CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
COLORADO RIVER BASIN REGION

CEASE AND DESIST ORDER R7-2024-XXXX
FOR

PHILO AND CAROLYN BIANE, dba BIANE GUARD, LLC
SMOKE TREE VILLAS
WASTEWATER COLLECTION, TREATMENT, AND DISPOSAL SYSTEM
CITY OF TWENTYNINE PALMS, SAN BERNARDINO COUNTY

The California Regional Water Quality Control Board, Colorado River Basin Region, (Regional Water Board) finds that:

1. Biane Guard, LLC (Discharger) owns and operates a wastewater treatment and disposal system used to treat domestic wastewater generated from the Smoke Tree Villas apartment complex. The apartment complex is at 6061 Bagley Avenue in Twentynine Palms.

2. The Discharger is regulated by Waste Discharge Requirements (WDRs) Order No. R7-2006-0038, adopted by the Regional Water Board on May 17, 2006. The WDRs state that the facility's name is Sunwest Apartments and the owner is Sunwest 29, LLC. On May 13, 2015, the Regional Water Board adopted Order No. R7-2015-0026 to change the facility name to Smoke Tree Villas and the ownership to PI Properties No. 40, LLC. On December 12, 2023, the Regional Water Board adopted Order No. R7-2023-0047 to change the ownership to Biane Guard, LLC. The Discharger is also regulated by Revised Monitoring and Reporting Program (Revised MRP) Order No. R7-2006-0038-01, issued by the Executive Officer on December 8, 2022.

3. The WDRs contain effluent limitations, prohibitions, specifications, and provisions necessary to protect the beneficial uses of the underlying groundwater and to prevent nuisance conditions from the discharge of waste.

DESCRIPTION OF FACILITY

4. According to the WDRs, domestic wastewater from 36 apartments flows to a wastewater treatment facility (WWTF) which consists of an activated sludge package treatment plant that can operate in nitrification/denitrification mode. The WWTF is designed to treat 9,000 gallons per day (gpd) of wastewater. Effluent is disposed of via five seepage pits in the parking lot. Solids and sludge are removed by a licensed septage hauler.

5. A Water Board inspection on May 9, 2022 found that the WWTF is at the east end of the parking lot, below ground. Wastewater first enters a 5,000-gallon septic tank. Scum and sludge remain in the tank, while liquid flows to a fixed activated sludge treatment (FAST) unit. Sewage is sprayed over media and is recirculated about 30 times before discharge to five septic pits located in the parking lot/driveway. About 1,500 gallons of

sludge from the septic tank and the FAST unit is pumped out every 45 days. The system includes two blowers, which are used one at a time and rotated on an annual basis.

RELEVANT PROVISIONS OF WDRS ORDER NO. R7-2006-0038

6. Discharge Prohibition A.3 of WDRs Order No. R7-2006-0038 states, in part, "Bypass or overflow of untreated or partially-treated waste is prohibited…"

7. Discharge Specification B.1 of WDRs Order No. R7-2006-0038 states "The 30-day monthly average daily discharge flow shall not exceed 9,000 gpd. The flow limit shall be applied to the flow entering the WWTF."

8. Discharge Specification B.7 of WDRs Order No. R7-2006-0038 states, in part, "WWTF effluent shall not exceed the following limits:

Constituent	Units	Monthly Average	Weekly Average	Daily Maximum
BOD_5[1]	mg/L	30	45	65
Total Suspended Solids	mg/L	30	45	65
Settleable Solids	mg/L	0.5	--	1.0
Nitrogen (as Total Nitrogen)	mg/L	10	15	20
Total Dissolved Solids (TDS)	mg/L	350	--	--
[1]5-day biochemical oxygen demand at 20^0C				

9. Provision E.10 of WDRs Order No. R7-2006-0038 states, in part, "The Discharger shall, at all times, properly operate and maintain all systems and components of collection, treatment, and control which are installed or used by the Discharger to achieve compliance with the conditions of this Board Order…This provision requires the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance…All systems, both in service and reserved, shall be inspected and maintained on a regular basis…"

HISTORY OF VIOLATIONS

10. On March 30, 2009, the Discharger was issued a Notice of Noncompliance for the failure to comply with the biochemical oxygen demand (BOD) and total suspended

solids (TSS) effluent limits. The Notice states that the Discharger's engineer believed the violations were due to improper maintenance and sludge removal.

