CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

In the matter of:	)	
	)	**Order R2-2013-1033**
ALLIED DEFENSE RECYCLING	)	
MARE ISLAND SHIP YARD,	)	**SETTLEMENT AGREEMENT AND**
LLC	)	**STIPULATED ORDER**
	)	
Failure to Pay Regional Monitoring	)	
Program Fees	)	

Section I: INTRODUCTION

1. This Settlement Agreement and Stipulated Order (Stipulation) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board San Francisco Bay Region (Regional Water Board) and Allied Defense Recycling, Mare Island Ship Yard, LLC (collectively Mare Island) (the Regional Water Board and Mare Island are collectively referred to as the Parties), and is presented to the Regional Water Board or its delegee for adoption as an Order by settlement pursuant to Government Code section 11415.60.

Section II: RECITALS

2. Mare Island operates the Mare Island Dry Docks located in Mare Island Straight adjacent to the former Mare Island Shipyard in Vallejo, Solano County. Mare Island applied for a U.S. Army Corps of Engineers individual permit authorizing multiple episodes of dredging over a 10-year period (File No. 2008-00311N) pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S. Code § 403). Correspondingly, Mare Island applied to the Regional Water Board for a Clean Water Act Section 401 (33 U.S.C. § 1341) water quality certification (401 Certification) that the project will not violate State water quality standards. The Regional Water Board granted the 401 Certification on April 15, 2010, and amended the certification on November 10, 2010.

3. The 401 Certification includes an order issued pursuant to Water Code section 13267 that Mare Island submit a technical report regarding monitoring of the impacts of the proposed discharge of dredge materials into San Francisco Bay. The 401 Certification provides the option of participating in the San Francisco Estuary Regional Monitoring Program for Trace Substances (RMP) to fulfill this requirement, or providing comparable data on an individual basis. The San Francisco Estuary Institute (SFEI), located in Oakland, California, administers the RMP with oversight by the Regional Water Board. Dischargers may contribute money to the RMP, based on the RMP Dredger Fee Schedule Policy. The fees are based on in-bay dredge disposal volumes calculated using post-dredge survey results provided to the Regional Water Board and SFEI by the U.S. Army

Corps of Engineers. Payment of the RMP fees to SFIE fulfills the requirements under the Section 13267 order.

4. Mare Island's RMP fees for the period 1 January 2012 to 31 December 2012 totaled $60,531.20, with payment in full due no later than 15 December 2011. Mare Island submitted a payment of $15,000 on 6 September 2013. The remaining outstanding RMP fee balance is $45,531.20. Mare Island has not submitted data on an individual basis to otherwise comply with the Section 13267 order.

5. Water Code section 13268, subdivision (a), provides that any person who fails to furnish technical or monitoring reports as required by Section 13267 is subject to administrative civil liability in an amount not to exceed one thousand dollars ($1,000) for each day in which the violation occurs.

6. As of 12 September 2013, Mare Island is 637 days late in making its full 2012 RMP fee payment. Mare Island is therefore subject to a potential maximum penalty of **$637,000** under Water Code section 13268.

7. The Parties have engaged in settlement negotiations and agree to fully settle certain alleged violations set forth herein without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

8. Mare Island has agreed to bring its RMP fees account current through this Stipulation. Based on information supplied by SFEI, the total amount in RMP fees still owed by Mare Island is **$45,531.20**.

9. Resolution through settlement saves staff costs associated with preparing for and conducting a hearing. Moreover, this settlement guarantees that Mare Island's back fees owed to SFEI will be paid directly to SFEI. There is no assurance that an order following a hearing would direct any portion of the liability amount to SFEI.

10. The Regional Water Board believes that the resolution of the alleged violations set forth herein is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning those violations, except as provided in this Stipulation, and that this Stipulation is in the best interest of the public.

Section III: STIPULATIONS

The Parties stipulate to the following:

11. **Jurisdiction:** The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged herein and personal jurisdiction over the Parties to this Stipulation.

12. **Payment to SFEI:** Mare Island shall pay a total of **$45,531.20** by check payable to Regional Monitoring Program c/o SFEI, 4911 Central Ave, Richmond, CA 94804, in one or more payments, with final payment no later than 31 December 2013. The check(s) shall reference the Order number listed on page one of this Stipulation. Submit copies of the check(s) to: Andrew Tauriainen, SWRCB Office of Enforcement, P.O. Box 100, Sacramento, CA 95812, and Brian Thompson, San Francisco Bay Regional Water Quality Control Board, 1515 Clay Street, Suite 1400, Oakland, CA 94612.

