



Santa Ana Regional Water Quality Control Board

January 18, 2024

Dynacast Inc.
25952 Commercentre Drive
Lake Forest, CA 92630
(Via Certified Mail)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Richard Wilby
rwilby@dynacast.com
(Via Email)

CONDITIONAL SETTLEMENT OFFER NO. R8-2024-0009 TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM RELATING TO VIOLATIONS OF THE GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITIES (ORDER NO. 2014-0057-DWQ, NPDES NO. CAS000001), FOR DYNACAST INC., 25952 COMMERCENTRE DRIVE, LAKE FOREST, WQID NO. 8 301014348

Dear Mr. Wilby,

This letter is to notify Dynacast Inc., (hereinafter "Discharger" or "you") of alleged violations, subject to Mandatory Minimum Penalties (MMPs) pursuant to the California Water Code (Water Code) section 13385, identified in the State Water Resources Control Board's water quality data system and to allow the Discharger an opportunity to participate in the Santa Ana Regional Water Quality Control Board's (Santa Ana Water Board) Expedited Payment Program to address these MMPs.

NOTICE OF VIOLATION:

Based on information in the Stormwater Multiple Application & Report Tracking System (SMARTS), the Santa Ana Water Board Prosecution Team (Prosecution Team) alleges that the Discharger is in violation of the General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ as amended by Order No. 2015-0122-DWQ and Order No. 2018-0028-DWQ, National Pollutant Discharge Elimination System (NPDES) Permit No. CAS000001 (Industrial General Permit), for exceedances of the Total Maximum Daily Load (TMDL) Numeric Effluent Limits (NELs), found in Attachment E, for the facility located at 25952 Commercentre Drive in the City of Lake Forest. The Discharger will have the opportunity to address the alleged violations as discussed below.

KRISTINE MURRAY, CHAIR | JAYNE JOY, EXECUTIVE OFFICER

STATUTORY LIABILITY:

Pursuant to Water Code section 13385, subdivisions (h) and (i), the Discharger is subject to an MMP of three thousand dollars (\$3,000) for specified serious and chronic violations as defined by statute. For the purposes of subdivision (h) of section 13385, the 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 may also be subject to discretionary administrative civil liabilities of up to ten thousand dollars (\$10,000) for each day in which the violation occurs. Any discretionary administrative civil liabilities may be assessed by the Santa Ana Water Board beginning with the date on which that violation(s) first occurred. The formal enforcement action that the Santa Ana Water Board uses to assess such liability is an administrative civil liability complaint (ACLC), although the Santa Ana Water 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.

Dischargers enrolled in the Industrial General Permit and located in a watershed with an applicable TMDL, may be subject to NELs as articulated in Attachment E and as presented in Attachment C of the Industrial General Permit as follows: *"Responsible Discharger shall compare all sampling and analytical results from each distinct sample (individual or combined as authorized by XI.C.5) to the corresponding instantaneous maximum NEL values in the TMDL Compliance Table E-2."* The Industrial General Permit, Attachment C, provides that *"an instantaneous maximum NEL exceedance occurs when two (2) or more analytical results, from samples collected for any single parameter within a reporting year, exceed the instantaneous maximum NEL value."* In order to determine compliance with applicable NELs, Santa Ana Water Board staff has reviewed sampling data submitted by you to SMARTS and has determined that MMPs apply to your facility for the 2021-2022 reporting year.

DISCHARGER'S OPTIONS FOR RESPONSE TO OFFER:

You have two options to respond as outlined below.

1. **Accept the Conditional Settlement Offer**, waive your right to a board hearing, and pay a settlement of **three thousand dollars (\$3,000)**. The minimum administrative civil liability pursuant to Water Code section 13385 is \$3,000 for each specified serious or chronic violation. This is a Conditional Settlement Offer subject to certain terms and conditions set forth below. If you choose this option, **you must sign and submit the enclosed Acceptance and Waiver form by February 16, 2024**. The form provides submittal instructions. Final closure on this action is only possible after ultimate submission of the settlement amount.

Please submit an original (blue ink) signed Acceptance and Waiver form to:

Kaitlin Diaz, General Stormwater Unit
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348

In response to the Conditional Settlement Offer and payment in settlement of this enforcement action, the Prosecution Team will forego 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 violations identified.

2. **Contest the alleged violations** by submitting, in writing, the basis of your challenge with supporting evidence. If you choose this option, you must **submit your written documentation by February 16, 2024**. The Prosecution Team will review your submission, and if we agree with you, we will notify you in writing that our enforcement action has been terminated. All responses should be directed to Kaitlin Diaz.

