

Santa Ana Regional Water Quality Control Board

State of California
California Regional Water Quality Control Board
Santa Ana Region

In the matter of:)	
)	
EnGen Corporation)	
41625 Enterprise Circle, South, B-2)	Order No. RB-2017-0017 (Proposed)
Temecula, CA 92590)	
)	Settlement Agreement and Stipulation for Attn:
Wayne Baimbridge, Principal)	Entry of Order; Order

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (“Stipulated Order” or “Order”) is entered into by and between the Executive Officer of the Regional Water Quality Control Board, Santa Ana Region (“Regional Water Board”), on behalf of the Regional Board Prosecution Staff (“Prosecution Staff”) and EnGen Corporation (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 section 11415.60.

Section II: Recitals

1. The Settling Respondent is the EnGen Corporation, a geotechnical and geological engineering and inspection firm, located at 41625 Enterprise Circle, Temecula, California, County of Riverside, California. Mr. Wayne Baimbridge is the Principal of Engen Corporation. The Discharger provides geotechnical services to residents and businesses in the region.
2. On September 1, 2016, the Prosecution Staff issued the Discharger a letter detailing a forthcoming enforcement action for violations of the Water Code, specifically the discharge of sewage to Canyon Lake without a report of waste discharge in July 2016 (“Forthcoming Enforcement Action Letter”) (Attachment A).
3. As described in the Specific Factors Considered for Administrative Liability for EnGen Geotechnical Services (Attachment B), the Discharger performed subsurface work on a vacant parcel on San Joaquin Drive West (APN # 353-132-001) within the city of Canyon Lake. The subsurface work consisted of digging three holes with a backhoe and obtaining soil samples to confirm the presence of undocumented soils for

future engineering work to build a house. While the Discharger was digging the third hole, Mr. Baimbridge discovered that the digging activity had broken a clay pipe. Mr. Baimbridge assessed the pipe and assumed it was an abandoned water line. This broken clay pipe, however, was an active sewer line, owned and maintained by Elsinore Valley Municipal Water District. The damage to the sewer line that the Discharger caused resulted in the discharge of raw sewage to Canyon Lake over a period of seven (7) days.

4. The discharge of pollutants to Canyon Lake without a report of waste discharge would constitute a violation of Water Code section 13376.

5. Application of the factors set forth in the Water Quality Enforcement Policy by the Prosecution Staff resulted in a recommended a penalty of \$38,040. The Settling Party provided Regional Water staff with verifiable financial evidence that took into consideration the Discharger's ability to pay. Prosecution Staff took under advisement the Settling Party's ability to pay. (Attachment B) The Prosecution Staff subsequently offered to reduce the penalty of five thousand dollars (\$5,000). The Settling Party accepted the offer.

6. The Parties have engaged in settlement negotiations and agree to settle the matter 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 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 Water Quality Enforcement Policy except as provided in this Stipulated Order and that this Stipulated Order is in the best interest of the public.

Section III: Stipulations

The Parties stipulate to the following:

7. **Administrative Civil Liability:** The Discharger hereby agrees to pay the administrative civil liability totaling five-thousand dollars (\$5,000) as set forth in Paragraph 12 herein.

8. **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 may subject them to further enforcement, including additional administrative civil liability.

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

For the Regional Water Board:

Charles Griffin, PE
Senior WRCE, Enforcement Coordinator
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501
(951) 782-4996
Chuck.Griffin@waterboards.ca.gov

For the Discharger:

Wayne Baimbridge
EnGen Corporation
41625 Enterprise Circle South, B-2
Temecula, California 92590
(951) 296-3511
wayne@engencorp.com

10. **Bankruptcy:** Should the Discharger enter into bankruptcy proceedings before all payments are paid in full, the Discharger agrees to not seek to discharge any of these penalties in bankruptcy proceedings.

11. **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.

12. **Matters Addressed by Stipulation:** Upon adoption by the Regional Board as an Order, this Stipulated Order represents a final and binding resolution and settlement of all liabilities, claims, violations, or causes of action described in Attachments A through C, or which could have been asserted against the Discharger as of the Effective Date of this Stipulated Order based on the allegations in Attachment A. The provisions of this Paragraph are expressly conditioned on the full payment of the liability amount of five-thousand (\$5,000) through a payment agreement, described in Attachment D and incorporated into this Stipulated Order by reference, following the execution of the Order by the Executive Officer of the Regional Board as specified in Paragraph 7 herein.

13. **Admission of Liability:** In settling this matter, the Discharger does not admit to any of the findings of the Water Quality Enforcement Policy, or that they have been or are in violation of the Water Code, or any other federal, state, or local law or ordinance, provided, the Discharger 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 Water Code section 13327.

14. **Public Notice:** The Discharger understands that this Stipulated Order and Order will be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board, or its delegate, for adoption, the Assistant/Executive Officer may unilaterally declare this Stipulated Order and Order void and decide not to present it to the Regional Water Board or its delegate. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

15. **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 Stipulated Order 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.

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 Discharger 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 the Regional Water Board.

18. **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 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 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 Stipulated Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Water Quality Enforcement Policy in this matter; or
- b. Laches or delay or other equitable defenses based on the time period

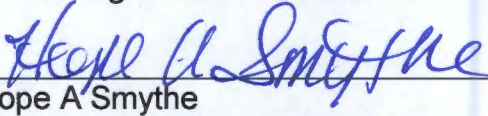
for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

19. **Waiver of Hearing:** The 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.
20. **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 Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
21. **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.
22. **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.
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 Stipulated Order.
24. **Effective Date:** This Stipulated Order is effective and binding on the Parties upon the entry of this Order by the Regional Board or its delegee, which incorporates the terms of this Stipulated Order.
25. **Severability:** This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.
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.

IT IS SO STIPULATED.

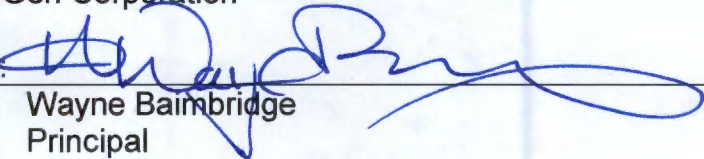
California Regional Water Quality Control Board,
Santa Ana Region Prosecution Team

Date: 4/10/17

By: 
Hope A Smythe
Assistant Executive Officer

EnGen Corporation

Date: 4/5/17

By: 
Wayne Baimbridge
Principal

Order of the Regional Board

27. The Regional Board incorporates the foregoing Stipulated Order, set forth in Paragraphs 1 through 26 above, by this reference, as if set forth fully herein.

28. In accepting the foregoing Stipulated Order, the Regional Board has considered, where applicable, each of the factors prescribed in CWC sections 13327 and 13385(e) as provided for in the Water Quality Enforcement Policy. The Regional Board's consideration of these factors is based upon information provided by the Prosecution Staff or otherwise provided to the Regional Board.

29. This is an action to enforce the laws and regulations administered by the Regional Board. The Regional Board finds that issuance of this Stipulated 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.

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

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

Kurt V. Berchtold
Executive Officer

Date: _____