Los Angeles Regional Water Quality Control Board

March 29, 2019

Larry Constantino
Orange County Container
440 Baldwin Park Boulevard
City of Industry, CA 91746

Certified Mail
Return Receipt Requested
Claim No. 7018 0680 0000 4670 5417

SETTLEMENT OFFER NO. R4-2019-0002: OFFER TO PARTICIPATE IN THE EXPEDITED PAYMENT PROGRAM RELATING TO VIOLATIONS OF THE STATE WATER RESOURCES CONTROL BOARD GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITIES FOR ORANGE COUNTY CONTAINER, 13400 EAST NELSON AVENUE, CITY OF INDUSTRY, CA 91746 (ORDER NO. 2014-0057-DWQ, NPDES NO. CAS000001, WDID 4 191021990)

Dear Larry Constantino:

This letter is to notify Orange County Container (hereinafter “Permittee” or “you”) of alleged violations of the California Water Code identified in the State Water Resources Control Board’s water quality data system and to allow the Permittee to participate in the Los Angeles Regional Water Quality Control Board’s (Regional Board) Expedited Payment Program to address liabilities that may be assessed pursuant to California Water Code section 13399.33.

VIOLATION:

Based on information in the Storm Water Multiple Application & Report Tracking System (SMARTS) as of January 8, 2019, the Regional Board alleges that the Permittee is in violation of the statewide General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ (Order) for failure to submit the Fiscal Year (FY) 2017-2018 annual report. The annual reports are due to the Regional Board by July 15 of each year as required by Section B.14 of the Order. The Permittee failed to submit the annual reports requested in the Notice of Non-Compliance (NNC) sixty (60) days after the NNC was issued on August 24, 2018. A Notice of Violation (NOV) for failing to submit the annual reports was also issued on October 4, 2018.
STATUTORY LIABILITY:

Pursuant to California Water Code section 13399.33(c), the Permittee is subject to a minimum penalty of not less than one thousand dollars ($1,000) per report, plus staff costs for failing to submit an 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 violation.

PERMITTEE’S OPTIONS FOR RESPONSE TO OFFER:

You have two options to respond as outlined below. This Conditional Offer only resolves liability for the specific violation identified in the corresponding NNC and NOV.

1. **Accept the Expedited Payment Program offer** by complying with the Order, submitting the requested annual report and agreeing to pay a settlement of $1,737. The minimum administrative civil liability pursuant to California Water Code section 13399.33(c) is $1,000 **per report**. Staff costs incurred in seeking compliance with California Water Code Chapter 5.9, the Storm Water Enforcement Act of 1998, is $737. 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 April 29, 2019. 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 Waiver form to:

   Ashley Olmeda, Enforcement Unit
   Los Angeles Regional Water Quality Control Board
   320 West 4th Street, Suite 200
   Los Angeles, CA 90013

   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 NNC and NOV.

2. **Contest the non-filing violation** by submitting in writing, the basis of your challenge with supporting evidence. For example, you have evidence that you previously submitted your annual reports. If you choose this option, you must submit your written documentation by
April 29, 2019. 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.

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 Violation section above. 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, staff costs associated with formal enforcement may further increase the liability amount.

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 April 29, 2019. 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. After the offer is deemed withdrawn, Regional Board staff will notify you of the impending enforcement action and any associated deadlines.

Should you participate in the Expedited Payment Program, 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. section 123.27(d)(2)(iii)). Upon receipt of the Permittee’s Acceptance and Waiver, the annual reports, and other requested technical reports on or before April 29, 2019, Regional Board staff will publish a notice of the proposed resolution of the failure to submit the reports alleged in the NNC and NOV attached.

If no comments are received within the notice period, the Regional Board Executive Officer will execute the Acceptance and Waiver as a stipulated order assessing the uncontested penalty amount pursuant to Water Code section 13399.33 as described under the heading “Statutory Liability” herein. You will then be notified that payment is due within 30 days.

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 in a liability assessment proceeding. 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.
Should you have any questions about this Conditional Offer or Notice of Violation, please contact Enforcement Unit staff Ashley Olmeda by phone at (213) 620-6190 or by email at Ashley.Olmeda@waterboards.ca.gov or contact Pavlova Vitale by phone at (213) 576-6751 or by email at Pavlova.Vitale@waterboards.ca.gov regarding this matter.

