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## San Diego Regional Water Quality Control Board

July 13, 2018

**Sent By Email Only**

Michael Steinlicht  
General Manager  
Encina Wastewater Authority  
6200 Avenida Encinas  
Carlsbad, CA 92011-1095  
[mikes@encinajpa.com](mailto:mikes@encinajpa.com)

**In reply refer to / attn:**  
222754:JLLim

**Subject: Settlement Offer No. R9-2018-0121: Offer to Participate in Expedited Payment Program Relating to Violation of Order No. R9-2011-0019, NPDES No. CA0107395**

Mr. Steinlicht:

The Encina Wastewater Authority (EWA or Permittee) is hereby notified of an alleged violation of Order No. R9-2011-0019, *Waste Discharge Requirements for the Encina Wastewater Authority, Encina Water Pollution Control Facility and Satellite Wastewater Treatment Plants Discharge to the Pacific Ocean through the Encina Ocean Outfall*, and of the opportunity to participate in an Expedited Payment Program to address liability that may be assessed pursuant to California Water Code section 13385.

### **ALLEGED VIOLATION SUBJECT TO THIS OFFER**

As detailed in Exhibit A, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) alleges that the Permittee has violated Order No. R9-2011-0019.

### **STATUTORY LIABILITY**

The Permittee is subject to the following statutory liabilities:

1. Water Code sections 13385(f), (h), and (i) requires the assessment of a mandatory minimum penalty of \$3,000 for a single operational upset that leads to simultaneous violations of more than one pollutant parameter;
2. Water Code section 13385(c) allows for additional civil liability of up to \$10,000 for each day in which the simultaneous violations occur, and \$10 for each gallon discharged but not cleaned up in excess of 1,000 gallons; and
3. Water Code section 13385(e)(2) allows for the reimbursement of staff costs.

These mandatory minimum penalties and discretionary administrative civil liabilities may be assessed by the San Diego Water Board beginning with the date that the simultaneous violations first occurred.

The formal enforcement that the San Diego Water Board uses to assess such liability is an administrative civil liability complaint, although the San Diego Water Board may instead refer such matters to the Attorney General's Office for prosecution. If referred to the Attorney General's Office for prosecution, the Superior Court may assess up to \$25,000 per violation. In addition, the Superior Court may assess up to \$25 per gallon discharged but not cleaned up in excess of 1,000 gallons, plus staff costs.

### **SETTLEMENT OFFER**

The Permittee can avoid formal enforcement action and settle the alleged violation identified in Exhibit A by participating in the San Diego Water Board's Expedited Payment Program. The Permittee may accept this conditional Settlement Offer, waive its right to a hearing, and pay the mandatory minimum penalty of **\$3,000** for the violation described in Exhibit A. If the Permittee elects to do so, the San Diego Water Board will execute the Settlement Offer, subject to the conditions below. Accordingly, the San Diego Water Board will forego issuance of a formal administrative liability complaint, will not refer the violation to the Attorney General's Office, will not charge incurred staff costs, and will waive its right to seek additional discretionary civil liabilities for the violation identified in Exhibit A.

The Expedited Payment Program does not address or resolve liability for any violation that is not specifically identified in Exhibit A regardless of the date that the violation occurred.

### **OPTIONS FOR RESPONSE TO OFFER**

1. If the Permittee accepts this offer, the Permittee shall complete and return the enclosed Acceptance of Conditional Resolution and Waiver of Right to Hearing of Settlement Offer No. R9-2018-0121 (Acceptance and Waiver, Exhibit B) on or before 5 p.m. on August 13, 2018.
2. If the Permittee chooses to contest the violation alleged in Exhibit A, the Permittee shall submit in writing the specific violation and the basis for the challenge (factual error, affirmative defense, etc.) to the San Diego Water Board on or before 5 p.m. on August 13, 2018. The San Diego Water Board will evaluate the contested violation and take one of two actions:
  - a. The San Diego Water Board will determine that the violation is not supported, expunge the alleged violation, take no further action against the Permittee for the alleged violation, and notify the Permittee in writing of that determination; or
  - b. The San Diego Water Board will determine that the alleged violation is meritorious and will notify the Permittee of that determination. The Permittee will be given 30 days from the date of receipt of the San Diego Water Board determination to either accept the Settlement Offer by completing and returning the Acceptance and Waiver to the San Diego Water Board, or to reject the Settlement Offer.
3. If the Permittee does not respond to this offer, the San Diego Water Board will initiate a formal enforcement action with regard to the alleged violation. In a formal enforcement action, the liability amount sought and/or imposed may exceed the liability amount set forth in this conditional Settlement Offer. Moreover, the staff costs of investigating the violation and proceeding with formal enforcement action are factors that will be considered in assessing the liability amount.

