



Santa Ana Regional Water Quality Control Board

May 1, 2023

Toyota Racing Development USA Inc
335 Baker Street East
Costa Mesa, CA 92626
(Via Certified Mail)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jacob Cramer
jacob_cramer@toyota.com
(Via Email)

Amanda Garcia, CT Corporation System
Agent for Service of Process of TRD USA Inc.
330 North Brand Boulevard
Glendale, CA 91203
(Via Certified Mail)

CONDITIONAL SETTLEMENT OFFER NO. R8-2023-0037 TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM RELATING TO VIOLATIONS OF THE GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITIES, ORDER NO. 2014-0057-DWQ, NPDES NO. CAS000001) AND TIME SCHEDULE ORDER NO. R8-2021-0036, FOR TOYOTA RACING DEVELOPMENT USA INC, 335 BAKER STREET EAST, COSTA MESA, WDDID NO. 8 30I016707

Dear Mr. Cramer,

This letter is to notify Toyota Racing Development USA Inc, (hereinafter “Discharger” or “you”) of alleged violations subject to Mandatory Minimum Penalties (MMPs) pursuant to the California Water Code (Water Code) section 13385 identified in the State Water Resources Control Board’s water quality data system and to allow the Discharger to participate in the Santa Ana Regional Water Quality Control Board’s (Santa Ana Water Board) Expedited Payment Program to address these MMPs.

NOTICE OF VIOLATION:

Based on information in the Stormwater Multiple Application & Report Tracking System (SMARTS), the Santa Ana Water Board alleges that the Discharger is in violation of the General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ as amended by Order No. 2015-0122-DWQ and Order No. 2018-0028-DWQ, National Pollutant Discharge Elimination System (NPDES) Permit No. CAS000001 (Industrial General Permit) and Time Schedule Order (TSO) No. R8-2021-0036 issued to comply with requirements specified in the Industrial General Permit, for exceedances of Total Maximum Daily Load Numeric Effluent Limits found in Attachment E of the Industrial General Permit, for the facility located at 335 Baker Street East in the City of Costa Mesa. The Discharger will have the opportunity to address the alleged violations as discussed below.

KRISTINE MURRAY, CHAIR | JAYNE JOY, EXECUTIVE OFFICER

STATUTORY LIABILITY:

Dischargers enrolled in the Industrial General Permit and located in a watershed with an applicable TMDL, may be subject to Numeric Effluent Limitations (NELs) as articulated in Attachment E to the Industrial General Permit. The Industrial General Permit, Attachment C, provides that an NEL Exceedance is: "Responsible Discharger shall compare all sampling and analytical results from each distinct sample (individual or combined as authorized by XI.C.5) to the corresponding instantaneous maximum NEL values in the TMDL Compliance Table E-2. An instantaneous maximum NEL exceedance occurs when two (2) or more analytical results from samples taken for any single parameter within a reporting year exceed the instantaneous maximum NEL value."

Water Code section 13300 states: "Whenever a regional board finds that a discharge of waste is taking place or threatening to take place that violates or will violate requirements prescribed by the regional board, or the state board, or that the waste collection, treatment, or disposal facilities of a discharger are approaching capacity, the board may require the discharger to submit for approval of the board, with such modifications as it may deem necessary, a detailed time schedule of specific actions the discharger shall take in order to correct or prevent a violation of requirements." If the time schedule exceeds one year from the effective date of the order, the schedule shall include interim requirements and the dates for their achievement. The interim requirements shall include both (I) Effluent limitations for the pollutant or pollutants of concern and (II) Actions and milestones leading to compliance with the effluent limitation. (Wat. Code § 13385, subd. (j)(3)(C)(iii).) Here, the Discharger obtained a Time Schedule Order (TSO) which contained interim effluent limitations and interim milestones. To date, the Discharger has not complied with the requirements of TSO R8-2021-0036. Therefore, the Discharger is subject to all of the requirements of the Industrial General Permit and is subject to mandatory minimum penalties for failure to comply with the effluent limits contained therein.

