

San Diego Regional Water Quality Control Board

February 15, 2019

Sent By Email Only

Sara Giobbi
Manager, Environmental Engineering
General Dynamics NASSCO
2798 Harbor Drive
San Diego, CA 92113
SGiobbi@nassco.com

In reply refer to / attn:
243883:KYaeger

Subject: Settlement Offer No. R9-2019-0043: Offer to Participate in Expedited Payment Program Related to Violation(s) of Order No. R9-2016-0116, NPDES Permit No. CA0109134

Ms. Giobbi:

General Dynamics National Steel & Shipbuilding Company (NASSCO or Permittee) is hereby notified of alleged violation(s) of Order No. R9-2016-0116, *Waste Discharge Requirements for General Dynamics National Steel and Shipbuilding Company (NASSCO), Discharge to San Diego Bay*, and of the opportunity to participate in an Expedited Payment Program to address liability that may be assessed pursuant to Water Code section 13385.

ALLEGED VIOLATION(S) SUBJECT TO THIS OFFER

As detailed in Exhibit A, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) alleges that the Permittee has violated Order No. R9-2016-0116.

STATUTORY LIABILITY

The Permittee is subject to the following statutory liabilities:

1. Water Code section 13385(h) requires the assessment of a mandatory minimum penalty of \$3,000 for each specified serious violation;
2. Water Code section 13385(c) allows for additional civil liability of up to \$10,000 for each day in which the violation(s) occurs, and \$10 for each gallon discharged but not cleaned up in excess of 1,000 gallons; and
3. Water Code section 13385(e) allows for the reimbursement of staff costs.

These mandatory minimum penalties and discretionary administrative civil liabilities may be assessed by the San Diego Water Board beginning with the date that the violation(s) first occurred.¹

The formal enforcement that the San Diego Water Board uses to assess such liability is an administrative civil liability complaint, although the San Diego Water Board may instead refer such matters to the Attorney General's Office for prosecution. If referred to the Attorney General's Office for prosecution, the Superior Court may assess up to \$25,000 per violation. In

¹ There is no statute of limitations applicable 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.)

addition, the Superior Court may assess up to \$25 per gallon discharged but not cleaned up in excess of 1,000 gallons, plus staff costs.

SETTLEMENT OFFER

The Permittee can avoid formal enforcement action and settle the alleged violation(s) identified in Exhibit A by participating in the San Diego Water Board's Expedited Payment Program. The Permittee may accept this conditional Settlement Offer, waive its right to a hearing, and pay the mandatory minimum penalty of **\$3,000** for the violation(s) described in Exhibit A. If the Permittee elects to do so, the San Diego Water Board, or its delegate, will execute the Settlement Offer, subject to the conditions below. Accordingly, the San Diego Water Board will forego issuance of a formal administrative liability complaint, will not refer the violation(s) to the Attorney General's Office, will not charge incurred staff costs, and will waive its right to seek additional discretionary civil liabilities for the violation(s) identified in Exhibit A.

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

OPTIONS FOR RESPONSE TO OFFER

1. If the Permittee accepts this offer, the Permittee shall complete and return the enclosed Acceptance of Conditional Resolution and Waiver of Right to Hearing of Settlement Offer No. R9-2019-0043 (Acceptance and Waiver, Exhibit B) on or before 5 p.m. on March 18, 2019.
2. If the Permittee chooses to contest the violation(s) alleged in Exhibit A, the Permittee shall submit in writing the specific violation(s) and the basis for the challenge (factual error, affirmative defense, etc.) to the San Diego Water Board on or before 5 p.m. on March 18, 2019. The San Diego Water Board will evaluate each contested violation and take one of two actions:
 - a. The San Diego Water Board will determine that the violation(s) are not supported, expunge the alleged violation(s), take no further action against the Permittee for the alleged violation(s), and notify the Permittee in writing of that determination; or
 - b. The San Diego Water Board will determine that the alleged violation(s) are meritorious and will notify the Permittee of that determination. The Permittee will be given 30 days from the date of receipt of the San Diego Water Board determination to either accept the Settlement Offer by completing and returning the Acceptance and Waiver to the San Diego Water Board, or to reject the Settlement Offer.
3. If the Permittee does not respond to this offer, the San Diego Water Board will initiate a formal enforcement action with regard to the alleged violation(s). In a formal enforcement action, the liability amount sought and/or imposed may exceed the liability amount set forth in this conditional Settlement Offer. Moreover, the staff costs of investigating the violation(s) and proceeding with formal enforcement action are factors that will be considered in assessing the liability amount.

