

San Francisco Bay Regional Water Quality Control Board

March 7, 2016
File: CW-657165
Regulatory Measure: 404730

City of Richmond
Successor Agency, Engineering Department
Point Molate Community Advisory Committee Staff Liaison
Attention: Mr. Craig K. Murray, SR/WA, Development Project Manager II
450 Civic Center Plaza, 2nd Floor
Richmond, CA 94804-1630

Subject: Conditional Offer to Settle Violation(s) of NPDES Permit CAG912002

Facility: City of Richmond Packaged Groundwater system located at the former Naval Fuel Depot, Point Molate, Western Drive, City of Richmond, Contra Costa County

Dear Mr. Murray:

This letter notifies the City of Richmond (Discharger) of an alleged violation or violations of discharge limitations and/or reporting requirements, and provides the Discharger the opportunity to settle the violation(s) through payment of \$15,000 in mandatory minimum penalties pursuant to Water Code section 13385 and 13385.1. Please reply by **April 7, 2016**.

NOTICE OF VIOLATION

The Assistant Executive Officer alleges that the Discharger has violation(s) identified in Exhibit A attached hereto and incorporated herein by reference. The Discharger has the opportunity to address the alleged violation(s) as discussed below.

STATUTORY LIABILITY

Water Code sections 13385(h) and (i) require the assessment of a mandatory minimum penalty of \$3,000 for specified serious and other effluent limit violations. Failure to file a discharge monitoring report required pursuant to section 13383 for each complete period of 30 days following the deadline for submitting the report constitutes a serious violation. The Discharger is also subject to discretionary administrative civil liabilities of up to \$10,000 for each day in which the violation occurs, plus \$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 the Regional Water Board or the State Water Board (collectively Water Boards), beginning with the date that the violations first occurred¹. The formal enforcement

¹ 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 has 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.)

action the Water Boards use to assess such liability is an administrative civil liability complaint followed by a public hearing, although the Water Boards 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 \$25,000 per violation. In addition, the Superior Court may assess up to \$25 per gallon discharged but not cleaned up in excess of 1,000 gallons.

CONDITIONAL OFFER TO SETTLE

The Discharger can avoid the issuance of a formal enforcement action and settle the alleged violation(s) identified in Exhibit A by accepting this conditional offer. Details of this offer are described below, as well as in the "Acceptance of Conditional Resolution and Waiver of Right to Hearing" (Acceptance and Waiver) enclosed herewith.

This offer does not address liability for any violation that is not specifically identified in Exhibit A.

OPTIONS FOR RESPONSE TO OFFER

If the Discharger chooses to accept this offer, then it must complete and return the enclosed Acceptance and Waiver on or before the reply date specified in the first paragraph of this letter. Note that when we receive the Acceptance and Waiver, this notice and offer will become a proposed settlement and a part of the Regional Water Board files that are available to the public. The Acceptance and Waiver will then be posted for a 30-day public notice period. Based on comments received, the Executive Officer will decide whether to accept this proposed settlement. If acceptable, the Executive Officer will counter-sign the Acceptance and Waiver and an invoice will be sent to you for payment.

If the Discharger chooses to contest the violation, or any of the violations, alleged in Exhibit A, please identify the specific violation and the basis for the challenge (factual error, affirmative defense, etc.) on or before the reply date specified in the first paragraph of this letter. Regional Water Board staff will evaluate each contested violation and take one of two actions:

- 1) Determine that the violation warrants dismissal and dismiss the alleged violation in the California Integrated Water Quality System (CIWQS) database, take no further action against the Discharger for the alleged violation, and notify the Discharger of that determination; or
- 2) Determine that the alleged violation is meritorious and notify the Discharger of that determination. The Discharger will then have 30 days from the date of the determination to accept settlement for that violation through a mandatory minimum penalty. If The Discharger chooses not to accept, or makes no reply to the determination, it should expect to be contacted regarding formal enforcement action for the contested violations. In a formal enforcement action, information received by Regional Water Board staff during a formal investigation and assessment of the violation, as well as staff costs associated with pursuing additional enforcement, may increase the liability amount beyond that which is set forth in this conditional offer.

CONDITIONS FOR REGIONAL WATER BOARD ACCEPTANCE OF RESOLUTION

Federal regulations require the Regional Water Board to publish and allow the public at least 30 days to comment on any settlement of an enforcement action addressing an NPDES permit violation (40 C.F.R. § 123.27(d)(2)(iii)). Upon receipt of the Discharger's Acceptance and Waiver, Regional Water Board staff will publish a notice of the proposed settlement of the violation(s).

