

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

In the matter of:)	
)	
City of Oakland)	Order No. R2-2011-0014
)	Settlement Agreement and Stipulation
Complaint No. R2-2009-0078 for)	for Entry of Order; Order
Administrative Civil Liability)	
)	

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (“Stipulation”) are entered into by and between the San Francisco Bay Regional Water Quality Control Board (“Regional Water Board”) Prosecution Team (“Prosecution Team”) and the City of Oakland (the “City”) (collectively “Parties”) in reference to an adjudicative proceeding initiated by the issuance of Administrative Civil Liability Complaint No. R2-2009-0078, dated January 26, 2010, (the “Complaint”), and additional violations of Order No. R2-2004-0012 (National Pollutant Discharge Elimination System [NPDES] Permit No. CA0038512) for sanitary sewer overflows that occurred between May 2009 through July 16, 2010, described in detail below in Paragraph 4 and summarized in Table 1, Attachment A. This Stipulation is presented to the Regional Water Board, or its delegated representative, for adoption as an Order, by settlement, pursuant to Government Code section 11415.60.

Section II: Recitals

1. The City owns, operates, and maintains the City of Oakland Sanitary Sewer Collection System located in Oakland, Alameda County, California (the “Collection System”). The Collection System consists of approximately 1,000 miles of sewer pipe and seven pump stations, which are connected to the interceptor owned and operated by East Bay Municipal Utility District (EBMUD), Special District 1. The Collection System serves a population of approximately 400,000 people. Sanitary sewer overflows (SSOs) from the City’s collection system are discharged to various storm drain systems, and/or creeks, which are tributary to Central San Francisco Bay, a water of the United States. The Collection System is subject to the requirements set forth in Order No. R2-2004-0012, NPDES Permit No. CA0038512; State Water Resources Control Board (State Water Board) Order No. 2006-0003 DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (General WDR) and its subsequent amendments; and reporting requirements established by the Regional Water Board pursuant to California Water Code (CWC) sections 13267 and 13383.

2. The Complaint, as issued on January 26, 2010, recommended imposing an administrative civil liability, in accordance with the 2002 State Water Board Water Quality Enforcement Policy, totaling \$299,600, which includes staff costs of \$27,000, for the following alleged violations, however as noted below, certain allegations are being revised by this Stipulation and Order. The alleged violations in the initial Complaint were:

- a. The City violated Order No. R2-2004-0012, Discharge Prohibition A.1 by discharging approximately 42,175 gallons of untreated sewage to waters of the State and the United States, as a result of eleven different SSOs. (See Table 1, Attachment "A" to the Complaint.)
- b. The City, on three occasions, violated Order No. R2-2004-0012, Discharge Prohibition A.2 by discharging chlorinated water to surface waters while flushing and/or cleaning creeks into which SSOs had discharged.
- c. The City, on six occasions, violated the Monitoring and Reporting Program of the General WDR, as amended by State Water Board Order No. WQ 2008-0002-EXEC and/or reporting requirements established by the Regional Water Board pursuant to CWC section 13383 by failing to notify the State Office of Emergency Services (California Emergency Management Agency as of October 1, 2008), the local health officer, and the Regional Water Board within two hours of becoming aware of an SSO.
- d. The City, on five occasions, violated the Monitoring and Reporting Program of the General WDR, as amended by State Water Board Order No. WQ 2008-0002-EXEC and/or reporting requirements established by the Regional Water Board pursuant to CWC section 13383 by failing to submit an initial SSO report via California Integrated Water Quality System (CIWQS) within three days of being notified of a Category 1 SSO. This allegation is dismissed, as detailed in Paragraph 3 below.
- e. The City violated the Monitoring and Reporting Program of the General WDR, as amended by State Water Board Order No. WQ 2008-0002-EXEC and/or reporting requirements established by the Regional Water Board pursuant to CWC section 13383 by failing to timely submit final, certified SSO reports in CIWQS on seven occasions.
- f. The City violated CWC section 13268 by falsifying the start times and SSO volumes in six SSO reports submitted by the City via CIWQS and by falsifying the flow rate and volume in one SSO report submitted by the City via CIWQS. This allegation is revised as detailed in Paragraph 3 below.