11. A Water Board inspection on January 3, 2013, followed by a Notice of Noncompliance on January 9, 2013, documented that (a) the Discharger had reported violations of the BOD, total dissolved solids (TDS), and total nitrogen effluent limitations over the past year, and (b) that treatment plant had been damaged and had shifted 1-2 feet from its original position, crushing the effluent pipe. With respect to the damaged plant, the Notice states that the Discharger is in violation of WDR Provision E.10, and that the Discharger is to respond by March 31, 2013 indicating when the repairs would be complete[1].

12. As described in the May 13, 2022 inspection report, the WWTF does not contain a flow meter. Instead, influent flow is determined by the potable water bill. The complex does not have outdoor landscaping, so this may be an appropriate approximation. However, the monthly monitoring reports for January 2020 to March 2022 state that the flow is exactly 5,845 gallons per day (gpd) for each month. This is suspect, as it means that water use never varied at all over two years.

13. On June 23, 2022, the Discharger was issued a Notice of Violation (NOV) for consistently failing to comply with the WDR's BOD, TSS, settleable solids, total nitrogen, and TDS effluent limits for the previous three years. The Discharger was required to hire a California Registered Engineer to determine upgrades to the WWTF such that it would consistently treat effluent to meet the WDR limits. The report was to include a date by which upgrades would be completed as well as propose a more reliable method of reporting effluent flows.

14. On March 21, 2023, Water Board staff notified the Discharger that its February 2023 monitoring report did not comply with the Revised MRP. In particular, the monitoring frequency for those constituents which exceeded effluent limits had not been increased from monthly to two times per month, the subsurface disposal area monitoring was missing, and an explanation of why violations occurred and how they will be corrected was missing.

15. Attachment A to this Cease and Desist Order lists the Discharger's effluent limit violations from January 2021 through December 2023.

[1] There is no information in the case file as to the Discharger's response or when the repairs were completed.

RECENT ACTIONS BY THE DISCHARGER

16. In response to the June 23, 2022 Notice of Violation, the Discharger hired a California Registered Engineer who then evaluated the WWTF.

17. An Engineering Report was submitted on September 12, 2022. The report contains the results of a site visit by a Grade III wastewater operator, the FAST treatment system's operation and maintenance manual, a review of monthly water use bills, and proposed corrective actions. These corrective actions were to take place in three phases, with Phase 1 to be completed by March 15, 2023, Phase 2 to be completed by June 15, 2023, and Phase 3 to be completed by September 15, 2023. Water Board staff reviewed the Engineering Report and agreed with the proposed phases and timelines, with the request that status reports be submitted at the end of each phase of work.

18. The Phase I progress report was submitted on March 15, 2023. It states that (a) tenants were advised not to pour grease down the drain, (b) solids were pumped out of the septic tank, the FAST tank and the effluent distribution manhole, (c) monthly drinking water flows are now being tracked, and (d) an electrician determined that the control panel needs repairs and that the second blower may work once the control panel is operable. The electrician is scheduled to repair the control panel and blower on March 16, 2023. The engineer determined that the FAST media does not need cleaning at this time but will review monthly monitoring results to determine if cleaning is needed in the future.

19. The Phase 2 progress report was submitted on June 15, 2023. It states that (a) the average flow over the last four months is 6,061 gpd, (b) the control panel was updated to alternate between the two blowers but Blower 1 has failed, and Blower 2 has now been set to run 24/7, and (c) the engineer needs additional time to determine if the treatment system can be effective with the previous solids removal and increased aeration. However, the following Phase 2 items were not completed: (a) the electrician had surgery and therefore the control panel has not been repaired or replaced, and (b) Blower 1 has not been replaced. In addition, Phase 3 tasks have been delayed until after Phase 2 tasks are completed.

20. The third progress report was submitted on September 19, 2023. Although information was provided, no physical improvements were made to the WWTF. The report states that (a) the average flow over the last eight months is 6,745 gpd, (b) although Blower 2 ran full time, the effluent still exceeded the BOD, TSS, and total nitrogen effluent limits, and (c) the electrician left the company so the blower was not replaced and the control panel was not repaired. The report states that the FAST media and recirculation loop will be cleaned in the next six months, that the electrical panel will be repaired in the next six months, and that Blower 1 is scheduled to be replaced. In addition, Phase 3 will not begin for another six months (i.e., March 2024).

21. During a videoconference call with the Discharger on October 29, 2023, Water Board staff were informed that by November 2023, the back-up blower and control panel will be fixed and that the FAST media and recirculation loops will be cleaned. According to the Engineer, the FAST system is sized properly to meet the BOD and TSS effluent limits but is not designed to meet the Total nitrogen effluent limit. In addition, the plant cannot be properly maintained because it is below grade. The Engineer is investigating installation of a new treatment plant. The Discharger agreed to provide, by November 30, 2023, a proposed schedule and timeline for the WWTF improvements such that effluent will continuously meet the WDR effluent limits.

