

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

In the Matter of:)	ORDER No. R4-2016-0192
)	SETTLEMENT AGREEMENT AND
)	STIPULATION FOR ENTRY OF
FORMER JALK FEE PROPERTY)	ADMINISTRATIVE CIVIL LIABILITY ORDER
)	
10607 Norwalk Boulevard)	
Santa Fe Springs, CA 90670)	

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Order or Stipulated Order) is entered into by and between the Executive Officer of the Regional Water Quality Control Board, Los Angeles (Regional Board), on behalf of the Regional Board Prosecution Team (Prosecution Team), and ExxonMobil Oil Corporation (Discharger or ExxonMobil) (collectively Parties) and is presented by the Prosecution Team and Discharger to the Regional Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

SECTION I: RECITALS

1. The former Jalk Fee site was used for oil production activities in the 1920s, continuing to the 1990s. In the 1990s, ExxonMobil engaged in the abandonment and plugging of oil wells, and in 1997-2000, ExxonMobil conducted soil remediation activities to remove soil that was impacted with petroleum hydrocarbons and halogenated volatile organic compounds (HVOCs). Following soil excavation up to 24 feet below ground surface, the site was granted soil closure by the Regional Board in letters dated March 1, 1999 and March 5, 2001, to promote site redevelopment. The site was redeveloped into an industrial park in 2003, after the soil remediation activities. Groundwater monitoring continued, which demonstrated a continuing presence of contaminants of concern, including tetrachloroethylene (PCE) and trichloroethylene (TCE). ExxonMobil requested groundwater closure of the site in 2010, which the Regional Board did not grant, based on the continuing presence of contaminants in monitoring well data.

2. On August 24, 2010, the Regional Board issued an order pursuant to California Water Code (CWC) section 13267 which directed ExxonMobil to: 1) submit a work plan to delineate the lateral and vertical extent of groundwater contamination from releases at the site; 2) install new groundwater monitoring wells; and 3) conduct additional groundwater monitoring and sampling in the new monitoring wells. The order laid out due dates for the technical reports and continued monitoring: ExxonMobil was to submit a work plan for monitoring by November 10, 2010, and following the installation of the monitoring wells, to submit monitoring and sampling, with the first report due August 15, 2011.

3. On December 21, 2011, the Regional Board issued a letter that rescinded the soil

closure previously granted in 2001 based on new soil sampling data. In addition, the letter amended the August 24, 2010 CWC 13267 Order to include a work plan for additional soil assessment due April 15, 2012.

3. On May 28, 2013, the Regional Board amended the order to require the submittal of a work plan to conduct additional soil and soil vapor investigation, and a public participation plan. Based on a report submitted by ExxonMobil's consultant, the Regional Board amended the requirements of the original order to include a work plan for additional soil vapor and soil investigation for review and approval, including indoor air sampling. In addition, the May 28, 2013 order required ExxonMobil to develop and submit a Public Participation Plan (PPP) for the site and the surrounding parties for review and approval by August 13, 2013.

4. On February 18, 2014, the Regional Board amended the order. The Regional Board approved conducting the inspection of two on-site buildings, added a third off-site building, and required the submittal of a revised Indoor Air Assessment Work Plan (IAWP). The February 18, 2014 order approved the work plan for the building surveys, and required ExxonMobil to respond to comments from the Office of Environmental Health Hazard Assessment regarding the air assessment and include a figure map of the sampling locations.

5. On March 25, 2014, the Regional Board amended the August 24, 2010 order. The order required the submittal of technical reports by July 31, 2014, including a work plan for further subsurface investigation if the contamination was not fully delineated prior to the submittal of the technical report.

6. On April 3, 2014, the Regional Board amended the order in response to the submittal of the PPP by ExxonMobil's consultant. The amendment, based on the submittal, required a revised PPP, including an expanded scope of work, and inclusion of nearby stakeholders. The revised plan was due by June 30, 2014.

7. ExxonMobil filed a petition to review the requirements of the February 18, 2014 amendment to the original August 29, 2010 CWC 13267 Order. The petition was denied. ExxonMobil filed a Request for Reconsideration of its petition on April 17, 2014. On May 29, 2014, ExxonMobil notified the Regional Board that it was not going to submit the IAWP until the State Water Resources Control Board had addressed its Request for Reconsideration. On June 30, 2014 ExxonMobil notified the Regional Board that it would not submit the revised PPP until the State Water Resources Control Board had completed its review of the petitions. On July 29, 2014, ExxonMobil requested an extension for submittal of the Site Assessment Report, which was due July 31, 2014. The Regional Board denied the request for the extension, noting that filing a petition with the State Board does not exempt a party from the requirements of the CWC 13267 Order.

8. On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy ("Enforcement Policy"). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The Prosecution Staff considered the methodology set forth in the Enforcement Policy for the alleged violations above, as shown in Attachment A, which is attached hereto and incorporated by reference as though fully set forth herein.

