

ORDER NO. R2-2019-1013
ACCEPTANCE OF CONDITIONAL RESOLUTION
AND WAIVER OF RIGHT TO HEARING

M10 Development, LLC
744-750 San Antonio Road, Palo Alto, Santa Clara County
NPDES Permit CAG912002, Regulatory Measure 428903

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the San Francisco Bay Regional Water Quality Control Board (Regional Water Board), M10 Development, LLC (Discharger) hereby accepts the conditional offer to settle an alleged violation through payment of a mandatory minimum penalty and waives the right to a hearing before the Regional Water Board to dispute the alleged violation. The violation is attached to this Acceptance and Waiver as Exhibit A and incorporated 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. The Discharger agrees to pay the penalty authorized by Water Code section 13385, 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 described in Exhibit A. The Discharger understands that this Acceptance and Waiver waives its right under Water Code section 13323 to contest the allegation in Exhibit A and the amount of civil liability assessed for the violation.

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

This Acceptance and Waiver may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. This Acceptance and Waiver may be executed by wet or electronic signature, and may be transmitted by hand, mail service, facsimile, or email. Any such signature shall be deemed to be an original signature and shall be binding to the same extent as if it were an original signature.

Upon execution, the Discharger shall return the Acceptance and Waiver to the following:

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

or

R2NPDES.MMPS@Waterboards.ca.gov

The Discharger understands that federal regulations set forth in Code of Federal Regulations, title 40, 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, prior to execution by the Regional Water Board's Executive Officer, this Acceptance and Waiver will be published for public comment as required by law.

The Discharger understands that the Executive Officer may execute the Acceptance and Waiver if no comments are received within the public notice period and the Executive Officer agrees that the assessment of the mandatory minimum penalty appropriately resolves the alleged violation. The Regional Water Board's resolution of the violation will preclude State Water Resources Control Board (State Water Board) action for the same violation.

The Discharger understands that the offer may be withdrawn if significant comments are received in opposition to the conditional offer. In that circumstance, Regional Water Board staff will advise the Discharger of the withdrawal and may issue an administrative civil liability complaint and schedule the matter for a hearing before the Regional Water Board or State Water Board.

The Discharger understands that funds collected for violations pursuant to Water Code section 13385 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 toward a supplemental environment project (SEP). The SEP option is the SEP Fund, which supplements Regional Monitoring Program (RMP) studies that would not otherwise be conducted through the RMP's annually approved RMP cost allocations.

The Discharger agrees to pay the amounts indicated below to the State Water Pollution Cleanup and Abatement Account and, if chosen, the SEP Fund. The Discharger understands that the Regional Water Board will consider the Discharger to have fulfilled any SEP obligation if and when the San Francisco Estuary Institute receives the Discharger's contribution to the SEP Fund. (Place a "✓" or "✗" in one box below and fill in the blanks as appropriate. Electing to pay a portion of the assessed liability to the SEP Fund will not change the total amount to be paid.)

- Pay a portion of the assessed liability to the RMP SEP Fund:
- \$ _____ Amount to be paid to the SEP Fund (cannot exceed \$3,000)
- \$ _____ Amount to be paid to the State Water Pollution Cleanup and Abatement Account (\$3,000 minus amount inserted above)
- \$ 3,000 Total assessed mandatory minimum penalty (sum of amounts above).

Or

- Pay the total assessed mandatory minimum liability (\$3,000) to the State Water Pollution Cleanup and Abatement Account.

The Discharger understands that once the Regional Water Board's Executive Officer executes this Acceptance and Waiver, payment no later than 30 days after the date of the Executive Officer's signature is a condition of this Acceptance and Waiver. The Discharger shall pay the assessed civil liability to the State Water Pollution Cleanup and Abatement Account and/or San Francisco Estuary Institute (for the SEP Fund) as selected above. The State Water Board will send

Acceptance of Conditional Resolution and Waiver of Right to Hearing
M10 Development, LLC
Regulatory Measure: 428903

an invoice for any payment due to the State Water Pollution Cleanup and Abatement Account. The Regional Water Board will send an invoice for any payment due to the SEP Fund.

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.

M10 Development, LLC

| | |
|----------------------------|---------------------------------|
| By: <u>Frank Maskevicz</u> | <u>Director of Construction</u> |
| Printed or typed name | Title |
| <u>[Signature]</u> | <u>4-9-19</u> |
| Signature | Date |

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

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

| | |
|--|----------------|
| By: _____ | <u>5/16/19</u> |
| Michael Montgomery Executive Officer California Regional Water Quality Control Board San Francisco Bay Region | Date |

EXHIBIT A
Notice of Violation

Discharger: M10 Development, LLC
744-750 San Antonio Road, Palo Alto, Santa Clara County
NPDES Permit CAG912002

The following table lists the alleged violation for which the Discharger is subject to civil liabilities pursuant to Water Code section 13385. The table lists the mandatory minimum penalty (MMP) that applies.

| CIWQS Violation ID No. | Violation Date | Parameter (Unit) | Group | Effluent Limitation | Reported Value | Percent Exceedance ¹ | Violation Type | MMP ² |
|------------------------|----------------|---|-------|---------------------|----------------|---------------------------------|----------------|------------------|
| 1055297 | 11/26/2018 | Methyl Tert-butyl Ether, Maximum Daily (µg/L) | 2 | 5.0 | 6.6 | 32 | C1, S | \$3,000 |
| Total | | | | | | | | \$3,000 |

Legend:

CIWQS = California Integrated Water Quality System database that the Water Boards use to track violations and enforcement.

Violation ID = Identification number assigned to each permit violation within CIWQS.

C = Count – Number of violations within past 180 days, including this violation. A penalty applies under Water Code section 13385(i) when the count is greater than three (> C3).

S = Serious. A penalty applies under Water Code section 13385(h) whenever an effluent limitation is exceeded by 40 percent or more for a Group 1 pollutant or 20 percent or more for a Group 2 pollutant.

Notes:

1. Percent that a discharger’s reported value exceeds the effluent limitation for a Group 2 pollutant.
2. The MMP required under Water Code section 13385(h).

CIWQS Place ID: 846150
WDID: 2_43NPG420731