22. Although the Engineer has not submitted a schedule and timeline to date, on December 18, 2023, the Engineer provided an update. On November 3, 2023, an electrician attempted to replace the non-functioning blower with one in storage. However, the electrician found that the blower which had been in storage was non-operable. A new blower will be ordered. The Engineer is also working on the pricing and schedule for the pH adjusted cleaning of the FAST media. He anticipates that the work will be completed in the first quarter 2024. On February 23, 2024, the Engineer provided another update, and requested changes to the Tentative CDO's schedule. The requested changes have been incorporated into this Order.

23. As shown in Attachment A, there has been no appreciable improvement in effluent quality since the Notice of Violation was issued in June 2022, and BOD, TSS, total nitrogen, and TDS continue to exceed the WDR's effluent limits.

REGULATORY CONSIDERATIONS

24. According to the WDRs, the WWTF discharges waste to groundwater within the Twentynine Palms hydrologic unit. The WDRs then list the beneficial uses of groundwater within the Joshua Tree hydrologic unit (the Basin Plan does not recognize Twentynine Palms as a hydrologic unit).

25. The beneficial uses of the groundwater are defined in the Water Quality Control Plan for the Colorado River Basin Region. The beneficial uses of the Joshua Tree hydrologic unit are municipal and domestic water supply and industrial service water supply. The failure to comply fully with the effluent limits of WDRs Order No. R7-2006-0038 threatens these beneficial uses.

26. Water Code section 13301 states, in part: "When a regional board finds that a discharge of waste is taking place, or threatening to take place, in violation of requirements or discharge prohibitions prescribed by the regional board or the state board, the board may issue an order to cease and desist and direct that those persons not complying with the requirements or discharge prohibitions (a) comply forthwith, (b) comply in

accordance with a time schedule set by the board, or (c) in the event of a threatened violation, take appropriate remedial or preventive action."

27. The Regional Water Board finds that a discharge of waste is taking place in violation of WDRs Order No. R7-2006-0038, as described in the Findings of this Order. This Order requires the Discharger to take appropriate remedial action and to comply in accordance with the time schedule set forth below.

28. Water Code section 13267, subdivision (b) states, in part: "In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region […] that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."

29. The Discharger owns and operates the Smoke Tree Villas wastewater treatment and disposal facility which is subject to WDRs Order No. R7-2006-0038 and this Cease and Desist Order. The technical and monitoring reports required by this Order are necessary to determine compliance with the requirements in WDRs Order No. R7-2006-0038 and with this Order to ensure prevention of degradation to groundwater. The cost to produce the reports required by this Order is estimated to be $6,000, based on statewide rates for a project engineer. Therefore, the burden of production of these reports is reasonable.

30. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

31. After due notice to the Discharger, and all other affected persons, the Regional Water Board conducted a public hearing at which evidence was received to consider this Cease and Desist Order under Water Code section 13301 to establish a time schedule to achieve compliance with waste discharge requirements.

IT IS HEREBY ORDERED that, pursuant to sections 13301 and 13267 of the Water Code, the Discharger shall implement the following measures in order to return to compliance with its WDRs:

1. Beginning with the **May 2024 Self-Monitoring Report** and continuing through the November 2025 Self-Monitoring Report, each Self-Monitoring Report shall include, as

an attachment, the monthly water bill used to determine the WWTF's influent flow. If desired, the Discharger may redact the cost of the water. Beginning with the **December 2025 Self-Monitoring Report**, flows shall be reported using an influent flow meter installed at the WWTF.

2. By **June 1, 2024**, submit a technical report prepared by a California Registered Engineer or Certified Engineering Geologist, documenting that (a) the control panel has been repaired or replaced (b) the second blower is operational (as described in Phase I, Tasks 6 and 7, of the September 12, 2022 Engineering Report) (c) the media and internal recirculation loop have been cleaned using an elevated pH solution (as described in Phase 2, Task 2 of the September 12, 2022 Engineering Report), and (d) including a discussion of the pH adjusted cleaning process with initial effluent results..

3. By **September 1, 2024**, submit a progress report prepared by a California Registered Engineer or Certified Engineering Geologist, describing the steps taken to date toward modifying the WWTF such that it will consistently treat wastewater to meet the WDR's effluent limits for BOD, TSS, settleable solids, and total nitrogen.

