



Central Coast Regional Water Quality Control Board

January 7, 2020

Tom Frutchey
City Manager
City of El Paso de Robles
1000 Spring Street
Paso Robles, CA 93446
Email: citymanager@prcity.com

**Via Electronic Mail and Certified Mail
No. 7019 1120 0002 2960 6042**

Dear Mr. Frutchey:

ENFORCEMENT PROGRAM: EXPEDITED PAYMENT LETTER (EPL) NO. R3-2020-0007, CONDITIONAL OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM RELATING TO VIOLATIONS OF NPDES PERMIT FOR THE CITY OF EL PASO DE ROBLES WASTEWATER TREATMENT PLANT, SAN LUIS OBISPO COUNTY (WDR ORDER NO. R3-2011-0002, NPDES NO. CA0047953, W DID NO. 3 400105001)

This letter is to notify the City of El Paso de Robles (hereinafter "Permittee" or "you") of alleged violations of the California Water Code identified in the Central Coast Regional Water Quality Control Board's (Central Coast Water Board) water quality data system and to allow you to participate in the Central Coast Water Board's expedited payment program to address \$3,000 in 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), the Central Coast Water Board's Assistant Executive Officer alleges that on October 31, 2018, the Permittee 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. To assist the Permittee in reviewing the alleged violations, the attached NOV/Exhibit A provides instructions for accessing the alleged violations within CIWQS.

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 non-serious (formerly named "chronic") effluent limit violations. The Permittee is also potentially subject to discretionary administrative civil liabilities of up to

DR. JEAN-PIERRE WOLFF, CHAIR | JOHN M. ROBERTSON, EXECUTIVE OFFICER

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 Central Coast Water Board or the State Water Board (collectively “the Water Boards”), beginning with the date that the violations first occurred. The formal enforcement action that 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.

CONDITIONAL 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 Central Coast Water Board’s expedited payment program. Details of the proposed settlement are described below and addressed in the enclosed documents.

To promote resolution of these alleged violations, the Central Coast Water Board enforcement staff 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. If the Permittee elects to do so, subject to the conditions below, the Central Coast 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 Central Coast Water Board enforcement staff 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 Offer and Waiver of Right to Hearing; Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order No. R3-2020-0007 (Upon Execution)” (Acceptance and Waiver) **no later than February 6, 2020**. The returned Acceptance and Waiver will be held, pending a 30-day public notice period, and then will be counter-signed by the Executive Officer and returned to you with instructions for payment. *No payment is due at the time the Permittee returns the signed Acceptance and Waiver form to the Central Coast Water Board.*

If the Permittee chooses to contest any of the violations alleged in the NOV, please identify each violation and the basis for its challenge (e.g., factual error, affirmative defense, etc.) on or before the above due date. Central Coast Water Board staff will evaluate the contested violations and take the following actions:

1. Where the available evidence supports the removal of alleged violations, Water Board staff will expunge those violations from the CIWQS database and take no further action against the Permittee for those violations;
2. Water Board staff will provide the Permittee with a revised NOV reflecting any changes warranted by the above evaluation, and provide another opportunity to submit a signed Acceptance and Waiver.
3. If the above evaluation resolves all of the alleged violations, Central Coast Water Board staff will notify the Permittee that no further action is necessary.

If the Permittee chooses not to submit an Acceptance and Waiver at any stage of the process described above and therefore rejects the offer, or elects to reserve the right to address any contested matters and resolve only uncontested violations via this offer, Central Coast Water Board staff will contact the Permittee regarding the initiation of formal enforcement action with regard to any unresolved 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 CENTRAL COAST WATER BOARD ACCEPTANCE: Federal regulations require the Central Coast Water Board to publish any proposed settlement of an enforcement action addressing NPDES permit violations and provide at least 30 days for public comment [40 C.F.R. section 123.27(d)(2)(iii)]. Upon receipt of the Permittee's Acceptance and Waiver, Central Coast Water Board enforcement staff will publish a notice of the proposed settlement of the violations.

