CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY

In the matter of:	)	
	)	Order R2-2002-0055
Kelly Engineer and All Star Service, Inc.	)	Order R2-2002-0056
	)	
and	)	**[~~Proposed~~] Order R2-2014-~~XXXX~~** 1021
Perrin Engineer and All Star Service, Inc.	)	
	)	**SETTLEMENT AND STIPULATION FOR ENTRY OF ORDER: ~~[PROPOSED]~~ ORDER**
1791 Pine Street	)	
Concord, CA 94520	)	
Contra Costa County	)	
	)	

Section I: **INTRODUCTION**

This Settlement and Stipulation for Entry of Order (Stipulated Order) is entered into by and between the Assistant Executive Officer of the San Francisco Bay Regional Water Quality Control Board (Regional Water Board), on behalf of the Regional Water Board Prosecution Team (Prosecution Team) and Mr. Kelly Engineer on behalf of Kelly Engineer, Perrin Engineer (as successor to her liability for Order R2-2002-0056), and All Star Service, Inc., and is presented to the Regional Water Board, or its delegee, for adoption as an Order by Stipulation, pursuant to Government Code section 11415.60.

Section II: **RECITALS**

1. All Star Service, Inc. has operated a gasoline dispensing station at 1791 Pine Street (the Site) since 1999. Mr. Kelly Engineer has operated the site under the names All Star Service, Inc. and All Star Gasoline, Inc. Mr. Kelly Engineer is the sole corporate officer of All Star Service, Inc., and the sole site operator. Mr. Kelly Engineer and All Star Service, Inc. are named dischargers in Administrative Civil Liability Order R2-2002-0055.

2. Mrs. Perrin Engineer was the owner of the property located at 1791 Pine Street. Mrs. Perrin Engineer and All Star Service, Inc. are named dischargers in Administrative Civil Liability Order R2-2002-0056.

3. In Administrative Civil Liability Complaint Nos. R2-2002-0019 and R2-2002-0020, dated February 15, 2002, the Prosecution Team alleged that the dischargers were required to submit a technical report by March 31, 2000. The dischargers submitted the report on March 19, 2001, in violation of Water Code section 13267. On April 17, 2002, the Regional Water Board adopted Administrative Civil Liability Order Nos. R2-2002-0055 and R2-2002-0056 which imposed administrative civil liability on the dischargers.

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4. On October 24, 2002 the Office of the Attorney General of the State of California entered a judgment against Kelly Engineer on Administrative Civil Liability Order R2-2002-0055 in the Superior Court of the State of California, County of Contra Costa, Case NO-1600 ("Kelly Engineer Judgment") and on July 2, 2003 a judgment was entered against Perrin Engineer and All Star Service, Inc. on Administrative Civil Liability Order R2-2002-0056 in the Superior Court of the State of California, County of Contra Costa, Case NO-0943 ("Perrin Engineer / All Star Judgment").

5. Subsequent to the Regional Water Board's adoption of Administrative Civil Liability Order Nos. R2-2002-0055 and R2-2002-0056, the matter was referred to the Office of the Attorney General on March 19, 2003, for collection of the outstanding liability owed to the State Water Pollution Cleanup and Abatement Account.

6. Mr. Kelly Engineer and All Star Service, Inc. assumed responsibility for making payments pursuant to Administrative Civil Liability Order R2-2002-0056 in 2008. He made the following four payments, which the Cleanup and Abatement Account allocated to each outstanding liability amount as follows:

Date on Check	Payment	Amount Allocated to R2-2002-0055 (Kelly Engineer)	Amount Allocated to R2-2002-0056 (Perrin Engineer)
March 12, 2008	$4000	$2768	$1232
April 15, 2008	$3000	$2070	$930
July 22, 2008	$3000	$2070	$930
October 27, 2008	$3000	$2070	$930
Balance Due		$27,822	$12,328

7. Mr. Kelly Engineer has undertaken remediation at the Site. He has paid or incurred costs for investigation and remediation in the amount of $98,000. The environmental consultant working on the Site estimated that the future costs of implementing enhanced bioremediation for site remediation for a period of two years, and groundwater monitoring for three to five years will cost between $70,000 and $165,000.