If you do not respond in a manner described in the above options, the Prosecution Team will prepare an ACLC for the violations. The liability amount sought in the ACLC and/or imposed by the Santa Ana Water Board may be higher than the liability amount set forth in this Conditional Settlement Offer. Moreover, additional staff costs associated with formal enforcement may be considered in the recommended liability amount in an ACLC.

CONDITIONS FOR SANTA ANA WATER BOARD ACCEPTANCE OF RESOLUTION:

If you accept Conditional Settlement Offer, the settlement will be published in the following manner: Federal regulations require the Santa Ana Water Board to publish notice of, and to provide at least thirty (30) days for public 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 Discharger's Acceptance and Waiver and other requested technical reports on or before **February 16, 2024**, Santa Ana Water Board staff will publish a notice of the proposed settlement of the alleged violations.

If no comments are received within the notice period, the Santa Ana Water Board Executive Officer will execute the Acceptance and Waiver as a stipulated order assessing the MMP amount pursuant to Water Code section 13323. You will then be notified that payment is due within 30 days. Failure to pay the administrative civil liability within that time frame may result in further enforcement including referral of the matter to the Attorney General, and/or may void the offer to participate in this Expedited Payment Program.

If, however, significant comments are received in opposition to the settlement, this offer may be withdrawn. In that case, the Discharger's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn, and the violations will be addressed through a formal enforcement action.

This Conditional Settlement Offer does not address or resolve liability for any violation that is not specifically identified. The Santa Ana Water Board reserves the right to pursue formal enforcement of any violations not specifically cited.

Should you have any questions about this Conditional Settlement Offer, please contact Kaitlin Diaz via email at Kaitlin.Diaz@waterboards.ca.gov or via phone at (951) 782-4992.

Sincerely,



Eric Lindberg, P.G., C.H.G.
Assistant Executive Officer
Santa Ana Water Board Prosecution Team

enclosures: Appendix 1 (Tables 1-2)
Acceptance of Conditional Resolution and Waiver of Right to a Board
Hearing; (proposed) Order

APPENDIX 1

DETERMINATION OF MMPS BASED ON DISCHARGER SPECIFIC TMDL NEL EXCEEDANCES

Table 1: Applicable TMDL requirements for specified parameters that exceeded NELs, as referenced from Attachment E of the General Permit that includes all TMDL requirements.

| TMDL | Impaired Waterbody / Watershed | Pollutants | Additional TMDL-related NELs | Pollutant Category | Required Actions |
|---|--------------------------------|-------------|--|--------------------|--|
| San Diego Creek and Newport Bay Toxics TMDL | San Diego Creek Watershed | Copper (Cu) | Total Copper Instantaneous Maximum NEL of 0.027 mg/L | 2 | In addition to complying with this General Permit, Responsible Dischargers shall take QSE samples in accordance with Section XI.B of the General Permit and shall compare the results to the corresponding TMDL NEL. Sample, collection, and reporting shall be conducted in accordance with Section XI.B. |
| | | Zinc (Zn) | Total Zinc Instantaneous Maximum NEL of 0.21 mg/L | 2 | |

Table 2: TMDL applicable sampling data and MMP determination for the 2021-2022 Reporting Period based on NEL exceedances.¹

| Discharge Location | Sample Collection Date | Parameter | Result (mg/L) | NEL (mg/L) | Serious MMP Applies? | Count Toward Chronic | Chronic MMP Applies? | Mandatory Minimum Penalty (MMP) |
|---------------------------------------|------------------------|---------------|---------------|------------|----------------------|----------------------|----------------------|---------------------------------|
| Location 1 | 10/4/2021 | Zinc, Total | 0.663 | 0.21 | No | N/A | No | - |
| Location 2 | 10/4/2021 | Copper, Total | 0.0473 | 0.027 | No | N/A | No | - |
| Location 2 | 10/4/2021 | Zinc, Total | 1.44 | 0.21 | No | N/A | No | - |
| Location 2 | 12/14/2021 | Zinc, Total | 0.328 | 0.21 | Yes | 1 | No | \$3,000 |
| Location 1 | 3/28/2022 | Zinc, Total | 0.238 | 0.21 | No | 1 | No | - |
| Location 2 | 3/28/2022 | Zinc, Total | 0.243 | 0.21 | No | 2 | No | - |
| Total MMP for NEL Exceedances: | | | | | | | | \$3,000 |

¹ It is stated in Water Code section 13385, subdivision (h)(2) that a serious violation occurs when a discharger violates effluent limitations contained in the applicable waste discharge requirements by 20 percent or more for a Group II pollutant and 40 percent or more for a Group I pollutant. Pursuant to Water Code section 13385, subdivision (i), a chronic violation is assessed when a discharger violates an effluent limitation four or more times in a six-month period. Water Code sections 13385 and 13385.1, further identify that the Discharger is subject to a MMP of three thousand dollars (\$3,000) for specified serious and chronic violation.



