



Los Angeles Regional Water Quality Control Board

December 4, 2019

Mr. Johnny Rivas
Marathon Distribution Services, LLC
2141 Paulhan Street
Compton, CA 90220

Certified Mail
Return Receipt Requested
Claim No. 7018 2290 0002 2270 3522

Mr. Chris Simonoff
Agent for Service of Process
Marathon Distribution Services, LLC
2141 Paulhan Street
Compton, CA 90220

Certified Mail
Return Receipt Requested
Claim No. 7018 2290 0002 2270 3539

SETTLEMENT OFFER NO. R4-2019-0112: OFFER TO PARTICIPATE IN THE EXPEDITED PAYMENT PROGRAM FOR FAILURE TO OBTAIN COVERAGE UNDER THE NPDES GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITIES FOR MARATHON DISTRIBUTION SERVICES, LLC, 2141 PAULHAN STREET, RANCHO DOMINGUEZ, CA (ORDER NO. 2014-0057-DWQ, NPDES NO. CAS000001, NON-FILER ID NO. 4 19IN604448)

Dear Mr. Rivas and Mr. Simonoff:

This letter (Conditional Offer) is to notify Marathon Distribution Services, LLC (hereinafter "Operator" 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 Operator to participate in the Los Angeles Regional Water Quality Control Board's (Regional Board) Expedited Payment Program to address mandatory minimum penalties that may be assessed pursuant to Water Code section 13399.33(a)(1).

VIOLATION:

The State Water Resources Control Board's National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ (General Permit) was adopted on April 1, 2014. Attachment A of the General Permit lists facilities required to obtain permit coverage under the General Permit. Facilities listed on Attachment A are required to obtain permit coverage by filing a Notice of Intent (NOI) or a Notice of Non-Applicability (NONA) that specifies the basis for not needing to obtain coverage under an NPDES permit.

On July 10, 2018, Regional Board staff inspected the Marathon Distribution Services, LLC facility located at 2141 East Paulhan in Compton. During the inspection, Regional Board staff observed warehousing and trucking activities conducted on-site. Warehousing and storage activities are classified under SIC code 4225-general warehousing and storage and are required to obtain coverage under the General Permit.

IRMA MUÑOZ, CHAIR | RENEE PURDY, EXECUTIVE OFFICER

On September 27, 2018, the Regional Board issued a Notice of Non-Compliance (NNC) to the Operator for failing to obtain coverage under the General Permit. The Operator did not take action as required in the NNC including obtaining coverage under the General Permit or submitting a Notice of Non-Applicability via the Storm Water Multiple Application and Report Tracking System (SMARTS) by November 26, 2018.

On December 10, 2018, the Regional Board issued a Notice of Violation (NOV) to the Operator for failing to obtain coverage under the General Permit. The deadline to comply with the NOV was January 9, 2019.

On June 10, 2019, the Operator submitted a No Exposure Certification (NEC) application under the General Permit. On June 11, 2019, The State Water Resources Control Board returned the Operator's NEC application because it was not certified by a Legal Responsible Person.

On July 23, 2019, the Operator satisfactorily submitted and certified a NEC application, 195 days after the deadline in the NOV.

STATUTORY LIABILITY:

Pursuant to Water Code section 13399.33(a)(1), the Operator is subject to a minimum penalty of not less than five thousand dollars (\$5,000) per year of noncompliance or fraction thereof plus staff costs for failing to submit the required notice of intent in accordance with Water Code section 13399.30. Although the Operator ultimately submitted and certified a NEC application, it did so significantly after the deadlines in the NNC and NOV and thus triggered the mandatory minimum penalty. Alternatively, the Operator is subject to discretionary administrative civil liabilities of up to ten thousand dollars (\$10,000) under Water Code section 13385 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) for each day in which the violation occurs.

OPERATOR'S OPTIONS FOR RESPONSE TO OFFER:

You have two options to respond as outlined below:

1. Accept the Expedited Payment Program Conditional Offer

Acceptance of this Conditional Offer requires the Operator to pay \$5,535 for settlement of the non-filer violation.

If the Operator elects to accept this Conditional Offer and participate in the Regional Board's Expedited Payment Program, the Regional Board will forego issuance of a formal administrative civil liability complaint (Complaint); the Regional Board will not refer the violation to the Attorney General; and the Regional Board will waive its right to seek additional discretionary civil liabilities against the Operator for failure to obtain coverage under the General Permit.

The penalty includes a \$5,000 mandatory minimum penalty in addition to \$535 in staff costs. The Regional Board is required to recover staff costs under Water Code section 13399.33(d). 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 along with payment by January 6, 2020**. The form provides submittal instructions. This option is deemed complete only after submission of the mandatory minimum penalty amount.

Please submit a hard copy of the Acceptance and Waiver form to:

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

Acceptance of this Conditional Offer and participation in the Expedited Payment Program does not address or resolve liability for any violation that is not specifically identified above and in the corresponding NNC and NOV regardless of the date that the violation occurred.

2. **Contest the Violation**

Submit in writing the basis of your challenge with supporting evidence. If you choose this option, you must submit your written documentation by **January 6, 2019**.

