

TO: James L. App, City Manager
FROM: Doug Monn, Public Works Director
SUBJECT: Penalties for Wastewater Treatment Plant Effluent Violations
DATE: December 3, 2013

NEED: For City Council to consider settling penalties for wastewater treatment plant effluent violations.

FACTS:

1. The Paso Robles Wastewater Treatment Plant (WWTP) discharge to the Salinas River is regulated by the Central Coast Regional Water Quality Control Board (Water Board) under a National Pollutant Discharge Elimination System (NPDES) permit.
2. Paso Robles wastewater contains high salt levels. The existing WWTP is antiquated and overloaded, thus cannot consistently comply with NPDES permit effluent limits. Between September 1, 2009, and September 30, 2013, the City violated effluent limits 107 times. Pollutants that exceeded effluent limits include sodium, chloride, total dissolved solids, pH, bis-phthalate, selenium, copper, cyanide, chlorine, biochemical oxygen demand, total suspended solids, and coliform bacteria.
3. The City will continue to regularly violate effluent limits until Nacimiento water is online and the WWTP upgrade is completed in 2015.
4. The California Water Code requires a mandatory minimum penalty of \$3,000 for each effluent violation. On November 13, 2013, the Water Board assessed the City with a penalty of \$321,000 for the 107 effluent violations described above. The Water Board's letter is attached.
5. The Water Board is offering an opportunity to settle the penalties and avoid the possibility that penalties may be increased. The California Water Code provides that penalties may be increased up to \$10,000 per day.
6. The State's Enforcement Policy does not allow the penalty to be directed to the City's WWTP upgrade project.

ANALYSIS &

CONCLUSION: The Water Board's proposed penalty is the minimum amount required by the Water Code. The Water Board does not have discretion to reduce the penalty amount, but does have discretion to increase the penalties up to \$10,000 per day. It would be in the City's best interest to settle this matter by paying the minimum penalty, and eliminate the potential of a greater penalty being assessed.

The Water Board would allow up to \$168,000 of the \$321,000 penalty to be directed to two pre-approved local environmental projects, instead of the State's Cleanup and Abatement Account. The pre-approved projects are the Low Impact Development Initiative and Central Coast Ambient Monitoring Program, both of which have

benefited Paso Robles. Staff recommends the \$168,000 be directed to these two projects. The balance of the penalty amount must be directed to the State's Cleanup and Abatement Account.

FISCAL IMPACT: The City's Sewer Enterprise Fund has accrued a \$120,000 budget for payment of Water Board penalties. Although these penalties exceed this budgeted amount, other Sewer Enterprise Fund expenses have been less than projected, such that this expenditure would not have an adverse impact on the Sewer Fund.

- OPTIONS:**
- a. Adopt Resolution No. 13-xx to 1) authorize the City Manager to settle this matter by signing and submitting the "Acceptance of Conditional Resolution and Waiver of Right to Hearing," 2) approve payment of the \$321,000 penalty from the Sewer Enterprise Fund, and 3) request the Water Board direct \$168,000 of the penalty to the Low Impact Development Initiative and Central Coast Ambient Monitoring Program.
 - b. Amend, modify, or reject the above option.

ATTACHMENTS:

1. Water Board's November 13, 2013, Expedited Payment Letter, including the "Acceptance of Conditional Resolution and Waiver of Right to Hearing" form
2. Resolution No. 13-xx

Prepared by: Matt Thompson, Wastewater Manager



Central Coast Regional Water Quality Control Board

November 13, 2013

via certified US mail: 7008 1140 0003 4708 8681

Jim App, City Manager
City of El Paso de Robles
3200 Sulphur Springs Road
El Paso de Robles, CA 93446
japp@prcity.com

EXPEDITED PAYMENT LETTER (EPL) NO. R3-2014-0005, OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM RELATING TO VIOLATIONS OF NPDES PERMIT FOR CITY OF EL PASO DE ROBLES WASTEWATER TREATMENT FACILITY (WDR ORDER NO. R3-2004-0031 AND NO. R3-2011-0002, NPDES NO. CA0047953, WDID NO. 3 400105001)

Dear Mr. App:

This letter is to notify the City of El Paso De Robles (hereinafter "Permittee" or "you") of alleged violations of the California Water Code identified in the Central Coast Regional Water Quality Control Board's (Central Coast Water Board) water quality data system and to allow the Permittee to participate in the Central Coast Water Board's Expedited Payment Program to address \$321,000 in liability which may be assessed pursuant to Water Code sections 13385 and 13385.1.

NOTICE OF VIOLATION: Based on information in the California Integrated Water Quality System (CIWQS), the Central Coast Water Board's Assistant Executive Officer alleges that from December 25, 2008, to September 30, 2013, the Permittee violated the effluent limitations, reporting violations, or Water Code provisions identified in the Notice of Violation (NOV) attached as Exhibit A. The Permittee will have the opportunity to address the alleged violations as discussed below.

STATUTORY LIABILITY: Subdivisions (h) and (i) of California Water Code section 13385 require the assessment of a mandatory minimum penalty of \$3,000 for specified serious and non-serious (formerly named "chronic") effluent limit violations. The Permittee is also potentially subject to discretionary administrative civil liabilities of up to ten thousand dollars (\$10,000) for each day in which the violation occurs, plus ten dollars (\$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 Coast Water Board or the State Water Board (collectively

“the Water Boards”), beginning with the date that the violations first occurred¹. The formal enforcement action that the Water Boards use to assess such liability is an administrative civil liability complaint, although the Water Boards 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. In addition, the Superior Court may assess up to twenty-five dollars (\$25) per gallon discharged but not cleaned up in excess of 1,000 gallons.

OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM: The Permittee can avoid the issuance of a formal enforcement action and settle the alleged violations identified in the attached NOV by participating in the Central Coast Water Board’s Expedited Payment Program. Details of the proposed settlement are described below and addressed in the enclosed documents.

To promote resolution of these violations, the Central Coast Water Board enforcement staff makes this Conditional Offer. The Permittee may accept this offer, waive the Permittee’s right to a hearing, and pay the mandatory minimum penalty as indicated on Exhibit A for the violations described. If the Permittee elects to do so, subject to the conditions below, the Central Coast Water Board will accept that payment in settlement of any enforcement action that would otherwise arise out of the violations identified in the NOV. Accordingly, the Central Coast Water Board enforcement staff will forego issuance of a formal administrative 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 the NOV.

The Expedited Payment Program does not address liability for any violation that is not specifically identified in the NOV.

PERMITTEE’S OPTIONS FOR RESPONSE TO OFFER: If you accept this offer, please complete and return the enclosed “Acceptance of Conditional Resolution and Waiver of Right to Hearing; Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order No. R3-2014-0005 (Upon Execution)” (Acceptance and Waiver) **no later than December 13, 2013**. The returned Acceptance and Waiver will be held, pending a 30-day public notice period, and then will be counter-signed by the Executive Officer and returned to you with an invoice for payment.

If you contest some but not all of the violations identified in the attached NOV, the Permittee may elect to reserve the right to address the contested matters and resolve any uncontested violations through the payment of the mandatory minimum penalty for each uncontested violation. If the Permittee chooses this option, please communicate

¹ Please note that there are no statutes of limitation that 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 (4th ed. 1996) Actions, §405(2), p. 510.) The Permittee has not been substantially prejudiced by the passage of time between the date(s) that Permittee reported the violations identified on Exhibit A and the date of this letter. The Permittee was aware of the violations at the time it reported them to the Central Coast Water Board. Water Board staff’s limited enforcement resources and competing enforcement priorities provide a rational explanation for the delay. In fact, the delay has actually benefited the Permittee because it extended the time before payment of the mandatory minimum penalties is due. For these reasons, any delay is not unreasonable.

with the staff contact identified below to discuss the mechanism for memorializing that election on or before the due date.

If the Permittee chooses to contest any of the violations alleged in the NOV, please identify the specific violation and the basis for the challenge (factual error, affirmative defense, etc.) on or before the due date. Central Coast Water Board staff will evaluate the contested violation and take one of two actions:

- 1) Central Coast Water Board staff will determine that the violation is not supported, expunge the alleged violation from the CIWQS database, take no further action against the Permittee for the alleged violation, and notify the Permittee of that determination;
- 2) Central Coast Water Board staff will determine that the alleged violation is validated, notify the Permittee, and provide 30 days for the Permittee to submit a supplemental Expedited Payment for those violations. If the Permittee chooses not to make a payment in response to the determination, the Permittee should expect to be contacted regarding formal enforcement action that will be initiated with regard to the contested violations. In a formal enforcement action, the liability amount sought and/or imposed may exceed the liability amount set forth in this Conditional Offer. Moreover, the cost of enforcement is a factor which can be considered in assessing the liability amount.

CONDITIONS FOR WATER BOARD ACCEPTANCE OF RESOLUTION: Federal regulations require the Central Coast Water Board to publish and allow the public 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 Permittee's Acceptance and Waiver, Central Coast Water Board enforcement staff will publish a notice of the proposed resolution of the violations.

If no comments are received within the 30-day period, and unless there are new material facts that become available to the Central Coast Water Board, the Executive Officer will execute the Acceptance and Waiver as a settlement agreement and stipulation for entry of administrative civil liability order assessing the uncontested mandatory minimum penalty amount pursuant to Water Code section 13385.

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 unresolved violations will be addressed in a liability assessment proceeding. At the liability assessment hearing the Permittee will be free to make arguments as to any of the alleged violations, and the Permittee's agreement to accept this conditional offer will not in any way be binding or used as evidence against the Permittee. The Permittee will be provided with further information on the liability assessment proceeding.

In the event the Acceptance and Waiver is executed by the Executive Officer, payment of the assessed amount shall be due and payable within 30 days and as specified in the letter and/or invoice that will accompany the Permittee's receipt of the Executive Officer's signed stipulated order. Failure to pay the penalty within the required time period may subject the Permittee to further liability.

OPPORTUNITY FOR SUPPLEMENTAL ENVIRONMENTAL PROJECT OR COMPLIANCE PROJECT IN LIEU OF ADMINISTRATIVE LIABILITY: In lieu of paying to the State Water Board Cleanup and Abatement Account all of the mandatory minimum penalty, the Permittee may elect to use part of the penalty to fund a supplemental environmental project (SEP) as defined in the State Water Board's Supplemental Environmental Project Policy. There are currently two SEP options available:

