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## Central Valley Regional Water Quality Control Board

08 September 2020

Arthur Robertson  
Easterly Government Properties, Inc.  
10525 Vista Sorrento Parkway 5823  
San Diego, California 92024

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
Claim No. 7018 3090 0000 5203

C T Corporation System  
Agent for Service of Process  
818 West Seventh Street, Suite 930  
Los Angeles, California 90017

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
Claim No. 7018 3090 0000 5203 5977

**SETTLEMENT OFFER NO. R5-2020-0547: OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM RELATING TO VIOLATIONS OF THE STATE WATER RESOURCES CONTROL BOARD'S NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION AND LAND DISTURBANCE ACTIVITIES FOR EASTERLY GOVERNMENT PROPERTIES, INC., TRACY WAREHOUSE, 1547 E GRANT LINE ROAD (ORDER NO. 2009-0009-DWQ AMENDED BY 2010-0014-DWQ AND 2012-0006-DWQ, NPDES PERMIT NO. CAS000002, WDID NO. 5S39C381712)**

Dear Arthur Robertson:

This letter is to notify Easterly Government Properties, Inc. (hereinafter "Permittee or "you") of alleged violations of the California Water Code (Water Code) identified in the State Water Resources Control Board's water quality data system and to allow the Permittee to participate in the Central Valley Regional Water Quality Control Board's (Regional Board) Expedited Payment Program for Reporting Violations to address mandatory minimum penalties that must be assessed pursuant to Water Code section 13399.33.

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

11020 Sun Center Drive #200, Rancho Cordova, CA 95670 | [www.waterboards.ca.gov/centralvalley](http://www.waterboards.ca.gov/centralvalley)

**NOTICE OF VIOLATION:**

Based on information in the Storm Water Multiple Application & Report Tracking System (SMARTS) as of 30 July 2020, the Regional Board alleges that the Permittee is in violation of the National Pollutant Discharge Elimination System (NPDES) Statewide General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ as amended by 2010-0014-DWQ and 2012-0006-DWQ (General Permit), for failure to submit the annual reports for **Fiscal Years 2017/2018 and 2018/2019** for the construction project located at 1547 E Grant Line Road in the City of Tracy. Annual Reports are due to the Regional Board by **September 1 of each year** as required by Section XVI.A of the General Permit. The Permittee has failed to submit the Annual Reports requested in the Notices of Noncompliance (NNC) issued on 26 September 2018 and on 09 November /2018 for fiscal year 2017/2018 and on 26 September 2019 and 10 December 2019 for fiscal year 2018/2019. The Permittee will have the opportunity to address the alleged violations as discussed below.

**STATUTORY LIABILITY:**

Pursuant to Water Code section 13399.33(c)-(d), the Permittee is subject to a mandatory minimum penalty of not less than one thousand dollars (\$1,000) plus staff costs for failing to submit **each** Annual Report within sixty (60) days after the first NNC was sent. The Permittee is also subject to discretionary administrative civil liabilities of up to ten thousand dollars (\$10,000) for each day in which the violation occurs. These minimum and discretionary administrative civil liabilities may be assessed by the Regional Board beginning with the date that the violations first occurred. The formal enforcement action that the Regional Board uses to assess such liability is an administrative civil liability complaint, although the Regional 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 day, per violation.

**PERMITTEE'S OPTIONS FOR RESPONSE TO OFFER:**

You have two options to respond as outlined below.

1. **Accept the Expedited Payment Program offer** by complying with the General Permit and submitting the requested Annual Reports and agreeing to pay a settlement of **\$2,500**. The minimum administrative civil liability pursuant to Water Code section 13399.33(c)-(d) is \$1,000 **per missing report plus staff costs**. Staff costs in this matter are \$500. This is a Conditional Offer subject to certain terms and conditions set forth below. If you choose this option, **you must sign and submit the enclosed Acceptance and Waiver form by 28 September 2020**. The form provides submittal instructions. Final closure on this action is only possible after ultimate submission of the settlement amount.

