



Central Valley Regional Water Quality Control Board

16 October 2020

Winston Deason
Stockton Terminal Eastern Railroad
1330 N. Broadway Ave
Stockton, CA 95205

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Email:
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SETTLEMENT OFFER R5-2020-0540: OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM FOR FAILURE TO SUBMIT THE 2017-2018, AND 2018-2019 ANNUAL REPORTS, STOCKTON TERMINAL EASTERN RAILROAD, SAN JOAQUIN COUNTY, WDID# 5S39I09060

Stormwater discharge from Stockton Terminal Eastern Railroad located at 1282 Shaw Road in Stockton (Facility), is regulated by the National Pollutant Discharge Elimination System (NPDES) *General Permit for Stormwater Discharges Associated with Industrial Activities, 2014-0057-DWQ* (Industrial General Permit) NPDES Permit No. CAS000001. The Industrial General Permit requires regulated facilities to submit an Annual Report by July 15th of each year.

This letter is to notify Winston Deason (hereinafter "Permittee" or "you") of alleged violations of the California Water Code (Water Code) identified in the State Water Resources Control Board's water quality data system and to allow the Permittee to participate in the Central Valley Regional Water Quality Control Board's (Regional Board) Expedited Payment Program for Reporting Violations to address mandatory minimum penalties that must be assessed pursuant to California Water Code sections 13399.31 and 13399.31.

NOTICE OF VIOLATION:

Based on information in the Stormwater Multiple Application & Report Tracking System (SMARTS) as of 15 June 2020, the Regional Board alleges that the Permittee is in violation of the Industrial General Permit, for failure to submit the **Fiscal Year 2017-2018, and 2018-2019 Annual Reports** for the facility located at 1282 Shaw Road in Stockton. Annual Reports are due to the Regional Board by July 1 of each year as required by Section XVI.A of the Industrial General Permit. You have failed to submit the Annual Reports required by the Industrial General Permit and requested in the four Notices of Noncompliance (NNC), shown in Table 1, below.

Table 1. Notices of Noncompliance and Annual Report Status Summary

Annual Reporting Period	First NNC Issued	Second NNC Issued	Annual Report Status
2017-2018	8/16/2018	10/24/2018	Not Submitted
2018-2019	8/27/2019	11/19/2019	Not Submitted

Table 1 Note: Report Status shown in the State Water Board's Stormwater Multiple Application and Tracking System (SMARTS) as of the date of this letter.

The Permittee will have the opportunity to address the alleged violations as discussed below.

STATUTORY LIABILITY:

Pursuant to Water Code section 13399.33(c)-(d), the Permittee is subject to a minimum penalty of not less than one thousand dollars (\$1,000) plus staff costs for failing to submit **each** Annual Report within sixty (60) days after the first NNC was sent. You are also potentially subject to discretionary administrative civil liabilities of up to ten thousand dollars (\$10,000) for each day in which the violation occurs. These minimum and discretionary administrative civil liabilities may be assessed by the Regional Board beginning with the date that the violations first occurred. The formal enforcement action that the Regional Board uses to assess such liability is an administrative civil liability complaint, although the Regional 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 twenty-five thousand dollars (\$25,000) per violation.

PERMITTEE'S OPTIONS FOR RESPONSE TO OFFER:

You have two options to respond as outlined below.

1. **Accept the Expedited Payment Program offer** by complying with the Order and submitting the requested Annual Reports and agreeing to pay a settlement of **\$3,000**. The minimum administrative civil liability pursuant to California Water Code section 13399.33(c)-(d) is \$1,000 **per missing report plus staff costs**. Staff costs in this matter are \$1,000, or \$500 per missing report. This is a Conditional Offer subject to certain terms and conditions set forth below. If you choose this option, **you must sign and submit the enclosed Acceptance and Waiver form by 11 November 2020**. The form provides submittal instructions. Final closure on this action is only possible after ultimate submission of the settlement amount.

