

State of California
California Regional Water Quality Control Board
Santa Ana Region

IN THE MATTER OF:)
)
County of Orange)
Lincoln Avenue Bridge Project)
) Settlement Agreement and Stipulations For
Attn: ~~Ignacio Ochoa~~) Adoption of Order No. R8-2015-0039
 Shane Silsby)

This Settlement Agreement and Stipulation for Entry of Order No. R8-2015-0039 ("Settlement Agreement" or "Stipulated Order") is entered into by and between the Division Chief of the Santa Ana Regional Water Quality Control Board ("Regional Board") Prosecution Team ("Prosecution Team") and the County of Orange ("Discharger") (the Regional Board and the Discharger are collectively referred to as the "Parties") and is presented to the Regional Board or its delegee, for adoption as an Order by settlement, pursuant to Government Code 11415.60. This Settlement Agreement accepts the stipulations for settlement of administrative civil liability assessed to the Discharger for violations of California Water Code section 13385.

A. RECITALS

1. The discharge of storm water runoff from construction sites owned or controlled by the County of Orange is regulated under Regional Board Order No. R8-2009-0030, NPDES Permit No. CAS618030 (Permit). Provision XV.2. requires that "All construction activities shall be in compliance with the latest version of [the] State's General Permit for Storm Water Discharges Associated with Construction Activities except that an NOI need not be filed with the State Board." As shown in Attachment A, incorporated herein by reference, the Discharger violated the Permit terms by violating provisions of State Water Resources Control Board (State Board) Order No. 2009-0009-DWQ, NPDES Permit No. CAS000002, "General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities" (General Permit).
2. The Discharger is the Legally Responsible Person for construction activity related to the Lincoln Avenue Bridge Project (Project) in the cities of Anaheim and Orange. The Project involves the widening of the Lincoln Avenue Bridge from four lanes to its ultimate six-lane Major Arterial Highway width¹. The Project is

¹ County of Orange, Initial Study/Mitigated Negative Declaration (IP 11-445), Lincoln Avenue Widening Project, October 2012.

part of the larger Lincoln Avenue Widening Project within the jurisdictions of the City of Anaheim, the City of Orange, and the Discharger. The Project is a construction project that disturbs over 9 acres of land. Consequently, a Notice of Intent to comply with the terms and conditions of the General Permit was submitted by the Discharger to the Regional Board on July 17, 2013.

3. Section V, A.2 of the General Permit requires the Discharger to minimize or prevent pollutants in storm water discharges through the use of controls, structures, and management practices that achieve best available technology for toxic and non-conventional pollutants and best conventional technology for conventional pollutants. Section B.1.c of Attachment C to the General Permit requires the Discharger to store chemicals in water-tight containers with secondary containment or in a completely enclosed storage. Section B.1.d of Attachment C to the General Permit requires the Discharger to minimize exposure of construction materials to precipitation. Section B.2.a of Attachment C to the General Permit requires the Discharger to prevent the disposal of rinse or wash waters or materials on impervious or pervious surfaces into the storm drain system. Section B.2.i of Attachment C to the General Permit requires the Discharger to ensure the containment of concrete washout areas and other washout areas that may contain additional pollutants so there is no discharge into the underlying soil and onto the surrounding areas. Section B.2.f of Attachment C to the General Permit requires the Discharger to contain and securely protect stockpiled waste material from wind and rain at all times unless actively being used. Section E.1 of Attachment C to the General Permit requires the Discharger to establish and maintain effective perimeter controls to sufficiently control erosion and sediment discharges from the site.
4. Regional Board staff conducted an unscheduled inspection of the Lincoln Avenue Bridge Widening Project on December 16, 2014. During the December 16, 2014 inspection, Regional Board staff identified violations of the General Permit provisions described in Recital 3, which are described in detail in Attachment A.
5. Water Code section 13385(a)(2) provides that any person who violates the General Permit may be subject to administrative civil liability of up to \$10,000 for each day the violation occurs. Water Code section 13385(a)(5) provides that any person who violates Section 301 of the federal Clean Water Act may be subject to administrative civil liability of up to \$10,000 for each day the violation occurs.
6. The State Water Board adopted Resolution No. 2009-0083, thereby adopting the Water Quality Enforcement Policy (Enforcement Policy), which became effective May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability that address factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13385, subdivision, and section 13327 that is less than the maximum civil liability allowed in section 13385 subdivision (c).