Water Code section 13385, subdivisions (h) and (i), require the regional water boards to impose mandatory minimum penalties of three thousand dollars (\$3,000) for specified serious and chronic violations as defined by statute when dischargers violate effluent limitations in NPDES permits. The Discharger may also be subject to discretionary administrative civil liabilities of up to ten thousand dollars (\$10,000) for each day in which the violation occurs. Any discretionary administrative civil liabilities may be assessed by the Santa Ana Water Board beginning with the date that the violations first occurred. The formal enforcement action that the Santa Ana Water Board uses to assess such liability is an administrative civil liability complaint (ACLC), although the Santa Ana Water 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. Water Code section 13385 subdivision (j)(3) allows the regional water boards to exempt certain facilities from mandatory minimum penalties when there are exceedances of NELs if the facility is in compliance with a time schedule order issued pursuant to Section 13300 only when all of the [specified] requirements, including interim effluent limits and any required milestones, are met. Here, mandatory minimum penalties will be assessed due to the failure to comply with the interim effluent limits specified in the TSO.

Pursuant to Water Code section 13385, subdivision (j)(3), full compliance with the requirements of the TSO exempts the Discharger from mandatory minimum penalties only for violations of the NELs for parameters in the Industrial General Permit that are specified in the TSO and that occur after the effective date of the TSO and until the expiration date of the TSO. In addition to potential

mandatory minimum penalties for violations of final NELs in the Industrial General Permit, the Discharger may be subject to enforcement actions for failure to comply with an interim effluent limitation or other requirement contained in this Order. An exceedance of an interim numeric effluent limit is defined in the TSO as when two (2) or more analytical results from samples taken for any single parameter within a reporting year exceed the applicable interim effluent limit.

In order to determine compliance with applicable interim effluent limitations adopted in the TSO, Santa Ana Water Board staff has reviewed sampling data submitted by you to SMARTS to determine whether MMPs apply to your facility for the 2021-2022 reporting year.

DISCHARGER'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 this proposed Settlement Agreement and agreeing to pay a settlement of **twenty seven thousand dollars (\$27,000)**. The minimum administrative civil liability pursuant to Water Code section 13385 is \$3,000 for each specified serious or chronic violation. 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 May 30, 2023**. The form provides submittal instructions. Final closure on this action is only possible after ultimate submission of the settlement amount.

Please submit an original (blue ink) signed Acceptance and Wavier form to:

Devin Darrow, General Stormwater Unit
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348

In response to the Conditional Offer and payment in settlement of this enforcement action, the Santa Ana Water 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.

2. **Contest the alleged violations** by submitting in writing, the basis of your challenge with supporting evidence. If you choose this option, you must **submit your written documentation by May 30, 2023**. The Santa Ana Water Board Prosecution Team will review your submission, and if we agree with you, we will notify you in writing that our enforcement action has been terminated. All responses should be directed to Devin Darrow.

If you do not respond in a manner described in the above options, the Santa Ana Water Board will prepare an ACLC for the violations. The liability amount sought in the ACLC and/or imposed by the Santa Ana Water Board may be higher than the liability amount set forth in this Conditional Offer. Moreover, additional staff costs associated with formal enforcement may be considered in the recommended liability amount in an ACLC.

CONDITIONS FOR SANTA ANA WATER BOARD ACCEPTANCE OF RESOLUTION:

If you accept the Expedited Payment Program offer, the settlement will be published in the following manner: Federal regulations require the Santa Ana Water 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 Discharger's Acceptance and Waiver and other requested technical reports on or before **May 30, 2023**, Santa Ana Water Board staff will publish a notice of the proposed settlement of the alleged violations.

If no comments are received within the notice period, the Santa Ana Water Board Executive Officer will execute the Acceptance and Waiver as a stipulated order assessing the MMP amount pursuant to Water Code section 13323. You will then be notified that payment is due within 30 days. Failure to pay the administrative civil liability within that time frame may result in further enforcement including 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 Discharger's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn, and the violations will be addressed through a formal enforcement action.

This Expedited Payment Program offer does not address or resolve liability for any violation that is not specifically identified. The Santa Ana Water Board reserves the right to pursue formal enforcement of any violations not specifically cited.

Should you have any questions about this Expedited Payment Program, please contact Devin Darrow via email at Devin.Darrow@waterboards.ca.gov or via phone at (951) 782-4497.