3. **Other Factors as Justice May Require:** The Prosecution Team dismisses with prejudice the allegation summarized in Paragraph 2.d above. Subsequent to the issuance of the Complaint, the Prosecution Team learned that the City had timely

submitted initial reports via CIWQS on the five occasions alleged. The City has also reported that since the reporting violations alleged in the Complaint, the City has implemented changes to personnel and initiated improvements to SSO reporting procedures that are required by the United States Environmental Protection Agency, Region IX Administrative Order for Compliance. Further, for purposes of settlement and without adjudicated factual bases, the Prosecution Team amends the allegation summarized above in Paragraph 2.f to replace the term “falsifying” with “failing to accurately report,” which should be reflected throughout the Complaint.

4. **Additional Discharge Prohibition Violations:** Subsequent to the issuance of the Complaint, the City reported and certified in CIWQS, under penalty of perjury under the laws of the State of California, that it had experienced additional SSOs, not addressed by the Complaint, from its collection system between May 1, 2009, and July 16, 2010. The Prosecution Team alleges that four of the SSOs were caused by root blockages, debris blockage, or pipe failure; occurred during dry weather months; and resulted in a total of 71,100 gallons discharged to waters of the State and the United States in violation of Order No. R2-2009-0085, Discharge Prohibition A.1. These additional alleged violations are provided in detail in Table 1, Attachment A.

- a. **Administrative Civil Liability Authority and Amount:** Pursuant to CWC section 13385(a), a discharger is subject to civil liability for violating any waste discharge requirement. The Regional Water Board may impose civil liability administratively pursuant to Article 2.5 (commencing with section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following; (1) \$10,000 for each day in which the violation occurs; and (2) \$10 for each gallon of discharge that is not susceptible to cleanup or is not cleaned up in excess of 1,000 gallons. The maximum administrative civil liability that the Regional Water Board may impose for these additional violations is \$640,000.
- b. **Factors Affecting the Amount of Civil Liability:** CWC section 13385(e) requires the Regional Water Board to consider several factors when determining the amount of civil liability to impose. These factors include: “... the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require.”

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 Enforcement Policy establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in CWC section 13385(e).

The policy can be found at:

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

The proposed administrative civil liability for the additional alleged violations is based on the use of that methodology.

i. PER GALLON DETERMINATION FOR DISCHARGE VIOLATIONS

The potential for harm factor is 5. This is determined by the sum of the factors for a) the potential for harm to beneficial uses (2); b) the physical, chemical, biological or thermal characteristics of the discharge (3); and the susceptibility for cleanup or abatement (0).

Four SSOs occurred on June 6, 2010; June 17, 2010; July 5, 2010; and July 15, 2010, respectively. (See Table 1, Attachment A.) An SSO is a discharge of raw, untreated sewage that can cause a public nuisance and adversely affect public health and water quality. The City self-reported in CIWQS that root and/or debris blockages and a pipe failure caused the SSOs. As a result of these four SSOs, it is alleged that approximately 71,100 gallons of raw sewage discharged to waters of the State and/or the United States, of which the City recovered approximately 10,100 gallons. Approximately 61,000 gallons, of raw sewage reached or remained in creeks or creekbeds that are tributaries of central San Francisco Bay, a water of the State and the United States. Raw sewage, as compared to properly treated wastewater, typically has over ten times the concentrations of biochemical oxygen demand, trash, total suspended solids, oil and grease, ammonia, and over a thousand times the levels of viruses and bacteria (measured in terms of total and fecal coliform). These pollutants exert varying levels of impact on water quality, and, as such, will adversely affect beneficial uses of receiving waters to different extents.

The deviation from requirements is major because all four SSOs reached surface waters, which rendered Prohibition A.1. set forth in Order No. R2-2004-0012 of the City's NPDES Permit, ineffective.

