

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the Matter of:

City of Beaumont)	Mandatory Minimum Penalty Order
550 E. 6 th Street)	Order No. R8-2015-0012
Beaumont, CA 92223)	Stipulations for
Attn: Alan Kapanickas)	Settlement of Mandatory Minimum
City Manager)	Penalties

A. INTRODUCTION:

This is a Mandatory Minimum Penalty (MMP) Order (hereinafter Order) presented to the Executive Officer of the Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), for consideration. This Order accepts the stipulations for settlement (Agreement) of an MMP Complaint (hereinafter "Complaint" that was issued as an Expedited Payment Letter) issued by the Regional Board's Division Chief to the City of Beaumont (City) (hereinafter Discharger).

B. BACKGROUND:

The Discharger owns and operates the Beaumont Wastewater Treatment Plant. The discharge of treated wastewater from the treatment plant is regulated under Order No. R8-2006-0003. On April 27, 2015, the Regional Board's Division Chief issued a Mandatory Minimum Penalty Complaint (issued as an Expedited Payment Letter) to the Discharger for alleged violations of effluent limitations set forth in Order No. R8-2006-0003 subject to MMPs under California Water Code (Water Code) section 13385(i). The Complaint recommends imposing a mandatory minimum penalty totaling \$48,000 for the alleged violations subject to MMPs as identified in Attachment 1 of the Complaint. The Complaint is attached hereto as Exhibit A and is incorporated by this reference. The Discharger responded to the Complaint, agreed to settle the alleged violations without further administrative proceedings, and proposed to participate in a Supplemental Environmental Project (SEP) as part of this Agreement. The SEP was proposed by the Santa Ana Watershed Project Authority and was approved by the Executive Officer as an acceptable SEP. Attachment 2 (Acceptance of Conditional Resolution and Waiver of Right to

Hearing) to the Complaint was subsequently amended to incorporate the SEP and is included as Attachment 2A. This Agreement stipulates the terms and conditions for settlement of the Complaint.

C. PARTIES TO THIS AGREEMENT:

1. Regional Board's Prosecution Team represented by the Division Chief
2. City of Beaumont (Discharger)
3. Santa Ana Watershed Project Authority (SEP Proponent)

C. MMP COMPLAINT BEING SETTLED:

Expedited Payment Letter issued on April 27, 2015 (Complaint), proposing mandatory minimum penalty against the Discharger in the amount of \$48,000 pursuant to Water Code section 13385(i), as set forth in Exhibit A.

D. PROPOSED SETTLEMENT:

The Discharger agrees to settle the liabilities assessed in the Complaint (total liability: \$48,000) in accordance with the following:

1. The Discharger agrees to pay \$24,000 to State Water Resources Control Board. A check for \$24,000 shall be made payable to the State Water Pollution Cleanup and Abatement Account, referencing Order No. R8-2015-0012. This is the initial payment and it shall be mailed to the following address within 30 days of adoption of this Order:

Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348

2. The Discharger agrees to pay \$24,000 to the Santa Ana Watershed Project Authority (SAWPA) for a Supplemental Environmental Project (SEP). This is the suspended liability payment and is also due within 30 days of adoption of this Order and shall be mailed to the address indicated in Item 1, above. A check for \$24,000 shall be made payable to the Santa Ana Watershed Project Authority (SAWPA). The suspended liability shall be deemed satisfied once the Discharger funds the SEP project and the SEP is completed by the SEP Proponent in accordance with the schedule proposed in the SEP proposal, attached hereto as Exhibit B and is incorporated by this reference.
3. SAWPA shall utilize the SEP allocation of \$24,000 as per the proposed budget in accordance with the schedule included in Exhibit B.

E. STIPULATIONS

The Parties incorporate Sections A through D above by this reference, as if set forth fully herein, and stipulate to entry of the Order set forth below, and recommend that the Executive Officer issue the Order to effectuate the settlement.

1. The Complaint (in this case, an Expedited Payment Letter) was issued to the Discharger for violating the California Water Code by discharging wastewater with constituents that exceeded the permit limits. The Discharger waived its right to a hearing for the Complaint. The total assessed liability for the Complaint is \$48,000.
2. The Discharger agrees to settle this Complaint by making an initial payment of \$24,000 to the State Water Pollution Cleanup and Abatement Account and by funding a SEP project for the suspended liability of \$ 24,000.
3. The SEP Proponent agrees to complete the SEP project as per the proposed budget and the schedule included in the SEP proposal, Exhibit B.

