
Central Valley Regional Water Quality Control Board

5 May 2022

Kevin Towle, CEO
Waterworks Aquatic Management, Inc.
4120 Douglas Blvd. #306-353
Granite Bay, CA 95746

Via email:
kevin@getwaterworks.com

OFFER TO SETTLE ADMINISTRATIVE CIVIL LIABILITY R5-2022-0502, WATERWORKS AQUATIC MANAGEMENT INC., SACRAMENTO COUNTY

This letter contains an offer from the Central Valley Regional Water Quality Control Board (Central Valley Water Board) Prosecution Team to settle claims for administrative civil liability arising out of alleged violations by Waterworks Aquatic Management Inc. (Discharger) of the Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for Residual Aquatic Pesticide Discharges to Waters of the United States from Algae and Aquatic Weed Control Applications, Order No. 2013-002-DWQ (Aquatic Pesticide General Order or Order). As the Discharger and legally responsible person enrolled in the Aquatic Pesticide General Order, the Discharger is responsible for complying with all elements of the Aquatic Pesticide General Order and is strictly liable for penalties associated with noncompliance. Hereafter, this letter will be referred to as the "Settlement Offer."

This Settlement Offer provides the Discharger with an opportunity to resolve the alleged violations through payment of twenty thousand dollars (\$20,000). Please read this letter carefully and respond no later than 19 May 2022.

Description of Violations

Waterworks Aquatic Management, Inc. engages in algae and aquatic weed control application resulting in discharges of residual algaecides, aquatic herbicides, and degradation byproducts to waters of the United States. The Discharger has been enrolled, and subject to the requirements of, the Aquatic Pesticide Permit since 2017. The Monitoring and Reporting Program (MRP) Provision III.B. of the Aquatic Pesticides Permit requires the Discharger to monitor for all active ingredients for the background, event, and post-event monitoring. Active ingredients are ingredients disclosed by manufacturers that yield toxic effects on target organisms and include products that are used by the Discharger in its regular business operations. Despite the use of these products, and the Discharger's enrollment in the Aquatic Pesticide Permit, the Discharger has failed to conduct all active ingredients sampling in 2018, 2019, and

2020. Therefore, the annual monitoring reports submitted to the State Water Board in 2018, 2019, and 2020 are deficient reports. For the purposes of this settlement offer, the Prosecution Team for the Central Valley Water Board is only alleging a single violation for failure to submit an adequate monitoring report for the 2020 reporting year.

Statutory Liability

Pursuant to Section 13385 of the California Water Code (Water Code), the Discharger is liable for administrative civil liabilities of up to \$10,000 per violation for each day in which the violation occurred, and \$10 per gallon discharged in excess of the first 1,000 gallons. The statutory minimum civil liability is the economic benefit resulting from the violations. The State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy) states that the minimum penalty is to be the economic benefit plus 10%. For the alleged violations described in the enclosed "Penalty Calculation Methodology," the maximum potential liability is least **\$9,780,000** and the minimum liability is **\$2,912.80**.

Proposed Settlement Offer

The Central Valley Water Board's Prosecution Team proposes to resolve the violation(s) with this Settlement Offer of **\$20,000**. This Settlement Offer was determined based on an assessment of the factors set forth in Water Code section 13385(e) using the penalty methodology set forth in the Enforcement Policy. The enclosed "Penalty Calculation Methodology" describes in detail how the penalty amount was calculated. The Prosecution Team believes that the proposed resolution of the alleged violation(s) is fair and reasonable, fulfills the Central Valley Water Board's enforcement objectives, and is in the best interest of the public. Should the Discharger choose not to accept this Settlement Offer, please be advised that the Central Valley Water Board Prosecution Team reserves the right to seek a higher liability amount, up to the maximum allowed by statute, either through issuance of a formal administrative civil liability complaint or by referring the matter to the Attorney General's Office. The Central Valley Water Board Prosecution Team also reserves the right to conduct additional investigation, including issuance of investigation orders and/or subpoenas to determine the number of gallons discharged and whether additional violations occurred. Any additional violations and gallons of discharge subjecting the Discharger to liability may be included in a formal enforcement action. The Discharger can avoid the risks inherent in a contested enforcement action and settle the alleged violation(s) by accepting this Settlement Offer.

Options for Responding to the Settlement Offer

Option A: Accept the Offer

If the Discharger chooses to accept this Settlement Offer, then the enclosed Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver) shall be completed and submitted no later than **19 May 2022** 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

Important! - Upon receipt of the Acceptance and Waiver, this settlement will be publicly noticed for a 30-day comment period as required by federal regulations. If no substantive comments are received within the 30 days, the Prosecution Team will ask the Central Valley Water Board's Executive Officer to formally endorse the Acceptance and Waiver as an order of the Central Valley Water Board. An invoice will then be mailed to the Discharger requiring payment of the administrative civil liability within 30 days of the date of the invoice.