The Prosecution Team used the statutory maximum of \$10 per gallon to calculate the proposed administrative civil liability because all four SSOs were dry weather discharges.

ii. PER DAY ASSESSMENT FOR DISCHARGE VIOLATIONS

Because the SSOs resulted in dry weather discharges, a per day assessment is also appropriate. The per day factor is 0.15. This factor

is determined by a matrix analysis using the “potential for harm” and the “deviation from requirements” discussed above.

iii. ADJUSTMENTS TO DETERMINATION OF INITIAL LIABILITY

The City’s culpability factor is 1. This value is based on the following: The City is responsible for the proper operation and maintenance of its collection system. It could have prevented the SSOs caused by root blockages with a more effective Root Foaming Program. The City’s actions or inactions that resulted in these alleged violations were not negligent or intentional.

The City’s cleanup and cooperation factor is 1. This value is based on the following: Once an SSO reaches surface waters, flows can carry the discharge downstream making it difficult to contain and recover the waste. The City was notified of and responded to each SSO in 30 minutes or less of becoming aware of the SSO. As stated above, the City recovered a total of approximately 10,100 gallons (or 14 percent) from its responses to the four SSOs.

The City’s history of violations factor is 1.2. This value is based on the following: From February 1, 2007, through July 16, 2010, the Discharger self-reported approximately 522 SSOs. In the early 1980’s, the Discharger had many SSOs during wet weather, which indicated insufficient collection system capacity. As a result, the Regional Water Board issued to the Discharger Cease and Desist Order (CDO) No. 86-17 on March 19, 1986, which was subsequently superseded by CDO No. 93-134 on October 20, 1993. CDO No. 93-134 was recently superseded by CDO No. R2-2009-0087 on November 18, 2009. The City has completed 87 percent of the sewer collection system infrastructure improvements, replacements, and repair required by these orders and the EPA Administrative Order referenced above. In addition, the City is on schedule to complete all of the projects required by these orders and the EPA Administrative Order by June 30, 2014. The City has also made significant improvements in its reporting systems in accordance with the Regional Water Board’s reporting policies and procedures.

iv. ABILITY TO PAY AND ABILITY TO CONTINUE IN BUSINESS

The City has the ability to pay the total base liability amount based on the following information: The Discharger has an annual operating budget of approximately \$34 million for fiscal year 2009. The Discharger also has authority to adjust its sewer-rate scale to provide for financial needs. According to a survey of monthly Bay Area sewer services charges conducted by the Collection System Committee of the Bay Area Clean Water Agencies for the period ending September 30, 2009, the Discharger’s monthly collection sewer rate is \$22.24, which is above the average collection sewer rate for the seven East

Bay collection system communities (i.e., Cities of Oakland, Alameda, Albany, Berkeley, Emeryville, and Piedmont, and the Stege Sanitary District).

v. OTHER FACTORS AS JUSTICE MAY REQUIRE

Costs of Investigation and Enforcement. The Regional Water Board Prosecution Team's time to investigate and pursue enforcement related to the additional violations has been minimal at an estimated 20 hours. These 20 hours in staff time are in addition to the estimated 180 hours associated with the violations alleged in the Complaint. Based on an average cost to the State of \$150 per hour, the total staff cost for the additional 20 hours of staff time is approximately \$3,000.

vi. ECONOMIC BENEFIT

The economic benefit estimated for the violation(s) at issue is minimal due to the fact that the City implements a Root Foaming Program that targets root blockage hot spots.

The Regional Water Board Prosecution Team believes that the proposed civil liability significantly exceeds the economic benefit or savings the City received as a result of the violations alleged herein.

vii. FINAL LIABILITY AMOUNT

Based on the foregoing analysis, and consistent with the Enforcement Policy, the proposed administrative civil liability is \$114,606, which includes \$3,000 for staff costs.

5. To resolve by consent and without further administrative proceedings certain alleged violations set forth in the Complaint and Paragraphs 2 and 4 above and summarized in Table 1, Attachment A, the Parties have agreed to the imposition of \$280,000 against the City, which includes \$30,000 for staff costs. The City shall pay a total of \$155,000 to the State Water Board Cleanup and Abatement Account, consisting of \$125,000 in stipulated civil penalties and \$30,000 in staff costs no later than 30 days following the Regional Water Board executing this Order. Payment shall be submitted to the Designated Regional Water Board Representative identified in Paragraph 8 of this Stipulation and Order. The remaining \$125,000 in penalties is suspended upon completion of a Supplemental Environmental Project ("SEP") as set forth in this Stipulation and Order. The City shall expend at a minimum \$125,000 to complete the SEP in accordance with the terms of this Stipulation and the subsequently adopted Order.

6. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board for adoption as an Order pursuant to Government Code section

11415.60. The Prosecution Staff believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the specific violations alleged in the Complaint and this Stipulation except as provided in this Stipulation and that this Stipulation is in the best interest of the public.

7. **Designated San Francisco Estuary Partnership Representative:** The Designated San Francisco Estuary Partnership (SFEP) Representative is responsible for oversight of the SEP on behalf of the Regional Water Board and shall be the contact for the City regarding the implementation of the SEP. The contact information for this representative is as follows:

San Francisco Estuary Partnership
Attention: Athena Honore
1515 Clay Street, Suite 1400
Oakland, CA 94612
ahonore@waterboards.ca.gov
(510) 622-2325

8. **Designated Regional Water Board Representative:** The Designated Regional Water Board Representative shall serve as the main contact person for this enforcement case. For this matter, the Designated Regional Water Board Representative is Ms. Gina Kathuria. The contact information for this representative is as follows:

Ms. Gina Kathuria
San Francisco Bay Regional Water Board
1515 Clay Street, Ste. 1400
Oakland, CA 94612
(510) 622-2378
gkathuria@waterboards.ca.gov

Section III: Stipulations

The Parties stipulate to the following:

9. **Administrative Civil Liability:** The City hereby agrees to pay the administrative civil liability totaling \$280,000 as set forth in Paragraph 5 of Section II herein. Further, the Parties agree that \$125,000 of this administrative civil liability shall be suspended pending completion of an SEP as set forth in Paragraphs 10 through 20 herein and Attachment B attached hereto and incorporated by reference.

10. **SEP Description—City of Oakland Firehouse Biotreatment Retrofit Project:** The goals of this SEP are to improve water quality, reduce stormwater flows and velocities, and implement new technology in Oakland to create acceptance and gain new skills in biotreatment retrofit project implementation. The City shall implement

biotreatment retrofits at one or two existing fire station facilities, or other similar City facility, that will encompass an area of at least 1,000 square feet. These retrofits shall reduce stormwater flows and velocities and improve water quality by reducing pollutants in stormwater that flows to local creeks, Lake Merritt, and San Francisco Bay. Biotreatment retrofits include, but are not limited to, the installation of flow-through planters, swales, rain gardens, storm drain retrofits, and/or replacement of existing paved surface with permeable cover such as grasscrete or permeable pavement. Detailed plans, project milestones, and a budget for achieving the above goal(s) are provided in the SEP description attached hereto as Attachment B.

11. **SEP Completion Date:** The SEP shall be completed in its entirety no later than May 31, 2014 (the "SEP Completion Date").

12. **Representations and Agreements of the City to Fund, Report, and Guarantee Implementation of the SEP:** As a material consideration for the Regional Water Board's, or its delegated representative's, acceptance of this Stipulation, the City represents and agrees that (1) it will implement and complete the SEP as described in this Stipulation and Order; (2) it will provide certifications and written reports to the Designated Regional Water Board Representative and the Division of Financial Assistance of the State Water Board consistent with the terms of this Stipulation detailing the implementation of the SEP, and (3) it will guarantee implementation of the SEP identified in Attachment B by remaining liable for \$125,000 of suspended administrative liability until the SEP is completed and accepted by the Regional Water Board in accordance with the terms of this Stipulation. The City agrees that the Regional Water Board has the right to require an audit of the funds expended by it to implement the SEP.

13. **SEP Oversight:** The City agrees to pay the San Francisco Estuary Partnership (SFEP) for costs for overseeing implementing the SEP, with check(s) payable to the Association of Bay Area Governments. The City is solely responsible for paying for all oversight costs incurred by the San Francisco Estuary Partnership to oversee the SEP, up to a maximum of \$20,000. The total oversight costs for the SEP are estimated to be \$8,778. The SEP oversight costs are in addition to the total administrative civil liability imposed against the City and are not credited toward the City's obligation to implement and complete the SEP as described in this Stipulation and Order. Oversight tasks to be performed by the San Francisco Estuary Partnership include but are not limited to, updating CIWQS, reviewing and evaluating progress, reviewing the final completion report, verifying completion of the SEP with a site inspection, auditing appropriate expenditure of funds, and providing updates to Regional Water Board staff.