4. SEP Definitions

- a. "Cleanup and Abatement Account": the State Water Pollution Cleanup and Abatement Account.
- b. "Designated Regional Board Representative": The representative from the Santa Ana Regional Water Quality Control Board responsible for oversight of the supplemental environmental project (SEP). The contact information for this representative is as follows:

Name: Mr. David Woelfel

Address: Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348

Phone: 951-782-7960

E-mail: david.woelfel@waterboards.ca.gov

- c. "SEP Proponent": An independent third-party with whom the Discharger has contracted with or otherwise engaged to perform or implement the SEP; in this case, the Santa Ana Watershed Project Authority.
- d. "Milestone Requirement": A requirement with an established time schedule for meeting/ascertaining certain identified measurements of

completed work. Upon the timely and successful completion of each milestone requirement, an amount of liability will be permanently suspended or excused as set forth in the SEP proposal, Exhibit B.

- e. "SEP Completion Date": The date in which the SEP will be completed in its entirety.
5. **Description of the SEP:** See Exhibit B.
6. **Deliverable Products from SEP:** See Exhibit B.
7. **Budget and Milestones:** See Exhibit B.
8. **Representations and Agreements by the SEP Proponent:** As a material consideration for the Executive Officer's acceptance of this Order, the SEP Proponent represents that it will utilize the funds provided to it by the Discharger to implement the SEP in accordance with the schedule in Exhibit B. The SEP Proponent understands that its promise to implement the SEP as described in Exhibit B, in its entirety and in accordance with the schedule for implementation, is a material condition of this settlement of liability between the Discharger and the Regional Board. The SEP Proponent agrees that the Regional Board has the right to require the SEP Proponent to implement the SEP in accordance with the terms of this Order if it has received funds for that purpose from the Discharger. The SEP Proponent agrees to submit to the jurisdiction of the Regional Board to enforce the terms of this Order for purposes of implementation of the SEP.
9. The SEP Proponent represents to the Parties and to the Regional Board that the SEP Proponent will: 1) spend the SEP payment as described in the Order as per the project description in Exhibit B; and 2) provide a certified, written report to Regional Board staff consistent with the terms of this Order detailing the implementation of the SEP. The SEP Proponent agrees that Regional Board staff has the right to require an audit of the funds provided to it by the Discharger and expended by it to implement the SEP.
10. **Publicity:** Wherever the Discharger or its subcontractors or agents or the SEP proponent or its agents or subcontractors publicizes one or more elements of the SEP project, they shall state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action by the Regional Board against the Discharger.
11. **Public Notice:** The MMP Complaint, the SEP proposal and this Agreement and Order were publicly noticed at least for 30 days before the Executive Officer's approval. All public comments received have been considered and responded to. This Discharger agrees that it may not rescind or otherwise withdraw its approval of this Agreement and Order.

12. **Regional Board Staff Oversight Costs:** Regional Board staff does not anticipate any staff oversight costs for the proposed SEP.
13. **Submittal of Progress Reports:** The SEP Proponent shall provide quarterly progress reports to the Designated Regional Board Representative on the 15th day of the month following the quarter; the first quarterly report is due on: August 15, 2015. .
14. **SEP Program Audit:** The SEP Proponent shall allow Regional Board staff to audit the SEP project during normal business hours.
15. **Final Certification:** On or before December 31, 2017, the SEP Proponent shall submit certified statements by responsible corporate officials representing the SEP Proponent documenting the respective expenditures by the SEP Proponent to implement and to complete the SEP. The expenditures may be external payments to outside vendors or contractors implementing the SEP. In making such certification, the official may rely upon normal company project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The SEP Proponent shall provide any additional information requested by the Regional Board staff which is reasonably necessary to verify the SEP Proponent's SEP expenditures. The certification need not address any costs incurred by Regional Board staff for oversight. The final report shall include a certification by the SEP Proponent (see Attachment B), under penalty of perjury, stating that the SEP has been completed in accordance with Exhibit B and any agreed upon written changes between the authorized representatives of SEP Proponent and Regional Board and the applicable provisions of this Order. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Board to evaluate the completion of the SEP and the costs incurred by the SEP Proponent. The final Certification may be provided on Exhibit C, Certificate of Completion.
16. **Third Party Audit:** If the Designated Regional Board Representative obtains information that causes the representative to reasonably believe that the SEP Proponent has not expended money in the amounts claimed by the SEP Proponent, or has not adequately completed any of the work in the SEP proposal, as described in Exhibit B, the Designated Regional Board Representative, may require, and the SEP Proponent shall submit, at its sole cost, a report prepared by an independent third party(ies) acceptable to the Regional Board providing such party(ies)'s professional opinion that the SEP Proponent has expended money in the amounts claimed by the SEP Proponent. In the event of such an audit, the SEP Proponent agrees that it will provide the third-party auditor with access to all documents which the auditor requests. Such information shall be provided to the Designated Water Board Representative within three (3) months of the completion of the SEP Proponent's SEP

obligations. The audit need not address any costs incurred by the Regional Board staff for oversight.

