

Central Valley Regional Water Quality Control Board

21 August 2018

Michael R. Davies
General Manager
Town of Discovery Bay CSD
18000 Willow Lake Road
Discovery Bay, CA 94505

CERTIFIED MAIL
91 7199 9991 7039 7061 7468

OFFER TO PARTICIPATE IN THE EXPEDITED PAYMENT PROGRAM RELATING TO ADMINISTRATIVE CIVIL LIABILITY R5-2018-0521 FOR ASSESSMENT OF MANDATORY MINIMUM PENALTIES, TOWN OF DISCOVERY BAY COMMUNITY SERVICES DISTRICT, WASTEWATER TREATMENT PLANT, CONTRA COSTA COUNTY

The Town of Discovery Bay Community Services District (Discharger) discharges treated wastewater from its Wastewater Treatment Plant (WWTF or Facility), which is regulated by Waste Discharge Requirements (WDRs) Order R5-2014-0073-01 (NPDES CA00078590). This Offer to Participate in the Central Valley Regional Water Quality Control Board's (Central Valley Water Board's) Expedited Payment Program provides the Discharger with an opportunity to resolve mandatory minimum penalties for effluent violations without a formal administrative civil liability Complaint (ACLC). The alleged mandatory minimum penalty, in the amount of **three thousand dollars (\$3,000)**, represents the sum of accrued mandatory minimum penalties for effluent limitation violations specifically identified in the Record of Violations (ROV), Attachment A, attached hereto and incorporated herein by reference, as subject to mandatory minimum penalties that occurred between 1 May 2013 and 31 December 2018.

BACKGROUND

On 5 March 2018, the Assistant Executive Officer of Central Valley Water Board issued ACLC R5-2018-0514 for mandatory minimum penalties for effluent violations (identified in Attachment A to ACLC R5-2018-0514) that occurred from 1 May 2013 through 31 December 2018. The Discharger signed a waiver of hearing and entered negotiations because the Discharger disagreed with four of the violations which occurred due one sampling event regarding the effluent biochemical oxygen demand (BOD). On 21 June 2018 during meeting with Board staff, the Discharger provided the supplemental information about the incident and provided a letter from its contract laboratory which stated that the sampling data is was anomaly and was a not representative sample. After reviewing the supplemental information and considering the contract laboratory's letter Board staff agreed with the Discharger and have dismissed violations associated with the 19 December 2017 sampling event. Therefore, the Central Valley Water Board is dismissing ACLC R5-2018-0514. This Offer to Participate in the Central Valley Water Board's Expedited Payment Program addresses a remaining effluent limitation violation based on sampling data other than the 19 December 2017 sampling event.

STATUTORY LIABILITY

Water Code sections 13385(h) and (i) require the assessment of a mandatory minimum penalty of \$3,000 for each specified serious and chronic effluent limit violations. For purposes of Water Code section 13385(h), the failure to file a discharge monitoring report required pursuant to sections 13383 for each complete period of thirty (30) days following the deadline for submitting the report constitutes a serious violation subject to a mandatory minimum penalty. The Discharger may also be subject to discretionary administrative civil liabilities pursuant to Water Code section 13385(c) of up to \$10,000 for each day in which the violation occurs, and \$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 Valley Water Board beginning with the date that the violations first occurred.¹ The formal enforcement action that the Central Valley Water Board uses to assess such liability is an administrative civil liability complaint, although the Central Valley Water 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.

SETTLEMENT OFFER

The Discharger can avoid the issuance of a formal enforcement action and settle the alleged violations identified in the ROV (Attachment A) by participating in the Expedited Payment Program.

To promote resolution of these violations, the Central Valley Water Board Prosecution Team makes this Conditional Offer. The Central Valley Water Board's Prosecution Team proposes to resolve this violation, specifically identified in the ROV, without the issuance of a formal enforcement action through this Expedited Payment Letter assessing **three thousand dollars (\$3,000)** in mandatory minimum penalties. If the Discharger accepts this proposal, subject to the conditions below, the Central Valley Water Board Prosecution Team will accept that payment in settlement of any enforcement action that would otherwise arise out of the violations identified in Attachment A. Accordingly, the Central Valley Water Board Prosecution Team 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 ROV. The Expedited Payment Program does not address or resolve liability for any violation that is not specifically identified in the ROV, regardless of the date that the violation occurred.

If the Discharger accepts 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 **7 September 2018**. Upon receipt of the Acceptance and Waiver Form, this settlement will be publicly noticed for a 30-day comment period as required by federal regulations. If no substantive comments are received within the 30 days, then the Board will consider those effluent violations specifically listed in Attachment A to be resolved.