If, however, substantive comments are received in opposition to this settlement and/or the Executive Officer declines to accept the settlement, then the Settlement Offer may be withdrawn. In this case, the Discharger will be notified and the Discharger's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. The unresolved violation(s) will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued, and the matter may be set for a hearing.

Option B: Contest the Alleged Violations

If the Discharger wishes to contest the violation(s) or the methodology used to calculate the proposed liability, it must submit a written response identifying the basis for the challenge, including any evidence to support its claims. The Discharger's response must be received by the Central Valley Water Board no later than **19 May 2022**. The Central Valley Water Board Prosecution Team will evaluate the Discharger's basis for a challenge and may seek clarifying information or schedule a meeting by video or teleconference. The Prosecution Team will inform the Discharger whether a reduction in the settlement amount is warranted, or whether the original settlement amount is appropriate. The Discharger will be provided a final opportunity to accept the revised/original settlement amount before proceeding to formal enforcement.

Option C: Reject Offer

If the Discharger chooses to reject this Settlement Offer and/or does not complete and return the Acceptance and Waiver, the Discharger should expect that the Prosecution Team will conduct further investigation of the violation(s), issue an administrative civil liability complaint, and schedule a hearing. The Discharger will receive notice of any deadlines associated with that action. As previously stated, in such an action, the liability amount sought and/or imposed may exceed the liability amount set forth in this Settlement Offer.

Kevin Towel
Waterworks Aquatic Management Inc.

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5 May 2022

If you have any questions about this settlement offer, please contact Xuan Luo at (916) 464-4606 or by email at Xuan.Luo@waterboards.ca.gov.

Original Signed by

JOHN J. BAUM
Assistant Executive Officer

Enclosures: Penalty Calculation Mythology

**ACCEPTANCE OF SETTLEMENT OFFER AND WAIVER OF RIGHT TO A HEARING
FOR**

**ORDER NO. R5-2022-0502
WATERWORKS AQUATIC MANAGEMENT INC.,
SACRAMENTO COUNTY**

Waterworks Aquatic Management Inc.
Settlement Offer No. R5-2022-0502
WDID No. 5A34AP00005

By signing below and returning this Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver) to the Central Valley Regional Water Quality Control Board (Central Valley Water Board), Waterworks Aquatic Management Inc., (Discharger) hereby accepts the Settlement Offer **R5-2022-0502** and waives the right to a hearing before the Central Valley Water Board to dispute the alleged violations described in the Settlement Offer and its enclosures.

The Discharger 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 Central Valley Water Board to assert jurisdiction over the alleged violations. The Discharger agrees to perform the following:

- Pay an administrative civil liability in the sum of **twenty thousand dollars (\$20,000)** by cashier's check or certified check made payable to the "State Water Resources Control Board Cleanup and Abatement Account." This payment shall be deemed payment in full of any civil liability pursuant to Water Code section 13385 that might otherwise be assessed for violations described in the Settlement Offer and its enclosures.
- Fully comply with the conditions of the Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for Residual Aquatic Pesticide Discharges to Waters of the United States from Algae and Aquatic Weed Control Applications, Order No. 2013-002-DWQ (Aquatic Pesticide General Order or Order).

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

Settlement Offer
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The Discharger understands that by signing this Acceptance and Waiver, the Discharger has waived its right to contest the allegations in the Settlement Offer and the civil liability amount for the alleged violation(s). The Discharger understands that this Acceptance and Waiver does not address or resolve any liability for any violation not specifically identified in the Settlement Offer and its enclosures.

If no comments are received within the notice period that cause the Prosecution Team to consider the Settlement Offer, then the Prosecution Team will present this Acceptance and Waiver to the Central Valley Water Board's Executive Officer for formal endorsement on behalf of the Central Valley Water Board. The Discharger understands that if significant comments are received in opposition to the settlement, then the offer may be withdrawn by the Prosecution Team. If the Settlement Offer is withdrawn, then the Discharger will be notified and the Discharger's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. The unresolved violation(s) will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued, and the matter may be set for a 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 **\$20,000** liability shall be paid by a cashier 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:

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

State Water Resources Control Board, Accounting Office
Attn: **R5-202-0502** Payment
PO Box 1888
Sacramento, California, 95812-1888

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

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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.

Waterworks Aquatic Management Inc.,

By: Kevin Towle

Title: President

Date: 5/9/2022

IT IS SO ORDERED PURSUANT TO CALIFORNIA WATER CODE SECTION 13323
AND GOVERNMENT CODE SECTION 11415.60.

BY: Original Digitally Signed by Patrick Pulupa on
Date: 2022.07.15 at 15:21:55 -07'00'
PATRICK PULUPA
Executive Officer