

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of:

**UNITED STATES DEFENSE LOGISTICS
AGENCY**

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

**ORDER
WQ 2022-XXXX-EXEC**

Section I: Introduction

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Order (Stipulated Order) is entered into by and between the Executive Officer of the State Water Resources Control Board, (State Water Board), on behalf of the State Water Board Office of Enforcement's Prosecution Team (Prosecution Team), and the Defense Logistics Agency (DLA) (collectively known as the Parties) and is presented to the State Water Board, or its delegee, for adoption as an order by settlement, pursuant to California Health and Safety Code section 25299.05 and California Government Code section 11415.60.

Section II: Background

2. DLA is a combat logistics support agency of the Department of Defense. DLA manages the global supply chain for the military departments, combatant commands, federal agencies, and partner and allied nations.
3. DLA operated a fuel facility, known as the Defense Fuel Support Point (DFSP) Moffett Field, which lies within the National Aeronautics and Space Administration (NASA) facility at Moffett Field. DLA has been a tenant at Moffett Field since 1994. DLA previously stored capitalized fuel product at DFSP Moffett Field; first as a supplier to the United States Navy starting in 1992, and then to NASA as a result of a Base Realignment and Closure beginning in 1994. DLA ceased fuel operations at DFSP Moffett Field in 2003. The fuel facility was cleaned and secured in 2005, and since that time the facility has remained in caretaker status, which includes, among other things, site monitoring and surveillance, permit and plan management, and reporting.
4. Five inactive, underground storage tanks (UST) remain on site at DFSP Moffett Field, and are identified as follows: UST 137, UST 138, UST 139, UST 140, and UST 253 (collectively, the USTs). DLA emptied and cleaned the USTs in 2005 but did not formally close them. DLA has been engaged in efforts with contractors to close the USTs since 2005.
5. Between 2005 and 2015, the Santa Clara County Department of Environmental Health, the local Certified Unified Program Agency (CUPA), has sent five Notices of Violation (NOV) that included alleged violations for failing to properly close the

USTs. CUPA referred the matter to the State Water Board's Office of Enforcement (OE) for further action based on the alleged failure to properly close the USTs. During that time, DLA and CUPA were engaged in active discussions concerning formal closure of the USTs.

6. On March 15, 2015, OE's UST staff inspected the sites identified as Moffett Field Building 686 (housing UST 253) and Building 545 (housing USTs 137, 138, 139, and 140). On March 25, 2015, OE issued NOV's to DLA containing allegations of noncompliance with numerous California UST operating and monitoring requirements. OE determined that compliance was not achieved for all violations and failure to comply letters were sent to DLA on May 29, 2015. DLA notified the State Water Board that the tanks had been empty since 2005 with the intention of closing them.
7. On April 22, 2015, CUPA received from DLA a UST System Closure Permit Application to permanently close the USTs. CUPA also received a Tank System On-Site Cleaning Application from DLA.
8. On October 25, 2016, CUPA approved the permit applications for permanent closure of the USTs. The USTs were inspected on October 31, 2016, and verified empty and clean by CUPA. UST 140 was inspected and certified empty on November 7, 2016, by CUPA. Permanent closure of the USTs is in process. DLA has entered into a tank demolition and closure contract and began mobilization in August 2021.

Section III: Statutory and Regulatory Considerations

9. California Health and Safety Code section 25299(a) provides, in relevant part, "An operator of an underground tank system is liable for a civil penalty of not less than five hundred dollars (\$500) or more than five thousand dollars (\$5,000) for each underground storage tank, for each day of violation. Section 25299(b) provides, in relevant part "An owner of an underground tank system is liable for a civil penalty of not less than five hundred dollars (\$500) or more than five thousand dollars (\$5,000) per day for each underground storage tank, for each day of violation,.."
10. California Health and Safety Code section 25299 authorizes civil penalties for violations of certain UST system requirements. Section 25299.05 authorizes the Water Board to impose administrative civil penalties for violations of section 25299, subdivisions (a), (b), (c), (e), or (f)."
11. The United States has waived sovereign immunity with respect to state and local requirements, including administrative and civil penalties, for federal facilities as set forth in 42 U.S.C. § 6991f.
12. Pursuant to California Water Code section 13327, in determining the amount of discretionary civil liability, the State Water Board is required to take into