4. By **December 1, 2024**, submit a technical report, prepared by a California Registered Engineer or Certified Engineering Geologist, containing a proposal and engineering drawings to modify the existing WWTF such that it will consistently treat wastewater to meet the WDR's effluent limits for BOD, TSS, settleable solids, and total nitrogen. The modified WWTF shall include an influent flow meter.

5. By **March 1, 2025**, submit a progress report as described in Item 3.

6. By **June 1, 2025**, submit a progress report as described in Item 3.

7. By **September 1, 2025**, submit a progress report as described in Item 3.

8. By **December 1, 2025**, submit a technical report, prepared by a California Registered Engineer or Certified Engineering Geologist certifying that the existing WWTF had been modified (as described in the technical report required by Item 4, above) and describing the remaining tasks needed to bring the modified plant to full operational capacity.

9. By **March 1, 2026**, the new WWTF shall consistently treat wastewater to meet the WDR's effluent limits for BOD, TSS, settleable solids, and total nitrogen. The Discharger shall also take all reasonable steps to meet the WDR's effluent limit for TDS using source controls.

10. The Regional Water Board has transitioned to a paperless office. Therefore, all technical reports required by this Order must be converted to searchable pdf files and submitted via email to the Regional Board's paperless mailbox at RB7-wdrs_paperless@waterboards.ca.gov.

11. In accordance with California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. All technical reports specified herein that contain workplans for investigations and studies, that describe the conduct of investigations and studies, or that contain technical conclusions and recommendations concerning engineering and geology shall be prepared by or under the direction of appropriately qualified professional(s), even if not explicitly stated. Each technical report submitted by the Discharger shall bear the professional's signature and stamp.

12. Any person signing a document submitted under this Order shall make the following certification:

    "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

The Executive Officer or her delegee may extend the deadlines contained in this Order if the Discharger demonstrates that circumstances beyond the Discharger's control have created delays, provided that the Discharger continues to undertake all appropriate measures to meet the deadlines. The Discharger shall make any deadline extension request in writing at least 30 days prior to the deadline. The Discharger must obtain written approval from the Executive Officer or her delegee for any departure from the time schedule shown above. Failure to obtain written approval for any departures may result in further enforcement action.

If, in the opinion of the Executive Officer or her delegee, the Discharger fails to comply with the provisions of this Order, the Executive Officer or her delegee may refer this matter to the Attorney General for judicial enforcement, may issue a complaint for administrative civil liability, or may take other enforcement actions. Failure to comply with this Order or the WDRs may result in the assessment of Administrative Civil Liability of up to $5,000 per violation, per day, depending on the violation, pursuant to the Water Code, including sections 13268 and 13350. The Regional Water Board reserves its right to take any enforcement actions authorized by law.

Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date that this Order becomes final, except that if the thirtieth day following the date that this Order becomes final falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board

by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: (http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

I, PAULA RASMUSSEN, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order issued by the California Regional Water Quality Control Board, Colorado River Basin, on _April 9, 2024.

_____
PAULA RASMUSSEN, Executive Officer

Attachment A: Summary of Effluent Limit Violations

Attachment A to CDO R7-2024-XXXX
Smoke Tree Villas, San Bernardino County

Monitoring results are collated from the Discharger's self-monitoring reports from January 2021 through November 2023. Constituents listed are those required to be monitored per the Monitoring and Reporting Program. WDR effluent limits are in (). Results in bold and yellow exceed the effluent limits. "NS" means not sampled. A * means that the laboratory reported the potable water TDS as a higher value than the effluent TDS, indicating a sampling or laboratory mistake. The WWTF does not have a flow meter and the consultant states that flows are estimated ("est") based on water bills. However, discrepancies exist between the flows reported by the consultant and flows reported by the engineer; this table lists the flows reported in the self-monitoring reports.

Month/ Year	Effluent Limits and Results							
	BOD, mg/L (30 monthly/ 45 weekly / 65 max daily)	TSS, mg/L (30 monthly/ 45 weekly / 65 max daily)	Settleable Solids, mg/l 0.5 monthly/ 1.0 daily)	Total N, mg/L (10 monthly/ 15 weekly/ 20 daily)	pH (6-9)	TDS, mg/L (350 monthly)	Flow (9,000 gpd)	Potable water TDS, mg/l (no limit)
Dec 2023	**41**	24.5	**4.0**	**33.5**	7.7	**505**	6,474 est.	350
Nov 2023	**36**	9	0.2	**32.5**	7.7	**455**	5,956 est.	350
Oct 2023	**42.5**	**35**	**1.2**	**19**	7.8	**445**	5,960 est.	300
Sept 2023	**44**	**102**	**16**	**54**	7.6	**425**	6,679 est.	330
Aug 2023	**31**	7	<0.5	**43**	7.8	**455**	6,587 est	340
July 2023	**42**	**110**	**5**	**38**	7.5	**435**	7,625 est	330
June 2023	**44**	**99**	0.3	**47**	7.3	**460**	7,625 est	310
May 2023	**65**	24	<0.5	**34**	7.6	**540**	7,625 est	310

