

COLORADO RIVER BASIN REGIONAL WATER QUALITY CONTROL BOARD

In the Matter of:

ORDER R7-2021-0030

LEAN GREEN INDUSTRIES-INS., LLC

**SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY
ORDER; ORDER (PROPOSED)**

I. Introduction

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order or Order) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, Colorado River Basin Region (Regional Water Board), on behalf of the Regional Board Prosecution Team (Prosecution Team) and Lean Green Industries-Ins., LLC (Discharger) (collectively hereinafter the Parties) and is presented to the Regional Water Board for adoption as an order by settlement, pursuant to California Water Code section 13323 and Government Code section 11415.60.

II. Recitals

2. The Discharger operates an indoor cannabis cultivation facility on Riverside County Assessor Parcel Number (APN) 687-162-004-4, located at 68721 Summit Drive in Cathedral City, California (Site).
3. On January 9, 2019, the Discharger enrolled under the State Water Resources Control Board's (State Water Board's) *General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities*, Order No. WQ 2017-0023-DWQ (General Order), as amended by Order No. WQ-2019-0001-DWQ. The Executive Officer of the Regional Water Board issued a Notice of Applicability (NOA) on March 25, 2019, confirming the Discharger's coverage under the Waiver of Waste Discharge Requirements for Dischargers of Waste Associated with Cannabis Cultivation Activities (Conditional Waiver), Waste Discharge Identification No. 7_33CC403337. The NOA provided the Discharger with notice that it is responsible for all applicable requirements in the General Order, the *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation* (Cannabis Policy), and the site-specific requirements of the Conditional Waiver.

4. On June 5, 2020, the Assistant Executive Officer of the Regional Water Board issued the Discharger Administrative Civil Liability (ACL) Complaint R7-2020-0025. The Complaint alleged that between March 25, 2019 and August 30, 2019, the Discharger discharged irrigation runoff and mineralized wastewater from its reverse osmosis filtration system to its onsite wastewater treatment system (OWTS) in violation of the Conditional Waiver requirements of the General Order. Due to the nature and composition of the soil at the Site and the Site's proximity to groundwater (approximately 200 feet below ground surface), the Prosecution Team asserted that the discharge of cannabis wastewater to the OWTS infiltrated groundwater, a water of the state, for a total of 159 days.
5. The violation alleged in the ACL Complaint constitutes a violation of Water Code section 13350, subdivision (a)(2) for which discretionary penalties may be assessed in the amount of up to five thousand dollars (\$5,000) for each day the violation occurs pursuant to Water Code section 13350, subdivision (e)(1).
6. The ACL Complaint proposed administrative civil liability in the amount of \$237,167.10 for the alleged violation, after considering the factors in Water Code section 13327 and application of the State Water Board's 2017 *Water Quality Enforcement Policy* (Enforcement Policy), as more fully discussed in Attachment A to the ACL Complaint. The ACL Complaint and Attachment A are attached hereto as Exhibit 1.
7. Pursuant to the Enforcement Policy, the Prosecution Team conducted a preliminary financial investigation based on publicly available information to assess the Discharger's ability to pay when determining the proposed liability in the ACL Complaint. The Discharger is a limited liability company with an ongoing business, deemed an essential business, during the COVID-19 pandemic. When calculating the proposed liability in the ACL Complaint, the Prosecution Team did not identify any publicly available information that would indicate that the Discharger would not be able to pay the proposed liability.
8. After issuance of the ACL Complaint, the Parties engaged in settlement negotiations and have agreed to fully settle the violation alleged in the ACL Complaint without administrative or civil litigation and by presenting this Stipulated Order to the Regional Water Board for adoption as an Order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.
9. Based on information provided by the Discharger, the Parties have agreed to separate the violation alleged in the ACL Complaint into two violations to better account for the nature of the waste that is alleged to have been discharged during the relevant time periods. Accordingly, Violation 1 encompasses the period between March 25, 2019 and June 8, 2019 (a total of 75 days), when the Discharger is alleged to have discharged a combination of cannabis irrigation

runoff and mineralized wastewater from the reverse osmosis filtration system into its OWTS. Violation 2 encompasses the period between June 8, 2019 and August 31, 2019 (a total of 84 days), when the Discharger is alleged to have discharged only cannabis irrigation runoff into its OWTS.

