



**California Regional Water Quality Control Board
Central Coast Region
Enforcement Unit**



Linda S. Adams
*Secretary for
Environmental Protection*

895 Aerovista Place, Suite 10J, San Luis Obispo, California 93401-7906
(805) 549-3147 • Fax (805) 543-0397
<http://www.waterboards.ca.gov/centralcoast>

Arnold Schwarzenegger
Governor

October 26, 2009

Kevin Silviera
City of Watsonville
P.O. Box 50000
Watsonville, CA 95077

Via Certified Mail
7008 1140000347087493

**NO. R3-2009-0073, OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM
RELATING TO VIOLATIONS OF NPDES PERMIT, WATSONVILLE WWTP, 401
PANABAKER, WATSONVILLE, CA 95077 (WDR ORDER NO. R3-2008-0016, NPDES
NO. CA0048216, WOID NO.3 440104001)**

Dear Mr. Silviera:

This letter is to notify Watsonville WWTP (hereinafter "Permittee" or "you") of alleged violations of the California Water Code identified in the Central Coast Regional Water Quality Control Board's (Central Coast Water Board) water quality data system and to allow the Permittee to participate in the Central Coast Water Board's Expedited Payment Program to address liability which may be assessed pursuant to Water Code sections 13385 and 13385.1.

NOTICE OF VIOLATION:

Based on information in the California Integrated Water Quality System (CIWQS) as of October 22, 2009, the Central Coast Water Board's Assistant Executive Officer alleges that the Permittee has violated the effluent limitations, reporting violations, or Water Code provisions identified in the Notice of Violation (NOV) attached as Exhibit "A." The Permittee will have the opportunity to address the alleged violations as discussed below.

STATUTORY LIABILITY:

Subdivisions (h) and (i) of California Water Code section 13385 require the assessment of a Mandatory Minimum Penalty of \$3,000 for specified serious and chronic effluent limit violations. The Permittee is also potentially subject to discretionary administrative civil liabilities of up to ten thousand dollars (\$10,000) for each day in which the violation occurs, plus ten dollars (\$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 a Regional Water Quality Control Board (Regional Water Board) or the State Water Board (collectively "the Water Boards"), beginning with

the date that the violations first occurred¹. The formal enforcement action that the Water Boards use to assess such liability is an administrative civil liability complaint, 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 twenty-five thousand dollars (\$25,000) per violation. In addition, the Superior Court may assess up to twenty-five dollars (\$25) per gallon discharged but not cleaned up in excess of 1,000 gallons.

OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM:

The Permittee can avoid the issuance of a formal enforcement action and settle the alleged violations identified in the attached NOV by participating in Central Coast Water Board's Expedited Payment Program. Details of the proposed settlement are described below and addressed in the enclosed documents.

To promote resolution of these violations, the Central Coast Water Board enforcement staff makes this Conditional Offer. The Permittee may accept this offer, *waive* the Permittee's right to a hearing, and pay the mandatory minimum penalty as indicated on Exhibit A, for the violations described in the NOV. If the Permittee elects to do so, subject to the conditions below, the Central Coast Water Board will accept that payment in settlement of any enforcement action that would otherwise arise out of the violations identified in the Notice of Violation.' Accordingly, the Central Coast Water Board enforcement staff will forego issuance of a formal administrative complaint, will not refer the violations to the Attorney General, and will waive its right to seek additional discretionary civil liabilities for the violations identified in the Notice of Violation.

The Expedited Payment Program does not address liability for any violation that is not specifically identified in the Notice of Violation.

PERMITTEE'S OPTIONS FOR RESPONSE TO OFFER:

If you accept *this* offer, please complete and return the enclosed "Acceptance of Conditional Resolution and Waiver of Right to Hearing, (proposed) Order" (Acceptance and Waiver) on or before November 30, 2009. The Acceptance and Waiver will be held, pending a 30-day public notice period, and then will be counter-signed by the Executive Officer and returned to you with an invoice for payment.

If you contest some but not all, of the violations identified in the attached Notice of Violation, the Permittee may elect to reserve the right to address the contested matters

¹ Please note that there are no statutes of limitation that apply to administrative proceedings 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.) The Permittee has not been substantially prejudiced by the passage of time between the date(s) that Permittee reported the violations identified on Exhibit A and the date of this . The Permittee was aware of the violations at the time it reported them to the Regional Board, Regional Board staff's limited enforcement resources and competing enforcement priorities provide a rational explanation for the delay. In fact, the delay has actually benefited the Permittee because it extended the time before payment of the mandatory minimum penalties is due. For these reasons, any delay is not unreasonable,

penalty for each uncontested violation. If the Permittee chooses this option, please communicate with the staff contact identified below to discuss the mechanism for memorializing that election on or before the due date.