7. The Parties have engaged in settlement negotiations and agree to fully settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the Regional Board or its delegee for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The liability imposed by this Order was reached using the Water Quality Enforcement Policy, as described in Attachment A. The Prosecution Staff believes that the resolution of the alleged violation is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the specific violations alleged in Attachment A, except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

B. STIPULATIONS

1. **Jurisdiction:** The Parties agree that the Regional Board has subject matter jurisdiction over the violation described herein and personal jurisdiction over the Parties to this Settlement Agreement.
2. **Administrative Civil Liability:** Within 30 days of adoption of this Stipulated Order, the Discharger shall remit **thirty-nine thousand two hundred dollars (\$39,200)** in the form of a check made payable to the *State Water Resources Control Board Cleanup and Abatement Account*. The check shall indicate Order No. R8-2015-0039 and shall be sent to the following address:

State Water Resources Control Board
Division of Administrative Services, ATTN: ACL Payment
P.O. Box 1888
Sacramento, California 95812-1888

A copy of the check shall also be transmitted electronically to the following e-mail address:

Adam Fischer
Adam.Fischer@waterboards.ca.gov

3. **Scope of Order:** Upon adoption by the Regional Board, or its delegee, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged in this Order or which could have been asserted based on the specific facts alleged in this Stipulated Order against Discharger as of the effective date of this Stipulated Order. The provisions of this Paragraph are expressly conditioned on Discharger's full payment of the administrative civil liability by the deadline specified in Stipulation 2.
4. **Waiver of Hearing:** The Discharger 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 Board prior to the adoption of the Order.

5. **Denial of Liability:** Neither this Settlement Agreement (including all Attachments), nor any payment made pursuant to the Stipulated Order, shall constitute evidence of, or be construed as, a finding, adjudication, or acknowledgement of any fact, law, or liability, nor shall it be construed as an admission of violation of any law, rule, or regulation, by the Discharger. However, this Stipulated Order and/or any actions of payment pursuant to the Order may constitute evidence in actions seeking compliance with this Order. This Order may be used as evidence of a prior enforcement action in future unrelated enforcement actions by the Regional Board against the Discharger.
6. **Release and Covenant not to Sue the Discharger:** Upon the full payment of the thirty-nine thousand, two hundred dollars (\$39,200) as required in Stipulation 2, the Regional Board shall and does release, discharge, and covenant not to sue the Discharger, including its officers, elected board members, agents, directors, employees, subcontractors, attorneys, representatives, predecessors-in-interest, and successors and assigns for any and all claims or cause of action, including for civil penalties or administrative oversight costs, of every kind and nature whatsoever, in law and equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which arise out of or are related to this action.
7. **Release and Covenant not to Sue Regional Board:** Upon the effective date of this Order, the Discharger shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against the Regional Board, including its officers, board members, agents, directors, employees, contractors, subcontractors, attorneys, representatives, predecessors-in-interest, and successors and assigns for any and all claims or causes of action, of every kind and nature whatsoever, in law and equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which arise out of or are related to this action.
8. **Public Notice:** The Parties agree that the Settlement Agreement, as signed by the Parties, will be noticed for a 30-day public comment period prior to being presented to the Regional Board, or its delegee, for adoption in the Order. In the event objections are raised during the public review and comment period, the Regional Board, or its delegee, may, under certain circumstances, require a public hearing regarding the Settlement Agreement. In that event, the Parties agree to meet and confer concerning any such objections, and may mutually agree to revise or adjust the proposed Settlement Agreement. Except in such an event, the Discharger agrees that it will not rescind or otherwise withdraw its approval of this Settlement Agreement prior to its adoption in the Order.
9. **Procedure:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Settlement Agreement, will be adequate. In the event procedural objections are raised prior to the effective date of the Order, the Parties agree to meet and confer concerning any such objections, and may mutually agree to revise or adjust the procedure as necessary or advisable under the circumstances. However, agreement to such revisions or adjustments shall not require Discharger to pay any amount in excess of that set forth in this Settlement Agreement.