10. For purposes of resolving this matter through settlement, the Parties agree to a Degree of Toxicity score of 2 for the discharges alleged in Violation 1 given the likelihood that lead detected in the RO brine would fall below the primary maximum contamination level (MCL) when comingled with the cannabis irrigation runoff. Additionally, for purposes of settlement, the Parties agree to a Degree of Toxicity score of 1 for the discharges alleged in Violation 2 due to the absence of lead in the cannabis irrigation runoff but an exceedance of manganese beyond the secondary MCL. The scores for Actual Harm or Potential Harm to Beneficial Uses and Susceptibility to Cleanup or Abatement are a 1 for both alleged violations. Additionally, both alleged violations have been categorized as major Deviations from Requirement. In considering the Discharger's conduct prior to the alleged violations, the Parties agree to a Culpability score of 1.4 for Violation 1 and a score of 1.3 for Violation 2. Although staff were clear in their communications regarding the disposal requirements for RO brine prior to the Discharger receiving its NOA, those communications did not specifically address the disposal of cannabis irrigation runoff; however, it is the Prosecution Team's position that the Discharger should have been aware of and operating in compliance with all requirements of the Conditional Waiver. The Parties also agree to a Cleanup and Cooperation score of 1.0 for Violation 1 to account for the Discharger ceasing the alleged discharges of the RO brine shortly after staff inspected the site on June 5, 2019. For Violation 2, the Parties agree to a Cleanup and Cooperation score of 1.3 to account for the alleged discharges of cannabis irrigation runoff continuing until August 31, 2019. The score for History of Violations is a 1.0 for both alleged violations.
11. After accounting for these adjustments, the Total Base Liability Amount for Violation 1 is calculated to be forty-two thousand dollars (\$42,000). The Total Base Liability Amount for Violation 2 is calculated to be twenty-eight thousand three hundred and ninety-two dollars (\$28,392). Combining the two base liability amounts and adding four thousand six hundred and thirty dollars (\$4,629.60) in staff costs, the Final Liability Amount is calculated to be seventy-five thousand twenty-one dollars and sixty cents (\$75,021.60).
12. The Discharger also provided the Prosecution Team with several financial records in its exclusive possession and control to support an asserted inability to pay and continue in business. Pursuant to the Enforcement Policy section VI.A., the Prosecution Team assessed the Discharger's ability to pay the administrative civil liability by reviewing the financial documents and tax returns provided by the Discharger. The Prosecution Team utilized a financial consultant to analyze the

documents provided by the Discharger, who concluded the Discharger does not have the ability to pay the proposed liability amount of \$75,021.60 due to the start-up nature of the Discharger's business, its high debt level relative to low asset holdings and revenues, and negative operating cash flow. Therefore, to resolve this matter by consent and without further administrative or civil proceedings, the Parties agree to settle the alleged violations in the amount of thirty-five thousand dollars (\$35,000).

13. The Prosecution Team believes that the resolution of the alleged violations as set forth in the Stipulated Order is fair and reasonable, that the resolution fulfills the Prosecution Team's enforcement objectives, that no further action is warranted concerning the violations alleged herein, and that this Stipulated Order is in the best interest of the public.

III. Stipulations

The Parties stipulate to the following:

14. **Jurisdiction:** The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulated Order.
15. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability in the amount of **thirty-five thousand dollars (\$35,000)** by check made payable to the "Waste Discharge Permit Fund" no later than thirty (30) days after the Regional Water Board, or its delegate, executes the Stipulated Order. The check shall reference the Order number indicated on page one of the Stipulated Order. The original signed check shall be sent to:

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

The Discharger shall provide a copy of the check via email to the State Water Resources Control Board, Office of Enforcement (Heather.Jidkov@waterboards.ca.gov).

16. **Compliance with Applicable Laws and Regulatory Changes:** The Discharger understands that payment of an 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 additional violations of the type alleged may subject it to further enforcement, including additional administrative civil liabilities. Nothing in this Stipulated Order shall

excuse the Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

17. Party Contacts for Communication Related to the Stipulated Order:

For the Regional Water Board:
Heather Jidkov
Office of Enforcement
801 K Street, 23rd Floor
Sacramento, California 95814
(916) 341-5163
Heather.Jidkov@waterboards.ca.gov

For the Discharger:
Lean Green Industries-Ins., LLC
Attn: Bernard Steimann
68721 Summit Drive
Cathedral City, California 92234
949-336-1957
Bernard@peoplescali.com

18. Attorneys' 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.

19. Matters Covered by this Stipulation: Upon approval of the Discharger, adoption by the Regional Water Board, or its delegee, as an Order, this Stipulation represents a final and binding resolution and settlement of all claims, violations or causes of actions alleged above or which could have been asserted based on the specific facts alleged against the Discharger. The provisions of this Paragraph are expressly conditioned on the Discharger's full payment of administrative civil liability by the deadline specified in Paragraph 15.

