STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the Matter of:	)	**ORDER No. R8-2016-0030**
	)	**SETTLEMENT AGREEMENT AND**
	)	**STIPULATION FOR ENTRY OF**
Cham-Cal Engineering Co. and	)	**ADMINISTRATIVE CIVIL LIABILITY ORDER**
Western Avenue Associates, L.P.	)	
12722 Western Avenue	)	
Garden Grove, CA 92811	)	
	)	

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulation and Order or Stipulated Order) is entered into by and between the Division Chief of the Regional Water Quality Control Board, Santa Ana Region (Regional Board), on behalf of the Santa Ana Water Board Prosecution Team (Prosecution Team), and Cham-Cal Engineering Co. and Western Avenue Associates, L.P. (Dischargers) (collectively Parties) and is presented by the Prosecution Team and Dischargers to the Santa Ana Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

SECTION I: RECITALS

1. Cham-Cal Engineering Co. is a manufacturer of heavy duty mirrors, brackets, and other accessories for commercial trucks and operates at 12722 Western Avenue, Garden Grove, California, County of Orange (Site). In general, the manufacturing operations have included stamping, grinding, polishing, electro-polishing, assembling, welding, and degreasing. Western Avenue Associates, L.P owns the property at which Cham-Cal Engineering Co. conducts operations. Tetrachloroethane (PCE) was used in Cham-Cal Engineering Co.'s vapor degreaser from the late 1970's to 1989. Based on the depths of multiple detections of PCE in soil and soil vapor samples at the Site including the elevated concentrations of PCE present at the Site beneath the vapor degreaser area, Regional Board staff conclude that Cham-Cal Engineering Co. and Western Avenue Associates, L.P. discharged volatile organic compounds (VOCs) to soil and groundwater at the Site and full delineation of the impacted area and prompt remediation are warranted.

2. The Regional Board's Executive Officer issued Water Code section 13267 Order – Directive for Site Investigation at Cham-Cal Engineering Co. (13267 Order) requiring the Dischargers to generate technical reports for investigation regarding underground contamination. The 13267 Order required the Dischargers to submit technical reports to the Regional Board in order to delineate contamination that originated from operations at the Site and perform preliminary sampling. The work plan for a complete characterization of soil and groundwater to assess the full lateral and vertical extent of VOC-impacts was due October 20, 2015.

3. On January 25, 2016, the Division Chief of the Regional Board issued Administrative Civil Liability Complaint No. R8-2016-0005 (Complaint) to the Dischargers. The Complaint alleged that the Dischargers failed to submit a work plan characterizing the full lateral and vertical extent of VOC impacts in accordance with the requirement in the 13267 Order. This violation subjects the Dischargers to administrative civil liability pursuant to Water Code section 13268.

4. On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy ("Enforcement Policy"). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The Prosecution Staff considered the methodology set forth in the Enforcement Policy for the alleged violations above, as shown in Attachment A, which is attached hereto and incorporated by reference as though fully set forth herein.

5. 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 Santa Ana Water Board's Executive Officer for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The Parties have agreed to the imposition of $49,764 in liability as set forth 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 violation alleged in the Complaint, except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

SECTION II: STIPULATIONS

The Parties stipulate to the following terms for a Stipulated Order:

1. **Jurisdiction:** The Parties agree that the Regional Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulated Order.

2. **Administrative Civil Liability:** Within thirty (30) days of adoption of this Stipulated Order, the Dischargers shall remit **forty-nine thousand seven hundred and sixty four dollars ($49,764)** 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. R8-2016-0030" 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:

   Chuck Griffin
   Chuck.Griffin@waterboards.ca.gov

3. **Matters Addressed by Stipulation:** Upon the Regional Board's adoption of this Order,

this Stipulation represents a final and binding resolution and settlement of the violations alleged, and all claims, violations or causes of action that could have been asserted against the Dischargers as of the effective date of this Order based on the specific facts alleged in the Complaint or this Stipulation and Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability, in accordance with Paragraph 2 of this Order.

