

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

In the matter of:)
)
Lamoure's Incorporated) **Order R5-2014-0562**
)
) **Settlement Agreement and Stipulation for**
) **Entry of Order**
)
)

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order ("Stipulated Order" or "Stipulation") is entered into by and between the Central Valley Regional Water Quality Control Board Prosecution Staff ("Prosecution Staff") and Lamoure's Incorporated ("Settling Respondent") (collectively "Parties") and is presented to the Central Valley Regional Water Quality Control Board ("Central Valley Water Board") for adoption as an order, by settlement, pursuant to Government Code section 11415.60. The Stipulation shall take effect and become binding on Settling Respondent upon the Central Valley Water Board's acceptance of the Stipulation and entry of the proposed order attached hereto below.

Section II: Recitals

1. The Settling Respondent is the owner of 1304 G Street, Fresno, Fresno County, California (the "Site"). The Settling Respondent owned and operated a dry cleaning business at the Site between 1980 and 2010. The dry cleaning business ceased operations in 2010, but Settling Respondent continues to own the Site, which is currently vacant.
2. A third party conducting assessment for a site greater than 500 feet to the southeast collected soil vapor samples in 2009 on the east side of G Street within five feet of the Site. According to a January 2010 Investigation Report, the maximum tetrachloroethene concentration in soil vapor next to the Site (sample point SG-4) was 120,000 micrograms per cubic meter at 30 feet below ground surface (bgs). The highest tetrachloroethene concentration in soil vapor samples collected at locations between the Site and the third party site in 2009 was reported to be 1,400 micrograms per cubic meter.
3. In 2013, the State of California, Office of Environmental Health Hazard Assessment set a California Human Health Screening Level of 603 micrograms per cubic meter for tetrachloroethene in soil vapor at commercial property locations. Lamoure's Incorporated is the closest known historical user of

tetrachloroethene adjacent to soil vapor sampling point SG-4. The above data indicates that use of tetrachloroethene at the subject Site has impacted soil, soil vapor, and/or groundwater at the Site.

4. On 1 March 2010, Central Valley Water Board staff sent a letter to Lamoure's Incorporated summarizing assessment data collected adjacent to the Site and requesting submittal of a work plan proposing assessment at the Site. The work plan was due 23 April 2010. No response was received. An Order issued pursuant to Water Code section 13267 ("13267 Order") was issued by the Executive Officer to Lamoure's Incorporated on 6 May 2010. A signed certified U.S. mail receipt was received indicating that Lamoure's Incorporated had received the 13267 Order. No response was received by the due date of 7 June 2010. Central Valley Water Board staff sent Lamoure's Incorporated a Notice of Violation ("NOV") dated 21 July 2010 for non-response to the 13267 Order. A work plan dated 9 August 2010 was received from RCC Group LLC on behalf of Lamoure's Incorporated. The work plan was determined by Water Board staff to be incomplete and did not contain all the information and proposed tasks for completing investigations specifically required by the 13267 Order.
5. Lamoure's Incorporated was issued Cleanup and Abatement Order R5-2011-0706 (CAO) on 7 October 2011. The CAO requires assessment and cleanup of soil and/or groundwater impacted by tetrachloroethene and other volatile organic constituents from releases at the Site. The CAO required a work plan; specifically it required the following:
 - a. **"By 19 December 2011**, submit a technical report that contains a written work plan prepared by a qualified professional, proposing a systematic and logical sequence of tasks with a proposed schedule to investigate releases of volatile organic compounds to soil and/or groundwater from the subject property and nearby sewer lines, and/or septic systems. The work plan shall include a history of volatile organic compound usage, storage, handling, and disposal practices, a map of the facility showing the former location of dry cleaning equipment, and the locations of sewer lines and any existing or former septic system. The work plan shall propose tasks including collection of active soil gas samples to delineate the lateral and vertical extent of soil impacted by volatile organic compounds and other wastes discharged. Tasks shall also be proposed to delineate whether groundwater has been impacted by releases that have occurred at the site and the lateral and vertical extent of impacts to groundwater. The work plan shall contain the information in Attachment B, which is made part of this Order."
6. A consultant for Lamoure's Incorporated submitted a letter dated 15 November 2011 requesting comments on the work plan submitted prior to the CAO, rescission of the CAO, and consideration of Lamoure's Incorporated as a closed business. Central Valley Water Board staff responded in a 30 December 2011 letter explaining: 1) why the pre-CAO work plan was inadequate and incomplete,

and 2) that the CAO was appropriate and would not be rescinded. The letter added that the CAO-required work plan was overdue and must be submitted as soon as possible.