1. **Low Impact Development Initiative (LIDI):** The mission of the LIDI is to support the vision of healthy watersheds through the implementation of LID design principles, hydromodification controls, and sustainable development throughout the Central Coast Region. In 2008, the Central Coast Water Board established a LID Endowment Fund with the Bay Foundation of Morro Bay. This fund provides support for the LIDI, which is housed under a branch of the UC Davis Extension's Land Use and Natural Resources Program. LIDI services focus on the planning, design, and implementation of LID projects and programs. This includes regional training, regulatory compliance, site specific project designs, hydromodification criteria development, technical consulting services, and large-scale, long-term, community-level planning. More information is available at:

http://www.centralcoastlidi.org/Central_Coast_LIDI/Home.html

2. **Central Coast Ambient Monitoring Program (CCAMP):** CCAMP is the Central Coast Water Board's regionally scaled water quality monitoring and assessment program. The purpose of the program is to provide scientific information to Water Board staff, local water agencies and water purveyors, and the public, to protect, restore, and enhance the quality of the waters of central California. CCAMP consists of both surface water and groundwater components (Groundwater Assessment and Protection, or GAP), and has built a significant data resource over the years to characterize the Central Coast Region's waters. CCAMP will use the SEP funds for staffing, equipment, and contract services associated with field sampling, analytical testing, data management and assessment, and the implementation of water quality related projects. More information is available at:

<http://www.ccamp.org/>

http://www.waterboards.ca.gov/centralcoast/water_issues/programs/gap/index.shtml

Each option is an established, on-going, region-wide project administered by an approved third party, which allows the Permittee to satisfy its selected project obligations by transferring the agreed-upon funds in a timely manner. Funds derived from suspended liability related to the alleged violations are appropriate for these SEPs because the projects are implemented throughout the region and are related to waters associated with the Permittee’s waste discharge. The State Water Board Office of Enforcement has approved both LIDI and CCAMP as appropriate SEPs. The Central Coast Water Board has established LIDI and CCAMP as top priorities for SEP funding. Central Coast Water Board staff will not accept SEP proposals other than those listed above as part of the EPL process.

Alternatively, the Permittee may elect to fund a compliance project (CP) pursuant to Water Code section 13385(k) if it can demonstrate status as a publicly owned treatment works serving a small community with a financial hardship.

Permittees may choose to pay the total settlement amount to the State Water Board’s Cleanup and Abatement Account (CAA) rather than fund either of the above SEPs or propose a CP. The CAA’s primary purpose is to provide public agencies with grants to clean up pollution in cases where no viable responsible party is available. In addition, agencies can apply to the CAA for grants to do habitat restoration, studies, monitoring, and planning activities.

The SEP and CAA options are represented in the enclosed Acceptance and Waiver. If you want to discuss any of the above options, please contact the person identified below.

CONTACT PERSON: Should you have any questions about the Notice of Violation or the Conditional Offer, please contact Katie DiSimone at (805) 542-4638 or Katie.DiSimone@waterboards.ca.gov, or Harvey Packard at (805) 542-4639 or Harvey.Packard@waterboards.ca.gov.

Sincerely,



cn=Harvey C. Packard, o=Central Coast
Regional Water Quality Control Board,
ou,
email=hpackard@waterboards.ca.gov,
c=US
2013.11.13 13:43:09 -08'00'

for Michael J. Thomas
Assistant Executive Officer

- Encl. – 1. Exhibit A - Notice of Violation
- 2. Acceptance of Conditional Resolution and Waiver of Right to Hearing; Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order No. R3-2014-0005 (Upon Execution)

c: Matt Thompson, Paso Robles Wastewater Division Manager,
mthompson@prcity.com
Doug Monn, Paso Robles Public Works Director, dmonn@prcity.com

Harvey Packard, RWQCB Enforcement Coordinator
Katie DiSimone, RWQCB Permitting Staff
Todd Stanley, RWQCB CIWQS Coordinator
Michael Thomas, RWQCB Assistant Executive Officer

File Location: P:\Enforcement\Mandatory Minimum Penalties\EPLs\2013 Paso WWTP\Paso Robles
WWTP MMP EPL 14-0005 Offer.docx
Primary Indexing #247750
CIWQS Regulatory Measure #393832

**Exhibit A – Notice of Violation
City of El Paso de Robles WWTP**

**ALLEGED VIOLATIONS (December 25, 2008 – September 30, 2013)
MANDATORY MINIMUM PENALTY VIOLATIONS REQUIRING ENFORCEMENT**

The Enforcement Staff of the Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) has reviewed information submitted by this facility to determine whether the discharger is subject to mandatory minimum penalties (MMPs) pursuant to subdivisions (h) and (i) of California Water Code section 13385. The following table lists this facility's alleged violations of Waste Discharge Requirements Order No. R3-2004-0031 and Order No. R3-2011-0002, NPDES Permit No. CA0047953 from December 25, 2008, through September 30, 2013, for which the Central Coast Water Board has not assessed MMPs. Final calculation of MMP amounts owed and descriptions of the abbreviations that appear in the table are also listed below. For additional information about the alleged violations listed in the table, please refer to the State Water Resources Control Board CIWQS Public Reports webpage http://www.waterboards.ca.gov/water_issues/programs/ciwqs/publicreports.shtml and select the "Mandatory Minimum Penalty (MMP) Report" link located under the "Violations Reports" category. Once in the Mandatory Minimum Penalty Reports search page, select Region 3 along with the beginning and ending dates shown in this exhibit, select Run Report, and then select your facility to access the list of violations.