consideration the nature, circumstance, 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 ability to continue in 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 as justice may require. In this case, the State Water Board has concluded that the primary alleged failure is the failure to properly close USTs no longer in use according to the statutory requirements. The alleged violations began in 2005 from the first notice until the closure permit was issued in 2016. The USTs were cleaned and emptied in 2005, which mitigated the risk of petroleum products entering the environment as a result of the alleged failure to close the tanks. As such, there were no unauthorized releases attributed to the alleged failure to close the USTs. There also was no associated history of violations related to the USTs aside from the alleged failure to close them according to statutory requirements. DLA has addressed the alleged failure to close the USTs, and is in the process of permanently closing the USTs. The factors related to cleanup and abatement, degree of toxicity are not relevant to the alleged violations. The United States stipulates it has the ability to pay the penalty subject to the availability of appropriated funds. The State Water Board has estimated that the economic benefit related to the alleged failure to close the USTs is three hundred, ninety-seven thousand, two hundred and fifty-two dollars (\$397,252), which amounts to the estimated cost of compliance as determined by the State Water Board in Attachment A.

Section IV: Settlement

13. The Parties have engaged in confidential settlement negotiations and agree to settle the matter without administrative or civil litigation by presenting this Stipulated Order to the State Water Board, or its delegee, for adoption as an order by settlement pursuant to California Government Code section 11415.60. To resolve the alleged violations by consent and without further administrative proceedings, the Parties have agreed to the imposition of an administrative penalty in the amount of **one million, six hundred and three thousand, one hundred and thirteen dollars (\$1,603,113)** against DLA.
14. The State Water Board Prosecution Team believes that the resolution of the alleged violations set forth herein is fair and reasonable and fulfills all of its enforcement objectives, that no further action against DLA is warranted concerning Covered Matters in paragraph 21 below, and that this Stipulated Order is in the best interest of the public. DLA agrees that a settlement, without any admission of liability or wrongdoing, makes the most practical sense for resolving the Covered Matters identified in paragraph 21.

Section V: Stipulations

The Parties stipulate to the following:

15. **Jurisdiction:** The Parties agree that the State Water Board has subject matter jurisdiction over the covered matters in paragraph 21 of this Stipulated Order.
16. **Administrative Civil Penalty:** DLA hereby agrees to the imposition of one million, six hundred three thousand, one hundred thirteen dollars (\$1,603,113) in administrative civil penalty to the State Water Resources Control Board to resolve the covered matters alleged paragraph 21 of this Stipulated Order. DLA agrees to pay the following amounts:
 - a. **Eight hundred and one thousand, five hundred and fifty-six dollars, and fifty cents (\$801,556.50)** shall be paid to the State Water Pollution Cleanup and Abatement Account. Payment shall be made no later than 30 days after adoption of an order approving this Stipulated Order by the State Water Board, or its delegee, by electronic funds transfer or check payable to the State Water Pollution Cleanup and Abatement Account. DLA shall indicate on the check the number of this Stipulated Order. DLA shall send the original signed check to the State Water Board Accounting Office, Attention: ACLO Payment, P.O. Box 1888, Sacramento, California, 95812-1888. If payment is executed via electronic funds transfer, DLA shall provide payment to an account provided by the State Water Board. A copy of the check or, in the case of an electronic funds transfer, other record confirming payment shall be sent to Nickolaus Knight, Attorney, State Water Resources Control Board, Office of Enforcement, 801 K Street, Suite 2300, Sacramento, California 95814.
 - b. **Eight hundred and one thousand, five hundred and fifty-six dollars, and fifty cents (\$801,556.50)** shall be permanently suspended on the condition that DLA spends \$801,556.50 (Supplemental Environmental Project (SEP) Amount) on completing the described in Attachment B of this Stipulated Order, hereby incorporated by reference. If DLA fails to complete all aspects of the SEP, DLA shall pay the difference between SEP Amount and the amount DLA has expended on the SEP to the State Water Pollution Cleanup and Abatement Account.
17. **Supplemental Environmental Project (SEP):** The Parties agreed that the SEP Amount of eight hundred and one thousand, five hundred and fifty-six dollars, and fifty cents (\$801,556.50) specified in paragraph 16.b. will be used to fund a SEP. The SEP Amount shall be treated as a suspended administrative civil penalty at the time of the SEP Completion Date for purposes of this Stipulated Order. The State Water Board is entitled to recover any portion of the SEP Amount that is not expended in accordance with this Stipulated Order.

