



Central Valley Regional Water Quality Control Board

17 July 2023

Douglas Charlton
President and CEO
Original Sixteen to One Mine, Inc.
P.O. Box 909
Alleghany, CA 95910

Via Email Only
doug989tmm@gmail.com

OFFER TO PARTICIPATE IN THE EXPEDITED PAYMENT LETTER PROGRAM RELATING TO ADMINISTRATIVE CIVIL LIABILITY R5-2023-0527 FOR ASSESSMENT OF MANDATORY MINIMUM PENALTIES, ORIGINAL SIXTEEN TO ONE MINE, INC, SIXTEEN TO ONE MINE, SIERRA COUNTY

The Original Sixteen to One Mine (Facility) is owned and operated by Original Sixteen to One Mine, Inc. (Discharger) and was regulated under Waste Discharge Requirements (WDRs) Order R5-2015-0002 through 1 August 2021, when it was rescinded and replaced by WDRs R5-2021-0037. The Facility is also regulated under Time Schedule Order (TSO) R5-2015-0035-01, however, the interim effluent limitations contained in the TSO expired on 16 April 2020. 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 **one hundred twenty-six thousand dollars (\$126,000)**, represents the sum of accrued mandatory minimum penalties for effluent limitation and late reporting violations specifically identified in the Record of Violations (Attachment A), attached hereto and incorporated herein by reference, that occurred between 1 January 2019 through 31 March 2022.

NOTICE OF VIOLATION AND RECORD OF VIOLATIONS

On 28 November 2022, the Assistant Executive Officer of Central Valley Water Board issued Administrative Civil Liability Complaint (ACLC) R5-2022-0513 for mandatory minimum penalties for effluent violations (identified in Attachment A to ACLC R5-2022-0513) that occurred from 1 June 2019 and 31 March 2022. The Discharger signed a waiver of hearing and entered negotiations to negotiate the terms of the ACLC. On 22 May 2023 Board staff and the Discharger reached the settlement and the Discharger agreed to participate in the Central Valley Water Board's Expedited Payment Program. Therefore, the Central Valley Water Board is dismissing ACLC R5-2022-0513. This Offer to Participate in the Central Valley Water Board's Expedited

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

Payment Program addresses effluent limitation violations based on sampling events occurring between 1 January 2019 through 31 March 2022.

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. 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 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 these violations without the issuance of a formal enforcement action through this Conditional Offer assessing **one-hundred twenty-six (\$126,000)** 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. 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 **18 August 2023**. 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:

[Central Valley Tentative Orders](https://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/)

(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.

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 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 **one-hundred twenty-six (\$126,000)** 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 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 R5-2023-0527Payment, 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 Settlement Offer, please contact Xuan Luo at (916) 464-4606 or by email Xuan.Luo@waterboards.ca.gov.

Original Signed by

JOHN J. BAUM
Assistant Executive Officer

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

cc via email: 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
Adam Laputz, Central Valley Water Board Advisory Team, Rancho Cordova
Roger Haas, QuartzView, RogerHaas@cruzio.com

ATTACHMENT A TO SETTLEMENT OFFER NUMBER. R5-2023-0527
RECORD OF VIOLATIONS SUBJECT TO MANDATORY MINIMUM PENALTIES

Original Sixteen to One Mine Inc.
Sixteen to One Mine

RECORD OF VIOLATIONS (1 January 2019 – 31 March 2022) MANDATORY MINIMUM PENALTIES
(Data reported under Monitoring and Reporting Program R5-2015-0002, R5-2021-0037, and TSO R5-2015-0035-01)

