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## Central Valley Regional Water Quality Control Board

20 October 2020

Lori Waterman, City Manager  
City of Atwater  
750 Bellevue Road  
Atwater, CA 95301

**CERTIFIED MAIL**  
**7019 2970 0001 5202 4139**

### **OFFER TO PARTICIPATE IN THE EXPEDITED PAYMENT LETTER PROGRAM RELATING TO ADMINISTRATIVE CIVIL LIABILITY R5-2020-0555 FOR ASSESSMENT OF MANDATORY MINIMUM PENALTIES, CITY OF ATWATER, ATWATER REGIONAL WASTEWATER TREATMENT FACILITY, MERCED COUNTY**

The City of Atwater (Discharger) discharges treated wastewater from the Atwater Regional Wastewater Treatment Facility (Facility), which is regulated by Municipal General Waste Discharge Requirements Order R5-2017-0085 (NPDES CAG585001) with assigned Municipal General Order R5-2017-0085-001 effective 30 May 2018. The Facility was also regulated under Waste Discharge Requirements (WDRs) Order R5-2011-0082 (NPDES CA0085308) from 20 January 2012 through 29 May 2018. This Offer to Participate in the Central Valley Regional Water Quality Control Board's (Central Valley Water Board's) Expedited Payment Letter (EPL) Program (Conditional Offer) provides the Discharger with an opportunity to resolve mandatory minimum penalties for alleged NPDES permit violations under WDRs Order R5-2011-0082 without a formal administrative civil liability complaint. The alleged mandatory minimum penalty, in the amount of **twenty-seven thousand dollars (\$27,000)**, represents the sum of accrued mandatory minimum penalties for effluent limitation violations specifically identified in the Record of Violations (Attachment A) subject to Mandatory Minimum Penalty (MMP), attached hereto and incorporated herein by reference, that occurred between 20 January 2012 and 31 July 2020 (all MMPs occurred in 2012 and 2013).

### **NOTICE OF VIOLATION AND RECORD OF VIOLATIONS**

Based on the Discharger's self-monitoring reports, the Central Valley Water Board Prosecution Team (Prosecution Team) sent the Discharger a Notice of Violation and Draft Record of Violations (ROV) on 6 November 2018, notifying the Discharger of effluent limit violations and corresponding violations of the California Water Code. The Prosecution Team provided the Discharger with an opportunity to review and contest the violations listed in the ROV.

The Discharger did not submit a written response by 6 December 2018, a date required by the ROV. However, Discharger staff verbally communicated with the Prosecution Team that they agreed with the ROV and was willing to pay the MMP liability amount of \$27,000. On 1 October 2020, Prosecution Team staff contacted the Discharger's staff and requested an email confirmation for the Discharger's agreement to pay the MMP total liability. On the same date, the Discharger's staff emailed Prosecution Team staff that they agree with the ROV and are willing to pay the MMP total liability through the EPL program.

Therefore, the MMP subjects the Discharger to nine violations of effluent limits for total recoverable zinc with total liability of \$27,000.

### **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 violation. Pursuant to Water Code section 13385.1(a), the failure to file a discharge monitoring report required pursuant to section 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 under Water Code section 13385(h). The Discharger may

KARL E. LONGLEY ScD, P.E., CHAIR | PATRICK PULUPA, ESQ., EXECUTIVE OFFICER

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 violation first occurred. 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 \$25,000 for each day in which the violation occurs, and \$25 for each 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 Attachment A by participating in the EPL 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 these violations without the issuance of a formal enforcement action through this Conditional Offer assessing **twenty-seven thousand dollars (\$27,000)** 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 civil liability complaint, will not recommend referral of the violations to the Attorney General, and will waive its right to seek additional discretionary civil liabilities for the violations identified in Attachment A. The Conditional Offer does not address or resolve liability for any violation that is not specifically identified in Attachment A, regardless of the date that the violation occurred.

If the Discharger accepts this Conditional 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 30 November 2020**. The Acceptance and Waiver constitutes a settlement of the violations specifically identified in Attachment A.

## **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)). Notice of this settlement will be published on the Central Valley Water Board's website at:

[This Settlement Notice](https://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/)

([https://www.waterboards.ca.gov/centralvalley/board\\_decisions/tentative\\_orders/](https://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/))

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 or his designee will execute the Acceptance and Waiver as a stipulated order assessing the uncontested mandatory minimum penalty amount pursuant to Water Code sections 13385.

However, if significant comments are received in opposition to the settlement, this Conditional Offer may be withdrawn. In that case, the Discharger's waiver pursuant to the Acceptance and Waiver will be void and the violations 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 be treated as a settlement communication and 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.

If the Discharger chooses to sign the Acceptance and Waiver, full payment of the assessed amount may be submitted with the waiver. However, full payment of the assessed amount shall be due no later than thirty (30) calendar days after the date the Acceptance and Waiver is executed by the Executive Officer. 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 \$27,000 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.

