CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the matter of:	)	
	)	
APPLIED ENGINEERING AND GEOLOGY, INC.	)	**SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY ORDER**
	)	
Alleged instances of misrepresentation of costs submitted to and reimbursed by the Underground Storage Tank Cleanup Fund	)	~~PROPOSED~~ **ORDER**

Section I: INTRODUCTION

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Order, Stipulation, or Stipulation and Order) is entered into by and between the State Water Resources Control Board (State Water Board), on behalf of the Underground Storage Tank Cleanup Fund (Cleanup Fund), and Applied Engineering and Geology, Inc. (AEG) and its principal Earl Robert Stephens (Settling Respondents) (collectively Parties), and is presented to the State Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60. This Stipulation resolves the violations alleged herein by the imposition of administrative civil liability against AEG in the amount of **$200,000**.

Section II: RECITALS

2. On January 25, 2013, the Office of Enforcement's Fraud, Waste, and Abuse Prevention Unit issued a request for information to AEG. The request notified AEG that the Fraud, Waste, and Abuse Prevention Unit was in the process of conducting an audit of invoices submitted, either directly or through claimants, by AEG to the Cleanup Fund.

3. The audit focused on alleged misrepresentations AEG made to the Cleanup Fund including equipment that was never present on-site and overcharges for work performed by an affiliated company.

4. The audit identified misrepresentations made to the Cleanup Fund related to alleged unreasonable and unnecessary costs for AEG's professional services for conducting corrective action for cleaning up of releases from petroleum underground storage tanks.

5. On September 25, 2014, Senate Bill 445 amended the Health and Safety Code, adding section 252 99.80 that allows the State Water Board to impose civil liability administratively for misrepresentations made to the Cleanup Fund.

6. After an initial review of the invoices/reimbursement requests AEG submitted to the Cleanup Fund, either directly or through claimants, and subsequent response to the audit, the Fraud, Waste, and Abuse Prevention Unit determined that several alleged misrepresentations occurred after September 25, 2014, when Senate Bill 445 came into effect.

7. Prior to a complaint being issued, AEG re-engaged with the Fraud, Waste, and Abuse Prevention Unit to discuss resolution of any and all alleged violations or misrepresentations.

8. The Parties have engaged in settlement negotiations and agree to fully settle the alleged violations for TWO HUNDRED THOUSAND DOLLARS ($200,000.00) without administrative or civil litigation and by presenting this Stipulation to the State Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60 and Health and Safety Code section 25299.80.

9. The Cleanup Fund believes that the resolution of the alleged matter set forth herein is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning invoices AEG submitted to the Cleanup Fund, either directly or through claimants, except as provided in this Stipulation, and that this Stipulation is in the best interest of the public.

Section III: STIPULATIONS

The Parties stipulate to the following:

10. **Administrative Civil Liability:** The Settling Respondents hereby agree to pay the administrative civil liability totaling TWO HUNDRED THOUSAND DOLLARS (**$200,000.00**) by check made payable to the *State Water Resources Control Board*, no later than 30 days following execution of this Order by the State Water Board or its delegee. The memo line of the check shall reference *UST Cleanup Fund*. The original signed check shall be sent to the following address, and notification of payment shall be sent to abenedict@waterboards.ca.gov.

State Water Resources Control Board
Office of Enforcement
1001 "I" St
Sacramento, CA 95814
Attn: Kim Sellards, MS16-41A

11. **Injunctive Relief/Prohibitions:**

a. Settling Respondents agree that as of December 15, 2015, AEG and its principal are prohibited from participating in any work and/or project overseen, directed, funded, submitted to or administered by the State Water Board's Cleanup Fund, which includes, but is not limited to, the Emergency, Abandoned, and Recalcitrant Account Program, Orphan Site Cleanup Fund Program, Expedited Claim Account Program, and/or the Site Cleanup Subaccount Program. This also includes, but is not limited to, investigation, corrective action, and associated work, including preparation of reimbursement requests.

b. Settling Respondents agree that as of December 15, 2015, AEG and its principal are prohibited from participating in any work and/or project overseen, directed, funded, submitted to or administered by the State Water Board's Cleanup and Abatement Account Program.

c. Settling Respondents agree that as of December 15, 2015, AEG and its principal may no longer own in whole or in part any entity, or consult or provide contract services that performs work or provides services on any project that seeks payment or reimbursement from the State Water Board's Cleanup Fund and/or by the Cleanup and Abatement Account Program, including, but not limited to any entity providing services that may be considered for reimbursement from the Cleanup Fund and the Cleanup and Abatement Account.

d. Settling Respondents agree that they will provide written notice to all person(s) and entities that it currently or proposes to work for and/or provide services to of this agreement, specifically terms 11(a) through (c). This requirement shall be effective as of the date of execution of the attached Order.

e. The State Water Board's Cleanup Fund agrees to review reimbursement requests and reimburse AEG's Claimants for reasonable and necessary work performed on sites listed in Attachment A for work performed between October 1, 2014, and December 31, 2015. These reimbursement requests will be paid within 90 days after execution of the Order by the State Water Board.

