

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the matter of:)	
)	
HAYDEN ENVIRONMENTAL,)	SETTLEMENT AGREEMENT AND
INC. dba TKO)	STIPULATION FOR ENTRY OF
ENVIROSERVICES; JULIE)	ADMINISTRATIVE CIVIL LIABILITY
HAYDEN; KURT HAYDEN)	ORDER
)	
Alleged misrepresentations)	PROPOSED
submitted to the Underground)	ORDER
Storage Tank Cleanup Fund)	WQ 2018-XXXX-EXEC
)	
)	

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 Hayden Environmental, Inc. dba TKO EnviroServices, (TKO) and its principals Julie Hayden and Kurt Hayden (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 TKO in the amount of **\$100,000.00**.

Section II: RECITALS

2. On September 4, 2015, the Office of Enforcement's Fraud, Waste, and Abuse Prevention Unit (Fraud Prevention Unit) issued a request for information and investigative subpoena to TKO. The request notified TKO that the Fraud Prevention Unit was in the process of conducting an audit of invoices submitted, either directly or through claimants, by TKO to the Cleanup Fund.
3. The audit focused on alleged misrepresentations TKO made to the Cleanup Fund.
4. Misrepresentations by the Settling Respondents to the Cleanup Fund are the factual basis of the charges in Santa Barbara Superior Court Case 17CR10065. The State Water Board alleged misrepresentations administratively, including those alleged in the criminal case referenced.

5. Effective September 25, 2014, Senate Bill 445 (Stats. 2014, Ch. 547) amended the Health and Safety Code, adding several provisions, including section 25299.80 that allows the State Water Board to impose up to \$500,000 civil liability administratively for each misrepresentation made to the Cleanup Fund. The Health and Safety Code also provides for the recovery of enforcement costs and disqualification of persons from participation in the Cleanup Fund for violations of section 25299.80.
6. On September 28, 2017, Kurt and Julie Hayden were charged in a felony complaint with Penal Code violations and violations of Health and Safety Code section 25299.80.5(a) by the Santa Barbara County District Attorney's Office.
7. In April of 2018, the parties agreed to discuss settling the administrative and civil case brought by the State Water Board Cleanup Fund against the Settling Respondents. All parties to this Stipulation and Order agree that based upon the investigation by the Fraud Prevention Unit, there are sufficient facts to form the basis for guilty pleas to an added Count 4 misdemeanor violation of Health and Safety Code section 25299.80.5 in Santa Barbara Superior Court Case 17CR10065, above.
8. The Parties have engaged in settlement negotiations and agree to fully and finally settle this administrative action for **\$100,000.00** 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 its enforcement objectives, that no further action against TKO is warranted concerning invoices TKO 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 **\$100,000.00** 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 nickolaus.knight@waterboards.ca.gov.

State Water Resources Control Board
Office of Enforcement
801 "K" St., Suite 2300
Sacramento, CA 95814
Attn: Amantha Henkel

11. Injunctive Relief/ Prohibitions:

- a. Settling Respondents agree that as of September 28, 2017, TKO and its principals, Kurt Hayden and Julie Hayden, are prohibited from performing any work for or in connection with any program administered, funded or directed in any manner by the State Water Board. The prohibition in this paragraph includes, but is not limited to, any program, fund or account authorized under division 20, chapters 6.75 and 6.76 of the Health and Safety Code.
- b. Settling Respondents are specifically disqualified from participation in any fund or account authorized under division 20, chapter 6.75 of the Health and Safety Code pursuant to this Order and section 25299.71.
- c. Settling Respondents agree to waive all rights to appeal or petition, administratively or judicially, or in any forum or venue, any and all determinations of eligibility made by the Cleanup Fund with respect to reimbursement of costs and work performed at any site. All determinations regarding whether costs invoiced to the Cleanup Fund are eligible reasonable and necessary costs are final.
- d. Settling Respondents agree to waive and/or abandon all appeals or petitions related to any reimbursement requests for costs incurred on claims within the meaning of division 20, chapter 6.75 of the Health and Safety Code presently before the State Water Board and/or any court in California or anywhere in the United States of America.
- e. Settling Respondents agree that after May 2, 2018, any and all work performed, supervised by and/or directed by TKO and/or its principals that has not been submitted for reimbursement by the Cleanup Fund is not eligible reasonable and necessary costs 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 to TKO not submitted as part of a reimbursement request by May 2, 2018.
- f. Settling Respondents agree they are not entitled to any further payment from UST Cleanup Fund claimants based upon any reimbursement request submitted to the State Water Board's Cleanup Fund, including costs submitted or pending appeal or petition before the State Water Board, submitted but determined ineligible, or for work completed but not yet submitted or appeals or petitions not yet submitted, except as otherwise provided by paragraph 12 of this Order.