## CONDITIONS FOR SAN DIEGO WATER BOARD ACCEPTANCE OF RESOLUTION

Pursuant to title 40 of the Code of Federal Regulations (40 CFR), section 123.27(d)(2)(iii), the San Diego Water Board is required to publish and allow the public 30 days to comment on any settlement of an enforcement action addressing alleged violations of National Pollutant Discharge Elimination System (NPDES) permit conditions. Upon receipt of the Permittee's Acceptance and Waiver, the San Diego Water Board will publish a notice of the proposed resolution of the violation.

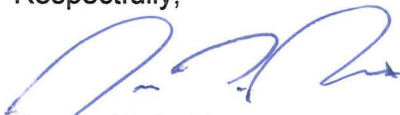
If no comments are received within the 30-day comment period, and unless there are new material facts that become available to the San Diego Water Board, the Executive Officer will execute the Acceptance and Waiver as a stipulated order assessing the uncontested mandatory minimum penalty amount pursuant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

If, however, significant comments are received in opposition to the settlement, this conditional offer may be withdrawn. In that case, the Permittee's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn, and the violation will be addressed in a liability assessment proceeding. At the liability assessment hearing, the Permittee will be free to make arguments as to the alleged violation, and the Permittee's agreement to accept this conditional Settlement 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, full payment of the assessed amount shall be due within 30 calendar days after the Permittee's receipt of the notice of the Executive Officer's execution. In accordance with Water Code section 13385(n)(1), funds collected for violations of effluent limitations and reporting requirements pursuant to section 13385 shall be deposited in the State Water Pollution Cleanup and Abatement Account. Accordingly, the liability shall be paid by cashier's or certified check made out to the "State Water Pollution Cleanup and Abatement Account." Failure to pay the full liability within the required time period may subject the Permittee to further liability.

A summary of this offer is enclosed as Exhibit C. Should you have any questions about this conditional offer, please contact Ms. Joann Lim by phone at 619-521-3362, or by email at [Joann.Lim@waterboards.ca.gov](mailto:Joann.Lim@waterboards.ca.gov).

Respectfully,



James G. Smith  
Assistant Executive Officer

JGS:dtb:bo:jll

### Enclosures:

- Exhibit A: Notice of Violation Subject to Mandatory Minimum Penalty, Encina Ocean Outfall
- Exhibit B: Acceptance of Conditional Resolution and  
Waiver of Right to Hearing of the Settlement Offer No. R9-2018-0121
- Exhibit C: Summary of Settlement Offer No. R9-2018-0121

cc by email:

Jeff Parks, Encina Wastewater Authority, [jparks@encinajpa.com](mailto:jparks@encinajpa.com)  
David Barker, San Diego Water Board, [dbarker@waterboards.ca.gov](mailto:dbarker@waterboards.ca.gov)  
Chiara Clemente, San Diego Water Board, [cclemente@waterboards.ca.gov](mailto:cclemente@waterboards.ca.gov)  
Brandi Outwin-Beals, San Diego Water Board, [Brandi.Outwin-Beals@waterboards.ca.gov](mailto:Brandi.Outwin-Beals@waterboards.ca.gov)  
Keith Yaeger, San Diego Water Board, [Keith.Yaeger@Waterboards.ca.gov](mailto:Keith.Yaeger@Waterboards.ca.gov)

