

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the Matter of:

**City of Anaheim
Order No. R8-2010-0062
NPDES No. CAS618030
Waste Discharge Requirements for
Orange County and incorporated
Cites**

ORDER R8-2016-0040

**SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY
ORDER**

INTRODUCTION

1. This Settlement Agreement and Stipulation for Entry of Order No. R8-2016-0040 (Settlement Agreement or Stipulated Order) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, Santa Ana Region (Santa Ana Water Board) on behalf of the Regional Water Board Prosecution Team and the City of Anaheim (Discharger) (the Regional Water Board and the Discharger are collectively referred to as the Parties) and is presented to the Regional Water Board or its delegee, for adoption as an Order by settlement, pursuant to Government Code 11415.60. This Settlement Agreement accepts the stipulations for settlement of administrative civil liability assessed to the Discharger for violations subject to administrative civil liability pursuant to California Water Code section 13385.

RECITALS

2. On July 22, 2006, the County of Orange, along with the Discharger and numerous other incorporated cities, submitted NPDES Application No. CAS618030 and a Report of Waste Discharge for reissuance of their area-wide urban storm water permit. On May 22, 2009 the Santa Ana Regional Water Board adopted Waste Discharge Requirements for the Discharger as Order No. R8-2009-0030, and amended those requirements by Order R8-2010-0062, NPDES No. CAS618030 (Order).

3. The Order regulates the discharge of pollutants in urban storm water runoff from anthropogenic sources and/or activities within the jurisdiction and control of the Discharger.
4. The Discharger owns and operates a municipal separate storm sewer system consisting of storm drains and flood control facilities within the boundaries of the City of Anaheim. As owner and operator of the municipal separate storm sewer system the Discharger is responsible for discharges into the system.
5. The Discharger is required by the Order to develop and implement programs and policies necessary to reduce the discharge of pollutants in urban storm water, including the implementation of structural and non-structural Best Management Practices (BMPs) for new developments and significant redevelopments as per the approved project Water Quality Management Plan (WQMP).
6. The Regional Board staff conducted an audit of the New Development element of the Discharger's storm water management program. The audit occurred on June 18 and 19, 2015 and July 16, 2015. The audit consisted of interviews with the Discharger's staff, reviews of project WQMPs, and field inspections of completed project sites.
7. The Prosecution Team alleges that Discharger violated provisions of the Order. The alleged violations are associated with implementation of structural and non-structural BMPs at two newly developed sites: the Starbucks Coffee Project, located at 1224 North Harbor Blvd, and the Marriot Springhill Suites Project located at 1160 West Ball Rd.
8. Specifically, the Prosecution Team alleges the following:
 - 8.1 **Violation 1:** Regional Board staff alleges that the Discharger violated Provision XII.B.4 of the Order by failing to ensure the structural treatment control BMPs at the Starbucks Coffee Project site were properly constructed in accordance with the 2011 Model WQMP.

8.2 **Violation 2:** Regional Board staff alleges that the Discharger violated Provisions XII.G.2 and XII.G.3 of the Order by failing to verify that treatment control BMPs were implemented according to the approved WQMP prior to occupancy of the Starbucks Coffee Project site.

8.3 **Violation 3:** Regional Board staff alleges that the Discharger violated Provision XII.B.4 of the Order by failing to ensure the structural treatment control BMPs at the Marriot Springhill Suites Project site were properly constructed in accordance with the 2011 Model WQMP.

8.4 **Violation 4:** Regional Board staff alleges that the Discharger violated Provision XII.G.2 and XII.G.3 of the Order by failing to verify that treatment control BMPs were implemented according to the approved WQMP prior to occupancy of the Marriot Springhill Suites Project site.

8.5 Both violations of Provisions XII.G.2 and XII.G.3 (Violation 2 and Violation 4) occurred due to the same inaction (namely, failure to field-verify as-built structural BMP prior to occupancy), so they have been consolidated into a single violation.

