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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

DEC 16 2011

ALAN CARLSON, Clerk of the Court

S. Garcia
BY S. GARCIA

RECEIVED
SUPERIOR COURT OF CALIFORNIA
CENTRAL JUSTICE CENTER

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BY: S. NEW

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

PEOPLE OF THE STATE OF CALIFORNIA, EX-
REL. CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD, SANTA ANA
REGION

Plaintiff,

v.

KIRKHILL-TA CO., AND DOES 1 THROUGH 25,
INCLUSIVE,

Defendants

Case No. 30-2011-00463149-CU-TT-CJC

**STIPULATED CONSENT JUDGMENT
AND FINAL ORDER [PROPOSED]**

The Hon. Francisco F. Firmat

1 This Stipulated Consent Judgment and Final Order (Consent Judgment) is entered into by
2 Plaintiff THE PEOPLE OF THE STATE OF CALIFORNIA, ex rel., CALIFORNIA REGIONAL
3 WATER QUALITY CONTROL BOARD, SANTA ANA REGION (Regional Board) and
4 Defendant KIRKHILL-TA Co. (Kirkhill or Defendant). For purposes of this Consent Judgment,
5 the Regional Board and Kirkhill shall be referred to collectively as the "Parties." The Parties
6 have agreed to settle the above-captioned matter without further litigation, as set forth below.

7 **INTRODUCTION**

8 On March 30, 2011, the Regional Board filed a complaint in this matter in Orange County
9 Superior Court naming as Defendant Kirkhill and related parties, and alleging various violations
10 of the California Water Code with respect to actions undertaken at Kirkhill's facility in the City
11 of Brea, California. Following the filing of the Complaint, the Parties commenced discussions
12 aimed at resolving the claims alleged by the Regional Board. The violations alleged in the
13 Complaint include the discharge of pollutants, including unauthorized non-storm water, to
14 Fullerton Creek and Craig Lake, both waters of the United States, in violation of its California
15 waste discharge requirements (WDR) and Federal Water Pollution Control Act (Clean Water Act)
16 storm water permit. This Consent Judgment does not constitute evidence of, or an admission by,
17 any party regarding any issue of fact or law alleged in the Complaint, and Defendant denies the
18 claims as asserted in the Complaint. To avoid litigation over the claims asserted in the
19 Complaint, the Parties enter into this Consent Judgment pursuant to a compromise and settlement
20 of disputed claims.

21 **CONSENT JUDGMENT PURSUANT TO STIPULATION; ORDER**

22 The Parties, after opportunity for review by counsel, hereby stipulate and consent to the
23 entry of this Consent Judgment as set forth below.

24 **1. DEFINITIONS**

25 Except where otherwise expressly defined in this Consent Judgment, all terms shall be
26 interpreted consistent with Chapter 5.5 of the Porter-Cologne Water Quality Control Act, Water
27 Code sections 13370 et seq. and the regulations promulgated under the Federal Water Pollution
28 Control Act, 40 C.F.R. 100 et seq.

1 **2. JURISDICTION**

2 The Parties agree that the Superior Court of California, County of Orange, has subject
3 matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties
4 to this Consent Judgment.

5 **3. PAYMENTS FOR PENALTIES, ENVIRONMENTAL**
6 **PROTECTION ENFORCEMENT AND OTHER PROJECTS**

7 **3.1. Total Penalties**

8 Kirkhill shall be liable for a total of one million seven hundred thirty eight thousand three
9 hundred thirty eight dollars and thirty one cents (\$1,738,338.31) in civil penalties, costs, and
10 attorneys' fees, allocated as set forth in Sections 3.2 below. On entry of this Consent Judgment,
11 Kirkhill shall deliver all required payments to the Regional Board to:

12 Gary Tavetian
13 Deputy Attorney General
14 Office of the Attorney General
15 300 South Spring Street, Suite 1702
16 Los Angeles, California, 90013

17 for distribution pursuant to the terms of this Consent Judgment.

