



Colorado River Basin Regional Water Quality Control Board

CERTIFIED MAIL: 7018 0680 0002 0102 3530

January 11, 2021

Wayne Sterud, Vice President of Operations
Kent SeaTech, LLC
70775 Buchanan Street
Mecca, CA 92254
Email: wsterud@kentseatech.com

SUBJECT: CONDITIONAL SETTLEMENT OFFER NO. R7-2021-0009; OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM RELATING TO ALLEGED VIOLATIONS OF ORDER NO. R7-2016-0035, NPDES NO. CA0105181

Dear Mr. Sterud:

This letter notifies Kent SeaTech, LLC (Discharger), the owner and operator of Kent SeaTech Corporation Fish Farm, of alleged violation(s) of effluent limitations and provides the Discharger the opportunity to settle the violation(s) through payment of **\$84,000** in mandatory minimum penalties (MMPs) pursuant to California Water Code (Water Code) section 13385, subdivisions (h) and (i). Please reply by **February 10, 2021**.

NOTICE OF VIOLATION

The Assistant Executive Officer alleges that the Discharger has violated the above-referenced National Pollutant Discharge Elimination System (NPDES) permit as identified in Exhibit A, attached hereto and incorporated by reference. Background information on previous notices and conditional settlement offers provided to the Discharger are provided below.

The Discharger was originally notified of the alleged violations on April 5, 2019, when the Assistant Executive Officer issued Conditional Settlement Offer No. R7-2019-0024 (2019 Settlement Offer), which provided the Discharger an opportunity to review and contest the violations. Following the Discharger's review of the 2019 Settlement Offer, the Discharger submitted a response letter dated April 30, 2019 that contested the violations and made requests as summarized below:

- The first three oil & grease violations, Violations 7 – 9, should not be subject to MMPs because the violations are “the first three violations of ‘a waste discharge requirement effluent limitation’ in any six-month period.”
- Alternatively, two rather than four MMPs should apply to Violations 7 – 10 because the concentration-based and mass-based effluent limitation violations are based on the same sample. Pursuant to Water Code section 13385, subdivision (f) and the State Water Resources Control Board’s 2017 Water Quality Enforcement Policy (Enforcement Policy), the violations are ‘not independent of one another or are not substantially distinguishable.’
- The 30-day geometric mean violations of *E. coli*, Violations 2, 4, 6, 12, 17, 22, 24, 29, and 33, should not be subject to MMPs because MMPs are assessed for *E. coli* daily maximum limit violations during the same 30-day period.
- Pursuant to Water Code section 13385, subdivision (e), the Discharger’s limited ability to pay justifies a reduced MMP amount that could be paid in monthly installments.
- The Discharger requested that a portion of the MMP amount be allocated to a supplemental environmental project (SEP) and expressed interest in discussing options for a SEP, including treatment technology improvements and capital improvements for wastewater disposal at the Discharger’s facility.

In a June 14, 2019 letter, the Colorado River Basin Regional Water Quality Control Board (Regional Water Board) Prosecution Team responded to the Discharger’s requests and confirmed that each of the violations alleged in the 2019 Settlement Offer have merit as summarized below:

- Violations 7 – 10 are each subject to an MMP. In determining the MMP amount under Water Code section 13385, subdivision (i), the Regional Water Board shall assess \$3,000 for each violation, not counting the first three violations, where the violator had four or more violations in any one of the four categories in Subdivision (i) (i.e., effluent limitation violation). A serious violation under Water Code section 13385, subdivision (h), which always receives an MMP whether or not it is one of the first three violations, also count toward determining the number of exceedances under Water Code section 13385, subdivision (i); serious violations are, by definition, violations of effluent limitations. When a serious and nonserious violation occur on the same day (i.e., Violations 7 – 8 and 9 – 10), and it is not possible to determine the order in which the violations occurred, the Regional Water Board takes the most conservative approach and counts serious violations last in determining the order of violations.
- Violations 7 – 10 are each subject to an MMP. In accordance with federal regulations, the Discharger’s NPDES permit requires compliance with mass and concentration effluent limitations for the same parameter (i.e., oil and grease) to

be determined separately with their respective limitations. Federal regulations (40 C.F.R. § 122.45(f)(1)) require all NPDES permit limits, standards, or prohibitions to be expressed in terms of mass units (i.e., pounds, kilograms, grams). A permit writer has the discretion to express limits in additional units (i.e., concentration units). (40 C.F.R. § 122.45(f)(2).) Where limits are expressed in more than one unit, the permit shall require the permitted to comply with both limits. (Id.) A single sample can be used to separately determine compliance with a mass and concentration effluent limitation.