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

21. Procedure: The Parties agree that the procedure adopted for approval of the settlement by the Parties and review by the public, as reflected in this Order, will

be adequate. In the event procedural objections are raised prior to this Stipulated 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.

22. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or the Regional Water 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 the Regional Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions, or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party of its obligations regarding matters covered in this Stipulated Order. The Regional Water 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 Order.
23. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Regional Water Board or any state agency, department, board, entity, or local agency from exercising its authority under any law, statute, or regulation.
24. **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.
25. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of the Order. All modifications must be made in writing and approved by the Regional Water Board or its delegate.
26. **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.
27. **If Order Does Not Take Effect:** The Discharger's obligations under this Stipulated Order are contingent upon the entry of the Order by the Regional Water Board as proposed. In the event that this Stipulated Order does not take effect because it is not approved by the Regional Water Board or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that the Prosecution Team may proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess an

administrative civil liability for the underlying alleged violations, or may continue to pursue settlement. The Parties agree that all oral and written statements and agreements made during the course of the settlement discussions will not be admissible as evidence in any subsequent administrative or judicial proceeding or hearing and will be fully protected by California Evidence Code sections 1152 and 1154; California Government Code section 11415.60; Rule 408, Federal Rules of Evidence; and any other applicable privilege under federal and/or state law. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including but not limited to:

- a. Objections related to prejudice or bias of any of the Regional Water 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 Water 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; 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.

24. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and, if the settlement is adopted by the Regional Water Board, hereby waives its right to a hearing before the Regional Water Board prior to the Stipulated Order's adoption. However, should the settlement not be adopted, and should the matter proceed to the Regional Water Board for hearing, the Discharger does not waive the right to a hearing before an order is imposed.

25. **Waiver of Right to Petition:** Except in the instance where the settlement is not adopted by the Regional Water Board, the Discharger hereby waives the right to petition the Regional Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waives the right, if any, to appeal the same to a California Superior Court and/or California appellate level court.

26. **Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, its officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order.

27. **No Admission of Liability:** In settling this matter, the Discharger 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 Regional Water Quality Control Board, this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327 and/or 13385, subdivision (e).
28. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that they are authorized to execute this Order on behalf of and to bind the entity on whose behalf the Order is executed.
29. **Necessity for Written Approval:** All approvals and decisions of the Regional Water Board under the terms of this Stipulated Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Regional Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Stipulated Order.
30. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligation 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.
31. **Severability:** This Stipulated Order is severable; should any provision be found invalid, the remainder shall remain in full force and effect.
32. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board enters the Order incorporating the terms of this Stipulated Order.
33. **Counterpart Signatures:** 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.

IT IS SO STIPULATED

California Regional Water Quality Control Board, Colorado River Basin Prosecution Team

By: Original Signed By: 3/26/2021
Cassandra Owens Date
Assistant Executive Officer

Lean Green Industries-Ins, LLC

By: Original Signed By: 3/26/2021
Bernard Steimann Date
Managing Member

Exhibit 1: ACL Complaint R7-2020-0025 and Attachment A Penalty Methodology

IV. FINDINGS OF THE COLORADO RIVER BASIN WATER BOARD¹

Having considered the allegations and the Parties' stipulations, the Regional Water Board finds that:

34. The Regional Water Board incorporates Paragraphs 1 through 33 by reference as if set forth fully herein.
35. In accepting this settlement, the Regional Water Board has considered, where applicable, each of the factors prescribed in California Water Code section 13327. The Regional Water Board's consideration of these factors is based upon information obtained by the Prosecution Team in investigating the violations alleged herein, the information in Exhibit 1, or otherwise provided to the Regional Water Board.
36. 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 (CEQA) (Public Resources Code section 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.
37. The Regional Water Board's Executive Officer is hereby authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this Order.
38. Fulfillment of the Discharger's obligations under the Order constitutes full and final satisfaction of any and all liability for Covered Matters in accordance with the terms of the Order.
39. The attached Agreement between the Assistant Executive Officer and Lean Green Industries-Ins., LLC is approved pursuant to Water Code section 13323 and Government Code section 11415.60 and is incorporated by reference into this Order.

I, Paula Rasmussen, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Colorado River Basin Region.

PAULA RASMUSSEN
Executive Officer

Date: _____

¹ These findings by the Regional Water Board may be modified prior to the adoption of this Order without requiring amendment of the settlement agreement between the Parties.