4. **Public Notice:** The Parties understand that this Stipulation and Order will be noticed for a 30-day public review and comment period on the Regional Board's website prior to settlement or imposition of any administrative civil liability by the Regional Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulation and Order to the Regional Board, or its delegee, for adoption, the Division Chief may unilaterally declare this Stipulation and Order void and decide not to present it to the Regional Board, or its delegee. The Dischargers agree that they may not rescind or otherwise withdraw its approval of the Stipulation and Order.

5. **Addressing Objections Raised During the Public Comment Period**: The Parties agree that the procedure contemplated for the Santa Ana Regional Water Board's adoption of the settlement by the Parties and review by the public, as reflected in this Stipulation and Order, will be adequate. In the event procedural objections are raised prior to the Stipulation and 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.

6. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Regional 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 this Stipulated Order. 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 Stipulation and Order.

7. **Integration:** This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.

8. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Stipulated Order. All modifications must be made in writing and approved by the Regional Board or its delegee.

9. **Interpretation:** This Stipulated Order 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.

10. **If Order Does Not Take Effect:** In the event that this Stipulation and Order does not take effect because it is not approved by the Regional Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional 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:

i. Objections related to prejudice or bias of any of the Santa Ana Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Santa Ana 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 this matter; or

ii. 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.

11. **Effect on Future Enforcement Actions:** In settling this matter, the Dischargers recognize that this Stipulation and Order may be used as evidence of a prior enforcement action consistent with Water Code sections 13327 and 13385(e), and the Enforcement Policy.

12. **Waiver of Hearing**: The Dischargers have been informed of the rights provided by Water Code section 13323(b), and hereby waives its right to a hearing before the Regional Board prior to the adoption of the Stipulation and Order.

13. **Waiver of Right to Petition:** The Dischargers hereby waives its right to petition the Regional Water Board's adoption of the Stipulation and Order as written for review by the State Water Board, and further waive its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

14. **Covenant not to Sue**: Upon the effective date of this Stipulated Order, Dischargers shall and do release, discharge, and covenant not to sue or pursue any civil or administrative claims against the Regional Board, including its officers, 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.

15. **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 Dischargers or its respective directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Regional Board, its members or staff be held as parties to or guarantors of any contract entered into by Respondent, or its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

16. **Authority to Bind**: Each person executing this Stipulation and Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation and order on behalf of and to bind the entity on whose behalf he or she executes the Stipulated Order.

17. **Effective Date**: This Stipulation and Order shall be effective and binding on the

Parties upon the adoption of this Stipulated Order by the Regional Water Board, or its delegee, which expressly incorporates all of the terms of this Stipulation.

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

19. **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 the original, but such counterparts shall together constitute one document.

20. **Compliance with Applicable Laws**: Dischargers understand that payment of administrative civil liability in accordance with the terms of this Stipulation and Order and/or compliance with the terms of this Stipulation and Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged may subject it to further enforcement, including additional administrative civil liability.

IT IS SO STIPULATED:

Hope Smythe _____ 4/5/16
Hope Smythe Date
For the Regional Board Prosecution Team

Ed Chambers _____ 3-29-2016
Ed Chambers Date
Cham-Cal Engineering Co.
Western Avenue Associates, L.P.

HAVING CONSIDERED THE PARTIES' STIPULATIONS, THE SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

1. Issuance of this Stipulated 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.

2. The foregoing Stipulation is fully incorporated herein and made part of this Order.

PURSUANT TO SECTION 13268 OF THE CALIFORNIA WATER CODE AND SECTION 11415.60 OF THE CALIFORNIA GOVERNMENT CODE, THE EXECUTIVE OFFICER **HEREBY ADOPTS THIS ORDER**.

_____ _____

Kurt V. Berchtold Date
Executive Officer
Santa Ana Regional Water Quality Control Board

Attachment A
Specific Factors Considered for Administrative Civil Liability
Cham-Cal Engineering Co. and Western Avenue Associates, L.P.

