

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION**

ORDER R5-2017-0539

In the Matter of:

**Rockwell Automation, Inc.
Rockwell Automation Groundwater
Cleanup System
Tulare County**

**SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY ORDER**

Introduction

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order or Order) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board), on behalf of the Central Valley Water Board Prosecution Team (Prosecution Team), and Rockwell Automation, Inc. (Discharger)(collectively known as the Parties) and is presented to the Central Valley Water Board, or its delegee, for adoption as an order by settlement, pursuant to Government Code section 11415.60.

Recitals

2. Rockwell Automation, Inc., (hereafter Discharger) owns and has operated a groundwater cleanup system (hereafter Facility) at 914 West Pioneer Avenue, Porterville, Tulare County. Prior to September 2013, the Facility consisted of two extraction wells, an air stripper system, and a granular activated carbon polish system. Treated groundwater was discharged to Pioneer Ditch Pipeline, which is hydraulically connected to the Tule River, a water of the United States, via Canal No. 4 until September 2013.
3. The Discharger filed a Report of Waste Discharge (ROWD) and submitted an application for renewal of its waste discharge requirements and NPDES permit on 21 October 2009.
4. The Regional Board issued Order R5-2011-0013 (NPDES No. CA0082708) (Order) and a Time Schedule Order (TSO) Order R5-2011-0014 on 3 February 2011 (Permit, or Order). The Order required the Discharger to maintain compliance with specific effluent limitations. Compliance was measured through a monitoring and reporting program that required the Discharger to monitor effluent from the Facility and submit self-monitoring reports to the Central Valley Water Board on a semiannual basis. The TSO, on pages 5 and 6, provided interim effluent limits for ammonia, mercury, selenium and pH.
5. On 13 July 2015, the Central Valley Water Board received a letter from ARCADIS U.S., Inc., on behalf of the Discharger, requesting the rescission of Order R5-2011-0013. The Discharger modified the Facility's treatment system in September 2013 to a groundwater reinjection system. Waste Discharge Requirements Order R5-2008-0149 (Enrollee # R5 2008-0149-044) permits the Discharger to inject treated groundwater to the underlying aquifer. On 2 October 2015, Order R5-2011-0013 and TSO R5-2011-0014 were rescinded.

6. The Discharger's annual self-monitoring reports for 2012 under Order R5-2011-0013, indicate that the treated groundwater discharged from the Facility exceeded the effluent limitations for 1,1-Dichloroethlene on three (3) occasions. A summary of these exceedances is attached hereto and incorporated by reference as Attachment A.
7. The effluent limitation violations identified in Attachment A are subject to mandatory minimum penalties (MMPs) under Water Code section 13385 subdivision (h), and/or subdivision (i).

Regulatory Considerations

8. Water Code sections 13385, subdivisions (h) and (i) require assessment of mandatory penalties and state, in part, the following:
 - a. Water Code section 13385, subdivision (h)(1) states:
 - i. Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.
 - ii. Water Code section 13385, subdivision (h)(2) states:
 - iii. For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.
9. Water Code section 13385, subdivision (i)(1) states:
 - a. Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:
 - i. Violates a waste discharge requirement effluent limitation.
 - ii. Fails to file a report pursuant to Section 13260.
 - iii. Files an incomplete report pursuant to Section 13260.
 - iv. Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

Settlement

10. The Parties have engaged in confidential settlement negotiations and agree to settle the matter without administrative or civil litigation by presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption as an order by settlement pursuant to Government Code section 11415.60. To resolve the violations by consent and without further administrative proceedings, the Parties have agreed to the imposition of administrative civil liability in the amount of nine thousand dollars (\$9,000) in MMPs against the Discharger.
11. The Central Valley Water Board Prosecution Team believes that the resolution of the alleged violation is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged herein and that this Stipulated Order is in the best interest of the public.

Stipulations

The Parties stipulate to the following:

12. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of administrative civil liability in the amount of nine thousand dollars (\$9,000) to the Central Valley Water Board to resolve the alleged Water Code violations. The liability shall be paid to the *State Water Pollution Cleanup and Abatement Account*. Payment shall be made no later than thirty (30) days after the entry of an Order approving this Settlement Agreement by the Central Valley Water Board, or its delegee, by check payable to the *State Water Pollution Cleanup and Abatement Account*. The Discharger shall indicate on the check the number of this Order. The Discharger shall send the original signed check to the Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, California 95812-1888. A copy of the check shall be sent to Catherine Hawe, Attorney, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812 and Dale Harvey, Supervisor, Compliance/Enforcement Section, Regional Water Quality Control Board, Central Valley Region, 1685 E Street Fresno, CA 93706.
13. **Compliance with Applicable Laws and Regulatory Changes:** The Discharger understands that payment in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that additional violations of the type alleged may subject it to further enforcement, including additional administrative civil liability. Nothing in this Stipulated Order shall excuse the Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.
14. **Party Contacts for Communications Related to Stipulated Order:**

For the Central Valley Water Board:

Dale Harvey, Supervisor
Compliance and Enforcement Section
Central Valley Regional Water Quality Control Board
1685 E Street Fresno, CA 93706

Dale.Harvey@waterboards.ca.gov
(559) 445-6190

For the Discharger:
Troy Pfaff, Environmental Manager
Rockwell Automation, Inc.
1201 South Second Street, Mail Stop: B5 M28
Milwaukee, WI 53204
tmpfaff@ra.rockwell.com
(414) 382-5664

15. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
16. **Matters Addressed by Stipulation:** Upon adoption by the Central Valley Water Board, or its delegee, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged in this Order or which could have been asserted based on the specific facts alleged in this Stipulated Order against Dischargers as of the effective date of this Stipulated Order. The provisions of this Paragraph are expressly conditioned on Discharger's full payment of the liability by the deadline specified in Paragraph 17.
17. **Public Notice:** The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Central Valley Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Central Valley Water Board, or its delegee. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
18. **Procedure:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Order, will be adequate. In the event procedural objections are raised prior to this Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
19. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Central Valley Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Team or Central Valley Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions, or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. The Central Valley Water Board reserves all rights to take additional enforcement actions,

including without limitation the issuance of administrative civil liability complaints or orders for violations other than those addressed by this Order.

20. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Prosecution Team or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
21. **Interpretation:** This Stipulated Order shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
22. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Order. All modifications must be made in writing and approved by the Central Valley Water Board or its delegee.
23. **If Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the Central Valley Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that the Prosecution Team may proceed to a contested evidentiary hearing before the Central Valley Water Board to determine whether to assess an ACL for the underlying alleged violations, or may continue to pursue settlement. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in any subsequent administrative or judicial proceeding or hearing and will be fully protected by California Evidence Code sections 1152 and 1154; California Government Code section 11415.60; Rule 408, Federal Rules of Evidence; and any other applicable privilege under federal and/or state law. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:
 24. Objections related to prejudice or bias of any of the Central Valley Water Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that the Central Valley Water Board members or their advisors were exposed to some of the material facts and the Parties settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter; or
 25. Laches or delay or other equitable defenses based on the time period that the Order or decision by settlement may be subject to administrative or judicial review.
26. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Central Valley Water Board.
27. **Waiver of Right to Petition:** The Discharger hereby waives the right to petition the Central Valley Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waives the rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

28. **Covenant Not to Sue:** Upon the effective date of this Stipulated Order, Discharger shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against any State Agency or the State of California, its officers, agents, directors, employees, attorneys, representatives, for any and all claims or cause of action, which arise out of or are related to this action.
29. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
30. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligation on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
31. **Severability:** This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.
32. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Central Valley Water Board, or its delegee, enters the Order.
33. **Counterpart Signatures:** This Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
Central Valley Region

By: Clay L. Rodgers
Clay Rodgers
Assistant Executive Officer

Date: 8/14/2017

Rockwell Automation Inc.

By: Troy Pfaff
Troy Pfaff
Environmental Manager, Rockwell Automation, Inc.

Date: 2 August 2017

HAVING CONSIDERED THE PARTIES STIPULATIONS, THE CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

1. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The method of compliance with this enforcement action consists entirely of payment of administrative civil liability. As such, the Central Valley Water Board finds that issuance of this Order is not considered subject to the provisions of the California Environmental Quality Act (CEQA) as it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not considered a "project" (Public Resources Code 21065, 21080(a); 15060(c)(2),(3); 150378(a), Title 14, of the California Code of Regulations). In addition, issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.
2. The foregoing Stipulation is fully incorporated herein and made part of this Order.

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, Central Valley Region.

ORIGINAL SIGNED BY:

Pamela C. Creedon, Executive Officer

9/28/17

Date

ATTACHMENT A

MANDATORY MINIMUM PENALTIES

 for
Rockwell Automation, Inc.
Rockwell International Groundwater Cleanup System
NPDES permit No. CA0082708, Order R5-2011-0013

The following table lists violations for which the Discharger is subject to mandatory minimum penalties pursuant to Water Code section 13385(h).

Violation Date	Parameter	Pollutant Group	Limitation Period	Limit	Result	Units	CIWQS
02/02/2012	1,1-Dichloroethylene	Group II	Daily Maximum	0.11	0.6	ug/L	943302
03/09/2012	1,1-Dichloroethylene	Group II	Daily Maximum	0.11	1.8	ug/L	932131
03/13/2012	1,1-Dichloroethylene	Group II	Daily Maximum	0.11	1.3	ug/L	932132

Remarks:

For Group II pollutants, a violation is serious when the limit is exceeded by more than 20%.

Violation period ending the last day of March 2012

Group I Violations Assessed MMP: 0
Group II Violations Assessed MMP: 3
Other Effluent Violations Assessed MMP: 0
Violations Exempt from MMP: 0
Total Violations Assessed MMP: 3

**Mandatory Minimum Penalty = (3 Serious Violations) x \$3,000 =
\$9,000**