#	Violation Number	Violation Date	Pollutant	Pollutant Type	Limitation Period	Limit	Result	Units	% Over Limit	Serious or Non-Serious Violation	Date 180 Days Prior	No. of Viols within 180 days	Penalty
1	802415*	12/25/2008	pH	Other	Instantaneous	6.5	6.4	SU	N/A	N	06/28/2008	7	\$ 3,000
2	832549*	07/31/2009	Sodium, Total	Group 1	Daily Maximum	225	230	mg/L	2%	N	02/01/2009	12	\$ 3,000
3	842779	09/03/2009	Chloride	Group 1	Daily Maximum	310	327	mg/L	5%	N	03/07/2009	13	\$ 3,000
4	842780	09/03/2009	Sodium, Total	Group 1	Daily Maximum	225	270	mg/L	20%	N	03/07/2009	14	\$ 3,000
5	846990	10/12/2009	Chloride	Group 1	Daily Maximum	310	320	mg/L	3%	N	04/15/2009	13	\$ 3,000
6	846991	10/12/2009	Sodium, Total	Group 1	Daily Maximum	225	256	mg/L	14%	N	04/15/2009	14	\$ 3,000

EPL No. R3-2014-0005 – Exhibit A
Proposed Stipulated ACL Order No. R3-2014-0005
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7	846992	10/12/2009	Total Dissolved Solids	Group 1	Daily Maximum	1100	1150	mg/L	5%	N	04/15/2009	15	\$ 3,000
8	957502	10/12/2009	Copper, Total	Group 2	Daily Maximum	47.4	49	ug/L	3%	N	04/15/2009	16	\$ 3,000
9	847008	10/12/2009	Bis (2-Ethylhexyl)	Group 2	Monthly Average	1.8	3	ug/L	67%	S	N/A	N/A	\$ 3,000
10	847007	10/12/2009	Selenium, Total	Group 2	Monthly Average	4.1	8	ug/L	95%	S	N/A	N/A	\$ 3,000
11	957499	10/12/2009	Cyanide, Total (as CN)	Group 2	Daily Maximum	8.5	17	ug/L	100%	S	N/A	N/A	\$ 3,000
12	847006	10/31/2009	Cyanide, Total (as CN)	Group 2	Monthly Average	4.3	17	ug/L	295%	S	N/A	N/A	\$ 3,000
13	847004	10/31/2009	Copper, Total	Group 2	Monthly Average	23.6	49	ug/L	108%	S	N/A	N/A	\$ 3,000
14	849709	11/05/2009	Sodium, Total	Group 1	Daily Maximum	225	237	mg/L	5%	N	05/09/2009	21	\$ 3,000
15	855059	12/03/2009	Sodium, Total	Group 1	Daily Maximum	225	248	mg/L	10%	N	06/06/2009	22	\$ 3,000
16	860949	01/11/2010	Sodium, Total	Group 1	Daily Maximum	225	231	mg/L	3%	N	07/15/2009	17	\$ 3,000
17	860993	01/11/2010	Copper, Total	Group 2	Monthly Average	23.6	37	ug/L	57%	S	N/A	N/A	\$ 3,000

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18	860995	01/11/2010	Selenium, Total	Group 2	Monthly Average	4.1	8	ug/L	95%	S	N/A	N/A	\$ 3,000
19	860950	01/20/2010	Chlorine, Total Residual	Group 2	Instantaneous	0.02	5	mg/L	24900%	S	N/A	N/A	\$ 3,000
20	872065	04/05/2010	Bis (2-Ethylhexyl)	Group 2	Monthly Average	1.8	3	ug/L	67%	S	N/A	N/A	\$ 3,000
21	872066	04/05/2010	Copper, Total	Group 2	Monthly Average	23.6	30	ug/L	27%	S	N/A	N/A	\$ 3,000
22	873496	05/06/2010	Sodium, Total	Group 1	Daily Maximum	225	244	mg/L	8%	N	11/07/2009	8	\$ 3,000
23	875373	06/03/2010	Sodium, Total	Group 1	Daily Maximum	225	255	mg/L	13%	N	12/05/2009	8	\$ 3,000
24	878452	07/12/2010	Sodium, Total	Group 1	Daily Maximum	225	275	mg/L	22%	N	01/13/2010	6	\$ 3,000
25	878453	07/12/2010	Biochemical Oxygen	Group 1	Monthly Average	25	30	mg/L	20%	N	01/13/2010	7	\$ 3,000
26	878454	07/12/2010	Total Suspended Solids	Group 1	Monthly Average	30	32	mg/L	7%	N	01/13/2010	8	\$ 3,000
27	957531	07/12/2010	Copper, Total	Group 2	Daily Maximum	47.4	50	ug/L	5%	N	01/13/2010	9	\$ 3,000
28	878455	07/12/2010	Copper, Total	Group 2	Monthly Average	23.6	50	ug/L	112%	S	N/A	N/A	\$ 3,000

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29	880680	08/10/2010	Chloride	Group 1	Daily Maximum	310	370	mg/L	19%	N	02/11/2010	10	\$ 3,000
30	880682	08/10/2010	Sodium, Total	Group 1	Daily Maximum	225	284	mg/L	26%	N	02/11/2010	11	\$ 3,000
31	880683	08/10/2010	Total Dissolved Solids	Group 1	Daily Maximum	1100	1120	mg/L	2%	N	02/11/2010	12	\$ 3,000
32	880674	08/31/2010	Biochemical Oxygen	Group 1	Monthly Average	25	26	mg/L	4%	N	03/04/2010	13	\$ 3,000
33	882265	09/02/2010	Sodium, Total	Group 1	Daily Maximum	225	275	mg/L	22%	N	03/06/2010	14	\$ 3,000
34	882267	09/02/2010	Chloride	Group 1	Daily Maximum	310	329	mg/L	6%	N	03/06/2010	15	\$ 3,000
35	885278	10/07/2010	Chloride	Group 1	Daily Maximum	310	317	mg/L	2%	N	04/10/2010	14	\$ 3,000
36	885279	10/07/2010	Sodium, Total	Group 1	Daily Maximum	225	261	mg/L	16%	N	04/10/2010	15	\$ 3,000
37	885362	10/07/2010	Copper, Total	Group 2	Monthly Average	23.6	40	ug/L	69%	S	N/A	N/A	\$ 3,000
38	887293	11/11/2010	Sodium, Total	Group 1	Daily Maximum	225	245	mg/L	9%	N	05/15/2010	16	\$ 3,000
39	887303	11/11/2010	Biochemical Oxygen	Group 1	Monthly Average	25	29	mg/L	16%	N	05/15/2010	17	\$ 3,000