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- a. **Description of the SEP:** Removal of Building or Lead-Based Paint Abatement at Former Hunters Point Naval Shipyard. The SEP is described in Attachment B to the Stipulated Order.
- b. **SEP Completion Deadlines:** Subject to paragraph 17.c. below, DLA shall comply with the deadlines in the SEP proposal. The deadlines shall begin with the effective date of this Stipulated Order.
- c. **Request for Extension of Final SEP Completion Deadlines:** If DLA cannot meet the SEP Completion Deadlines due to circumstances beyond DLA's control, DLA shall notify the State Water Board in writing at least thirty (30) days prior to the SEP Completion Deadline. If such circumstances arise within 30 days of the SEP Completion Deadline, then such notice shall be provided promptly upon discovery thereof. The notice shall describe the reason for the delay and specifically refer to this paragraph. The notice shall describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken by DLA to prevent or minimize the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance with this Stipulated Order. DLA shall adopt all reasonable measures to avoid and minimize such delays. The determination as to whether the circumstances were beyond the reasonable control of DLA and its agents will be made by the Executive Director of the State Water Board (Executive Director). Where the Executive Director concurs that compliance was or is impracticable, despite the timely good faith efforts of DLA, due to circumstances beyond the control of DLA that could not have been reasonably foreseen and prevented by the exercise of reasonable diligence by DLA, a new compliance deadline (including the SEP Completion Deadline, any periodic reporting or audit deadlines, and any certification of completion or expenditure deadlines described herein) shall be established and provided to DLA in writing with the effect of revising this Stipulated Order. The determination by the Executive Director to approve or concur with DLA's request for an extension of SEP Completion Deadline shall not be unreasonably withheld or delayed. Until a determination is made by the Executive Director, DLA shall not be deemed in violation of this Stipulated Order for failing to meet the applicable SEP Completion Deadline.
- d. **Annual Monitoring Reports:** DLA shall provide annual monitoring reports on the progress of the SEP thirty (30) days following the end of each calendar year beginning on the effective date of this Stipulated Order.
- e. **Quarterly Monitoring Reports:** DLA shall provide quarterly monitoring reports on the progress of the SEP, beginning in the first quarter following the effective date of this Stipulated Order.

- f. **Final Report:** A Final Report shall be submitted with the certification (described in paragraph 17.h. below) within 90 days of the completion of the SEP.
- g. **Site Inspections:** DLA shall permit the State Water Board's staff to inspect during normal business hours any location where the SEP is being implemented, as well as review any documents associated with implementation of the SEP upon reasonable advance notice to satisfy any access protocols to gain entry to any applicable controlled areas at the installation/site.
- h. **Certification of SEP:**
 - A. **Certification of Completion:** Within 90 days of completion of the SEP, DLA shall submit a certified statement of completion of the SEP (Certification of Completion). The Certification of Completion may be submitted with the DLA's Final Report for the project. DLA's authorized representative shall submit the Certification of Completion under penalty of perjury to the Designated State Water Board contact. The Certification of Completion shall include the following:
 - i. **Certification of Expenditures:**

Certification documenting all expenditures by DLA. The expenditures may include external payments to outside vendors or contractors implementing the SEP. In making such certification, the representative may rely upon normal company and project tracking systems that captures employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. DLA shall provide any additional information requested by State Water Board staff that is reasonably necessary to verify SEP expenditures. The certification need not address any costs incurred by the State Water Board for oversight.
 - ii. **Certification of Performance of Work:**