If the Permittee chooses to contest any of the violations alleged in the Notice of Violation, please identify the specific violation and the basis for the challenge (factual error, affirmative defense, etc.) on or before the due date. Central Coast Water Board staff will evaluate the contested violation and take one of two actions:

- 1) Central Coast Water Board staff will determine that the violation is not supported, expunge the alleged violation from the CIWQS database, take no further action against the Permittee for the alleged violation, and notify the Permittee of that determination;
- 2) Central Coast Water Board staff will determine that the alleged violation is validated, and will notify the Permittee of that determination. The Permittee will be given 30 days from the date of receipt of the Water Board staff determination to submit a supplemental Expedited Payment for violations. If the Permittee chooses not to make a payment in response to the determination, the Permittee should expect to be contacted regarding formal enforcement action that will be initiated with regard to the contested violations. In a formal enforcement action, the liability amount sought and/or imposed may exceed the liability amount set forth in this Conditional Offer. Moreover, the cost of enforcement is a factor which can be considered in assessing the liability amount.

CONDITIONS FOR WATER BOARD ACCEPTANCE OF RESOLUTION:

Federal regulations require the Central Coast Water Board to publish and allow the public 30 days to comment on any settlement of an enforcement action addressing NDPEs permit violations (40 C.F.R. section 123.27(d)(2)(iii)). Upon receipt of the Permittee's Acceptance and Waiver, Central Coast Water Board enforcement staff will publish a notice of the proposed resolution of the violations.

If no comments are received within the 30-day period, and unless there are new material facts that become available to the Central Coast Water Board, the Executive Officer will execute the Acceptance and Waiver as a stipulated order assessing the mandatory minimum penalty amount pursuant to Water Code section 13385.

If, however, significant comments are received in opposition to the settlement, this Offer may be withdrawn. In that case, the Permittee's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. In that case, the unresolved violations will be addressed in a liability assessment proceeding. At the liability assessment hearing the Permittee will be free to make arguments as to any of the alleged violations, and the Permittee's agreement to accept this conditional 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 Executive Officer, payment of the assessed amount shall be due and payable to the Central Coast Water Board as specified on the invoice that will accompany the Permittee's receipt of the notice of the Executive Officer's execution. The payment period is 30 days. Failure to pay the penalty within the required time period may subject the Permittee to further liability.

OPPORTUNITY FOR SUPPLEMENTAL ENVIRONMENTAL PROJECT OR COMPLIANCE PROJECT IN LIEU OF ADMINISTRATIVE LIABILITY

In lieu of the payment of all or a portion of the mandatory minimum penalties, the Permittee may be able to fund a supplemental environmental project as defined in the State Water Board's Enforcement Policy or a compliance project pursuant to Water Code section 13385(k) if it can demonstrate status as a publicly owned treatment works serving a small community with a financial hardship. If the Permittee wishes to discuss either of these options, please speak with the contact person identified in this correspondence.

CONTACT PERSON

Should you have any questions about the Notice of Violation or the Conditional Offer, please contact Sandy Cheek at (805) 542-4633 regarding this matter.

Sincerely,



Michael J. Thomas
Assistant Executive Officer

Encl. - Exhibit "A" - Notice of Violation
Acceptance of Conditional Resolution
and Waiver of Right to Hearing; (Proposed) Order

Exhibit "A"

City of Watsonville Watsonville WWTP

NOTICE OF VIOLATIONS (1 January 2008 - 30 September 2009) MANDATORY MINIMUM PENALTIES WITHOUT ENFORCEMENT

The Enforcement Staff of the Regional Water Quality Control Board, Central Coast Region has reviewed information submitted by this facility to determine whether the discharger is subject to mandatory minimum penalties (MMPs) pursuant to subdivisions (h) and (i) of California Water Code section 13385. The following table lists this facility's alleged violations of subdivisions (h) and (i) of California Water Code section 13385, January 1, 2008, through September 30, 2009, which have not been subjected to the assessment of MMPs by the Water Board. Final calculation of MIV1P amounts owed and descriptions of the abbreviations that appear in the table are also listed below. For additional information about the alleged violations listed in the table, please refer to the SWRCB Public Reports webpage http://www.waterboards.ca.gov/water_issues/programs/ciwqs/publicreports.shtml; choose the "MMP Report" link located under the "Enforcement Reports" category. Once in the Public Reports search page, enter the search criteria that correspond to your facility to access the list of violations.