Tech Staff Info & Use	
Order No.	R9-2011-0019
Party ID	14804 (Encina Wastewater Authority)
File No.	01-030
WDID	9 000000030
NPDES No.	CA0107395
Reg. Measure IDs	378933 (R9-2011-0019), 422085 (R9-2018-0121)
Place ID	222754
Person ID	575592 (Michael Steinlicht)
Violation IDs	1042800, 1042801, 1042802, 1042803, 1042804, 1042805, 1042806, 1042807, 1042808, and 1043836

## Exhibit A

### NOTICE OF VIOLATION SUBJECT TO MANDATORY MINIMUM PENALTIES ENCINA OCEAN OUTFALL

For the purposes of California Water Code sections 13385, a single operational upset (SOU) that leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation [Water Code section 13385(f)(1)]. For the purposes of subdivisions 13385(h) and (i), an SOU in a wastewater treatment unit that treats wastewater using a biological treatment process shall be treated as a single violation, even if the operational upset results in violations of more than one effluent limitation and the violations continue for a period of more than one day, if all the criteria at Water Code sections 13385(f)(2)(A)(i) and (ii) apply [Water Code section 13385(f)(2)(A)]. Water Code section 13385(f)(2)(A) only applies to violations that occur during a period for which the regional board has determined that violations are unavoidable, but in no case may that period exceed 30 days [Water Code section 13385(f)(2)(B)].

The following table lists effluent exceedances that occurred from March 17 to April 7, 2018. The Encina Wastewater Authority (EWA or Permittee) has reported that the effluent exceedances occurred as a result of an SOU and has met all of the conditions for an SOU pursuant to Water Code section 13385(f). For additional information about the effluent exceedances listed in the table:

1. Refer to the State Water Resources Control Board Public Reports webpage: [http://www.waterboards.ca.gov/water\\_issues/programs/ciwqs/publicreports.shtml](http://www.waterboards.ca.gov/water_issues/programs/ciwqs/publicreports.shtml);
2. Choose the "MMP Report" link located under the "Violations Reports" category; and
3. Enter the search criteria.

An SOU led to the following simultaneous violations for a period of more than one day. Water Code section 13385(f) provides that an SOU shall be treated as a single violation.

Violation ID	Occurred Date	Violation Type	MMP Type	Violation Description	Facility Name
1042806	03/17/2018	CAT1	SOU	The average weekly effluent limitation of 45 mg/L for total suspended solids (TSS) was exceeded, with a reported value of 109.3 mg/L at Monitoring Location M-001.	Encina Water Pollution Control Facility
1042802	03/31/2018	CAT1	SOU	The average weekly effluent limitation of 45 mg/L for TSS was exceeded, with a reported value of 111.5 mg/L at Monitoring Location M-001.	Encina Water Pollution Control Facility
1043836	04/07/2018	CAT1	SOU	The average weekly effluent limitation of 45 mg/L for TSS was exceeded, with a reported value of 51.1 mg/L, at Monitoring Location M-001.	Encina Water Pollution Control Facility
1042804	03/17/2018	CAT1	SOU	The average weekly effluent limitation of 15,000 lbs/day for TSS was exceeded, with a reported value of 21,469 lbs/day, at Monitoring Location M-001.	Encina Water Pollution Control Facility
1042800	03/31/2018	CAT1	SOU	The average weekly effluent limitation of 15,000 lbs/day for TSS was exceeded, with a reported value of 23,967 lbs/day, at Monitoring Location M-001.	Encina Water Pollution Control Facility
1042801	03/31/2018	CAT1	SOU	The average monthly effluent limitation of 30 mg/L for TSS was exceeded, with a reported value of 63.5 mg/L, at Monitoring Location M-001.	Encina Water Pollution Control Facility

