

1 **United States Environmental Protection Agency**  
2 **Region IX**  
3 75 Hawthorne Street  
San Francisco, California 94105

4 In re: ) Docket No. CWA-309(a)-09-019  
5 Stockton Port District, )  
6 Respondent. ) ADMINISTRATIVE ORDER ON CONSENT  
7 )  
8 ) Proceeding under Clean Water Act § 309(a),  
9 ) 33 U.S.C. § 1319(a)

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10 **I. INTRODUCTION**

11 1. This Administrative Order on Consent (“AOC”) is entered into voluntarily by the United  
12 States Environmental Protection Agency, Region 9 (“EPA”), and the Stockton Port District  
13 (“Respondent”) (collectively the “Parties”) under the Clean Water Act (“CWA”), 33 U.S.C.  
14 § 1251, et seq. Respondent owns and operates the Port of Stockton and its storm sewer system in  
15 Stockton, California. This AOC requires Respondent to undertake specified measures to remedy  
16 deficiencies in its storm sewer discharge management and control programs in order to come into  
17 full compliance with its National Pollutant Discharge Elimination System permit issued by the  
18 State of California pursuant to the CWA.

19 **II. JURISDICTION**

20 2. EPA issues this AOC under the authority vested in its Administrator by  
21 Section 309(a) of the CWA, 33 U.S.C. § 1319(a). This authority has been delegated to the EPA  
22 Region 9 Administrator and re-delegated to the Director of EPA Region 9’s Water Division.

23 3. Respondent agrees not to contest EPA’s jurisdiction or authority to enter into or enforce  
24 this AOC. Respondent further agrees not to contest the validity of any term or condition of this  
25 AOC in any action to enforce or arising from the AOC.

1 4. EPA’s decision or actions in entering into or pursuant to this AOC are not  
2 subject to judicial review prior to any initiation of judicial action by the United States to compel  
3 compliance with the AOC.

4 **III. DEFINITIONS**

5 5. Unless defined herein, terms used in this AOC shall have the meaning as  
6 assigned in the CWA or in regulations promulgated by EPA under the CWA. The following  
7 definitions shall apply to this AOC.

8 6. “AOC” shall mean this document, all attachments hereto, all its  
9 agreed-upon modifications, and all submissions, including, but not limited to, deliverables, plans,  
10 schedules, reports, maps, and technical memoranda and specifications, that are required by this  
11 AOC and approved by EPA. Upon EPA approval, Respondent’s submissions are incorporated  
12 and enforceable as part of this AOC. In case of inconsistency, this document and its subsequent  
13 modifications shall control.

14 7. “Day” shall mean a calendar day unless otherwise specified to be a Business Day.  
15 “Business Day” shall mean a day other than a Saturday, Sunday, or Federal legal holiday. In  
16 computing a prescribed period of time, the day of the event shall not be included. If a stated time  
17 period expires on a Saturday, Sunday or Federal legal holiday, it shall be extended to include the  
18 next Business Day.

19 **IV. PARTIES BOUND**

20 8. This AOC shall be binding on Respondent and its officials, officers, directors, partners,  
21 agents, employees, attorneys, successors and assigns, and on all persons, independent  
22 contractors, contractors, and consultants acting in concert with Respondent.

23 9. No transfer of any interest in real property within the jurisdiction of the Port shall alter  
24 or relieve Respondent of its obligations under this AOC. As a condition of any transfer affecting  
25 either the Port, or access to the Port, Respondent shall reserve all rights necessary to comply with

1 the terms of this AOC. Respondent shall provide a copy of this AOC to any successor in  
2 interest to the ownership, control, operation, or any other interest in any portion of the Port at  
3 least thirty (30) days prior to the transfer, and shall simultaneously notify EPA in writing that  
4 such notice has been given.

5 10. The undersigned signatory for Respondent certifies that the signatory has the authority to  
6 execute this AOC and legally bind Respondent.

7 **VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

8 11. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutant  
9 from a point source into a navigable water except in compliance with, inter alias, a permit issued  
10 under Section 402 of the CWA, 33 U.S.C. § 1412.

11 12. Section 502(7) of the CWA, 33 U.S.C. § 11362(7) defines “navigable waters” as “the  
12 waters of the United States.” EPA’s implementing regulations at 40 C.F.R. § 122.2 further  
13 define “waters of the United States” to include all waters that are subject to the ebb and flow of  
14 the tide.

15 13. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the National Pollutant Discharge  
16 Elimination System (“NPDES”) program and authorizes states with an EPA-approved NPDES  
17 program, such as California, to issue NPDES permits.

18 14. Section 402(p) of the CWA, 33 U.S.C. § 1342, sets forth NPDES permit requirements  
19 for storm water discharges. Under Section 402(p)(2), storm water discharges from certain  
20 municipal separate storm sewer systems (“MS4s”), including those serving a population of  
21 100,000 or more, must have NPDES permit authorization. Under Section 402(p)(3)(B), the MS4  
22 permit must: (i) include a requirement to effectively prohibit non-storm water discharges into  
23 storm sewers; and (ii) require controls, including management practices, control techniques and  
24 system, design and engineering methods, and other control measures as appropriate, to reduce  
25 the discharge of pollutants to the maximum extent practicable (“MEP”),.

