

**LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD**

In the matter of:	)	
	)	Order R4-2012-0091 (Proposed)
<b>TESORO REFINING &amp;</b>	)	
<b>MARKETING CO.</b>	)	<b>SETTLEMENT AGREEMENT AND</b>
	)	<b>STIPULATION FOR ENTRY OF</b>
	)	<b>ADMINISTRATIVE CIVIL LIABILITY ORDER;</b>
	)	<b>ORDER (PROPOSED)</b>

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This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (hereafter “Stipulated Order” or “Order”) is entered into by and between the Executive Officer of the Los Angeles Regional Water Quality Control Board (“Los Angeles Water Board”), on behalf of the Los Angeles Water Board Prosecution Staff (“Prosecution Staff”) and Tesoro Refining and Marketing Company (collectively “Parties”) and is presented to the Los Angeles Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

1. **RECITALS**

WHEREAS, at all times relevant to this matter, Tesoro Refining and Marketing Company (“Tesoro”) was the owner and operator of the Los Angeles Refinery (“Refinery”), located at 2101 East Pacific Coast Highway, P.O. Box 817, Wilmington, CA 90744, and was responsible for the operation thereof;

WHEREAS, on or about January 4, 2010, there was a discharge from the Refinery of approximately 638,400 gallons of naphtha to groundwater<sup>1</sup>, a water of the state, (“the Discharge Event”). Tesoro promptly notified the appropriate agencies, including the Los Angeles Water Board, after the Discharge Event;

WHEREAS, Tesoro commenced a response to the Discharge Event by January 5, 2010, which included product recovery from existing wells as well as installation of additional product recovery wells;

WHEREAS, by letter dated January 14, 2010, the Los Angeles Water Board issued Tesoro an order pursuant to Water Code section 13267 requiring Tesoro to submit technical reports related to the Discharge Event, and Tesoro promptly complied with the order;

WHEREAS, on April 11, 2011, the Los Angeles Water Board issued Order No. R4-2011-0027 (“Cleanup Order”) requiring Tesoro to cleanup and abate the effects of the release from the Discharge Event, and to date, Tesoro has complied with the Cleanup Order and has committed to performing the required remediation;

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<sup>1</sup> Tesoro acknowledged the released material of naphtha entered groundwater in its February 2010 correspondence to the Los Angeles Water Board.

WHEREAS, the Executive Officer of the Los Angeles Water Board, by and through the Prosecution Staff, investigated the circumstances of the Discharge Event;

WHEREAS, the Prosecution Staff alleges that the Discharge Event resulted in the violation of Water Code section 13260 requiring any person discharging waste within any region that could affect the quality of the waters of the state to file a report of the discharge and Water Code section 13264 prohibiting any person from initiating a new discharge of waste or initiating a discharge before filing a report of the discharge as required by Water Code section 13260. In addition, because Tesoro allegedly caused or permitted the discharge of a residuary product of petroleum to be deposited to a water of the state not in accordance with waste discharge requirements, it is allegedly subject to administrative civil liability under Water Code section 13350, subdivisions (a) and (e). The alleged violations are described in Exhibit A, attached; and

WHEREAS, 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 Los Angeles Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The amount of administrative civil liability imposed pursuant to this Stipulated Order is \$47,880 less than the amount calculated by the Los Angeles Water Board Prosecution Staff using the State Water Resources Control Board's Water Quality Enforcement Policy (\$488,550), as shown in Exhibit A. The reduction in liability is justified considering the risks associated with proceeding to hearing and is consistent with the range of settlement considerations which may result in a reduction in the calculated liability specified in the State Water Board's Water Quality Enforcement Policy. The Prosecution Staff believes that the resolution of the alleged violations is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the specific violations alleged in Exhibit A, except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

2. **JURISDICTION**

The Parties agree that the Los Angeles Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulated Order.

3. **ADMINISTRATIVE CIVIL LIABILITY**

Within 30 days of adoption of this Stipulated Order, Tesoro shall remit, by check, FOUR HUNDRED FORTY THOUSAND, SIX HUNDRED SEVENTY DOLLARS (\$440,670) to the Los Angeles Water Board, payable to the *State Water Resources Control Board Cleanup and Abatement Account*, and shall indicate on the check the number of this Stipulated Order.

Tesoro shall send the original signed check to Hugh Marley, Los Angeles Regional Water Quality Control Board, 320 W. 4<sup>th</sup> Street, Suite 200, Los Angeles, California 90013, with a copy sent to: David Boyers, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812.

