
Central Valley Regional Water Quality Control Board

22 May 2020

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OFFER TO PARTICIPATE IN THE EXPEDITED PAYMENT LETTER PROGRAM RELATING TO ADMINISTRATIVE CIVIL LIABILITY R5-2020-0523 FOR ASSESSMENT OF MANDATORY MINIMUM PENALTIES, CITY OF MODESTO WATER QUALITY CONTROL FACILITY AND CITY OF TURLOCK REGIONAL WATER QUALITY CONTROL FACILITY, STANISLAUS COUNTY

The City of Modesto and the City of Turlock (Dischargers) discharge treated wastewater from their Water Quality Control Facilities (Facilities), which are regulated by Waste Discharge Requirements (WDRs) Order R5-2016-0010 (NPDES CA0085316). The WDRs regulate the surface water discharge from the Facilities to the Delta-Mendota Canal via the North Valley Regional Recycled Water Program Joint Outfall. This Offer to Participate in the Central Valley Regional Water Quality Control Board's (Central Valley Water Board's) Expedited Payment Letter (EPL) Program (Conditional Offer) provides the Dischargers with an opportunity to resolve mandatory minimum penalties for alleged NPDES permit violations without a formal administrative civil liability complaint. The alleged mandatory minimum penalty, in the amount of **eighteen thousand dollars (\$18,000)**, represents the sum of accrued mandatory minimum penalties for the effluent limitation violation specifically identified in the Record of Violations (Attachment A), attached hereto and incorporated herein by reference, that occurred between 1 April 2016 through 31 January 2020.

NOTICE OF VIOLATION AND RECORD OF VIOLATIONS

Based on the City of Modesto's self-monitoring reports, the Central Valley Water Board Prosecution Team sent the Dischargers a Notice of Violation and Record of Violations (ROV) on 23 March 2020 notifying the Dischargers of effluent limit violations, reporting violations, and corresponding violations of the California Water Code. The Central Valley Water Board Prosecution Team provided the Dischargers with an opportunity to review and contest the violations listed in the attached ROV. Following the Dischargers'

KARL E. LONGLEY SCD, P.E., CHAIR | PATRICK PULUPA, ESQ., EXECUTIVE OFFICER

review of the ROV, the Central Valley Water Board Prosecution Team confirmed that the violations listed in the ROV are subject to mandatory minimum penalties.

STATUTORY LIABILITY

Water Code section 13385(h) and (i) require the assessment of a mandatory minimum penalty of \$3,000 for each specified serious and chronic effluent limit violation. Pursuant to Water Code section 13385.1(a), the failure to file a discharge monitoring report required pursuant to section 13383 for each complete period of thirty (30) days following the deadline for submitting the report also constitutes a serious violation subject to a mandatory minimum penalty under Water Code section 13385(h). The Discharger may also be subject to discretionary administrative civil liabilities pursuant to Water Code section 13385(c) of up to \$10,000 for each day in which the violation occurs, and \$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 the Central Valley Water Board beginning with the date that the violations first occurred. The formal enforcement action that the Central Valley Water Board uses to assess such liability is an administrative civil liability complaint, although the Central Valley 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 \$25,000 for each day in which the violation occurs, and \$25 for each gallon discharged but not cleaned up in excess of 1,000 gallons.

SETTLEMENT OFFER

The City of Modesto can avoid the issuance of a formal enforcement action and settle the alleged violations identified in Attachment A by participating in the EPL Program.

To promote resolution of these violations, the Central Valley Water Board Prosecution Team makes this Conditional Offer. The Central Valley Water Board's Prosecution Team proposes to resolve the violation without the issuance of a formal enforcement action through this Conditional Offer assessing **eighteen thousand dollars (\$18,000)** in mandatory minimum penalties. If the City of Modesto accepts this proposal, subject to the conditions below, the Central Valley Water Board Prosecution Team will accept that payment in settlement of any enforcement action that would otherwise arise out of the violations identified in Attachment A. Accordingly, the Central Valley Water Board Prosecution Team will forego issuance of a formal administrative civil liability 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 Attachment A. This Conditional Offer does not address or resolve liability for any violation that is not specifically identified in Attachment A, regardless of the date that the violation occurred.

If the City of Modesto accepts this Conditional 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 **19 June 2020**. The Acceptance and Waiver constitutes a settlement of the violations specifically identified in Attachment A.

CONDITIONS FOR CENTRAL VALLEY WATER BOARD ACCEPTANCE OF RESOLUTION

Federal regulations require the Central Valley Water Board to publish and allow the public thirty (30) days to comment on any settlement of an enforcement action addressing NPDES permit violations (40 C.F.R. section 123.27(d)(2)(iii)). Notice of this settlement will be published on the Central Valley Water Board's website at:

[This Settlement Notice](#)

https://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/

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

However, if significant comments are received in opposition to the settlement, this Conditional Offer may be withdrawn. In that case, the City of Modesto's waiver pursuant to the Acceptance and Waiver will be void and the violation(s) will be addressed in an administrative civil liability hearing. At the hearing, the City of Modesto will be free to make arguments to any of the alleged violations, and the City of Modesto's prior agreement to accept this Conditional Offer will be treated as a settlement communication and will not in any way be binding or used as evidence against the City of Modesto. The City of Modesto will be provided with further information on the administrative civil liability hearing process.