- g. Settling Respondents agree they will seek no further payment from any claimants, grantees, or borrowers for any work performed on a claim, grant, or loan within the meaning of division 20, chapters 6.75 and 6.76 that was or will be reimbursed by the State Water Board after the effective date of this order. Settling respondents reserve the right to seek payment from claimants, including civil actions against claimants, who received reimbursements from the Cleanup Fund, and have not forwarded any reimbursements lawfully due to Settling Respondents.
 - h. Settling Respondents will provide written notice to all clients of TKO, including those clients who are existing site claimants, that they are no longer doing any work for any claims, grants, or loans within the meaning of division 20, chapters 6.75 and 6.76 of the Health and Safety Code. Copies of the written notice shall be submitted to the contacts in paragraph 16 within 30 days of the effective date of this order.
12. The State Water Board's Cleanup Fund agrees to review reimbursement requests submitted by May 7, 2018 and reimburse claimants for eligible, reasonable and necessary costs for work performed on claims where TKO was active and authorized to work prior to September 28, 2017, and for which TKO has not already been paid by a claimant. The claims considered under this paragraph are summarized in the attached table. Within 90 days of the effective date of this Order, the Cleanup Fund will approve for payment all costs eligible for reimbursement under this paragraph.
- a. Payment for Cleanup Fund Claim No. 16959 will not be approved unless and until a successor claimant is approved by the Cleanup Fund and the successor claimant is determined eligible to receive reimbursement for the costs incurred. Settling Respondents reserve the right to seek reimbursement from a successor claimant for Claim No. 16959.
 - b. The Cleanup Fund will not make any payments that are otherwise contrary to statutes, regulations or decisional authority.
 - c. The Cleanup Fund will notice TKO when reimbursements are issued to claimants pursuant to this Stipulated Order.
13. **Covered Matters:** This agreement covers all the administrative actions the State Water Board alleged in relation to the conduct described in paragraph 4 under Health and Safety Code section 25299.80. This agreement is a full and complete Settlement of those matters against TKO and its principals except for the obligations imposed herein.
14. **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 Respondents, 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 Respondents, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and Order.

15. **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.

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

For the Cleanup Fund:

Nickolaus Knight
Senior Counsel
State Water Board, OE
801 K Street, Suite 2300
Sacramento, CA 95814
nickolaus.knight@waterboards.ca.gov
916.327.0169

For Settling Respondents:

For Kurt Hayden:
Addison Steele
Santa Barbara Public Defender
1100 Anacapa Street
Santa Barbara, CA 93101
asteele@co.santa-barbara.ca.us
805.568.3483

For Julie Hayden:
Robert F. Landheer
Attorney at Law
924 Anacapa Street, Suite 1-T
Santa Barbara, CA 93101
robertlandheer@gmail.com
805.963.2273

17. **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.

18. **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.


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. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.
24. **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, and that all discussions of settlement and this Settlement Agreement shall not be referred to in any such hearing.
25. **Waiver of Right to Petition or Appeal:** Settling Respondents hereby waive their rights, if any, to petition the adoption of this order to the State Water Board, petition for writ of administrative mandate in the California Superior Court or to appeal to a California Superior Court and/or any California appellate level Court.
26. **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.
27. **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.
28. **No Third Party Beneficiaries:** This Stipulation is not intended to confer any rights or obligations on any third party or parties, or claimants, and no third party or parties shall have any right of action under this Stipulation for any cause whatsoever.

29. **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.
30. **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: 12/5/18

By: 
Leslie S. Laudon, Deputy Director
Division of Financial Assistance
State Water Resources Control Board

Hayden Environmental, Inc. dba TKO EnviroServices and Principals

Date: _____

By: _____
Kurt Hayden

Date: _____

By: _____
Julie Hayden

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Date: _____

By: _____

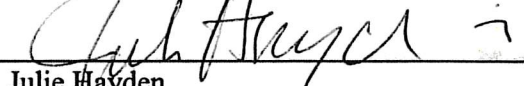
Leslie S. Laudon, Deputy Director
Division of Financial Assistance
State Water Resources Control Board

Hayden Environmental, Inc. dba TKO EnviroServices and Principals

Date: 12-4-18

By: 
Kurt Hayden

Date: 12-4-18

By: 
Julie Hayden

**ORDER OF THE STATE
WATER BOARD**

1. This Order incorporates the foregoing Stipulation.
2. 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.
3. The Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.
4. 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.

Eileen Sobeck, Executive Director

Date