14. **SEP Progress Reports:** The City shall provide quarterly reports of progress to the Designated SFEP Representative, and the State Water Board's Division of Financial Assistance, commencing April 15, 2011, and continuing through submittal of the final report described in Paragraph 14. If no activity occurred during a particular quarter, a quarterly report so stating shall be submitted. Quarterly reports covering each calendar

quarter are due on the 15th day following that calendar quarter (i.e., January 15, April 15, July 15, and October 15.)

15. Certification of Completion of SEP and Final Report: On or before May 31, 2014, the City shall submit a certified statement of completion of the SEP (“Certification of Completion”). The Certification of Completion shall be submitted under penalty of perjury under the laws of the State of California, to the Designated Regional Water Board Representative and the State Water Board’s Division of Financial Assistance, by a responsible official representing the City. The Certification of Completion shall include the following:

- a. Certification that the SEP has been completed in accordance with the terms of this Stipulation and Order. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate the completion of the SEP and the costs incurred by the City.
- b. Certification documenting the expenditures by the City during the implementation of the SEP in order to complete the SEP. The expenditures may be external payments to outside vendors or contractors implementing the SEP. In making such certification, the official may rely upon normal project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The certification need not address any costs incurred by the Regional Water Board or the Designated SFEP Representative for oversight. The City shall provide any additional information requested by the Designated Regional Water Board Representative or the Regional Water Board staff that is reasonably necessary to verify SEP expenditures.
- c. Certification that the City followed all applicable environmental laws and regulations in the implementation of the SEP including but not limited to the California Environmental Quality Act (CEQA), the Federal Clean Water Act, and the Porter-Cologne Act. To ensure compliance with CEQA where necessary, the City shall provide the Regional Water Board with the following documents from the lead agency prior to commencing SEP construction:
 - i. Categorical or statutory exemptions relied upon by the City;
 - ii. Negative Declaration if there are no potentially “significant” impacts;
 - iii. Mitigated Negative Declaration if there are potential “significant” impacts but revisions to the project have been made or may be made to avoid or mitigate those potential significant impacts; or
 - iv. Environmental Impact Report (EIR), if there are “significant” impacts.

16. **Third Party Financial Audit:** In addition to the Certification of Completion, upon completion of the SEP, and at the written request of the Regional Water Board staff, the City, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Regional Water Board staff, or the Designated Regional Water Board Representative, providing such party's(ies') professional opinion that the City has expended money in the amounts claimed by the City. In the event of such an audit, the City agree that it will provide the third-party auditor with access to all documents that the auditor requests. The Regional Water Board staff's written request shall specify the reasons why the audit is being requested. The audit report shall be provided to the Designated Regional Water Board Representative within three (3) months of notice from the Regional Water Board staff to the City of the need for an independent third-party financial audit. The audit need not address any costs incurred by the Regional Water Board or the Designated SFEP Representative for oversight.

17. **Regional Water Board Acceptance of Completed SEP:** Upon the City's satisfaction of its obligations under this Stipulation and the completion of the SEP and any audits requested by the Regional Water Board staff, the Regional Water Board staff shall send the City a letter recognizing satisfactory completion of its obligations under this Stipulation. This letter shall terminate any further obligations of the City under this Stipulation and result in the permanent stay of \$125,000 of the administrative civil liability imposed on the City by this Stipulation and Order.

18. **Failure to Expend All Suspended Administrative Civil Liability Funds on the Approved SEP:** In the event that the City is not able to demonstrate to the reasonable satisfaction of the Regional Water Board staff that the entire SEP Amount has been spent to complete the SEP as required by this Stipulation and Order, the City shall pay the difference between the SEP Amount and the amount City can demonstrate was actually spent on the completion of the SEP, as an administrative civil liability. The City shall pay said difference within 30 days of its receipt of notice of the Regional Water Board staff's determination that the City failed to demonstrate that the entire SEP Amount has been spent to complete the SEP as required by this Stipulation and Order. Payment shall be submitted to the Designated Regional Water Board Representative.

