

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

In the matter of:)	
)	
THE WINE GROUP, LLC,)	SETTLEMENT AGREEMENT AND
ALAMEDA COUNTY)	STIPULATION FOR ENTRY OF
)	ADMINISTRATIVE CIVIL LIABILITY
Discharges in Violation of)	ORDER
Waste Discharge Requirements;)	
Livermore Valley Groundwater)	R2-2017-1014
Basin)	ORDER
)	
)	

Section I: INTRODUCTION

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order) is entered into by and between the California Regional Water Quality Control Board, San Francisco Bay Region, Prosecution Team (Prosecution Team), and The Wine Group, LLC, doing business as Concannon Vineyard (The Wine Group or Settling Respondent) (collectively Parties), and is presented to the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board), or its delegate, for adoption as an Order by settlement, pursuant to Government Code section 11415.60. This Stipulated Order resolves the violations alleged herein by the imposition of administrative civil liability against The Wine Group in the amount of **\$635,000**.

Section II: RECITALS

2. The Wine Group owns and operates a commercial winery facility in an unincorporated area of Alameda County, adjacent to the City of Livermore. The Wine Group generates sanitary sewage from employees and visitors and winery wastewater from wine production and wine bottling. These wastes are managed by onsite wastewater treatment systems that discharge treated wastewater to subsurface dispersal systems. Order No. R2-2014-0029 (Permit) prescribes waste discharge requirements for the wastewater treatment systems.

3. Permit section B.6.c.1 sets an effluent limitation for total nitrogen for discharges from the Bottling Wastewater System to a subsurface dispersal field. The monthly

average effluent limitation was 5 milligrams per liter (mg/L).¹ Between July 15, 2014, and July 8, 2016, The Wine Group allegedly violated Permit section B.6.c.1 for 586 days by discharging over four million gallons of wastewater from the Bottling Wastewater System with total nitrogen concentrations that averaged 44 mg/L.

4. To resolve the alleged violations in Section II, paragraph 3 by consent and without further administrative proceedings, the Parties have agreed to the imposition of an administrative civil liability of \$635,000 against the Settling Respondent. Payment of \$635,000 is due no later than 30 days following the Regional Water Board executing this Order.

5. The settlement amount (\$635,000) is lower than the liability amount the Prosecution Team calculated or asserted using Steps 1 through 10 of the State Water Resources Control Board's Water Quality Enforcement Policy (May 2010) (Enforcement Policy) as shown in Attachment A. As a result of settlement discussions, the Parties have agreed to lower the liability in consideration of hearing and/or litigation risks, including equitable factors and mitigating circumstances. The reduction is justified under Enforcement Policy section VI.B.

6. The Parties have agreed to settle the matter without administrative or civil litigation and to present this Stipulated Order to the Regional Water Board, or its delegate, for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

7. The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the violations except as provided in this Stipulated Order, and that this Stipulated Order is in the public's best interest.

Section III: STIPULATIONS

The Parties incorporate the foregoing Recitals and stipulate to the following:

8. **Administrative Civil Liability:** The Settling Respondent hereby agrees to the imposition of an administrative civil liability totaling \$635,000 to resolve the alleged violations as set forth in Section II.

9. **Payment:** The Settling Respondent shall submit a check for \$635,000 no later than 30 days following the date the Regional Water Board or its delegate signs this Stipulated Order. The check shall be made payable to "Waste Discharge Permit Fund," reference the Order number on page one of this Stipulated Order, and submitted to:

¹ The authorization to discharge nitrogen terminated on July 9, 2016, pursuant to Permit section C.9.d. The Wine Group has ceased discharging to land and is hauling all wastewater to East Bay Municipal Utility District for disposal. The Wine Group submitted a Report of Waste Discharge dated November 22, 2016, to modify Order R2-2014-0029 and obtain authorization to discharge winery process wastewater.

State Water Resources Control Board Accounting Office
Attn: ACL Payment
P.O. Box 1888
Sacramento, CA 95812-1888

The Settling Respondent shall provide a copy of the check via e-mail to the State Water Resources Control Board, Office of Enforcement (paul.ciccarelli@waterboards.ca.gov) and the Regional Water Board (jack.gregg@waterboards.ca.gov).