9. The Parties have engaged in settlement negotiations and agree to fully settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the Regional Board's Executive Officer for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The Parties have agreed to the imposition of twenty-four thousand three hundred forty-seven dollars (\$24,347.00) in liability as set forth in Attachment A. The Prosecution Staff believes that the resolution of the alleged violation is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the specific violations alleged in the Complaint, except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

SECTION II: STIPULATIONS

The Parties stipulate to the following terms for a Stipulated Order:

1. **Jurisdiction:** The Parties agree that the Regional Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulated Order.
2. **Administrative Civil Liability:** Within thirty (30) days of adoption of this Stipulated Order, the Discharger shall remit **twenty four thousand three hundred forty-seven dollars (\$24, 347.00)** in the form of a check made payable to the State Water Resources Control Board Cleanup and Abatement Account. The check shall indicate "Order No. R4-2016-0192" and shall be sent to the following address:

State Water Resources Control Board
Division of Administrative Services
ATTN: ACL Payment
P.O. Box 1888
Sacramento, California 95812-1888

A copy of the check shall also be transmitted electronically to the following e-mail address:

Hugh Marley
Hugh.Marley@waterboards.ca.gov

3. **Matters Addressed by Stipulation:** Upon the Regional Board's adoption of this Order, this Stipulation represents a final and binding resolution and settlement of the violations alleged, and all claims, violations or causes of action that could have been asserted against the Discharger as of the effective date of this Order based on the August 29, 2010 CWC 13267 Order and subsequent Amendments ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability, in accordance with Paragraph 2 of this Order.
4. **Public Notice:** The Parties understand that this Stipulation and Order will be noticed for a 30-day public review and comment period on the Regional Board's website prior to settlement or imposition of any administrative civil liability by the Regional Board, or its delegatee. If significant new information is received that reasonably affects the propriety of presenting this Stipulation and Order to the Regional Board, or its delegatee, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulation and Order void and decide not to

present it to the Regional Board, or its delegee. The Discharger agrees that it may not rescind or otherwise withdraw its approval of the Stipulation and Order.

5. Addressing Objections Raised During the Public Comment Period: The Parties agree that the procedure reflected in this Stipulation and Order for the Regional Water Board's adoption of the settlement by the Parties and review by the public, will be adequate. In the event procedural objections are raised prior to the Stipulation and Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or appropriate under the circumstances.

6. No Waiver of Right to Enforce: The failure of the Prosecution Team or Regional Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Team or Regional Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulation and Order.

7. Integration: This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.

8. Modification: This Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Order. All modifications must be made in writing and approved by the Regional Board or its delegee.

9. Interpretation: This Stipulated Order shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.

10. If Order Does Not Take Effect: In the event that this Stipulation and Order does not take effect because it is not approved by the Regional Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

- i. Objections related to prejudice or bias of any of the Regional Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on this matter; or
- ii. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

11. **Effect on Future Enforcement Actions:** In settling this matter, the Discharger recognizes that this Stipulation and Order may be used as evidence of a prior enforcement action consistent with Water Code sections 13327 and 13385(e), and the Enforcement Policy.

12. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323(b), and hereby waives its right to a hearing before the Regional Board prior to the adoption of the Stipulation and Order.

13. **Waiver of Right to Petition:** The Discharger hereby waives its right to petition the Regional Water Board's adoption of the Stipulation and Order as written for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

14. **Covenant not to Sue:** Upon the effective date of this Stipulated Order, the Discharger shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against the Regional Board, including its officers, agents, directors, employees, contractors, subcontractors, attorneys, representatives, predecessors-in-interest, and successors and assigns for any and all claims or causes of action, of every kind and nature whatsoever, in law and equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which arise out of or are related to this action.

15. **Water Boards not Liable:** Neither the Regional Board members nor the Regional Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from the negligent or intentional acts or omissions by Discharger or its respective directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Order, nor shall the Regional Board, its members or staff be held as parties to or guarantors of any contract entered into by Respondent, or its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Order.

16. **No Admission:** Nothing in this Stipulation and Order shall constitute or shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Compliance with this Stipulation and Order shall not constitute or be construed as an admission by the Parties of any alleged wrongdoing, violation, or of any fact or conclusion of law.

17. **Authority to Bind:** Each person executing this Stipulation and Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation and Order on behalf of and to bind the entity on whose behalf he or she executes the Order.

18. **Effective Date:** This Stipulation and Order shall be effective and binding on the Parties upon the adoption of this Order by the Regional Water Board, or its delegee, which expressly incorporates all of the terms of this Stipulation.

19. **Severability:** This Stipulation and Order are severable. Therefore, should any provision be found invalid, the remainder shall remain in full force and effect.

20. **Counterpart Signatures:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be the original, but such counterparts shall together constitute one document.

21. **Compliance with Applicable Laws:** Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulation and Order and/or compliance with the terms of this Stipulation and Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged may subject it to further enforcement, including additional administrative civil liability.

IT IS SO STIPULATED:



Paula Rasmussen
Assistant Executive Officer
For the Regional Board Prosecution Team

8-2-2016
Date

EXXON MOBIL CORPORATION

By: 

Len M. Racioppi
Its Attorney in Fact

7-17-2016
Date

HAVING CONSIDERED THE ALLEGATIONS AND THE PARTIES' STIPULATIONS, THE REGIONAL BOARD, OR ITS DELEGEE, FINDS THAT:

22. The Regional Board incorporates the foregoing Stipulation, set forth in Paragraphs 1 through 21 above, by this reference, as if set forth fully herein.

23. This is an action to enforce the laws and regulations administered by the Regional Board. The Regional Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, Los Angeles Region.

Samuel Unger, P.E.
Executive Officer

Date: _____