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40	888609	12/21/2010	Chlorine, Total Residual	Group 2	Instantaneous	0.02	7	mg/L	34900%	S	N/A	N/A	\$ 3,000
41	888610	12/29/2010	Chlorine, Total Residual	Group 2	Instantaneous	0.02	4	mg/L	19900%	S	N/A	N/A	\$ 3,000
42	890840	01/05/2011	Chlorine, Total Residual	Group 2	Instantaneous	0.02	3	mg/L	14900%	S	N/A	N/A	\$ 3,000
43	890842	01/06/2011	Copper, Total	Group 2	Monthly Average	23.6	35	ug/L	48%	S	N/A	N/A	\$ 3,000
44	890843	01/06/2011	Selenium, Total	Group 2	Monthly Average	4.1	12	ug/L	193%	S	N/A	N/A	\$ 3,000
45	957297	01/31/2011	Selenium, Total	Group 2	Daily Maximum	8.2	12	ug/L	46%	S	N/A	N/A	\$ 3,000
46	893133	02/09/2011	Chlorine, Total Residual	Group 2	Instantaneous	0.02	0.03	mg/L	50%	S	N/A	N/A	\$ 3,000
47	893134	02/23/2011	Chlorine, Total Residual	Group 2	Instantaneous	0.02	0.03	mg/L	50%	S	N/A	N/A	\$ 3,000
48	896376	03/03/2011	Sodium, Total	Group 1	Daily Maximum	225	226	mg/L	0%	N	09/04/2010	14	\$ 3,000
49	899250	04/07/2011	Sodium, Total	Group 1	Daily Maximum	225	230	mg/L	2%	N	10/09/2010	12	\$ 3,000

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50	901811	05/05/2011	Sodium, Total	Group 1	Daily Maximum	225	244	mg/L	8%	N	11/06/2010	13	\$ 3,000
51	904389	06/02/2011	Sodium, Total	Group 1	Daily Maximum	225	236	mg/L	5%	N	12/04/2010	12	\$ 3,000
52	904388	06/15/2011	Chlorine, Total Residual	Group 2	Instantaneous	0.02	0.03	mg/L	50%	S	N/A	N/A	\$ 3,000
53	906623	07/07/2011	Copper, Total	Group 2	Monthly Average	21	29	ug/L	38%	S	N/A	N/A	\$ 3,000
54	957300	10/06/2011	Copper, Total	Group 2	Daily Maximum	39	42	ug/L	8%	N	04/09/2011	5	\$ 3,000
55	913679	10/06/2011	Selenium, Total	Group 2	Monthly Average	4	7	ug/L	75%	S	N/A	N/A	\$ 3,000
56	913680	10/31/2011	Copper, Total	Group 2	Monthly Average	21	42	ug/L	100%	S	N/A	N/A	\$ 3,000
57	914078	11/03/2011	Total Suspended Solids	Group 1	Monthly Average	30	31	mg/L	3%	N	05/07/2011	7	\$ 3,000
58	916594	12/07/2011	Biochemical Oxygen	Group 1	Weekly Average	35	38	mg/L	9%	N	06/10/2011	6	\$ 3,000
59	916595	12/21/2011	Chlorine, Total Residual	Group 2	Instantaneous	0.02	0.04	mg/L	100%	S	N/A	N/A	\$ 3,000

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City of El Paso de Robles WWTP

#	Violation Number	Violation Date	Pollutant	Pollutant Type	Limitation Period	Limit	Result	Units	% Over Limit	Serious or Non-Serious Violation	Date 180 Days Prior	No. of Viols within 180 days	Penalty
60	916593	12/28/2011	Chlorine, Total Residual	Group 2	Instantaneous	0.02	0.16	mg/L	700%	S	N/A	N/A	\$ 3,000
61	916596	12/31/2011	Biochemical Oxygen	Group 1	Monthly Average	25	27	mg/L	8%	N	07/04/2011	8	\$ 3,000
62	919407	01/05/2012	Selenium, Total	Group 2	Daily Maximum	8.6	13	ug/L	51%	S	N/A	N/A	\$ 3,000
63	919408	01/05/2012	Copper, Total	Group 2	Monthly Average	21	33	ug/L	57%	S	N/A	N/A	\$ 3,000
64	957343	01/31/2012	Selenium, Total	Group 2	Monthly Average	4	13	ug/L	225%	S	N/A	N/A	\$ 3,000
65	923004	03/08/2012	Sodium, Total	Group 1	Monthly Average	255	262	mg/L	3%	N	09/10/2011	11	\$ 3,000
66	925582	04/05/2012	Copper, Total	Group 2	Monthly Average	21	38	ug/L	81%	S	N/A	N/A	\$ 3,000
67	925584	04/30/2012	Selenium, Total	Group 2	Monthly Average	4	6	ug/L	50%	S	N/A	N/A	\$ 3,000
68	927943	05/03/2012	Sodium, Total	Group 1	Monthly Average	255	260	mg/L	2%	N	11/05/2011	11	\$ 3,000
69	927947	05/10/2012	Biochemical Oxygen	Group 1	Weekly Average	35	39.7	mg/L	13%	N	11/12/2011	12	\$ 3,000
70	927945	05/31/2012	Total Suspended Solids	Group 1	Monthly Average	30	33	mg/L	10%	N	12/03/2011	13	\$ 3,000