If no comments are received within the 30-day period, and unless there are new material facts that become available to the Central Coast Water Board, the Executive Officer will execute the Acceptance and Waiver as a settlement agreement and stipulation for entry of administrative civil liability 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 Conditional Offer may be withdrawn. In that case, the Permittee's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn, and the unresolved violations will be addressed in a revised offer or a liability assessment proceeding. In the latter case, 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 as a stipulated order, Central Coast Water Board staff will then send you that order in a separate letter. Payment of the assessed amount will then be due and payable as specified in the letter that will accompany the Executive Officer's signed stipulated order. Failure to pay the penalty within the required time period may subject the Permittee to further liability. *Again, please note that no payment is due at the time the*

Permittee returns the signed Acceptance and Waiver form to the Central Coast Water Board.

CONTACT PERSONS: Should you have any questions about the Notice of Violation or the Conditional Offer, please contact Katie DiSimone at (805) 542-4638 or Katie.Disimone@waterboards.ca.gov, or Thea Tryon at (805) 542-4776 or Thea.Tryon@waterboards.ca.gov.

Sincerely,



for Matthew T. Keeling
Assistant Executive Officer

Attachments:

1. Exhibit A - Notice of Violation
2. Acceptance of Conditional Offer and Waiver of Right to Hearing; Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order No. R3-2020-0007 (Upon Execution)

cc via email:

City of El Paso de Robles:

Matt Thompson
Wastewater Manager
MThompson@prcity.com

Central Coast Water Board:

Matthew Keeling
Thea Tryon
Harvey Packard
Phillip Hammer
Katie DiSimone
Todd Stanley

File Location: R:\RB3\Enforcement\EPLs\3_2020 Paso WWTP\Paso WWTP MMP EPL 20-0007 Offer.docx
ECM Primary Indexing # 247750

**Exhibit A – Notice of Violation
 City of El Paso de Robles Wastewater Treatment Plant
 Mandatory Minimum Penalty Violations Requiring Enforcement
 Alleged Violation Date: October 31, 2018**

The enforcement staff of the Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) reviewed information submitted by this facility to determine whether the discharger is subject to mandatory minimum penalties (MMPs) pursuant to subdivisions (h) and (i) of California Water Code section 13385. The following table lists this facility’s alleged violations of Waste Discharge Requirements Order No. R3-2011-0002, NPDES Permit No. CA0047953 on October 31, 2018, for which the Central Coast Water Board has not assessed MMPs. Final calculation of MMP amounts owed and definitions of some of the terms used in this document are listed below the table.

For additional information about the alleged violations listed in the table, please refer to [the State Water Resources Control Board CIWQS Public Reports webpage](#) and select the “Mandatory Minimum Penalty (MMP) Report” link located under the “Violations Reports” category. Once in the Mandatory Minimum Penalty Reports search page, select Region 3 along with the beginning and ending dates shown in this exhibit, select Run Report, and then select your facility to access the list of violations. Expand the “Effluent MMP Violations” section of the page by selecting the “+” icon to the left of the section title. To view details of a violation, select the “Violation ID” number. For chronic (non-serious) violations, select the “Chronic” link in the “MMP Type” column to see a list of the three or more violations preceding each chronic violation within 180 days and thus qualifying the chronic violation as a MMP.

#	Violation Number	Violation Date	Pollutant	Pollutant Type	Limitation Period	Limit	Result	Units	% Over Limit	Serious or Non-Serious (Chronic) Violation	Date 180 Days Prior	No. of Viols within 180 days	Mandatory Minimum Penalty
1	1052931	10/31/2018	Chlorine, Total Residual	Group 2	Instantaneous	0.031	0.31	mg/L	900%	S	N/A	N/A	\$ 3,000

EPL No. R3-2020-0007 – Exhibit A
 Stipulated ACL Order No. R3-2020-0007
 City of El Paso de Robles Wastewater Treatment Plant

Total Mandatory Minimum Penalty Amount for Effluent Violations
 (1 Serious Violation + 0 Non-Serious Violations) × \$3,000 = \$3,000

For Group 2 pollutants, a violation is serious when the limit is exceeded by 20% or more, and non-serious when the limit is exceeded by less than 20%.

Serious violations are subject to a mandatory minimum penalty of \$3,000 each.

Term	Definition
CIWQS	California Integrated Water Quality System database used by the Water Boards to manage violation and enforcement activities, as well as other data types relevant to water quality protection.
NPDES	National Pollutant Discharge Elimination System permit program that controls water pollution by regulating point sources that discharge pollutants into waters of the United States.
Violation Number	Identification number assigned to a violation in CIWQS.
Violation Date	Date that a violation actually occurred, with the exception that for some violation types, such as a monthly average, the last day of the reporting period is used. If the occurrence date is unknown, the date used is the day the violation was first discovered by staff, the Discharger, or a third party.
Pollutant Type: Group 2	Group of pollutants defined in the State Water Resources Control Board Water Quality Enforcement Policy. Also referred to as Category 2 or CAT2.

