

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the matter of:)	
)	ORDER WQ-2014-XXXX-EXEC
COUNTY OF)	
SAN BERNARDINO)	Settlement Agreement and Stipulation for
CHINO AIRPORT)	Entry of Administrative Civil Liability Order;
)	Order (Proposed)
)	

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (“Stipulation”) is entered into by and between the State Water Resources Control Board Enforcement Staff (“Enforcement Staff”) and the County of San Bernardino (“Settling Respondent”) (collectively “Parties”) and is presented to the State Water Resources Control Board (“State Water Board”) for adoption as an Order, by settlement, pursuant to Government Code section 11415.60.

Section II: Recitals

1. The Settling Respondent is the owner and operator of the collection system at the Chino Airport, San Bernardino County, California, with a mailing address of 825 East Third Street, San Bernardino, CA 92415. The collection system consists of approximately four miles of gravity sewer lines. The collection system is subject to the requirements set forth in State Water Board Order No. 2006-0003-DWQ, the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems Order (“Sanitary Sewer Systems WDRs”), its Monitoring and Reporting Program, and its two monitoring and reporting requirements amendments, State Water Board Orders No. WQ 2008-0002-EXEC and No. WQ 2013-0058-EXEC.

2. On July 20, 2010, the State Water Board’s Executive Director issued a Notice of Violation and California Water Code Section 13267 Order to Submit Technical Reports to the Settling Respondent (NOV and 13267 Order). The NOV and 13267 Order outlined the Settling Respondent’s failure to comply with the Sanitary Sewer Systems WDRs by (1) failing to timely certify any of the required Sewer System Management Plan elements, (2) failing to complete and annually update the Collection System Questionnaire, and (3) failing to provide any of the elements required under the monitoring and reporting program, including reporting spills to the online database system, the California Integrated Water Quality System (CIWQS).

3. The July 20, 2010 NOV and 13267 Order required the Settling Respondent to submit three technical reports: (1) a compliance plan, (2) update and maintain CIWQS reports, and (3) return to compliance report. This Stipulation and Order resolves this

matter for one violation of Water Code section 13268 for failing to update and maintain CIWQS reports by September 20, 2010 as required in the NOV and 13267 Order. This failure to submit a technical report is referred to as the Alleged Violation. The State Water Board is authorized to impose administrative civil liability for this violation pursuant to Water Code section 13268, subdivision (a)(1).

4. To resolve by consent and without further administrative proceedings certain alleged violations of the California Water Code, the Parties have agreed to the imposition of \$10,400 against the Settling Respondent, which includes \$2,400 for staff costs. The liability amount was determined using a factors analysis consistent with Water Code section 13327 and the State Water Resources Control Board Water Quality Enforcement Policy (May 2010) ("Enforcement Policy"). The Enforcement Staff considered the methodology set forth in the Enforcement Policy for the Discharge Violation, as shown in Attachment A, attached hereto and incorporated by reference as though fully set forth herein.

5. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulation to the State Water Board for adoption as an Order pursuant to Government Code section 11415.60. The Enforcement Staff contends that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the specific violations alleged in this Stipulation, and that this Stipulation is in the best interest of the public.

Section III: Stipulations

The Parties stipulate to the following:

6. **Administrative Civil Liability:** The Settling Respondent hereby agrees to pay the administrative civil liability totaling \$10,400 as set forth in Paragraph 4 of Section II herein. Payment of \$10,400 to the State Water Resources Control Board Waste Discharge Permit Fund is due no later than 30 days following the State Water Board executing this Order. The Settling Respondent shall indicate on the check the number of this Stipulation and Order and send it to the State Water Resources Control Board, Division of Administrative Services, Accounting Branch 1001 I Street, 18th Floor, Sacramento, California, 95814, and shall send a copy of the check to Dr. Matthew Buffleben, Office of Enforcement, 16th Floor, Sacramento, California, 95814.

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

8. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

9. **Matters Addressed by Stipulation:** Upon adoption by the State Water Board as an Order, this Stipulation represents a final and binding resolution and settlement of the Alleged Violation asserted against the Settling Respondent for as of the date the Parties sign the Stipulation based on the specific facts alleged in this Stipulated Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability obligations by the deadlines specified in Paragraph 6 of Section III.

10. **Public Notice:** The Settling Respondent understands that this Stipulation and Order will be noticed for a 30-day public review and comment period prior to consideration by the State Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulation and Order to the State Water Board, or its delegate, for adoption, the Director of the Office of Enforcement may unilaterally declare this Stipulation and Order void and decide not to present it to the State Water Board or its delegate. The Settling Respondent agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulation and Order.

11. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the State Water Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the 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 advisable under the circumstances.

12. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Settling Respondent is represented by counsel in this matter.

13. **Modification:** This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties and approved the State Water Board or its delegate.

14. **If Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the State Water Board, or its delegate, or is vacated in whole or in part by a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the State Water 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:

- a. Objections related to prejudice or bias of any of the State Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the State Water 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 the Complaint in this matter; or
- b. 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.

15. **Waiver of Hearing:** The Settling Respondent has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the State Water Board prior to the adoption of the Order.

16. **Waiver of Right to Petition:** The Settling Respondent hereby waives its right to petition the State Water Board's adoption of the Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

17. **Settling Respondent's Covenant Not to Sue:** The Settling Respondent covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.

18. **Necessity for Written Approvals:** All approvals and decisions of the State Water Board under the terms of this Order shall be communicated to the Settling Respondent in writing. No oral advice, guidance, suggestions or comments by employees or officials of the State Water Board regarding submissions or notices shall be construed to relieve the Settling Respondent of its obligation to obtain any final written approval required by this Order.

