

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION**

In the matter of:)	
)	Order R1-2015-0046
City of Ferndale)	
Wastewater Treatment Facility)	SETTLEMENT AGREEMENT AND
Order and Notice of Violation,)	STIPULATION FOR ENTRY OF
Order No. R1-2014-0055 for)	ADMINISTRATIVE CIVIL LIABILITY ORDER
Administrative Civil Liability)	
)	
Attn: Jay Parrish, City Manager)	
WDID No. 1B83136OHUM)	
NPDES Permit No. CA0022721)	

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulation, Order, or Stipulated Order) is entered into by and between the Assistant Executive Officer of the Regional Water Quality Control Board, North Coast Region (Regional Water Board), on behalf of the Regional Water Board Prosecution Team (Prosecution Team) and the City of Ferndale (the Discharger) (collectively Parties) and is presented to the Regional Water Board for adoption as an Order, by settlement, pursuant to Government Code section 11415.60. This Stipulation and Order resolve the violations alleged here by the imposition of administrative liability against the City of Ferndale in the amount of \$18,000.

Section II: Recitals

1. The Discharger owns and operates a wastewater collection, treatment, reclamation and disposal facilities that serve a population of approximately 1,500 residential and commercial users within the City of Ferndale and outlying areas. Tertiary treated wastewater may be discharged to Francis Creek at its confluence with the Salt River from October 1 through May 14, and at least secondary treated wastewater is delivered for irrigation/reclamation use on neighboring agricultural land from May 15 through September 30 of each year and at other appropriate times based upon weather and soil conditions.
2. The Regional Water Board has determined that the Discharger meets the requirements under Water Code section 13385, subdivision (k), and the State Water Resources Control Board (State Water Board) Water Quality Enforcement Policy (Enforcement Policy) to be recognized as a publicly owned treatment works (POTW) serving a small community with a financial hardship.
3. On July 13, 2009, the Regional Water Board adopted Waste Discharge Requirements (WDRs) Order No. R1-2009-0036 (NPDES Permit No. CA0022721) to regulate discharges from the Discharger's POTW to Francis Creek and the Salt River tributary to the Pacific Ocean. Order No. R1-2009-0036 became effective on September 1, 2009. On December 6, 2012, the Regional Water Board adopted WDRs Order No. R1-2012-0097, which became effective on February 1, 2013. Order R1-2012-0097 rescinded Order No. R1-2009-0036 upon the effective date of the new Order, except for enforcement purposes.

4. On September 19, 2014, the Prosecution Team Issued Complaint No. R1-2014-0055 to the Discharger. The Complaint alleged that the Discharger self-reported exceeding 7 effluent limits for biochemical oxygen demand, total suspended solids, total coliform and pH as set forth in WDRs Orders No. R1-2009-0036 and R1-2012-0097. The effluent violations occurred during the period of May 2, 2012 through April 30, 2014. Of the 7 effluent violations, 6 are subject to Mandatory Minimum Penalties (MMPs) pursuant to California Water Code section 13385 subdivisions (h) and (i). The Complaint proposed to assess \$18,000 in MMPs. The violations are summarized in Attachment A of the Complaint.
5. During the period from October 15, 2014 through October 22, 2014, the Discharger discussed its waiver options concluding and informing Regional Water Board staff that it did not contest the alleged violations, but would like to enter into settlement negotiations and submit a proposal for completing a Compliance Project (CP) in lieu of paying the assessed penalty amount.
6. The Parties have engaged in settlement negotiations and agree to settle certain alleged violations of the California Water Code set forth in the Complaint without administrative or civil litigation and by presenting this Stipulated Order to the Regional Water Board for adoption as an Order pursuant to Government Code section 11415.60. The Prosecution Team believes that the resolution of the violations alleged in the Complaint is fair and reasonable and fulfills its enforcement objectives and meets the requirements under Water Code section 13385, subdivisions (h) and (i) and the Enforcement Policy, so that no further action is warranted concerning these violations except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.
7. To resolve by consent and without further administrative proceedings certain alleged violations of the Water Code section 13385 set forth in the Complaint, the Parties have agreed to the imposition of a penalty of eighteen thousand dollars (\$18,000) against the Discharger, which is the mandatory minimum penalty for the alleged violations. The Parties have further agreed that the Discharger will apply these penalties toward the cost to complete a CP and the full penalty amount shall be suspended upon completion of the CP in accordance with the terms of this Stipulated Order.
8. Pursuant to Water Code section 13385, subdivision (k), the Regional Water Board may, in lieu of assessing all or a portion of mandatory minimum penalties pursuant to Water Code section 13385, subdivisions (h) and (i), require a publicly owned treatment works serving a small community to spend all or a portion of mandatory minimum penalties towards the completion of a CP proposed by the publicly owned treatment works. The CP must conform to the requirements specified in the State Water Board Water Quality Enforcement Policy (Enforcement Policy).
9. 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 policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