Certification that the SEP has been completed in accordance with the terms of this Stipulated Order. Such documentation may include photographs, invoices, receipts, certifications, and other material reasonably necessary for the State Water Board to evaluate the completion of the SEP and the costs incurred by DLA.
 - iii. **Certification that Work Performed on SEP Met or Exceeded Requirements of the National Environmental Policy Act (NEPA) and other applicable requirements for which the United States has waived sovereign immunity:**

Certification that the SEP meets or exceeds the requirements of NEPA and any other applicable requirements for which the United States has waived sovereign immunity. DLA shall comply with NEPA and any other

applicable requirements for which the United States has waived sovereign immunity.

- i. **State Water Board Acceptance of Completed SEP:** Upon DLA completion of the SEP and satisfaction of their obligations under this Stipulated Order, the DLA shall request and the State Water Board, or its delegee, shall issue a statement indicating that the SEP has been completed in satisfaction of the terms of this Stipulated Order and Attachment B and that the corresponding penalty be permanently suspended. The issuance of the statement shall terminate any further obligation of DLA under this Stipulated Order.
- j. **Failure to Expend All Suspended Funds on the Approved SEP:** In the event that DLA is not able to demonstrate to the reasonable satisfaction of the State Water Board that the entire SEP amount pursuant to Paragraphs 16(b) and 17 has been spent for the completed SEP, DLA shall pay the difference between the SEP Amount and the amount DLA can demonstrate was actually spent on the SEP, as an administrative penalty to the State Water Pollution Cleanup and Abatement Account. Upon payment of any necessary amount under this paragraph, the requirements for issuance of a "Satisfaction of Stipulated Order" under paragraph 17.i. above shall be implemented.
- k. **Failure to Complete the SEP:** If the SEP is not fully implemented by the SEP Completion Deadlines required by this Stipulated Order and an extension has not been granted by the State Water Board's Executive Officer pursuant to Paragraph 17.c above, DLA shall pay the difference between the SEP Amount and the amount DLA has expended on the SEP. Upon payment of any necessary amount under this paragraph, the requirements for issuance of an "State Water Board Acceptance of Completed SEP" under paragraph 17.i above shall be implemented.
- l. **State Water Board Not Liable:** Neither the State Water Board members nor the State Water Board staff, attorneys, or representatives shall be liable for any injury or damage to person or property resulting from acts or omissions by DLA (or any party that performs or oversees the work for the SEP, where applicable), its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the State Water Board, its members or staff be held as parties to or guarantors of any contract entered into by DLA, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

DLA and its contractor(s) covenant not to sue or pursue any administrative or civil claim or claims against any State Agency or the State of California, or their officers, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order or the SEP.

18. **Compliance with Applicable Laws and Regulatory Changes:** DLA understands that compliance with the terms of this Stipulated Order resolves the matters covered under paragraph 21 below. Any other noncompliance with applicable laws, including violations of the type resolved in this Stipulated Order but not a covered matter under paragraph 21 below, may subject DLA to further enforcement. Nothing in this Stipulated Order shall excuse DLA from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations that are not covered matters under paragraph 21 below.

19. **Party Contacts for Communications Related to Stipulated Order:**

State Water Board:

Brian Taylor
Office of Enforcement
State Water Resources Control Board
801 K Street, Suite 2300
Sacramento, California 95814
brian.taylor@waterboards.ca.gov
(916) 323-0600

Nickolaus Knight
Office of Enforcement
State Water Resources Control Board
801 K Street, Suite 2300
Sacramento, California 95814
nickolaus.knight@waterboards.ca.gov
(916) 327-0169

DLA:

David Mitchell
U.S. Department of Justice
Environment & Natural Resource Division
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044
(202) 514-0165

Christopher Hempel
DLA Office of General Counsel
8725 John J. Kingman Road
Fort Belvoir, Virginia 22060-6222
(571) 767-0252