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

20. **Effective Date:** The obligations under Paragraph 6 of Section III of this Stipulation are effective and binding on the Parties only upon the entry of an Order by the State Water Board which incorporates the terms of this Stipulation.

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

22. **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 an original, but such counterparts shall together constitute one document.

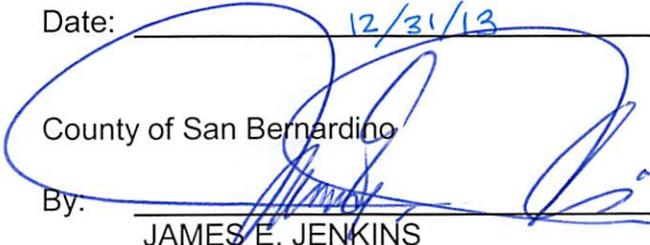
IT IS SO STIPULATED.

State Water Resources Control Board Office of Enforcement

By: Daniel Bayan, for
Christian M. Carrigan, Director

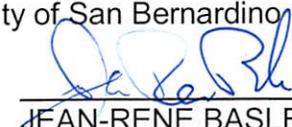
Date: 12/31/13

County of San Bernardino

By: 
JAMES E. JENKINS
DIRECTOR, DEPARTMENT OF AIRPORTS

Date: 12-17-2013

County of San Bernardino

By: 
JEAN-RENE BASLE
COUNTY COUNSEL

Date: 12-16-13

Order of the State Water Board

23. This Order incorporates the foregoing Stipulation.

24. In accepting the foregoing Stipulation, the State Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13327. The State Water Board's consideration of these factors is based upon information obtained by the State Water Board staff in investigating the allegations in the Stipulations or otherwise provided to the State Water Board. In addition to these factors, this settlement recovers the costs incurred by the staff of the State Water Board for this matter.

25. This is an action to enforce the laws and regulations administered by the State Water Board. The State Water 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 State Water Resources Control Board.

Thomas Howard
Executive Officer

Date: _____

Attachment: A – Administrative Civil Liability Methodology

Attachment A

Administrative Civil Liability Methodology

Introduction

On November 17, 2009, the State Water Resources Control Board (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. Use of the methodology addresses the factors in California Water Code section 13385(e). The policy can be found at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

The agreed upon administrative civil liability amount is based on the State Water Board Enforcement Staff’s use of that methodology.

Violation

The Settling Respondent violated California Water Code section 13268(a)(1) by failing to furnish the required technical reports to the online database system, California Integrated Water Quality System (CIWQS) as required in the July 20, 2010 Notice of Violation and California Water Code Section 13267 Order to Submit Technical Reports (NOV and 13267 Order).

Per Day Determination

Based on the facts in this case, a per day assessment is 0.2. This factor is determined by a matrix analysis using the potential for harm and the deviations from requirements. The potential for harm is determined to be minor since the act of reporting does not directly prevent spills, and the deviation from requirement is moderate since the effectiveness of the online reporting program was partially achieved once the Settling Respondent updated CIWQS.

The technical reports to CIWQS were due pursuant to the NOV and 13267 Order on September 20, 2010. The Settling Respondent updated CIWQS by July 12, 2013. Therefore, there are 1,026 days of violation.

The alternative approach for calculating liability for multiday violations is applicable because the violation is not causing daily detrimental impacts to the environment or the regulatory program, and the violation results in no economic benefit that can be measured on a daily basis.

Based on the alternative approach, the violation is assessed per day penalties based on 40 days of violation. Therefore, the initial amount of liability based on the days of violation is \$8,000, which is 40 days multiplied by the per day factor of 0.2 and the \$1,000 statutory maximum per day penalty.

Adjustment Factors to Determining Total Base Liability Amount

The Settling Respondent's culpability factor is 1. This value is based on the Settling Respondent having initially attempted to register for CIWQS, and there was no intentional violation. The Settling Respondent internally documented daily inspections, necessary cleaning, and camera inspections. The cleanup and cooperation factor is 1. This value is based on the Settling Respondent's completing 95% of clean out and camera inspection for all lines at the airport by August 16, 2013, with the remaining cleanout and camera inspection scheduled for the following 30 days. The Settling Respondent's history of violations factor is 1 due to no prior violations.

Based on these adjustments, the amount revised from the initial liability remains \$8,000.

Ability to Pay and to Continue in Business

The factor for the ability to pay the liability and to continue in business is a neutral 1 because the Chino airport is an active business.

Other Factors as Justice May Require

Costs of Investigation and Enforcement: As of the date of the issuance of this Stipulation and Order, Enforcement Staff has incurred costs of investigation and enforcement in the amount of approximately \$2,400. Therefore, the liability amount is adjusted to \$10,400 to include these staff costs.

Economic Benefit

If there was any economic benefit, it would be negligible since the Settling Respondent subsequently spent the resources to comply with submitting reports to CIWQS.

The Enforcement Policy requires that the adjusted Total Base Liability Amount be at least 10% higher than the economic benefit amount. It is more than 10% higher and therefor the liability is not adjusted for this factor.

Maximum and Minimum Liability Amounts

The maximum liability provided for by statute for one violation of Water Code section 13268(a)(1) for 1,026 days is \$1,026,000.

Though there is no statutory minimum, the Enforcement Policy requires 10% more than the economic benefit, which is negligible.

Final Administrative Civil Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the administrative civil liability is \$10,400.