f. Settling Respondents agree to waive all rights to appeal any and all determinations of eligibility made by the Cleanup Fund with respect to reimbursement of costs and work performed at the sites listed in Attachment A. Costs include, but are not limited to equipment and subcontractor charges.

g. Settling Respondents agree that outside of the reimbursement requests for the sites listed in Attachment A, any and all work performed, supervised by and/or directed by AEG and its principal that have not been reimbursed by the Cleanup Fund as of October 15, 2015, is not reasonable and necessary corrective action for purposes of reimbursement from the Cleanup Fund and, therefore, not subject to reimbursement from the Cleanup Fund. This

includes, but is not limited to, work performed by a third party or subcontractor.

h. Outside of those reimbursement requests set forth in section 11(e), Settling Respondents are not entitled to any further payment based upon any reimbursement request submitted to the State Water Board's Cleanup Fund, whether submitted and not yet processed by the State Water Board, submitted but pending appeal before the State Water Board, submitted but determined ineligible, or for work completed but not yet submitted or appeals not yet submitted.

i. Nothing in this Stipulation limits or prohibits the State Water Board from taking civil, criminal and/or administrative enforcement against AEG, its principal, and/or its Claimants for actions that occur and/or are related to activity after the date of entry of the Order.

12. **State Water Board is Not Liable:** Neither the State Water Board members nor the State Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Settling Respondent, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and Order, nor shall the State Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Settling Respondent, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and Order.

13. **Necessity for Written Approvals:** All approvals and decisions of the State Water Board under the terms of this Stipulation and Order shall be communicated to the Settling Respondents in writing. No oral advice, guidance, suggestions or comments by employees or officials of the State Water Board regarding submissions or notices shall be construed to relieve the Settling Respondents of their obligation to obtain any final written approval required by this Order.

14. **Compliance with Applicable Laws:** Settling Respondents 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 herein may subject it to further enforcement, including additional administrative civil liability.

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

For the Cleanup Fund:	**For Settling Respondents:**
Anna Kathryn Benedict	Lawrence T. Ring
Senior Counsel	Law Office of Larry T. Ring
State Water Board, OE	Applied Engineering & Geology, Inc.
1001 I Street, 16th Floor	12150 Herdal Drive
Sacramento, CA 95814	Auburn, CA 95603
Abenedict@waterboards.ca.gov	larry@lringlaw.com
916.323.6848	530.885.7836

16. **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.

17. **Matters Addressed by this Stipulation:** Upon adoption of the Order incorporating the terms set forth herein, this Stipulation represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged herein. The provisions of this paragraph are expressly conditioned on Settling Respondents' full payment of the Stipulated Administrative Civil Liability by the deadline specified above.

18. **No Admission of Liability:** In settling this matter, Settling Respondents do 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 State and/or Regional Water Quality Control Board, this Stipulation and Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327 or section 13385, subdivision (e).

19. **Public Notice:** The Parties understand that this Stipulation and Order must be noticed for a 30-day public review and comment period prior to consideration by the State Water Board or its delegee. In the event objections are raised during the public review and comment period, the State Water Board or its delegee may, under certain circumstances, require a public hearing regarding the Stipulation and Order. 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.

20. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the State 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 the procedure as necessary or advisable under the circumstances.

21. **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.

22. **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 State Water Board or its delegee.

23. **If the Order Does Not Take Effect:** In the event that the Order does not take effect because it is not approved by the State Water Board or its delegee, the parties agree to meet to attempt to resolve any issues prior to this matter proceeding to a contested hearing.

24. **Waiver of Right to Petition or Appeal:** Settling Respondents hereby waive their rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

25. **Covenant Not to Sue:** Settling Respondents covenant 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.

26. **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.

27. **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.

28. **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.

29. **Effective Date**: This Stipulation is effective and binding on the Parties upon the entry of this Order by the State Water Board, or its delegee, which incorporates the terms of this Stipulation.

IT IS SO STIPULATED.

Date: 2/17/2016 By: _____

Darrin Polhemus, Deputy Director
Division of Financial Assistance
State Water Resources Control Board

Applied Engineering and Geology, Inc.

Date: 2/16/2016 By: _____

Earl Robert Stephens/
President of Applied Engineering and Geology, Inc.

Earl Robert Stephens

Date: 2/16/2016 By: _____

Earl Robert Stephens

ORDER OF THE STATE WATER BOARD

30. This Order incorporates the foregoing Stipulation.

31. The Parties believe that settlement of this matter is in the best interest of the People of the State. Therefore, to settle this matter, the Settling Respondent agrees to comply with the terms and conditions of this Order.

32. The Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

33. The State Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Settling Respondent fails to perform any of its obligations under the Stipulation and Order.

PURSUANT to Government code section 11415.60 and Health and Safety code section 25299.80, IT IS HEREBY ORDERED on behalf of the State Water Resources Control Board.

Thomas Howard

Thomas Howard, Executive Director

4/5/16

Date

SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY ORDER

APPLIED ENGINEERING AND GEOLOGY, INC. (AEG)

ATTACHMENT A

Site Name	Claim #
California Ranch Property	17916
D&C Market	15689
Dawley's Chevron	14598
Full Stop Market	18817
Ken's Auto Repair	9204
Meritage Motors	17333
Oliver's Grocery	14760