount, the Executive Officer will execute the Acceptance and Waiver. Resolution of these violations by the Regional Water Board will preclude State Water Board action for these same violations.

The Successor Agency understands that if significant comments are received in opposition to the Expedited Payment Amount, the offer on behalf of the Regional Water Board to resolve the violations set forth in the attached Exhibit A may be withdrawn. In that circumstance, the Successor Agency 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 Water Board or the State Water Board. For such a liability hearing, the Successor Agency understands that this Acceptance and Waiver executed by the Successor Agency will be treated as a settlement communication and will not be used as evidence in that hearing.

The Successor Agency understands that once the Acceptance and Waiver is executed by the Executive Officer of the Regional Water Board, payment of the amount in full no later than 30 days after the date of the Executive Officer's signature is a condition of this Acceptance and Waiver. The Successor Agency must submit its payment in full by a check and indicate on the check the number of this Order and Regulatory Measure ID No. shown at the bottom of this page and send it to the State Water Resources Control Board, Division of Administrative Services, Accounting Branch 1001 I Street, 18th Floor, Sacramento, California, 95814.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Successor Agency to the Redevelopment Agency of the City of San Jose in the making and giving of this Acceptance and Waiver.

\_\_\_\_\_  
Successor Agency to the Redevelopment Agency of the City of San Jose

By: *Richard A. Keet*  
(Signed Name)

5/1/14  
(Date)

RICHARD A. KEET  
(Printed or typed name)

MANAGING DIRECTOR  
(Title)

IT IS SO ORDERED PURSUANT TO CALIFORNIA WATER CODE SECTION 13385

By: \_\_\_\_\_

Bruce H. Wolfe  
Executive Officer  
Regional Water Quality Control Board

**Note to the Successor Agency: Please return the signed waiver with Exhibit A, together.**

**EXHIBIT A  
Notice of Violation**

Successor Agency to the Redevelopment Agency of the City of San Jose  
Adobe Tower II Phase II Groundwater Cleanup System  
located at 151 Almaden Blvd., San Jose, Santa Clara County

Mandatory Minimum Penalties without Regional Water Quality Control Board Hearing  
The following table lists this facility's alleged permit exceedance of California Water Code (CWC) Sections 13385(h) and 13385(i) for which the Water Board has not assessed a mandatory minimum penalty. Final calculation of MMP amounts owed, and descriptions of the abbreviations that appear in the table are also listed in the table below.

No	CIWQS Violation ID No.	Violation or Effluent Limitation Description	Date of Occurrence or Monitoring Report Due Date	Effluent Limit or Date Monitoring Report Received	Effluent Result Reported (Percent a Tetrachloroethene Pollutant is over Effluent Limitation) or Number of Days and Months Overdue	Type of Violation	CWC Section 13385(h) and/or (i) Required MMP
1	925631	Tetrachloroethene Daily Maximum (µg/L)	April 28, 2012	1.6	2.3 (44%)	C1, S	\$3,000
2-8	947940	Late 3rd Quarter Discharge Monitoring Report Submittal	November 15, 2012	July 3, 2013	230 days = about seven months	C1, S (See Note 1)	7 X \$3,000
9-12	947941	Late 4th Quarter Discharge Monitoring Report Submittal	February 15, 2013	July 3, 2013	138 days = about four months	C2, S (See Note 1)	4 X \$3,000
Total							\$36,000

**Legend for Table:**

CIWQS = California Integrated Water Quality System database used by the Water Boards to manage violation and enforcement activities.

Violation ID = Identification number assigned to a permit exceedance in CIWQS.

CWC = California Water Code.

C = Count – The number that follows represents the number of exceedances the Successor Agency has had in the past 180 days, including this violation. A count greater than three (> C3) means that a penalty under CWC Section 13385(i) applies.  
S = Serious, which means that a penalty under CWC Section 13385(h) applies when an effluent limitation is exceeded 40% or more for a Group I pollutant or 20% or more for a Group II pollutant.

Note I: Under Water Code Section 13385.1 (a)(1), a "serious violation" also means a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations.

Regulatory Measure ID: 394237  
Place ID: 201664  
WDID: 2 438501004