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
A	31-Aug-18	Total Suspended Solids	mg/L	20	25	Average Monthly	CAT 1	NCHRON	1053474
1	11-Mar-20	Total Suspended Solids	mg/L	30	730	Daily Maximum	CAT 1	SIG	1073134
2	31-Mar-20	Total Suspended Solids	mg/L	20	730	Monthly Average	CAT 1	SIG	1073135
3	19-May-20	Total Nickel	µg/L	43	134	Maximum Daily	CAT 2	SIG	1080291
4	19-May-20	Total Arsenic	µg/L	20	833	Maximum Daily	CAT 2	SIG	1080289
5	19-May-20	Total Antimony	µg/L	12	34.2	Maximum Daily	CAT 2	SIG	1080287
6	31-May-20	Total Nickel	µg/L	21	134	Monthly Average	CAT 2	SIG	1080292
7	31-May-20	Total Arsenic	µg/L	10	833	Monthly Average	CAT 2	SIG	1080290
8	31-May-20	Total Antimony	µg/L	6	34.2	Monthly Average	CAT 2	SIG	1080288
9	15-Dec-20	Total Antimony	µg/L	12	15.6	Maximum Daily	CAT 2	SIG	1087699
10	15-Dec-20	Total Arsenic	µg/L	20	1398	Maximum Daily	CAT 2	SIG	1087701
11	15-Dec-20	Total Nickel	µg/L	21	31	Monthly Average	CAT 2	SIG	1087703
12	31-Dec-20	Total Antimony	µg/L	6	16	Monthly Average	CAT 2	SIG	1087700

ATTACHMENT A TO SETTLEMENT OFFER NUMBER. R5-2023-0527
Record of Violations Subject to Mandatory Minimum Penalties

Item	Date	Parameter	Units	Limit	Measured	Period	Violation Type	MMP Type	CIWQS
13	31-Dec-20	Total Arsenic	µg/L	10	1398	Monthly Average	CAT 2	SIG	1087702
14	31-Dec-20	Electrical Conductivity	µmhos/cm	900	1423	Annual Average	OEV	CHRON	1087704
15	25-Mar-21	Total Antimony	µg/L	12	19	Maximum Daily	CAT 2	SIG	1093866
16	25-Mar-21	Total Arsenic	µg/L	20	1114	Maximum Daily	CAT 2	SIG	1093868
17	31-Mar-21	Total Nickel	µg/L	21	38	Monthly Average	CAT 2	SIG	1093870
18	31-Mar-21	Total Antimony	µg/L	6	19	Monthly Average	CAT 2	SIG	1093867
19	31-Mar-21	Total Arsenic	µg/L	10	114	Monthly Average	CAT 2	SIG	1093869
20	29-Jun-21	Total Arsenic	µg/L	20	762	Maximum Daily	CAT 2	SIG	1093878
21	29-Jun-21	Total Antimony	µg/L	12	15	Maximum Daily	CAT 2	SIG	1093876
22	30-Jun-21	Total Nickel	µg/L	21	34	Monthly Average	CAT 2	SIG	1093884
23	30-Jun-21	Total Antimony	µg/L	6	15	Monthly Average	CAT 2	SIG	1093877
24	30-Jun-21	Total Arsenic	µg/L	10	762	Monthly Average	CAT 2	SIG	1093879
25	27-Sep-21	Total Antimony	µg/L	11	33	Daily Maximum	CAT 2	SIG	1100658
26	27-Sep-21	Total Arsenic	µg/L	22	1293	Daily Maximum	CAT 2	SIG	1100659
27	27-Sep-21	Total Antimony	µg/L	5.6	33	Monthly Average	CAT 2	SIG	1100660
28	27-Sep-21	Total Arsenic	µg/L	10	1293	Monthly Average	CAT 2	SIG	1100661
29	27-Sep-21	Total Nickel	µg/L	45	86	Monthly Average	CAT 2	SIG	1100662
30	21-Dec-21	Total Antimony	µg/L	11	24	Daily Maximum	CAT 2	SIG	1100664
31	21-Dec-21	Total Arsenic	µg/L	22	240	Daily Maximum	CAT 2	SIG	1100665
32	31-Dec-21	Total Antimony	µg/L	5.6	24	Monthly Average	CAT 2	SIG	1100666
33	31-Dec-21	Total Arsenic	µg/L	10	240	Monthly Average	CAT 2	SIG	1100667
34	31-Dec-21	Total Nickel	µg/L	45	56	Monthly Average	CAT 2	SIG	1100668