19. **Failure to Complete the SEP:** If the SEP is not fully implemented by the SEP Completion Date required by this Stipulation and Order, or there has been a material failure to timely submit a report or certification as required by this Stipulation and Order, the Regional Water Board staff shall issue a Notice of Violation. As a consequence, City shall be liable to pay the entire SEP Amount or, some portion thereof less the value of the completion of any requirements satisfied in accordance with this Stipulation and Order, or the City may be compelled to complete the SEP.

20. **Publicity:** Whenever the City or its agents or subcontractors publicizes one or more elements of the SEP, they shall state in a **prominent manner** that the SEP is undertaken as part of the settlement of an enforcement action by the Regional Water Board against the City.

21. **Compliance with Applicable Laws:** The City understands that payment of administrative civil liability in accordance with the terms of this Order and/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 them to further enforcement, including additional administrative civil liability.

22. **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.

23. **City's Denial of Liability:** In settling this matter, the City does not admit to any of the findings of the Complaint or any finding set forth in Paragraphs 2 or 4 above or summarized in Table 1, Attachment A, provided, the City agrees that in the event of any future enforcement actions by the Regional Water Board, this Order may be used as evidence of a prior enforcement action consistent with CWC section 13327.

24. **Public Notice:** The City understands that this Stipulation and Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegated representative. In the event objections are raised during the public review and comment period, the Regional Water Board or its delegated representative 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.

25. **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.

26. **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 City is represented by counsel in this matter.

27. **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 the Regional Water Board or its delegated representative.

28. **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 its delegated representative, 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.

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

30. **Waiver of Right to Petition:** The City 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.

31. **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 City its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation, Order, or SEP, nor shall the Regional Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the City, its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulation and Order.

32. **City's Covenant Not to Sue:** The City covenants 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 the Complaint, this Stipulation and Order, or the SEP.

33. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board or its staff under the terms of this Order shall be communicated to the City 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 City of its obligation to obtain any final written approval required by this Order.

34. **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.

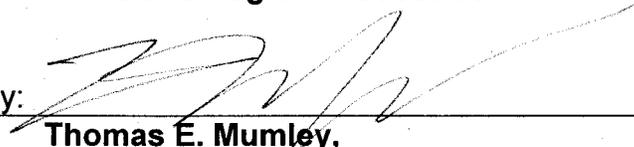
35. **Counterpart Signatures:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

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

IT IS SO STIPULATED.

**California Regional Water Quality Control Board,
San Francisco Region Prosecution Team**

Date: 2/15/11

By: 
Thomas E. Mumley,
Assistant Executive Officer

The City of Oakland

Date: _____

By: _____
Daniel Lindheim
Oakland City Administrator

Approved as to Form:

Date: 2/15/11

By: 
Ann K. B. Carroll,
State Water Resources Control Board,
Office of Enforcement
Attorney for Prosecution Team

Date: _____

By: _____
Celso Ortiz
Deputy City Attorney
City of Oakland

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**California Regional Water Quality Control Board,
San Francisco Region Prosecution Team**

Date: _____

By: _____

**Thomas E. Mumley,
Assistant Executive Officer**

The City of Oakland

Date: February 17, 2011

By: 

**Daniel Lindheim
Oakland City Administrator**

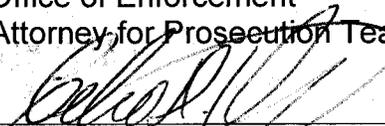
Approved as to Form:

Date: _____

By: _____

**Ann K. B. Carroll,
State Water Resources Control Board,
Office of Enforcement
Attorney for Prosecution Team**

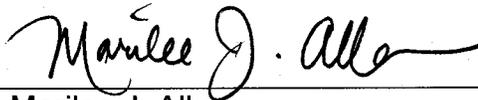
Date: February 17, 2011

By: 

**Celso Ortiz
Deputy City Attorney
City of Oakland**

Date: February 17, 2011

By:



Marilee J. Allan
Bingham McCutchen, LLP
Attorney for The City of Oakland

Section IV: Findings of the Regional Water Board or its Delegated Representative

37. The Regional Water Board, or its delegated representative, incorporates Paragraphs 1 through 36, by this reference, as if set forth fully herein.