CONDITIONS FOR SAN DIEGO WATER BOARD ACCEPTANCE OF RESOLUTION

Pursuant to title 40 of the Code of Federal Regulations (40 CFR), section 123.27(d)(2)(iii), the San Diego Water Board is required to publish and allow the public 30 days to comment on any settlement of an enforcement action addressing alleged violation(s) of National Pollutant

Discharge Elimination System (NPDES) permit conditions. Upon receipt of the Permittee's Acceptance and Waiver, the San Diego Water Board will publish a notice of the proposed resolution of the violation(s).

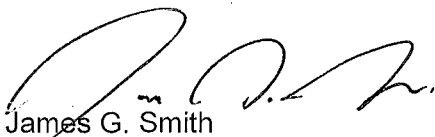
If no comments are received within the 30-day comment period, and unless there are new material facts that become available to the San Diego Water Board, the San Diego Water Board, or its delegate, will execute the Acceptance and Waiver as a stipulated order assessing the uncontested mandatory minimum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

If, however, significant comments are received in opposition to the settlement, this conditional offer may be withdrawn. In that case, the Permittee's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn, and the violation will be addressed in a liability assessment proceeding. At the liability assessment hearing, the Permittee will be free to make arguments as to the alleged violation(s), and the Permittee's agreement to accept this conditional Settlement 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 San Diego Water Board, or its delegate, full payment of the assessed amount shall be due within 30 calendar days after the Permittee's receipt of the notice of the San Diego Water Board's, or its delegate's, execution. In accordance with Water Code section 13385(n)(1), funds collected for violations of effluent limitations shall be deposited in the State Water Pollution Cleanup and Abatement Account. Accordingly, the liability shall be paid by cashier's or certified check made out to the "State Water Pollution Cleanup and Abatement Account." Failure to pay the full liability within the required time period may subject the Permittee to further liability.

In the subject line of any response, please include the following: 243883:KYaeger. For questions or concerns regarding this letter, please contact me by phone at 619-521-5899 or by email at Keith.Yaeger@waterboards.ca.gov.

Respectfully,



James G. Smith
Assistant Executive Officer
San Diego Water Board

Enclosures:

- Exhibit A: Notice of Violation(s) Subject to Mandatory Minimum Penalty, General Dynamics National Steel and Shipbuilding Company
- Exhibit B: Acceptance of Conditional Resolution and Waiver of Right to Hearing of the Settlement Offer No. R9-2019-0043

cc:

David Barker, San Diego Water Board, David.Barker@waterboards.ca.gov
Chiara Clemente, San Diego Water Board, Chiara.Clemente@waterboards.ca.gov
Brandi Outwin-Beals, San Diego Water Board, Brandi.Outwin-Beals@waterboards.ca.gov
Fisayo Osibodu, San Diego Water Board, Olufisayo.Osibodu@waterboards.ca.gov