The Santa Ana Water Board alleges that the Dischargers failed to submit the work plan and time schedule by October 20, 2015 that was required in the September 24, 2015 Investigative Order that was issued by the Santa Ana Regional Board's Executive Officer pursuant to California Water Code section 13267. The Investigative Order directed Western Avenue Associates, L.P. (property owner) and Cham-Cal Engineering Co. (operator) to submit the work plan and time schedule to conduct a complete characterization of soil and groundwater to assess the full lateral and vertical extent of volatile organic compounds (VOCs) and 1,4-dioxane impacts at the Cham-Cal Site. For the purpose of applying the Enforcement Policy's administrative civil liability methodology, the alleged violation is a non-discharge violation. Each factor of the Enforcement Policy and its corresponding score for each violation are presented below:

Violation No. 1: Failure to submit required work plan and time schedule: In accordance with the requirement set forth in the September 24, 2015 Investigative Order pursuant to Water Code section 13267, the Dischargers failed to submit a work plan and time schedule by October 20, 2015.

Penalty Calculation

Step 1. Potential for Harm for Discharge Violations
This step is not applicable because the violation is a not a discharge violation.

Step 2. Assessment for Discharge Violations
This step is not applicable because the violation is a not a discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

The initial liability factor must take into consideration the Potential for Harm and the extent of deviation from applicable requirements.

The per day factor is 0.55.

This factor is determined using the potential for harm of the violation and the extent of the Dischargers' deviation from requirements. The potential for harm was determined to be "Moderate" due to the following: The beneficial uses for the Orange Groundwater Management Zone are municipal and domestic supply, agricultural supply, industrial service supply and industrial process supply. The existing analytical data from one-time grab groundwater sampling at the Site indicate that the concentrations of VOCs in shallow groundwater exceed drinking water standards, and therefore may be impacting, or threaten to impact, the deeper drinking water aquifer. Our understanding of groundwater is limited to the

existing dataset. This highlights the need for additional investigation and groundwater data. The submittal of the work plan and time schedule is critical for the protection of groundwater quality. Until the site is remediated, VOCs in groundwater remain every day at concentrations that exceed the State Water Resources Control Board Division of Drinking Water (DDW) maximum contaminant levels (MCLs) for drinking water. In particular, the solvent stabilizer 1,4-dioxane has also been detected in the groundwater beneath the site (Water Board split sample - analytical data received on December 15, 2014), at concentrations that exceed the DDW notification level for drinking water. Since the violation thwarts the Regional Board's ability to identify water quality risks, the violation has the potential to exacerbate the presence and accumulation of, and the related risks associated with, pollutants of concern. This in turn, presents a substantial threat to beneficial uses. In addition, the presence of VOCs has the potential to pose a significant risk to human health of the indoor occupants. Therefore, conservatively, a moderate potential for harm was assessed.

The deviation from requirements was determined to be major, as the requirement to submit the work plan and time schedule has been rendered ineffective. Therefore, because the Dischargers failed to submit the work plan and time schedule, the Dischargers were assessed a major deviation from the requirement.

Initial Liability

A failure to submit a report is subject to civil liability under Water Code section 13268(b)(1) in an amount which shall not exceed one thousand dollars ($1,000) for each day in which the violation occurs. The Dischargers failed to submit the work plan and time schedule by October 20, 2015, and are ninety-seven (97) days late in submitting an adequate work plan from the issuance of this Complaint on January 25, 2016. Therefore, the Per Day Assessment is calculated as (0.55 factor from Table 3) X (97 days) X ($1,000 per day). The Initial Liability Value is $53,350.