8. The Parties have engaged in negotiations and have agreed to a modified payment allocation of the liability as described below in Paragraph 10. The amount of liability imposed by this Stipulated Order is consistent with a reasonable liability determination taking into account past payments, future payments, past expenditures directed toward remediation of the Site, a commitment to complete remediation to the satisfaction of the Regional Water Board, and the cost of future remediation efforts.[1] The Prosecution Team believes that the resolution of the alleged violations in the manner set forth herein is fair and reasonable and fulfills all of its

[1] The alleged violations in ACL Complaint Nos. R2-2002-0019 and R2-2002-0020 have been previously adjudicated by the Regional Water Board and liability for these violations imposed by ACL Order Nos. R2-2002-0055 and R2-2002-0056. The purpose of this Stipulated Order is not to re-adjudicate those alleged violations, rather, to enter into an enforceable Order by stipulation to collect the outstanding administrative civil liability originally imposed by those ACL Orders pursuant to Water Code section 13268 and 13323.

enforcement objectives, and no further action is warranted concerning those alleged violations, except as provided in this Stipulation, and that this Stipulation is in the best interest of the public.

9. To resolve by consent and without further administrative proceedings the alleged violations set forth herein, the Parties have agreed to the imposition of administrative civil liability of $25,500 against Mr. Kelly Engineer. This settlement amount includes $5,900 for Regional Water Board staff costs and the $13,000 previously paid in 2008 as noted in the table above. In addition, Mr. Kelly Engineer agrees to continue remediation efforts at the Site in a good faith effort and on the timeline approximated by his consultant. (See Exhibit A.) The Regional Water Board considers investigation and completion of remediation efforts at the Site to be valuable consideration, in fact the key condition to entering into this settlement.

Section III: STIPULATIONS

The Parties stipulate to the following:

10. **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.

11. **Administrative Civil Liability:** No later than 30 days following the Regional Water Board's, or its delegee's, execution of this Order, Mr. Kelly Engineer shall pay $12,500, in stipulated administrative civil liability by check made payable to the "State Water Resources Control Board" to be deposited into the State Water Pollution Cleanup and Abatement Account. The check shall reference Order numbers R2-2002-0055 and R2-2002-0056. The original signed check shall be sent to the following address, and notification of payment shall be sent to the Office of Enforcement (email to Tamara.Austin@waterboards.ca.gov) and the Regional Water Board (email to Barbara.Siemuski@waterboards.ca.gov).

Division of Administrative Servises
Attn: Accounting, 18th Floor
P.O. Box 100
Sacramento, CA 95812

This payment, plus the $13,000 paid to date (totaling $25,500) includes $5,900 in Regional Water Board staff costs.

The new payment ($12,500) will be applied to the two ACL's as follows:

Order No.	R2-2002-0055 (Kelly Engineer)	R2-2002-0056 (Perrin Engineer)
Balance as of this agreement	$27,822	$12,328
Allocation of the $12,500 payment	$172	$12,328
Remaining balance	$27,650	$0

In addition to the $12,500 payment due, Mr. Kelly Engineer shall continue remediation efforts at the site in a good faith and timely manner, until the cleanup is sufficient to warrant issuance of a No Further Action letter from the Regional Water Board (complete remediation).

Upon payment by Mr. Kelly Engineer of the $12,500, the Regional Water Board shall promptly provide Kelly Engineer with duplicate duly executed and acknowledged originals of full satisfaction of judgment of the Perrin Engineer / All Star Judgment and all liability under Administrative Civil Liability Order R2-2002-0056 shall be deemed satisfied.

If at any time Mr. Kelly Engineer's efforts to complete remediation at the Site are not timely or cease, the Regional Water Board may pursue the remaining balance of $27,650, plus interest and penalties calculated as of the date of the original ACL, April 17, 2002. Execution on the Kelly Engineer Judgment shall be stayed provided that Mr Kelly Engineer is taking remediation efforts at the site in a good-faith and timely manner. When remediation efforts by Kelly Engineer are sufficient to warrant issuance of a no further action letter from the Regional Water Board, Administrative Civil Liability Order R2-2002-0055 shall be deemed satisfied, and the Regional Water Board shall promptly provide Kelly Engineer with duplicate duly executed and acknowledged originals of full satisfaction of judgment of the Kelly Engineer Judgment.