Hugo Bermudez, General Dynamics NASSCO, hugo.bermudez@nassco.com

| Tech Staff Info & Use | |
|---|--------------|
| Order No. | R9-2016-0116 |
| NPDES No. | CA0109134 |
| CW Place ID (National Steel & Shipbuilding Co) | 243883 |
| CW Party/Organization ID (General Dynamics National Steel & Shipbuilding Co (NASSCO)) | 31242 |
| CW Party/Person ID (Sara A. Giobbi) | 562952 |
| CW Party/Person ID (Hugo Bermudez) | 306427 |
| CW Regulatory Measure (Individual Order) | 408359 |
| EPL Order No. | R9-2019-0043 |
| CW Regulatory Measure (EPL) | 428494 |
| WDID | 9 000000066 |

Exhibit A

NOTICE OF VIOLATION(S) SUBJECT TO MANDATORY MINIMUM PENALTIES GENERAL DYNAMICS NATIONAL STEEL & SHIPBUILDING COMPANY

The following table lists the alleged violation(s) subject to mandatory minimum penalties (MMPs), pursuant to Water Code section 13385(h). For additional information about the alleged violation(s) listed in the table:

1. Refer to the State Water Resources Control Board Public Reports webpage:
http://www.waterboards.ca.gov/water_issues/programs/ciwqs/publicreports.shtml;
2. Choose the "MMP Report" link located under the "Violations Reports" category; and
3. Enter the search criteria.

| Violation ID | Occurred Date(s) | Violation Type | MMP Type | Violation Description |
|--------------|----------------------------------|----------------|----------|--|
| 1055210 | 5/1/2017 through 5/31/2017 | CAT2 | SIG | Total recoverable copper exceeded the average monthly effluent limitation of 3.2 µg/L with a result of 6.1 µg/L at Monitoring Location IX-1. |

EXPEDITED PAYMENT AMOUNT

Mandatory Minimum Penalty Amount for Effluent Limit Violations

1 Serious Violation × \$3,000 per Serious Violation = \$3,000 Expedited Payment Amount

DEFINITIONS

| | |
|-----------------|--|
| AM | Effluent exceeds average monthly limitation. |
| ATOX | Violation of an acute toxicity effluent limitation. |
| AW | Effluent exceeds average weekly limitation. |
| CAT1 | Violation of an effluent limitation for a Group I pollutant by more than 40%. |
| CAT2 | Violation of an effluent limitation for a Group II pollutant by more than 20%. |
| CHRON | Chronic violation as defined by Water Code section 13385 (i). To be counted as a chronic violation, there must be 3 preceding violations within a 180 day period. The fourth non-serious violation that occurs within the 180 period is an MMP violation. |
| CIWQS | California Integrated Water Quality System database. |
| CTOX | Violation of a chronic toxicity effluent limitation. |
| DM | Effluent exceeds daily maximum limitation. |
| DREP | Deficient reporting violation. This will only result in an MMP if the report is so deficient as to make determination of compliance impossible for that reporting period. |
| GROUP | The list of pollutants is based on Appendix A to section 123.45 of title 40 of the Code of Federal Regulations. |
| IM | Effluent exceeds instantaneous maximum limitation. |
| LREP | Late reporting violation. Every 30 days a report is late counts as one late reporting violation. |
| M | Effluent exceeds limit for monthly reporting period. |
| MMP Type | Classification of the type of MMP violation. |
| N/A | Not Applicable |
| Occurrence Date | Date that a violation actually occurred. For continuing violations, such as a monthly average, the last day of the reporting period is used. If the occurrence date is unknown, the date is entered as the day it was first discovered by staff, the discharger, or a third party. For deficient or late reports, the occurrence date is the day after the report was due. |
| OEV | Violation of any constituent-specific effluent limitation not included in Group I or Group II. |
| Q | Effluent exceeds limit for quarterly reporting period. |
| S | Effluent exceeds limit for semi-annual reporting period. |
| SIG | Serious violation as defined by Water Code section 13385 (h). Waste discharge exceeds the effluent limitation for a Group I pollutant by 40% or more (CAT1), or a Group II pollutant by 20% or more |

| | |
|-----------------------|--|
| | (CAT2). Also defined by Water Code section 13385.1 as a failure to file a discharge monitoring report pursuant to Water Code section 13383 for each period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations. |
| Violation Description | Narrative description of the violation. |
| Violation ID | Identification number assigned to a violation in CIWQS. |
| Violation Type | Classification of a violation. Two types of violations relate to MMPs: 1) Late Reporting Violations (LREP, DREP) 2) Effluent Violations (ATOX, CTOX, CAT1, CAT2, OEV) |

