

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

In the Matter of:)	
)	
The City of Santa Rosa)	Order No. R1-2014-0052
Wastewater Treatment Facilities)	
)	Settlement Agreement and Stipulation for
Complaint No. R1-2014-0024 for)	Entry of Administrative Civil Liability
Administrative Civil Liability)	Order; Order (Proposed)

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (“Stipulated Order” or “Stipulation and Order”) is entered into by and between the Assistant Executive Officer of the Regional Water Quality Control Board, North Coast Region (Regional Water Board), on behalf of the Regional Water Board Prosecution Team (“Prosecution Team”) and the City of Santa Rosa (“Discharger”) (collectively “Parties”) and is presented to the Regional Water Board for adoption as an Order, by settlement, pursuant to Government Code section 11415.60. This Stipulated Order are in reference to an adjudicative proceeding initiated by the issuance of Administrative Civil Liability (ACL) Complaint No. R1-2014-0024, dated March 24, 2014, to the Discharger (the “Complaint”).

Section II: Recitals

1. The Discharger owns, operates and maintains the wastewater treatment facilities, including the reclamation system for recycled water distribution to public and private disposal facilities throughout the City of Santa Rosa and outlying authorized areas. The Discharger is required to comply with Waste Discharge Requirements (WDRs) Order No. R1-2006-0045 (NPDES Permit No. CA 0022764) which contains prohibitions and specifications for the processes to be used for treating wastewater that will be reclaimed for permitted uses.
2. The Complaint, as issued, recommends imposing an administrative civil liability, in accordance with the 2010 State Water Board Water Quality Enforcement Policy (Water Quality Enforcement Policy), totaling \$74,776 for alleged violations of Order No. R1-2006-0045 incurred by (1) discharging effluent to the recycling facilities that was partially filtered and/or partially disinfected and (2) discharging recycled water and/or sediment laden recycled water to waters of the United States. The Complaint covers the period from October 2, 2011 through October 31, 2013 and includes only violations determined to be Class II Violations as described in the Water Quality Enforcement Policy.
3. The Parties have engaged in settlement negotiations and agree to settle certain alleged violations of the California Water Code set forth in the Complaint without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board for adoption as an Order pursuant to Government Code section 11415.60. The Prosecution Team believes that the resolution of the violations alleged in the Complaint is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning these violations except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.
4. To resolve by consent and without further administrative proceedings certain alleged violations of the Water Code set forth in the Complaint, the Parties have agreed to the imposition of a penalty of \$74,776 against the Discharger.

Designated Representatives for Communications related to this Stipulation and Order:

For the Regional Water Board:
Cecile Morris, Water Resource Control
Engineer
Regional Water Quality Control Board,
North Coast Region
5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403
cecile.morris@waterboards.ca.gov
707-576-2347

For the Discharger:
David Guhin, Director of Utilities
City of Santa Rosa
Public Works Department
dguhin@srcity.org
707-543-4299

Section III: Stipulations

The Parties stipulate to the following:

5. **Jurisdiction:** The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.
6. **Administrative Civil Liability:** A total of \$74,776 in stipulated administrative civil liability shall be imposed against the Discharger.
 - a. Of that amount, the Discharger shall pay within 30 days of this Order's execution the amount of \$37,388 in administrative civil liability in the form of a check made payable to the State Water Resources Control Board Cleanup and Abatement Account. The check shall indicate Order No. R1-2014-0052 and shall be sent to the following address:

State Water Resources Control Board
Division of Administrative Services, ATTN: ACL Payment
P.O. Box 1888
Sacramento, California 95812-1888
 - b. Failure to pay that monetary assessment on a timely basis will cancel the provisions for suspended penalties for the Supplemental Environmental Project ("SEP") described in subdivision (b) and that amount will become immediately due and payable.
 - b. The remaining \$37,388 shall be suspended ("Suspended Liability") pending completion of an SEP, as set forth in Paragraphs 8 through 15 of Section III herein and "Attachment A" attached hereto and incorporated by this reference.
7. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order 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.
8. **SEP Description:** The purpose of the SEP is to provide Exclusionary Fencing to reduce pollutants at three creek crossings (bridges) in the Santa Rosa area. The

construction of exclusionary structures under three bridges will reduce water quality impacts including litter, human waste, soap, hazardous materials, and sedimentation created from chronic homeless encampments adjacent to creeks. The three bridges are within the Santa Rosa Creek watershed, tributary to the Laguna de Santa Rosa. Pollutants to be mitigated include, but are not limited to nutrients, bacteria, trash, and sediment. This SEP is part of an on-going effort by the Discharger to reduce impacts to water quality and repair, operate and maintain its public structures and is beyond that required by law and separate from projects designed to bring the Discharger into compliance. Detailed plans and a budget for achieving the completion of the SEP are provided in the SEP description attached hereto as "Attachment A."