10. **Order not Adopted/Vacated:** In the event that this Order does not take effect because it is not adopted by the Regional Board or its delegee, or is vacated in whole or in part by the State Board or a court, the Discharger acknowledges that the Prosecution Team may proceed to a contested evidentiary hearing before the Regional Board to determine whether to assess administrative civil liability for the underlying alleged violations, or may continue to pursue settlement. In the event of the Order being vacated by the State Board or a court, unless waived by the Discharger in writing, the Regional Board shall refund to the Discharger, within thirty (30) days of the effective date of such vacation, the thirty-nine thousand two hundred dollars (\$39,200), provided that the Discharger had paid the amount as per this Settlement Agreement. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions, including this Settlement Agreement and all Attachments, will not be admissible as evidence in any subsequent administrative or judicial proceeding or hearing. The Parties also agree to waive the following objections related to their efforts to settle this matter:
- a. Objections related to prejudice or bias of any of the Regional Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that the Regional Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter, except that Discharger may object to members of the Prosecution Team serving as advisors to the Regional Board in any such subsequent administrative or judicial proceeding or hearing; or
 - b. Laches or delay or other equitable defenses based on the time period that the order or decision by settlement may be subject to administrative or judicial review.
11. **Appeals:** Upon adoption of this Order, the Discharger waives their right to appeal this Order to the State Board, a California Superior Court and/or any California appellate level court. Nothing in this Settlement Agreement, however, shall be construed to prevent the Discharger from participating as parties or interveners in any appeal of this Order brought by a third party before any California court of law or the State Board.
12. **Effect of Stipulated Order:** Except as expressly provided in this Settlement Agreement, nothing in the Order is intended nor shall it be construed to preclude the Prosecution Team or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
13. **Water Boards 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 Discharger or their respective directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Settlement Agreement, nor shall the Regional Board, its members, or staff be held as parties to or guarantors of any contract entered into by Discharger, or

their respective directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Settlement Agreement.

14. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Regional Board to enforce any provision of this Settlement Agreement shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Agreement. The failure of the Prosecution Team or Regional Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Agreement. No oral advice, guidance, suggestions or comments by employees or officials of any Party regarding matters covered under this Agreement shall be construed to relieve any Party regarding matters covered in this Agreement. This Agreement relates only to the subjective matter hereof, including administrative civil liability for the violations listed in Attachment A. 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 other than those addressed by this Settlement Agreement.
15. **Regulatory Changes:** Nothing in this Settlement Agreement shall excuse Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.
16. **Third Party Claims.** Nothing in this Settlement Agreement 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.
17. **Authority to Enter Stipulated Order:** Each person executing this Settlement Agreement in a representative capacity represents and warrants that he or she is authorized to execute this Settlement Agreement on behalf of and to bind the entity on whose behalf he or she executes the Settlement Agreement.
18. **Integration:** This Settlement Agreement constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Settlement Agreement.
19. **Modification:** Neither this Settlement Agreement nor the proposed Order shall be modified by any of the Parties by oral representation whether made before or after the execution of this Order. All modifications must be made in writing and approved by Discharger and the Regional Board or its delegee.
20. **Interpretation:** This Settlement 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.
21. **Effective Date:** The effective date of the Order shall be the date on which it is adopted by the Regional Board or its delegee.
22. **Disputes:** In the event of a dispute, the Discharger, as appropriate, 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 Discharger 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 the Discharger are unable to resolve the dispute, the decision of the Executive Officer or the Executive Officer Designee shall be final, unless appealed to a court of competent jurisdiction.

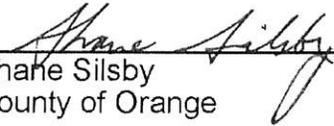
23. **Counterpart Signatures:** This Settlement Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.
24. **Incorporated Attachments:** Attachment A is incorporated by reference and is made fully a part of this Settlement Agreement as though set forth herein.

IT IS SO STIPULATED²:



Hope Smythe, Division Chief
Santa Ana Regional Water Quality Control Board
Prosecution Team

10/20/15
Date

WS 

Shane Silsby
County of Orange

10/22/2015
Date

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² The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.

PROPOSED ORDER

HAVING CONSIDERED THE PARTIES' STIPULATIONS, AS SET FORTH IN THE ATTACHED SETTLEMENT AGREEMENT, THE SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

1. In adopting this Order, the Santa Ana Regional Water Quality Control Board or its Delegee has assessed a penalty in accordance with Water Code section 13385(c) and the Enforcement Policy.

2. The Settlement Agreement resolves an action brought to enforce the laws and regulations administered by the Santa Ana Regional Water Quality Control Board. The Santa Ana Regional Water Quality Control Board, acting through its Executive Officer, finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.

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.**

Kurt Berchtold
Executive Officer

Date