EPL No. R3-2014-0005 – Exhibit A
Proposed Stipulated ACL Order No. R3-2014-0005
City of El Paso de Robles WWTP

#	Violation Number	Violation Date	Pollutant	Pollutant Type	Limitation Period	Limit	Result	Units	% Over Limit	Serious or Non-Serious Violation	Date 180 Days Prior	No. of Viols within 180 days	Penalty
71	927946	05/31/2012	Biochemical Oxygen	Group 1	Weekly Average	35	38.9	mg/L	11%	N	12/03/2011	14	\$ 3,000
72	927948	05/31/2012	Biochemical Oxygen	Group 1	Monthly Average	25	35	mg/L	40%	S	N/A	N/A	\$ 3,000
73	930243	06/30/2012	Biochemical Oxygen	Group 1	Monthly Average	25	26	mg/L	4%	N	01/02/2012	12	\$ 3,000
74	937528	07/12/2012	Copper, Total	Group 2	Daily Maximum	39	57	ug/L	46%	S	N/A	N/A	\$ 3,000
75	934463	07/12/2012	Copper, Total	Group 2	Monthly Average	21	57	ug/L	171%	S	N/A	N/A	\$ 3,000
76	934255	07/18/2012	Biochemical Oxygen	Group 1	Weekly Average	35	45	mg/L	29%	N	01/20/2012	13	\$ 3,000
77	934254	07/26/2012	Biochemical Oxygen	Group 1	Weekly Average	1430	1525	lb/day	7%	N	01/28/2012	14	\$ 3,000
78	934257	07/26/2012	Biochemical Oxygen	Group 1	Weekly Average	35	59.6	mg/L	70%	S	N/A	N/A	\$ 3,000
79	934256	07/31/2012	Biochemical Oxygen	Group 1	Monthly Average	25	39.7	mg/L	59%	S	N/A	N/A	\$ 3,000
80	934466	07/31/2012	Selenium, Total	Group 2	Monthly Average	4	5.97	ug/L	49%	S	N/A	N/A	\$ 3,000
81	937034	08/09/2012	Sodium, Total	Group 1	Monthly Average	255	284	mg/L	11%	N	02/11/2012	17	\$ 3,000

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City of El Paso de Robles WWTP

#	Violation Number	Violation Date	Pollutant	Pollutant Type	Limitation Period	Limit	Result	Units	% Over Limit	Serious or Non-Serious Violation	Date 180 Days Prior	No. of Viols within 180 days	Penalty
82	937956	09/05/2012	Sodium, Total	Group 1	Monthly Average	255	273	mg/L	7%	N	03/09/2012	17	\$ 3,000
83	937957	09/30/2012	Biochemical Oxygen	Group 1	Monthly Average	25	26.2	mg/L	5%	N	04/03/2012	18	\$ 3,000
84	939392	10/03/2012	Sodium, Total	Group 1	Monthly Average	255	264	mg/L	4%	N	04/06/2012	18	\$ 3,000
85	939793	10/03/2012	Selenium, Total	Group 2	Monthly Average	4	6.79	ug/L	70%	S	N/A	N/A	\$ 3,000
86	957303	10/03/2012	Copper, Total	Group 2	Daily Maximum	39	57	ug/L	46%	S	N/A	N/A	\$ 3,000
87	939796	10/31/2012	Copper, Total	Group 2	Monthly Average	21	57	ug/L	171%	S	N/A	N/A	\$ 3,000
88	940602	11/08/2012	Sodium, Total	Group 1	Monthly Average	255	273	mg/L	7%	N	05/12/2012	19	\$ 3,000
89	941870	12/06/2012	Sodium, Total	Group 1	Monthly Average	255	267	mg/L	5%	N	06/09/2012	17	\$ 3,000
90	945087	02/07/2013	Sodium, Total	Group 1	Monthly Average	255	270	mg/L	6%	N	08/11/2012	9	\$ 3,000
91	945088	02/19/2013	Total Coliform	Other	Seven Sample Median	23	27	MPN/100 mL	N/A	N	08/23/2012	10	\$ 3,000
92	945086	02/21/2013	Total Coliform	Other	Seven Sample Median	23	27	MPN/100 mL	N/A	N	08/25/2012	11	\$ 3,000

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City of El Paso de Robles WWTP

#	Violation Number	Violation Date	Pollutant	Pollutant Type	Limitation Period	Limit	Result	Units	% Over Limit	Serious or Non-Serious Violation	Date 180 Days Prior	No. of Viols within 180 days	Penalty
93	945085	02/26/2013	Total Coliform	Other	Seven Sample Median	23	27	MPN/100 mL	N/A	N	08/30/2012	12	\$ 3,000
94	946321	03/07/2013	Sodium, Total	Group 1	Monthly Average	255	311	mg/L	22%	N	09/08/2012	12	\$ 3,000
95	948475	04/04/2013	Copper, Total	Group 2	Monthly Average	21	25	ug/L	19%	N	10/06/2012	10	\$ 3,000
96	948363	04/04/2013	Sodium, Total	Group 1	Monthly Average	255	294	mg/L	15%	N	10/06/2012	9	\$ 3,000
97	950053	05/31/2013	Sodium, Total	Group 1	Monthly Average	255	256	mg/L	0%	N	12/02/2012	9	\$ 3,000
98	951747	06/30/2013	Sodium, Total	Group 1	Monthly Average	255	261	mg/L	2%	N	01/01/2013	9	\$ 3,000
99	953938	07/01/2013	Total Coliform	Other	Seven Sample Median	23	27	MPN/100 mL	N/A	N	01/02/2013	10	\$ 3,000
100	954017	07/02/2013	Selenium, Total	Group 2	Monthly Average	4	6	ug/L	50%	S	N/A	N/A	\$ 3,000
101	954016	07/02/2013	Copper, Total	Group 2	Daily Maximum	39	50	ug/L	28%	S	N/A	N/A	\$ 3,000
102	954015	07/31/2013	Copper, Total	Group 2	Monthly Average	21	50	ug/L	138%	S	N/A	N/A	\$ 3,000
103	955188	08/08/2013	Sodium, Total	Group 1	Monthly Average	255	268	mg/L	5%	N	02/09/2013	13	\$ 3,000