1 15. EPA has promulgated regulations at 40 C.F.R. § 122.26 to implement CWA Section  
2 402(p). These regulations contain comprehensive NPDES permit application requirements  
3 concerning the MS4's legal authority to develop and implement control programs to prevent  
4 illicit discharges to municipal storm sewers, 40 C.F.R. § 122.26(d)(2)(i), and the MS4's proposed  
5 storm water management program ("SWMP") to reduce and monitor pollutants in storm sewer  
6 discharges from industrial and other sources to the MEP, 40 C.F.R. § 122.26(d)(2)(iv). These  
7 application requirements in turn provide the framework for MS4 NPDES permit requirements.  
8

9 16. Respondent is a special district organized under California laws. It owns and operates  
10 the Port of Stockton (the "Port") and its storm sewer system. The Port is located within the City  
11 of Stockton, California, with a population of approximately 250,000.

12 17. Respondent's primary activities at the Port are industrial unloading, warehousing, and  
13 loading of goods for production and distribution. The Port is divided into a West Complex and  
14 an East Complex. The 1,460-acre West Complex, a 2003 acquisition by Respondent, is under  
15 development for full-scale shipping and manufacturing operations. Most of the shipping, loading  
16 and unloading of bulk commodities by Respondent and its commercial and industrial tenants  
17 currently take place at the 640-acre East Complex.

18 18. Discharges from the Port's storm sewer system, which consist of storm water and non-  
19 storm water discharges, flow either directly or indirectly to the tidally-influenced San Joaquin  
20 River and Stockton Deep Water Channel, a tributary of the San Joaquin River. Specifically, the  
21 East Complex discharges from the East Complex Retention Basin to the San Joaquin River and  
22 from five major storm sewers via gravity to the Stockton Deep Water Channel; the West  
23 Complex discharges from one major storm sewer via a pump station to the Burns Cutoff, which  
24 forms part of the San Joaquin River.  
25

1 **RESPONDENT’S NPDES PERMIT REQUIREMENTS**

2 19. Respondent’s storm sewer discharges are regulated under NPDES Permit No.  
3 CAS0084077/Order No. R5-2004-0136 (the “Permit”), adopted by the California Regional  
4 Water Quality Control Board, Central Valley Region (“Regional Board”), on October 15, 2004.

5 20. Permit Part A.3 prohibits discharges containing pollutants that have not been reduced to  
6 the MEP. Permit Section C.1 requires Respondent to comply with the MEP standard by  
7 developing and implementing a SWMP that has been approved by the Regional Board and  
8 includes, without limitation, specified programs pertaining to the identification and enforcement  
9 of best management practices (“BMPs”) for discharges from construction activities, commercial  
10 and industrial facilities and municipal operations, development standards, and compliance  
11 monitoring and reporting. Permit Section C.5 further requires Respondent to submit an Annual  
12 Work Plan listing the schedule for proposed activities in the upcoming fiscal year. Therefore,  
13 compliance with the Permit requires that Respondent fully implement the SWMP that was  
14 approved by the Regional Board on January 26, 2006, and all its schedules, appendices and  
15 subsequently approved revisions, and all documents incorporated by reference as part of the  
16 SWMP.  
17

18 21. Permit Section C.3 requires Respondent to control pollutant discharges from its  
19 construction, commercial and industrial tenants to its storm sewers by, among other things, using  
20 “enforcement mechanisms to attain compliance with ... tenant agreements” (Section C.3.e);  
21 “carry[ing] out all inspections, surveillance and monitoring necessary to determine compliance  
22 and noncompliance with tenant agreements” (Section C.3.g); and requiring appropriate BMPs  
23 (Sections C.3.h and C.3.i). Permit Section C.4 requires Respondent to adopt a standardized lease  
24 agreement with a progressive enforcement procedure to enforce these Permit requirements.  
25

1 Therefore, compliance with the Permit requires that Respondent conduct regular inspections and  
2 take appropriate measures to enforce its tenant agreements with construction projects and  
3 commercial and industrial facilities, as more specifically described below.

4 **Requirements for Oversight of Construction Sites**

5 22. Permit Section C.7 requires Respondent to “implement the Construction Element of its  
6 SWMP to reduce pollution discharges from construction sites to the MEP” and additional  
7 “Construction Element requirements” listed in Section C.7. Section C.7.a requires Respondent  
8 to “implement a program to control pollution discharges from all construction sites, regardless of  
9 size, within its jurisdiction.” Among the requirements under Section C.7.a and Respondent’s  
10 approved SWMP are:  
11

- 12 a. Project identification and review prior to construction:
  - 13 i. Under SWMP Section 2.1.1 and Respondent’s standard tenant agreement  
14 Section 7.2, construction may commence only with Respondent’s prior  
15 written consent.
  - 16 ii. Under Permit Section C.7.a.i and SWMP Section 2.1.1.- 2.1.2, new  
17 construction involving one acre or more of soil disturbance must also have a  
18 Storm Water Pollution Prevention Plan (“SWPPP”)/Construction Work  
19 Plan approved by Respondent prior to commencing construction.
- 20 b. Regular inspection: Under Permit Section C.7.a.ii and SWMP Section 2.3,  
21 Respondent must inspect all construction sites to ensure implementation of an  
22 effective combination of erosion and sediment control BMPs to the MEP and  
23 compliance with the tenant agreement at least once every two weeks during the  
24 wet season (October – April) and once a month during the dry season (May –  
25

1 September) until construction is terminated.

- 2 c. Progressive Enforcement: Under Permit Section C.3.e and SWMP Section 2.5,  
3 “[i]f visual observations or monitoring results identify violations of the project’s  
4 SWPPP or the Port’s water quality objectives,” Respondent will “require  
5 corrective action ... to address site conditions, ... endeavor to obtain an  
6 agreement for achieving compliance with the construction site manager, ... and  
7 subsequently re-inspect the construction site to ensure that the violation(s) have  
8 been corrected.”  
9