ATTACHMENT A TO SETTLEMENT OFFER NUMBER. R5-2023-0527
Record of Violations Subject to Mandatory Minimum Penalties

Item	Date	Parameter	Units	Limit	Measured	Period	Violation Type	MMP Type	CIWQS
35	23-Mar-22	Antimony	µg/L	11	24	Daily Maximum	CAT 2	SIG	1106705
36	23-Mar-22	Arsenic	µg/L	22	150	Daily Maximum	CAT 2	SIG	1106707
37	31-Mar-22	Antimony	µg/L	5.6	24	Monthly Average	CAT 2	SIG	1106704
38	31-Mar-22	Arsenic	µg/L	10	150	Monthly Average	CAT 2	SIG	1106706
39	31-Mar-22	Nickel	µg/L	45	81	Monthly Average	CAT 2	SIG	1106708

Table B. Late Reporting Violations Subject to Mandatory Penalties

Item	Report	Due Date	Date Received	Days Late	No. of 30-Day Period Late	Violation Type	CIWQS
40	Third Quarter 2020	1-Nov-2020	Not submitted	92	(1 of 3)	LREP	1087705
41	Third Quarter 2020	1-Nov-2020	Not submitted	92	(2 of 3)	LREP	1087707
42	Third Quarter 2020	1-Nov-2020	Not submitted	92	(3 of 3)	LREP	1087708
43	Third Quarter 2020	1-Nov-2020	Not submitted	92	< 30 days	LREP (Not Subject to MMP)	1087709

Item Notes:

A. Supporting violation addressed in ACL R5-2019-0506.

Items #40-43. Per Water Code section 13385.1, one MMP is assessed for each complete 30-day period that a report is late. The number of days for late reporting is counted from the due date of the third quarter 2020 report to the due date of the fourth quarter 2020 report.

ATTACHMENT A TO SETTLEMENT OFFER NUMBER. R5-2023-0527
Record of Violations Subject to Mandatory Minimum Penalties

VIOLATIONS SUMMARY

<u>VIOLATIONS AS OF:</u>	<u>3/31/2022</u>
Group I Serious Violations:	2
Group II Serious Violations:	36
Late Reporting Violations Not Subject to MMPs:	1
Late Reporting Violations Subject to MMPs	3
Non-Serious Violations Not Subject to MMPs:	0
<u>Non-serious Violations Subject to MMPs:</u>	<u>1</u>
Total Violations Subject to MMPs:	42

Mandatory Minimum Penalty Amount for Effluent Limit Violations

(2 Group 1 Violations Subject to MMP + 36 Group II Violations Subject to MMP + 3 Late Reporting Violations Subject to MMP + 1 Non-serious Violation Subject to MMP) x \$3,000 Per Violation = \$126,000

Total Expedited Mandatory Minimum Penalty = \$126,000

Table C. 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.

ATTACHMENT A TO SETTLEMENT OFFER NUMBER. R5-2023-0527
Record of Violations Subject to Mandatory Minimum Penalties

Abbreviation	Description
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; ORDER**

Original Sixteen to One Mine, Inc.
EPL No. R5-2023-0527

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 Original Sixteen to One Mine, Inc. (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 **one hundred twenty-six thousand dollars (\$126,000)** (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 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

Offer to Participate in Expedited Payment Letter Program
EPL R5-2023-0527

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 **one hundred twenty-six thousand dollars (\$126,000)** 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 R5-2023-0527 Payment
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).

Offer to Participate in Expedited Payment Letter Program
EPL R5-2023-0527

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.

Original Sixteen to One Mine, Inc.

<u>Original Signed by</u>	<u>8/9/2023</u>
Signature	Date

<u>Douglas W. Charlton</u>	<u>CEO</u>
Printed or Typed Name	Title

IT IS SO ORDERED PURSUANT TO CALIFORNIA WATER CODE SECTION 13385

Patrick Pulupa
Executive Officer