Sincerely,

Hugh Marley
Assistant Executive Officer

Enclosures:
- Notice of Non-Compliance dated August 24, 2018
- Notice of Violation dated October 4, 2018
- Acceptance of Conditional Resolution and Waiver of Right to Hearing; (proposed) Order

cc: (via email)
- Catherine Hawe, Office of Enforcement, State Water Resources Control Board
- John Ballas, Operations Coordinator, City of Industry
ACCEPTANCE OF CONDITIONAL RESOLUTION
AND WAIVER OF RIGHT TO HEARING: (Proposed) ORDER

Orange County Container
Settlement Offer No. R4-2019-0002
WDID No. 4 191021990

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the Los Angeles Regional Water Quality Control Board (Regional Board), Orange County Container (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 allegations of violations described in the Notice of Violation (NOV) and Notice of Noncompliance (NNCs), which are attached hereto as Exhibits 1 and 2 and incorporated herein by reference.

The Permittee 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 Regional Board to assert jurisdiction over the alleged violations through its Chief Prosecutor. The Permittee agrees to pay the administrative civil liability authorized by California Water Code section 13399.30, in the sum of $1,737 (Expedited Payment Amount) which shall be deemed payment in full of any civil liability pursuant to California Water Code section 13399.30 that otherwise might be assessed for the violations described in the NOV and NNC. The Permittee understands that this Acceptance and Waiver waives its right to contest the allegations in the NOV and NNC and the amount of civil liability for such violations.

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 and NNC.

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

Ashley Olmeda, Enforcement Unit
Expedited Payment Program
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, California 90013

The Permittee understands that federal regulations set forth in 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 addressing NPDES permit violations. 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 Executive Officer to question the Expedited Payment Amount, the Regional Board Executive Officer will execute the Acceptance and Waiver.
The Permittee understands that if significant comments are received in opposition to the Expedited Payment Amount, the offer on behalf of the Regional Board to resolve the violations set forth in the NOIs may be withdrawn. In that circumstance, 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. 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.

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 California Water Code section 13399.37(a), funds collected for violations pursuant to sections 13399.33(c) and 13399.33(d) shall be deposited in the Waste Discharge Permit Fund. Accordingly, the $1,737 liability including staff costs shall be paid by a cashier's or certified 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 mail check to:

State Water Resources Control Board
Re: Order No. R4-2019-0002
Division of Administrative Services, Accounting Branch
1001 I Street, 18th Floor, [95814]
P.O. Box 1888
Sacramento, California 95812-1888

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.

Orange County Containr

By: ____________________________
(Signed Name)

Laury Constantino
(Printed or Typed name)

(EHS Manager)

(Date)

5/15/2019

IT IS SO ORDERED PURSUANT TO CALIFORNIA WATER CODE SECTION 13399.30

Date:

By:

Deborah J. Smith
Executive Officer
Los Angeles Regional Water Quality Control Board

October 4, 2018

Pedro Cuevas
Orange County Container
13400 East Nelson Avenue
City of Industry, CA 91746

Certified Mail
Return Receipt Requested
Claim No. 7018 0680 0000 4670 5486

NOTICE OF VIOLATION: FAILURE TO SUBMIT AN ANNUAL REPORT REQUIRED BY THE GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITIES ORDER NO. 2014-0057-DWQ, NPDES NO. CAS000001, WDID NO. 4 191021990

Dear PEDRO CUEVAS:

Orange Cnty Container, (hereinafter “Permittee") operates a facility located at 13400 East Nelson Avenue, in City of Industry, WDID No. 4 191021990, that is subject to the requirements of NPDES General Permit Order No. 2014-0057-DWQ, CAS000001, for Stormwater Discharges Associated with Industrial Activities (General Permit). Section XVI.A of the General Permit requires the Permittee to submit an annual report electronically to the Regional Board via the Stormwater Multiple Application & Report Tracking System (SMARTS) database by July 15th of each year. The Fiscal Year (FY) 2017-2018 annual report was due on July 15, 2018.

On August 24, 2018, the California Regional Water Quality Control Board, Los Angeles Region, (Regional Board) issued the Permittee a Notice of Non-Compliance for failing to submit the Fiscal Year (FY) 2017-2018 annual report. To date, the Regional Board has not received your facility’s FY 2017-2018 annual report.

The Permittee is currently in violation of the General Permit, the California Water Code (CWC), and the Federal Clean Water Act for failing to submit the FY 2017-2018 annual report.

The Permittee is required to submit the FY 2017-2018 annual report to the Regional Board via SMARTS by November 5, 2018.