10 **Requirements for Oversight of Commercial and Industrial Facilities**

11 23. Under Permit Section C.8, Respondent must ensure that its commercial and industrial  
12 facilities implement pollution reduction and control measures to reduce pollutants in storm water  
13 runoff to the MEP. Among the requirements under the Permit and Respondent’s approved  
14 SWMP are:

- 15 a. Regular inspection: Under Permit Section C.8.b and SWMP Section 3.2.1,  
16 Respondent must conduct inspection once per year to ensure effective  
17 implementation of BMPs to the MEP and tenant agreement compliance.  
18 b. Progressive enforcement: Under Permit Sections C.8.c.ii.a through C.8.c.ii.c and  
19 SWMP Section 3.3, Respondent must implement a progressive enforcement  
20 policy that includes: conducting a follow-up inspection within two weeks of the  
21 initial inspection; taking enforcement actions if failure to control sources of  
22 pollution discharges continues after the follow-up inspection; and maintaining  
23 records of all enforcement-related efforts.  
24  
25

1 **Municipal Operations Program Requirements**

2 24. Permit Section C.9 requires Respondent to “implement a Municipal Operations Program  
3 to prevent or reduce pollutants in runoff from all of its land use area, facilities, and activities.”

4 Among the program components required by the Permit and Respondent’s approved SWMP are:

5 a. Pesticide Application Protocol for Landscape and Recreational Facilities

6 Management: Under Permit Section C.9.f, Respondent must prepare and  
7 implement a standardized protocol for routine and non-routine application of  
8 pesticides, herbicides (including pre-emergents), and fertilizers that, among other  
9 things, requires proper storage practice and regular inspection of storage areas.  
10 Respondent’s standardized protocol is set forth in Appendix E of the SWMP.

11 b. Maintenance and Operation of Catch Basins and Sumps: Under Permit Section

12 C.9.g, Respondent’s SWMP must specify maintenance procedures for catch  
13 basins and sumps, including but not limited to: an inspection and cleaning  
14 schedule, record keeping of cleaning and overall quantity of waste removed, and  
15 proper disposal of removed waste. Respondent’s maintenance procedures are set  
16 forth in Appendix F of the SWMP.

17 c. Maintenance of Streets and Roads: Under Permit Section C.9.h, Respondent must

18 “designate appropriate sweeping frequencies for streets, material handling and  
19 storage areas, and docks within its jurisdiction.” Pursuant to this requirement,  
20 SWMP Section 4.8 states that Respondent is to “operate a street sweeper that  
21 maintains streets, roads, material handling and storage areas, and docks as part of  
22 normal daily operations” (*emphasis added*).  
23  
24  
25

- 1 d. Operation and Maintenance of East Complex Retention Basin: Under Permit  
2 Section C.9.i, Respondent must “prepare and implement guidelines for operating  
3 and maintaining retention basins within its jurisdiction with specified minimum  
4 elements,” and notify the Regional Board within two weeks of evidence of berm  
5 seepage. Pursuant to the guidelines prepared by Respondent in Appendix G of the  
6 SWMP, Respondent is to inspect the East Complex Retention Basin once a month  
7 during the dry season and once a week during the wet season,” and to inspect for  
8 “structural integrity during the dry season and from structural integrity and  
9 seepage during the wet season.”  
10

11 **Development Standards Program Requirements**

12 25. The Permit requires Respondent to implement a Development Standards Plan (“DSP”)  
13 to reduce discharges from new development and significant redevelopment projects to the MEP,  
14 as follows:

- 15 a. Under Permit Section C.13, Respondent must implement the DSP within three  
16 months of its approval by the Regional Board.  
17 b. Under Permit Section C.14, Respondent must review and condition for  
18 compliance with the Development Standards (“DS”) all Priority Development  
19 Projects; i.e., all new development projects and all “significant redevelopment”  
20 projects that fall within one of the seven priority development project categories  
21 enumerated in Permit Section C.14.a.  
22

23 26. Pursuant to Respondent’s SWMP Section 6.0 and the DSP, which became legally  
24 operative for purposes of permit compliance upon approval by the Regional Board in 2006,  
25 Respondent is to implement the DSP by the following steps: determining the applicability of the

1 DSP to the development project, notifying the Port of Stockton of the proposed project;  
2 identifying and incorporating into the project design appropriate BMPs; undertaking approval  
3 process of the project design; and confirming the implementation of BMPs through an inspection  
4 program.

5 **Toxicity Monitoring Requirements**

6 27. The Permit's Monitoring and Reporting Program ("MRP") requires Respondent to  
7 conduct toxicity monitoring of urban runoff and receiving waters as follows:

- 8
- 9 a. Under MRP Section II.H, Respondent must conduct short-term chronic toxicity  
10 testing at the downstream receiving water monitoring stations (Station ID Nos. R-  
11 2, R-4 and R-5), the West Complex pump station (Station ID No. WC), and the  
12 East Complex Retention Basin twice during the five-year permit term and for the  
13 same three storm events. If toxicity is detected, Respondent must continue the  
14 toxicity testing and toxicity identification evaluations (TIE) until the nature and  
15 cause(s) of the toxicity are defined.
  - 16 b. Under MRP Section III.D, Respondent must use 40 C.F.R. Part 136 test  
17 procedures. Therefore, for toxicity testing, Respondent must follow the sample  
18 integrity protocol, test acceptability criteria, and quality assurance and quality  
19 control (QA/QC) measures set forth in EPA's most current (i.e. 2002) Part 136  
20 toxicity test procedures. Furthermore, under SWMP Section 7.3, Respondent is to  
21 perform QA/QC in accordance with procedures established in its Quality  
22 Assurance Plan for Sample Collection and Analysis appended to its Annual  
23 Monitoring Work Plan.  
24  
25