If the City of Modesto chooses to sign the Acceptance and Waiver, full payment of the assessed amount may be submitted with the waiver. However, full payment of the assessed amount shall be due no later than thirty (30) calendar days after the date the Acceptance and Waiver is executed by the Executive Officer. In accordance with California Water Code section 13385(n)(1) and California Water Code section 13385.1(c)(1), funds collected for violations of effluent limitations and reporting requirements pursuant to section 13385 and 13385.1 shall be deposited in the State Water Pollution Cleanup and Abatement Account. Accordingly, the **\$18,000** liability shall be paid by cashiers or certified check made out to the "State Water Pollution Cleanup and Abatement Account". Failure to pay the full penalty within the required time period may subject the City of Modesto to further liability.

The City of Modesto shall indicate on the check the number of this EPL and send it to the State Water Resources Control Board, Accounting Office, Attn: R5-2020-0523 Payment, PO Box 1888, Sacramento, California, 95812-1888. The waiver and a copy of the check must also be mailed to the Central Valley Water Board at 11020 Sun Center Drive #200, Rancho Cordova, CA, 95670 attention to Xuan Luo.

If you have any questions or comments regarding this Conditional Offer, please contact Xuan Luo at (916) 464-4606 or Xuan.Luo@waterboards.ca.gov.

Original Signed by

Stewart W. Black
Acting Assistant Executive Officer

Enclosures (2): Attachment A Record of Violations
Acceptance of Conditional Resolution and Waiver of Right to Hearing

cc: Eric Magnan, USEPA, Region 9, Via email (magnan.eric@epa.gov)
David Boyers, Office of Enforcement, Via email (David.Boyers@waterboards.ca.gov)
Jessica Jahr, Office of Chief Counsel, Via email, (Jessica.Jahr@waterboards.ca.gov)
Adam Laputz, Central Valley Water Board Advisory Team, Via email,
(Adam.Laputz@waterboards.ca.gov)
Walter Ward, Stanislaus County Environmental Health, Via email, (wward@envres.org)
David Huff, CPO, Via email, Via email (dhuff@turlock.ca.us)

**ATTACHMENT A TO SETTLEMENT OFFER NO. R5-2020-0523
Record of Violations Subject to Mandatory Minimum Penalties**

**Cities of Modesto
Water Quality Control Facility**

RECORD OF VIOLATIONS (1 April 2016 through 31 January 2020) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Programs R5-2016-0010)

The following table lists the alleged violations subject to mandatory minimum penalties (MMPs), pursuant to Water Code section 13385(h) and (i).

Table A. Violations subject to Mandatory Penalties

Item	Date	Parameter	Units	Limit	Measured	Period	Violation Type	MMP Type	CIWQS
1	3-May-18	Total Coliform	MPN/100 mL	240	350	Instantaneous Maximum	OEV	NCHRON	1045170
2	21-Jul-19	Total Coliform	MPN/100 mL	2.2	4	7-Day Median	OEV	NCHRON	1062574
3	22-Jul-19	Total Coliform	MPN/100 mL	2.2	4	7-Day Median	OEV	NCHRON	1062579
4	23-Jul-19	Total Coliform	MPN/100 mL	2.2	4.5	7-Day Median	OEV	NCHRON	1062570
5	24-Jul-19	Total Coliform	MPN/100 mL	2.2	4.5	7-Day Median	OEV	CHRON	1062575
6	25-Jul-19	Total Coliform	MPN/100 mL	2.2	4.5	7-Day Median	OEV	CHRON	1062576
7	26-Jul-19	Total Coliform	MPN/100 mL	2.2	4.5	7-Day Median	OEV	CHRON	1062578
8	16-Jan-20	Total Coliform	MPN/100 mL	240	350	Instantaneous Maximum	OEV	CHRON	1070977
9	16-Jan-20	Total Coliform	MPN/100 mL	23	350	> Once in 30-day period	OEV	CHRON	1070978
10	17-Jan-20	Total Coliform	MPN/100 mL	23	33	> Once in 30-day period	OEV	CHRON	1070979

1. First excursion occurred on 10 January 2020 with reported results of 33 MPN/100 mL.

**Attachment A to Settlement Offer No. R5-2020-0523
Record of Violations Subject to Mandatory Minimum Penalties**

VIOLATIONS SUMMARY

<u>VIOLATIONS AS OF:</u>	<u>1/31/2020</u>
Group I Serious Violations:	0
Group II Serious Violations:	0
Non-Serious Violations Not Subject to MMPs:	4
<u>Non-serious Violations Subject to MMPs:</u>	<u>6</u>
Total Violations Subject to MMPs:	6