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.) Additionally, the State Water Resources Control Board had determined that the equitable doctrine of laches does not apply to mandatory minimum penalties. (State Water Board Order Nos. 2013-0053, 2013-0054, 2013-0055, 2013-0099.)

CONDITIONS FOR CENTRAL VALLEY WATER BOARD ACCEPTANCE OF RESOLUTION

Federal regulations require the Central Valley Water 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 Discharger's Acceptance and Waiver, the Central Valley Water 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 Central Valley 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 sections 13385 and 13385.1. However, if significant comments are received in opposition to the settlement, this offer may be withdrawn. In that case, the Discharger's waiver pursuant to the Acceptance and Waiver will also be withdrawn and the violation will be addressed in an administrative civil liability hearing. At the hearing, the Discharger will be free to make arguments to any of the alleged violations, and the Discharger's prior agreement to accept this conditional offer will not in any way be binding or used as evidence against the Discharger. The Discharger will be provided with further information on the administrative civil liability hearing process.

In the event the Acceptance and Waiver is executed by the Executive Officer, full payment of the assessed amount shall be due within thirty (30) calendar days after the date the Acceptance and Waiver is executed. In accordance with California Water Code section 13385(n)(1) and California Water Code section 13385.1(c)(1), funds collected for violations of effluent limitations and reporting requirements pursuant to section 13385 and 13385.1 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 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 Discharger to further liability.

If you have any questions or comments regarding this Settlement Offer, please contact Kim Sellards at (916) 464-4835 or Kim.Sellards@waterboards.ca.gov.

Original Signed By

ANDREW ALTEVOGT
Assistant Executive Officer

Enclosures (2): Acceptance of Conditional Resolution and Waiver of Right to Hearing
Record of Violations

cc w/o encl: Kenneth Greenberg, USEPA, Region 9, San Francisco
David Boyers, Office of Enforcement, SWRCB, Sacramento
Catherine Hawe, Office of Enforcement, SWRCB, Sacramento
Patrick Pulupa, Central Valley Water Board Advisory Team, Rancho Cordova
Jessica Jahr, Office of Chief Counsel, SWRCB, Sacramento
Adam Laputz, Central Valley Water Board Advisory Team, Sacramento
Contra Costa Environmental Health, Martinez, CA

Offer to Participate in Expedited Payment Program
Relating to ACL R5-2018-0521

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

Michael R. Davies, General Manager
Town of Discovery Bay CSD
EPL Order No. R5-2018-0521
Replacing ACL R5-2018-0514

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the Central Valley Regional Water Quality Control Board (Central Valley Water Board), the Town of Discovery Bay Community Services District (Discharger) hereby accepts the "Offer to Participate in Expedited Payment Program" and waives the right to a hearing before the Central Valley Water Board to dispute the allegations of violations described in the Record of Violations (ROV), which is attached hereto as Attachment A and incorporated herein by reference.

The Discharger agrees that the ROV shall serve as a complaint pursuant to Article 2.5 of the California Water Code and that no separate complaint is required for the Central Valley Water Board to assert jurisdiction over the alleged violations through its Chief Prosecutor. The Discharger 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 violation described in the ROV. The Discharger understands that this Acceptance and Waiver waives its right to contest the allegations in the ROV and the amount of civil liability for such violations.

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

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

Kim Sellards, Supervisor for Compliance and Enforcement Section
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
Phone: (916) 464-4835
Kim.Sellards@waterboards.ca.gov

The Discharger understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Central Valley Water Board to publish notice of and provide at least thirty (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 Central Valley Water Board Executive Officer, will be published as required by law for public comment.

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

The Discharger understands that if significant comments are received in opposition to the Expedited Payment Amount, the offer on behalf of the Central Valley Water Board to resolve the violations set forth in the ROV may be withdrawn. In that circumstance, the Discharger will be advised of the withdrawal and an administrative civil liability complaint may be issued and the

Offer to Participate in Expedited Payment Program
R5-2018-0521

matter may be set for a hearing before the Central Valley Water Board. For such a liability hearing, the Discharger understands that this Acceptance and Waiver executed by the Discharger will be treated as a settlement communication and will not be used as evidence in that hearing.

The Discharger further understands that once the Acceptance and Waiver is executed by the Central Valley Water 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) and California Water Code section 13385.1(c)(1), funds collected for violations of effluent limitations and reporting requirements pursuant to sections 13385 and 13385.1 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 made out to the "State Water Pollution Cleanup and Abatement Account". The payment must be submitted to the State Water Resources Control Board no later than thirty (30) calendar days after the date the Acceptance and Waiver is executed by the Central Valley Water Board Executive Officer.