1 **DESCRIPTION OF NON-COMPLIANCE**

2 28. On March 18, 19 and 20, 2008, EPA, with Regional Board assistance, audited  
3 Respondent’s compliance with the Permit. The audit included file reviews, inspections of four  
4 facilities owned and operated by Respondent, 26 individual inspections of Respondent’s  
5 commercial and industrial tenants, and interviews of Respondent’s personnel. The EPA audit  
6 report (“Audit Report”), dated July 9, 2008, is incorporated by reference as part of this AOC.  
7

8 29. Based on the audit and subsequent communications with Respondent and/or the  
9 Regional Board, EPA finds that, while Respondent has corrected many of the deficiencies noted  
10 in the Audit Report, the following deficiencies, which are the focus of this AOC, require longer-  
11 term remedial activities:

12 **Deficiencies in Oversight of Construction Sites**

13 30. As more fully set forth in Section 2.4 of the Audit Report, Respondent has violated  
14 Permit Sections C.3 and C.7 by failing to adequately exercise enforcement authority over  
15 construction activities on its premises:

- 16 a. Failure to conduct proper project identification and review prior to construction:  
17 Respondent has failed to review the SWPPPs of all construction and  
18 redevelopments sites with one acre or more disturbed area prior to the  
19 commencement of construction. For instance, Respondent did not review the 11-  
20 acre Inland Cold Storage construction site until after construction had begun.  
21  
22 b. Failure to inspect for BMP implementation and tenant agreement compliance:  
23 Respondent has failed to ensure that construction sites on its premises use  
24 adequate source control and structural BMPs. For instance, EPA inspectors  
25 observed during the audit that various parts of the Pacific Ethanol and Central

1 California Traction sites either lacked BMPs or had inadequate BMPs.

2 c. Failure to enforce compliance with source control and structural BMP

3 requirements and tenant agreements: Respondent has failed to use enforcement  
4 mechanisms to attain compliance with source control and structural BMP  
5 requirements. For instance, Respondent noted in its March 19, 2008 inspection of  
6 the American Biodiesel construction site that soil was improperly stockpiled in a  
7 drainage pathway without any down-gradient BMPs but took no enforcement  
8 action to correct them. As a result, the lack of BMPs at the construction site  
9 persisted during the EPA audit.  
10

11 **Deficiencies in Oversight of Commercial and Industrial Facilities**

12 31. As more fully set forth in Section 5.1 of the Audit Report, Respondent has violated  
13 Permit Sections C.3 and C.8 by failing to adequately exercise enforcement authority over its  
14 commercial and industrial tenants:

15 a. Failure to demonstrate inspection frequency: Respondent lacked an efficient  
16 inspection tracking system to show compliance with the required inspection  
17 frequency.

18 b. Failure to conduct follow-up inspections: Respondent has failed to conduct  
19 appropriate follow-up inspections of its commercial and industrial tenants. For  
20 instance, although Respondent's inspection of CenCal Recycling LLC indicated  
21 the need to re-inspect, it made no follow-up inspection.  
22

23 **Deficiencies in Municipal Operations Program**

24 32. Pesticide Management: As more fully set forth in Section 2.3.1 of the Audit Report,  
25 Respondent has violated Permit Section C.9.f by failing to:

- a. provide its staff adequate training on the SWMP and the standardized pesticide application protocol set forth in Appendix E of the SWMP, which requires proper cover and containment of pesticide storage areas on its premises; and
- b. conduct regular inspection of pesticide storage areas on its premises.

33. Maintenance and Operation of Catch Basins and Sumps: As more fully set forth in Section 2.3.2 of the Audit Report, Respondent has violated Permit Section C.9.g by failing to:

- a. document catch basin and sump cleaning, including but not limited to the amount of material removed during cleaning as required by Permit Section C.9.g.ii and the SWMP, Appendix F; and
- b. demonstrate compliance with the annual inspection and cleaning schedule specified in SWMP Section 1.2.4 and Annual Work Plan 2006–2007.

34. Maintenance of Streets and Roads: As more fully set forth in Section 2.3.3 of the Audit Report, Respondent has violated Permit Section C.9.h. by failing to implement SWMP Section 4.8, in that, instead of sweeping streets, roads or other municipal areas as part of normal daily operations, Respondent did so allegedly on an as-needed basis. Observations made during the audit indicated, however, that most streets and roads lacked adequate sweeping.

35. Maintenance of (East Complex) Retention Pond: As more fully set forth in Section 2.3.4 of the Audit Report, Respondent has violated Permit Section C.9.i, by failing to implement the guidelines established by Respondent, as follows:

- a. Failure to conduct regular inspections: During the EPA audit, Respondent was unable to produce documentation or otherwise demonstrate that it had inspected the retention basin at the frequencies (monthly during the dry season and weekly during the wet season) called for by its Annual Work Plans for the 2006-2007 and

1 2007-2008 permit years.