Violation ID	Occurred Date	Violation Type	MMP Type	Violation Description	Facility Name
1042803	03/31/2018	CAT1	SOU	The average monthly effluent limitation of 10,000 lbs/day for TSS was exceeded on March 31, with a reported value of 13,024 lbs/day, at Monitoring Location M-001.	Encina Water Pollution Control Facility
1042805	03/31/2018	CAT1	SOU	The minimum average monthly percent removal for TSS of 85% was not met on March 31, with a reported value of 79.6%, at Monitoring Location M-001.	Encina Water Pollution Control Facility
1042808	03/17/2018	CAT1	SOU	The average weekly effluent limitation of 40 mg/L for carbonaceous biochemical oxygen demand 5-day @ 20 degrees Celsius (CBOD <sub>5</sub> ) was exceeded on March 17, with a reported value of 50.3 mg/L, at Monitoring Location M-001.	Encina Water Pollution Control Facility
1042807	03/31/2018	CAT1	SOU	The average monthly effluent limitation of 25 mg/L for CBOD <sub>5</sub> was exceeded on March 31, with a reported value of 30.5 mg/L, at Monitoring Location M-001.	Encina Water Pollution Control Facility

**EXPEDITED PAYMENT AMOUNT**

**Mandatory Minimum Penalty Amount for Effluent Limit Violations**

1 Serious Violation × \$3,000 per Serious Violation = \$3,000 Expedited Payment Amount

**DEFINITIONS**

AM	Effluent exceeds average monthly limitation.
ATOX	Violation of an acute toxicity effluent limitation.
AW	Effluent exceeds average weekly 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%.
CBOD <sub>5</sub>	Carbonaceous Biochemical Oxygen Demand 5-day @ 20 degrees Celsius.
CHRON	Chronic violation as defined by 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.
CIWQS	California Integrated Water Quality System database.
CTOX	Violation of a chronic toxicity effluent limitation.
DM	Effluent exceeds daily maximum limitation.
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.
GROUP	The list of pollutants is based on Appendix A to section 123.45 of title 40 of the Code of Federal Regulations.
IM	Effluent exceeds instantaneous maximum limitation.
LREP	Late reporting violation. Every 30 days a report is late counts as one late reporting violation.
M	Effluent exceeds limit for monthly reporting period.
MMP Type	Classification of the type of MMP violation.
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.
OEV	Violation of any constituent-specific effluent limitation not included in Group I or Group II.
Q	Effluent exceeds limit for quarterly reporting period.
S	Effluent exceeds limit for semi-annual reporting period.
SOU	Single Operational Upset pursuant to Water Code sections 13385(f).
SIG	Serious violation as defined by 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 Water Code section 13385.1 as a failure to file a discharge monitoring report pursuant to Water Code 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.
TSS	Total Suspended Solids.
Violation Description	Narrative description of the violation.
Violation ID	Identification number assigned to a violation in CIWQS.
Violation 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)

## Exhibit B

### ACCEPTANCE OF CONDITIONAL RESOLUTION AND WAIVER OF RIGHT TO HEARING OF THE SETTLEMENT OFFER NO. R9-2018-0121

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), the Encina Wastewater Authority (EWA or Permittee) hereby accepts the *Offer to Participate in Expedited Payment Program* and waives the right to a hearing before the San Diego Water Board to dispute the allegations of violation described in the Settlement Offer, which is attached hereto as Exhibit A and incorporated herein by reference.

The Permittee agrees that the Settlement Offer shall serve as a complaint pursuant to Article 2.5 of the Water Code and that no separate complaint is required for the San Diego Water Board to assert jurisdiction over the alleged violation through its Chief Prosecutor. The Permittee agrees to pay the penalties required by 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 Water Code section 13385 that otherwise might be assessed for the violation described in the Settlement Offer. The Permittee understands that this Acceptance and Waiver waives the Permittee's right to contest the allegations in the Settlement Offer and the amount of civil liability for such violation.

The Permittee understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the Settlement Offer.