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ECM Primary Indexing # 247750

**ACCEPTANCE OF CONDITIONAL OFFER
AND WAIVER OF RIGHT TO HEARING;
SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE
CIVIL LIABILITY (ACL) ORDER NO. R3-2020-0007 (UPON EXECUTION)**

City of El Paso de Robles Wastewater Treatment Plant
EPL No. R3-2020-0007
Waste Discharge Requirements Order No. R3-2011-0002
National Pollutant Discharge Elimination System (NPDES) Permit No. CA0047953
WDID: 3 400105001

By signing below and returning this Acceptance of Conditional Offer and Waiver of Right to Hearing (Acceptance and Waiver) to the Central Coast Regional Water Quality Control Board (Central Coast Water Board), the City of El Paso de Robles (Permittee) hereby accepts the Conditional Offer to participate in the expedited payment program relating to violations of NPDES permit for City of El Paso de Robles Wastewater Treatment Plant, dated January 7, 2020 (Conditional Offer), and waives the right to a hearing before the Central Coast Water Board to dispute the alleged violations described in the notice of violation (NOV) attached to the Conditional Offer as Exhibit A and incorporated herein by reference.

The Permittee agrees that the NOV shall serve as a complaint pursuant to Division 7, Chapter 5, Article 2.5 of the California Water Code and that no separate complaint is required for the Central Coast Water Board to assert jurisdiction over the alleged violations through its enforcement staff. The Permittee agrees to pay the penalties authorized by California Water Code section 13385, as specified in the NOV (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.

Expedited Payment Amount: \$3,000.

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 signature by the Permittee, the Permittee must return this Acceptance and Waiver to:

Thea Tryon
Enforcement Coordinator
Central Coast Water Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

Expedited Payment Letter (EPL) No. R3-2020-0007
Settlement Agreement and Stipulation for Entry of
Administrative Civil Liability Order No. R3-2020-0007

The Permittee understands that federal regulations set forth in title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Central Coast Water Board to publish notice of any proposed settlement of this enforcement action and provide at least 30 days for public comment. Accordingly, Central Coast Water Board staff will publish this Acceptance and Waiver for public comment prior to execution by the Executive Officer of the Central Coast Water Board.

The Permittee understands that if significant comments are received in opposition to the Conditional Offer, then the Central Coast Water Board enforcement staff's offer to resolve the violations set forth in the NOV may be withdrawn. In that circumstance, Central Coast Water Board enforcement staff will advise the Permittee of the withdrawal, a revised offer or an administrative civil liability complaint may be issued, and the matter may be set for a hearing before the Central Coast Water 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.

If no comments are received within the notice period that cause the Executive Officer to reconsider the Conditional Offer, the Executive Officer will execute the Acceptance and Waiver as Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order No. R3-2020-0007 (Settlement and Order).

The Permittee understands that no payments are due at the time it returns the signed Acceptance and Waiver form to the Central Coast Water Board. The Permittee understands that after the signed Acceptance and Waiver is publicly noticed and executed by the Executive Officer of the Central Coast Water Board, Central Coast Water Board staff will transmit this Acceptance and Waiver as an executed Settlement and Order to the Permittee with payment instructions and due dates. Furthermore, the Permittee understands that full payment of the expedited payment amount by the hereby incorporated due date or dates specified in the transmittal letter and/or invoices associated with the executed Settlement and Order is a condition of this Acceptance and Waiver.

Expedited Payment Letter (EPL) No. R3-2020-0007
Settlement Agreement and Stipulation for Entry of
Administrative Civil Liability Order No. R3-2020-0007

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 and the terms of the Settlement and Order.

By: _____
(Signed Name)

(Date)

(Printed or typed name)

(Title)

Expedited Payment Letter (EPL) No. R3-2020-0007
Settlement Agreement and Stipulation for Entry of
Administrative Civil Liability Order No. R3-2020-0007

IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13385

By: _____

John M. Robertson
Executive Officer
Central Coast Water Board

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Waiver.docx
ECM Primary Indexing # 247750