- 2 b. Failure to report potential seepage: During the Audit, EPA inspectors found  
3 potential seepage along the eastern boundary of the retention basin adjacent to  
4 Navy Drive. While Respondent had observed the potential seepage in previous  
5 years and informally determined it to be caused by groundwater, it had failed to  
6 document the steps taken to reach this conclusion or to report the potential  
7 seepage to the Regional Board, as required by Respondent's SWMP, Appendix G,  
8 Section 2.  
9

### 10 **Deficiencies in Development Standards Program**

11 36. As more fully set forth in Section 2.5 of the Audit Report, Respondent has violated  
12 Permit Sections C.13 and 14 by failing to adequately implement the procedures of SWMP  
13 Section 6.0 and the approved DSP. Respondent lacked a structured program to ensure adequate  
14 coordination either externally with the City of Stockton, which maintains construction permitting  
15 authority within Respondent's jurisdiction but does not notify Respondent of permit approvals,  
16 or internally among its three organizational entities with authority over land development  
17 process. As a result, Respondent could not identify all the Priority Development Projects under  
18 Permit Section C.14.a, or ensure that their project plans are adequately conditioned and  
19 implemented for DS compliance. For instance, at the time of the EPA's March 2008 audit,  
20 Respondent had identified only two Priority Development Projects: A-Plus Materials Recycling  
21 Inc. and the Inland Cold Storage construction site, both in the East Complex. There was no prior  
22 review and approval of the Inland Cold Storage site for DS compliance because, as described in  
23 paragraph 30.a above, Respondent only identified the project after land-disturbing activities had  
24 commenced. Furthermore, Respondent has failed to review or condition for DS compliance at  
25

1 least the following Priority Development Projects in the West Complex: Daggett Road Project,  
2 Lowe's Distribution Center, and Ferguson Distribution Center.

3 **Deficiencies in Toxicity Monitoring and Reporting**

4 37. As more fully set forth at Sections 2.6.4 through 2.6.9 of the Audit Report, Respondent  
5 has violated Permit MRP Section II by failing to adequately collect and analyze toxicity samples  
6 and report sample results, including:

- 7 a. failure to collect samples at either the West Complex pump station or the East  
8 Complex Retention Basin;
- 9 b. failure to comply with either the 1994 or the 2002 EPA toxicity test methods;
- 10 c. failure to store samples at the proper temperature (samples were found to be  
11 stored at a temperature of 0-6 C);
- 12 d. failure to meet the required test acceptability criteria in EPA's 1994 or 2002  
13 toxicity test methods, resulting in invalid test results;
- 14 e. failure to conduct an inadequate Toxicity Identification Evaluation; and
- 15 f. failure to adequately interpret and report toxicity test results in its 2005 annual  
16 report.

17  
18 38. By failing to comply with the various requirements set forth in Permit Section C and the  
19 SWMP, Respondent has also violated the discharge prohibition set forth in Permit Section A.3.

20 39. The San Joaquin River and the Deep Water Ship Channel, the tidally-influenced  
21 receiving waters for Respondent's storm sewer discharges, are "waters of the United States"  
22 under 40 C.F.R. § 230.3(s)(1) and CWA Section 502(7), 33 U.S.C. § 1362(7).

23 40. Respondent is a "person" for purposes of the CWA, and an MS4 subject to NPDES  
24 permit requirements under 40 C.F.R § 122.26 and CWA Section 402(p).

1 41. By discharging storm and non-storm water into waters of the United States via its storm  
2 sewer system without complying with various Permit requirements, as summarized above,  
3 Respondent has violated Section 301(a) of the CWA.

4 42. EPA finds that Respondent's compliance with the provisions of this AOC will satisfy the  
5 objectives of the CWA and provide adequate and appropriate relief for Respondent's CWA  
6 violations summarized above.

## 7 **VII. WORK TO BE PERFORMED**

8 43. **Oversight of Construction Sites:** No later than **October 1, 2009**, Respondent shall  
9 provide EPA and the Regional Board the following documentation of its oversight of active  
10 construction sites for the period of August 1, 2008 to July 31, 2009:

- 11 a. a list of all active construction sites, regardless of size, within Respondent's  
12 jurisdiction, including without limitation the project name, location, and size of  
13 disturbed area of each construction site;
- 14 b. a list of all active construction sites, regardless of size, inspected by Respondent,  
15 including the inspection date;
- 16 c. an inventory of any and all violations observed by Respondent during inspection  
17 of each of the active construction sites, regardless of size;
- 18 d. an inventory of any and all enforcement responses, including any re-inspection,  
19 taken by Respondent in response to violations listed in c above; and
- 20 e. documentation of Respondent's review of SWPPP for each of the active  
21 construction sites that involve one acre or greater disturbed area.  
22

23 44. **Oversight of Commercial and Industrial Facilities:** No later than **October 1, 2009**,  
24 Respondent shall submit the following documentation of its oversight of commercial and  
25 industrial tenants for the period of August 1, 2008 to July 31, 2009:

- 1 a. a list of all commercial and industrial tenants inspected, including without  
2 limitation the identity, location, and inspection date of each such tenant.  
3 b. an inventory of any and all violations observed by Respondent during inspection  
4 of each of the commercial and industrial tenants; and  
5 c. an inventory of any and all enforcement responses, including any re-inspection,  
6 taken by Respondent in response to violations listed in b above.  
7

8 **45. Municipal Operations Program:**

- 9 a. Pesticides Management Practices: No later than **October 1, 2009**, Respondent  
10 shall submit the following documentation of its pesticides management practices  
11 for the period of August 1, 2008 to July 31, 2009:  
12 i. photograph-documentation of cover and containment of each of its pesticide  
13 storage areas; and  
14 ii. copies of inspection reports of its pesticide storage areas.  
15 b. Maintenance and Operation of Catch Basins and Sumps: No later than **October 1,**  
16 **2009**, Respondent shall submit the following documentation of its maintenance  
17 and operation of all its catch basins and sumps for the period of August 1, 2008 to  
18 July 31, 2009: A description of the cleaning conducted by Respondent of each of  
19 the catch basins and sumps, including without limitation the date of cleaning and  
20 the quantity of material removed from each catch basin.  
21 c. Maintenance of Streets and Roads:  
22 i. No later than **October 1, 2009**, Respondent shall submit copies of its  
23 sweeping logs for streets and roads within its jurisdiction for the period of  
24 August 1, 2008 to July 31, 2009.  
25

1           ii. For the period of October 1, 2009 through September 30, 2010, Respondent  
2           shall use GPS technology to track all areas swept.