Section VIII of the Enforcement Policy states that CPs shall only be considered where they are expressly authorized by statute, i.e., Water Code section 13385, subdivision (k),

and may not be considered in connection with discretionary administrative civil liability.

Section III: Stipulations

The Parties stipulate to the following:

10. Jurisdiction: The Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.

11. Administrative Civil Liability: A total of \$18,000 in administrative civil liability shall be imposed on the Discharger. The Parties agree that the full amount (\$18,000) of this administrative civil liability shall be suspended pending completion of the CP as set forth herein, and Attachment A, incorporated herein by reference. Should the Discharger fail to complete the CP as described herein, the Discharger shall pay the \$18,000, or a pro-rated amount determined by the Regional Water Board or its delegate, to the State Water Pollution Cleanup and Abatement Account. Payment of any or the entire previously suspended amount does not relieve the Discharger of its independent obligation to take necessary actions to achieve compliance with Waste Discharge Requirements Order No. R1-2012-0097.

12. Compliance with Applicable Laws: The Discharger understands that payment of administrative civil liability in accordance with the terms of this Order or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject it to further enforcement, including additional administrative civil liability.

13. CP Description: The CP is to construct a sludge drying facility to be completed in two phases and within approximately two years. The first phase is constructing the concrete foundation and walls for the facility, and the second phase is completing the shell, roof and doors of the facility. The dewatering equipment is currently located outside in an area that receives heavy annual rainfall. The purpose of the CP is to increase the rate of dewatering, waste removal and sludge drying. An increase in the dewatering rate will improve treatment and reduce effluent violations of Total Suspended Solids and Biochemical Oxygen Demand. The detailed CP description is attached hereto as Attachment A.

The implementation schedule for completion of the CP is as follows:

PHASE 1: (Facility Foundation and Walls)

TASK	MILESTONE	DEADLINE
1	Request for Bids	Completed
2	Award Contract	Completed
3	Begin Construction	6/30/15
4	Complete Construction	7/31/15
5	Submit Progress Report	8/31/15

PHASE 2: (Building Shell, Roof and Doors)

TASK	MILESTONE	DEADLINE
1	Request for Bids	6/30/16
2	Award Contract	7/14/16
3	Begin Construction	8/1/16
4	Complete Construction	9/1/16
5	CP Completion - Submit Final Report	10/1/16

The CP (Sludge Drying Facility) shall be completed in its entirety no later than October 1, 2016 (the "CP Completion Date") as indicated in the schedule above.