18 **3.2. Penalty Payment**

19 Within sixty (60) days of entry of the Consent Judgment, Kirkhill shall pay one million
20 seven hundred thirty eight thousand three hundred thirty eight dollars and thirty one cents
21 (\$1,738,338.31), delivered as set forth in section 3.1 above and the Funds are to be distributed as
22 follows:

23 i. One million six hundred sixteen thousand four hundred and ten dollars
24 (\$1,616,410.00), of which one million five hundred eighty-nine thousand dollars (\$1,589,000.00)
25 is for penalties and of which twenty-seven thousand four hundred ten dollars (\$27,410.00) is for
26 the Regional Board's investigation costs. Payment of One million six hundred sixteen thousand
27 four hundred and ten dollars (\$1,616,410.00) shall be made to the State Water Pollution Cleanup
28 and Abatement Account as penalties and costs. The Regional Board strongly supports, and will
encourage the State Water Board to appropriate, upon application of the County of Orange and/or

1 City of Brea, some of the penalties (not to exceed \$794,500.00) to fully or partially fund projects
2 to restore Craig Lake, Fullerton Creek and the watershed that feeds into Craig Lake. The projects
3 would be unrelated to the allegations against Kirkhill made in the complaint.

4 ii. Fifty two thousand four hundred forty five dollars and twenty cents
5 (\$52,445.20) in attorneys' fees incurred by the Regional Board payable to the Office of Attorney
6 General of the State of California.

7 iii. Twenty eight thousand two hundred eighty five dollars and eighty eight
8 cents (\$28,285.88) in costs payable to the City of Brea.

9 iv. Forty one thousand one hundred ninety seven dollars and twenty three
10 cents (\$41,197.23) in costs payable to the County of Orange.

11 **3.3. Penalties For Late Payments**

12 Kirkhill shall be liable for a Stipulated Civil Penalty of one thousand dollars (\$1,000) for
13 each day that a payment required pursuant to Sections 3.1 through 3.2 is late, subject to the
14 Consent Judgment enforcement provisions set forth in Sections 5.1 and 5.2, below.

15 **4. INJUNCTIVE RELIEF**

16 **4.1. Water Code Violations**

17 Pursuant to this Consent Judgment, Kirkhill shall not discharge from its facility
18 unauthorized non-storm water either directly or indirectly to waters of the United States as stated
19 in Condition A.1 of its industrial stormwater permit, which is attached hereto as Exhibit A, except
20 as provided in Condition D.1 of that permit. If that industrial stormwater permit is either
21 amended or superseded, then Kirkhill is obligated to comply with the amended terms or the
22 superseded permit.

23 **5. ENFORCEMENT AND PENALTIES**

24 **5.1. Procedure**

25 The Regional Board may move this Court to enforce any provision of this Consent
26 Judgment and to award other appropriate relief, including penalties as provided in Sections 5.2.,
27 by serving and filing a regularly noticed motion in accordance with Code of Civil Procedure
28 section 1005 (Enforcement Motion). Kirkhill may file an opposition, and the Regional Board

1 may file a reply, both also in accord with Code of Civil Procedure section 1005. At least ten (10)
2 business days before filing an Enforcement Motion under this Consent Judgment, the Regional
3 Board must meet and confer with Kirkhill to attempt to resolve the matter without judicial
4 intervention. To ensure that the "meet and confer" is as productive as possible, the Regional
5 Board will identify, as specifically as the available information allows, the specific instances and
6 dates of non-compliance and the actions that the Regional Board believes Kirkhill must take to
7 remedy that non-compliance.

8 **5.2. Remedies and Sanctions**

9 The Court has the authority to penalize any violation of this Consent Judgment. Any
10 penalty paid pursuant to this section shall be delivered as set forth in Sections 3.1 above, with a
11 check made payable to the State Water Pollution Cleanup and Abatement Account.

12 **5.2.a. Contempt**

13 The Court retains, in addition to the above described enforcement procedures, its power to
14 enforce the Consent Judgment through contempt.