Sincerely,

Ann E. 
Sturdivant
Water Boards

Ann E. Sturdivant, PG, CEG, CHG
Assistant Executive Officer
Santa Ana Water Board Prosecution Team

enclosure: Appendix 1 (Tables 1-3)
Acceptance of Conditional Resolution and Waiver of Right to Hearing;
(proposed) Order

cc (w/encl): Chuck Griffin, Santa Ana Regional Water Quality Control Board
David Burmeister, Toyota Racing Development USA Inc

APPENDIX 1

DETERMINATION OF MANDATORY MINIMUM PENALTIES (MMPs) BASED ON DISCHARGER SPECIFIC TOTAL MAXIMUM DAILY LOAD (TMDL) NUMERIC EFFLUENT LIMITATION (NEL) EXCEEDANCES TRIGGERED BY THE FAILURE TO COMPLY WITH TSO INTERIM NUMERIC EFFLUENT LIMITS

Table 1: Applicable TMDL requirements for specified parameters that exceeded NELs, as referenced from Attachment E of the General Permit that includes all TMDL requirements.

TMDL	Impaired Waterbody / Watershed	Pollutants	Additional TMDL-related Numeric Effluent Limitation (NEL)	Pollutant Category	Required Actions
San Diego Creek and Newport Bay Toxics TMDL	Lower Newport Bay and Bay Segments (including Costa Mesa Channel and Santa Ana Delhi Channel)	Copper (Cu)	Total Copper Instantaneous Maximum NEL of 0.00578 mg/L	2	In addition to complying with this General Permit, Responsible Dischargers shall take QSE samples in accordance with Section XI.B of the General Permit and shall compare the results to the corresponding TMDL Numeric Effluent Limitation (NEL). Sample, collection, and reporting shall be conducted in accordance with Section XI.B.
		Zinc (Zn)	Total Zinc Instantaneous Maximum NEL of 0.095 mg/L	2	

Table 2: TSO Interim Effluent Limit compliance determination for the 2021-2022 Reporting Period based on comparison of sample results with Interim Numeric Effluent Limits (NEL). An exceedance of an Interim NEL is defined in the TSO as when two (2) or more analytical results from samples taken for any single parameter within a reporting year exceed the applicable interim effluent limit for the reporting year.

Discharge Location	Sample Collection Date	Parameter	Result (mg/L)	TSO Interim NEL (mg/L)	Above TSO Interim NEL?	Occurrence	TSO Interim NEL Exceedance Applies	Violates TSO?
BNE Outfall	10/25/2021	Zinc, Total	0.55	0.463	Yes	1	No	No
BNE Outfall	12/9/2021	Zinc, Total	0.96	0.463	Yes	2	Yes	Yes

Table 3: TMDL applicable sampling data and MMP determination for the 2021-2022 Reporting Period based on Numeric Effluent Limitation (NEL) exceedances. It is stated in Water Code section 13385, subdivision (h)(2) that a serious violation occurs when a discharger violates effluent limitations contained in the applicable waste discharge requirements by 20 percent or more for a Group II pollutant and 40 percent or more for a Group I pollutant. Pursuant to Water Code section 13385, subdivision (i), a chronic violation is assessed when a discharger violates an effluent limitation four or more times in a six-month period. Water Code sections 13385 and 13385.1, further identify that the Discharger is subject to a MMP of three thousand dollars (\$3,000) for specified serious and chronic violation.

