CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

In the matter of:	)	
	)	
ATLANTIC RICHFIELD COMPANY 411 HIGH STREET OAKLAND, CA 94601	)	**Settlement Agreement and Stipulation for Entry of Order**
	)	
	)	**PROPOSED**
Administrative Civil Liability	)	
	)	

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order ("Stipulated Order") is entered into by and between the San Francisco Bay Regional Water Quality Control Board Prosecution Staff ("Prosecution Staff") and Atlantic Richfield Company ("ARCO" or "Settling Respondent") (collectively "Parties") and is presented to the San Francisco Bay Regional Water Quality Control Board ("San Francisco Bay Water Board"), or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60. This Stipulated Order resolves the violation alleged herein by imposition of administrative civil liability against ARCO in the amount of **$245,000**.

Section II: Recitals

1. The Settling Respondent owned and operated property at 411 High Street, Oakland, California (the "Property") from 1946 through 1967. From 1967 through 1975, the Property was leased to other industrial operators. In 1975, the Settling Respondent sold the Property to Mr. William Balfrey who immediately sold it to the Richard Koch 411 High Street Annuity Trust and Nancy Koch 411 High Street Annuity Trust (the "Trust"). In 2014, the Trust conveyed the Property to the current owner, 411 High Street LLC.

2. The Settling Respondent operated a petroleum storage facility in the southern portion of the Property from 1946 through 1967. The facility included two large buildings, three above ground storage tanks (ASTs) with capacities greater than 50,000 gallons each, six smaller ASTs with capacities less than 50,000 gallons each, a loading rack and numerous product pipelines and manifolds. Gasoline, diesel, and motor oil were stored in the ASTs. The Settling Respondent removed the ASTs and associated aboveground piping from the Property by 1975.

3. On July 14, 2011, the San Francisco Bay Water Board adopted Revised Final Site Cleanup Order R2-2011-0052 (SCR Order) to regulate the cleanup of soil, groundwater, and soil gas contamination caused by former industrial activities at the Property. The SCR Order names the Settling Respondent as primarily-responsible discharger and is the most recent in a series of cleanup orders issued by the San Francisco Bay Water Board to regulate cleanup of the Property. The SCR Order superseded previous orders.

4. On November 17, 2014, the Assistant Executive Office of the San Francisco Bay Water Board issued Administrative Liability Complaint No. R2-2014-1031 ("Complaint") to the Settling Respondent (Attachment A) for an alleged violation of Task 5 "Implement Offsite Remedial Action/Mitigation (441/445 High Street)" of the SCR Order. Compliance with Task 5 required offsite mitigation to be completed by September 18, 2013. The report documenting implementation of Task 5 was 288 days late. The Complaint proposed imposing an administrative civil liability totaling $561,800 for this alleged violation pursuant to Water Code section 13350(a)(1). The proposed amount included staff costs of $7,400.

5. The Parties have engaged in settlement negotiations and agree to settle the violations alleged in the Complaint without administrative or civil litigation and by presenting this Stipulated Order to the San Francisco Bay Water Board for adoption as an Order pursuant to Government Code section 11415.60. During settlement negotiations, the Settling Respondent provided the Prosecution Staff with new information and/or evidence to justify the reduction of the Complaint's proposed administrative liability amount. The Settling Respondent provided additional information about the potential threat to indoor air ("Potential for Harm" lowered to minor (0.2 multiplier for the per day factor) based on a health risk assessment) and additional documentation of correspondence suggesting that there was not an intent to miss the deadline, but a potential misunderstanding from a meeting ("Culpability" factor lowered to a 0.75 multiplier). 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 except as provided in this Stipulated Order and that this Stipulated Order is in the best interest of the public.

6. To resolve by consent and without further administrative proceedings the alleged violation of the SCR order, set forth in the Complaint, the Parties have agreed to the imposition of administrative civil liability in the amount of $245,000 against the Settling Respondent, which includes $7,400 for staff costs.

Section III: Stipulations

The Parties stipulate to the following:

7. **Administrative Civil Liability:** The Settling Respondent hereby agrees to pay the administrative civil liability totaling $245,000. Within thirty (30) days of the effective date of this Order, the Settling Respondent agrees to remit, by check, TWO HUNDRED FORTY-FIVE THOUSAND DOLLARS ($245,000), payable to the *State Water Resources Control Board Waste Discharge Permit Fund*, and shall indicate the number of this Order on the check. The original signed check shall be sent to the following address, and notification of payment shall be sent to the Office of Enforcement (email to annakathryn.benedict@waterboards.ca.gov) and the Regional Water Board (email to Jack.Gregg@waterboards.ca.gov).

Division of Administrative Services
Attn: Accounting, 18th Floor
P.O. Box 100
Sacramento, CA 95812

8. **Compliance with Applicable Laws:** The Settling Respondent understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order or compliance with the terms of this Stipulated 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.

9. **Party Contacts for Communications related to Stipulation/Order:**

For the San Francisco Bay Water Board:

Jack Gregg
Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay St., Suite 1400
Oakland, CA 94612

For the Settling Respondent:

Douglas S. Reinhart
Senior Counsel
BP Legal
150 W. Warrenville Road
Mail Code 200-1W
Naperville, Illinois 60563

With a copy to:

Jeffrey M. Hamerling, Esq.
Archer Norris
2033 North Main Street, Suite 800
Walnut Creek, CA 94596

10. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

11. **Matters Addressed by Stipulation:** Upon the San Francisco Bay Water Board's adoption of this Stipulated Order, this Order represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in the Complaint ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadlines specified in Paragraph 7.