- Violations 2, 4, 6, 12, 17, 22, 24, 29, and 33 are each subject to an MMP because violations of a monthly limitation (i.e., 30-day geometric mean) and daily maximum limitations are distinct and separate violations. MMPs for violating both the *E. coli* daily maximum limitations and monthly limitation during the same month is not “double-counting.” A \$3,000 MMP under Water Code section 13385, subdivision (h) and (i) are required for “each violation” and liability is not based on days in which an exceedance of the *E. coli* effluent limitation occurred.
- Ability to pay is not a factor when assessing MMPs. The factors provided in Water Code section 13385, subdivision (e), including ability to pay, only apply to discretionary administrative civil liability cases. For violations subject to MMPs, the Regional Water Board must assess the MMP or a greater amount. (Enforcement Policy, p. 25.) Pursuant to Water Code section 13323, subdivision (d), orders imposing administrative civil liability are effective and final upon issuance and payment shall be made not later than 30 days from the date on which the order is issued.
- Implementation of a capital improvement project is more akin to an enhanced compliance action (ECA) or a compliance project (CP) than a SEP. The Discharger cannot implement an ECA or CP for the following reasons:
 - ECAs are “projects that enable a discharger to make capital or operational improvements beyond those required by law and are separate from projects designed to merely bring a discharger back into compliance. The Water Boards may approve a settlement with a discharger that includes a suspension of a portion of the monetary liability of a *discretionary ACL* [administrative civil liability] for completion of an ECA.” (Enforcement Policy, p. 31, emphasis added.) An ECA cannot be implemented as part of a settlement of an MMP enforcement action.
 - A CP is a project designed to address problems related to the violation(s) and bring a violator back into compliance in a timely manner. CPs are only authorized in connection with MMPs against public owned treatment works serving a small community with a financial hardship. (See Wat. Code, § 13385, subd. (k); Enforcement Policy, p. 30.)

The Prosecution Team's April 5, 2019 response gave the Discharger two options to resolve the alleged violations: (1) participate in the expedited payment program and accept the 2019 Settlement Offer; or (2) engage in settlement discussions to propose a SEP. On July 15, 2019, the Discharger submitted a signed *Agreement to Engage in Settlement Discussions to Propose a Supplemental Environmental Project*, which provided the Discharger an opportunity to propose a SEP to offset a portion of the \$84,000 MMP.

Despite good faith efforts, the Discharger and Prosecution Team were unable to reach an agreement on a SEP during confidential settlement negotiations. The Assistant Executive Officer withdraws the 2019 Settlement Offer through issuance of this Conditional Settlement Offer and is providing the Discharger a final opportunity to resolve the alleged violations before an administrative civil liability complaint is issued or the matter is referred to the Attorney General's Office for prosecution.

STATUTORY LIABILITY

Water Code section 13385, subdivisions (h) and (i), require the assessment of a \$3,000 mandatory minimum penalty for each specified serious and chronic effluent limitation violation. The Discharger is also subject to discretionary administrative civil liability of up to \$10,000 per day for each violation, plus \$10 for each gallon discharged but not cleaned up in excess of 1,000 gallons. The Regional Water Board may assess MMPs or discretionary administrative civil liability beginning with the date on which the violations first occurred. The formal enforcement action that the Regional Water Board uses to assess such liability is an administrative civil liability complaint. Alternatively, the Regional Water Board may refer the matter to the Attorney General's Office for prosecution in superior court. The superior court may assess up to \$25,000 per day for each violation, plus \$25 per gallon discharged but not cleaned up in excess of 1,000 gallons.

OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM

The Discharger can avoid the issuance of a formal enforcement action and settle the alleged violation(s) identified in Exhibit A by participating in the Regional Water Board's Expedited Payment Program. The Discharger may accept this Conditional Settlement Offer, waive its right to a hearing, and pay the mandatory minimum penalty of **\$84,000** for the violation(s) described in Exhibit A. If the Discharger elects to do so, the Regional Water Board will execute the settlement offer subject to the conditions below. The Regional Water Board will accept the payment in settlement of any enforcement action that would otherwise arise out of the violation(s) identified in Exhibit A. Accordingly, the Regional Water Board will not issue a formal administrative civil liability complaint, will not refer the violation(s) to the Attorney General's Office, and will waive its right to seek additional discretionary civil liability for the violation(s) identified in Exhibit A.