Please submit a hard copy of the Annual Reports and the Acceptance and Wavier form to:

Kari Holmes
Supervisor, Compliance and Enforcement Program
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

In response to the Conditional Offer and payment in settlement of this enforcement action, the Regional Board will forego issuance of a formal administrative complaint, will not refer the violation to the Attorney General, and will waive its right to seek additional discretionary civil liabilities for the violations identified in the NNCs.

2. **Contest the non-filing violation** by submitting in writing, the basis of your challenge with supporting evidence. For example, you may have evidence that you previously submitted your Annual Reports, or you are no longer in business. If you choose this option, you must **submit your written documentation by 11 November 2020**. We will review your submission, and if we agree with you, we will notify you in writing that you are no longer considered in violation of the permit and that our enforcement action has been terminated. All responses should be directed to Kari Holmes.

If you do not respond in a manner described in the above options, the Regional Board will prepare an administrative civil liability complaint for the violations cited in the NNC. The liability amount sought in the administrative civil liability complaint and/or imposed by the Regional Board may be higher than the liability amount set forth in this Conditional Offer.

CONDITIONS FOR REGIONAL BOARD ACCEPTANCE OF RESOLUTION:

This offer to participate in the Expedited Payment Program is conditional upon the Regional Board's receipt of confirmation that the Permittee has submitted the Annual Reports to the Regional Board on or before 11 November 2020. If you choose not to or fail to submit the Annual Reports on or before that date, this offer will be deemed withdrawn and a formal enforcement action will be pursued.

If you accept in the Expedited Payment Program offer, the settlement will be published in the following manner: Federal regulations require the Regional Board to publish notice of, and to provide at least thirty (30) days for public 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 Permittee's Acceptance and Waiver, the Annual Reports, and other requested technical reports on or before 11 November 2020, Regional Board staff will publish a notice of the proposed resolution of the alleged violations.

If no comments are received within the notice period, the Regional Board Executive Officer will execute the Acceptance and Waiver as a stipulated order assessing the uncontested penalty amount pursuant to Water Code section 13399.33. You will then be notified that payment is due within 30 days. Failure to pay the penalty within that time frame may result in further liability, referral of the matter to the Attorney General, and/or may void the offer to participate in this Expedited Payment Program.

If, however, significant comments are received in opposition to the settlement, this offer may be withdrawn. In that case, the Permittee's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. In that case, the violations will be addressed through a formal enforcement action.

This Expedited Payment Program offer does not address or resolve liability for any violations that are not specifically identified in the attached NNCs. The Regional Board reserves the right to pursue formal enforcement of any violations not specifically cited in the attached NNCs.

Should you have any questions about this Expedited Payment Program or Notice of Noncompliance, please contact Enforcement Unit staff Mike Fischer at (916) 464-4663 or at michael.fischer@waterboards.ca.gov regarding this matter.

Sincerely,

Original Signed By
John J. Baum
Assistant Executive Officer

Enclosures:

Acceptance of Conditional Resolution and Waiver of Right to Hearing; (proposed)
Order
First 2017-2018 Notice of Noncompliance dated 16 August 2018
Second 2017-2018 Notice of Noncompliance dated 24 October 2018
First 2018-2019 Notice of Noncompliance dated 27 August 2019
Second 2018-2019 Notice of Noncompliance dated 19 November 2019

cc via email: Catherine Hawe, Office of Enforcement, State Water Resources Control Board

ORDER NO. (R5-2020-0540)

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

Stockton Terminal Eastern Railroad
Settlement Offer No. R5-2020-0540
WDID No. 5S39I009060

SUMMARY OF VIOLATION

Stockton Terminal Eastern Railroad (Permittee) violated Section XVI.A of the National Pollutant Discharge Elimination System (NPDES) Statewide General Permit for Storm Water Discharges Associated with Industrial Activities (Order No. 2014-0057-DWQ), NPDES Permit No. CAS000001 (Industrial General Permit) by failing to submit a annual reports for the 2017-2018, and 2018-2019 reporting years by July 15th of the respective reporting year. As required by California Water Code (Water Code) section 13399.31, the Central Valley Regional Water Quality Control Board (Regional Board) issued two Notices of Non-Compliance (NNC) to the Permittee on the dates shown in Table 1, below. By statute, the Permittee is now subject to a minimum penalty of \$1,000 plus staff costs for failing to submit each annual report by the deadlines established in the NNCs.