15 **6. MATTERS COVERED BY THIS CONSENT JUDGMENT**

16 **6.1.** This Consent Judgment is a complete, final and binding resolution and settlement of
17 all claims, violations or causes of action alleged by the Regional Board in the Complaint against
18 Kirkhill and/or its respective directors, officers, governing boards, parent companies, subsidiaries,
19 employees, heirs, assigns, successors, agents and contractors acting under their direction
20 (collectively, the Covered Parties) based on the facts alleged in the Complaint, including all costs
21 of investigation and attorneys' fees incurred by the Regional Board or their counsel (Covered
22 Matters). Therefore, the Regional Board covenants not to file any other complaint(s), whether
23 judicial or administrative (including, without limitation, under the Administrative Civil Liability
24 or other enforcement provisions of the California Water Code), against the Covered Parties
25 arising from or related to the Covered Matters. The Regional Board reserves the right, however,
26 to pursue any claim that is not a Covered Matter.

1 7. NOTICE

2 All submissions and notices required by this Consent Judgment shall be sent to: For the
3 Regional Board:

4 Gary E. Tavetian, Esq.
5 Noah Golden-Krasner, Esq.
6 Deputy Attorneys General
7 Office of the Attorney General
8 300 S. Spring Street, 11th Floor
9 Los Angeles, California 90013
10 Phone: (213) 897-2639
11 Fax: (213) 897-2802
12 E-mail: Gary.Tavetian@doj.ca.gov

13 (with a copy to)

14 Santa Ana Regional Water Quality Control Board
15 3737 Main Street, Suite 500
16 Riverside, CA 92501-3348
17 Attention: Stephen Mayville

18 For Kirkhill:
19 Donald J. Kula
20 Perkins Coie LLP
21 888 Century Park East, Suite 1700
22 Los Angeles, CA 90067-1721
23 Phone: 310.788.9900
24 Fax: 310.843.1291
25 E-mail: dkula@perkinscoie.com

26 (with a copy to)

27 Mr. Rick Gentle
28 Kirkhill-TA, Co.
 300 East Cypress Street
 Brea, CA 92821
 Tel: (714) 529-4901
 Fax: (714) 529-6716

 Any Party may change its notice name and address by informing the other Parties in writing, but no change is effective until it is received. All notices and other communications required or permitted under this Consent Judgment that are properly addressed as provided in this Section are effective upon delivery if delivered personally or by overnight mail, or are effective five (5) days following deposit in the United States mail, postage prepaid, if delivered by mail.

1 **8. NECESSITY FOR WRITTEN APPROVALS**

2 All approvals and decisions of the Regional Board under the terms of this Consent
3 Judgment shall be communicated to Kirkhill in writing. No oral advice, guidance, suggestions or
4 comments by employees or officials of the Regional Board regarding submissions or notices
5 required or given under this Consent Judgment shall be construed to relieve Kirkhill of its
6 obligation, if any, to obtain any final written approval required by this Consent Judgment.

7 **9. EFFECT OF JUDGMENT**

8 Except as expressly provided in this Consent Judgment, nothing in this Consent Judgment
9 is intended nor shall it be construed to preclude the Regional Board, or any state, county, or local
10 agency, department, board or entity, or any CUPA, from exercising its authority under any law,
11 statute or regulation.

12 **10. NO WAIVER OF RIGHT TO ENFORCE**

13 The failure of the Regional Board to enforce any provision of this Consent Judgment shall
14 neither be deemed a waiver of such provision nor in any way affect the validity of this Consent
15 Judgment, except as set forth in this Consent Judgment or by operation of any applicable statute
16 of limitations. The failure of the Regional Board to enforce any such provision shall not preclude
17 it from later enforcing the same or any other provision of this Consent Judgment, unless
18 otherwise provided in the Consent Judgment. The "no waiver" provisions in this paragraph do
19 not apply to, or interfere with, the operation of any applicable statute of limitations. No oral
20 advice, guidance, suggestions or comments by employees or officials of any Party regarding
21 matters covered in this Consent Judgment shall be construed to relieve any Party of its obligations
22 under this Consent Judgment.