12. **Compliance with Applicable Laws:** Mr. Kelly Engineer understands that payment of administrative civil liability in accordance with the terms of this Order and/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 herein may subject it to further enforcement, including additional administrative civil liability.

13. **Party Contacts for Communications related to this Stipulation and Order:**

For the Regional Water Board:

Laurent Meillier
Sr. Engineering Geologist
San Francisco Bay Regional Water
Quality Control Board
1515 Clay Street, 14th Floor
Oakland, CA 94612
Lmeillier@waterboards.ca.gov
(510) 622-3277

For Mr. Kelly Engineer:

Mr. Kelly Engineer
c/o All Star Service, Inc.
1791 Pine Street
Concord, CA 94520
(510) 938-4900

14. **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.

15. **Matters Covered by this Stipulation:** Upon adoption by the Regional Water Board, or its delegee, as an Order, this Stipulation represents a final and binding resolution and settlement of all previous claims, violations, or causes of action which could have been asserted and any additional claims, violations, or causes of action based on the specific facts alleged herein against Mr. Kelly Engineer regarding non-payment of administrative civil liabilities. The provisions of

this Paragraph are expressly conditioned on Mr. Kelly Engineer's full payment of administrative civil liability by the deadline specified in Paragraph 11 herein.

16. **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.

17. **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 procedure as necessary or advisable under the circumstances.

18. **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 Parties are represented by counsel in this matter.

19. **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 by the Regional Water Board or its delegee.

20. **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 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 the balance remaining on Administrative Civil Liability Orders R2-2002-0055 and R2-2002-0056 plus interest and penalties calculated as of the date of the original ACLs will remain due and payable.

21. **No Admission of Liability:** In settling this matter, Mr. Kelly Engineer 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.

22. **Waiver of Hearing:** Mr. Kelly Engineer 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.

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23. **Waiver of Right to Petition:** Mr. Kelly Engineer hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

24. **Mr. Kelly Engineer's Covenant Not to Sue:** Mr. Kelly Engineer 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 and Order.

25. **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.

26. **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.

27. **Counterpart Signatures; Facsimile and Electronic Signature:** 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. Further, this Stipulation may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

28. **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, which incorporates the terms of this Stipulation.

IT IS SO STIPULATED.

California Regional Water Quality Control Board,
San Francisco Region Executive Officer

Date: 6-23-14 By: Dyan C. Whyte
Dyan C. Whyte
Assistant Executive Officer

Mr. Kelly Engineer

Date: 6-20-14 By: Kelly Engineer
Kelly Engineer

(REV. 8-19-14)

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HAVING CONSIDERED THE ALLEGATIONS AND THE PARTIES' STIPULATIONS, THE REGIONAL WATER BOARD, OR ITS DELEGEE, FINDS THAT:

1. The Regional Water Board incorporates the foregoing Stipulation, set forth in Paragraphs 1 through 28 above, by this reference, as if set forth fully herein.

2. In accepting this Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13327. The Regional Water Board's consideration of these factors is based upon information obtained by the Prosecution Team in investigating the allegations set forth in the Stipulation, or otherwise provided to the Regional Water Board. This Stipulation recovers the costs incurred by the Prosecution Team in investigating and pursuing enforcement of the allegations set forth in the Stipulation.

3. 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 (Pub. Resources Code, § 21000 et seq.) in accordance with section 15321, subdivision (a)(2), title 14, of the California Code of Regulations.

4. The Executive Officer is authorized to refer this matter directly to the Attorney General for enforcement if Mr. Kelly Engineer fails to perform any of its obligations under the Order.

5. Fulfillment of Mr. Kelly Engineer'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 on behalf of the California San Francisco Bay Regional Water Quality Control Board, pursuant to Water Code section 13323 and Government Code section 11415.60, that the foregoing Stipulation is accepted in settlement of this action.

Dyan C. Whyte
for

Bruce H. Wolfe
Executive Officer

August 11, 2014
Date