Please submit a hard copy of the Annual Reports and the Acceptance and Wavier form to:

Central Valley Regional Water Quality Control Board  
Attention: Kari Holmes, Supervisor, Enforcement Section  
11020 Sun Center Drive, Ste 200  
Rancho Cordova, CA 95670

In response to the Conditional Offer and payment in settlement of this enforcement action, the Regional Board will forego issuance of a formal administrative complaint, will not refer the violation to the Attorney General, and will waive its right to seek additional discretionary civil liabilities for the violations identified in the NNCs.

2. **Contest the violation** by submitting in writing, the basis of your challenge with supporting evidence. If you choose this option, you must **submit your written documentation by 28 September 2020**. We will review your submission, and if we agree with you, we will notify you in writing that you are no longer considered in violation of the permit and that our enforcement action has been terminated. All responses should be directed to Kari Holmes, Supervisor, Enforcement Section.

If you do not respond in a manner described in the above options, the Regional Board will prepare an administrative civil liability complaint for the violations cited in the NNC. The liability amount sought in the administrative civil liability complaint and/or imposed by the Regional Board may be higher than the liability amount set forth in this Conditional Offer. Moreover, additional staff costs associated with formal enforcement may be considered in the recommended liability amount in an administrative civil liability complaint.

#### **CONDITIONS FOR REGIONAL BOARD ACCEPTANCE OF RESOLUTION:**

This offer to participate in the Expedited Payment Program is conditional upon the Regional Board's receipt of confirmation that the Permittee has submitted the Annual Reports to the Regional Board on or before **28 September 2020**. If you choose not to or fail to submit the Annual Reports on or before that date, this offer will be deemed withdrawn and a formal enforcement action will be pursued.

If you accept in the Expedited Payment Program offer, the settlement will be published in the following manner: Federal regulations require the Regional Board to publish notice of, and to provide at least thirty (30) days for public comment on, any settlement of an enforcement action addressing NPDES permit violations (40 C.F.R. § 123.27(d)(2)(iii)). Upon receipt of the Permittee's Acceptance and Waiver, and the Annual Reports on or before **28 September 2020**, Regional Board staff will publish a notice of the proposed resolution of the alleged violations.

If no comments are received within the notice period, the Acceptance and Waiver will be presented to the Regional Board Executive Officer for consideration as a stipulated order assessing the uncontested penalty amount pursuant to Water Code section 13323 and Government Code section 11415.60. You will then be notified that payment is due within 30 days of the Executive Officer signing the Order. Failure to pay the penalty within that time frame may result in further liability, referral of the matter to the Attorney General, and/or may void the offer to participate in this Expedited Payment Program.

If, however, significant comments are received in opposition to the settlement, this offer may be withdrawn. In that case, the Permittee's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. In that case, the violations will be addressed through a formal enforcement action.

This Expedited Payment Program offer does not address or resolve liability for any violation that is not specifically identified in the attached NNC. The Regional Board reserves the right to pursue formal enforcement of any violations not specifically cited in the attached NNCs.

Should you have any questions about this Expedited Payment Program or Notice of Noncompliance, please contact Enforcement Unit staff Jorge L Beltran at (916) 464-4794 or at [jorge.beltran@waterboards.ca.gov](mailto:jorge.beltran@waterboards.ca.gov) regarding this matter.

Original Signed By  
John J. Baum  
Assistant Executive Officer

Five (5) Enclosures:

- Notice of Noncompliance dated 9/26/2018
- Notice of Noncompliance dated 11/09/2018
- Notice of Noncompliance dated 9/26/2019
- Notice of Noncompliance dated 12/10/2019
- Acceptance of Conditional Resolution and Waiver of Right to Hearing; (proposed) Order

cc: (via email)  
Kailyn Ellison, Attorney, Office of Enforcement, SWRCB

**ORDER NO. (R5-2020-0547) (PROPOSED)**

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

Easterly Government Properties, Inc.  
Settlement Offer No. R5-2020-0547  
WDID No. 5S39C381712