Legal Authority

9. The Federal Clean Water Act (33 U.S.C Section 1311) and California Water Code (Water Code) Section 13376 prohibit the discharge of pollutants to waters of the United States, unless authorized by a National Pollutant Discharge Elimination System (NPDES) permit.
10. Order R8-2010-0062, NPDES No. CAS618030 as amended by Order No. R8-2010-0062 requires the Discharger to implement structural and non-structural BMPs for new developments and significant redevelopments as per the approved model WQMP.
11. Violation of the Order by failing to fully implement structural and non-structural BMPs for new developments and significant redevelopments subjects the Discharger to civil liability under Water Code section 13385(a)(2).

12. Water Code section 13385 authorizes the Regional Water Board to impose administrative civil liability of up to \$10,000 per day of violation.
13. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation by presenting this Stipulated Order to the Santa Ana Water Board, or its delegee, for adoption as an order by settlement pursuant to Government Code section 11415.60. To resolve the alleged violations by consent and without further administrative proceedings, and in consideration of hearing and litigation risks, the Parties have agreed to the imposition of \$110,000 in liability against the Discharger.
14. The Santa Ana Water Board Prosecution Team 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 violations alleged herein, and that this Stipulated Order is in the best interest of the public.

STIPULATIONS

The Parties stipulate to the following:

15. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability totaling ONE HUNDRED TEN THOUSAND DOLLARS (\$110,000) to resolve the alleged violations. Specifically:
 - 15.1 Within thirty (30) days of issuance of the Stipulated Order, the Discharger agrees to remit, by check, ONE HUNDRED TEN THOUSAND DOLLARS (\$110,000) payable to the *State Water Resources Control Board Cleanup and Abatement Account*, and shall indicate on the check the number of this Stipulated Order. The Discharger shall send the original signed check to the State Water Resources Control Board Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, CA 95812-1888.

Copies of the check shall be sent to John J. Prager, Attorney, State Water Resources Control Board, Office of Enforcement, P.O. Box

100, Sacramento, CA 95812 and Michelle R. Beckwith, Chief, Coastal Storm Water Unit, Regional Water Quality Control Board, Santa Ana Region, 3737 Main Street, Suite 500 Riverside, CA 92501-3339.

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

17. **Party Contacts for Communications related to Stipulated Order:**

For the Santa Ana Water Board:
Michelle R. Beckwith, Chief
Coastal Storm Water Unit
Regional Water Quality Control Board, Santa Ana Region
3737 Main Street, Suite 500 Riverside, CA 92501-3339
Michelle.Beckwith@waterboards.ca.gov
(951) 782-4433

For the City of Anaheim:
Rudy Emami, City Engineer
City of Anaheim
200 S Anaheim Boulevard, Suite 276 Anaheim, CA 92805
REmami@anaheim.net
(714) 765-5176

18. **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.

19. **Matters Addressed by Stipulation:** Upon adoption by the Santa Ana Water Board, or its delegee, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations or causes of action alleged herein or which could have been asserted based on the specific facts

- alleged herein as of the effective date of this Stipulated Order (Covered Matters). The provisions of this Paragraph are expressly conditioned on the Discharger's payment of the administrative civil liability by the deadline specified in Paragraph 15.1
20. **Public Notice:** The Discharger understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Santa Ana Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Santa Ana Water Board, or its delegee, for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Santa Ana Water Board, or its delegee. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
 21. **Procedure:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Settlement Agreement, will be adequate. In the event procedural objections are raised prior to the effective date of the Stipulated Order, the Parties agree to meet and confer concerning any such objections, and may mutually agree to revise or adjust the procedure as necessary or advisable under the circumstances. However, agreement to such revisions or adjustments shall not require Discharger to pay any amount in excess of that set forth in this Settlement Agreement.
 22. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or of the Santa Ana 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 Team or of the Santa Ana Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.
 23. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Prosecution Team or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.

