
San Francisco Bay Regional Water Quality Control Board

July 29, 2022
CW-236598

Las Gallinas Valley Sanitary District
Mel Liebmann, Plant Manager
(via email only to mliebmann@lqvsd.org)
300 Smith Ranch Road
San Rafael, CA 94903

**Subject: Conditional Offer to Settle Violations of NPDES Permit CA0037851,
Las Gallinas Valley Sanitary District Sewage Treatment Plant, San Rafael,
Marin County**

Dear Mel Liebmann:

The San Francisco Bay Regional Water Quality Control Board (Regional Water Board) is charged with enforcing violations of the Water Code. This letter notifies Las Gallinas Valley Sanitary District (Discharger) of alleged violations of discharge limitations and provides the Discharger an opportunity to settle the violations through a payment of **\$66,000**, the mandatory minimum penalty pursuant to Water Code section 13385. Please reply by **August 31, 2022**.

NOTICE OF VIOLATION

As the Regional Water Board's Assistant Executive Officer, I allege that the Discharger has violated the NPDES permit indicated above as identified in Exhibit A, which is attached to this letter and incorporated by reference. The Discharger has the opportunity to address the alleged violations as discussed below.

STATUTORY LIABILITY

Water Code section 13385, subdivisions (h) and (i), requires the assessment of a \$3,000 mandatory minimum penalty for specified serious and chronic effluent limitation violations. Failure to file a discharge monitoring report required pursuant to Water Code section 13383 constitutes a serious violation for each complete period of 30 days following the deadline for submitting the report. The Discharger may also be subject to discretionary administrative civil liabilities 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 or the State Water Resources Control Board (collectively, the Water Boards) may assess these mandatory minimum penalties and discretionary administrative civil liabilities beginning with the date on which each violation first occurred.¹ To assess such liabilities, the Water Boards could initiate a formal enforcement action by issuing an administrative civil liability complaint to be followed by a public hearing. Alternatively, the Water Boards could refer the matter to the Attorney General's Office for

¹ The statute of limitations does not apply to administrative proceedings to assess mandatory minimum penalties. See *City of Oakland v. Public Employees' Retirement System*, (2002) 95 Cal.App.4th 29, 48; 3 Witkin, Cal. Procedure (5th ed. 2008) Actions, § 430.

enforcement in the 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.

CONDITIONAL OFFER TO SETTLE

The Discharger can avoid a formal enforcement action and settle the alleged violations identified in Exhibit A by accepting this conditional offer as described below and in the enclosed "Acceptance of Conditional Resolution and Waiver of Right to Hearing" (Acceptance and Waiver). This offer does not address liability for any violation not specifically identified in Exhibit A.

OPTIONS FOR RESPONSE

To accept this offer, the Discharger must complete, sign, and return the enclosed Acceptance and Waiver on or before the date specified in the first paragraph of this letter.

If the Discharger chooses to contest any of the violations alleged in Exhibit A, the Discharger should identify the specific violation and the basis for the challenge (factual error, affirmative defense, etc.) on or before the date specified in the first paragraph of this letter. Regional Water Board staff will evaluate any contested violation and take one of two actions:

1. Determine that the alleged violation warrants dismissal, dismiss the alleged violation within the California Integrated Water Quality System (CIWQS) database, notify the Discharger of the dismissal, and take no further action against the Discharger for the alleged violation; or
2. Determine that the alleged violation is meritorious and notify the Discharger of that determination. The Discharger will then have 30 days from the date of the determination to accept the mandatory minimum penalty as settlement for that violation.

If the Discharger chooses not to accept the settlement or does not reply to the determination, it should expect to be contacted regarding formal enforcement for the contested violation. With respect to formal enforcement, information Water Board staff receive during any formal investigation and assessment of the violation, as well as staff costs associated with pursuing enforcement and other considerations, may increase the liability beyond that set forth in this conditional offer.

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 an NPDES permit violation (40 C.F.R. § 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 settlement. If staff receives no comment within the 30-day period and no new material facts are available to the Regional Water Board, the settlement will be presented to the Executive Officer who will determine whether to execute the Acceptance and Waiver as a stipulated order assessing the uncontested mandatory minimum penalty pursuant to Water Code section 13385.