The Discharger shall indicate on the check the number of this EPL and send it to the State Water Resources Control Board, Accounting Office, Attn: EPL R5-2020-0555 Payment, PO Box 1888, Sacramento, California, 95812-1888. The waiver and a copy of the check must also be mailed to the Central Valley Water Board at 1685 E Street, Fresno, CA, 93706 attention to Russell Walls.

If you have any questions or comments regarding this Settlement Offer, please contact Hossein (Hoss) Aghazeynali at (559) 445-6194 or [Hossein.Aghazeynali@waterboards.ca.gov](mailto:Hossein.Aghazeynali@waterboards.ca.gov).

*Original Signed by:*  
CLAY L. RODGERS  
Assistant Executive Officer

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

cc w/o encl: Patrick Pulupa, Central Valley Water Board Advisory Team, Rancho Cordova  
Eric Magnan, USEPA, Region 9, San Francisco  
David Boyers, Office of Enforcement, SWRCB, Sacramento  
Jessica Jahr, Office of Chief Counsel, SWRCB, Sacramento  
Adam Laputz, Central Valley Water Board Advisory Team, Rancho Cordova  
Merced County Environmental Health, Merced  
Justin Vinson, City of Atwater, Atwater

ATTACHMENT A TO SETTLEMENT OFFER NUMBER R5-2020-0555  
Record of Violations Subject to Mandatory Minimum Penalties

**CITY OF ATWATER**  
**ATWATER REGIONAL WASTEWATER TREATMENT FACILITY**  
RECORD OF VIOLATIONS (20 January 2012 through 31 July 2020) MANDATORY MINIMUM PENALTIES  
(Data reported under Monitoring and Reporting Programs R5-2011-0082 and R5-2017-0085)

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

**Table 1. Violations subject to Mandatory Minimum Penalties**

| Item | CIWQS Violation Number | Violation Date <sup>1</sup> | Constituent             | Pollutant Group <sup>2</sup> | Limitation Period | Limit | Measured (Result) | Units | MMP Type <sup>3</sup> (S, C, NC, E) | Water Code | Penalty  |
|------|------------------------|-----------------------------|-------------------------|------------------------------|-------------------|-------|-------------------|-------|-------------------------------------|------------|----------|
| 1    | 932062                 | 06/27/2012                  | Zinc, Total Recoverable | Group 2                      | Monthly Average   | 34    | 50.5              | ug/L  | E                                   | NA         | \$ 0     |
| 2    | 935668                 | 07/25/2012                  | Zinc, Total Recoverable | Group 2                      | Monthly Average   | 34    | 59.5              | ug/L  | E                                   | NA         | \$ 0     |
| 3    | 937245                 | 08/31/2012                  | Zinc, Total Recoverable | Group 2                      | Monthly Average   | 34    | 66.4              | ug/L  | E                                   | NA         | \$ 0     |
| 4    | 938815                 | 09/30/2012                  | Zinc, Total Recoverable | Group 2                      | Monthly Average   | 34    | 60                | ug/L  | S                                   | 13385(h)   | \$ 3,000 |
| 5    | 940152                 | 10/31/2012                  | Zinc, Total Recoverable | Group 2                      | Monthly Average   | 34    | 63                | ug/L  | S                                   | 13385(h)   | \$ 3,000 |
| 6    | 941464                 | 11/30/2012                  | Zinc, Total Recoverable | Group 2                      | Monthly Average   | 34    | 52                | ug/L  | S                                   | 13385(h)   | \$ 3,000 |
| 7    | 943022                 | 12/31/2012                  | Zinc, Total Recoverable | Group 2                      | Monthly Average   | 34    | 43.5              | ug/L  | S                                   | 13385(h)   | \$ 3,000 |
| 8    | 944578                 | 01/31/2013                  | Zinc, Total Recoverable | Group 2                      | Monthly Average   | 34    | 55                | ug/L  | S                                   | 13385(h)   | \$ 3,000 |
| 9    | 945820                 | 02/28/2013                  | Zinc, Total Recoverable | Group 2                      | Monthly Average   | 34    | 64                | ug/L  | S                                   | 13385(h)   | \$ 3,000 |
| 10   | 947299                 | 03/06/2013                  | Zinc, Total Recoverable | Group 2                      | Daily Maximum     | 69    | 120               | ug/L  | S                                   | 13385(h)   | \$ 3,000 |
| 11   | 947298                 | 03/31/2013                  | Zinc, Total Recoverable | Group 2                      | Monthly Average   | 34    | 120               | ug/L  | S                                   | 13385(h)   | \$ 3,000 |

| Item | CIWQS Violation Number | Violation Date <sup>1</sup> | Constituent             | Pollutant Group <sup>2</sup> | Limitation Period | Limit | Measured (Result) | Units | MMP Type <sup>3</sup> (S, C, NC, E) | Water Code | Penalty  |
|------|------------------------|-----------------------------|-------------------------|------------------------------|-------------------|-------|-------------------|-------|-------------------------------------|------------|----------|
| 12   | 948980                 | 04/30/2013                  | Zinc, Total Recoverable | Group 2                      | Monthly Average   | 34    | 57                | ug/L  | S                                   | 13385(h)   | \$ 3,000 |
| 13   | 950469                 | 05/31/2013                  | Zinc, Total Recoverable | Group 2                      | Monthly Average   | 34    | 47.5              | ug/L  | E                                   | NA         | \$ 0     |

