SAN FRANCISCO BAY REGIONAL WATER QUALITY CONTROL BOARD

In the matter of:	)	
	)	**ORDER NO. R2-2013-1003**
MCKESSON CORPORATION	)	
33950 SEVENTH STREET (UNION CITY, CA) FACILITY	)	**SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ORDER; ORDER**
	)	
	)	

Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Order ("Stipulation" or "Stipulated Order") is entered into by and between the San Francisco Bay Regional Water Quality Control Board ("Regional Water Board") and McKesson Corporation ("Discharger") (collectively "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

1. The Discharger operates a groundwater treatment facility located at 33950 Seventh Street, Union City, California ("facility"). From 1991 to the present, the Discharger has treated and discharged groundwater containing volatile organic compounds under a National Pollutant Discharge Elimination System ("NPDES") permit at the facility. Treated groundwater is discharged to a storm drain at the facility which flows into the Alameda Flood Control Channel, a tributary of Alameda Creek, which flows into San Francisco Bay South.

2. On July 21, 2004, the Regional Water Board adopted Order No. R2-2004-0055 (General NPDES Permit No. CAG912003), *General Waste Discharge Requirements for Discharge or Reuse of Extracted and Treated Groundwater Resulting from the Cleanup of Groundwater Polluted by Volatile Organic Compounds*. Order No. R2-2004-0055 sets maximum daily effluent limitations for 1,1-dichloroethylene ("1,1-DCE") for discharge to "Drinking Water Areas" (0.11 µg/L) and for "Other Surface Water Areas" (5 µg/L). On August 12, 2009, the Regional Water Board adopted Order No. R2-2009-0059 (General NPDES Permit No. CAG912003), *General Waste Discharge Requirements for Discharge or Reuse of Extracted and Treated Groundwater Resulting from the Cleanup of Groundwater Polluted by Volatile Organic Compounds*. Order No. R2-2009-0059 sets the same maximum daily effluent limitations for 1,1-DCE as Order No. R2-2004-0055.

3. At all times since the adoption of Order No. R2-2004-0055, the Discharger has characterized the receiving waters to which it discharges treated water from the facility as "Other Surface Water Areas," including on its Notice of Intent Applications submitted to the Regional Water Board on March 11, 2004, January 20, 2009, August 27, 2010, and August 31, 2010. The Discharger's quarterly monitoring reports have also listed the effluent limitations for "Other Surface Water Areas" as the applicable effluent limitations.

4. On September 8, 2004, the Regional Water Board issued to the Discharger an Authorization to Discharge for the facility stating, "The effluent shall not contain constituents in excess of the limits listed under the column titled 'Discharge to Drinking Water Areas.'" On November 19, 2009, the Regional Water Board issued a Notice of General Permit Coverage for Discharge for the facility stating, "Limits under 'Discharge to Drinking Water Areas' are applicable."

5. As part of its Quarterly NPDES Self-Monitoring Reports, the Discharger reported concentrations of 1,1-DCE at the facility which exceeded the effluent limitations for discharge to "Drinking Water Areas" (0.11 µg/L) on the following dates:

- August 5, 2008 – 0.6 µg/L
- November 1, 2010 – 1.4 µg/L
- June 1, 2011 – 0.8 µg/L
- June 5, 2012 – 5.2 µg/L

6. In correspondence dated August 10, 2012, the Regional Water Board alleged that the Discharger had exceeded the effluent limit for 1,1-DCE at the facility, referring to the reported discharge of June 5, 2012. In correspondence dated August 14, 2012, the Regional Water Board alleged that the reported discharges at the facility of August 5, 2008, November 1, 2010, June 1, 2011, and June 5, 2012, exceeded the effluent limit for "Discharge to Drinking Water Areas." The Regional Water Board also alleged that the Discharger failed to timely notify Regional Water Board staff within 24-hours of becoming aware of the alleged exceedances, and failed to report the alleged exceedances in the cover letter of discharge monitoring reports.

7. In correspondence dated August 28, 2012, the Discharger advised the Regional Water Board of its position that the effluent limits for discharge to "Other Surface Water Areas" should apply to the facility, and that the reported concentration of 5.2 µg/l on June 5, 2012, most likely represented laboratory error, and that, therefore, the Discharger did not exceed effluent limits for 1,1-DCE at the facility on the dates alleged.