38. The Parties believe that settlement of this matter is in the best interest of the People of the State. Therefore, to settle the Complaint and the allegations set forth in Paragraphs 2 and 4 above and summarized in Table 1, Attachment A, the City hereby agrees to comply with the terms and conditions of the Stipulation and this Order.

39. The Regional Water Board, or its delegated representative, finds that the Recitals set forth herein in Section II are true.

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

41. In accepting this Stipulation, the Regional Water Board, or its delegated representative, has considered, where applicable, each of the factors prescribed in CWC sections 13327 and 13385(e). The consideration of these factors is based upon information obtained by the Prosecution Team in investigating the allegations in the Complaint and those set forth in Paragraphs 2 and 4 above and summarized in Table 1, Attachment A, or otherwise provided during the public comment period. In addition to these factors, this settlement recovers the costs incurred by the Prosecution Team investigate and pursue enforcement of the allegations addressed herein.

42. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board, or its delegated representative, 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.

43. The Regional Water Board or its delegated representative is authorized to refer this matter directly to the Attorney General for enforcement if the City fails to perform any of its obligations under the Order.

44. Fulfillment of the City's obligations under the Order constitutes full and final satisfaction of any and all liability for each claim in the Complaint and those set forth in Paragraphs 2 and 4 above and summarized in Table 1, Attachment A.

Pursuant to CWC section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California San Francisco Bay Regional Water Quality Control Board.

Dyan C. Whyte
Assistant Executive Officer
California Regional Water Quality Control Board, San Francisco Region

Date: March 28, 2011

ATTACHMENT "A"

Table 1 – City of Oakland: Summary of Four SSOs that Occurred between May 1, 2009, and July 16, 2010, Investigated by Regional Water Board Staff

SSO CIWQS Event ID #	Date SSO Occurred	End Date	Location in Oakland, CA	Reported SSO Volume (gal)	Volume Recovered (gal)	SSO Destination	Cause	Maximum Penalty (CWC § 13385(c))
753313	6/6/2010	6/6/2010	Sequoyah Road & Macgurrin Road	100	100	Country Club Creek	Root Intrusion	\$10,000
753630	6/17/2010	6/18/2010	4555 Sequoyah Road	27,000	9,000	Melrose Creek	Pipe/ Structural Problem/ Failure	\$190,000
754526	7/5/2010	7/6/2010	140 Montwaad Way	27,000	0	dry creek bed	Debris/Rags	\$280,000
755035	7/15/2010	7/15/2010	Highway 13 at Park Blvd.	17,000	1,000	Sausal Creek	Root Intrusion	\$160,000
			TOTAL	71,100	10,100		TOTAL	\$640,000

ATTACHMENT "B"

Supplemental Environmental Project: City of Oakland Firehouse Biotreatment Retrofit Project

Project Name:

City of Oakland Firehouse Biotreatment Retrofit Project

Project Developed by:

City of Oakland, Department of Engineering and Construction, Watershed and Stormwater Management

Project to be Performed by:

City of Oakland, Department of Engineering and Construction, Watershed and Stormwater Management

Contact:

Lesley Estes, City of Oakland Public Works Agency,
Department of Engineering and Construction, Watershed and Stormwater Management

250 Frank H. Ogawa Plaza, Suite 4314
Oakland, CA 94612

(510) 238-7431
lestes@oaklandnet.com

Compliance with SEP Criteria:

1. The SEP provides pollution prevention and reduction, potential creek and waterbody protection and protection of beneficial uses of the San Francisco Estuary.
2. This SEP contains only measures that go above and beyond applicable current regulatory obligations.
3. This SEP does not directly benefit, in a fiscal manner, the Water Board's functions, its members, or its staff.
4. This SEP has nexus to the violation(s) in that the SEP will be located within the same area in which at least one of the violations occurred.

Description of Project:

The City is proposing to retrofit one to two existing fire station facilities, or other similar City facility, with appropriate biotreatment technologies.