20. **Attorneys' 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.
21. **Covered Matters:** Upon adoption by the State Water Board, or its delegee, this Stipulated Order represents a final and binding resolution and settlement of all violations identified in this Stipulated Order or potential claims, violations or causes of action which could be asserted by the State Water Board against DLA relating to the DLA's ownership and/or operation of underground storage tanks at Moffett Field pursuant to California Health and Safety Code section 25299 as of the effective date of this Stipulated Order. The provisions of this paragraph are expressly conditioned on DLA's full payment by the deadline specified in Paragraph 16.a. above and completion of the SEP referenced in Paragraph 16.b above or payment of the amount due pursuant to Paragraph 16.b above.
22. **Public Notice:** DLA understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the State Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the State Water Board, or its delegee, for adoption, the Executive Director may unilaterally declare this Stipulated Order void and decide not to present it to the State Water Board, or its delegee. Prior to any such action by the Executive Director, the Parties agree to meet and confer to negotiate the terms of this Stipulated Order in light of any significant new information received during the comment period. If the Parties are not able to agree within 30 days, the Executive Director may act consistent with this paragraph to unilaterally void this Stipulated Order. DLA agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
23. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the State Water Board's or its delegate's adoption of the Stipulated Order, and public review of this Stipulated Order is lawful and adequate. The Parties understand that the State Water Board, or its delegate, has the authority to require a public hearing on this Stipulated Order. In the event procedural objections are raised or the State Water Board requires a public hearing 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 and/or this Stipulated Order as necessary or advisable under the circumstances.
24. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or State 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 this Stipulated Order. The failure of the Prosecution Team or State Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions, or comments by employees or officials of any Party regarding matters covered

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under this Stipulated Order shall be construed to relieve any Party of its obligations under this Stipulated Order. The State Water Board reserves all rights to take additional enforcement actions, including without limitation the issuance of Administrative Civil Liability (ACL) complaints or orders for violations other than covered matters in paragraph 21 above.

25. **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.
26. **Interpretation:** This Stipulated Order shall not be construed against the party preparing it but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
27. **Publicity:** Whenever DLA or its agents or subcontractors publicize one or more elements of the SEP, they shall state in a prominent manner that the project is being undertaken as part of the resolution of violations alleged by the State Water Board against DLA.
28. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Stipulated Order. All modifications must be made in writing and approved by the State Water Board or its delegee. Nothing in this paragraph shall be construed to impose requirements in addition to the requirements for the extension of the SEP final completion deadline in paragraph 17.c.
29. **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 State Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that the Prosecution Team may proceed to a contested evidentiary hearing before the State Water Board to determine whether to unilaterally assess an administrative penalty for the underlying alleged violations, or may continue to pursue settlement. 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 any subsequent administrative or judicial proceeding or hearing and will be fully protected by California Evidence Code sections 1152 and 1154; California Government Code section 11415.60; Rule 408, Federal Rules of Evidence; and any other applicable privilege under federal and/or state law. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:
 - a. Objections related to prejudice or bias of any of the State Water Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that the State Water Board members or their advisors were exposed to some of the material facts and the Parties'

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settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter; provided however, that objections intended to preserve State Water Board's due process rights are not waived by this section; or

- b. Laches or delay or other equitable defenses based on the time period that the Stipulated Order or decision by settlement may be subject to administrative or judicial review.
30. **No Admission of Liability:** In settling this matter, DLA does not admit any of the allegations, or that it has been or is in violation of the California Health and Safety Code, or any federal, state, or local law, regulation, or ordinance.
 31. **Waiver of Hearing:** DLA has been informed of the rights provided by California Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the State Water Board.
 32. **Waiver of Right to Petition or Appeal:** Upon the effective date of this Stipulated Order, DLA hereby waives the right to petition the State Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waives the rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court, or any federal court.
 33. **Covenants Not to Sue:**
 - a. For DLA: Upon the effective date of this Stipulated Order, the State of California, including any State Agency, shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against DLA for covered matters in Paragraph 21 above. This covenant is conditioned upon DLA's satisfactory performance of the obligations of this Stipulated Order.
 - b. For the State of California: Upon the effective date of this Stipulated Order, DLA shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against any State Agency or the State of California, its officers, agents, directors, employees, attorneys, representatives, for any and all claims or cause of action, which arise out of or are related to the issuance of this Stipulated Order and/or enforcement of this Stipulated Order.
 34. **State Water Board is Not Liable:** Neither the State Water Board members nor the 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 DLA, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to the Stipulated Order, nor shall the State Water Board, its members or staff be held as parties to or guarantors of any contract entered into by DLA, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to the Stipulated Order.