The implementation schedule for completion of the SEP is as follows:

MILESTONE	DEADLINE
Obtain CEQA Clearance	Within 2 months of issuance of this Order
Project Bid	Within 4 months of issuance of this Order
Award contract	Within 6 months of issuance of this Order
Complete Construction	Within 11 months of issuance of this Order
Submit Final Report: SEP Completion	Within 12 months of issuance of this Order

Confirmation that the SEP has been completed in its entirety shall be submitted by the Discharger to the Designated Regional Water Board Representative no later than 12 months of issuance of this Order (the "SEP Completion Date") as indicated in the schedule above.

9. **SEP Costs:** The cost of the SEP is estimated at \$38,960 plus inspection costs (\$1,170) for a total estimated cost of \$40,130. The Discharger will cover additional costs including staff time for project management, design, and preparation of permit applications and bid packages. The Discharger's budget is detailed in Attachment A.
10. The Discharger shall provide the balance of funds necessary to complete the SEP as proposed or as provided for in paragraph 9.
11. **Extension of the Implementation Schedule Deadlines:** If the Discharger provides written justification and Regional Water Board staff concurs that a delay in the SEP implementation schedule is beyond the reasonable control of the Discharger, the Executive Officer may revise the implementation schedule as appropriate. Written justification must be received by Designated Regional Water Board Representative before a given specific due date occurs, must describe circumstances causing the delay, and must state when each task of the SEP will be completed. If any extension of the implementation schedule is granted, Regional Water Board staff shall provide the Discharger with a new implementation schedule in writing, which shall include the date the SEP will be completed ("Revised Completion Date").

12. **Representations and Agreements of the Discharger to Implement and Complete, Report, and Guarantee Implementation of the SEP:** As a material consideration for the Regional Water Board's acceptance of this Stipulated Order, the Discharger represents and agrees that (1) it will implement and complete the SEP as described in this Stipulated Order; (2) it will provide certifications and written reports to the Designated Regional Water Board Representative and the Division of Financial Assistance of the State Water Board consistent with the terms of this Stipulated Order detailing the implementation of the SEP; and (3) it will guarantee implementation of the SEP identified in Paragraph 8 and "Attachment A" by remaining liable for the Suspended Liability until the SEP is completed and accepted by the Regional Water Board in accordance with the terms of this Stipulated Order. The Discharger agrees that the Regional Water Board has the right to require an audit of the funds expended by the Discharger to implement the SEP.
13. **SEP Bi-Monthly Progress Reports:** The Discharger shall provide progress reports every 2 months (bi-monthly) to the Designated Regional Water Board Representative and the Division of Financial Assistance of the State Water Board commencing 30 days after this Stipulated Order becomes final and continuing through submittal of the certified statement of completion of the SEP described in Paragraph 8. If no activity occurred during the 2-month period, a bi-monthly report so stating shall be submitted. Bi-monthly reports are due on the 15th day of the following month.
14. **Certification of Completion of SEP:** Within 12 months of issuance of this Order (or within 60 days of the Revised Completion Date, if an extension to the Completion Date is granted pursuant to Paragraph 11), the Discharger shall provide a certified statement of completion of the SEP ("Certification of Completion"). The Certification of Completion shall be submitted by a responsible official under penalty of perjury under the laws of the state of California, to the Designated Regional Water Board Representative and the Division of Financial Assistance of the State Water Board. The Certification of Completion shall include the following:
 - a. Certification that the SEP has been completed in accordance with the terms of this Stipulation and Order. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate the completion of the SEP and the costs incurred by the Discharger.
 - b. Certification documenting the expenditures by the Discharger during the implementation of the SEP to complete the SEP. Expenditures may include, but are not limited to, payments to outside vendors or contractors implementing the SEP. The Discharger shall provide any additional information requested by the Regional Water Board staff that is reasonably necessary to verify SEP expenditures.
 - c. Certification that the Discharger followed all applicable environmental laws and regulations in the implementation of the SEP including but not limited to the California Environmental Quality Act (CEQA), the federal Clean Water Act, and the Porter-Cologne Act.