Under existing conditions, stormwater runoff from driveways, pathways, parking areas and other impervious surfaces collects pollutants and enters the stormdrain network, delivering the pollutants and high velocity flows to our creeks, Lake Merritt and the Bay. The installation of new biotreatment techniques such as swales, cisterns, rain gardens and stormdrain retrofits, helps to cleanse and slow stormwater. Additionally, fire personnel at fire stations interact frequently with the public. Implementing stormwater treatment at fire stations provides for stormwater treatment, high public visibility, and educational opportunities.

The City of Oakland has twenty-five Fire Stations. The City will develop an initial list of ten possible fire stations. After surveying and evaluating the initial ten fire stations, one or two of these fire stations would be selected for retrofit projects. The target retrofit project/area will be at least 1,000 square feet. The fire station(s) will be selected based on drainage, slope, accessibility, facility condition and feasibility. At its option, the City may also select one or two other similar City facilities if no appropriate fire station can be identified.

Biotreatment retrofits may include:

- Replace fire truck driveway with grasscrete
- Replace impervious parking surface at firehouse with permeable surfaces
- Construct flow-thru planter, swale, or rain garden to treat parking and/or roof runoff

Additionally, for each project a maintenance manual will be developed and permanent maintenance signage will be installed in the project area.

The goals of the project are to:

- Implement new technology in Oakland to create acceptance and gain new skills in biotreatment retrofit project implementation
- Improve water quality
- Reduce stormwater flows and velocities

Key personnel involved in the SEP are:

- Lesley Estes, Department of Engineering and Construction, Watershed and Stormwater Management

- Will Stockard, Department of Engineering and Construction, Watershed and Stormwater Management
- Kevin Kashi, Department of Engineering and Construction, Watershed and Stormwater Management

The City of Oakland plans to continue and/or maintain the SEP beyond the SEP-funded period by:

1. Incorporating the Biotreatment retrofit into the City's existing maintenance program; and
2. If it is shown that the biotreatment is successful, expanding driveway/parking spot replacement.

The Project occurs on City of Oakland property.

The project would be exempt from CEQA.

Project Milestones and Budget

Budget:

Total Budget: \$125,000.00

Budget will cover contractor costs for design, construction and up to 10% (or up to \$12,500) may be used for City of Oakland construction management. All other City of Oakland staff costs for this project will be covered by the City of Oakland and not by SEP funds.

Project Milestones:

- Develop project schedule
- Survey firehouse sites
- Conduct site visits
- Select at least one to two firehouse sites
- Gain agreement with Fire Department
- Conduct drainage analysis and evaluate soil
- Conduct utility research

- Determine size
- Design project concept
- Create plan sets, specifications and bid set
- Complete bid process (bid advertising, opening, canvas of bids, compliance report, City of Oakland council authorization)
- Contract Award
- Construct project
- Develop maintenance plan
- Train maintenance personnel
- Project construction will be completed no later than June 30, 2013.
- Complete post construction inspection to verify performance of constructed feature(s) no later than July 31, 2013.
- Inspect to note conditions of constructed feature(s) after one winter season.
- No later than May 31, 2014, and after at least one rainy season, submit final report and certification of completion.

All costs and invoices will be documented against real costs, invoices, and labor charges. Any funds left over after the successful completion of the SEP will be turned over to the State Cleanup and Abatement Account.

Project Performance Measures:

The project performance measures will be:

- Use approved design standards for biotreatment project
- Use load standards for fire trucks
- Build to design standards
- Conduct maintenance in accordance with maintenance plan

Reports to the Water Board:

The City of Oakland will submit quarterly reports on the progress of the SEP to the Regional Water Board, the third party oversight organization, and the State Water Board's Division of Financial Assistance. Quarterly reports covering each calendar quarter are due on the 15th day following that calendar quarter (i.e., January 15, April 15, July 15, and October 15).

The City of Oakland will also submit a final report and certification of completion in accordance with the Settlement Agreement for this matter. The final report and certification of completion shall document completion of the SEP, addressing how performance measures were met, including photos of the project, a description of the results of the post construction inspection, and a copy of accounting records of expenditures.

Third Party Oversight Organization:

The City of Oakland will hire the San Francisco Estuary Partnership to perform the required third party oversight with funding from the City of Oakland.