35. **Authority to Enter Stipulated Order:** 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.
36. **Necessity for Written Approvals:** All approvals and decisions of the State Water Board under the terms of this Stipulated Order shall be communicated to DLA in writing. No oral advice, guidance, suggestions or comments by employees or officials of the State Water Board regarding submissions or notices shall be construed to relieve DLA of its obligation to obtain any final written approval required by this Stipulated Order.
37. **Anti-Deficiency Act:** Nothing herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.
38. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligation 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.
39. **Severability:** This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.
40. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the State Water Board, or its delegee, enters the Stipulated Order.
41. **Counterpart Signatures; Facsimile, and Electronic Signature:** 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.

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IT IS SO STIPULATED:

State Water Resources Control Board
Office of Enforcement

By: original signed version is available upon request
Yvonne West
Director
Office of Enforcement

April 22, 2022

Date

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IT IS SO STIPULATED:

United States Department of Justice

By: original signed version is available upon request April 7, 2022
David D. Mitchell Date
Environment & Natural Resource Division
Environmental Defense Section
U.S. Department of Justice

Defense Logistics Agency

By: original signed version is available upon request March 30, 2022
Michelle C. Skubic Date
Vice Admiral, SC, USN
Director
Defense Logistics Agency

HAVING CONSIDERED THE PARTIES' STIPULATIONS, THE STATE WATER BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

1. This Stipulated Order incorporates Paragraphs 1 through 41 by reference as if set forth fully herein.
2. In accepting this settlement, the State Water Board has considered, where applicable, each of the factors prescribed in California Water Code section 13327.
3. The State Water Board finds that issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.), in accordance with section 15321(a)(2), title 14, of the California Code of Regulations.
4. The State Water Board is authorized to refer this matter directly to the Attorney General for enforcement if DLA fails to perform any of its obligations under the Stipulated Order.
5. The Settlement Agreement and Stipulation for Entry of Administrative Civil Order between the State Water Board Prosecution Team and DLA is approved pursuant to Health and Safety Code section 25299.05 and Government Code section 11415.60 and is incorporated by reference into this Order.

IT IS HEREBY ORDERED on behalf of the State Water Resources Control Board.

By: _____
Eileen Sobeck
Executive Director
State Water Resources Control Board

_____ Date

Attachment A - Economic Benefit Analysis

Economic Benefit Analysis									
DLA Moffett Field									
Compliance Action	One-Time Non-Depreciable Expenditure				Non-Compliance Date	Compliance Date	Penalty Payment Date	Discount Rate	Benefit of Non-Compliance
	Amount	Basis	Date	Delayed?					
UST Tank Demo/Removal	\$ 6,881,640	CCI	7/21/2016	Y	10/20/2005	10/25/2016	4/30/2022	3.40%	397,252
Income Tax Schedule: Federal Facility USEPA BEN Model Version: Version 2021.0.0 (April 2021) Analyst: Bryan Elder Date/Time of Analysis: 12/9/21 9:44								Total Benefit: \$	397,252
Assumptions: <ol style="list-style-type: none"> 1 Cost estimate for underground storage tank (UST) demolition and removal was provided by the Discharger in the Cost Information Enclosure dated February 2017, which referenced Contract No. W912PL-16-0020 signed and dated July 21, 2016. 2 UST demolition/removal is indexed using the Construction Cost Index (CCI). 3 Non-compliance date for tank demolition/removal is assumed to be the date the Discharger emptied and cleaned the tanks. 4 The compliance date for the UST demolition and removal was October 26, 2016. 5 The penalty payment date is assumed to be the tentative date of a Board hearing. 6 The applied discount rate is a function of the entity type for the Discharger. The Discharger is considered a federal facility. 									