Mandatory Minimum Penalty Amount for Effluent Limit Violations

6 Non-serious Violations Subject to MMPs x \$3,000 Per Violation = \$18,000

Total Expedited Mandatory Minimum Penalty = \$18,000

Table B. Definition

Abbreviation	Description
CAT 1	Violation of effluent limitation for Group I pollutant.
CAT 2	Violation of effluent limitation for Group II pollutant
CHRON	Chronic violation as defined by Water Code section 13385 (i). Any non-serious violation that falls within a 180-day period with three preceding violations. Thus, the fourth non-serious violation that occurs within a 180-day period is subject to MMPs.
CIWQS	California Integrated Water Quality System database. https://www.waterboards.ca.gov/water_issues/programs/ciwqs/
CTOX	Violation of chronic toxicity effluent limitation.
DREP	Deficient reporting violation. This will only result in MMPs if the report is so deficient as to make determination of compliance impossible for the reporting period.
LREP	Late Reporting violation. Every 30-Days a report is late counts as one serious late reporting violation subject to MMPs.
Measured	Reported value for the monitoring period by the Discharger.
MMP Type	Classification of the type of MMP violation.
Occurrence Date	Date that a violation occurred. For averaging period limitation violations, such as weekly and monthly averages, the last day of the reporting period is used such as last day of the week (Saturday) and last day of the month, respectively.
OEV	Violation of any constituent-specific effluent limitation not included in Group I or Group II.

Attachment A to Settlement Offer No. R5-2020-0523
Record of Violations Subject to Mandatory Minimum Penalties

Abbreviation	Description
NCHRON	Non-serious violation falls within the first three violations in a 180-day period, thus, not subject to MMP.
SIG	Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more. For Group II pollutants that exceed the effluent limitation by 20 percent or more.

**Offer to Participate in Expedited Payment Letter Program
City of Modesto
EPL R5-2020-0523**

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

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the Central Valley Regional Water Quality Control Board (Central Valley Water Board), the City of Modesto hereby accepts the "Offer to Participate in Expedited Payment Letter Program" (Conditional Offer), incorporated herein by reference, and waives the right to a hearing before the Central Valley Water Board to dispute the allegations of violations described in the Record of Violations (ROV), which is included as Attachment A to the Conditional Offer.

The City of Modesto agrees that the Conditional 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 Central Valley Water Board to assert jurisdiction over the alleged violations through its Chief Prosecutor. The City of Modesto agrees to pay the penalties required by California Water Code section 13385(h) and/or (i), in the sum of **\$18,000** (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 violations described in the ROV. The City of Modesto understands that this Acceptance and Waiver waives its right to contest the allegations in the ROV and the amount of civil liability assessed for the violations.

The City of Modesto understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the ROV.

Upon execution by the City of Modesto, the completed Acceptance and Waiver shall be returned via email and/or U.S. mail to:

Xuan Luo, Senior Water Resources Control Engineer
NPDES Compliance and Enforcement
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
Phone: (916) 464-4606
xuan.luo@waterboards.ca.gov

The City of Modesto understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Central Valley 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 Central Valley Water Board Executive Officer, will be published as required by law for public comment.

Offer to Participate in Expedited Payment Letter Program
EPL R5-2020-0523

If no comments are received within the notice period that causes the Central Valley Water Board Executive Officer to question the Expedited Payment Amount, the Central Valley Water Board Executive Officer or his designee will execute this Acceptance and Waiver.

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

The City of Modesto further understands that once the Acceptance and Waiver is executed by the Central Valley Water Board Executive Officer or his designee, 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(n)(1) and California Water Code section 13385.1(c)(1), funds collected for violations of effluent limitations and reporting requirements pursuant to sections 13385 and 13385.1 shall be deposited in the State Water Pollution Cleanup and Abatement Account. Accordingly, the **\$18,000** liability shall be paid by a cashiers or certified check made out to the "State Water Pollution Cleanup and Abatement Account". The City of Modesto may choose to submit the full payment with the Waiver. However, 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 Central Valley Water Board Executive Officer or his designee.

Payment to the State Water Pollution Cleanup and Abatement Account shall be mailed to:

State Water Resources Control Board, Accounting Office
Attn: EPL R5-2020-0523 Payment
PO Box 1888
Sacramento, California, 95812-1888

The City of Modesto shall also provide a copy of the wavier form and check via email to the Central Valley Water Board (Xuan.Luo@waterboards.ca.gov).

Offer to Participate in Expedited Payment Letter Program
EPL R5-2020-0523

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.

City of Modesto

By:	<u>Original Signed by</u> <u>Timothy B. Koehler</u> Signed Name	<u>5/26/20</u> Date
	<u>Timothy B. Koehler</u> Printed or Typed Name	<u>Acting Water Quality Control Plant Manager</u> Title

IT IS SO ORDERED PURSUANT TO CALIFORNIA WATER CODE SECTION 13385

By:	<u>Original Signed by</u> <u>Patrick Pulupa</u> Executive Officer	<u>8/4/2020</u> Date
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