Step 4. Adjustment Factors

The Enforcement Policy allows for multi-day violations to be consolidated, provided specific criteria are satisfied. The Enforcement Policy also describes three factors related to the Dischargers' conduct that should be considered for modification of the initial liability amount: the Dischargers' culpability, the Dischargers' efforts to clean up or cooperate with regulatory authorities after the violation, and the Dischargers' history of violations. After each of these factors is considered for the violation alleged, the applicable factor should be multiplied by the proposed liability amount for the violation.

a) *Multiple Day Violations*

The Enforcement Policy provides that for violations lasting more than 30 days, the Santa Ana Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per-day economic benefit, if any, resulting from the violation. Here, the economic benefit of the violation cannot be accurately quantified and measured on a daily basis. Therefore, the Prosecution Team elected to apply the formula to reduce the number of days of violation. The Prosecution Team chose to reduce the number of days of violation alleged from 97 days of violation to 48 days.

b) *Culpability*: 1.45

Discussion: The Dischargers were assessed a score of 1.45, which increases the liability amount. Cham-Cal Engineering Co. has historically stored, used, and disposed of hazardous chemicals, including PCE, at its facility. As a facility responsible for or contributing to the pollution of a groundwater source beneficial use, it is imperative that steps be taken toward remediation of the pollutants of concern. A reasonably prudent person in similar circumstances would not have delayed remediation activities.

The Santa Ana Water Board issued a 13267 Order requiring a work plan and time schedule to conduct a complete characterization of soil and groundwater to assess the full lateral and vertical extent of the impacts. The Dischargers had previously voluntarily agreed to take the necessary steps to delineate the extent of VOCs in soil and groundwater beneath their property. In turn, the Regional Board chose not to issue a 13267 Order back in 2010. Prior to issuing the 13267 Order, the Regional Board gave the Dischargers another opportunity to voluntarily commence additional investigation when the Santa Ana Water Board staff sent the Dischargers a letter on September 15, 2015 of the intent to issue a Water Code section 13267 investigative order. After issuance of the 13267 Order, Santa Ana Water Board staff attempted to reach out and persuade the Dischargers to submit the required work plan and time schedule by October 20, 2015. On October 16, 2015, Santa Ana Water Board staff sent Mr. Chambers an email reminder of the October 20, 2015 due date for submittal of the work plan. On October 27, 2015, Santa Ana Water Board staff sent a Notice of Violation (NOV) to the Dischargers, explaining the potential liability for the failure to submit the work plan and time schedule, and gave the Dischargers an additional 5 days from the date of the NOV to submit the work plan and time schedule.

Despite these efforts, as of the date of the issuance of this Complaint, the Dischargers have not yet submitted the work plan and time schedule to Santa Ana Water Board staff. Mr. Chambers explained that he is working toward financing the cost with a loan and that he is waiting for the bank to provide the

money to begin work. The requirements contained in the 13267 Order have been known to the Dischargers since at least 2014, when they received the proposed cleanup and abatement order. This provided the Dischargers ample time to prepare for and obtain any necessary financing to conduct additional investigation activities. The Dischargers' failure to timely comply with the 13267 Order given that they have known about the severity of water quality impacts to soil and groundwater indicates negligent behavior. A factor of 1.45 is appropriate where the Dischargers' conduct amounted to negligent behavior, falling well below what a reasonable and prudent person would have done in similar circumstances.

c) *Cleanup and Cooperation*: 1.3

Discussion: The Dischargers were assessed a score of 1.3, which increases the penalty. Regional Board staff has invested a great amount of time and resources to communicate with Mr. Chambers and notify the Dischargers of the requirement to conduct additional remediation activities before the issuance of the 13267 Order from the Board. Despite these attempts, the Dischargers have chosen to not take the necessary steps in a timely manner, given the serious water quality impacts, and the likely human health impacts from the pollution to building occupants. In response to the September 15, 2015 letter from the Regional Board of the intent to issue a 13267 order, Mr. Chambers stated that remediation can begin once the funds are available. Since the issuance of the 13267 Order, Mr. Chambers has been communicative and has claimed that he is waiting for approval of a loan before proceeding. Therefore, a lower multiplier than a 1.5 is appropriate. The Dischargers have not demonstrated compliance with the requirements of the 13267 Order up until this enforcement action. A multiplier of 1.3 has been assessed.

d) *History of Violations*: 1.0

Discussion: The Dischargers were assessed the score of 1.0. Santa Ana Water Board staff has sought voluntary compliance from the Dischargers for a number of years. No formal enforcement actions have been taken until now. Therefore, the Dischargers have no history of violations.