- 14. CP Costs:** The Discharger has estimated the total cost for the CP to be \$45,575, as detailed in Attachment A. The cost for Phases 1 and 2 are estimated to be approximately \$18,825 and \$26,750, respectively. The amount of liability to be suspended upon completion of the CP is \$18,000. The Discharger is prepared to provide the balance of funds necessary to complete the CP.
- 15. CP Completion Date:** The CP shall be completed by September 1, 2016. A final report certifying the completion of the CP shall be provided to the Regional Water Board and the State Water Resources Control Board's Division of Financial Assistance by October 1, 2016, as described in paragraph 18.
- 16. Failure to Complete the CP:** Except as provided for in paragraph 21, if the CP as described in this Order is determined to be infeasible, or if the Discharger fails to complete the CP by the CP Completion Date, the Regional Water Board shall issue a Notice of Violation (NOV). As a consequence, the Discharger shall be liable to pay the State Water Pollution Cleanup and Abatement Account the Suspended Liability within 30 days of receipt of the NOV.
- 17. CP Oversight:** The Discharger will oversee implementation of the CP. Additional oversight will be provided by the Regional Water Board. The Discharger is solely responsible for paying all reasonable oversight costs incurred by the Regional Water Board to oversee the CP. The CP oversight costs are in addition to the total administrative civil liability imposed against the Discharger and are not credited toward the Discharger's obligation to implement and complete the CP. Reasonable oversight tasks to be performed by the Regional Water Board include but are not limited to, reviewing and evaluating progress, reviewing the final report, and verifying completion of the CP.
- 18. Representation of the Discharger:** As a material consideration for the Regional Water Board's acceptance of this Stipulation, the Discharger represents that it will utilize the funds as described in paragraph 12 to implement the CP in accordance with the implementation schedule set forth above. The Discharger understands that its promise to implement the CP, in its entirety and in accordance with the schedule for implementation, is a material condition of this settlement of liability between the Discharger and the Regional Water Board.

19. Representations and Agreements of the Discharger to Implement and Complete, Report, and Guarantee Implementation of the CP: As a material consideration for the Regional Water Board's acceptance of this Stipulation, the Discharger represents and agrees that (1) it will implement and complete the CP as described in this Stipulation and Order; (2) it will provide certifications and written reports to the Designated Regional Water Board Representative consistent with the terms of this Stipulation detailing the implementation of the CP; and (3) it will guarantee implementation of the CP identified in paragraph 11 and Attachment A by remaining liable for the Suspended Liability until the CP is completed and accepted by the Regional Water Board in accordance with the terms of this Stipulation. The Discharger agrees that the Regional Water Board has the right to require an audit of the funds expended by it to implement the CP. The Discharger shall permit inspection of the CP by the Regional Water Board staff at any time without notice.

20. Certification of Completion of CP: On or before October 1, 2016, the Discharger shall provide a certified statement of completion of the CP (Certification of Completion). The Certification shall be submitted by a responsible official under penalty of perjury under the laws of the state of California, to Regional Water Board staff. The Certification of Completion shall include the following:

- a. Certification that the CP has been completed in accordance with the terms of this Stipulation and Order. Such documentation may include, but are not be limited to, photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate the completion of the CP and the costs incurred by the Discharger.
- b. Certification documenting the expenditures by the Discharger during the completion period for the CP. Expenditures may include, but are not limited to, payments to outside vendors or contractors implementing the CP. The Discharger shall provide any additional information requested by the Regional Water Board staff that is reasonably necessary to verify CP expenditures.
- c. Certification that the Discharger followed all applicable environmental laws and regulations in the implementation of the CP including but not limited to the California Environmental Quality Act (CEQA), the federal Clean Water Act, and the Porter-Cologne Act.

21. Third Party Financial Audit of CP: At the written request of Regional Water Board staff, the Discharger, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Regional Water Board staff providing such party's(ies') professional opinion that the Discharger has expended money in the amounts claimed by the Discharger. The written request shall specify the reasons why the audit is being requested. The audit report shall be provided to Regional Water Board staff within three (3) months of notice from Regional Water Board staff to the Discharger of the need for an independent third party audit. The audit need not address any costs incurred by the Regional Water Board for oversight.

22. Failure to Expend the Entire Suspended Liability on the Approved CP: In the event that the Discharger is not able to demonstrate to the reasonable satisfaction of the Regional Water Board staff that the entire suspended liability of \$18,000 has been spent for the completed CP, the Discharger shall pay the difference between the suspended liability of \$18,000 and the amount the Discharger can demonstrate was actually spent on the CP, as administrative civil liability. The Discharger shall be liable to pay the State

Water Board Cleanup and Abatement Account the additional administrative civil liability within 30 days of receipt of notice of the Regional Water Board staff's determination that the Discharger failed to demonstrate that the entire CP amount was spent to complete the CP.