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

California Regional Water Quality Control Board, San Diego Region  
2375 Northside Drive, Suite 100  
San Diego, CA 92108-2700  
ATTN: 222754:JLLim

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

During the public comment period, if no comments are received that cause the Executive Officer to question 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 offer on behalf of the San Diego Water Board to resolve the violation set forth in the Settlement Offer 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 San Diego 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 further understands that once the Acceptance and Waiver is executed by the Executive Officer, the full payment required by the deadline set forth below is a condition of this Acceptance and Waiver. In accordance with Water Code section 13385(n)(1), funds collected



for violations of effluent limitations and reporting requirements pursuant to section 13385 shall be deposited in the State Water Pollution Cleanup and Abatement Account. Accordingly, the liability shall be paid by a cashier's or certified check for \$3,000 made out to the "State Water Pollution Cleanup and Abatement Account." Payment must be submitted to the State Water Resources Control Board, Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, CA 95812-1888, no later than thirty (30) calendar days after the date the Permittee receives written notice that the Executive Officer has executed this Acceptance and Waiver. A copy of the check must also be received by the San Diego Water Board at 2375 Northside Drive, Suite 100, San Diego, CA 92108-2700 within thirty (30) days of approval via U.S. Postal Service or email to [SanDiego@waterboards.ca.gov](mailto:SanDiego@waterboards.ca.gov), attention 222754:JLLim.

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.

Encina Wastewater Authority

By: \_\_\_\_\_  
Signed Name Date

\_\_\_\_\_

Printed or Typed Name Title

IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13385.

By: \_\_\_\_\_  
DAVID W. GIBSON Date  
Executive Officer

## Exhibit C

### SUMMARY OF THE SETTLEMENT OFFER NO. R9-2018-0121

**Enforcement of Mandatory Minimum Penalty for NPDES Effluent Limit Violation  
Water Code sections 13385(f), (h), and (i)**

You have until August 13, 2018 to act or face more penalties.

Questions: Contact Joann Lim at (619) 521-3362

This is a plain language summary of the attached Settlement Offer No. R9-2018-0121 to participate in an Expedited Payment Program to address alleged violation of Order No. R9-2011-0019, *Waste Discharge Requirements for the Encina Wastewater Authority, Encina Water Pollution Control Facility and Satellite Wastewater Treatment Plants Discharge to the Pacific Ocean through the Encina Ocean Outfall*.

The Encina Wastewater Authority, Encina Water Pollution Control Facility has exceeded effluent limitations established in Order No. R9-2011-0019. The violation is subject to a mandatory minimum penalty of \$3,000 pursuant to Water Code section 13385(f), (h), and (i). Consequently, the San Diego Water Board will assess a monetary liability for \$3,000 for this serious violation. However, instead of pursuing a formal enforcement complaint with penalties higher than the mandatory minimum, the San Diego Water Board is offering the opportunity to participate in an Expedited Payment Program to resolve the violation.

**The Encina Wastewater Authority has three response options:**

1. **Accept the conditional Settlement Offer** by agreeing to pay a settlement of \$3,000. This is the fastest and most certain way to get closure on this enforcement action. If chosen, sign and submit the Acceptance and Waiver Form, attached to the Settlement Offer letter, by 5 p.m. on August 13, 2018. The form provides submittal instructions.
2. **Contest the violation** by submitting in writing the basis of the challenge with supporting evidence. For example, submit evidence that the alleged violation is inaccurate or meets the criteria for exceptions to mandatory minimum penalties described in Water Code section 13385(j). If chosen, submit challenge by 5 p.m. on August 13, 2018.

The challenge will be reviewed, and if San Diego Water Board staff agrees, the Encina Wastewater Authority will be notified in writing that the enforcement action has been terminated. However, if San Diego Water Board staff does not agree, they will prepare a formal enforcement complaint at a higher dollar amount than the settlement offer of \$3,000. To avoid the latter, contact Joann Lim (see contact information above) as soon as possible to discuss the validity of the challenge.

3. **Reject the conditional Settlement Offer** by not responding or submitting the rejection in writing by 5 p.m. on August 13, 2018. In either case, San Diego Water Board staff will prepare a formal enforcement complaint at a higher dollar amount than the settlement offer. The date of submittal or failure to submit the Acceptance and Waiver form will affect the recommended penalty amount.