8. Additional alleged effluent limit exceedances not identified in paragraphs 5 and 6 herein are included in this Stipulated Order in order to resolve potential violations associated with such alleged exceedances that would be subject to mandatory minimum or other penalties.

9. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulation and Order to the Regional Water Board for adoption as an order by settlement, pursuant to Government Code section 11415.60. The Regional Water Board believes that this resolution is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the specific exceedances alleged except as provided in this Stipulation and Order, and that this Stipulation and Order is in the best interest of the public. The Discharger denies that it has discharged 1,1-DCE effluent at concentrations that exceed the applicable effluent limitations for the facility. The Discharger is willing, however, to enter into this Stipulated Order to avoid the cost and uncertainty of future administrative action or civil litigation. The Discharger also agrees to comply, unless and until the Regional Water Board orders otherwise, with notification and reporting requirements and the effluent limitations for "Drinking Water Areas" with respect to the treatment system discharge from the facility.

Section III: STIPULATIONS

The Parties incorporate Paragraphs 1 through 9 by this reference as if set forth fully herein and stipulate to the entry of this Stipulation as set forth below. The Parties hereby stipulate to the following:

10. ADMINISTRATIVE CIVIL LIABILITY: No later than 30 days following the Regional Water Board's, or its delegee's, execution of this Order, the Discharger shall pay the stipulated amount of $15,000 by check made payable to the "State Water Pollution Cleanup and Abatement Account." The check shall reference the Order number listed on page one of this Stipulation. The original signed check shall be sent as instructed by an invoice from the State Water Resources Control Board. A copy of the check shall be sent to the San Francisco Bay Regional Water Quality Control Board, 1515 Clay Street, Suite 1400, Oakland, California 94612, to the attention of: Lourdes Gonzales.

11. REGIONAL WATER BOARD IS NOT LIABLE: Neither the Regional Water Board members nor the Regional Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Discharger or its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Regional Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order. The Discharger covenants not to sue or pursue any administrative or civil claim or claims against any State Agency or the State of California, or their officers, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order.

12. COMPLIANCE WITH APPLICABLE LAWS: The Discharger understands that 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 Attachment A may subject it to further enforcement, including administrative civil liability.

13. PARTY CONTACTS FOR COMMUNICATIONS RELATED TO STIPULATED ORDER:

For the Regional Water Board:

Claudia Villacorta
Senior Water Resources Control Engineer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, California 94612
Claudia.Villacorta@waterboards.ca.gov

Mayumi E. Okamoto
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814
Email: Mayumi.Okamoto@waterboards.ca.gov

For the Discharger:

Jean Mescher
McKesson Corporation
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San Francisco, CA 94104
E-mail: Jean.Mescher@McKesson.com

R. Morgan Gilhuly
Barg Coffin Lewis & Trapp, LLP
350 California Street, 22nd floor
San Francisco, CA 94104
Email: rmg@bcltlaw.com

14. ATTORNEYS' 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.

15. MATTERS ADDRESSED BY STIPULATION: Upon the Regional Water Board's adoption of this Stipulated Order, this Stipulation covers all alleged violations subject to mandatory minimum penalties ("Covered Matters") and represents a final and binding resolution and settlement of any and all claims for civil liability the Regional Water Board has or may have against the Discharger arising from or relating to the alleged violations set forth in paragraphs 5, 6 and 8 and Attachment A of this Stipulation. Attachment A is attached hereto and incorporated herein by reference.

16. **PUBLIC NOTICE:** The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board, or its delegee. The Regional Water Board, or its delegee, will promptly notify the Discharger of any comments received during the 30-day public review period and will promptly communicate those comments to the Discharger. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order. If significant new information is received during the 30-day public review and comment period that reasonably affects presenting this Stipulated Order to the Regional 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 Regional Water Board, or its delegee.

17. **ADDRESSING OBJECTIONS DURING PUBLIC COMMENT PERIOD:** In the event procedural objections regarding the adequacy of the Regional Water Board's adoption of the settlement 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.