23 **11. REGULATORY CHANGES**

24 Nothing in this Consent Judgment shall excuse Kirkhill from meeting any more stringent
25 requirements that may be imposed by changes in the applicable law.

26 **12. APPLICATION OF CONSENT JUDGMENT**

27 This Consent Judgment shall apply to and be binding upon the Regional Board and Kirkhill
28 and their respective employees, agents, successors and assigns.

1 **13. AUTHORITY TO ENTER CONSENT JUDGMENT**

2 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the
3 Party he or she represents to enter into this Consent Judgment, to execute it on behalf of the Party
4 represented and legally to bind that Party.

5 **14. CONTINUING JURISDICTION**

6 The Parties agree that this Court has exclusive jurisdiction to interpret and enforce the
7 Consent Judgment. The Court shall retain continuing jurisdiction to enforce the terms of this
8 Consent Judgment and to address any other matters arising out of or regarding this Consent
9 Judgment. The Parties shall meet and confer prior to the filing of any motion relating to this
10 Consent Judgment, including any Enforcement Motion as required by Section 5.1, and shall
11 negotiate in good faith in an effort to resolve any dispute without judicial intervention.

12 **15. INTERPRETATION**

13 The Parties agree that the rule of construction holding that ambiguity is construed against
14 the drafting Party shall not apply to the interpretation of this Consent Judgment.

15 **16. COUNTERPART SIGNATURES**

16 This Consent Judgment may be executed by the Parties in counterpart.

17 **17. INTEGRATION**

18 This Consent Judgment constitutes the entire agreement between the Parties and may not be
19 amended or supplemented except as provided for in the Consent Judgment.

20 **18. MODIFICATION OF CONSENT JUDGMENT**

21 This Consent Judgment may be modified only by the Court, or upon mutual written consent
22 by the Parties and the approval of the Court.

23 **19. TERMINATION OF CONSENT JUDGMENT**

24 Except as otherwise set forth in Section 3.9 herein, this Consent Judgment will expire and
25 be of no further effect after October, 2021 (the Termination Date), except if Kirkhill has not paid
26 any and all amounts due under the Consent Judgment or as against which an Enforcement Motion
27 has been filed and served, both as of the Termination Date. In such a case, the Consent Judgment
28 will expire upon the date all payments have been made and/or all proceedings under the

1 Enforcement Motion have been concluded.

2

3 IT IS SO STIPULATED.

4

FOR THE REGIONAL BOARD:

5

6

7 Dated: 10/28/11

8

Kurt V. Berchtold

9

Kurt V. Berchtold
Executive Officer

10

11

12

FOR KIRKHILL-TA, Co.

13

14 Dated: _____, 2011

15

16

(Print)

17

Its _____

18

APPROVED AS TO FORM.

19

November 2
Date: ~~October~~ _____, 2011

20

21

By: Gary Tavetian

22

Gary Tavetian
Attorneys for Plaintiff
People of the State of California,
ex rel. Regional Water Quality Control Board,
Santa Ana Region

23

24

25

Date: October __, 2011

26

By: _____

27

Donald J. Kula
Perkins Coie LLP
Attorney for Kirkhill-TA-Co.

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Enforcement Motion have been concluded.


IT IS SO STIPULATED.

FOR THE REGIONAL BOARD:

Dated: _____

FOR KIRKHILL-TA, Co.

Dated: OCT. 28, 2011


M. SCOTT CRAWFORD (Print)
Its VP FINANCE

APPROVED AS TO FORM.

Date: October ____, 2011

By: _____
Gary Tavetian
Attorneys for Plaintiff
People of the State of California,
ex rel. Regional Water Quality Control Board,
Santa Ana Region

Date: October 28 2011

By: 
Donald J. Kula
Perkins Coie LLP
Attorney for Kirkhill-TA-Co.

12/16/11

IT IS SO ORDERED:
JUDGE FRANCISCO F. FIRMAT
Judge of the Superior Court