3           iii. No later than **November 1, 2010**, Respondent shall provide GPS  
4           documentation of areas swept for the period of October 1, 2009 through  
5           September 30, 2010.

6           d. Maintenance and Operation of East Complex Retention Basin:

7           i. No later than **October 1, 2009**, Respondent shall submit copies of  
8           documentation that Respondent inspected the retention basin at the  
9           frequencies (monthly during the dry season and weekly during the wet  
10          season) for the period of August 1, 2008 to July 31, 2009.

11          ii. No later than **July 1, 2010**, Respondent shall submit a geological and  
12          engineering assessment report, along with any recommended repairs, for the  
13          retention basin.  
14

15          **46. Development Standards Plan:** No later than **October 1, 2009**, Respondent shall  
16          provide a list of all projects that qualify as Priority Development Projects (i.e., all new  
17          development projects and all significant development projects that fall within the categories  
18          enumerated in Permit Section C.14.a), along with documentation of DS approval and BMP  
19          selection for each such Project for the period of August 1, 2008 to July 31, 2009  
20

21          **47. Toxicity Monitoring:** For the period of **August 1, 2009 to July 31, 2010**, Respondent  
22          shall conduct short-term chronic toxicity monitoring and reporting according to the following  
23          requirements:  
24  
25

1 a. Toxicity Sampling Locations and Procedures:

2 i. Respondent shall collect toxicity samples at downstream receiving water  
3 monitoring stations R-1 through R-5, the West Complex pump station  
4 (Station WC), and the East Complex Retention Basin (when it discharges  
5 to the San Joaquin River) for four storm events separated by 7 days of dry  
6 weather. Respondent shall target the first storm event that produces a  
7 rainfall of at least 0.25 inches.

8 ii. Respondent shall collect toxicity samples pursuant to 40 C.F.R. Part 136  
9 and Attachment C of Respondent's "Sampling and Analysis Plan 2008-2009  
10 Storm Season - Port of Stockton," which is appended as Exhibit 2 and  
11 incorporated as part of this AOC.

12 iii. Respondent shall collect sufficient sample volume to perform the required  
13 toxicity tests and any potential Toxicity Identification Evaluation as  
14 required in c below.

15 b. Toxicity Testing Protocols:

16 i. Toxicity tests shall comply with 40 C.F.R. Part 136.3, Table IA and *Short-*  
17 *Term Methods for Estimating the Chronic Toxicity of Effluents and*  
18 *Receiving Waters to Freshwater Organisms* (2002), EPA/821/R-02/013.  
19 ("2002 Short Term Chronic Toxicity Method").

20 ii. Respondent shall test with all three test species and endpoints: (1) the  
21 fathead minnow survival and growth endpoints, (2) the *Ceriodaphnia dubia*  
22 survival and reproduction endpoints, and (3) Green alga, *Selenastrum*  
23 *capricornutum*. The preceding toxicity test species shall not be substituted  
24  
25

1 with another organism except with prior written authorization from EPA or  
2 the Regional Board.

3 iii. Respondent shall use the short-term test methods for estimating the chronic  
4 toxicity of NPDES effluents found in the 2002 Short Term Toxicity  
5 Method; and 40 C.F.R. Part 136.3 Table IA. Respondent shall conduct:

- 6 1. a static renewal toxicity test with the fathead minnow, *Pimephales*  
7 *promelas* (Larval Survival and Growth Test Method 1000.0- daily  
8 observations for mortality to calculate toxicity for survival and  
9 measure growth endpoints of the test);
- 10 2. a static renewal toxicity test with the daphnid, *Ceriodaphnia dubia*  
11 (Survival and Reproduction Test Method 1002.0 - daily  
12 observations for mortality to calculate toxicity for survival and  
13 reproduction endpoints of the test); and
- 14 3. a static renewal toxicity test with the green alga, *Selenastrum*  
15 *capricornutum* (also named *Raphidocelis subcapitata*) (Growth  
16 Test Method 1003.0).

17  
18 iv. Respondent shall analyze the survival and sub-lethal endpoint data from the  
19 chronic tests using a standard t-test approach and statistical analysis  
20 methods consistent with *Methods for Measuring the Acute Toxicity of*  
21 *Effluents and Receiving Waters to Freshwater and Marine Organisms*  
22 (2002), EPA/821/R-02/012, page 86). Respondent shall compare 100% of  
23 the toxicity receiving water sample to a laboratory control.  
24  
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- 1 v. Upon detection of chronic toxicity in a sample as defined in paragraph iv  
2 above, Respondent shall include a multi-concentration test design in the  
3 preceding tests and perform requirements under paragraph c.i below.