15. **Third Party Financial Audit:** At the written request of Regional Water Board staff, the Discharger, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Regional Water Board staff providing such party's(ies') professional opinion that the Discharger has expended money in the amounts claimed by the Discharger. In the event of such an audit, the Discharger agrees that it will provide the third-party auditor with access to all documents that the auditor requests. The Regional Water Board staff's written request shall specify the reasons why the audit is being requested. The audit report shall be provided to the Designated Regional Water Board Representative within three (3) months of notice from Regional Water Board staff to the Discharger of the need for an independent third party audit. The audit need not address any costs incurred by the Regional Water Board for oversight.
16. **Failure to Expend the Entire Suspended Liability on the Approved SEP:** In the event that the Discharger is not able to demonstrate to the reasonable satisfaction of the Regional Water Board staff that the entire suspended liability of \$37,388 has been spent to complete the SEP as required by this Stipulated Order, the Discharger shall pay the difference between the Suspended Liability of \$37,388 and the amount the Discharger can demonstrate was actually spent on the completion of the SEP, as administrative civil liability. The Discharger shall be liable to pay the State Water Resources Control Board Cleanup and Abatement Account the difference within 30 days of receipt of notice of the Regional Water Board staff's determination that the Discharger failed to demonstrate that the entire Suspended Liability was spent to complete the SEP as required by this Stipulated Order.
17. **Failure to Complete SEP:** If the Discharger fails to complete the SEP within 12 months of issuance of this Order, as required by this Stipulated Order, (or within 60 days of the Revised Completion Date, if an extension to the Completion Date is granted pursuant to Paragraph 8), or there has been a material failure to timely submit a progress report or the Certification of Completion as required by this Stipulation and Order, the Regional Water Board staff shall issue a Notice of Violation (NOV). As a consequence, the Discharger shall be liable to pay the entire suspended liability of \$37,388, or some portion thereof less the value of the completion of any requirements satisfied in accordance with this Stipulated Order, to the State Water Resources Control Board Cleanup and Abatement Account within 30 days of receipt of the NOV.
18. **Completion of the SEP to the Regional Water Board Staff's Satisfaction:** Upon the Discharger's satisfaction of its SEP obligations under this Stipulation and Order and any audit requested by the Regional Water Board, Regional Water Board staff shall send the Discharger a letter recognizing satisfactory completion of its obligations under this Stipulated Order. Receipt of this letter shall terminate any further obligations of the Discharger under this Stipulated Order and result in the permanent stay of the Suspended Liability.
19. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability and 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 the Discharger to further enforcement, including additional administrative civil liability.

20. **Publicity:** Whenever the Discharger or its agents or subcontractors publicizes one or more elements of the SEP, the Discharger shall state in a **prominent manner** that the SEP is undertaken as part of the settlement of an enforcement action by the Regional Water Board against the Discharger.
21. **Attorneys' Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
22. **Matters Addressed by Stipulation:** Upon the Regional Water Board's adoption of the Order incorporating the terms of this Stipulation, this Stipulation represents a final and binding resolution and settlement of the violations alleged in the Complaint (Covered Matters). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadline specified in Paragraph 8 and the Discharger's full satisfaction of the SEP obligation described herein.
23. **Public Notice:** Discharger understands that federal regulations require that the Regional Water Board publish and allow the public thirty (30) days to comment on any settlement of an enforcement action addressing NPDES permit violations (40 C.F.R. section 123.27(d)(2)(iii)). This Stipulated Order will be noticed for a 30-day public comment period prior to being presented to the Regional Water Board, or its delegee, for adoption. In the event objections are raised during the public review and comment period, the Regional Water Board or its delegee may, under certain circumstances, require a public hearing regarding the Stipulated Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the proposed Order as necessary or advisable under the circumstances. Discharger agrees that it may not rescind or otherwise withdraw approval of this proposed Stipulated Order.
24. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
25. **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. The Discharger is represented by counsel in this matter.
26. **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 the Regional Water Board or the Executive Officer.
27. **If the Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Water Board or it is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional 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 Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional 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.
28. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.
 29. **Waiver of Right to Petition:** The Discharger hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
 30. **Regional Water Board is Not Liable:** Neither the Regional Water Board members nor the Regional or State 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 Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation, Order, or SEP, nor shall the Regional Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Discharger, its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order.
 31. **Discharger's Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.
 32. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Regional Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Order.
 33. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

34. **Effective Date:** The obligations under this Stipulation are effective and binding on the Parties upon the date of its execution as an Order by the Regional Water Board, or its delegee.
35. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.
36. **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,
North Coast Region Prosecution Team

By:

Date: December 24, 2014

Original Signed By

David F. Leland, P.E.
Assistant Executive Officer

The City of Santa Rosa

Date: December 30, 2014

By: Original Signed By

David Guhin
Director of Utilities

Order of the Regional Water Board;

IT IS HEREBY ORDERED:

37. This Order incorporates the terms of the foregoing Stipulation.
38. The Parties believe that settlement of this matter is in the best interest of the People of the State. Therefore, to settle the violations alleged in the Complaint, the Discharger hereby agrees to comply with the terms and conditions of this Order.
39. The Regional Water Board finds that the Recitals set forth herein in Section II are true.
40. This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.
41. In accepting this settlement, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code sections 13327 and 13385(e). The Regional Water Board's consideration of these factors is based upon information obtained by the Regional Water Board Prosecution Team in investigating the allegations in the Complaint or otherwise provided to the Regional Water Board. This

settlement recovers the costs incurred by the Prosecution Team in investigating and pursuing enforcement of the violations alleged in the Complaint as “other matters as justice may require”.

42. The Discharger does not qualify as a small community with a financial hardship. The basis of that determination is set forth in the analysis and recommendation prepared by the State Water Board, Office of Research, Planning, and Performance, approved by the State Water Board’s Executive Director. (See Attachment “B” attached hereto, incorporated herein, and made a part of this administrative civil liability order by this reference).
43. On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The policy can be found at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf.
44. Section IX of the Enforcement Policy provides that the Regional Water Board may approve a settlement with a discharger that includes suspension of a portion of the monetary liability of a discretionary administrative civil liability for completion of an SEP.
45. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional 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.
46. The Regional Water Board or its Executive Officer is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this Order.

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

Matthias St. John
Executive Officer

DATE

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Enc: Attachment A