13. **Compliance with Applicable Laws:** Mare Island understands that compliance with the terms of this Stipulation is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged herein may subject it to enforcement.

14. **Party Contacts for Communications related to this Stipulation:**

For the Regional Water Board:	**For Mare Island:**
Brian Thompson San Francisco Bay Regional Water Quality Control Board 1515 Clay Street, 14th Floor Oakland, CA 94612 brthompson@waterboards.ca.gov (510) 622-2422	Gary Whitney Principal Mare Island Ship Yard LLC 1180 Nimitz Ave Vallejo, CA 94592

15. **Attorney's 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.

16. **Matters Covered by this Stipulation:** Upon adoption of the Order incorporating the terms set forth herein, this Stipulation represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged herein or which could have been asserted against Mare Island as of the date of this Stipulation based on the specific facts alleged herein. The provisions of this Paragraph are expressly conditioned on Mare Island's full payment in accordance with Paragraph 12.

17. **Public Notice:** The Parties understand that this Stipulation must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegee. 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 Stipulation. 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. If significant new information is received during the public review and comment period that reasonably affects the propriety of presenting this Stipulation to the Regional Water Board or its delegee for adoption, the Assistant Executive Officer may unilaterally declare this Stipulation void and decide not to present it to the Regional Water Board or its delegee.

18. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board, or its delegee, 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.

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

20. **Modification:** This Stipulation 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 Regional Water Board or its delegee.

21. **If the Order Does Not Take Effect:** In the event that the Order does not take effect because it is not approved by the Regional Water Board or its delegee, or is vacated in whole or in part by the State Water Resources Control Board (State Water Board) or a court, the Parties acknowledge that they may 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 violations alleged herein 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.

22. **No Admission of Liability:** In settling this matter, Mare Island does not admit to any of the allegations stated herein, or that it has been or is in violation of the Water Code, or any other federal, state or local law or ordinance, with the understanding that in the event of any future enforcement actions by the Regional Water Board, the State Water Board or any other Regional Water Quality Control Board, this Stipulation and Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327 or section 13385, subdivision (e).

23. **Waiver of Hearing:** Mare Island 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.

24. **Waiver of Right to Petition:** Mare Island hereby waives its right to petition the Order for review by the State Water Board, and further waives its right, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

25. **Covenant Not to Sue:** Mare Island 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 matter expressly addressed by this Stipulation.

26. **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.

27. **No Third Party Beneficiaries:** This Stipulation 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 Stipulation for any cause whatsoever.

28. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulation may be executed and delivered in any number of counterparts; such counterparts shall together constitute one document. Further, any facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding to the same extent as if such facsimile or electronic signature were an original signature.

29. **Effective Date:** This Stipulation is effective and binding on the Parties upon the entry of this Order by the Regional Water Board or its delegee.

IT IS SO STIPULATED.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN FRANCISCO BAY REGION

Date: 9/20/13 By: Dyan C. Whyte

Dyan Whyte
Assistant Executive Officer

ALLIED DEFENSE RECYCLING / MARE ISLAND SHIP YARD LLC

Date: 9/23/13 By: G Whitney

Gary Whitney, Principal

Section IV: ORDER OF THE REGIONAL WATER BOARD

30. The Regional Water Board incorporates the Stipulation described above by this reference as if set forth fully herein.

31. In accepting this Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e), and has applied the methodology set forth in the State Water Resource Control Board's Enforcement Policy. The Regional Water Board's consideration of these factors and application of the methodology is based upon information obtained by the Regional Water Board in investigating the allegations set forth in the Stipulation, or otherwise provided to the Regional Water Board.

32. 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, § 21000 et seq.) in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations.

33. The Stipulation and Order are severable; should any provision be found invalid the remainder shall be in full force and effect.

34. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if Mare Island fails to perform any of its obligations under the Order.

35. Fulfillment of Mare Island's obligations under this Order constitutes full and final satisfaction of any and all liability for the matters alleged in the Stipulation in accordance with the terms of the Order.

IT IS HEREBY ORDERED, pursuant to Water Code section 13323 and Government Code section 11415.60 on behalf of the California San Francisco Bay Regional Water Quality Control Board.

Bruce Wolfe

Digitally signed by Bruce H. Wolfe
Date: 2013.11.01 15:16:43 -07'00'

Date: _____

Bruce H. Wolfe
Executive Officer