17. **Regional Board's Acceptance of Completed SEP:** Upon the SEP Proponent's satisfaction of its obligations under this Order, the completion of the SEP and any audits, the Designated Water Board Representative, shall request that the Executive Officer issue a "Satisfaction of SEP Letter." The issuance of the Satisfaction of SEP Letter shall terminate any further obligations of the SEP Proponent and the Discharger under this Order.
18. **Failure to Expend All Suspended Liability on the Approved SEP Project:** In the event that the SEP Proponent is not able to demonstrate to the reasonable satisfaction of the Regional Board staff that it has spent the entire SEP Amount for the completed SEP, the SEP Proponent shall pay the difference between the SEP funds and the actual amount expended.
19. **Failure to Complete the SEP:** If the SEP is not fully implemented as per the schedule in Exhibit B or there has been a material failure to satisfy a Milestone Requirement, the Designated Regional Board Representative shall issue a Notice of Violation. As a consequence, the SEP Proponent shall be liable to pay the entire SEP funds or, some portion thereof less the value of the completion of any Milestone Requirements. Unless otherwise ordered, the SEP Proponent shall not be entitled to any credit, offset, or reimbursement from the Regional Board for expenditures made on the SEP prior to the date of the "Notice of Violation" by the Designated Regional Board Representative. The amount of the SEP funds owed shall be determined via a "Motion for Payment of SEP Funds" before the Regional Board. Upon a determination by the Regional Board of the amount of the SEP funds, the amount owed shall be paid to the State Water Pollution Cleanup and Abatement Account within thirty (30) days after the service of the Regional Board's determination. In addition, the SEP Proponent shall be liable for the Regional Board's reasonable costs of enforcement, including but not limited to legal costs and expert witness fees. Payment of the suspended liability amount will satisfy the SEP Proponent's obligations to implement the SEP.
20. **Regional Board is not Liable:** Neither the Regional Board members nor the Regional Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from the negligent or intentional acts or omissions by the SEP Proponent or its respective directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Order, nor shall the Regional Board, its members or staff be held as parties to or guarantors of any contract entered into by the SEP Proponent, or its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Order.
21. The SEP Proponent and the Discharger covenant not to sue or pursue any administrative or civil claim or claims against the Regional Board, or its officers,

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employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by the Mandatory Minimum Penalty Complaint, this Order or the SEP project.

22. Upon adoption of this Order by the Executive Officer, incorporating this Agreement, this Order represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in the Complaint against the Discharger and its subsidiaries, successors, assigns, and their officers, directors, employees, representative agents, and attorneys. The provisions of this Paragraph are expressly conditioned on the full payment of the mandatory minimum penalty by the deadlines and full satisfaction of the obligations specified in this Order.
23. The Discharger hereby waives its right to petition the Regional 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. This explicit waiver of rights includes potential future decisions by the Regional Board or its delegate related to this Order, including, but not limited to time extensions, completion of SEP milestones, or other terms contained in this Order.
24. The Parties agree that the procedure contemplated for adopting this Order by the Regional Board and review of this Agreement and Order by the public is lawful and adequate. In the event procedural objections are raised prior to this 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. Nothing in this Order shall be deemed to create any rights in favor of, or to inure to the benefit of, any third party or parties, or to waive or release any defense or limitation against third party claims.
26. The Executive Officer may extend any of the due dates in this Order upon the joint request of the Parties. Such extensions must be in writing.
27. The effective date of this Order shall be the date on which it is adopted by the Executive Officer.
28. This Order relates only to MMP violations alleged in the Complaint and the SEP proposal. The Regional Board reserves all rights to take additional enforcement actions, including without limitation the issuance of administrative civil liability complaints or orders for violations that occur after the date on which the Division Chief signed the Complaint.