18. **NO WAIVER OF RIGHT TO ENFORCE:** The failure of the Regional 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 Stipulated Order. The failure of the Regional Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.

19. **MODIFICATION:** This Stipulated Order may 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.

20. **IF ORDER DOES NOT TAKE EFFECT:** In the event that this Stipulated 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 Regional Water Board or a court, the Parties acknowledge that they may proceed to a contested evidentiary hearing before a Hearing Officer of 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 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 in this matter. The Parties agree to waive any and all objections related to 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.

21. **ADMISSION OF LIABILITY**: In settling this matter, the Discharger does not admit to the alleged violations set forth in paragraphs 5, 6 and 8 and Attachment A of this Stipulation. This Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code section 13385.

22. **WAIVER OF RIGHT TO PETITION:** The Discharger hereby waives its right to appeal the adoption of the Stipulated Order to a California Superior Court and/or any California appellate court.

23. **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.

24. **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 Stipulated Order.

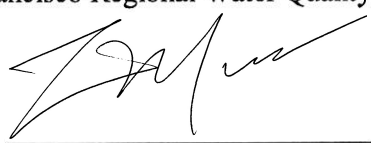
25. **NO THIRD PARTY BENEFICIARIES:** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.

26. **EFFECTIVE DATE:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board, or its delegee, enters the Stipulated Order.

27. **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.

San Francisco Regional Water Quality Control Board

By: 

Thomas E. Mumley
Assistant Executive Officer

Date: December 5, 2012

Approved as to form:

Mayumi E. Okamoto
Counsel, State Water Resources Control Board

McKesson Corporation

By: _____

Nicholas Lofacono, VP and Treasurer
McKesson Corporation

Date: Nov 27, 2012

Approved as to form:

R. Morgan Gilhuly
Barg Coffin Lewis & Trapp, LLP
Attorneys for McKesson Corporation

HAVING CONSIDERED THE ALLEGATIONS IN THE PARTIES' STIPULATIONS, THE REGIONAL WATER BOARD FINDS THAT:

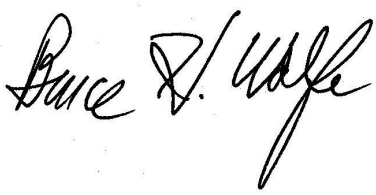
28. The Discharger is hereby ordered to remit a check (made payable to the State Water Pollution Cleanup and Abatement Account) referencing this Stipulated Order No. R2-2013-1003) in the amount of $15,000 within 30 days from the date of receipt of written notice that this Stipulated Order is entered.

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

30. 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.

31. The terms of the foregoing stipulation are fully incorporated herein and made part of this Stipulated Order of the Regional Water Board.

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



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Bruce H. Wolfe
Date: 2013.01.22
11:54:34 -08'00'

Bruce H. Wolfe, Executive Officer

Date

McKesson Corporation 33950 Seventh Street (Union City, CA) Facility
Attachment A to Settlement Agreement and Stipulation for Entry of Order

Alleged Effluent Limitation Violations

#	Alleged Violation Date	Parameter	Pollutant Group	Limitation Period	Limit	Result/ Average	Units	% Over Limit	Date 180 Days Prior	Effluent Violations in 180 Days	Serious Alleged Violation?	Exempted from MMP?	Mandatory Fine?	Penalty
1	8/5/08	1,1-DCE	II	Daily	0.11	0.6	ug/L	545	2/7/08	1	Yes	No	Yes	$3,000
2	11/1/10	1,1-DCE	II	Daily	0.11	1.4	ug/L	1272	5/5/09	1	Yes	No	Yes	$3,000
3	6/1/11	1,1-DCE	II	Daily	0.11	0.8	ug/L	727	12/3/10	1	Yes	No	Yes	$3,000
4	6/5/12	1,1-DCE	II	Daily	0.11	5.2	ug/L	4727	12/8/2011	1	Yes	No	Yes	$3,000
5	7/17/12	1,1-DCE	II	Daily	0.11	1.4	ug/L	1272	1/19/12	2	Yes	No	Yes	$3,000

Total Penalty: $15,000