



Central Valley Regional Water Quality Control Board

8 November 2019

Mark Houghton
Director of Public Works
City of Manteca
1001 W. Center Street
Manteca, CA 95337

CERTIFIED MAIL
7019 0700 0002 0111 7583

Via email: mhoughton@ci.manteca.ca.us

OFFER TO PARTICIPATE IN THE EXPEDITED PAYMENT LETTER PROGRAM RELATING TO ADMINISTRATIVE CIVIL LIABILITY R5-2019-0534 FOR ASSESSMENT OF MANDATORY MINIMUM PENALTIES, CITY OF MANTECA, WASTEWATER QUALITY CONTROL FACILITY, SAN JOAQUIN COUNTY

The City of Manteca (Discharger) discharges treated wastewater from the Wastewater Quality Control Facility (WWTP or Facility), which is regulated by Waste Discharge Requirements (WDRs) Order R5-2015-0026 (NPDES CA0081558). 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 Discharger 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 **three thousand dollars (\$3,000)**, 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 February 2019 through 30 June 2019.

NOTICE OF VIOLATION AND RECORD OF VIOLATIONS

Based on the Discharger's self-monitoring reports, the Central Valley Water Board Prosecution Team sent the Discharger a Notice of Violation and Record of Violations (ROV) on 26 September 2019 notifying the Discharger of effluent limit violations, reporting violations, and corresponding violations of the California Water Code. The Central Valley Water Board Prosecution Team provided the Discharger with an opportunity to review and contest the violations listed in the attached ROV. Following the Discharger's 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.

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

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 Discharger 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 **three thousand dollars (\$3,000)** in mandatory minimum penalties. If the Discharger 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 Discharger 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 **22 November 2019**. The Acceptance and Waiver constitutes a settlement of the violation 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 Discharger'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 Discharger will be free to make arguments to any of the alleged violations, and the Discharger'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 Discharger. The Discharger will be provided with further information on the administrative civil liability hearing process.

OPPORTUNITY FOR SUPPLEMENTAL ENVIRONMENTAL PROJECT

As detailed in the Acceptance and Waiver, the Discharger has two options to pay the assessed liability: 1) pay the entire mandatory minimum penalty to the State Water Pollution Cleanup and Abatement Account; or 2) pay a portion of the mandatory minimum penalty to the State Water Pollution Cleanup and Abatement Account and direct a portion of the penalty to be expended on a Supplemental Environmental Project (SEP).

Pursuant to Water Code section 13385(l), in lieu of paying the entire mandatory minimum penalty to the State Water Pollution Cleanup and Abatement Account, the Central Valley Water Board, with the Discharger's concurrence, is authorized to direct a portion of the penalty to be expended on a SEP. One SEP option is currently available: direct a portion of the penalty to the Delta Regional Monitoring Program (Delta RMP) SEP Fund, as authorized by State Water Resources Control Board Resolution No. 2019-0011. The Delta RMP is a well-established program and collaborative effort between the Central Valley Water Board, the Aquatic Science Center, and the regulated communities. The Delta RMP provides critically needed water quality information to better inform policy and regulatory decisions of the Central Valley Water Board and other Federal, State, and local agencies. The Delta RMP also provides necessary data acquisition for management decisions to restore and protect beneficial uses of the region's waters. Information about the Delta RMP is available Delta RMP's website at: **[Delta R M P Information](https://www.sfei.org)** (<https://www.sfei.org>).

All funds directed to the Delta RMP SEP Fund will be expended on projects that supplement Delta RMP studies that would not otherwise be conducted through the Delta RMP's annually approved cost allocations. The nonprofit Aquatic Science Center manages and administers Delta RMP funds. No funds will go to the Central Valley Water Board.

If the Discharger chooses to reject this Conditional Offer or does not complete and return the Acceptance and Waiver by the deadline, the Central Valley Water Board Prosecution Team will contact the Discharger regarding a formal enforcement action that will be initiated for the contested violations.

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

ANDREW ALTEVOGT
Assistant Executive Officer

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

cc w/o encl: Eric Magnan, USEPA, Region 9, San Francisco
David Boyers, Office of Enforcement, SWRCB, Sacramento
Patrick Pulupa, Central Valley Water Board Advisory Team, Rancho Cordova
Jessica Jahr, Office of Chief Counsel, SWRCB, Sacramento
Selina Cole, Environmental Scientist, Rancho Cordova
Adam Laputz, Central Valley Water Board Advisory Team, Sacramento
San Joaquin County Environmental Health, Stockton
Heather Grove, 1001 W. Center Street, Manteca, CA 95337

**ATTACHMENT A TO SETTLEMENT OFFER NO. R5-2019-0534
Record of Violations Subject to Mandatory Minimum Penalties
City of Manteca
Wastewater Quality Control Facility**

RECORD OF VIOLATIONS (1 February 2019– 30 June 2019) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2015-0026)

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

<u>Item</u>	<u>Date</u>	<u>Parameter</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Violation Type</u>	<u>MMP Type</u>	<u>CIWQS</u>
A	7-Nov-18	Temperature	°F	20	21	Temperature difference between discharge and background	OEV	CHRON	1054285
A	20-Nov-18	Temperature	°F	20	22	Temperature difference between discharge and background	OEV	CHRON	1054284
A	2-Jan-19	Temperature	°F	20	22	Temperature difference between discharge and background	OEV	CHRON	1056287
1	11-Feb-19	Biochemical Oxygen Demand (BOD)	mg/L	20	21	Daily Maximum	CAT 1	CHRON	1057286

Footnote:

A Supporting violation addressed in Expedited Payment Letter Program R5-2019-0512.