EPL No. R3-2014-0005 – Exhibit A
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#	Violation Number	Violation Date	Pollutant	Pollutant Type	Limitation Period	Limit	Result	Units	% Over Limit	Serious or Non-Serious Violation	Date 180 Days Prior	No. of Viols within 180 days	Penalty
104	955190	08/08/2013	Chloride	Group 1	Monthly Average	355	400	mg/L	13%	N	02/09/2013	14	\$ 3,000
105	957014	09/05/2013	Biochemical Oxygen	Group 1	Weekly Average	35	49	mg/L	40%	S	N/A	N/A	\$ 3,000
106	957013	09/10/2013	Total Coliform	Other	Seven Sample Median	23	33	MPN/100 mL	N/A	N	03/14/2013	12	\$ 3,000
107	957015	09/30/2013	Biochemical Oxygen	Group 1	Monthly Average	25	28	mg/L	12%	N	04/03/2013	13	\$ 3,000

Total Penalty: \$321,000

* The Central Coast Water Board issued ACL Order No. R3-2010-0032 on June 15, 2010, resolving MMP violations spanning March 4, 2008, through August 6, 2009. However, that enforcement action did not resolve Violation No. 802415 or No. 832549.

Total Mandatory Minimum Penalty Amount for Effluent Violations
(44 Serious Violation + 63 Non-Serious Violations) x \$3,000 = \$321,000

For Group 1 pollutants, a violation is serious when the limit is exceeded by 40% or more, and non-serious (formerly “chronic”) when the limit is exceeded by less than 40%.

For Group 2 pollutants, a violation is serious when the limit is exceeded by 20% or more, and non-serious when the limit is exceeded by less than 20%.

For “Other” (i.e., Other Effluent Violation) pollutants, a violation is non-serious when the limit is exceeded by any amount. For the purposes of MMP enforcement, Other Effluent Violations are not categorized as serious.

Serious violations are subject to a penalty of no less than \$3,000 each, as are non-serious violations when preceded by three or more specified violations within any period of 180 days.

EPL No. R3-2014-0005 – Exhibit A
 Proposed Stipulated ACL Order No. R3-2014-0005
 City of El Paso de Robles WWTP

Definitions

CIWQS	California Integrated Water Quality System database used by the Water Boards to manage violation and enforcement activities, as well as other data types relevant to water quality protection.
Violation Number	Identification number assigned to a violation in CIWQS.
Violation Date	Date that a violation actually occurred, with the exception that for some violation types, such as a monthly average, the last day of the reporting period is used. If the occurrence date is unknown, the date used is the day the violation was first discovered by staff, the Discharger, or a third party.
Pollutant Types: Group 1 & 2	Groups of pollutants defined in the State Water Resources Control Board Water Quality Enforcement Policy. Also referred to as Category 1 or CAT1, Category 2 or CAT2, respectively.
Pollutant Type: Other	“Other” refers to “Other Effluent Violation”. Group of pollutants other than those included in Group 1 or 2.

File Location: P:\Enforcement\Mandatory Minimum Penalties\EPLs\2013 Paso WWTP\Exh A - Paso WWTP MMP Viols as of 11-5-13 and NOV.docx
 Primary Indexing #247750
 CIWQS Regulatory Measure #393832

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

**SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE
CIVIL LIABILITY ORDER NO. R3-2014-0005 (UPON EXECUTION)**

City of El Paso de Robles WWTP
EPL No. R3-2014-0005
Waste Discharge Requirements Order No. R3-2004-0031 and No. R3-2011-0002
NPDES Permit No. CA0047953

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the Central Coast Regional Water Quality Control Board (Central Coast Water Board), City of El Paso de Robles (Permittee) hereby accepts the "Offer to Participate in Expedited Payment Program" (Offer) and waives the right to a hearing before the Central Coast Water Board to dispute the alleged violations described in the Notice of Violation (NOV) attached to the Offer as Exhibit A and incorporated herein by reference.

The Permittee agrees that the NOV shall serve as a complaint pursuant to Article 2.5 of the Water Code and that no separate complaint is required for the Central Coast Water Board to assert jurisdiction over the alleged violations through its enforcement staff. The Permittee agrees to pay the penalties authorized by California Water Code section 13385, as specified in the NOV (Expedited Payment Amount), which shall be deemed payment in full of any civil liability pursuant to the Water Code sections 13385 and 13385.1 that otherwise might be assessed for the violations described in the NOV.

Expedited Payment Amount: **\$321,000**.