Exhibit B

ACCEPTANCE OF CONDITIONAL RESOLUTION AND WAIVER OF RIGHT TO HEARING OF THE SETTLEMENT OFFER NO. R9-2019-0043

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), General Dynamics National Steel & Shipbuilding Company (Permittee) hereby accepts the *Offer to Participate in Expedited Payment Program* and waives the right to a hearing before the San Diego Water Board to dispute the allegations of the violation(s) described in the Settlement Offer, which is attached hereto as Exhibit A and incorporated herein by reference.

The Permittee agrees that the Settlement Offer shall serve as a complaint pursuant to Article 2.5 of the Water Code and that no separate complaint is required for the San Diego Water Board to assert jurisdiction over the alleged violation(s) through its Chief Prosecutor. The Permittee agrees to pay the penalties required by Water Code section 13385(h), in the sum of **\$3,000** (Expedited Payment Amount), 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 the Settlement Offer. The Permittee understands that this Acceptance and Waiver waives the Permittee's right to contest the allegations in the Settlement Offer and the amount of civil liability for such violation(s).

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

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

California Regional Water Quality Control Board, San Diego Region
2375 Northside Drive, Suite 100
San Diego, CA 92108-2700
ATTN: 243883:KYaeger

The Permittee understands that federal regulations set forth at title 40 of the Code of Federal Regulations, section 123.27(d)(2)(iii), require the San Diego Water Board to publish notice of and provide at least 30 days for public comment on any proposed resolution of an enforcement action addressing National Pollutant Discharge Elimination System (NPDES) permit violations. Accordingly, this Acceptance and Waiver, prior to execution by the San Diego Water Board, or its delegate, will be published as required by law for public comment.

During the public comment period, if no comments are received that cause the San Diego Water Board, or its delegate, to question the Expedited Payment Amount, the San Diego Water Board, or its delegate, 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 San Diego Water Board to resolve the violation(s) set forth in the Settlement Offer 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 San Diego Water 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 the Acceptance and Waiver is executed by the San Diego Water Board, or its delegate, the full payment required by the deadline set forth below is

a condition of this Acceptance and Waiver. In accordance with Water Code section 13385(n)(1), funds collected for violations of effluent limitations pursuant to section 13385 shall be deposited in the State Water Pollution Cleanup and Abatement Account. Accordingly, the liability shall be paid by a cashier's or certified check for **\$3,000** made out to the "State Water Pollution Cleanup and Abatement Account." Payment must be submitted to the State Water Resources Control Board, Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, CA 95812-1888, no later than thirty (30) calendar days after the date the Permittee receives written notice that the San Diego Water Board, or its delegate, has executed this Acceptance and Waiver. A copy of the check must also be received by the San Diego Water Board at 2375 Northside Drive, Suite 100, San Diego, CA 92108 within thirty (30) days of approval via U.S. Postal Service or e-mail to SanDiego@waterboards.ca.gov, attention 243883:KYaeger.

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.

General Dynamics National Steel & Shipbuilding Company

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| By: |  | <u>3/12/2019</u> |
| | Signed Name | Date |
| | <u>SARIA GIOBBI</u> | <u>MANAGER ENVIRONMENTAL</u> |
| | Printed or Typed Name | Title <u>ENGINEERING</u> |

IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13385.

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|-----|---|-------------------|
| By: |  | <u>3 May 2019</u> |
| | DAVID W. GIBSON | Date |
| | Executive Officer | |