If we receive no comments within the 30-day period and there are no new material facts 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 and/or 13385.1.

If, however, significant comments are received in opposition to the proposed settlement, this offer may be withdrawn. In that case, we will also treat as withdrawn the Acceptance and Waiver, and address the alleged violation(s) in a formal liability assessment proceeding. At the liability assessment hearing the Discharger will be free to make arguments as to the alleged violation(s), and the acceptance of this conditional offer will not in any way be binding or used as evidence against the Discharger. The Discharger will be provided with further information on the liability assessment proceeding.

In the event that the Executive Officer executes the Acceptance and Waiver, payment of the settlement amount shall be due within 30 calendar days after. In accordance with Water Code section 13385(n)(1), funds collected pursuant to Water Code sections 13385 and 13385.1 shall be deposited in the State Water Pollution Cleanup and Abatement Account (CAA). Failure to pay the penalty within the required time period may subject the Discharger to further liability.

OPPORTUNITY FOR SUPPLEMENTAL ENVIRONMENTAL PROJECT

In lieu of paying all of the settlement amount to the State Water Pollution Cleanup and Abatement Account, the Discharger may elect to apply a portion² to fund a supplemental environmental project (SEP).³

There is currently one SEP option available: the SEP Fund to supplement the Regional Monitoring Program (RMP). This SEP Fund will supplement RMP studies that would not otherwise be conducted through the Regional Water Board's annually approved RMP cost allocations. The guiding principal of the RMP is to collect data and communicate information about water quality in the San Francisco Estuary in support of management decisions to restore and protect beneficial uses of the region's waters. Information about the RMP is at <http://www.sfei.org/rmp>. Funding for the RMP is managed and administered by the non-profit San Francisco Estuary Institute. No funds will go to the Regional Water Board.

² Pursuant to the State Water Board Enforcement Policy (2010) and Water Code section 13385(l)(1), the portion to a SEP may not exceed more than 50 percent of the penalty if the penalty is less than or equal to \$15,000; however, if the penalty exceeds \$15,000, the portion to a SEP may not exceed \$15,000 plus 50 percent of the penalty that exceeds \$15,000.

³ See State Water Board Policy on Supplemental Environmental Projects (2009) (http://www.waterboards.ca.gov/rwqcb5/water_issues/enforcement/sep_policy_2009.pdf).

The Discharger also may choose to pay the total settlement amount to the State Water Pollution Cleanup and Abatement Account. These options are represented in the enclosed Acceptance and Waiver.

REGIONAL WATER BOARD CONTACT

Please send your reply to the attention of Farhad Azimzadeh, either by U.S. mail, FAX at (510) 622-2460, or email. If you want to discuss or have questions regarding this matter, please contact Farhad Azimzadeh at (510) 622-2310 or farhad.azimzadeh@waterboards.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Mumley', with a long horizontal stroke extending to the right.

Thomas Mumley
Assistant Executive Officer

Enclosures: (1) Acceptance and Waiver
(2) Exhibit A - Notice of Violation

ORDER NO. R2-20
ACCEPTANCE OF CONDITIONAL RESOLUTION
AND WAIVER OF RIGHT TO HEARING

For

**City of Richmond Packaged Groundwater system located at the former Naval Fuel Depot,
Point Molate, Western Drive, Richmond, Contra Costa County
NPDES Permit CAG912002
Regulatory Measure ID 404730**

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the Regional Water Quality Control Board (Regional Water Board), City of Richmond (Discharger) hereby accepts the conditional offer to settle alleged violation(s) through payment of mandatory minimum penalties (Conditional Offer) and waives the right to a hearing before the Regional Water Board to dispute the alleged violation(s) set forth in Exhibit A attached hereto and incorporated herein by reference.

The Discharger agrees that Exhibit A shall serve as a complaint pursuant to Article 2.5 of the Water Code and that no separate complaint is required for the Regional Water Board to assert jurisdiction over the alleged violation(s) through its Assistant Executive Officer. The Discharger agrees to pay the penalties authorized by Water Code sections 13385 and 13385.1, which shall be deemed payment in full of any civil liability pursuant to Water Code section 13385 that otherwise might be assessed for the violation(s) described in Exhibit A. The Discharger understands that this Acceptance and Waiver waives its right to contest the allegation(s) in Exhibit A and the amount of civil liability for such violation(s).

The Discharger understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in Exhibit A.

