



NCRWQCB

AUG 23 2021

CITY OF FORT BRAGG

Incorporated August 5, 1889
416 N. Franklin Street
Fort Bragg, CA 95437
Fax: (707) 961-2913
Phone: (707) 961-2825

<input type="checkbox"/> EO	<input type="checkbox"/> WMgmt	<input type="checkbox"/> Admin
<input type="checkbox"/> AEO	<input type="checkbox"/> Timber	<input type="checkbox"/> Legal
<input type="checkbox"/> Reg/NPS	<input type="checkbox"/> Cleanups	<input type="checkbox"/> _____
<input type="checkbox"/> _____	<input type="checkbox"/> _____	Date _____

August 19, 2021

Diana Henriouille, Senior WRCB Control Engineer
CA Regional Water Quality Control Board
North Coast Region
5550 Skylane Blvd, Suite A
Santa Rosa CA 95403

Re: Fort Bragg Municipal Improvement District No. 1, WDID No. 1B84083OMEN

Ms. Henriouille,

Please find the enclosed executed offer to participate in expedited payment program relating to violations of orders No. R1-2015-0024 and R1-2019-0020 (NPDES Permit No. CA 0023078).

Please advise should anything else be needed.

Sincerely,

Sandy Arellano

Sandy Arellano
Public Works Administrative Analyst



North Coast Regional Water Quality Control Board

August 13, 2021

Certified Mail 7016 2070 0000 6486 2173

Mr. John Smith, Director of Public Works
Fort Bragg Municipal Improvement District No. 1
416 North Franklin Street
Fort Bragg, CA, 95437
jsmith@fortbragg.com

Dear Mr. Smith

Subject: **Order No. R1-2021-0032, OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM RELATING TO VIOLATIONS OF ORDERs No. R1-2015-0024 and R1-2019-0020 (NPDES PERMIT No. CA0023078)**

File: Fort Bragg Municipal Improvement District No.1, WDID No.1B84083OMEN

The purpose of this expedited payment letter is to notify the Fort Bragg Municipal Improvement District No. 1 (hereinafter "Permittee" or "you") of alleged violations of the California Water Code (Water Code) identified in the State Water Resources Control Board's (State Water Board) water quality data system and to allow the Permittee to participate in the Expedited Payment Program for Effluent and/or Reporting Violations (Expedited Payment Program) to address liability which may be assessed pursuant to Water Code sections 13385 and 13385.1.

NOTICE OF VIOLATION:

Based on information in the California Integrated Water Quality System (CIWQS) from March 1, 2017 through April 1, 2021, the North Coast Regional Water Quality Control Board (Regional Water Board) alleges that the Permittee has violated the effluent limitations identified in the Notice of Violation (NOV) attached as Exhibit "A." The Permittee shall pay the Expedited Payment Amount of \$6,000.00. The Permittee will have the opportunity to address the alleged violations as discussed below.

STATUTORY LIABILITY:

Subdivisions (h) and (i) of Water Code section 13385 require the assessment of a **MANDATORY MINIMUM PENALTY** of \$3,000 for specified serious and chronic effluent

GREGORY A. GIUSTI , CHAIR | MATTHIAS ST. JOHN, EXECUTIVE OFFICER

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limit violations. The Permittee is 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 cleaned up in excess of 1,000 gallons. These mandatory minimum penalties and discretionary administrative civil liabilities may be assessed by a Regional Water Quality Control Board or the State Water Board (collectively "the Water Boards"), beginning with the date that the violation first occurred. The formal enforcement action which the Water Boards use to assess such liability is an administrative civil liability complaint, although the Water Boards may instead refer such matters to the Attorney General's Office. If referred to the Attorney General, 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 violation identified in the attached NOV by participating in the Expedited Payment Program. Details of the proposed settlement are described below and addressed in the enclosed documents.

To promote resolution of this violation, the Regional Water 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 as indicated on Exhibit A, for the violation described in the NOV. If the Permittee elects to do so, subject to the conditions below, the Regional Water Board will accept that payment in settlement of any enforcement action that would otherwise arise out of the violation identified in the NOV. Accordingly, the Regional Water Board will forgo 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 violation identified in the NOV. Resolution of this violation by the State Water Board will preclude Regional Water Board action for this same violation.

