

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LOS ANGELES REGION

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CALIFORNIA REGIONAL WATER  
QUALITY CONTROL BOARD  
LOS ANGELES REGION

In the matter of: )  
)  
**Mr. Hovsep Gezalian and** )  
**Mr. Sarkis Gezalian** )  
)  
**Administrative Civil Liability** )  
**Complaint No. R4-2010-0211** )  
\_\_\_\_\_ )

**Order No. R4-2012-00XX (Proposed)**  
**Settlement Agreement and Stipulation**  
**for Entry of Order; Order (Proposed)**

**Section I: INTRODUCTION**

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order ("Stipulated Order" or "Order") is entered into by and between the Executive Officer of the Regional Water Quality Control Board, Los Angeles Region ("Los Angeles Water Board"), on behalf of the Los Angeles Water Board Prosecution Staff ("Prosecution Staff"), and Mr. Hovsep Gezalian and Mr. Sarkis Gezalian (together "Respondents") (Collectively the "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.

**Section II: RECITALS**

1. The Respondents own property located at 16604 Pioneer Blvd., Artesia, CA that has been used for auto service and retail tire and gasoline sales since 1953, and has operated as Diamond Tire Center since 1983. On March 8, 2006, the Los Angeles Water Board issued Cleanup and Abatement Order No. R4-2006-0025 (Cleanup Order) to the Respondents pursuant to Water Code section 13304, requiring the investigation and cleanup of petroleum hydrocarbons released from one or more underground storage tanks at the Diamond Tire Center.
2. On December 17, 2010, the Executive Officer of the Los Angeles Water Board issued Administrative Civil Liability Complaint No. R4-2010-0211 ("Complaint") to the Respondents (Attachment A). The Complaint recommends imposing an administrative civil liability totaling \$310,130 for alleged violations of the Cleanup Order. The proposed administrative civil liability includes staff costs of \$24,000.
3. The Parties have engaged in settlement negotiations and agree to 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 Prosecution Staff believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged in the

Complaint except as provided in this Stipulated Order and that this Stipulated Order is in the best interest of the public.

4. To resolve the violations alleged in the Complaint by consent and without further administrative proceedings, the Parties have agreed to the imposition of \$25,000 in liability against the Respondents. This liability amount is less than the liability amount of \$310,130 proposed in the Complaint as well as the economic benefit amount of \$129,000 that is alleged to have resulted from the violations. With respect to the economic benefit, this Stipulated Order departs from the recommendation in the State Water Resources Control Board's (State Water Board) Water Quality Enforcement Policy that the total base liability amount be at least ten percent higher than the economic benefit amount so that the liability is not construed as the cost of doing business and that the liability provides a meaningful deterrence to future violations.

Several considerations support the imposition of liability in an amount less than the economic benefit in this case. First, the liability is imposed as part of a settlement of violations arising under Water Code section 13350 rather than Water Code section 13385; there is no statutory mandate that the economic benefit be recovered. Second, the Respondents have provided financial records to the Prosecution Team, which were analyzed by an economist at the State Water Board, demonstrating that they do not have the financial ability to pay the economic benefit amount of \$129,000 and can pay only the amount of \$25,000 which is imposed pursuant to this Stipulated Order. The Respondents no longer operate the business and their only source of income is from leasing the property. While generally a showing of financial hardship will not override the considerations discussed in the State Water Board's Enforcement Policy recommending the imposition of liability in an amount at least ten percent higher than the economic benefit, in this case there are unique and compelling circumstances which support such a result. In particular, the imposition of liability at or above the economic benefit amount of \$129,000 would result in grave inequities and would not serve as a deterrent to future violations. Specifically, the full amount of money available for reimbursement from the Underground Storage Tank Cleanup Fund (Cleanup Fund) for the Respondent's site was expended prior to the onset of noncompliance without resulting in what the Prosecution Staff would expect to be a commensurate level of cleanup performed, either due to shortcomings of the Respondents' consultant, or the lack of oversight by the regulatory agency, or a combination of both. Generally, the Cleanup Fund serves as a viable insurance mechanism for underground tank owners such as Respondents which reimburses the costs of corrective action required in a Cleanup and Abatement Order. Consultants typically perform cleanup on behalf of the property owner and then wait for reimbursement by the Cleanup Fund, with the property owner serving as a pass-through for these funds. In the majority of cases, sites are cleaned up using the money available through the Cleanup Fund and underground tank owners have few out-of-pocket expenses other than the Cleanup Fund deductible. Accordingly, there is little to no economic incentive for underground tank owners to disregard cleanup directives in a Cleanup and Abatement Order.

Again, this case presents unique challenges because the maximum amount of money for cleanup from the Cleanup Fund was expended, yet the level of cleanup performed was significantly less than what should be expected given this level of financing. And while the Los Angeles Regional Water Board recognizes that complying with cleanup directives is not contingent on access to the Cleanup Fund, the fact that the available funds had been exhausted at the time of noncompliance without fault by the Respondents does mitigate the accountability of the Respondents. These factors, coupled with the Respondent's demonstrated financial hardship, support imposition of liability in the amount of \$25,000.