This Conditional Settlement Offer does not address or resolve liability for any violation that is not specifically identified in Exhibit A.

DISCHARGER'S OPTIONS FOR RESPONSE TO OFFER

To accept this Conditional Settlement Offer, the Discharger must complete, sign, and return the enclosed "Acceptance of Conditional Resolution and Waiver of Right to Hearing" (Acceptance and Waiver) on or before **February 10, 2021 (30 days)**.

CONDITIONS FOR REGIONAL WATER BOARD ACCEPTANCE OF RESOLUTION

Federal regulations require the Regional Water Board to publish and allow the public at least 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)). Upon receipt of the Discharger's Acceptance and Waiver, Regional Water Board staff will publish a notice of the proposed resolution of the violation(s).

If Regional Water Board staff do not receive comments within the 30-day comment period and no new material facts become available to the Regional Water Board, the Conditional Settlement Offer and Acceptance and Waiver will be presented to the Regional Water Board and its Executive Officer for approval as a stipulated order assessing the uncontested mandatory minimum penalty amount pursuant to Water Code section 13385, subdivisions (h) and (i). The Regional Water Board or Executive Officer may elect to schedule consideration of the matter at a board meeting prior to executing the Acceptance and Waiver.

If, however, significant comments are received in opposition to the Settlement, the Offer may be withdrawn. In that case, the Discharger's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn and the violation(s) will be addressed in a liability assessment proceeding. At the liability assessment hearing the Discharger will be free to make arguments as to any of the alleged violations, and the Discharger's agreement to accept this conditional settlement offer will not in any way be binding or used as evidence against the Discharger. The Discharger will be provided with further information on the liability assessment proceeding.

In the event the Executive Officer or Regional Water Board executes and approves the Acceptance and Waiver, full payment of the assessed amount shall be due within 30 calendar days from the date of the Executive Officer's or Regional Water Board's approval. Funds collected for violations under Water Code section 13385, subdivision (h) and (i) shall be deposited in the State Water Pollution Cleanup and Abatement Account. Accordingly, the **\$84,000** 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 may subject the Discharger to further liability.

Please send your reply to the attention of Kai Dunn, either by email or U.S. mail. If you want to discuss or have questions regarding this Conditional Settlement Offer, please contact Kai Dunn at (760) 776-8986 or Kai.Dunn@waterboards.ca.gov.

Sincerely,

Original Signed By

Cassandra D. Owens
Assistant Executive Officer
Colorado River Basin Region
Regional Water Quality Control Board

MP/KD

cc: Claudia Hertzog
Executive Vice President
claudia@kentseatech.com

Emily Lane Murray, Esq.
Allen Matkins Leck Gamble Mallory & Natsis LLP
emurray@allenmatkins.com

Paul D. Ciccarelli
Attorney III
State Water Board Office of Enforcement
paul.ciccarelli@waterboards.ca.gov

Enclosure: Exhibit A – Notice of Violation
Exhibit B - Acceptance of Conditional Resolution and Waiver of Right to
Hearing

File: WDID No. 7A 33 5003 001, Kent SeaTech Corporation Fish Farm
ECM: CW-234825

Conditional Settlement Offer No. R7-2021-0009

MANDATORY PENALTY ADMINISTRATIVE CIVIL LIABILITY

Kent Seatech Corporation Kent SeaTech Corp Fish Farm
 WDID No. 7A335003001 NPDES No. CA0105181

EXHIBIT "A"