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 thirty (30) days from the date of this letter. The Acceptance and Waiver will be held, pending a 30-day public notice period, and then will be counter-signed by the Executive Officer and returned to you with an invoice for payment.

If the Permittee chooses to contest the violation alleged in the NOV, please identify the basis for the challenge (factual error, affirmative defense, etc.) on or before the due date specified above. The Regional Water Board staff will evaluate the contested violation and take one of two actions:

- 1) The Regional Water Board staff will determine that the violation is not supported, expunge the alleged violation from the CIWQS data base, 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 Water Board staff determination to complete and return an Acceptance and Waiver for the remainder of the violations; or
- 2) The Regional Water Board staff will determine that the alleged violation is valid and will notify the Permittee of that determination. The Permittee will be given thirty (30) days from the date of receipt of the Regional Water 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 Water Board staff's determination, the Permittee should expect to be contacted regarding formal enforcement action that will be initiated regarding the contested violation. 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 which can be considered in assessing the liability amount.

CONDITIONS FOR REGIONAL WATER BOARD ACCEPTANCE OF RESOLUTION:

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

https://www.waterboards.ca.gov/northcoast/public_notices/notice_of_proposed_settlement/

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

If, however, significant comments are received in opposition to the settlement, this Offer may be withdrawn and the Permittee's waiver pursuant to the Acceptance and Waiver

August 13, 2021

will also be treated as withdrawn. In that case, the unresolved violation will be addressed in a formal enforcement hearing. At the hearing the Permittee will be free to make arguments as to the alleged violation, 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 Executive Officer, the Conditional Offer becomes a final order and payment of the assessed amount shall be due and payable as specified in the invoice that will accompany the Permittee's notice of the final order. Payment is due thirty (30) days after the order is finalized. Failure to pay the penalty within the required time period may subject the Permittee to further liability.

Should you have any questions about the EPL or the Conditional Offer, please contact Zane Stromberg at, Zane.Stromberg@waterboards.ca.gov or Diana Henrioulle, at Diana.Henrioulle@waterboards.ca.gov.

Sincerely,


Digitally signed by
Claudia E. Villacorta
Date: 2021.08.13
11:21:35 -07'00'
Claudia Villacorta, P.E.
Assistant Executive Officer

210813_ZS_er_FBPOTW_Fort_Bragg_EPL_Offer

Attachment: Exhibit A MMP for CA0023078

Enclosure: R1-2021-0032 Fort Bragg EPL Acceptance

Certified Mail – Return Receipt requested

cc: Diana Henrioulle; Diana.Henrioulle@waterboards.ca.gov



North Coast Regional Water Quality Control Board

EXPEDITED PAYMENT LETTER
NOTICE OF VIOLATION
ACCEPTANCE OF CONDITIONAL RESOLUTION
AND WAIVER OF RIGHT TO HEARING
Order No. R1-2021-0032

Fort Bragg Municipal Improvement District No. 1
Fort Bragg Wastewater Treatment Facility
ORDERS NO. R1-2015-0024 AND R1-2019-0020
NPDES NO. CA0023078
WDID No. 1B84083OMEN

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the North Coast Regional Water Quality Control Board (Regional Water Board), Fort Bragg Municipal Improvement District No. 1 hereby accepts the "Offer to Participate in Expedited Payment Program" and waives the right to a hearing before the Regional Water Board to dispute the allegations of violations described in the Notice of Violation (NOV) which is attached hereto as Exhibit "A" 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 (Water Code) and that no separate complaint is required for the Regional Water Board to assert jurisdiction over the alleged violations through its Assistant Executive Officer. The Permittee agrees to pay the penalties authorized by Water Code section 13385, as indicated on the attached NOV Exhibit "A" under "Expedited Payment Amount" (which shall be deemed payment in full of any civil liability pursuant to the Water Code sections 13385 and 13385.1 that otherwise might be assessed for the violations described in the NOV.

The Permittee understands that once the Acceptance and Waiver is executed by the Executive Officer of the Regional Water Board, the full payment required by the deadline indicated in the invoice to follow is a condition of this Acceptance and Waiver. The Permittee shall pay the Expedited Payment Amount of **\$6,000.00** by check payable to the SWRCB Cleanup and Abatement Account, referencing "R1-2021-0032".

The Permittee understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the Notice of Violation.