4. **MATTERS COVERED BY THIS STIPULATED ORDER**

Upon adoption by the Los Angeles Water Board, or its delegee, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in this Order or which could have been asserted based on the specific facts alleged in Exhibit A or this Stipulated Order against Tesoro as of the effective date of this Stipulated Order. The provisions of this Paragraph are expressly conditioned on Tesoro's full payment of administrative civil liability by the deadline specified in Paragraph 3.

5. **COVENANT NOT TO SUE**

Upon the effective date of this Stipulated Order, Tesoro shall and does release, discharge and covenant not to sue or pursue any civil or administrative claims against the Los Angeles Water 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.

6. **PUBLIC NOTICE**

The Parties agree that the proposed Stipulated Order, as signed by the Parties, will be noticed for a 30-day public comment period prior to being presented to the Los Angeles Water Board for adoption. If the Los Angeles Water Board Executive Officer receives significant new information that reasonably affects the propriety of presenting this Stipulated Order to the Los Angeles Water Board for adoption, the Executive Officer may unilaterally declare this Stipulated Order void and decide not to present the Order to the Los Angeles Water Board. Tesoro agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

7. **PROCEDURE**

The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Order, will be adequate. In the event procedural objections are raised prior to this Stipulated 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.

8. **WAIVERS**

In the event that this Stipulated Order does not take effect because it is not approved by the Los Angeles Water Board, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that the Prosecution Staff may proceed to a contested evidentiary hearing before the Los Angeles Water Board to determine whether to assess administrative civil liability for the underlying alleged violations, or may continue to pursue settlement. 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 any subsequent

administrative or judicial proceeding or hearing. The Parties also agree to waive the following objections related to their efforts to settle this matter:

a. Objections related to prejudice or bias of any of the Los Angeles Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Los Angeles Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter; or

b. Laches or delay or other equitable defenses based on the time period that the order or decision by settlement may be subject to administrative or judicial review.

9. **APPEALS**

Once adopted by the Los Angeles Water Board, Tesoro hereby waives its right to appeal this Stipulated Order to the State Water Resources Control Board or a California Superior Court and/or any California appellate level court.

10. **EFFECT OF STIPULATED ORDER**

Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Prosecution Staff or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.

11. **WATER BOARDS NOT LIABLE**

Neither the Los Angeles Water Board members, staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Tesoro, its employees, representative agents, attorneys, or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Los Angeles Water Board members, staff, attorneys or representatives be held as parties to or guarantor of any contract entered into by Tesoro, its employees, representative agents, attorneys, or contractors in carrying out activities required pursuant to this Stipulated Order.

12. **NO WAIVER OF RIGHT TO ENFORCE**

The failure of the Prosecution Staff or Los Angeles Water 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 Staff or Los Angeles Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order.

13. **REGULATORY CHANGES**

Nothing in this Stipulated Order shall excuse Tesoro from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

14. **AUTHORITY TO ENTER STIPULATED ORDER**

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

15. **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.

16. **MODIFICATION OF STIPULATED ORDER**

This Order shall not be modified by any of the Parties by oral representation made before or after the execution of this Order. All modifications must be made in writing and approved by the Los Angeles Water Board.

17. **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.

18. **COUNTERPART SIGNATURES**

This Order 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.

19. **INCORPORATION OF EXHIBITS**

Exhibit "A" is incorporated by reference.

**IT IS SO STIPULATED:**

Los Angeles Water Board Prosecution Staff

By: Samuel Unger  
Samuel Unger, PE  
Executive Officer  
Los Angeles Regional Water Quality Control Board

May 10, 2012  
Date

Tesoro:

By:   
Charles S. Parrish  
Executive Vice President and Secretary  
Tesoro Refining and Marketing Company

Date: 5/16/2012

**HAVING CONSIDERED THE ALLEGATIONS AND THE PARTIES' STIPULATIONS, THE LOS ANGELES WATER BOARD, OR ITS DELEESEE, FINDS THAT:**

20. Issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.

21. In adopting this Stipulated Order, the Los Angeles Water Board, or its delegee, has considered all the factors prescribed in Water Code section 13327, in accordance with the State Water Resources Control Board's Water Quality Enforcement Policy. The consideration of these factors is based upon information and comments provided by the Parties and by members of the public.

22. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the Los Angeles Water Board.