10. **Compliance with Applicable Laws:** Settling Respondent understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or 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 herein may subject it to further enforcement, including additional administrative civil liability.

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

For the Regional Water Board:

Jack Gregg, PhD, PG
San Francisco Bay Regional Water
Quality Control Board
1515 Clay Street, 14th Floor
Oakland, CA 94612
jack.gregg@waterboards.ca.gov
(510) 622-2300

For Settling Respondent:

Kyle Schmidt
Director of Environmental Services
The Wine Group
17000 E Hwy 120
Ripon, CA 95366
Kyle.Schmidt@thewinegroup.com
(209) 599-0451

12. **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.

13. **Matters Addressed by this Stipulation:** Upon the Regional Water Board's or its delegate's adoption, this Stipulated Order represents a final and binding resolution and settlement of the alleged violation(s) as of the effective date of this Stipulated Order. The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadlines specified in Section III, paragraph 9.

14. **Public Notice:** The Settling Respondent understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board, or its delegate, for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Regional Water Board or its delegate. The Settling Respondent agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

15. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Regional Water Board's or its delegate's adoption of the Order, and public review of this Stipulated Order is lawful and adequate. The Parties understand that the Regional Water Board, or its delegate, have the authority to require a public hearing on this Stipulated Order. In the event procedural objections are raised or the Regional Water Board requires a public hearing 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 and/or this Stipulated Order as necessary or advisable under the circumstances.

16. **Interpretation:** This Stipulated 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.

17. **Modification:** The Parties shall not modify this Stipulated Order 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 delegate.

18. **If the Order Does Not Take Effect:** In the event that the Order does not take effect because the Regional Water Board or its delegate does not approve it, or the State Water Resources Control Board (State Water Board) or a court vacates it in whole or in part, 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 violation(s), 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 the following:

- 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 violation 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.

19. **Waiver of Hearing:** Settling Respondent has been informed of the rights Water Code section 13323, subdivision (b) provides, and hereby waives its right to a hearing before the Regional Water Board prior to the Order's adoption.

20. **Waiver of Right to Petition or Appeal:** Settling Respondent 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.

21. **Covenant Not to Sue:** 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 matter expressly addressed by this Stipulated Order.

22. **No Admission of Liability:** In settling this matter, Settling Respondent 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 Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327 or section 13385, subdivision (e).

23. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Stipulated Order shall be communicated to the Settling Respondent in writing. No oral advice, guidance, suggestions, or comments from Regional Water Board employees or officials regarding submissions or notices shall be construed to relieve the Settling Respondent of its obligation to obtain any final written approval this Stipulated Order requires.

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. **Severability:** This Stipulated Order is severable; should any provision be found invalid, the remainder shall remain in full force and effect.

27. **Counterpart Signatures; Facsimile and Electronic Signature:** 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. Further, this Stipulated Order 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 Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board, or its delegate, enters the Order incorporating the terms of this Stipulated Order.

IT IS SO STIPULATED.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION, PROSECUTION TEAM**

Date: January 25, 2017

By: _____
Dyan C. Whyte
Assistant Executive Officer

Approved as to form:

By: _____
Paul D. Ciccarelli
Attorney
State Water Resources Control Board
Office of Enforcement

Settlement Agreement and Stipulated Administrative Civil Liability
The Wine Group, LLC

THE WINE GROUP, LLC

Date: January 20, 2017

By: _____



John Sutton
Chief Financial Officer

ORDER OF THE REGIONAL WATER BOARD

29. This Order incorporates the foregoing Sections I through III by this reference as if set forth fully herein.

30. In accepting this Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13327, and has applied the Penalty Calculation Methodology set forth in the State Water Resource Control Board's Enforcement Policy, which is incorporated herein by this reference. The Regional Water Board's consideration of these factors and application of the Penalty Calculation Methodology 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. In addition to these considerations, this Order recovers staff costs incurred by the Regional Water Board for this matter.