Effluent Limitation Violations Requiring Mandatory Minimum Penalties

#	Violation Number	Violation Date	Constituent	Pollutant Group	Limitation Period	Limit	Result/Average	Units	% Over Limit	Date 180 Days Prior	Serious or Chronic Violation?	Penalty
1	1033390	12/29/2016	E.coli	Other	Daily Maximum	400	900	MPN/100	N/A	07/02/2016	N/A	\$ 0
2	1033389	12/30/2016	E.coli	Other	30-Day Geometric	126	191	MPN/100	N/A	07/03/2016	N/A	\$ 0
3	1033388	01/03/2017	E.coli	Other	Daily Maximum	400	1600	MPN/100	N/A	07/07/2016	N/A	\$ 0
4	1033387	01/31/2017	E.coli	Other	30-Day Geometric	126	285	MPN/100	N/A	08/04/2016	C	\$ 3,000
5	1033386	02/17/2017	E.coli	Other	Daily Maximum	400	500	MPN/100	N/A	08/21/2016	C	\$ 3,000
6	1033384	02/28/2017	E.coli	Other	30-Day Geometric	126	154	MPN/100	N/A	09/01/2016	C	\$ 3,000
7	1033377	05/11/2017	Oil and Grease	Group 1	Daily Maximum	2190	2716	lb/day	24%	11/12/2016	C	\$ 3,000
8	1033380	05/11/2017	Oil and Grease	Group 1	Daily Maximum	25	39	mg/L	56%	11/12/2016	S	\$ 3,000
9	1030550	06/06/2017	Oil and Grease	Group 1	Daily Maximum	2190	2818	lb/day	29%	12/08/2016	C	\$ 3,000
10	1033376	06/06/2017	Oil and Grease	Group 1	Daily Maximum	25	47	mg/L	88%	12/08/2016	S	\$ 3,000
11	1033383	07/17/2017	E.coli	Other	Daily Maximum	400	500	MPN/100	N/A	01/18/2017	C	\$ 3,000
12	1033381	07/31/2017	E.coli	Other	30-Day Geometric	126	310	MPN/100	N/A	02/01/2017	C	\$ 3,000
13	1033382	07/31/2017	E.coli	Other	Daily Maximum	400	1600	MPN/100	N/A	02/01/2017	C	\$ 3,000
14	1032818	08/07/2017	E.coli	Other	Daily Maximum	400	1600	MPN/100	N/A	02/08/2017	C	\$ 3,000
15	1032819	08/14/2017	E.coli	Other	Daily Maximum	400	1600	MPN/100	N/A	02/15/2017	C	\$ 3,000
16	1032820	08/21/2017	E.coli	Other	Daily Maximum	400	1600	MPN/100	N/A	02/22/2017	C	\$ 3,000
17	1032816	08/28/2017	E.coli	Other	30-Day Geometric	126	333.0213	MPN/100	N/A	03/01/2017	C	\$ 3,000
18	1032817	08/28/2017	E.coli	Other	Daily Maximum	400	500	MPN/100	N/A	03/01/2017	C	\$ 3,000
19	1033831	09/11/2017	E.coli	Other	Daily Maximum	400	1600	MPN/100	N/A	03/15/2017	C	\$ 3,000
20	1033832	09/18/2017	E.coli	Other	Daily Maximum	400	900	MPN/100	N/A	03/22/2017	C	\$ 3,000
21	1033834	09/25/2017	E.coli	Other	Daily Maximum	400	500	MPN/100	N/A	03/29/2017	C	\$ 3,000
22	1033833	09/30/2017	E.coli	Other	30-Day Geometric	126	303.9	MPN/100	N/A	04/03/2017	C	\$ 3,000
23	1035557	10/02/2017	E.coli	Other	Daily Maximum	400	1600	MPN/100	N/A	04/05/2017	C	\$ 3,000
24	1035558	10/31/2017	E.coli	Other	30-Day Geometric	126	184.7	MPN/100	N/A	05/04/2017	C	\$ 3,000
25	1044945	05/07/2018	E.coli	Other	Daily Maximum	400	2400	MPN/100	N/A	11/08/2017	N/A	\$ 0
26	1044944	05/28/2018	E.coli	Other	Daily Maximum	400	687	MPN/100	N/A	11/29/2017	N/A	\$ 0
27	1048712	08/13/2018	E.coli	Other	Daily Maximum	400	1700	MPN/100	N/A	02/14/2018	N/A	\$ 0
28	1048847	08/27/2018	E.coli	Other	Daily Maximum	400	490	MPN/100	N/A	02/28/2018	C	\$ 3,000
29	1048848	08/31/2018	E.coli	Other	30-Day Geometric	126	186	MPN/100	N/A	03/04/2018	C	\$ 3,000
30	1049120	09/30/2018	E.coli	Other	30-Day Geometric	126	129.7	MPN/100	N/A	04/03/2018	C	\$ 3,000
31	1053041	10/22/2018	E.coli	Other	Daily Maximum	400	1600	MPN/100	N/A	04/25/2018	C	\$ 3,000
32	1056702	10/29/2018	E.coli	Other	Daily Maximum	400	580	MPN/100	N/A	05/02/2018	C	\$ 3,000
33	1053040	10/31/2018	E.coli	Other	30-Day Geometric	126	264	MPN/100	N/A	05/04/2018	C	\$ 3,000
34	1054384	11/30/2018	E.coli	Other	30-Day Geometric	126	143	MPN/100	N/A	06/03/2018	C	\$ 3,000