Attachment B

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Supplemental Environmental Project Removal of Building or Lead-Based Paint Abatement at Former Hunters Point Naval Shipyard

1. Project Name

Removal of Building or Lead-Based Paint Abatement at Former Hunters Point Naval Shipyard (“HPNS”)

2. Project Amount

\$801,556.50

3. Project Lead

Defense Logistics Agency (DLA)

4. Contacts

- Stacey Christenbury, Acting Environmental Compliance Section Chief, Defense Logistics Agency Energy – Engineering, Environmental, Property Division, (571) 767-6557, stacey.christenbury@dla.mil
- Brian Taylor, Chief, UST Enforcement Unit, State Water Resources Control Board (“State Water Board”), (916) 323-0600, brian.taylor@waterboards.ca.gov
- Thomas Macchiarella, P.E., Base Closure Manager, Navy BRAC PMO West, (619) 203-3644, thomas.l.macchiarella.civ@us.navy.mil

5. Project Description

This project will abate lead-based paint (“LBP”) from the exterior of buildings or demolish certain buildings, if more feasible, at the former HPNS. The project will abate LBP from buildings for the project cost, which will be approximately 100,000 square feet of walls. The number of buildings abated will depend on variations in size, construction

type, and condition. The exterior paint of many of the buildings (assumed to contain lead based on age) is peeling. During storms, paint chips can detach from buildings and can blow or wash into the adjacent San Francisco Bay (“Bay”). The U.S. Environmental Protection Agency (Region 9) and San Francisco Bay Regional Water Quality Board have asserted that the Navy’s Basewide Swale Management Plan does not sufficiently prevent paint chips that detach from building during storms from entering the Bay. LBP abatement or full removal of select buildings would reduce potential releases of paint chips that could contaminate the Bay. Buildings that pose the greatest threat to the environment based on following factors will be selected: (1) the likelihood of LBP releases and (2) the likelihood of released LBP entering the Bay. The buildings that will be selected will be those that are most likely to release LBP that will enter the Bay. Buildings with radiological impacts or with historical designation will not be considered for the SEP.

6. Compliance with SEP Criteria

A SEP must directly benefit or study groundwater or surface water quality, or quantity and the beneficial uses of the waters of the State. This project meets this SEP criterion as a pollution prevention project by removing lead-based paint from buildings at HPNS that could contaminate the Bay if released.

7. Above and Beyond Discharger’s Obligations

This SEP contains only measures that go above and beyond DLA’s obligations. The project is not part of DLA’s normal business nor is DLA otherwise required to implement any portion of the project.

8. No Benefit to the State Water Board's Functions, Members, or Staff

This SEP provides no direct fiscal benefit to the State Water Board's functions, its members, its staff, or family members of staff.

9. Nexus to the Nature or Location of Violations

This SEP has a nexus to the alleged violation by reducing the threat of contamination in the Bay. There was no actual harm to the environment from the alleged UST violations at Moffett Airfield, but if any releases had occurred, there would have been a threat of contamination in the Bay. Any releases of LBP from the subject buildings at HPNS poses a threat of contamination in the Bay as well.

10. Project Maintenance

The project will be funded by DLA and executed by Naval Facilities Engineering Command Southwest (NAVFAC SW) in conjunction with Navy BRAC PMO West.

11. Documented Support

Not applicable.

12. National Environmental Policy Act (NEPA) Compliance

DLA (in coordination with Navy POCs) will ensure the Project complies with NEPA.

Appropriate NEPA documentation will be completed by DLA (in coordination with Navy POCs) prior to obligation of funding for this project. DLA will provide a copy of NEPA documentation to the State Water Board.

13. Project Milestones, Schedule, and Budget

Subject to any extensions allowed under the Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order, WQ 2022-XXXX-EXEC ("Stipulated Order"), the SEP will be completed within thirty-six (36) months from the effective dates of the Stipulated Order, or at a later date pursuant to an extension granted under

paragraph 17 of the Stipulated Order. Major milestones and estimated completion timeframes are noted below.