Annual reports must be certified and submitted electronically to the Regional Board via SMARTS. For more information on electronic reporting using SMARTS refer to the following:

The discharger’s guide to filing an Annual Report can be downloaded from the following link:

The discharger’s guide to reporting sampling results may be downloaded from the following link:

Electronic Reporting user guide to help with navigating through SMARTS may be downloaded from the following link:
http://www.waterboards.ca.gov/water_issues/programs/stormwater/industrial.shtml#e_reporting
Pursuant to California Water Code section 13399.33(c), the Permittee is subject to a mandatory minimum penalty of not less than one thousand dollars ($1,000) plus staff costs, per missing annual report, for failing to submit the annual report within sixty days after the Notice of Non-Compliance 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 Regional Board may also refer this matter to the Attorney General’s Office for further enforcement. Please note that this Notice shall not be deemed to relieve you of liability for any penalties that may have already accrued. The Regional Board reserves its right to take any further enforcement action authorized by law.

If you need assistance or have any questions, please contact Ashley Olmeda at (213) 620-6190 via email at Ashley.Olmeda@waterboards.ca.gov or Pavlova Vitale at (213) 576-6751 via email at Pavlova.Vitale@waterboards.ca.gov.

Sincerely,

Hugh Marley  
Chief, Compliance and Enforcement Section

Enclosure: Notice of Non-Compliance dated August 24, 2018

cc: (via email only)  
Catherine Hawe, State Water Resources Control Board, Office of Enforcement  
John Dallas, Operations Coordinator, City of Industry (jdballas@cityofindustry.org)
Los Angeles Regional Water Quality Control Board

August 24, 2018

Pedro Cuevas
Orange County Container
13400 East Nelson Avenue
City of Industry, CA 91746

Certified Mail
Return Receipt Requested
Claim No. 7018 0680 0000 4655 7672

NOTICE OF NON-COMPLIANCE: FAILURE TO SUBMIT THE FISCAL YEAR 2017-2018 ANNUAL REPORT AS REQUIRED BY THE GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITIES, ORDER NO. 2014-0057-DWQ, NPDES No. CAS000001, WDID No. 4 191021990.

Dear Pedro Cuevas:

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board), is the public agency with the primary responsibility for the protection of ground and surface water quality within major portions of Los Angeles and Ventura Counties.

The Orange County Container facility, located at 13400 East Nelson Avenue, in City Of Industry is regulated under the General Permit for Storm Water Discharges Associated with Industrial Activities (General Permit) and identified by WDID No. 4 191021990. Section XVI A of the General Permit requires you to submit and certify an annual report via the Stormwater Multiple Application & Report Tracking System (SMARTS) database to the Regional Board no later than July 15 of each year using the standardized format and checklists in SMARTS.

Our records indicate that you have not submitted the Fiscal Year 2017-2018 annual report that was due on July 15, 2018. Please note that until this annual report is submitted, you will remain out of compliance with the General Permit. If you fail to submit the missing annual report by October 24, 2018, 60 days from the date of this notice, the Regional Board is required by statute to impose penalties of one thousand dollars ($1,000) plus staff costs for each missing annual report pursuant to Water Code sections 13399.31 and 13399.33.

By September 24, 2018, you are required to submit to the Regional Board the Fiscal Year 2017-2018 annual report required by section XVI A of the General Permit. Along with the annual report, you must also provide a statement explaining the reason you did not submit the annual report by the July 15, 2018 deadline and the measures you have taken to ensure timely submittals in the future. This statement must be uploaded to SMARTS as an attachment under the Annual Report Attachments tab.


Annual Reports must be submitted electronically to the Stormwater Multiple Application & Report Tracking System (SMARTS) database; please refer to the following link:
- SMARTS database link:
  https://smarts.waterboards.ca.gov/smarts/faces/SwSmartsLogin.jsp

Failure to submit the annual report may also result in the assessment of administrative civil liabilities of up to ten thousand dollars ($10,000) for each day in which the violation occurs. Compliance with this requirement to submit the annual report does not preclude enforcement for other violations of the CWC.

If you need assistance in completing the annual report, please contact the SMARTS Help Desk at (866) 563-3107. If you need assistance, or if you have any questions regarding this notice please contact Ashley Olmeda at (213) 620-6190 via email at Ashley.Olmeda@waterboards.ca.gov, or Pavlova Vitale at (213) 576-6751 via email at Pavlova.Vitale@waterboards.ca.gov.

Sincerely,

[Handwritten Signature]
Hugh Marley
Chief, Compliance and Enforcement Section

cc: (via email only)
Catherine Haue, State Water Resources Control Board, Office of Enforcement
John Ballas, Operations Coordinator, City of Industry (jdballas@cityofindustry.org)