If, however, significant comments are received in opposition to the proposed settlement, this offer may be withdrawn. In that circumstance, the Water Boards will also treat the Acceptance and Waiver as withdrawn. Water Board staff will advise the Discharger of any withdrawal and may issue an administrative civil liability complaint and schedule a hearing before the Regional Water Board or State Water Board. For such a hearing, the Discharger will be free to argue against the alleged violations. Water Board staff will treat the Discharger's Acceptance and Waiver as if it were a settlement communication and will not use it as evidence in the hearing.

Water Board staff will provide the Discharger with additional information on hearing procedures if a hearing is to occur.

If the Regional Water Board's Executive Officer executes the Acceptance and Waiver, payment of the settlement amount shall be due within 30 calendar days from the date of the Executive Officer's signature. In accordance with Water Code section 13385(n)(1), funds collected pursuant to Water Code section 13385 shall be deposited into the State Water Pollution Cleanup and Abatement Account. Failure to pay the penalty within the required time may subject the Discharger to additional liability.

OPPORTUNITY FOR SUPPLEMENTAL ENVIRONMENTAL PROJECT

In lieu of paying all of the mandatory minimum penalty to the State Water Pollution Cleanup and Abatement Account, the Discharger may elect to apply a portion of the penalty to fund a supplemental environmental project (SEP).^{2,3} One SEP option is available: the SEP Fund to supplement the Regional Monitoring Program (RMP). This SEP Fund will supplement RMP studies that would not otherwise be conducted through the RMP's annually approved cost allocations. The RMP collects data and communicates information about water quality in the San Francisco Estuary in support of management decisions to restore and protect beneficial uses of the region's waters. Information about the RMP is available at sfei.org/rmp. The non-profit San Francisco Estuary Institute manages and administers RMP funds. No funds will go to the Water Boards.

The Discharger also may choose to pay the total mandatory minimum penalty to the State Water Pollution Cleanup and Abatement Account. These options are represented in the enclosed Acceptance and Waiver.

REGIONAL WATER BOARD CONTACT

Please reply to the attention of Marcos De la Cruz, either by email or U.S. mail. If you want to discuss or have questions regarding this matter, please contact Marcos De la Cruz at (510) 622-2365 or R2NPDES.MMPS@Waterboards.ca.gov.

Sincerely,

Thomas Mumley
Assistant Executive Officer

**Enclosures: Exhibit A - Alleged Violations
Acceptance and Waiver**

² Water Code section 13385(l)(1) authorizes the Regional Water Board, with the Discharger's concurrence, to direct a portion of the penalty to be expended on a SEP in accordance with the State Water Board's Enforcement Policy (https://www.waterboards.ca.gov/water_issues/programs/enforcement/water_quality_enforcement.shtml). If the penalty is less than or equal to \$15,000, 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.

³ See *State Water Board Policy on Supplemental Environmental Projects (2017)*, page 10, and *Resolution 2018-0034*.

EXHIBIT A - Alleged Violations

Discharger: Las Gallinas Valley Sanitary District
 Las Gallinas Valley Sanitary District Sewage Treatment Plant
 300 Smith Ranch Road, San Rafael, Marin County
 NPDES Permit CA0037851

The following table lists the alleged violations for which the Discharger is subject to civil liabilities pursuant to Water Code section 13385. The table lists the mandatory minimum penalty (MMP) that applies.

Table 1. List of Alleged Violations

CIWQS Violation ID No.	Violation Date	Parameter (units)	Group	Effluent Limitation	Reported Value	Percent Exceedance ^[1]	Violation Type	MMP ^[2]
1068525	11/29/2019	Total Residual Chlorine, Instantaneous Maximum (mg/L)	2	0.0	4.9	[4]	C1, S	\$3,000
1068526	11/30/2019	Total Residual Chlorine, Instantaneous Maximum (mg/L)	2	0.0	4.9	[4]	C2, S	\$3,000
1069899	12/3/2019	Total Residual Chlorine, Instantaneous Maximum (mg/L)	2	0.0	4.9	[4]	C3, S	\$3,000
1086571	1/31/2021	Enterococci, Monthly 90th% (MPN/100 mL)	[3]	110	2,400	2,100%	C1	\$0
1097274	10/25/2021	Total Suspended Solids (TSS), Weekly Average (mg/L)	1	18	24	31%	C2	\$0
1097276	10/25/2021	TSS, Daily Maximum (mg/L)	1	20	72	260%	C3, S	\$3,000
1097272	10/25/2021	Copper, Daily Maximum (µg/L)	2	11	21	91%	> C3, S	\$3,000
1097277	10/25/2021	Total Residual Chlorine, Instantaneous Maximum (mg/L)	2	0.0	3.2	[4]	> C3, S	\$3,000