### **Section III: STIPULATIONS**

The Parties stipulate to the following:

**5. Administrative Civil Liability:** The Respondents hereby agree to the imposition of an administrative civil liability totaling \$25,000. Within thirty (30) days of the effective date of this Order, the Respondents agree to remit, by check, TWENTY FIVE THOUSAND DOLLARS (\$25,000), payable to the *Waste Discharge Permit Fund*, and shall indicate on the check the number of this Order. The Discharger shall send the original signed check to David Boyers, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812, and shall send a copy to Yue Rong, Regional Water Quality Control Board, Los Angeles Region, 320 W. 4<sup>th</sup> Street, Suit 200, Los Angeles, CA 90013.

**6. Compliance with Applicable Laws:** The Respondents understand that payment of administrative civil liability in accordance with the terms of this Stipulated Order and or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject it to further enforcement, including additional administrative civil liability.

#### **7. Party Contacts for Communications related to Stipulated Order:**

##### **For the Regional Water Board:**

Yue Rong  
Regional Water Quality Control Board  
Los Angeles Region  
320 W. 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013

##### **For the Respondents:**

Mr. Hovsep Gezalian  
536 North Kenmore  
Los Angeles, CA 90004

**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 the Los Angeles Water Board's adoption of this Stipulated Order, this Order represents a final and binding resolution and settlement of the violations alleged in the Complaint, and all claims, violations or causes of action that could have been asserted against the Respondents as of the effective date of this Stipulated Order based on the specific facts alleged in the Complaint or this Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability, in accordance with Paragraph 5.

**10. Public Notice:** The Respondents understand that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Los Angeles Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Los Angeles Water Board, or its delegee, for adoption, the Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Los Angeles Water Board, or its delegee. The Respondents agree that they may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.

**11. Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Los Angeles Water Board's adoption of the settlement by the Parties and review by the public, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are raised prior to the 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.

**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 the 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.

**13. Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.

**14. Modification:** This Stipulated 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 by the Los Angeles Water Board.

**15. If Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the Los Angeles Water Board, or its delegee,

or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Los Angeles 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 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 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.

**16. Admission of Liability:** In settling this matter, the Respondents admit to the findings in the Complaint, and recognize that this Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327.

**17. Waiver of Hearing:** The Respondents have been informed of the rights provided by CWC section 13323(b), and hereby waive their right to a hearing before the Los Angeles Water Board prior to the adoption of the Stipulated Order.

**18. Waiver of Right to Petition:** The Respondents hereby waive their right to petition the Los Angeles Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waive their rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

**19. Covenant Not to Sue:** The Respondents covenant 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.

**20. Los Angeles Water Board is Not Liable:** Neither the Los Angeles Water Board members nor the Los Angeles Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Respondents, their directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

**21. Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute

this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Order.

**22. No Third Party Beneficiaries.** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.

**23. Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Los Angeles Water Board, or its delegee, enters the Order.

**24. Counterpart Signatures:** This Stipulated 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.

**IT IS SO STIPULATED.**

California Regional Water Quality Control Board Prosecution Staff  
Los Angeles Region

By: Samuel Unger  
Samuel Unger, PE  
Executive Officer

Date: 3-14-2012

By: Hovsep Gezalian  
Mr. Hovsep Gezalian

Date: 3-12-2012

By: Sarkis Gezalian  
Mr. Sarkis Gezalian

Date: 3-12-2012

**Order of the Los Angeles Water Board**

**25.** In adopting this Stipulated Order, the Los Angeles Water Board or its delegee has considered, where applicable, each of the factors prescribed in CWC sections 13327 and 13351. The consideration of these factors is based upon information and

this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Order.

**22. No Third Party Beneficiaries.** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.

**23. Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Los Angeles Water Board, or its delegee, enters the Order.

**24. Counterpart Signatures:** This Stipulated 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.

**IT IS SO STIPULATED.**

California Regional Water Quality Control Board Prosecution Staff  
Los Angeles Region

By: Samuel Unger  
Samuel Unger, PE  
Executive Officer

Date: 3-14-12

By: \_\_\_\_\_  
Mr. Hovsep Gezalian

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mr. Sarkis Gezalian

Date: \_\_\_\_\_

**Order of the Los Angeles Water Board**

**25.** In adopting this Stipulated Order, the Los Angeles Water Board or its delegee has considered, where applicable, each of the factors prescribed in CWC sections 13327 and 13351. The consideration of these factors is based upon information and

comments obtained by the Los Angeles Water Board's staff in investigating the allegations in the Complaint or otherwise provided to the Los Angeles Water Board or its delegee by the Parties and members of the public. In addition to these factors, this settlement recovers the costs incurred by the staff of the Los Angeles Water Board for this matter.

**26.** This is an action to enforce the laws and regulations administered by the Los Angeles Water Board. The Los Angeles 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.

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

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

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name and Title)

Date: \_\_\_\_\_