Step 5. Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 3.

a) *Total Base Liability Amount:* **$49,764** [Initial Liability $26,400 ((0.55 factor from Table 3) X (48 days) X ($1,000 per day)) x Adjustments (1.45)(1.3)(1.0) = $49,764].

Step 6. Ability to Pay and Continue in Business

The Enforcement Policy requires the consideration of the Dischargers' ability to pay and continue in business. The Regional Board has the initial burden of producing information in the public record demonstrating the Dischargers' ability to pay and continue in business. During the period provided to submit evidence and at hearing, the Dischargers may submit information that it believes supports its position.

The Prosecution Team sets forward the following information in satisfaction of its initial burden. Cham-Cal Engineering Co. is a manufacturer of heavy duty mirrors, brackets, and other accessories for commercial trucks. Cham-Cal Engineering Co. operates a business with between 50 to 99 employees and has been in business for over 30 years. Cham-Cal Engineering Co. receives income from its business.

Western Avenue Associates, L.P. owns the parcel, assessor's parcel number 215-033-03, where Cham-Cal Engineering Co. has conducted its operations. The property is approximately 2.2 acres of land designated for single family residence use. According to the Orange County tax assessor's office, the assessed total value of the land as of 2014 is $1,801,733. This information in the public record is indicative of the Dischargers' available assets to pay the total proposed penalty and continue in business.

Step 7. Other Factors as Justice May Require

a) *Discussion:* No adjustment to the Combined Total Base Liability Amount has been made based on "other factors as justice may require."

Step 8. Economic Benefit

a) *Estimated Economic Benefit:* **$5,318**

Discussion: The 13267 Order required commencement of the investigation following approval of the work plan and submission of the final report following completion of the field work. Regional Board staff estimated avoided and delayed costs associated with these actions to be approximately $61,985. The Discharger avoided compliance actions estimated at approximately $61,985. The actual economic benefit realized is derived by adjusting the delayed and avoided costs for inflation and tax deductibility, assuming the Discharger operates as a tax-paying entity. The BEN financial model provided by the United States Environmental Protection Agency was used to compute the total economic benefit of noncompliance. The total economic benefit of noncompliance was estimated to be $5,318. The

Dischargers have received an economic benefit from the costs saved by (1) not developing a work plan and time schedule; (2) delaying and avoiding the collection of samples and analysis of the samples; (3) failing to pay the Regional Water Board staff's oversight costs that would have been necessary for review of groundwater monitoring data ($2,250); and (4) failing to evaluate the extent of pollution below the surface and extending into the groundwater. Note the costs considered for calculating the economic benefit are conservative and do not include potentially substantial costs associated with scenarios/conditions that cannot be reasonably calculated based on the information currently available.

The adjusted combined total base liability amount is more than the economic benefit plus 10% or $5,850 ($5,318 + $532), as required by the Enforcement Policy.

Step 9. Maximum and Minimum Liability Amounts

a) *Minimum Liability Amount:* ***$5,850***

Discussion: The Enforcement Policy requires that the minimum liability amount imposed not fall below the economic benefit plus ten percent. As discussed above, the Santa Ana Water Board Prosecution Team's estimate of the Dischargers' economic benefit obtained from the alleged violation plus ten percent is $5,850.

b) *Maximum Liability Amount:* ***$97,000***

Discussion: The maximum administrative liability amount is the maximum amount allowed by Water Code section 13268(b)(1): one thousand dollars ($1,000) for each day in which the violation occurs. The violation alleged in this Complaint occurred for 97 days. The maximum liability amount is $97,000. The Total Base Liability Amount of $49,764 falls below the statutory maximum amount.

Step 10. Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed is **$49,764**.