CIWQS Violation ID No.	Violation Date	Parameter (units)	Group	Effluent Limitation	Reported Value	Percent Exceedance ^[1]	Violation Type	MMP ^[2]
1097278	10/31/2021	Enterococci, Monthly 90th% (MPN/100 mL)	[3]	110	2,400	2,100%	> C3	\$0
1097275	10/31/2021	TSS, Monthly Average (mg/L)	1	15	18	22%	> C3	\$0
1097273	10/31/2021	Copper, Monthly Average (µg/L)	2	8.6	14	67%	> C3, S	\$3,000
1098160	11/30/2021	Cyanide, Monthly Average (µg/L)	2	6.4	7.5	17%	> C3	\$3,000
1098159	11/30/2021	Enterococci, Monthly 90th% (MPN/100 mL)	[3]	110	2,400	2,100%	> C3	\$3,000
1099747	12/13/2021	Copper, Daily Maximum (µg/L)	2	11	15	36%	> C3, S	\$3,000
1099748	12/15/2021	Copper, Daily Maximum (µg/L)	2	11	12	9%	> C3	\$3,000
1099740	12/18/2021	TSS, Weekly Average (mg/L)	1	45	59	30%	> C3	\$3,000
1099746	12/23/2021	Copper, Daily Maximum (µg/L)	2	11	15	36%	> C3, S	\$3,000
1099741	12/24/2021	Copper, Daily Maximum (µg/L)	2	11	15	36%	> C3, S	\$3,000
1099743	12/31/2021	TSS, Monthly Average (mg/L)	1	30	39	29%	> C3	\$3,000
1099744	12/31/2021	TSS, Percent Removal (%)	1	85	77	-10%	> C3	\$3,000
1099742	12/31/2021	Copper, Monthly Average (µg/L)	2	8.6	10	16%	> C3	\$3,000
1099745	12/31/2021	Enterococci, Monthly 90th% (MPN/100 mL)	[3]	110	2,400	2,100%	> C3	\$3,000
1100894	1/22/2022	Enterococci, 6-week rolling geometric mean (MPN/100 mL)	[3]	30	36	18%	> C3, S	\$3,000

CIWQS Violation ID No.	Violation Date	Parameter (units)	Group	Effluent Limitation	Reported Value	Percent Exceedance ^[1]	Violation Type	MMP ^[2]
1100895	1/26/2022	Total Residual Chlorine, Instantaneous Maximum (mg/L)	2	0.0	0.64	[4]	> C3, S	\$3,000

Total Penalty: \$66,000

Legend:

CIWQS = California Integrated Water Quality System database that the Water Boards use to track violations and enforcement.

Violation ID = Identification number assigned to each permit violation within CIWQS.

C = Count – Number of violations within past 180 days, including this violation. A penalty applies under Water Code section 13385(i) when the count is greater than three (> C3).

S = Serious. A penalty applies under Water Code section 13385(h) whenever an effluent limitation is exceeded by 40 percent or more for a Group 1 pollutant or 20 percent or more for a Group 2 pollutant.

Footnotes:

[1] Percent that a discharger's reported value exceeds the effluent limitation for a Group 1 or 2 pollutant.

[2] The MMP required under Water Code section 13385(h) and/or (i).

[3] Enterococcus is not categorized as a Group 1 or Group 2 pollutant.

[4] Chlorine is a Group 2 pollutant and the percent above the limit of 0.0 mg/L is more than 20 but not quantifiable.

CW-236598
WDID: 2 215012001

This page intentionally left blank

**ACCEPTANCE OF CONDITIONAL RESOLUTION
AND WAIVER OF RIGHT TO HEARING
ORDER NO. R2-20 _____**

**Las Gallinas Valley Sanitary District
Las Gallinas Valley Sanitary District Sewage Treatment Plant
300 Smith Ranch Road, San Rafael, Marin County
NPDES Permit CA0037851, Regulatory Measure 448318**

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the San Francisco Bay Regional Water Quality Control Board (Regional Water Board), Las Gallinas Valley Sanitary District (Discharger) hereby accepts the conditional offer to settle alleged violations through payment of a mandatory minimum penalty and waives the right to a hearing before the Regional Water Board to dispute the alleged violations. The violations are attached to this Acceptance and Waiver as Exhibit A and incorporated by reference.