**Total Penalty: \$ 27,000**

- 1 - Violation occurs on sample date or last date of averaging period.
- 2 - For Group I pollutants, a violation is serious when the limit is exceeded by 40% or more  
- For Group II pollutants, a violation is serious when the limit is exceeded by 20% or more
- 3 - When a serious violation occurs on the same day as a chronic, the serious violation is only assessed an MMP once and is counted last for the day when determining the number of chronic violations to be assessed

#### **EXPEDITED PAYMENT AMOUNT VIOLATIONS SUMMARY**

##### **Violation period ending the last day of July 2020**

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|   |   |
|---|---|
| Group I Violations Assessed MMP:        | 0 |
| Group II Violations Assessed MMP:       | 9 |
| Other Effluent Violations Assessed MMP: | 0 |
| Violations Exempt from MMP:             | 4 |
| Total Violations Assessed MMP:          | 9 |

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**Mandatory Minimum Penalty = (9 Serious Violations + 0 Non-Serious Violations) x \$3,000 = \$27,000**

**Total Expedited Payment Amount = \$27,000**

**Table 2. Definition**

| Abbreviation                            | Description   |
|---|---|
| <b>CAT 1 (Group 1)</b>                  | Violation of effluent limitation for Group 1 pollutant.   |
| <b>CAT 2 (Group 2)</b>                  | Violation of effluent limitation for Group 2 pollutant  |
| <b>CHRON (C)</b>                        | 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.                                    |
| <b>CIWQS</b>                            | California Integrated Water Quality System database.<br><a href="https://www.waterboards.ca.gov/water_issues/programs/ciwqs/">https://www.waterboards.ca.gov/water_issues/programs/ciwqs/</a>   |
| <b>CTOX</b>                             | Violation of chronic toxicity effluent limitation.  |
| <b>DREP</b>                             | 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.  |
| <b>EXEMPT (E)</b>                       | Exempt from MMP by Central Valley Water Board staff determination   |
| <b>LREP</b>                             | Late Reporting violation. Every 30-Days a report is late counts as one serious late reporting violation subject to MMPs.  |
| <b>Measured (Result)</b>                | Reported value for the monitoring period by the Discharger.   |
| <b>MMP Type</b>                         | Classification of the MMP violation (S, C, NC, E).  |
| <b>Occurrence Date (Violation Date)</b> | 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.  |
| <b>Other (OEV)</b>                      | Violation of any constituent-specific effluent limitation not included in Group 1 or Group 2.   |
| <b>NCHRON (NC)</b>                      | Non-serious violation falls within the first three violations in a 180-day period, thus, not subject to MMP.  |
| <b>S</b>                                | Serious Violation defined by Water Code section 13385 (h): <ul style="list-style-type: none"> <li>▪ For Group 1 pollutants that exceed the effluent limitation by 40 percent or more.</li> <li>▪ For Group 2 pollutants that exceed the effluent limitation by 20 percent or more.</li> </ul> |

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

City of Atwater  
EPL No. R5-2020-0555

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 City of Atwater (Discharger) hereby accepts the "Offer to Participate in Expedited Payment Letter Program" (Conditional Offer), incorporated herein by reference, 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 included as Attachment A to the Conditional Offer.

The Discharger agrees that the Conditional Offer 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(h) and/or (i), in the sum of \$27,000 (Expedited Payment Amount), which shall be deemed payment in full of any civil liability pursuant to Water Code section 13385 that otherwise might be assessed for the violations 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 assessed for the 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 via email or U.S. mail to:

Russell Walls, Senior Water Resources Control Engineer  
Compliance and Enforcement Unit  
1685 E Street  
Fresno, CA 93706  
Phone: (559) 488-4392  
[Russell.Walls@waterboards.ca.gov](mailto:Russell.Walls@waterboards.ca.gov)

The Discharger understands that federal regulations set forth in 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 or his designee will execute this 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 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 or his designee, 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 \$27,000 liability shall be paid by a cashiers or certified check made out to the "State Water Pollution Cleanup and Abatement Account". The Discharger may choose to submit the full payment with the Waiver. However, 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 or his designee.

Please mail the check to:

State Water Resources Control Board, Accounting Office  
Attn: EPL R5-2020-0555 Payment  
PO Box 1888  
Sacramento, CA 95812-1888

The Discharger shall also provide a copy of the waiver form and check via email to the Central Valley Water Board ([Russell.Walls@waterboards.ca.gov](mailto:Russell.Walls@waterboards.ca.gov)).



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.

City of Atwater

BY: Original Signed by  
Signed Name

10/29/2020  
Date

Lori Waterman  
Printed or Typed Name

10/29/2020  
Date

IT IS SO ORDERED PURSUANT TO CALIFORNIA WATER CODE SECTION 13385

BY: \_\_\_\_\_  
Patrick Pulupa  
Executive Officer

\_\_\_\_\_  
Date