31. 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.

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

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

Bruce H. Wolfe
Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region

Date

ATTACHMENT A

**Factors in Determining
 Administrative Civil Liability**

**THE WINE GROUP, LLC - CONCANNON WINERY
 CONCANNON WINERY WASTEWATER MANAGEMENT SYSTEMS
 LIVERMORE VALLEY, ALAMEDA COUNTY**

The State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy) establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors required by Water Code section 13327. Each factor in the Enforcement Policy and its corresponding category, adjustment, and amount for the alleged violation is presented below. The Enforcement Policy should be used as a companion document in conjunction with this administrative civil liability assessment since the penalty methodology and definition of terms are not replicated herein. The Enforcement Policy is at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

ALLEGED VIOLATIONS

The Wine Group, LLC (The Wine Group) violated Discharge Specifications, section B.6.c.1 of Order No. R2-2014-0029 (Permit), which specifies effluent limitations for total nitrogen for discharges from the Bottling Wastewater System to a subsurface dispersal field. Between July 15, 2014, and July 8, 2016, The Wine Group discharged over four million gallons of wastewater from the Bottling Wastewater System with total nitrogen concentrations that averaged 44 milligrams (mg/L) over 2014 and 2015 (the monthly average effluent limit was 5 mg/L). The Wine Group is subject to penalties pursuant to Water Code section 13350.

Table 1. Enforcement Policy Penalty Factor Assessment

PENALTY FACTOR	ASSESS- MENT	DISCUSSION
Harm or Potential Harm to Beneficial Uses for Discharge Violations	2	<p>Harm or Potential for Harm: Below Moderate</p> <p>A score of 2, below moderate, is selected because there is a less than moderate threat to beneficial uses (i.e., impacts are observed or reasonably expected, harm to beneficial uses is minor).</p> <p>The Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) designates existing and potential beneficial uses for groundwater in the Region. The existing beneficial uses applicable to the Livermore Valley Groundwater Basin are municipal and domestic water supply (MUN), industrial water supply (IND), industrial process supply (PROC), and agricultural water supply (AGR).</p> <p>Below moderate is appropriate because impacts to beneficial uses—particularly MUN—are reasonably expected, but the overall impacts to beneficial uses is minor for the following reasons: subsurface attenuation may reduce total nitrogen levels in the wastewater before it reaches groundwater; the discharges from the facility contribute to an existing legacy nitrate plume from offsite; and no long-term drinking water impacts have been documented.</p>

PENALTY FACTOR	ASSESS- MENT	DISCUSSION
Physical, Chemical, Biological, or Thermal Characteristics (Degree of Toxicity)	2	<p>Degree of Toxicity: Moderate</p> <p>A score of 2, moderate, is selected because levels of nitrogen discharged to groundwater pose a moderate risk to human health.</p> <p>Nitrogen discharged from the facility (over 200 mg/L) may elevate nitrate concentrations in groundwater to levels that exceed the U.S. EPA Maximum Contaminant Level (MCL) for drinking water (45 mg/L). Nitrate exceeding the MCL can cause methemoglobinemia.²</p>
Susceptibility to Cleanup or Abatement	1	<p>Susceptibility to Cleanup: No</p> <p>A score of 1 is selected because less than 50% of the discharge is susceptible to cleanup or abatement.³</p>
Per Gallon and Per Day Factor for Discharge Violations	0.15	<p>Deviation from Requirement: Major</p> <p>Permit Discharge Specifications section B.6.c.1 was rendered ineffective because The Wine Group failed to meet total nitrogen effluent limitations for 2 years.</p>
Adjustment for Multiple Day Violations	No	<p>Multiple Day Adjustment: No</p> <p>The violations do not meet any criterion necessary for an adjustment because they (a) caused daily detrimental impacts to the environment, (b) resulted in a daily economic benefit, and (c) occurred with the knowledge and control of The Wine Group.</p>
Initial Liability	\$439,500	<p>The initial liability is calculated as follows: the per day factor (0.15) was multiplied by the statutory maximum per day liability under Water Code section 13350(e)(1) (\$5,000), and then by the number of days of violation that occurred at the Bottling Wastewater System discharge points (586 days).</p>
Adjustments for Discharger Conduct		
Culpability	1.3	<p>A higher liability is appropriate because The Wine Group did not cease discharging when it reported effluent limit violations beginning with its first monitoring report after the permit was issued and after Regional Water Board staff provided multiple notices/warnings regarding violations. While The Wine Group expressed concern about complying with the Permit during the issuance hearing, this did not take away its obligation to comply with the terms of the Permit. However, it did gather additional data to evaluate groundwater conditions and proposed Permit modifications, which were not supported by Permit staff. As an alternative to ceasing discharge, The Wine Group did initiate a process for connecting to the local sanitary sewer, but these efforts have been delayed due to no fault of the company.</p>