Please mail the check to:

State Water Resources Control Board, Accounting Office
Attn: EPL R5-2018-0521 Payment
PO Box 1888
Sacramento, California, 95812-1888

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

Discovery Bay Community Services District

By:	<u>Original Signed by</u> Signed Name	<u>6 September 2018</u> Date
	<u>Original Signed by</u> Name	<u>General Manager</u> Title

IT IS SO ORDERED PURSUANT TO CALIFORNIA WATER CODE SECTION 13385

By:	<u>Original Signed by</u> Patrick Pulupa Executive Officer	<u>11 October 2018</u> (Date)
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**ATTACHMENT A TO SETTLEMENT OFFER No. R5-2018-0521
Record of Violations Subject to Mandatory Minimum Penalty**

**Discovery Bay Community Services District
Wastewater Treatment Plant**

RECORD OF VIOLATIONS ([1 May 2013 – 31 December 2017) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Programs R5-2008-0179-01, R5-2014-0073, and
R5-2014-0073-01)

The following table lists the alleged violations subject to mandatory minimum penalties (MMPs), pursuant to Water Code section 13385(h) and (i).

Table A. Violations subject to Mandatory Penalties

	<u>Date</u>	<u>Parameter</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Violation Type</u>	<u>MMP Type</u>	<u>CIWQS</u>
<i>Violation Under WDRs R5-2008-0179-01</i>									
1	31-Dec-13	Electrical Conductivity	µmhos/cm	2100	2136	Annual Average	OEV	NCHRON	968610
<i>Violations Under WDRs R5-2014-0073-01</i>									
2	8-Jun-16	Nitrite Plus Nitrate	mg/L	31	31.8	Daily Maximum	OEV	NCHRON	1010642
3	27-Sep-17	Total Coliform	MPN/100 mL	23	79	7-Day Median	OEV	NCHRON	1033647
4	28-Sep-17	Total Coliform	MPN/100 mL	23	79	7-Day Median	OEV	NCHRON	1033648
5	2-Oct-17	Total Coliform	MPN/100 mL	23	79	7-Day Median	OEV	NCHRON	1035370
6	3-Oct-17	Total Coliform	MPN/100 mL	23	64	7-Day Median	OEV	CHRON	1035369

EXPEDITED PAYMENT AMOUNT VIOLATIONS SUMMARY

<u>VIOLATIONS AS OF:</u>	<u>12/31/2017</u>
Group I Serious Violations:	0
Group II Serious Violations:	0
Non-Serious Violations Not Subject to MMPs:	5
<u>Non-serious Violations Subject to MMPs:</u>	<u>1</u>
Total Violations Subject to MMPs:	1

Mandatory Minimum Penalty Amount for Effluent Limit Violation

1 Non-Serious Violation subject to MMP x \$3,000 per Violation = \$3,000

Total Expedited Mandatory Minimum Penalty = \$3,000

Table B. Definition

Abbreviation	Description
CAT 1	Violation of effluent limitation for Group I pollutant.
CAT 2	Violation of effluent limitation for Group II pollutant
CHRON	Chronic violation as defined by Water Code section 13385 (i). Any non-serious violation that falls within a 180-day period with three preceding violations. Thus, the fourth non-serious violation that occurs within a 180-day period is subject to MMPs.
CIWQS	California Integrated Water Quality System database. https://www.waterboards.ca.gov/water_issues/programs/ciwqs/
CTOX	Violation of chronic toxicity effluent limitation.
DREP	Deficient reporting violation. This will only result in MMPs if the report is so deficient as to make determination of compliance impossible for the reporting period.
LREP	Late Reporting violation. Every 30-Days a report is late counts as one serious late reporting violation subject to MMPs.

ATTACHMENT A TO SETTLEMENT OFFER No. R5-2018-0521
Record of Violations Subject to Mandatory Minimum Penalty

Table B. Definition

Abbreviation	Description
Measured	Reported value for the monitoring period by the Discharger.
MMP Type	Classification of the type of MMP violation.
Occurrence Date	Date that a violation occurred. For averaging period limitation violations, such as weekly and monthly averages, the last day of the reporting period is used such as last day of the week (Saturday) and last day of the month, respectively.
OEV	Violation of any constituent-specific effluent limitation not included in Group I or Group II.
NCHRON	Non-serious violation falls within the first three violations in a 180-day period, thus, not subject to MMP.
SIG	Serious Violation: <ul style="list-style-type: none">▪ For Group I pollutants that exceed the effluent limitation by 40 percent or more.▪ For Group II pollutants that exceed the effluent limitation by 20 percent or more.