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29. In the event of a dispute, SEP Proponent shall file a "Notice of Dispute" with the Executive Officer or the Executive Officer's Designee within ten (10) days of discovery of the problem. The Regional Board and the SEP Proponent shall then attempt to negotiate a resolution of such claim and, if appropriate, process an amendment to implement the terms of any such resolution. If the Regional Board and SEP Proponent are unable to resolve the dispute, the decision of the Executive Officer or the Executive Officer Designee shall be final.
30. Each person executing this Agreement in a representative capacity represents that he or she is authorized to execute this Agreement on behalf of and to bind the entity on whose behalf he or she executes the Agreement.
31. This Agreement 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.
32. This Agreement shall not be modified by any of the Parties by oral representation made before or after the execution of this Agreement. All modifications must be made in writing and approved by the Executive Officer.
33. This Agreement is severable; should any provision be found invalid the remainder shall remain in full force and effect.
34. This Agreement may be executed by the parties 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.

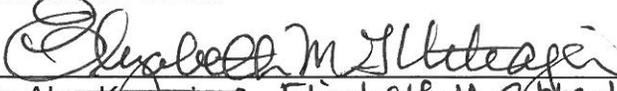
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City of Beaumont, Order No. R8-2015-0012

IT IS SO STIPULATED¹

Michael Adackapara,
Division Chief
For the Santa Ana Regional Water Quality Control Board
Prosecution Team

Date



Mr. Alan Kapanicas, Elizabeth M. Gibbs-Urriaga
City Manager (Acting)
For the City of Beaumont

Date 7-22-15

Mark Norton
For the Santa Ana Watershed Project

Date

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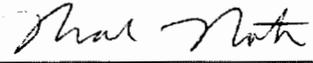
¹ The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.

Mandatory Penalty Order and Settlement Agreement
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IT IS SO STIPULATED¹

for  Date 7/23/15
Michael Adackapara,
Division Chief
For the Santa Ana Regional Water Quality Control Board
Prosecution Team

Mr. Alan Kapanicas,
City Manager
For the City of Beaumont Date _____

 Date 6/18/15
Mark Norton
For the Santa Ana Watershed Project Authority

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IT IS SO STIPULATED¹

Michael Adackapara

Michael Adackapara,
Division Chief
For the Santa Ana Regional Water Quality Control Board
Prosecution Team

Date 7/23/15

Elizabeth M. G. Urtiaga

Elizabeth M. G. Urtiaga
City Manager (Acting)
For the City of Beaumont

Date 7-22-15

Mark Norton
For the Santa Ana Watershed Project

Date _____

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HAVING CONSIDERED THE PARTIES' STIPULATIONS, THE SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

1. The foregoing Stipulations are incorporated into this Order.
2. Issuance of this Order is being taken for the protection of the environment and to enforce the laws and regulations administered by the Regional Board as such is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) in accordance with California Code of Regulations, title 14, sections 15061(b)(3), 15306, 15307, 15308, and 15321. This Order includes a SEP (Exhibit B) and the Discharger shall provide the SEP Proponent \$24,000 for the work. To the extent this Order requires earth disturbing and revegetation activities not to exceed five acres in size and to assure restoration of stream habitat and prevent erosion, this Order is exempt from provisions of CEQA pursuant to California Code of Regulations, title 14, section 15333. If the Regional Board determines that implementation of any plan required by this Order will have a significant effect on the environment that is not otherwise exempt from CEQA, the Regional Board will conduct the necessary and appropriate environmental review prior to approval of the applicable plan. The SEP Proponent will bear the costs, including the Regional Board's costs, of determining whether implementation of any required plan by this Order will have a significant effect on the environment and, if so, in preparing and handling any documents necessary for environmental review. If necessary, the Discharger and a consultant acceptable to the Regional Board shall enter into a memorandum of understanding with the Board regarding such costs prior to undertaking any environmental review.
3. In adopting this Order, the Santa Ana Regional Water Quality Control Board or its Delegee has assessed a penalty in accordance with California Water Code section 13385(i) and the Enforcement Policy.
4. The SEP Project is consistent with the State Water Resources Control Board's Policy on Supplemental Environmental Projects because: (1) Its scope and parameters are defined at this time; (2) The SEP Project directly benefit the area impacted by the discharge; and (3) There is a nexus between the "Santa Ana Sucker Habitat Protection and Beneficial Use Enhancement Project" and the nature of the violations alleged above, as well as a geographic nexus between the SEP Project and the location of the violations.
5. In adopting this Stipulated Order, the Executive Officer has considered all the factors prescribed in California Water Code section 13327. The Executive Officer's consideration of these factors is based upon information and comments provided by the Parties and by members of the public.

Pursuant to section 13385 of the California Water Code and section 11415.60 of the California Government Code, the Executive Officer hereby adopts this Order.