4 c. Toxicity Identification Evaluation (TIE) Protocols

- 5 i. Upon detection of chronic toxicity, Respondent shall perform an TIE to  
6 identify the causes of toxicity using the same species and test method and  
7 according to the following U.S. EPA test method manuals: *Toxicity*  
8 *Identification Evaluation: Characterization of Chronically Toxic Effluents,*  
9 *Phase I (1992) EPA/600/6-91/005F; Methods for Aquatic Toxicity*  
10 *Identification Evaluations, Phase II Toxicity Identification Procedures for*  
11 *Samples Exhibiting Acute and Chronic Toxicity (1993), EPA/600/R-92/080;*  
12 *and Methods for Aquatic Toxicity Identification Evaluations, Phase III*  
13 *Toxicity Confirmation Procedures for Samples Exhibiting Acute and*  
14 *Chronic Toxicity (1993), EPA/600/R-92/081.*
- 15 ii. Respondent shall complete chronic Phase I (Toxicity Characterization  
16 Procedures) TIEs for all sites demonstrating a statistically significant result  
17 (using standard t-test) to any 1-test organism.
- 18 iii. Respondent shall conduct a TIE on any test species demonstrating a  
19 statistically significant toxicity result at any sampling station. Respondent  
20 may utilize TIE Prioritization Metric to rank sites for TIEs.
- 21 iv. If Respondent discovers new toxicants in any of the toxicity testing, the  
22 Respondent will perform additional toxicity tests as directed by EPA or the  
23 Regional Board.  
24  
25

1 v. In consultation with EPA and the Regional Board, Respondent shall retain a  
2 neutral third party to perform the TIE.

3 d. Toxicity Reduction Evaluation (“TRE”) Protocols

4 i. Respondent shall perform a TRE of the toxic pollutant or the class of  
5 pollutants that has been identified through the TIE process in accordance  
6 with *Generalized Methodology for Conducting Industrial Toxicity*  
7 *Reduction Evaluations (1989)* (EPA/600/2-88/070).

8 ii. In consultation with EPA and the Regional Board, Respondent shall retain a  
9 neutral third party to perform the TRE.

10 iii. No later than 60 days from the detection of chronic toxicity in a sample  
11 above that in upstream receiving waters, Respondent shall submit to EPA  
12 and the Regional Board for approval an TRE Corrective Action Plan that  
13 shall, at a minimum, discuss the following items:

- 14 1. the potential sources of pollutant(s) causing toxicity;
- 15 2. a list of municipalities that may have jurisdiction over sources of  
16 pollutant(s) causing toxicity;
- 17 3. recommended BMPs to reduce the pollutant(s) causing toxicity; .
- 18 4. proposed post-construction control measures to reduce the  
19 pollutant(s) causing toxicity for new development and re-  
20 development projects; and
- 21 5. proposed follow-up monitoring to demonstrate that toxicity has  
22 been removed.
- 23
- 24
- 25

1 iv. Upon approval by EPA and the Regional Board, Respondent shall  
2 implement the TRE Corrective Action Plan and take all reasonable steps to  
3 eliminate toxicity.

4 v. If TRE implementation for a specific pollutant coincides with Total  
5 Maximum Daily Load (“TMDL”) implementation for the pollutant, the  
6 efforts must be coordinated. (For instance, if a TMDL for diazinon is being  
7 implemented at the same time a TRE for diazinon is required, the efforts  
8 shall be coordinated to avoid overlap). If applicable, Respondent may use  
9 the same TRE for the same toxic pollutant or pollutant class in different  
10 watersheds or basins.  
11

12 e. Toxicity Testing Notification and Reporting Requirements:

13 i. If Respondent is unable to perform any toxicity test and comply with the  
14 requirements under paragraph 47 of this AOC (the “Non-Complying  
15 Event”) for any reasons, Respondent shall, within 48 hours of the missed  
16 test, submit the following to EPA and the Regional Board:

- 17 1. a written explanation, with documentation, of the Non-Complying  
18 Event; and
- 19 2. a plan, including measures to be taken and the timetable for  
20 implementing the measures, to correct, prevent or avoid the  
21 circumstances giving rise to the Non-Complying Event.  
22

23 ii. Respondent shall submit the following toxicity data and reports to EPA and  
24 the Regional Board:  
25

- 1 1. Within 45 days of completion of toxicity tests, Respondent shall  
2 provide a copy of all sample documents, including chain of  
3 custody forms, the toxicity test results and all associated laboratory  
4 documents.
- 5 2. Within 30 days of completion of the TIE, Respondent shall provide  
6 a copy the TIE results and all associated laboratory documents.
- 7 3. Within 30 days of completion of TRE, Respondent shall provide  
8 with a copy the TRE results and all associated laboratory  
9 documents.  
10

11 iii. **By September 1, 2010**, Respondent shall submit a report that shall include:

- 12 1. a full laboratory report for all toxicity testing pursuant to this  
13 Order;
- 14 2. the dates of sample collection and initiation of each toxicity test;
- 15 3. a summary of the reported toxicity test results according to the test  
16 methods manual chapter on report preparation and test review;
- 17 4. all results for urban runoff parameters monitored concurrently with  
18 the toxicity test(s);
- 19 5. TIE Phase testing (Phase I, Phase II, and Phase III) conducted for  
20 each monitoring station; and
- 21 6. the development, implementation, and results for each TRE  
22 Corrective Action Plan.  
23

#### 24 **VIII. SUBMISSIONS AND NOTIFICATIONS**

25 48. All submissions required by this AOC shall be signed by a duly authorized

1 representative of Respondent. The authorization must be in writing and specify either an  
2 individual or a position having responsibility for the overall operation of the activities being  
3 reported or for Respondent's environmental matters.

