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## Los Angeles Regional Water Quality Control Board

May 19, 2020

Judy Walters  
Mercury Casualty Company  
4484 Wilshire Boulevard  
Los Angeles, CA 90010

**Via Email Only**

**SETTLEMENT OFFER NO. R4-2020-0037; OFFER TO PARTICIPATE IN THE EXPEDITED PAYMENT PROGRAM RELATING TO VIOLATIONS OF THE NPDES PERMIT FOR MERCURY CASUALTY COMPANY, HOME OFFICE BUILDING, 4484 WILSHIRE BOULEVARD, LOS ANGELES, CA (ORDER NO. R4-2013-0095, NPDES PERMIT NO. CAG994004, CI NO. 6714)**

Dear Judy Walters:

This letter is to notify the Mercury Casualty Company (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 for Effluent and/or Reporting Violations (Expedited Payment Program) to address mandatory minimum penalties that must be assessed pursuant to California Water Code sections 13385 and 13385.1.

### **NOTICE OF VIOLATION:**

Based on information in the California Integrated Water Quality System (CIWQS) as of May 19, 2020, the Regional Board alleges that the Permittee has violated the effluent limitations, reporting violations, or California Water Code provisions identified in the Notice of Violation (NOV) attached as Exhibit "1". The Permittee will have the opportunity to address the alleged violations as discussed below.

### **STATUTORY LIABILITY:**

Subdivisions (h) and (i) of California Water Code section 13385 require the assessment of a mandatory minimum penalty of three thousand dollars (\$3,000) for specified serious and chronic effluent limit and reporting violations. For the purposes of subdivision (h) of section 13385, failure to file a discharge monitoring report required pursuant to sections 13383 for each complete period of 30 days following the deadline for submitting the report constitutes a serious violation. 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, plus ten dollars (\$10) for each gallon discharged but not

IRMA MUÑOZ, CHAIR | RENEE PURDY, EXECUTIVE OFFICER

cleaned up in excess of 1,000 gallons. These mandatory minimum penalties and discretionary administrative civil liabilities may be assessed by the Regional Board beginning with the date that the violations first occurred.<sup>1</sup> 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. In addition, the Superior Court may assess up to twenty-five dollars (\$25) per gallon discharged but not cleaned up in excess of 1,000 gallons.

**OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM:**

The Permittee can avoid the issuance of a formal enforcement action and settle the alleged violations identified in the attached NOV by participating in the Regional Board's Expedited Payment Program. Details of the proposed settlement are described below and addressed in the enclosed documents.

To promote the resolution of these violations, the Regional Board makes this Conditional Offer. The Permittee may accept this offer, waive the Permittee's right to a hearing, and pay the mandatory minimum penalty of \$27,000 for the violations described in the NOV. If the Permittee elects to do so, subject to the conditions below, the Regional Board will accept that payment in settlement of any enforcement action that would otherwise arise out of the violations identified in the NOV. Accordingly, the Regional Board will forego issuance of a formal administrative complaint, will not refer the violations to the Attorney General, and will waive its right to seek additional discretionary civil liabilities for the violations identified in the NOV.

The Expedited Payment Program does not address or resolve liability for any violation that is not specifically identified in the NOV regardless of the date that the violation occurred.

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

If you accept this 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 **June 18, 2020**.

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<sup>1</sup> Please note that there are no statutes of limitation that apply to administrative proceedings to assess mandatory minimum penalties. See *City of Oakland v. Public Employees' Retirement System*, (2002) 95 Cal.App.4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.) Additionally, the State Water Resources Control Board had determined that the equitable doctrine of laches does not apply to mandatory minimum penalties. (State Water Board Order Nos. 2013-0053, 2013-0054, 2013-0055, 2013-0099)

If the Permittee chooses to contest any of the violations alleged in the NOV, please identify the specific violation and the basis for the challenge (factual error, affirmative defense, etc.) on or before the due date specified above.

Responses contesting any of the violations alleged in the NOV shall be submitted as a pdf via email or CD to Lala Kabadaian, lala.kabadaian@waterboards.ca.gov, (213) 620-6370, and submitted by you under penalty of perjury.

The Regional Board staff will evaluate the contested violation and take one of two actions:

- 1) The Regional Board staff will determine that the violation is not supported, expunge the alleged violation from the CIWQS database, take no further action against the Permittee for the alleged violation, and notify the Permittee of that determination. The Permittee will be given thirty (30) days from the date of receipt of the Regional Board staff determination to complete and return the Acceptance and Waiver for the remainder of the violations; or
- 2) The Regional Board staff will determine that the alleged violation is meritorious and will notify the Permittee of that determination. The Permittee will be given thirty (30) days from the date of the receipt of the Regional Board staff determination to complete and return the Acceptance and Waiver.

If the Permittee chooses not to make a payment in response to the Regional Board staff's determination, the Permittee should expect to be contacted regarding formal enforcement action that will be initiated with regard to the contested violations. In a formal enforcement action, the liability amount sought and/or imposed may exceed the liability amount set forth in this Conditional Offer. Moreover, the cost of enforcement is a factor that can be considered in assessing the liability amount.

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

Federal regulations require the Regional 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)). Upon receipt of the Permittee's Acceptance and Waiver, the Regional Board staff will publish a notice of the proposed resolution of the violations.