\$ 84,000

- 1 - Violation occurs on sample date or last date of averaging period.
- 2 - For Group I pollutants, a violation is serious when the limit is exceeded by 40% or more
 - For Group II pollutants, a violation is serious when the limit is exceeded by 20% or more
- 3 - When a serious violation occurs on the same day as a chronic, the serious violation is only assessed an MMP once and is counted last for the day when determining the number of chronic violations to be assessed a

Violation period ending the last day of November 2020

Group I Violations Assessed MMP: 4

Group II Violations Assessed MMP: 0

Other Effluent Violations Assessed MMP: 24

Violations Exempt from MMP: 0

Total Violations Assessed MMP: 28

Mandatory Minimum Penalty = (2 Serious Violations + 26 Non-Serious Violations) x \$3,000 = \$84,000

EXHIBIT B
ACCEPTANCE OF CONDITIONAL RESOLUTION
AND WAIVER OF RIGHT TO HEARING

Kent SeaTech, LLC, Owner/Operator
Kent SeaTech Corporation Fish Farm
WDR Order No. R7-2016-0035 (NPDES No. CA0105181)

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, Colorado River Basin Region (Regional Water Board), Kent SeaTech, LLC (Discharger), the owner and operator of Kent SeaTech Corporation Fish Farm, hereby accepts “Conditional Settlement Offer No. R7-2021-0009” (Conditional Settlement Offer) to settle the alleged violation(s) through payment of mandatory minimum penalties and waives the right to a hearing before the Regional Water Board to dispute the alleged violation(s). The alleged violation(s) are attached to this Acceptance and Waiver as Exhibit A, which is incorporated herein by reference.

The Discharger agrees that Exhibit A shall serve as a Complaint pursuant to Article 2.5 of the California Water Code (Water Code) and that a separate Complaint is not required for the Regional Water Board to assert jurisdiction over the alleged violation(s) through its Assistant Executive Officer. The Discharger agrees to pay the penalties required by Water Code section 13385, subdivisions (h) and/or (i), in the sum of **\$84,000**, 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(s) described in Exhibit A. The Discharger understands that this Acceptance and Waiver waives its right to contest the allegations in Exhibit A and the amount of civil liability assessed for the violation(s).

The Discharger understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in Exhibit A.

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

California Regional Water Quality Control Board, Colorado River Basin
Attention: Kai Dunn
73720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260

The Discharger understands that federal regulations set forth at Code of Federal Regulations, title 40, section 123.27(d)(2)(iii) require the Regional 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 will be published as required by law for public comment prior to the Executive Officer’s execution.

If no comments are received within the 30-day comment period and no new material facts become available to the Regional Water Board, the Conditional Settlement Offer and Acceptance and Waiver will be presented to the Regional Water Board and its Executive Officer for approval as a stipulated order assessing the uncontested mandatory minimum

penalty amount. The Regional Water Board or Executive Officer may elect to schedule consideration of the matter at a board meeting prior to executing the Acceptance and Waiver.

The Discharger understands that if significant comments are received in opposition to the Conditional Settlement Offer, the offer 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 Regional Water Board. For such a liability hearing, the Discharger understands that its executed Acceptance and Waiver will be treated as a settlement communication and will not be used as evidence in that hearing.

The Discharger understands that once the Executive Officer executes this Acceptance and Waiver, the full payment required by the deadline set forth below is a condition of this Acceptance and Waiver.

The Discharger understands that funds collected for violations under Water Code section 13385, subdivisions (h) and/or (i) 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 **\$84,000** made out to the "State Water Pollution Cleanup and Abatement Account."

The Discharger understands that payment must be submitted to the State Water Resources Control Board no later than thirty (30) calendar days after the date on which the Executive Officer executes this Acceptance and Waiver.

The Discharger shall mail the check to:

State Water Resources Control Board
Division of Administrative Services, Accounting Branch
Attn: ACL Payment
PO Box 1888
Sacramento, CA 95812-1888

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.

Kent SeaTech, LLC

By: Original Signed By _____ January 11, 2021 _____
Signed Name Date
Claudia Ken Hertzog _____ Executive Vice President _____
Printed or Typed Name Title

Note: Please return the signed Acceptance and Waiver with Exhibit A, together.

IT IS SO ORDERED PURSUANT TO GOVERNMENT CODE SECTION 11415.60 AND WATER CODE SECTIONS 13323 AND 13385.

By: Original Signed By _____ March 9, 2021 _____
PAULA RASMUSSEN Date
Executive Officer