Violation ID	Occurred Date	Type	MMP Type	Violation Description
753190	1/15/2008	CAT2	Serious	Chlordane limit is .002 ug/L and reported value was .21 ug/L.

Mandatory Minimum Penalty Amount Owed for Effluent Violations

(1 Serious Violation + 0 Non-Serious Violations) x \$3,000 = \$3,000 to the Cleanup & Abatement Account

Mandatory Minimum Penalty Amount Owed for Reporting Violations

(0 Late Reporting Violations + 0 Deficient Reporting Violations) x \$3,000 = \$0 to the Cleanup & Abatement Account

Definition of Acronyms & Abbreviations

CIWQS	California Integrated Water Quality System database used by the Water Boards to manage violation and enforcement activities.
Violation ID	Identification number assigned to a violation in CIWQS.
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.
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)
LREP	Late reporting violation. Every 30 days a report is late counts as one late reporting violation.
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.
DMR	Discharge Monitoring Report
ATOX	Violation of an acute toxicity effluent limitation.
CTOX	Violation of a chronic toxicity effluent 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%.
OEV	Violation of any constituent-specific effluent limitation not included in Group I or Group II.
MMP	mandatory minimum penalty
MMP Type	Classification of the type of MMP violation.
CHRON	Chronic violation as defined by California 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.
SIG	Serious violation as defined by California 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 California Water Code section 13385.1 as a failure to file a discharge monitoring

	report pursuant to 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.
M	Effluent exceeds limit for monthly reporting period.
Q	Effluent exceeds limit for quarterly reporting period.
S	Effluent exceeds limit for semi-annual reporting period.
A	Effluent exceeds limit for annual reporting period.
IM	Effluent exceeds instantaneous maximum limitation.
OM	Effluent exceeds daily maximum limitation.
AW	Effluent exceeds average weekly limitation.
AM	Effluent exceeds average monthly limitation.
2Q	2 ^{na} Quarter

Expedited Payment Letter R3-2009-0073
NPDES Permit No. R3-2008-0016

**ACCEPTANCE OF CONDITIONAL RESOLUTION
AND WAIVER OF RIGHT TO HEARING; (proposed) ORDER**

WATSONVILLE WWTP
EPL R3-2009-0073
NPDES Permit No. R3-2008-0016

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the Central Coast Regional Water Quality Control Board (Central Coast Water Board), Watsonville WWTP (Permittee) hereby accepts the "Offer to Participate in Expedited Payment Program" and waives the right to a hearing before the Central Coast 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 Permittee 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 Central Coast Water Board to assert jurisdiction over the alleged violations through its Enforcement Staff. The Permittee agrees to pay the penalties authorized by California Water Code section 13385, as indicated on the attached invoice (Expedited Payment Amount), 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 Permittee understands that once the Acceptance and Waiver is executed by the Executive Officer of the Central Coast Water Board, the full payment required by the deadline set forth on the attached invoice is a condition of this Acceptance and Waiver. The Permittee shall pay the Expedited Payment Amount by check payable to the SWRCB Cleanup and Abatement Account, with the NPDES number noted on the check. The payment shall be submitted to the Central Coast Water Board as specified on the enclosed invoice.

The Permittee 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 Permittee, the Acceptance and Waiver shall be returned to:

Harvey Packard
Enforcement Coordinator
Central Coast Water Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

Expedited Payment Letter R3-2009-0073
NPDES Permit No. R3-2008-0016

The Permittee understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Central Coast Water Board to publish notice of and provide at least 30 days for public comment on any proposed resolution of this enforcement action. Accordingly, this Acceptance and Waiver, prior to execution by the Executive Officer of the Central Coast Water Board, will be published as required by law for public comment.

If no comments are received within the notice period that cause the Executive Officer to reconsider the Expedited Payment Amount, the Executive Officer will execute the Acceptance and Waiver.

The Permittee understands that if significant comments are received in opposition to the Expedited Payment Amount, the Central Coast Water Board Enforcement Staff's offer to resolve the violations set forth in the NOV 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 Central Coast 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 understands that once the Acceptance and Waiver is executed by the Executive Officer of the Central Coast Water Board, the full payment required by the deadline set forth on the attached invoice is a condition of this Acceptance and Waiver.

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.

(Name of Permittee)

By:

(Signed Name)

—

(Date)

(Printed or typed name)

(Title)

Expedited Payment Letter R3-2009-0073
NPDES Permit No. R3-2008-0016

IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13385

Date: _ _ - _ -

By: _____
Roger W. Briggs ,
Executive Officer
Central Coast Regional Water Quality Control Board