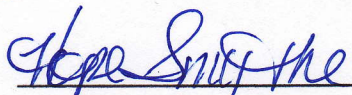
24. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
25. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Santa Ana Water Board or its delegee.
26. **If Stipulated Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the Santa Ana Water Board, or its delegee, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Santa Ana 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 Santa Ana Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Santa Ana 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.
27. **No Admission of Liability:** In settling this matter, the Discharger does not admit to any of the allegations herein, or that it has been or is in violation of

- the Water Code, or any other federal, state, or local law or ordinance; however, the Discharger agrees that in the event of any future enforcement actions by the Santa Ana Water Board, the Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code sections 13327 and 13385.
28. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323(b), and hereby waives its right to a hearing before the Santa Ana Water Board prior to the adoption of the Stipulated Order.
 29. **Waiver of Right to Petition:** The Discharger hereby waives its right to petition the Santa Ana Water Board's adoption of the Stipulated Order as written for review by the Regional Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
 30. **Appeals:** Upon adoption of this Stipulated Order, the Discharger waives their right to appeal this Stipulated Order to the State Board, a California Superior Court and/or any California appellate level court. Nothing in this Settlement Agreement, however, shall be construed to prevent the Discharger from participating as parties or interveners in any appeal of this Stipulated Order brought by a third party before any California court of law or the State Board.
 31. **Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.
 32. **Santa Ana Water Board is Not Liable:** Neither the Santa Ana Water Board members nor the Santa Ana 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 Stipulated Order, nor shall the Santa Ana 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 Stipulated Order.
33. **The Discharger is Not Liable:** Neither the Discharger, its directors, officers, employees, agents, representatives or contractors shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Santa Ana Water Board members, or the Santa Ana Water Board staff, attorneys, or representatives in carrying out activities pursuant to this Stipulated Order, nor shall the Discharger, its directors, officers, employees, agents, representatives or contractors be held as parties to or guarantors of any contract entered into by the Santa Ana Water Board, its members or staff the Discharger, in carrying out activities pursuant to this Stipulated Order.
 34. **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.
 35. **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.
 36. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Santa Ana Water Board, or its delegee, enters the Order.
 37. **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.
 38. **Incorporation of Exhibits:** Exhibit A, the Enforcement Policy Methodology Analysis, is hereby incorporated by reference.

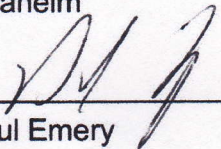
IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team Santa Ana
Region

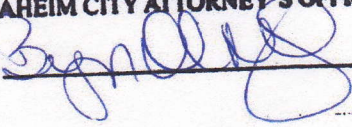
By: 
Hope Smythe
Assistant Executive Officer

Date: 11/29/16

City of Anaheim

By: 
Paul Emery
City Manager

Date: 11/28/16

**APPROVED AS TO FORM:
ANAHEIM CITY ATTORNEY'S OFFICE**
BY: 

ATTEST:

By: 
Linda N. Andral
City Clerk

Order of the Santa Ana Water Board

1. In adopting this Stipulated Order, the Santa Ana Water Board has considered, where applicable, each of the factors prescribed in Water Code sections 13327 and 13385(e). The consideration of these factors is based upon information and comments obtained by the Santa Ana Water Board's staff in investigating the allegations described in the Complaint or otherwise provided to the Santa Ana Water Board or its delegee by the Parties and members of the public.

2. This is an action to enforce the laws and regulations administered by the Santa Ana Water Board. The method of compliance with this enforcement action consists entirely of payment of amounts for administrative civil liability. As such, the Santa Ana Water Board finds that issuance of this Order is not considered subject to the provisions of the California Environmental Quality Act (CEQA) 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 sections 21065, 21080(a); sections 15060(c)(2) and (3); 15378(a), Title 14, of the California Code of Regulations). In addition, the Santa Ana 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.

3. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the Santa Ana Water Board.

Pursuant to Water Code sections 13385 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, Santa Ana Region.

Kurt V. Berchtold
Executive Officer

Date