**SUMMARY OF VIOLATION**

Easterly Government Properties, Inc. (Permittee) violated section XVI of the National Pollutant Discharge Elimination System (NPDES) Statewide General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ amended by 2010-0014-DWQ and 2012-0006-DWQ), NPDES Permit No. CAS000002 (General Permit) by failing to submit annual reports for the 2017/2018 and the 2018/2019 reporting years by September 1 of each reporting year. As required by California Water Code (Water Code) section 13399.31, the Central Valley Regional Water Quality Control Board (Regional Board) issued Notices of NonCompliance (NNC) to the Permittee on 26 September 2018 and 09 November 2018 for reporting year 2017/2018 and on 26 September 2019 and 10 December 2019 for reporting year 2018/2019. Pursuant to Water Code section 13399.33(c)-(d), the Permittee is now subject to a minimum penalty of \$1,000 per reporting year plus staff costs for failing to submit the annual report.

**ACCEPTANCE AND WAIVER**

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the Regional Board, Permittee hereby accepts the "Offer to Participate in Expedited Payment Program" and waives the right to a hearing before the Regional Board to dispute the violations described in the NNCs which are attached and incorporated herein by reference.

The Permittee agrees that the Expedited Payment Program Offer shall serve as a complaint pursuant to Article 2.5 of the Water Code and that no separate complaint is required for the Regional Board to assert jurisdiction over the violation. The Permittee agrees to pay the administrative civil liability authorized by Water Code section 13399.33, in the sum of \$2,500 (Expedited Payment Amount) which shall be deemed payment in full of any civil liability that otherwise might be assessed for the violations described in the NNCs.

The Permittee understands that this Acceptance and Waiver waives its right to contest the violation and the amount of administrative civil liability for the violation. The Permittee understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the NNCs.

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

Order No. R5-2020-0547  
WDID No. 5S39C381712

Central Valley Regional Water Quality Control Board  
Attention: Kari Holmes, Supervisor, Enforcement Section  
11020 Sun Center Drive, Ste 200  
Rancho Cordova, CA 95670

The Permittee understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Regional Board to publish notice of and provide at least thirty (30) days for public comment on any proposed resolution of an enforcement action. Accordingly, this Acceptance and Waiver, prior to execution by the Regional 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 Regional Board to question the Expedited Payment Amount, the Expedited Payment Program Offer and Acceptance and Waiver will be presented to the Regional Board Executive Officer for approval.

The Permittee understands that if significant comments are received in opposition to the Expedited Payment Amount, the Conditional Offer may be withdrawn, or the Acceptance and Waiver may not be executed. In those circumstances, the Permittee will be advised of that withdrawal, and an administrative civil liability complaint may be issued, and the matter may be set for a hearing before the Regional Board. In the event that this matter proceeds to hearing, the Permittee understands that this Acceptance and Waiver executed by the Permittee and will not be used as evidence in that hearing.

The Permittee further understands that once this Acceptance and Waiver is executed by the Regional Board Executive Officer, the full payment required by the deadline set forth below is a condition of this Acceptance and Waiver. In accordance with Water Code section 13399.37(a), funds collected for violations pursuant to Water Code section 13399.33(c)-(d) shall be deposited in the Waste Discharge Permit Fund. Accordingly, the **\$2,500** liability including staff costs shall be paid by a check made out to the "State Water Resources Control Board" referencing this Order number for deposit into the Waste Discharge Permit Fund. 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 Regional Board Executive Officer.

**Please do not send a check for payment with this Acceptance and Waiver.** If acceptable, the Executive Officer will counter-sign this Acceptance and Waiver and send a copy to the Discharger. Payment will then be due within 30 days of the date the Order is signed by the Executive Officer. Only at that time, please mail check to:

State Water Resources Control Board  
RE: Order No. R5-2020-0547, WDID No. 5S31C374884  
Division of Administrative Services, Accounting Branch  
1001 I Street, 18th Floor  
Sacramento, CA 95814

Order No. R5-2020-0547  
WDID No. 5S39C381712

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.

Easterly Government Properties, Inc.

By: Original Signed By  
(Signed Name)

10/29/2020  
(Date)

Michael P. Ibe  
(Printed or Typed Name)

Executive Vice President  
(Title)