Regional Board staff will review the submission, and if we agree with the challenge, we will notify the Operator in writing that it is no longer considered in violation of California Water Code Section 13399.30(a)(2), and the Regional Board Prosecution Team will take no further action against the Operator for the alleged failure to obtain coverage under the General Permit. If after review of your submission Regional Board staff does not agree with your challenge, the alleged violation will still apply to the Operator; the Operator will be given thirty (30) days from the date of receipt of Regional Board staff's determination to participate in the Expedited Payment Program by completing and returning the Acceptance and Waiver.

If you do not respond in a manner described in the above two options, the Regional Board's Prosecution Team will prepare a Complaint for failing to obtain coverage under the General Permit and a hearing will be scheduled before the Regional Board or an authorized delegate. The amount of the administrative civil liability sought in a Complaint and/or ultimately 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 will be considered in the recommended liability amount.

CONDITIONS FOR REGIONAL BOARD ACCEPTANCE OF RESOLUTION:

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)).

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 13399.33 as

Johnny Rivas
Chris Simonoff
Marathon Distribution Services, LLC

- 4 -

December 4, 2019

assessing the uncontested penalty amount pursuant to Water Code section 13399.33 as described under the heading "Statutory Liability" herein. The Operator will then be notified that payment is due within 30 days from the date of execution by the Executive Officer.

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 Operator's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. In that case, the violations will be addressed in an evidentiary hearing. At the evidentiary hearing the Operator will be free to make arguments as to any of the alleged violations, and the Operator's agreement to accept this conditional offer will not in any way be binding or used as evidence against the Operator. The Operator will be provided with further information on the evidentiary hearing.

Should you have any questions about this Conditional Offer, please contact Ms. Ashley Olmeda at (213) 620-6190 or via email at Ashley.Olmeda@waterboards.ca.gov or Ms. Pavlova Vitale at (213) 576-6751 or via email at Pavlova.Vitale@waterboards.ca.gov regarding this matter.

Sincerely,



Hugh Marley
Assistant Executive Officer

Enclosures:

Acceptance of Conditional Resolution and Waiver of Right to Hearing; (proposed) Order
Exhibit 1: Notice of Non-Compliance dated September 27, 2018
Exhibit 2: Notice of Violation dated December 10, 2018

cc: (via email)

Kailyn Ellison, Office of Enforcement, State Water Resources Control Board
Hien Nguyen, Operations Coordinator/Public Education Coordinator, City of Compton

Settlement Offer No. R4-2019-0112
Non-Filer No. 4 19IN604448

**ACCEPTANCE OF CONDITIONAL RESOLUTION
AND WAIVER OF RIGHT TO HEARING: (Proposed) ORDER**

Marathon Distribution Services, LLC
Settlement Offer No. R4-2019-0112
Non-Filer No. 4 19IN604448

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), Marathon Distribution Services, LLC (Operator) hereby accepts Settlement Offer No. R4-2019-0112 "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 Noncompliance (NNC) and Notice of Violation (NOV), which are attached hereto as Exhibits 1 and 2 and incorporated herein by reference.

The Operator 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 Assistant Executive Officer. The Operator agrees to pay the administrative civil liability authorized by California Water Code section 13399.33(a)(1) and 13399.33(d), in the sum of \$5,535 (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 NNC and NOV. The Operator understands that this Acceptance and Waiver waives its right to contest the allegations in the NNC and NOV and the amount of civil liability for such violations.

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

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

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

The Operator 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 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, 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 13399.33.

Settlement Offer No. R4-2019-0112
Non-Filer No. 4 19IN604448

If, however, significant comments are received in opposition to the settlement, this offer may be withdrawn. In that case, the Operator's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. In that case, the violations will be addressed in an evidentiary hearing. At the evidentiary hearing the Operator will be free to make arguments as to any of the alleged violations, and the Operator's agreement to accept this conditional offer will not in any way be binding or used as evidence against the Operator. The Operator will be provided with further information on the evidentiary hearing.

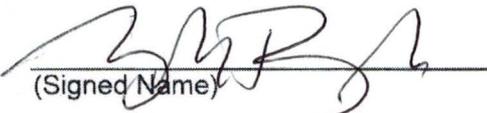
The Operator further understands that once this Acceptance and Waiver is executed by the Regional Board's Executive Officer, the full payment required by the deadline set forth below is a condition of this Acceptance and Waiver. In accordance with California Water Code section 13399.37(a), funds collected for violations pursuant to sections 13399.33(a)(1) shall be deposited in the Waste Discharge Permit Fund. Accordingly, the \$5,535.81 liability shall be paid by a cashiers or certified check made out to the "Waste Discharge Permit Fund" and reference this Order number. 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's Executive Officer.

Please mail the check to:

State Water Resources Control Board Accounting Office
Attn: ACL Payment
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 Operator in the making and giving of this Acceptance and Waiver.

Marathon Distribution Services, LLC

By:  4/2/2020
(Signed Name) (Date)
John M. Rivas Jr. Manager
(Printed or Typed name) (Title)

IT IS SO ORDERED PURSUANT TO CALIFORNIA WATER CODE SECTION 13323 AND GOVERNMENT CODE SECTION 11415.60.

By: _____ (Date)
Renee Purdy
Executive Officer