Milestone	Estimated Date/Timeframe
Stipulated Order Effective Date	June 2022
Complete NEPA Documentation (evaluating list of potential buildings provided by Navy)	6 weeks from the effective date of the Stipulated
Navy Contract Solicitation (Request for Proposal, RFP, Released)	8 weeks from the effective date of Stipulated Order (assuming DLA provides Navy funding concurrently)
Contract Award	4 months from RFP release
Project Kickoff Meeting	Within 2 weeks of contract award
Draft Project Schedule	Within 5 weeks of contract award
Final List of Buildings for Remediation	4 months from contract award
Workplan documents generated and approved by the Navy	9 months from contract award
Contractor Mobilization and Site Work	9 to 15 months from contract award
Completion of Field Work and Waste Disposal	15 to 23 months from contract award
Receipt of Certification of Remediation and Full Documentation Package from Contractor (receipt of which will determine the "SEP Completion" for purposes of the Stipulated Order)	1 to 4 months from Completion of Field Work and Waste Disposal (33 months from the effective date of the Stipulated Order)
DLA's Certification of Completion to Water Board	90 days from SEP Completion

Milestones are contingent on funding availability. A more detailed project schedule and budget will be submitted within 35 days of Navy contract award. Major milestones will be documented in the quarterly reports required under paragraph 17 of the Stipulated Order.

The Navy's contracting process will begin soon after the effective date of the Stipulated Order and Navy receipt of funding from DLA, and be conducted in accordance with Federal Acquisition Regulations and Defense Federal Acquisition Regulations Supplement. As part of its acquisition planning process, the Navy will determine the most appropriate contracting method to meet the requirements under this project. The solicitation may or may not be set aside for small business enterprises. The solicitation will advise potential offerors of the closing date, by which all proposals must be submitted and received by the Navy. After receipt of proposals, the Navy's contracting team will review the proposals and make an award to the successful offeror.

14. Final Post-Project Accounting of Expenditures

DLA will track costs and include financial data with the quarterly reports to the State Water Board. DLA will also provide the State Water Board with a final report that declares SEP completion and addresses how the expected performance measures for the project were met, certifies that all applicable environmental laws and regulations were followed in implementing the SEP, and provides a final accounting of SEP expenditures, as required by Stipulated Order paragraph 17.

15. Extension if Necessary

The SEP Completion date is the date upon which the field work related to the LBP abatement and/or demolition of buildings, where respectively applicable, is complete, including the waste disposal, and the contractor's Certification of Remediation and Full

Documentation Package (as identified in the section 13 chart above) is delivered to DLA. SEP completion will occur within thirty-six (36) months from the effective date of the Stipulated Order, unless the Executive Officer approves an extension in accordance with paragraph 17 of the Stipulated Order. If an extension is granted, it shall apply also to all reports under paragraph 17. If an extension is necessary, DLA shall submit a written request for such extension to the Executive Officer of the State Water Board and shall provide the justification for the delay as required by Stipulated Order paragraph 17.

16. Project Performance Measures

The SEP must achieve all of the following performance measures to be deemed complete:

- (a) Lead abatement (or building demolition if more feasible) of buildings at HPNS at a total cost of \$801,556.50;
- (b) Prepare and submit all quarterly and annual reports to the State Water Board by deadlines required under paragraphs 17(d) and 17(e).

17. Reports to the Water Board

Reports on the progress of SEP completion will be submitted quarterly to the State Water Board. DLA will coordinate with the State Water Board to provide the following reports:

- (a) Progress reports due quarterly starting with the first full calendar quarter after the effective date of the Stipulated Order and ending with the final report. Quarterly reports shall inform the State Water Board of project progress. Expenditure justifications for SEP-related work shall be included in the reports, including a running table of expenditures with backup documentation.

(b) Project completion certification and final report within ninety (90) days of completion of the SEP unless the due date is extended pursuant to paragraph 17 of the Stipulated Order.