4 49. The person signing Respondent's submissions shall make the following certification:

5 I certify under penalty of law that the information submitted is true and  
6 correct to the best of my knowledge and belief. I am aware that there are  
7 significant penalties for submitting false information, including, but not  
8 limited to, the possibility of fines and imprisonment for knowing  
violations under § 309 of the Clean Water Act, 18 U.S.C. § 1001, and  
other relevant federal statutes.

9 50. Unless otherwise specified or requested by EPA or the Regional Board, Respondent  
10 shall provide each deliverable required under this AOC by first-class mail to:

11 Amy C. Miller  
12 CWA Compliance Office (WTR-7)  
13 U.S.EPA Region IX  
14 75 Hawthorne St.  
San Francisco, CA 94105-3901  
(415) 947-4198

Greg Vaughn  
Central Valley Regional Water Quality  
Control Board  
11020 Sun Center Drive #200  
Rancho Cordova, CA 95670-6114  
(916) 464-4742

15 **IX. DELAY OF PERFORMANCE/FORCE MAJEURE**

16 51. "Force Majeure," for purposes of this AOC, is any event entirely beyond the control of  
17 Respondent or any entity controlled by Respondent that delays or prevents performance of any  
18 obligation under this AOC, notwithstanding Respondent's best efforts to avoid the delay. The  
19 best efforts requirement includes using best efforts to anticipate any such event and to minimize  
20 the delay caused by any such event to the greatest extent practicable. Examples of events that  
21 are not force majeure events include, but are not limited to, increased costs or expenses of any  
22 work to be performed under this AOC, Respondent's financial or business difficulties, and  
23 normal inclement weather.

24 52. Unless otherwise specified, in any event may occur or has occurred that may delay the  
25 performance of any obligation under this AOC, whether or not caused by a force majeure,  
Respondent shall notify by telephone the EPA contact identified in Paragraph 50 of this AOC,

1 or, in her absence, the Manager of the Clean Water Act Compliance Office (WTR-7), EPA,  
2 Region IX, within two (2) business days of when Respondent knew or reasonably should have  
3 known that the event might cause a delay. Within fifteen (15) days thereafter, Respondent shall  
4 provide in writing the reasons for the delay, the anticipated duration of the delay, the measures  
5 taken or to be taken to prevent or minimize the delay, and a timetable by which those measures  
6 will be implemented. Respondent shall exercise its best efforts to avoid or minimize any delay  
7 and any effects of a delay. Failure to comply with the notice requirement of this paragraph shall  
8 preclude Respondent from asserting any claim of force majeure.

9 53. If EPA agrees that an actual or anticipated delay is attributable to force majeure, the time  
10 for performance of the obligation shall be extended by written agreement of the parties. An  
11 extension of the time for performing an obligation directly affected by the force majeure event  
12 shall not, of itself, extend the time for performing a subsequent obligation.

13 54. Respondent shall have the burden of demonstrating, by a preponderance of the evidence,  
14 that the actual or anticipated delay has been or will be caused by a force majeure event, that the  
15 duration of the delay was or will be warranted under the circumstances, that Respondent did  
16 exercise or is using its best efforts to avoid and mitigate the effects of the delay, and that  
17 Respondent complied with the requirements of this section.

18 **X. FAILURE TO COMPLY WITH AOC**

19 55. EPA reserves all available legal and equitable remedies to enforce this AOC,  
20 and the right to seek recovery of any costs and attorney fees incurred by EPA in any actions  
21 against Respondent for non-compliance with this AOC.

22 56. EPA expressly reserves its right to seek civil, administrative or criminal penalties for  
23 violations of the CWA that occur or occurred at the Port, or elsewhere.

24 57. Failure to comply with this AOC is a violation of the CWA. Such violation  
25

1 may subject Respondent to civil penalties not to exceed \$37,500 per day for each violation under  
2 CWA § 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4.

3 **XI. SCOPE OF THE AOC**

4 58. This AOC is not and shall not be construed to be a permit under the CWA, nor  
5 shall it in any way relieve or affect Respondent's obligations under the CWA, or any other  
6 applicable federal, state or local laws, regulations and permits. Compliance with this AOC shall  
7 be no defense to any actions commenced pursuant to such applicable laws, regulations or  
8 permits.

9 59. Neither the issuance of this AOC, nor Respondent's compliance with it, shall in any way  
10 affect the rights of EPA or the United States against any person not a party hereto.

11 60. This AOC shall in no way affect EPA's authority to enter, inspect, sample or monitor  
12 compliance under any law, permit, court order or agreement, and Respondent shall use its best  
13 efforts to arrange for access by EPA or its authorized representatives for determining compliance  
14 with this AOC. For purposes of this AOC, EPA's authorized representatives shall include all  
15 EPA employees and contractors, all Regional Board employees and contractors, and such other  
16 persons as EPA may designate.

17 **XII. SEVERABILITY**

18 61. The provisions of this AOC shall be severable. Should any provision be  
19 declared by a court of competent jurisdiction to be unenforceable, the remaining provisions shall  
20 remain in full force and effect.

21 **XIII. EFFECTIVE DATE**

22 62. This AOC shall take effect upon signature by all parties.

23 IT IS SO AGREED AND ORDERED:  
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25 For U.S. Environmental Protection Agency  
Region 9

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Dated: \_\_\_\_\_

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Alexis Strauss, Director  
Water Division

For Stockton Port District

Dated: \_\_\_\_\_

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Richard Aschieris, Director