**IT IS HEREBY ORDERED, PURSUANT TO WATER CODE SECTION 13323 AND GOVERNMENT CODE SECTION 11415.60, ON BEHALF OF THE LOS ANGELES WATER BOARD.**

\_\_\_\_\_  
Deborah J. Smith  
Chief Deputy Executive Officer

\_\_\_\_\_  
Date

**EXHIBIT A – LOS ANGELES WATER BOARD PROSECUTION STAFF’S ALLEGATIONS  
AND WATER QUALITY ENFORCEMENT POLICY METHODOLOGY**

1. Tesoro Refining and Marketing Co. (“Tesoro”) is the owner and operator of the Los Angeles Refinery (“Refinery”), located at 2101 East Pacific Coast Highway, P.O. Box 817, Wilmington, CA 90744, and is responsible for the operation thereof in accordance with provisions in the Water Code;
2. On or about January 4, 2010, there was a discharge from the Refinery of approximately 638,400 gallons of naphtha to groundwater, a water of the state (“the Discharge Event”). Tesoro promptly notified the appropriate agencies, including the Los Angeles Water Board, after the Discharge Event. Tesoro commenced a response to the Discharge Event by January 5, 2010;
3. The Discharge Event resulted in an alleged violation of Water Code sections 13260 and 13264;
4. The Discharge Event subjects Tesoro to potential liability pursuant to Water Code section 13350, subdivisions (a) and (e); and
5. The Discharge Event was susceptible to cleanup where Tesoro recovered more than 50% of the discharged amount.

**POTENTIAL MAXIMUM CIVIL LIABILITY**

6. Water Code section 13350, subdivision (a) provides that any person or entity who, causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements, is subject to administrative civil liability pursuant to Water Code section 13350, subdivision (e).
7. Water Code section 13350, subdivision (e) provides that a civil liability may be imposed either:
  - a. (1) on a daily basis not to exceed five thousand dollars (\$5,000) for each day the violation occurs; or
  - b. (2) on a per gallon basis in an amount not to exceed ten dollars (\$10) per gallon of waste discharged.
8. Tesoro is exposed to potential liability pursuant to section 13350, subdivision (e) when Tesoro discharged approximately 638,400 gallons of naphtha to groundwater, a water of the state.
9. The maximum potential liability for the violation described above, pursuant to section 13350, subdivision (e) of the Water Code is: \$6,384,000.

**CONSIDERATION OF FACTORS**

10. Pursuant to Water Code section 13327, the Los Angeles Water Board is required to consider the following factors in determining the amount of civil liability, including the nature, circumstances, extent, and gravity of the violations; whether the discharge is susceptible to cleanup or abatement; the degree of toxicity of the discharge; and with respect to the violator, the ability to pay; the effect on the ability to continue in business; voluntary cleanup efforts; prior history of violations; the degree of culpability; economic benefit or savings, if any, resulting from the violation; and other matters as justice may require.

11. On November 17, 2009, the State Water Resources Control 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 Water Code section 13327.

12. The Prosecution Staff has conducted an analysis of the methodology for assessing liability in the Enforcement Policy, as shown below:

1. Step 1 - Potential for Harm for Discharge Violations

The potential for harm to the environment associated with the Discharge Event is **5**. This is determined by the sum of the factors for:

(a) The potential for harm to beneficial uses is 3 (moderate: impacts are observed or reasonably expected and impacts to beneficial uses are moderate and likely to attenuate without appreciable acute or chronic effects). The discharge consisted of approximately 638,400 gallons of naphtha to groundwater. The discharge has caused and threatens to cause conditions of pollution and contamination, by exceeding applicable water quality objectives for volatile organic chemicals (VOCs) constituents set forth in Water Quality Control Plan (Basin Plan).

(b) The physical, chemical, biological, or thermal characteristics of the discharge is 2 (the discharged material poses a moderate risk or threat to potential receptors). Naphtha is a toxic fuel component, considered hazardous by the Occupational Safety and Health Administration (OSHA), 29 C.F.R. § 1910.1200. Naphtha is extremely flammable, irritates eyes and the respiratory system and can affect the central nervous system. Naphtha can be harmful or fatal if swallowed and contains benzene, which can cause blood disease, including anemia and leukemia. Long-term exposure may cause effects to specific organs, such as to the liver, kidney, blood, nervous system, and skin.

The susceptibility to cleanup or abatement is 0 (more than 50% of the discharge is susceptible to cleanup or abatement). With the initiation of recovery activities in January 2010, as of July 1, 2011, Tesoro reported that LNAPL recovery

resulted in a total recovered volume of 530,251 gallons, which is more than 50% of the spilled amount of approximately 638,400 gallons.