Month/ Year	Effluent Limits and Results							
	BOD, mg/L (30 monthly/ 45 weekly / 65 max daily)	TSS, mg/L (30 monthly/ 45 weekly / 65 max daily)	Settleable Solids, mg/l 0.5 monthly/ 1.0 daily)	Total N, mg/L (10 monthly/ 15 weekly/ 20 daily)	pH (6-9)	TDS, mg/L (350 monthly)	Flow (9,000 gpd)	Potable water TDS, mg/l (no limit)
April 2023	**53**	26	<0.1	**39**	7.3	**465**	4,850 est	320
Mar 2023	**57**	22	<0.1	**47**	7.5	**460**	5,598 est	320
Feb 2023	**42**	24	0.5	**45**	7.0	**490**	7,507 est	380
Jan 2023	25	14	**0.8**	**37**	7.6	**420**	6,129 est	380
Dec 2022	**79**	28	0.5	**43**	7.1	**560**	6,853 est	220
Nov 2022	**80**	16	<0.1	**54**	5.9	**680**	5,188 est	360
Oct 2022	<10	10	<0.1	**19**	7.4	**470**	5,309 est	360
Sept 2022	**35**	11	0.2	**35**	7.5	340	5,309 est	390*
Aug 2022	**68**	18	0.3	**51**	7.4	**630**	5,845 est	440
July 2022	**63**	**31**	0.2	**47**	7.6	**690**	5,336 est	420
June 2022	**64**	14	0.5	**54**	7.6	**520**	5,335 est	960*
May 2022	**39**	15	<0.1	**45**	7.7	**560**	5,959 est	410
April 2022	**NS**	NS	NS	**NS**	NS	**NS**	4,488 est	NS

Month/ Year	Effluent Limits and Results							
	BOD, mg/L (30 monthly/ 45 weekly / 65 max daily)	TSS, mg/L (30 monthly/ 45 weekly / 65 max daily)	Settleable Solids, mg/l 0.5 monthly/ 1.0 daily)	Total N, mg/L (10 monthly/ 15 weekly/ 20 daily)	pH (6-9)	TDS, mg/L (350 monthly)	Flow (9,000 gpd)	Potable water TDS, mg/l (no limit)
Mar 2022	**46**	6	0.2	**51**	7.8	**520**	5,845 est	390
Feb 2022	**34**	8	0.2	**36**	8.0	**490**	5,845 est	380
Jan 2022	**43**	15	<0.1	**39**	7.6	**520**	5,845 est	420
Dec 2021	**34**	10	0.5	**37**	7.8	**500**	5,845 est	220
Nov 2021	**36**	15	<0.1	**52**	7.6	**460**	5,845 est	390
Oct 2021	**49**	8	<0.1	**50**	7.8	**560**	5,845 est	430
Sep 2021	**39**	28	0.3	Failed QC	7.7	**510**	5,845 est	490
Aug 2021	**39**	12	0.2	**43**	7.7	**490**	5,845 est	410
July 2021	16	12	0.2	**24**	7.7	**520**	5,845 est	210
Jun 2021	<10	8	<0.1	**16**	7.6	**360**	5,845 est	400*
May 2021	**40**	29	0.3	**48**	7.7	**560**	5,845 est	430
Apr 2021	**51**	21	<0.1	**51**	7.7	**610**	5,845 est	400
Mar 2021	**58**	27	**0.8**	**59**	7.5	**600**	5,845 est	340

Month/ Year	Effluent Limits and Results							
	BOD, mg/L (30 monthly/ 45 weekly / 65 max daily)	TSS, mg/L (30 monthly/ 45 weekly / 65 max daily)	Settleable Solids, mg/l 0.5 monthly/ 1.0 daily)	Total N, mg/L (10 monthly/ 15 weekly/ 20 daily)	pH (6-9)	TDS, mg/L (350 monthly)	Flow (9,000 gpd)	Potable water TDS, mg/l (no limit)
Feb 2021	**50**	25	0.2	**51**	7.8	**430**	5,845 est	200
Jan 2021	**58**	23	0.2	**75**	7.7	**540**	5,845 est	520