Santa Ana Regional Water Quality Control Board

ACCEPTANCE OF CONDITIONAL RESOLUTION AND WAIVER OF RIGHT TO A BOARD HEARING: (Proposed) ORDER

Dynacast Inc.
Settlement Offer No. R8-2024-0009

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to a Board Hearing (Acceptance and Waiver) to the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board), Dynacast Inc. (Discharger) hereby accepts the "Offer to Participate in Expedited Payment Program" and waives the right to a hearing before the Santa Ana Water Board to dispute the violations pursuant to California Water Code section 13385.

The Discharger agrees that the Conditional Settlement Offer shall serve as a complaint pursuant to Article 2.5 of the California Water Code and that no separate complaint is required for the Santa Ana Water Board to assert jurisdiction over the alleged violations through its Chief Prosecutor. The Discharger agrees to pay the administrative civil liability authorized by California Water Code section 13385, in the sum of \$3,000 (Expedited Payment Amount) which shall be deemed payment in full of any civil liability pursuant to California Water Code section 13385 that otherwise might be assessed for the violations described.

The Discharger understands that this Acceptance and Waiver waives its right to contest the violations and the amount of civil liability for such violations. The Discharger understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified.

Upon Execution by the Discharger, submit the completed Acceptance and Waiver to:

Kaitlin Diaz, General Stormwater Unit
Conditional Settlement Offer
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501

The Discharger understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Santa Ana Water 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, this Acceptance and Waiver, prior to execution by the Santa Ana Water Board Executive Officer, will be published as required by law for public comment.

KRISTINE MURRAY, CHAIR | JAYNE JOY, EXECUTIVE OFFICER

If no comments are received within the notice period, the Prosecution Team will present this Order to the Santa Ana Water Board Executive Officer to execute the Acceptance and Waiver.

The Discharger understands that if significant comments are received in opposition to the Conditional Settlement Offer, the offer on behalf of the Santa Ana Water Board to resolve the violations may be withdrawn. In that circumstance, the Discharger will be advised of that withdrawal, and an administrative civil liability complaint may be issued, and the matter may be set for a hearing before the Santa Ana Water Board. In the event that this matter proceeds to 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 further understands that once this Acceptance and Waiver is executed by the Santa Ana Water Board Executive Officer, the full payment required by the deadline set forth below is a condition of this Acceptance and Waiver. In accordance with California Water Code section 13385, subdivision (n) funds collected for violations pursuant to section 13385 shall be deposited in the Cleanup and Abatement Account, the \$3,000 liability shall be paid by a cashiers or certified check made out to the "State Water Resources Control Board" referencing this Order number for deposit into the Cleanup and Abatement Account. The payment must be submitted to the State Water Resources Control Board no later than thirty (30) calendar days after the date the Acceptance and Waiver is executed by the Santa Ana Water Board Executive Officer.

Please mail check to:

State Water Resources Control Board
Re: Order No. R8-2024-0009
Division of Administrative Services, Accounting Branch
P.O. Box 1888
Sacramento, CA 95812-1888



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.

Dynacast Inc.
By: [Signature] 2/7/24
(Signed Name) (Date)
Fabien Desormeau Operations Manager
(Printed or Typed Name) (Title)

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

By: _____
Jayne E. Joy, P.E.
Executive Officer

9589 0710 5270 0884 0704 79

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

OFFICIAL USE

Certified Mail Fee

\$

Extra Services & Fees (check box, add fee as appropriate)

- Return Receipt (hardcopy) \$ _____
- Return Receipt (electronic) \$ _____
- Certified Mail Restricted Delivery \$ _____
- Adult Signature Required \$ _____
- Adult Signature Restricted Delivery \$ _____

Postmark
Here

Postage

DYNACAST INC
25952 COMMERCENTRE DRIVE
LAKE FOREST CA 92630