The Permittee understands that it may pay up to the maximum allowable portion¹ of the Expedited Payment Amount towards the Supplemental Environment Projects (SEPs) it indicates with an "X" in the first column of the table below. If selecting this option, the Permittee will indicate in the second column of the table below how much of the maximum allowable portion it will direct to each selected SEP. If selecting multiple SEPs, the amounts entered in the second column must be equal to or less than the maximum allowable portion. The Permittee understands that if its indicated SEP amount(s) exceed the maximum allowable portion, then Central Coast Water Board staff will adjust the amount(s) accordingly, and will indicate said adjustment below, in the transmittal of the executed order for stipulation, and/or in invoice(s) accompanying the executed order at a later date. If the Permittee does not select the SEP option, the Permittee shall pay the total Expedited Payment Amount to the State Water Resources Control Board Cleanup and Abatement Account.

¹ Pursuant to Water Code section 13385(l)(1), if the penalty amount exceeds \$15,000, the amount the Water Board may direct to a SEP may not exceed \$15,000 plus 50 percent of the penalty amount over \$15,000. For penalty amounts of \$15,000 or less, the Water Board generally allows direction of the full amount to a SEP.

**Expedited Payment Letter (EPL) No. R3-2014-0005
 NPDES Permit No. CA0047953**

Maximum Allowable Portion for SEPs: **\$168,000.**

Permittee Selects the Following SEPs	Amount (\$) of Maximum Allowable Portion for each SEP	SEP Name
		Low Impact Development Initiative
		Central Coast Ambient Monitoring Program

The Permittee understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the Notice of Violation.

Upon execution by the Permittee, the Permittee shall return this Acceptance and Waiver to:

Harvey Packard
 Enforcement Coordinator
 Central Coast Water Board
 895 Aerovista Place, Suite 101
 San Luis Obispo, CA 93401

The Permittee understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Central Coast Water Board to publish notice of and provide at least 30 days for public comment on any proposed resolution of this enforcement action. Accordingly, this Acceptance and Waiver, prior to execution by the Executive Officer of the Central Coast Water Board, will be published as required by law for public comment.

The Permittee understands that if significant comments are received in opposition to the Offer, the Central Coast Water Board enforcement staff's offer to resolve the violations set forth in the NOV may be withdrawn. In that circumstance, the Permittee 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 Coast Water Board. For such a liability 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.

If no comments are received within the notice period that cause the Executive Officer to reconsider the Offer, the Executive Officer will execute the Acceptance and Waiver as Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order No. R3-2014-0005 (Settlement and Order).

The Permittee understands that after the signed Acceptance and Waiver is publicly noticed and executed by the Executive Officer of the Central Coast Water Board, Water Board staff will transmit the executed Settlement and Order to the Permittee with

**Expedited Payment Letter (EPL) No. R3-2014-0005
NPDES Permit No. CA0047953**

payment instructions and due dates. Furthermore, the Permittee understands that full payment of the Expedited Payment Amount, including any allowable portion of which is authorized for use in SEPs, within 30 days after staff transmits the executed Settlement and Order is a condition of this Acceptance and Waiver.

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 and the terms of the Settlement and Order.

By: _____ (Signed Name) _____ (Date)

(Printed or typed name)

(Title)

**Expedited Payment Letter (EPL) No. R3-2014-0005
NPDES Permit No. CA0047953**

IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13385

Date: _____

By: _____
Kenneth A. Harris Jr.
Executive Officer
Central Coast Regional Water Quality Control Board

File Location: P:\Enforcement\Mandatory Minimum Penalties\EPLs\2013 Paso WWTP\Paso Robles
WWTP MMP EPL 14-0005 Waiver.docx
Primary Indexing #247750
CIWQS Regulatory Measure #393832

RESOLUTION NO. 13-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES
TO SETTLE PENALTIES FOR WASTEWATER TREATMENT PLANT VIOLATIONS

WHEREAS, the City of Paso Robles Wastewater Treatment Plant (WWTP) discharge to the Salinas River is regulated by the Central Coast Regional Water Quality Control Board (Water Board) under a National Pollutant Discharge Elimination System (NPDES) permit.

WHEREAS, Paso Robles wastewater contains high salt levels. The existing WWTP is antiquated and cannot consistently comply with NPDES permit pollutant limits. Between September 1, 2009, and September 30, 2013, the City violated permit effluent limits 107 times.

WHEREAS, the California Water Code requires a mandatory minimum penalty of \$3,000 for each effluent violation. On November 13, 2013, the Water Board assessed the City with a penalty of \$321,000 for the 107 effluent violations.

WHEREAS, the California Water Code provides that penalties may be increased up to \$10,000 per day.

WHEREAS, the Water Board has offered an opportunity to settle the penalties and avoid the possibility that penalties may be increased.

WHEREAS, it would be in the City's best interest to settle this matter by paying the minimum penalty, and avoid the possibility of a greater penalty.

WHEREAS, the Water Board is allowing up to \$168,000 of the \$321,000 penalty to be directed to two pre-approved local environmental projects, instead of the State's Cleanup and Abatement Account. The pre-approved projects are the Low Impact Development Initiative and Central Coast Ambient Monitoring Program, both of which have benefited Paso Robles.

THEREFORE, BE IT RESOLVED, the City Council of the City of El Paso de Robles does hereby:

- a. Authorize the City Manager to settle this matter by signing and submitting the "Acceptance of Conditional Resolution and Waiver of Right to Hearing,"
- b. Approve payment of the \$321,000 penalty from the Sewer Enterprise Fund, and
- c. Request the Water Board direct \$168,000 of the penalty to the Low Impact Development Initiative and Central Coast Ambient Monitoring Program.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 3rd day of December 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Duane Picanco, Mayor

Caryn Jackson, Deputy City Clerk