² Methemoglobinemia or blue baby syndrome, can cause infants to become seriously ill and, if untreated, die.

³ See Harter *et al.* 2012. Addressing Nitrate in California's Drinking Water with a Focus on Tulare Lake Basin and Salinas Valley Groundwater. Report for the State Water Resources Control Board Report to the Legislature. Center for Watershed Sciences, University of California, Davis (concluding that there are no practicable methods for remediating groundwater basins contaminated by nitrate after evaluating various methods).

PENALTY FACTOR	ASSESSMENT	DISCUSSION
Cleanup and Cooperation	1.1	A higher liability is appropriate because The Wine Group willingly met and discussed issues with Regional Water Board staff, but it did not follow recommended actions to address the violations and did not come back into compliance with the Permit.
History of Violations	1.1	A higher liability is appropriate because The Wine Group has a prior history of violations. The Central Valley Regional Water Board issued The Wine Group Time Schedule Order R5-2014-0095 for nitrogen and metals discharges to groundwater from a Fresno County winery. The Central Valley Regional Water Board also issued The Wine Group two Notice of Violations in 2001 and a Cease and Desist Order in 1991.
Total Base Liability Amount	\$691,300	Each applicable factor relating to The Wine Group’s conduct is multiplied by the Initial Liability (\$439,500) to determine the Total Base Liability Amount.
Ability to Pay and Continue in Business	No adjustment	The Wine Group has the ability to pay the proposed liability. It is one of the world’s largest wine producers and has significant assets, completing a \$30 million expansion and renovation of its winery in 2009. ⁴ It also purchased several major wineries in 2008 for \$134 million. ⁵
Economic Benefit	\$367,200	The Wine Group may have realized an economic benefit estimated at \$367,200 based on delayed costs for purchase and installation of a treatment system plus the avoided costs for operation and maintenance of a treatment system (EcoBen).
Other Factors as Justice May Require		
Staff Costs	\$13,500	The Enforcement Policy gives the Regional Water Board discretion to consider staff costs in relation to the Total Base Liability Amount. The Prosecution Team, not including legal counsel, incurred \$13,500 in staff costs to investigate the alleged violations and to prepare this analysis and supporting information. The costs consist of time spent by Prosecution Team staff members based on the low end of the salary range for each classification. It is appropriate to increase the Total Base Liability Amount by \$13,500 in consideration of investigation and enforcement costs because it serves as a sufficient general and specific deterrent against future violations.
Maximum Liability	\$2,930,000	Water Code section 13350(e)(1) states that the Regional Water Board may administratively impose a civil liability amount not to exceed \$5,000 for each day of violation. The maximum liability is based on 586 days of violation.
Minimum Liability	\$403,920	The Enforcement Policy requires that the minimum liability amount imposed not be below the economic benefit plus ten percent. The minimum administrative civil liability for the alleged violations is \$403,920 (\$367,200 x 1.1).
Final Proposed Liability	\$704,800	The final proposed liability is the total base liability after adjusting for ability to pay, economic benefit, and other factors. \$704,800 is within the maximum and minimum liabilities.

⁴ San Francisco Business Times (January 11, 2009).

⁵ San Francisco Business Times (February 28, 2008).