EXPEDITED PAYMENT AMOUNT VIOLATIONS SUMMARY

<u>VIOLATIONS AS OF:</u>	<u>6/30/2019</u>
Group I Serious Violations:	0
Group II Serious Violations:	0
Non-Serious Violations Not Subject to MMPs:	0
<u>Non-serious Violations Subject to MMPs:</u>	<u>1</u>
Total Violations Subject to MMPs:	1

Mandatory Minimum Penalty Amount for Effluent Limit Violations

1 Non-Serious Violations subject to MMPs x \$3,000 Per Violation = \$3,000

Total Expedited Mandatory Minimum Penalty = \$3,000

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.
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
EPL R5-2019-0534**

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

City of Manteca
EPL No. R5-2019-0534

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 Manteca (Discharger) 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 Discharger 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 Discharger agrees to pay the penalties required by California Water Code section 13385(h) and/or (i), 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 violations described in the ROV. The Discharger 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 Discharger 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 Discharger, the completed Acceptance and Waiver shall be returned via email 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 Discharger 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 R5-2019-0534

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 Discharger 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 Discharger 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 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 understands that funds collected for violations pursuant to Water Code section 13385(h) and (i) shall be deposited in the State Water Pollution Cleanup and Abatement Account.

The Discharger understands that, in lieu of full payment of the Expedited Payment Amount to the State Water Pollution Cleanup and Abatement Account, the Central Valley Water Board, with the Discharger's concurrence, may direct a portion of the penalty to be expended on a Supplemental Environment Project (SEP). This Acceptance and Waiver provides one SEP option: fund a SEP through a payment to the Delta Regional Monitoring Program (Delta RMP) SEP Fund. All funds directed to the SEP Fund will be expended on projects that supplement Delta RMP studies that would not otherwise be conducted through the Delta RMP's annual approved RMP cost allocations.

The Discharger agrees to pay the Expedited Payment Amount to the State Water Pollution Cleanup and Abatement Account and, if chosen, the SEP Fund, as identified below. The Discharger understands that the Central Valley Water Board will consider the Discharger to have fulfilled all SEP obligations if and when the Aquatic Science Center receives the Discharger's timely and full payment of the required SEP Fund contribution.

For settlements of violations, pursuant to Water Code section 13385 (h) or (i), where the penalty amount equals fifteen thousand dollars (\$15,000) or less, 100 percent of the penalty may be expended on a SEP; if the penalty exceeds \$15,000, then up to \$15,000 plus 50 percent of the penalty that exceeds \$15,000 may be expended on a SEP.

Offer to Participate in Expedited Payment Letter Program
EPL R5-2019-0534

(Place a “✓” check or “✗” an X in one box below and fill in the blank as appropriate. Electing to pay a portion of the Expedited Payment Amount to the SEP Fund will not change the total penalty amount to be paid).

Pay a portion of the Expedited Payment Amount to the Delta RMP SEP Fund:

Dollar Amount	Expedited Payment Options
\$3,000	Maximum amount allowed to be paid to the SEP Fund (\$3,000)
\$	Different amount from the maximum amount allowed to be paid to the SEP Fund
\$	Total amount to be paid to the State Water Pollution Cleanup and Abatement Account (Total penalty minus amount to be paid to the SEP Fund)

Pay the total Expedited Payment Amount to State Water Pollution Cleanup and Abatement Account (\$3,000).

The Discharger further understands that once the Acceptance and Waiver is executed by the Central Valley Water Board Executive Officer or his designee, the Discharger shall pay the assessed civil liability to the State Water Pollution Cleanup and Abatement Account and/or Aquatic Science Center, for the SEP Fund, as selected above. Full payment of the Expedited Payment Amount required by the deadline below is a condition of this Acceptance and Waiver.

Accordingly, the Expedited Payment Amount shall be paid by a cashier's or certified check made out to the "State Water Pollution Cleanup and Abatement Account" and/or "Aquatic Science Center for SEP". The payment must be submitted to the State Water Resources Control Board and/or Aquatic Science Center 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 R5-2019-0534Payment
PO Box 1888
Sacramento, California, 95812-1888

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

Payment to the Aquatic Science Center for SEP shall be submitted in the form of a cashier's or certified check referencing EPL R5-2019-0534 and mailed to:

Offer to Participate in Expedited Payment Letter Program
EPL R5-2019-0534

Delta Regional Monitoring Program
c/o Aquatic Science Center
4911 Central Avenue
Richmond, CA 94804.

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

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 Manteca

By:	<u>Original Signed by</u>	<u>11/12/19</u>
	Signed Name	Date
	<u>Mark Houghton</u>	<u>Director of Public Works</u>
	Printed or Typed Name	Title

IT IS SO ORDERED PURSUANT TO CALIFORNIA WATER CODE SECTION 13385

By:	<u>Original Signed by</u>	<u>24 December 2019</u>
	Patrick Pulupa	Date
	Executive Officer	