- 23. Extension of the Implementation Schedule Deadlines:** If, given written justification from the Discharger and the Regional Water Board, staff determines that a delay in the CP implementation schedule is beyond the reasonable control of the Discharger, the Executive Officer may revise the implementation schedule as appropriate. Written justification must be received by the Designated Regional Water Board Representative before the specific due date occurs, must describe circumstances causing the delay, and must state when each task of the CP will be completed. If any extension of the implementation schedule is granted, the Regional Water Board staff shall provide the Discharger a new implementation schedule in writing, which shall include the date the CP will be completed (Revised CP Completion Date).
- 24. Completion of the CP to the Regional Water Board Staff's Satisfaction:** Upon the Discharger's satisfaction of its CP obligations under this Stipulation and completion of the CP and any audit requested by the Regional Water Board, Regional Water Board staff shall send the Discharger a letter recognizing satisfactory completion of its obligations under the CP. Receipt of this letter shall terminate any further CP obligations of the Discharger and result in the dismissal of the Suspended Liability.
- 25. Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Order or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject it to further enforcement, including additional administrative civil liability.
- 26. 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 Prosecution Team or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
- 27. No Waiver of Right to Enforce:** The failure of the Prosecution Team or 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 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 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.

28. Party Contacts for Communications related to Stipulation/Order:

For the Regional Water Board:

Cecile Morris
Water Resource Control Engineer
North Coast Regional Water Quality
Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403
Cecile.Morris@waterboards.ca.gov
(707) 576-2347

For the Discharger:

Jay Parrish,
City Manager
City of Ferndale, WWTF
P.O. Box 1095
Ferndale, CA 95536
citymanager@ci.ferndale.ca.us
(707) 786-4224

29. Attorney's Fees and Costs: Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

30. Public Notice: The Discharger understands that this Stipulation and Order will be noticed for a 30-day public comment period prior to consideration by the Regional Water Board. In the event objections are raised during the public comment period, the Regional Water Board or the Executive Officer 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 Stipulation and Order as necessary or advisable under the circumstances. If the Regional Water Board Assistant Executive Officer or other Prosecution Staff receives significant new information that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board for adoption, the Regional Water Board Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present the Order to the Regional Water Board. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this Stipulated and Order.

31. Addressing Objections Raised During Public Comment Period: The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board 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.

32. 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.

33. 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 Regional Water Board or its Executive Officer.

34. 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.

35.If Order Does Not Take Effect: In the event that this 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 they expect to proceed to a contested evidentiary hearing before the Regional Water 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:

- a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that 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 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 the Complaint in this matter; or
- b. 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.

36.Waiver of Hearing: The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.

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

38.Regional Water Board is Not Liable: Neither the Regional Water Board members nor the Regional or 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 the Discharger its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and/or Order nor shall the Regional Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Discharger, its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulation and Order.

39.Covenant Not to Sue: Upon the effective date of this Stipulated Order, Discharger shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against the Regional Water 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.

40.Necessity for Written Approvals: All approvals and decisions of the Regional Water Board under the terms of this 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 Order.

- 41. 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.
- 42. Severability:** This Stipulations and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.
- 43. 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.
- 44. 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 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.
- 45. Effective Date:** This Stipulation is effective and binding on the Parties upon the entry of this Order by the Regional Water Board, which incorporates the terms of this Stipulation.

IT IS SO STIPULATED.

**California Regional Water Quality Control Board,
North Coast Region Prosecution Team**

Date: June 30, 2015

By: Original Signed By

**Shin-Roei Lee, P.E.
Assistant Executive Officer**

City of Ferndale, WWTF

Date: July 6, 2015

By: Original Signed By

Jay Parrish, City Manager

Findings of the Regional Water Board:

IT IS HEREBY ORDERED:

46. The Parties believe that settlement of this matter is in the best interest of the People of the State. Therefore, to settle the Complaint, the Discharger hereby agrees to comply with the terms and conditions of this Order.

47. The Regional Water Board finds that the Recitals set forth herein in Section II of the Stipulation are true.

48. 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 (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

49. The Executive Officer is authorized to refer this matter directly to the Attorney General for enforcement if the Dischargers fail to perform any of its obligations under the Order.

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, North Coast Region.

Matthias St. John
Executive Officer

DATE, 2015

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Enc: Attachment A