

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO REGION**

In the Matter of:)
)
TransBay Container Terminal, Inc.) **Settlement Agreement and Stipulation for**
) **Order; Order No. R2-2010-0112**
Complaint No. R2-2010-0015 for)
Administrative Civil Liability)
)

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (“Stipulation”) is entered into by and between the Regional Water Quality Control Board Prosecution Staff (“Prosecution Staff”) and TransBay Container Terminal, Inc. (also known as TransBay Container Terminal I, as named in Administrative Civil Liability Complaint No. R2-2010-0015) (“Settling Respondent”) (collectively “Parties”) and is presented to the Executive Officer of the San Francisco Region, California Regional Water Quality Control Board (“Regional Water Board”) as the Regional Water Board’s delegee for adoption as an Order, by settlement, pursuant to Government Code section 11415.60.

Section II: Recitals

1. The Settling Respondent is the lessor of TransBay Container Terminal I located at 2500 7th Street in Oakland, Alameda County, California (the “Site”). The Settling Respondent is a permittee covered under State Water Resources Control Board (“State Water Board”) Water Quality Order No. 97-03-DWQ National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities (“Industrial Stormwater General Permit”). The Settling Respondent failed to submit its 2008-2009 and 2009-2010 fiscal year annual reports by July 1, 2009 and July 1, 2010, respectively, in violation of the Industrial Stormwater General Permit. The Settling Respondent submitted its 2008-2009 fiscal year annual report to the Regional Water Board on August 4, 2010, a total of 398 days late, and its 2009-2010 fiscal year annual report on July 30, 2010, a total of 28 days late.
2. On August 6, 2010, Prosecution Staff conducted an inspection of the Site. During that inspection, Prosecution Staff noted several conditions it believes to be violations of the Industrial Stormwater General Permit: (1) Unscreened inlets to the Site’s PVC pipe stormwater conveyance system; (2) Storm drain inlets lacked “No Dumping, Drains to Bay” stencils; (3) Failure to maintain an accurate and updated site map at the Site; and (4) Failure to implement appropriate maintenance of storm drain inlets. The Settling Respondent also informed Prosecution Staff of its plans to cease operations at the site on October 1, 2010, and its intent to file a Notice of Termination of its Industrial Stormwater General Permit coverage.
3. The Administrative Civil Liability Complaint No. R2-2010-0015 (the “Complaint”) alleges that the Settling Respondent violated the Industrial Stormwater General Permit by failing to submit an annual report for fiscal year 2008-2009 by July 1, 2009 as required by Section B—

Monitoring and Reporting Requirements, Number 14. Further, the Complaint recommends that the Regional Water Board impose an administrative civil liability totaling \$13,300 for alleged violations of the Industrial Stormwater General Permit. That amount includes staff costs of \$1,800.

4. To resolve by consent and without further administrative proceedings certain alleged violations of the California Water Code ("CWC") and Industrial Stormwater General Permit set forth in the Complaint, and herein in Paragraphs 1, 2 and 3 above, the Parties have agreed to the imposition of \$13,300 against the Settling Respondent, which includes \$1,800 for staff costs. Payment of \$13,300 to the State Water Resources Control Board Cleanup and Abatement Account is due no later than 30 days following the Regional Water Board executing this Order.

5. To resolve by consent and without further administrative proceedings the Settling Respondent's violation for the failure to timely submit its 2009-2010 fiscal year annual report and the alleged violations noted during the August 6, 2010 inspection of the Site, as alleged herein, the Settling Respondent agrees to correct the alleged violations noted during the August 6, 2010 inspection, and to file a Notice of Termination of its Industrial Stormwater General Permit coverage with the Regional Water Board staff by November 1, 2010. The Settling Respondent shall provide proof of correction of the alleged violations noted during the August 6, 2010 inspection by November 1, 2010. The proof of correction does not need to be filed at the same time as the Notice of Termination. If the Settling Respondent fails to file said Notice of Termination and proof of correction by November 1, 2010, the Prosecution Staff may pursue a formal enforcement action for those violations.

6. The Parties agree to settle the matter 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 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 specific violations alleged in the Complaint, and those alleged violations described in Paragraph 1 and 2 above, 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:

7. **Administrative Civil Liability:** The Settling Respondent hereby agrees to pay the administrative civil liability totaling \$13,300 as set forth in Paragraph 4 of Section II herein.

8. **Matters Addressed by Stipulation:** Upon adoption by the Regional Water Board as an Order, this Stipulation represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in the Complaint and this Stipulated Order based on the specific facts alleged in the Complaint and/or this Stipulated Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadlines specified in Paragraph 4 of Section II herein, and the Settling Respondents full satisfaction of the obligations described in Paragraph 5.

9. **Compliance with Applicable Laws:** The Settling Respondent understands that payment of administrative civil liability in accordance with the terms of this Order or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that

continuing violations of the type alleged in the Complaint may subject them to further enforcement, including additional administrative civil liability.

10. **Party Contacts for Communications related to Stipulation/Order:**

For the Regional Water Board:

Keith Lichten, Senior Water Resource Control Engineer
San Francisco Region, Regional Water Board
1515 Clay Street, 14th Floor
Oakland, CA 94612
KLichten@waterboards.ca.gov
(510) 622-2380

For the Settling Respondent:

Mr. Greg Stuhr
International Transportation Service, Inc.
1281 Pier G Way,
Long Beach, CA 90802
Greg.Stuhr@itslb.com
(562) 435-7781

11. **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.

12. **Public Notice:** The Settling Respondent understands that this Stipulation and proposed Order must be noticed for a 30-day public comment period, prior to consideration by the Regional Water Board. In the event objections are raised during the public comment period, the Regional Water Board or the Executive Officer may, under certain circumstances, require a public hearing regarding the Stipulation and proposed 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.

13. **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.

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

15. **Modification:** This Stipulation and 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.

16. **If 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 its delegee, or 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.

17. **Waiver of Hearing:** The Settling Respondent has been informed of the rights provided by CWC section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.

18. **Waiver of Right to Petition:** The Settling Respondent 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.

19. **Settling Respondent's Covenant Not to Sue:** The Settling Respondent 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.

20. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Order shall be communicated to the Settling Respondent 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 Settling Respondent of its obligation to obtain any final written approval required by this Order.

21. **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.

22. **Effective Date:** The obligations under Paragraphs 5 and 6 of this Stipulation are effective and binding on the Parties only upon the entry of an Order by the Regional Water Board, which incorporates the terms of this Stipulation.

23. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

24. **Counterpart Signatures:** This Stipulation 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, San Francisco Region Prosecution Team

Date: _____ By: _____
Thomas Mumley,
Assistant Executive Officer

TransBay Container Terminal, Inc.

Date: 9/20/10 By: _____
Greg Stühr
Director

Approved as to Form:

Date: _____ By: _____
Ann K. B. Carroll,
California State Water Resources Control Board,
Office of Enforcement
Attorney for Prosecution Team

Date: 9/21/10 By: _____
Brian M. Ledger
Gordon & Rees, LLP
Attorney for TransBay Container Terminal, Inc.

Order of the Regional Water Board

25. This Order incorporates the foregoing Stipulation.

26. In accepting the foregoing Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in CWC section 13385(e). The Regional Water Board's consideration of these factors is based upon information obtained by the Regional Water Board's staff in investigating the allegations in the Complaint or otherwise provided to the

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California State Water Resources Control Board,
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Regional Water Board. In addition to these factors, this settlement recovers the costs incurred by the staff of the Regional Water Board for this matter.

27. 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.

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

Bruce Wolfe
Executive Officer

Date: _____