12. **Settling Respondent's Denial of Liability:** In settling this matter, the Settling Respondent expressly denies the findings and allegations in the Complaint and makes no admission or representation as to the appropriateness of the liability determination under the Water Quality Enforcement Policy (as set forth in Exhibit A to the Complaint). Neither this Stipulated Order nor any payment pursuant to it shall constitute evidence of, or be construed

and/or interpreted as, a finding, adjudication, or acknowledgement of any fact, law or liability, nor shall be construed as an admission of violation of any law, rule, or regulations. However, the Settling Respondent agrees that in the event of any future enforcement actions by the San Francisco Bay Water Board, this Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327.

13. **Public Notice:** The Parties understand that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegee. In the event objections are raised during the public review and comment period, the Regional Water Board or its delegee may, under certain circumstances, require a public hearing regarding the Stipulated 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. If significant new information is received during the public review and comment period that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board or its delegee for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Regional Water Board or its delegee.

14. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the San Francisco Bay Water Board's adoption of the settlement by the Parties and review by the public, as reflected in this Stipulated Order, is lawful and adequate. In the event procedural objections are raised prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

15. **No Waiver of Right to Enforce:** The failure of the Prosecution Staff or San Francisco Bay 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 the Order. The failure of the Prosecution Staff or San Francisco Bay Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.

16. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Settling Respondent is represented by counsel in this matter.

17. **Modification:** This Stipulated 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 San Francisco Bay Water Board.

18. **If Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the San Francisco Bay Water Board, or its delegee, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the San Francisco Bay 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 the following:

a. Objections related to prejudice or bias of any of the San Francisco Bay Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the San Francisco Bay 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 Stipulated 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.

19. **Waiver of Hearing:** The Settling Respondent has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the San Francisco Bay Water Board prior to the adoption of the Order. However, should the Stipulated Order not take effect, Settling Respondent does not waive its right to a hearing on the Complaint.

20. **Waiver of Right to Petition or Appeal:** The Settling Respondent hereby waives its right to petition the San Francisco Bay Water Board's adoption of the Stipulated Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the Stipulated Order to a California Superior Court and/or any California appellate level court. This explicit waiver of rights includes potential future decisions by the San Francisco Bay Water Board or its delegate related to this Order (which pertains only to Task 5 of the SCR Order), including, but not limited to time extensions, completion of project milestones (if supplemental environmental projects, enhanced compliance projects, etc. are applicable to the settlement), and other terms contained in this Order.

21. **Settling Respondent's Covenant Not to Sue:** The Settling Respondent 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 this Stipulated Order.

22. **Necessity for Written Approvals:** All approvals and decisions of the San Francisco Bay Water Board under the terms of this Stipulated Order shall be communicated to the Settling Respondent in writing. No oral advice, guidance, suggestions or comments by employees or officials of the San Francisco Bay Water Board regarding submissions or notices shall be construed to relieve the Settling Respondent of its obligation to obtain any final written approval required by this Stipulated Order.

23. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Order.

24. **Severability:** This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.

25. **No Third Party Beneficiaries:** This Stipulated Order 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 Stipulated Order for any cause whatsoever.

26. **Counterpart Signatures:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

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

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
San Francisco Bay Region

By: Dyan C. Whyte

Dyan C. Whyte
Assistant Executive Officer

Date: April 2, 2015

Approved as to form:

By: Anna Kathryn Benedict
Anna Kathryn Benedict, Senior Staff Counsel
State Water Resources Control Board
Office of Enforcement

Atlantic Richfield Company

By: Robert M. Tull

NAME Robert M. Tull
TITLE Attorney-in-Fact

Date: April 1, 2015

ORDER OF THE SAN FRANCISCO BAY WATER BOARD

28. This Order incorporates the foregoing Stipulation described above by reference as if set forth fully herein and made part of this Order of the San Francisco Bay Water Board.

29. In adopting this Stipulated Order, the San Francisco Bay Water Board or its delegee has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e), and has applied the Penalty Calculation Methodology set forth in the State Water Resource Control Board's Enforcement Policy as shown in Exhibit A of the Complaint, which is hereby incorporated herein by this reference. The San Francisco Bay Water Board's consideration of these factors is based upon information and comments obtained by the San Francisco Bay Water Board's staff in investigating the allegations in the Complaint or otherwise provided to the San Francisco Bay Water Board or its delegee by the Parties and members of the public. In addition to these factors, this settlement recovers the costs incurred by the staff of the San Francisco Bay Water Board for this matter.

30. This is an action to enforce the laws and regulations administered by the San Francisco Bay Water Board. The method of compliance with this enforcement action consists entirely of payment of an administrative penalty. As such, the San Francisco Bay Water Board finds that issuance of this Order is not considered subject to the provisions of the California Environmental Quality Act as it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not considered a "project" (Public Resources Code 21065, 21080(a); 15060(c)(2),(3); 150378(a), Title 14, of the California Code of Regulations). In addition, the San Francisco Bay Water Board finds that issuance of this Order is also exempt from the provisions of CEQA in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations as an enforcement action by a regulatory agency and there are no exceptions that would preclude the use of this exemption.

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

32. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Settling Respondent fails to perform any of its obligations under the Order.

33. Fulfillment of Settling Respondent's obligations under this Order constitutes full and final satisfaction of any and all liability for the matters alleged in the Stipulation in accordance with the terms of the Order.

IT IS HEREBY ORDERED, pursuant to Water Code section 13323 and Government Code section 11415.60, by the California Regional Water Quality Control Board, San Francisco Bay Region that ARCO shall pay $245,000 in administrative civil liabilities.

_____ _____

Bruce H. Wolfe
Executive Officer

Date

California Regional Water Quality Control Board
San Francisco Bay Region

Attachment(s):

A. Administrative Liability Complaint No. R2-2014-1031