



California Regional Water Quality Control Board

San Francisco Bay Region



Linda S. Adams
Secretary for
Environmental Protection

1515 Clay Street, Suite 1400, Oakland, California 94612
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<http://www.waterboards.ca.gov/sanfranciscobay>

Arnold Schwarzenegger
Governor

August 10, 2009
CIWQS Place ID: 211358 (CV)

City of Benicia
Benicia Water Treatment Plant
Attn.: Mr. Scott Rovenpera, Superintendent
100 Water Way
Benicia, CA 94510

Subject: Amended Offer to Participate in Expedited Payment Program Relating to Violations of NPDES Permit, City of Benicia Water Treatment Plant located at 100 Water Way, Solano County, CA 94510, Order No. R2-2003-0062, NPDES Permit No. CAG382001 (Order)

Dear Mr. Rovenpera:

This letter amends the original offer letter dated June 30, 2009. Water Board staff is dismissing CIWQS Violation No. 794742 for submitting the 2008 Annual Self-Monitoring Report (SMR) past its due date. However, we are adding one violation for late submittal of a five-day report of the December 11, 2007, discharge. As a result of these amendments, the overall penalty will be reduced from \$54,000 to \$39,000.

In the City's response dated July 22, 2009, it provided more detail about a report the City submitted on January 23, 2008, for the dewatering of the City's chlorine contact tank on December 11, 2007. You stated that this report, although incomplete, was submitted prior to the due date. The Water Board agrees that this report meets the Order's SMR requirements for the purposes of Water Code Section 13385.1 since the discharge reported was the only discharge that occurred during the April 1, 2007, to March 31, 2008, monitoring period. Therefore, Water Board staff is not proposing a mandatory minimum penalty of \$18,000 for late submittal of the 2008 Annual SMR.

However, as previously stated in our notices of violation to the City, the City must improve its practice by submitting regular annual SMRs as required by the Order. The annual SMRs must contain all required information and certification, and must be submitted on or before the required due dates. Future failure to submit complete annual SMRs may subject the City to discretionary penalties by the Water Board.

Additionally, upon further review of the case, Water Board staff has determined that the City failed to submit a report within five (5) days of the December 11, 2007, 52,300 gallons discharge. Section IV.1 of the Order requires the City to report any non-routine discharge over 50,000 gallons of non-chlorinated water to Water Board staff by telephone within 24-hours, and

to provide a written report within five (5) days after the telephone report. Our records show that the City did not contact Water Board staff within 24-hours of the discharge and did not submit the five-day report until January 23, 2008, 37 days past the due date. Water Board staff is thus proposing a mandatory minimum penalty of \$3,000 for failure to submit the five-day report as required in Section IV.1 of the Order.

Attached are the Acceptance of Conditional Resolution and Waiver of Right to Hearing and the Amended Exhibit "A". Please sign the waiver and return both attachments by August 24, 2009.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Mumley', written in a cursive style.

Thomas E. Mumley
Assistant Executive Officer

Enclosures: (A) Acceptance of Conditional Resolution
(B) Amended Exhibit "A" - Notice of Violation

**ACCEPTANCE OF CONDITIONAL RESOLUTION
AND WAIVER OF RIGHT TO HEARING**

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 Benicia (City) 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 City agrees that the NOV 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 violations through its Assistant Executive Officer. The City agrees to pay the penalties authorized by California Water Code section 13385, 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 City 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.

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

Expedited Payment Program
California Regional Water Quality Control Board
San Francisco Bay Region
Attn: Claudia Villacorta
1515 Clay Street, Suite 1400
Oakland, California 94612

The City 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 Assistant 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 Assistant Executive Officer of the Regional Water Board to reconsider the Expedited Payment Amount, the Executive Director will execute the Acceptance and Waiver. Resolution of these violations by the Regional Water Board will preclude State Water Board action for these same violations.

The City understands that if significant comments are received in opposition to the Expedited Payment Amount, the offer on behalf of the Regional Water Board to resolve the violations set forth in the NOV may be withdrawn. In that circumstance, the City 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 Quality Control Board or the State Water Board. For such a liability hearing, the City understands that this Acceptance and Waiver executed by the City will be treated as a settlement communication and will not be used as evidence in that hearing.

The City understands that once the Acceptance and Waiver is executed by the Assistant Executive Officer of the Regional Water Board, payment of the amount in full no later than 30 days after the date of the Assistant Executive Officer's signature is a condition of this Acceptance and Waiver. The City must submit its payment in full by check made out to "California Regional Water Quality Control Board" and sent to the address indicated above, together with a copy of this Acceptance and Waiver after execution by the Assistant Executive Officer.

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

City of Benicia

By: James R. Erickson
(Signed Name)

08/18/09
(Date)

James R. Erickson
(Printed or typed name)

APPROVED AS TO FORM
James R. Erickson
CITY ATTORNEY

City Manager
(Title)

IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13385

By: _____
Thomas E. Mumley
Assistant Executive Officer
Regional Water Quality Control Board

Note to Discharger: Please return the signed waiver and Amended Exhibit "A", together

Amended Exhibit "A"
 City of Benicia

100 Water Way, Benicia, Solano County, CA 94510

(Discharges to Sulphur Springs Creek)

NOTICE OF VIOLATION (15 May 2006 – 15 May 2008)
MANDATORY MINIMUM PENALTIES WITHOUT ENFORCEMENT

The following table lists this facility's alleged violations of California Water Code (CWC) Sections 13385(h) and (i) during the May 15, 2005, through May 15, 2008, period, which have not received mandatory minimum penalty (MMP) assessment by the Regional Water Board. Final calculation of MMP amounts owed, and descriptions of the abbreviations that appear in the table are also listed in the table below.

No	Date Report Submitted	Date Report Due	Days Report may be late without Penalty	Total Days Late/ Number of 30-day Periods Late	Number of Violations	Type of Violations	CWC Sections 13385(h) Required MMP
1	06/06/2007	05/15/2006	29	388/12	12	S	\$36,000
2	06/06/2007	05/15/2007	29	22/0	0	--	--
3	01/23/2008	12/17/2007	29	37/1	1	S	\$3,000
Total							\$39,000
<p>Legend for Table 1: S = Under Water Code Section 13385.1 (a) (1), a "serious violation" means a 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, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations.</p>							