



Central Valley Regional Water Quality Control Board

17 January 2024

Bill Osmer, Public Works Manager
City of Merced
678 West 18th Street
Merced, CA 95340

CERTIFIED MAIL
7021 1970 0001 5446 5983

OFFER TO PARTICIPATE IN THE EXPEDITED PAYMENT LETTER PROGRAM RELATED TO LIABILITY FOR PERMIT VIOLATIONS, EPL R5-2023-0529, CITY OF MERCED, MERCED WASTEWATER TREATMENT FACILITY, MERCED COUNTY

The City of Merced (Discharger) discharges treated wastewater from the Merced Wastewater Treatment Facility (WWTF). The WWTF was previously regulated under Waste Discharge Requirements (WDRs) R5-2014-0096 (NPDES No. CA0079219) until 31 May 2020, when those WDRs were rescinded and replaced by WDRs R5-2020-0014 by the Central Valley Regional Water Quality Control Board (Central Valley Water Board). As required by section 13385 of the California Water Code, the Central Valley Water Board must assess mandatory minimum penalties (MMPs) for violations of the effluent limitations contained in the WDRs. This Offer to Participate in the 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 effluent limitation violations specifically identified in the Record of Violations (Attachment A), attached hereto and incorporated herein by reference, that occurred between December 2014 through August 2022.

NOTICE OF VIOLATION

Based on the Discharger's self-monitoring reports, the Central Valley Water Board Prosecution Team sent the Discharger a Notice of Violation (NOV) on 8 May 2023, notifying the Discharger of effluent limit violations. The Central Valley Water Board Prosecution Team provided the Discharger with an opportunity to review and contest the violations listed in the NOV. On 16 May 2023, Central Valley Water Board staff received an email from Debra Madrigal, Administrative Analyst for the Discharger, indicating that the Discharger was not contesting the violations listed in the NOV. Following the Discharger's review of the NOV, the Central Valley Water Board

MARK BRADFORD, CHAIR | PATRICK PULUPA, ESQ., EXECUTIVE OFFICER

Prosecution Team confirmed that one of the four violations listed in Attachment A is subject to mandatory minimum penalties.

STATUTORY LIABILITY

Water Code sections 13385(h) and (i) require the assessment of a mandatory minimum penalty of \$3,000 for each specified serious and chronic effluent limit violation. 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 more than 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 more than 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 these violations 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's 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's 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. The 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 **16 February 2024**. 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](https://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/) website (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 violations 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.

If the Discharger 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 required 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 **three thousand dollars (\$3,000)** 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 frame may subject the Discharger to further liability.

The Discharger shall indicate on the check the number of this EPL and send it to the State Water Resources Control Board, Accounting Office, Attn: **EPL R5-2023-0529** Payment, PO Box 1888, Sacramento, California, 95812-1888. The waiver and a copy of the check, with account numbers and routing information redacted, must also be mailed to the Central Valley Water Board at 1685 E Street, Fresno, CA, 93706 to the attention of Mario Jaramillo.

If you have any questions or comments regarding this Settlement Offer, please contact Mario Jaramillo at (559) 445-5093 or mario.jaramillo@waterboards.ca.gov.

Original Signed by Christina Shupe
For Patrick Pulupa
Executive Officer

Attachment: Attachment A: Record of Violations for Assessing MMPs

Enclosure: Acceptance of Conditional Resolution and Waiver of Right to Hearing

cc: Eric Magnan, Manager – Clean Water Act Enforcement,
U.S. EPA, Region 9, San Francisco (via email)
Kari Holmes, Supervising Engineer, Central Valley Water Board, Rancho Cordova (via email)
Debra Madrigal, Administrative Analyst, City of Merced, Merced (via email)

ATTACHMENT A TO THE EXPEDITED PAYMENT LETTER R5-2023-0529
Record of Violations for Assessing Mandatory Minimum Penalties

**City of Merced
Merced Wastewater Treatment Facility**

RECORD OF VIOLATIONS (1 December 2014 – 31 August 2022) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2014-0096 and R5-2020-0014)

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	30-Nov-14	Nitrite Plus Nitrate	mg/L	10.0	13.2	Monthly Average	CAT 1	NCHRON	983594
1	28-Feb-15	Nitrite Plus Nitrate	mg/L	10.0	10.1	Monthly Average	CAT 1	NCHRON	988590
2	22-May-15	Total Ammonia	mg/L	2.03	2.17	Daily Maximum	CAT 1	NCHRON	992606
3	6-Apr-20	Total Copper	µg/L	6.5	13	Monthly Average	CAT 2	SIG	1079052

Note:

A: Supporting Violation. Violation is addressed by ACL R5-2017-0533

VIOLATIONS SUMMARY

VIOLATIONS AS OF:	8/31/2022
Group I Serious Violations:	0
Group II Serious Violations:	1
Non-Serious Violations Not Subject to MMPs:	2
<u>Non-serious Violations Subject to MMPs:</u>	<u>0</u>
Total Violations Subject to MMPs:	1

Mandatory Minimum Penalty Amount for Effluent Limit Violations

1 Group II Violations subject to MMPs x \$3,000 Per Violation = \$3,000

Total Mandatory Minimum Penalty = \$3,000

ATTACHMENT A TO THE EXPEDITED PAYMENT LETTER R5-2023-0529
Record of Violations for Assessing Mandatory Minimum Penalties

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.

Acceptance of Conditional Resolution and Waiver of Right to Hearing
EPL R5-2023-0529

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

City of Merced
EPL R5-2023-0529

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 Merced (Discharger) hereby accepts the "Offer to Participate in the 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 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 Attachment A. The Discharger understands that this Acceptance and Waiver waives its right to contest the allegations in Attachment A 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 Attachment A.

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

Mario Jaramillo, Water Resources Control Engineer
Compliance and Enforcement
1685 E Street
Fresno, CA 93706
Phone: (559) 445-5093
mario.jaramillo@waterboards.ca.gov

Offer to Participate in Expedited Payment Letter Program
EPL R5-2023-0529

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.

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 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 \$3,000 liability shall be paid by a cashiers or certified check made out to the "State Water Pollution Cleanup and Abatement Account". The Discharger 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.

Please mail the check to:

State Water Resources Control Board, Accounting Office
Attn: EPL R5-2023-0529 Payment
PO Box 1888
Sacramento, California, 95812-1888

The Discharger shall also provide a copy of the waiver form and check (with account numbers and routing information redacted) via email to the Central Valley Water Board (mario.jaramillo@waterboards.ca.gov and centralvalleyfresno@waterboards.ca.gov).

Offer to Participate in Expedited Payment Letter Program
EPL R5-2023-0529

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 Merced

BY: Original Signed by Bill Osmar
Signed Name

29 January 2024
Date

Bill Osmar
Printed or Typed Name

29 January 2024
Date

IT IS SO ORDERED PURSUANT TO CALIFORNIA WATER CODE SECTION 13385

By: _____
Patrick Pulupa
Executive Officer

Date