Discharge Location	Sample Collection Date	Parameter	Result (mg/L)	NEL (mg/L)	Serious MMP Applies?	Count Toward Chronic	Chronic MMP Applies?	Mandatory Minimum Penalty (MMP)
BN Outfall	10/11/2021	Copper, Total	0.02	0.00578	No	N/A	No	-
BN Outfall	10/25/2021	Copper, Total	0.028	0.00578	Yes	1	No	\$3,000
BN Outfall	10/25/2021	Zinc, Total	0.29	0.095	No	N/A	No	-
BNE Outfall	10/25/2021	Copper, Total	0.015	0.00578	No	N/A	No	-
BNE Outfall	10/25/2021	Zinc, Total	0.55	0.095	No	N/A	No	-
FW Outfall	10/25/2021	Copper, Total	0.013	0.00578	No	N/A	No	-
FW Outfall	10/25/2021	Zinc, Total	0.16	0.095	No	N/A	No	-
BNE Outfall	12/9/2021	Copper, Total	0.034	0.00578	Yes	1	No	\$3,000
BNE Outfall	12/9/2021	Zinc, Total	0.96	0.095	Yes	2	No	\$3,000
FW Outfall	12/9/2021	Copper, Total	0.054	0.00578	Yes	1	No	\$3,000
FW Outfall	12/9/2021	Zinc, Total	0.29	0.095	Yes	2	No	\$3,000
BNE Outfall	3/28/2022	Copper, Total	0.02	0.00578	Yes	3	No	\$3,000
BNE Outfall	3/28/2022	Zinc, Total	0.51	0.095	Yes	4	Yes	\$3,000
FW Outfall	3/28/2022	Copper, Total	0.023	0.00578	Yes	3	No	\$3,000
FW Outfall	3/28/2022	Zinc, Total	0.59	0.095	Yes	4	Yes	\$3,000
Total MMP for NEL Exceedances:								\$27,000



Santa Ana Regional Water Quality Control Board

ACCEPTANCE OF CONDITIONAL RESOLUTION AND WAIVER OF RIGHT TO HEARING: (Proposed) ORDER

Toyota Racing Development USA Inc.
Settlement Offer No. R8-2023-0037

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board), Toyota Racing Development USA Inc. (Discharger) hereby accepts the "Offer to Participate in Expedited Payment Program" and waives the right to a hearing before the Santa Ana Water Board to dispute the violations pursuant to California Water Code section 13385.

The Discharger 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 Santa Ana Water Board to assert jurisdiction over the alleged violations through its Chief Prosecutor. The Discharger agrees to pay the administrative civil liability authorized by California Water Code section 13385, in the sum of \$27,000 (Expedited Payment Amount) which shall be deemed payment in full of any civil liability pursuant to California Water Code section 13385 that otherwise might be assessed for the violations described.

The Discharger understands that this Acceptance and Waiver waives its right to contest the violations and the amount of civil liability for such violations. The Discharger understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified.

Upon Execution by the Discharger, submit the completed Acceptance and Waiver to:

Devin Darrow, General Stormwater Unit
Expedited Payment Letter
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501

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

If no comments are received within the notice period, the Prosecution Team will present this Order to the Santa Ana Water Board Executive Officer to execute the Acceptance and Waiver.

The Discharger understands that if significant comments are received in opposition to the Conditional Offer, the offer on behalf of the Santa Ana Water Board to resolve the violations may be withdrawn. In that circumstance, the Discharger 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 Santa Ana Water Board. In the event that this matter proceeds to hearing, the Discharger understands that this Acceptance and Waiver executed by the Discharger will be treated as a settlement communication and will not be used as evidence in that hearing.

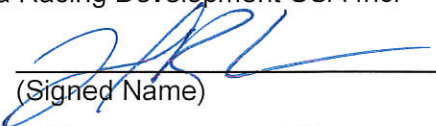
The Discharger further understands that once this Acceptance and Waiver is executed by the Santa Ana Water Board Executive Officer, the full payment required by the deadline set forth below is a condition of this Acceptance and Waiver. In accordance with California Water Code section 13385, subdivision (n) funds collected for violations pursuant to section 13385 shall be deposited in the Cleanup and Abatement Account, the \$27,000 liability shall be paid by a cashiers or certified check made out to the "State Water Resources Control Board" referencing this Order number for deposit into the Cleanup and Abatement Account. 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 Santa Ana Water Board Executive Officer.

Please mail check to:

State Water Resources Control Board
Re: Order No. R8-2023-0037
Division of Administrative Services, Accounting Branch
P.O. 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.

Toyota Racing Development USA Inc.

By:  05/25/2023
(Signed Name) (Date)
JACOB CRAMER MANAGER, FACILITIES
(Printed or Typed Name) (Title)

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

By: _____
Jayne E. Joy, PE
Executive Officer

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