Table 1. Notices of Noncompliance and Annual Report Status Summary

Annual Reporting Period	First NNC Issued	Second NNC Issued	Annual Report Status
2017-2018	8/16/2018	10/24/2018	Not Submitted
2018-2019	8/27/2019	11/19/2019	Not Submitted

Table 1 Notes: Report Status shown in the State Water Board's Storm Water Multiple Application and Tracking System (CIWQS) as of 15 June 2020.

ACCEPTANCE AND WAIVER

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the Regional Board, the Permittee hereby accepts the "Offer to Participate in Expedited Payment Program" and waives the right to a hearing before the Regional Board to dispute the violations described in the NNCs which are attached and incorporated herein by reference.

The Permittee agrees that the Expedited Payment Program 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 Regional Board to assert jurisdiction over the violation. The Permittee agrees to pay the administrative civil liability authorized by California Water Code section 13399.33, in the sum of \$3,000 (Expedited Payment Amount) which shall be deemed payment in full of any civil liability pursuant to California Water Code section 13399.31 that otherwise might be assessed for the violations described in the NNCs.

The Permittee understands that this Acceptance and Waiver waives its right to contest the violation and the amount of civil liability for the violation. The Permittee understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the NNCs. The Regional Board has not conducted a full compliance review for the Facility but does not have knowledge of additional violations beyond those identified in the NNCs at this time.

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

Central Valley Regional Water Quality Control Board
Attention: Kari Holmes, Supervisor, Compliance and Enforcement Program
11020 Sun Center Drive, Ste 200
Rancho Cordova, CA 95670

The Permittee understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Regional Board to publish notice of and provide at least thirty (30) days for public comment on any proposed resolution of an enforcement action. Accordingly, this Acceptance and Waiver, prior to execution by the Regional 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 Regional Board Executive Officer to question the Expedited Payment Amount, the Expedited Payment Program Offer and Acceptance and Waiver, the Regional Board Executive Officer will execute the Acceptance and Waiver.

The Permittee understands that if significant comments are received in opposition to the Expedited Payment Amount, the offer on behalf of the Regional Board to resolve the violations may be withdrawn. In that circumstance, the Permittee will be advised of that withdrawal, and an administrative civil liability complaint may be issued, and the matter may be set for a hearing before the Regional Board. In the event that this matter proceeds to hearing, the Permittee understands that this Acceptance and Waiver executed by the Permittee will be treated as a settlement communication and will not be used as evidence in that hearing.

The Permittee understands that funds collected for violations pursuant to Water Code section 13399.31 shall be deposited in the Waste Discharge Permit Fund.

The Permittee further understands that once this Acceptance and Waiver is executed by the Regional Board Executive Officer, 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 13399.37(a), funds collected for violations pursuant to sections 13399.33(c) and 13399.33(d) shall be deposited in the Waste Discharge Permit Fund. Accordingly, the \$3,000 liability including staff costs shall be paid by a cashiers or certified check made payable to the "State Water Resources Control Board" referencing this Order number for deposit into the Waste Discharge Permit Fund. 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 Regional Board Executive Officer.

Please do not send a check(s) for payment with this Acceptance and Waiver. If acceptable, the Executive Officer will counter-sign this Acceptance and Waiver and send a copy to the Discharger. Payment will then be due within 30 days of the date signed by the Executive Officer. Only at that time, please mail the check to:

State Water Resources Control Board
RE: Order No. R5-2020-0540, WDID No. 5S39I009060
Division of Administrative Services, Accounting Branch
1001 I Street, 18th Floor
Sacramento, CA 95814

I hereby affirm that I am duly authorized to act on behalf of and to bind the Permittee in the making and giving of this Acceptance and Waiver

Stockton Terminal Eastern Railroad

By: Original Signed By
(Signed Name)

02/26/2021
(Date)

John Spieglemen
(Printed or Typed Name)

Vice President
(Title)

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

By:

PATRICK PULUPA
Executive Officer