GREGORY A. GIUSTI , CHAIR | MATTHIAS ST. JOHN, EXECUTIVE OFFICER

Mandatory Penalty Administrative Civil Liability

Fort Bragg City

Fort Bragg City WWTP

WDID No. 1B84083OMEN

NPDES No. CA0023078

EXHIBIT "A"

Effluent Limitations Violations Requiring Mandatory Minimum Penalties

#	Violation Number	Violation Date	Constituent	Pollutant Group	Limitation Period	Limit	Result/Average	Units	Exempted from MMP?	Exempt Reason	% Over Limit	Date 180 Days Prior	Serious or Chronic Violation?	No. of Violations within 180 days	Mandatory Fine?	Water Code	Penalty
1	1047963	07/06/2018	Biochemical Oxygen	Group 1	Weekly Average	45	52	mg/L	Y	a	16%	01/07/2018	C	Ct. 1	N		\$ 0
2	1047937	07/31/2018	Biochemical Oxygen	Group 1	Monthly Average	30	31	mg/L	Y	a	3%	02/01/2018	C	Ct. 2	N		\$ 0
3	1055180	12/08/2018	Biochemical Oxygen	Group 1	Weekly Average	45	48	mg/L	Y	a	7%	06/11/2018	C	Ct. 3	N		\$ 0
4	1055179	12/31/2018	Biochemical Oxygen	Group 1	Monthly Average	30	34	mg/L	N		13%	07/04/2018	C	> Ct. 3	Y	13385(i)	\$ 3,000
5	1056987	02/25/2019	Total Coliform	Other	Instantaneous	230	1600	MPN/100	Y	a	596%	08/29/2018	C	Ct. 3	N		\$ 0
6	1056973	04/09/2019	Total Coliform	Other	Instantaneous	230	920	MPN/100	N		300%	10/11/2018	C	> Ct. 3	Y	13385(i)	\$ 3,000
7	1077668	04/20/2021	Total Coliform	Other	Instantaneous	230	1600	MPN/100	Y	a	596%	10/22/2019	C	Ct. 1	N		\$ 0
8	1089283	02/17/2021	Total Coliform	Other	Instantaneous	230	1600	MPN/100	Y	a	596%	8/21/2020	C	Ct. 1	N		\$ 0

Total Penalty: \$ 6,000

Legend of Table

a. The first three violations in a 180 day period shall not receive MMP assessment unless serious.

Ct. Count – The number that follows represents the number of exceedances in the past 180 days. A count > than Ct. 3 means that a penalty under Water Code Section 13385 (i) applies.

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 a penalty.

Violation Period Between February 29th, 2017 and April 1st, 2021

Group I Violations Assessed MMP:	1
Group II Violations Assessed MMP:	0
Other Effluent Violations Assessed MMP:	1
Violations Exempt from MMP:	6
Total Violations Assessed MMP:	2

Mandatory Minimum Penalty = (0 Serious Violations + 2 Non-Serious Violations) x \$3,000 = \$6,000

R1-2021-0032
Fort Bragg Municipal Improvement District No. 1
Acceptance and Waiver

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

Diana Henriouille, Senior Water Resource Control Engineer
California Regional Water Quality Control Board
North Coast Region
5550 Skylane Blvd, Suite A
Santa Rosa, CA 95403

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

If no comments are received within the notice period which causes the Executive Officer to reconsider the Acceptance and Waiver, the Executive Officer will execute the Acceptance and Waiver and it will become a final order.

The Permittee understands that if significant comments are received in opposition, the offer to resolve the violations set forth in the NOV may be withdrawn. In that circumstance, the Permittee 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 Regional Water Board. For such a 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 understands that once the Acceptance and Waiver is executed by the Executive Officer, the full payment is a condition of this Acceptance and Waiver. The payment shall be submitted to the Regional Water Board no later than the date indicated in the transmittal letter which will accompany the Acceptance and Waiver after execution by the Executive Officer.

R1-2021-0032
Fort Bragg Municipal Improvement District No. 1
Acceptance and Waiver

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.

Fort Bragg Municipal Improvement District No. 1
(Name of Permittee)

By: Tabatha Miller
(Signed Name)

August 18, 2021
(Date)

Tabatha Miller
(Printed or typed name)

City Manager
(Title)

IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13385

By: _____
Matthias St. John
Executive Officer

21_0032_Fort_Bragg_EPL_Acceptance

Attachment: Exhibit A MMP for CA0023078