If no comments are received within the 30-day comment period, and unless there are new material facts that become available to the Regional Board, the Regional Board Executive Officer will execute the Acceptance and Waiver as a stipulated order assessing the uncontested mandatory minimum penalty amount pursuant to Water Code sections 13385 and 13385.1.

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.

In the event the Acceptance and Waiver is executed by the Regional Board Executive Officer, full payment of the assessed amount shall be due within thirty (30) calendar days after the date the Acceptance and Waiver is executed. 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 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 Permittee to further liability.

Should you have questions about this Conditional Offer of Notice of Violation, please contact Enforcement Unit staff Lala Kabadaian at (213) 620-6370 / lala.kabadaian@waterboards.ca.gov or Ching-Yin To at (213) 620-6373 / ching-yin.to@waterboards.ca.gov regarding this matter.

Sincerely,

**Hugh  
Marley**  Digitally signed by  
Hugh Marley  
Date: 2020.05.19  
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Hugh Marley  
Assistant Executive Officer

Enclosures:

Exhibit "1" – Notice of Violation  
Acceptance of Conditional Resolution and Waiver to Right of Hearing; (proposed)  
Order

cc: (via email)  
Kailyn Ellison, Office of Enforcement, State Water Resources Control Board

**EXHIBIT "1" – NOTICE OF VIOLATION  
Effluent Limit Violations**

Violation Date	Monitoring Period	Violation Type	Parameter	Reported Value	Permit Limit	Units	Pollutant Category	% Exceeded	Serious/Chronic	Water Code Section 13385	Penalty
02/01/18	1st Quarter 2018	Monthly Average	Copper	203	9	µg/L	2	2156%	Serious	(h)1	\$0 *
05/01/18	2nd Quarter 2018	Daily Max	Copper	305	39	µg/L	2	682%	Serious	(h)1	\$0 *
05/01/18	2nd Quarter 2018	Monthly Average	Copper	305	20	µg/L	2	1425%	Serious	(h)1	\$0 *
05/01/18	2nd Quarter 2018	Monthly Average	Zinc	157	151***	µg/L	2	4%	Chronic	(i)1	\$3,000**
11/05/18	4th Quarter 2018	Daily Max	Copper	294	39***	µg/L	2	654%	Serious	(h)1	\$3,000
11/30/19	4th Quarter 2019	Monthly Average	Copper	294	20***	µg/L	2	1370%	Serious	(h)1	\$3,000
02/06/19	1st Quarter 2019	Daily Max	Zinc	286	119****	µg/L	2	140%	Serious	(h)1	\$3,000
02/06/19	1st Quarter 2019	Daily Max	Copper	29.2	18****	µg/L	2	62%	Serious	(h)1	\$3,000
02/28/19	1st Quarter 2019	Monthly Average	Zinc	286	59****	µg/L	2	385%	Serious	(h)1	\$3,000
02/28/19	1st Quarter 2019	Monthly Average	Copper	29.2	9****	µg/L	2	224%	Serious	(h)1	\$3,000
05/01/19	2nd Quarter 2019	Daily Max	Copper	150	39***	µg/L	2	285%	Serious	(h)1	\$3,000

Violation Date	Monitoring Period	Violation Type	Parameter	Reported Value	Permit Limit	Units	Pollutant Category	% Exceeded	Serious/ Chronic	Water Code Section 13385	Penalty
05/31/19	2nd Quarter 2019	Monthly Average	Copper	150	20***	µg/L	2	650%	Serious	(h)1	\$3,000

**Total:           \$27,000**

\*The three violations which occurred on 2/1/2018 for exceedance of the copper monthly average limit, on 5/1/2018 for exceedance of the copper daily maximum limit, and on 5/1/2018 for exceedance of the copper monthly average limit were included in Settlement Offer No. R4-2018-1041 and are only listed here to demonstrate that the chronic violation on 05/01/18 for the zinc monthly average limit exceedance is subject to a mandatory minimum penalty.

\*\* The zinc monthly average limit exceedance on 05/01/18 was listed in Settlement Offer No. R4-2018-0141; however, a penalty was inadvertently not assessed.

\*\*\* Dry weather limitations for the zinc monthly average, copper daily max, and copper monthly average are 151 µg/L, 39 µg/L, and 20 µg/L, respectively.

\*\*\*\* Wet weather limitations for zinc daily maximum and monthly average are 119 µg/L and 59 µg/L, respectively. Wet weather limits for copper daily max and monthly average are 18 µg/L and 9 µg/L, respectively.

Settlement Offer No. R4-2020-0037  
CI No. 6714, NPDES Permit No. CAG994004

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

Mercury Casualty Company  
Settlement Offer No. R4-2020-0037  
NPDES Permit No. CAG994004

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), the Mercury Casualty Company (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), which is attached hereto as Exhibit "1" and incorporated herein by reference.

The Permittee agrees that the NOV 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 penalties required by California Water Code section 13385 in the sum of \$27,000 (Expedited Payment Amount) which shall be deemed payment in full of any civil liability pursuant to California Water Code sections 13385 and 13385.1 that otherwise might be assessed for the violations described in the NOV. The Permittee understands that this Acceptance and Waiver waives its right to contest the allegations in the NOV 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.

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

Lala Kabadaian, Enforcement I Unit  
Expedited Payment Program  
Los Angeles Regional Water Quality Control Board  
320 West 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013

The Permittee understands that federal regulations set forth by 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, the 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.