2. Step 2 – Assessments for Discharge Violations

Per Gallon Assessment

The deviation from requirements is classified as moderate. Tesoro violated:

Water Code section 13260 by failing to timely file with the Los Angeles Water Board a report of the discharge, and Water Code Section 13264 by initiating a new discharge of wastes prior to the filing of the report required by Section 13260.

Because the deviation from requirements is moderate, in accordance with Table 1-Per Gallon Factor for Discharges on Page 14 of the Enforcement Policy, a multiplier of 0.1 is appropriate.

Per Day Assessment

Water Code section 13350, subdivision (e) provides that liability may be imposed on a per day basis or a per gallon basis, but not both. Because liability is proposed on a per gallon basis, this step does not apply.

High Volume Discharge

Because the Discharge Event was not a high volume sewage spill or release of storm water, a maximum per gallon liability of less than \$10 is not appropriate.

INITIAL LIABILITY AMOUNT

The Initial Liability Amount for the Discharge Event calculated on a per gallon basis, is as follows:

$$\begin{aligned} &\text{Per Gallon Liability} \\ &(638,400) \times (.10) \times (\$10) = \$638,400 \end{aligned}$$

**Total Initial Liability = \$638,400**

3. Step 3 – Per Day Assessments for Non-Discharge Violations

This step is not applicable because the violation is a discharge violation.

4. Step 4 – Adjustment Factors

The Enforcement Policy describes three factors related to the violator's conduct that should be considered for modification of the amount of initial liability: the violator's culpability, the violator's efforts to cleanup or cooperate with regulatory authorities after the violation, and the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

a. Adjustment for Culpability

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case a culpability multiplier of 1 has been selected.

b. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation. Tesoro was responsive and cooperative, therefore, in this case, a multiplier of .75 is appropriate.

c. Adjustment for History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this. In this case, a multiplier of 1 is proposed because though Tesoro has experienced other spills since it took over the facility in 2007, there are no other known violations of this nature.

5. Step 5 - Determination of Total Base Liability Amount

The Total Base Liability amount is determined by applying the adjustment factors from Step 4a through 4c to the Initial Liability Amount. Accordingly, the Total Base Liability Amount is calculated as follows:

(Initial Liability) x (Culpability Multiplier) x (Cleanup and Cooperation Multiplier) x (History of Violations) = (Total Base Liability Amount)

(\$638,400) x (1) x (.75) x (1) = **\$478,800**

6. Step 6 – Ability to Pay and Ability to Continue in Business

The Enforcement Policy provides that if the Los Angeles Water Board has sufficient financial information necessary to assess the violator's ability to pay the Total Base Liability or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability Amount may be adjusted downward.

The Los Angeles Water Board Prosecution Staff has enough information to suggest that Tesoro has the ability to pay the proposed liability. Tesoro Corporation, a Fortune 150 company, is an independent refiner and marketer of petroleum products. Tesoro, through its subsidiaries, operates seven refineries in the western United States with a combined capacity of approximately 665,000 barrels per day. Tesoro's retail-marketing system includes nearly 1,200 branded retail stations, of which over 375 are company operated under the Tesoro®, Shell®, Mirastar® and USA Gasoline™ brands. Given the assets and sources of income described above, and without further information concerning Tesoro's ability to pay, there is no basis to adjust the proposed liability.

7. Step 7 – Other Factors As Justice May Require

The Los Angeles Water Board has incurred \$9,750 in investigative costs to date associated with the violations. These costs are added to the liability amount.

8. Step 8 – Economic Benefit

The Enforcement Policy directs the Los Angeles Water Board to determine any economic benefit of the alleged violations based on the best available information and suggests that the amount of the administrative civil liability should exceed this amount whether or not economic benefit is a statutory minimum.

Prosecution Staff has no data showing that there was an economic benefit to Tesoro associated with the Discharge Event.

9. Step 9 – Maximum and Minimum Liability Amounts

Statutory Maximum

The Enforcement Policy directs the Los Angeles Water Board to consider and maximum or minimum liability amounts set forth in the applicable statutes.

The maximum potential liability for the alleged violations is \$6,384,000. (Based on Water Code section 13350, subdivision (e); 638,400 gallons x \$10/gallon)

Statutory Minimum

There is no statutory minimum liability for a violation of Water Code section 13350, subdivision (e).

10. Step 10 – Final Liability Amount

The final liability amount consists of the added amounts for each alleged violation, with any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts. The final liability amount calculation for the alleged Water Code violations was performed as follows:

(Total Base Liability Amount) + (Staff Costs) = (Final Liability Amount)

**Final Liability Amount = (\$478,800) + (\$9,750) + = \$488,550**