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

California Regional Water Quality Control Board, San Francisco Bay Region
NPDES Wastewater Enforcement Section
Attention: Farhad Azimzadeh
1515 Clay Street, Suite 1400
Oakland, California 94612

The Discharger 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 of the Regional Water Board, will be published as required by law for public comment.

If no comments are received within the notice period which causes the Executive Officer of the Regional Water Board to reject the settlement amount, the Executive Officer will execute the Acceptance and Waiver. Resolution of these violations by the Regional Water Board will preclude State Water Resources Control Board (State Water Board) action for the same violation(s).

The Discharger understands that if significant comments are received in opposition to the Conditional Offer, the offer may be withdrawn. In that circumstance, the Discharger 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 or the State Water Board. For such a liability hearing, the Discharger understands that this Acceptance and Waiver executed by the Discharger will be treated as a settlement communication and will not be used as evidence in that hearing.

The Discharger understands that funds collected for violations of effluent limitations and reporting requirements pursuant to section 13385 and 13385.1 shall be deposited in the State Water Pollution Cleanup and Abatement Account.

The Discharger understands that in lieu of full payment of the assessed mandatory minimum penalty to the State Water Pollution Cleanup and Abatement Account, it may elect to pay a portion towards a supplemental environment project (SEP). There is currently only one SEP option, which is the SEP Fund to supplement the Regional Monitoring Program (RMP). This SEP Fund will supplement RMP studies that would not otherwise be conducted through the Regional Water Board's annually approved RMP cost allocations. The guiding principal of the RMP is to collect data and communicate information about water quality in the San Francisco Estuary in support of management decisions to restore and protect beneficial uses of the region's waters. Information about the RMP is at <http://www.sfei.org/rmp>. Funding for the RMP is managed and administered by the non-profit San Francisco Estuary Institute. No funds will go to the Regional Water Board. The Regional Water Board will consider the Discharger to have fulfilled its obligation for this SEP after its contribution to the SEP Fund has been received by the Institute. To select this option, place a "✓" or "✗" in the box below. By selecting this option, the Discharger agrees to pay the amount indicated below to the SEP Fund. Selection of this SEP Fund option does not change the total amount the Discharger will pay.

Select appropriate box (and fill in blanks if appropriate):

☒ I choose to pay a portion of the assessed liability to the RMP SEP Fund.

\$7,500 Maximum allowable portion that can be paid to the SEP Fund.

\$ _____ Leave blank unless the Discharger chooses to pay less than the maximum allowable to the SEP Fund; in this case, then indicate the amount to be paid to the SEP Fund.

\$ 7,500 Indicate the amount to be paid to the State which is **\$7,500** unless the Discharger has chosen to pay less than the maximum allowable to the SEP Fund. If the Discharger has chosen to pay less than the maximum allowable to the SEP Fund, then enter the amount to be paid to the State, which shall be the balance of the total assessed mandatory minimum penalty and the amount the Discharger chooses to pay to the SEP Fund.

\$15,000 Total assessed mandatory minimum penalty. This amount must equal the sum of the above, either lines 1 plus 3, or lines 2 plus 3.

☐ I choose to pay the total assessed mandatory minimum liability in full to the State Water Pollution Cleanup and Abatement Account.

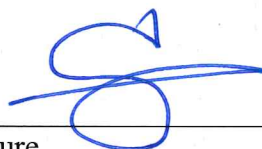
The Discharger understands that once the Acceptance and Waiver is executed by the Executive Officer of the Regional Water Board, payment no later than 30 days after the date of the Executive Officer's signature is a condition of this Acceptance and Waiver. If the Discharger does not select the SEP Fund option above, the Discharger shall pay the total assessed civil liability in full to the State Water Pollution Cleanup and Abatement Account. If the Discharger selects the SEP Fund option, then the Discharger shall pay the portion not paid towards the SEP Fund to the State Water Pollution Cleanup and Abatement Account and pay the balance to the San Francisco Estuary Institute for the SEP Fund. The Regional Water Board will send an invoice for any payment that is due for the SEP Fund. Payment to the State Water Pollution Cleanup and Abatement Account must be submitted in accordance with an invoice for payment from the State Water Board.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Discharger in the making and giving of this Acceptance and Waiver.

City of Richmond

By: CRAIG K. MURRAY
Printed or typed name

DEVELOPMENT PROJECT MANAGER II
Title


Signature

4/13/16
Date

Note: Please return the signed Acceptance and Waiver with Exhibit A, together.

IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13385

By: _____
Bruce H. Wolfe
Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region

Date

WDID: 2 071057003