The Discharger agrees that Exhibit A shall serve as a complaint pursuant to Article 2.5 of the Water Code and that no separate complaint is required for the Regional Water Board to assert jurisdiction over the alleged violations. The Discharger agrees to pay the penalty authorized by Water Code section 13385, 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 Exhibit A. The Discharger understands that this Acceptance and Waiver waives its right under Water Code section 13323 to contest the allegations in Exhibit 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 not specifically identified in Exhibit A.

This Acceptance and Waiver may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. This Acceptance and Waiver may be executed by wet or electronic signature, and may be transmitted by hand, mail service, facsimile, or email. Any such signature shall be deemed to be an original signature and shall be binding to the same extent as if it were an original signature.

Upon execution, the Discharger shall return the Acceptance and Waiver to the following:

California Regional Water Quality Control Board, San Francisco Bay Region
NPDES Wastewater Enforcement Section
Attention: Marcos De la Cruz
1515 Clay Street, Suite 1400
Oakland, California 94612

or

R2NPDES.MMPS@waterboards.ca.gov

The Discharger understands that federal regulations set forth in 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 30 days for public comment on, any proposed resolution of an enforcement

action. Accordingly, prior to execution by the Regional Water Board's Executive Officer, this Acceptance and Waiver will be published for public comment as required by law.

The Discharger understands that the Executive Officer may execute the Acceptance and Waiver if no comments are received within the public notice period and the Executive Officer agrees that the assessment of the mandatory minimum penalty appropriately resolves the alleged violations. The Regional Water Board's resolution of the violations will preclude State Water Resources Control Board (State Water Board) action for the same violations.

The Discharger understands that the offer may be withdrawn if significant comments are received in opposition to the conditional offer. In that circumstance, Regional Water Board staff will advise the Discharger of the withdrawal and may issue an administrative civil liability complaint and schedule the matter for a hearing before the Regional Water Board or State Water Board.

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

The Discharger understands that, in lieu of full payment of the assessed mandatory minimum penalty to the State Water Pollution Cleanup and Abatement Account, it may elect to pay a portion toward a supplemental environment project (SEP). The SEP option is the SEP Fund, which supplements Regional Monitoring Program (RMP) studies that would not otherwise be conducted through the RMP's annually approved RMP cost allocations.

The Discharger understands that once the Regional Water Board's Executive Officer executes this Acceptance and Waiver, payment no later than 30 days after the date of the Executive Officer's signature is a condition of this Acceptance and Waiver. The Discharger shall pay the assessed civil liability to the State Water Pollution Cleanup and Abatement Account and/or San Francisco Estuary Institute (for the SEP Fund) as selected above. The State Water Board will send an invoice for any payment due to the State Water Pollution Cleanup and Abatement Account. The Regional Water Board will send an invoice for any payment due to the SEP Fund.

The Discharger agrees to pay the amounts indicated below to the State Water Pollution Cleanup and Abatement Account and, if chosen, the SEP Fund. The Discharger understands that the Regional Water Board will consider the Discharger to have fulfilled any SEP obligation if and when the San Francisco Estuary Institute receives the Discharger's contribution to the SEP Fund. (Place a "✓" or "x" in **one** box below and fill in the blanks as appropriate. Electing to pay a portion of the assessed liability to the SEP Fund will not change the total amount to be paid.)

Acceptance of Conditional Resolution and Waiver of Right to Hearing
Las Gallinas Valley Sanitary District
Regulatory Measure: 448318

Payment Options:

- Option 1: Pay a portion of the assessed liability to the RMP SEP Fund:
 \$ 33,000 Amount to be paid to the SEP Fund (cannot exceed \$40,500)
 \$ 33,000 Amount to be paid to the State Water Pollution Cleanup and Abatement
 Account (\$66,000 minus amount inserted above)
 \$ 66,000 Total assessed mandatory minimum penalty (sum of amounts above).

Or

- Option 2: Pay the total assessed mandatory minimum liability (\$66,000) to the State
Water Pollution Cleanup and Abatement Account.

**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.**

Las Gallinas Valley Sanitary District

By: CURTIS PAXTON GENERAL MANAGER
Printed or typed name Title

Curt Paxton 08/25/2022
Signature Date

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

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

By: _____ Date _____
Eileen White
Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region