7. A NOV letter was sent to Lamoure's Incorporated on 16 February 2012 that notified Lamoure's Incorporated that the CAO-required work plan had not been submitted and that the delinquent work plan needed to be submitted by 9 March 2012 (administrative date that does not affect the due date in the CAO). On 14 March 2012, an email from RCC Group, LLC, consultant for Lamoure's Incorporated, was received stating that although Lamoure's Incorporated had authorized them to prepare a work plan, the scope of work would be reduced to what Lamoure's Incorporated could afford at the time of preparation. No date for submittal of the work plan was given. The work plan has not been received to date.
8. On 10 January 2014, the Central Valley Water Board issued Administrative Civil Liability Complaint (ACLC) R5-2014-0502 to Lamoure's Incorporated, which proposed \$37,680.50 in administrative civil liability and \$4,500 for staff costs, for failure to submit a technical report as required by the CAO.
9. Subsequent to the issuance of the ACLC, Central Valley Water Board staff rescinded the proposed recovery of \$4,500 in staff costs in this Complaint. The rescission of the proposed recovery of staff costs attributed to this enforcement action does not relieve Lamoure's Incorporated from any obligation, liability, or debt from the Cost Recovery Program.
10. Central Valley Water Board staff met with the Settling Respondent on 13 June 2014 to discuss a potential resolution of the ACLC. At that meeting, the Parties agreed to terms of a settlement which includes civil penalties assessed in this Stipulated Order.
11. To resolve the alleged violations of the California Water Code ("CWC"), set forth in the ACLC, without formal administrative proceedings, the Parties have agreed to the following terms:
 - a. The final imposition of **\$18,000** in liability against the Settling Respondent pursuant to Government Code section 11415.60. The Settling Respondent shall pay a total of **\$18,000** to the State Water Resources Control Board Cleanup and Abatement Account no later than 30 days following the Regional Board's issuance of this Order. The reduction in liability from the amount proposed in the ACLC is justified given the inherent risk and uncertainty in proceeding to hearing.
 - b. The Settling Respondent will submit the work plan as required in CAO R5-2011-0706 within 60 days of issuance of this Order by the Regional Board or its delegate.

12. The Prosecution Staff has determined based on the information in the record that the resolution of the alleged violations (i.e., assessment of penalties and agreement for the Settling Respondent to submit the required technical report) is fair and reasonable and fulfills the enforcement objectives of CWC sections 13000 et seq., and the *Water Quality Enforcement Policy*, and that no further action is warranted concerning the alleged violations except as provided in this Stipulated Order; and that this Order is in the best interest of the public.

Section III: Stipulations

The Parties stipulate to the following:

13. **Administrative Civil Liability:** The Settling Respondent hereby agrees to pay the administrative civil liability totaling \$18,000 as set forth in Paragraph 11 of Section II herein.
14. **Submission of Work Plan:** The Settling Respondent hereby agrees to submit the work plan required by Cleanup and Abatement Order R5-2011-0706 within 60 days of issuance of this Order.
15. **Compliance with Applicable Laws:** The Settling Respondent 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 in the Complaint may subject them to further enforcement, including additional administrative civil liability.
16. **Party Contacts for Communications related to Stipulation/Order:**

For the Regional Water Board:

Russell Walls, Senior Water Resource Control Engineer
Central Valley Regional Water Quality Control Board
1685 E Street, Fresno, CA 93706-2007
russell.walls@waterboards.ca.gov

For the Settling Respondent:

Diane G. Kindermann Henderson
Abbott & Kindermann, LLP
2100 21st Street, Sacramento, CA 95818
dkindermann@aklandlaw.com

17. **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.
18. **Matters Addressed by Stipulation:** Upon issuance of this Order by the Central Valley Water Board, this Order represents a final and binding resolution to settle, as set forth herein, all claims, violations, or causes of action as alleged in Attachment A of the ACLC (Covered Matters). The provisions of this paragraph are expressly conditioned on the payment of the administrative civil liability as provided herein by the deadlines specified in this Order, and the Discharger's full satisfaction of the obligations described in this Order, including submission of the work plan. This matter does not address, or resolve, any potential non-compliance of the Settling Respondent after 13 June 2014.
19. **Public Notice:** The Settling Respondent understands that this Stipulation and Order will be noticed for a 30-day public review and comment period prior to consideration by the Central Valley Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulation and Order to the Central Valley Water Board, or its delegate, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulation and Order void and decide not to present it to the Central Valley Water Board or its delegate. The Settling Respondent agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulation and Order.
20. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Central Valley Water Board and review of this Stipulation 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.
21. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Settling Respondent is represented by counsel in this matter.
22. **Modification:** This Stipulation and 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 Central Valley Water Board.
23. **If Order Does Not Take Effect:** In the event that this Order does not take effect because it is not issued by the Central Valley 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 Central Valley 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 Central Valley Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Central Valley 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.
24. **Waiver of Hearing:** On 10 February 2014, the Settling Respondent submitted a waiver of their right to a hearing. Furthermore, Settling Respondent has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Central Valley Water Board prior to the adoption of the Order.
25. **Waiver of Right to Petition:** The Settling Respondent hereby waives its right to petition the Central Valley 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.
26. **Settling Respondent's Covenant Not to Sue:** The Settling Respondent covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.
27. **Necessity for Written Approvals:** All approvals and decisions of the Central Valley Water Board under the terms of this Order shall be communicated to the Settling Respondent in writing. No oral advice, guidance, suggestions or comments by employees or officials of the Central Valley Water Board regarding submissions or notices shall be construed to relieve the Settling Respondent of its obligation to obtain any final written approval required by this Order.
28. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this

Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

29. **Effective Date:** The obligations under Paragraph 11 of this Stipulation are effective and binding on the Parties only upon the issuance of an Order by the Central Valley Water Board which incorporates the terms of this Stipulation.
30. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.
31. **Counterpart Signatures:** This Stipulation 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 Prosecution Team
Central Valley Region

By: 
Clay Rodgers, Assistant Executive Officer

Date: 9/17/14

SETTLING RESPONDENT'S NAME

By: 
Brad Clarke, Treasurer
Lamoure's Incorporated

Date: 9/11/14

Section V: Findings of the Central Valley Water Board

32. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the Central Valley Water Board.
33. The Central Valley Water Board finds that the Recitals set forth herein are true.
34. The proposed settlement was noticed to receive public comment for a minimum of 30 days prior to Central Valley Water Board consideration.
35. This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.
36. In issuing this Stipulated Order, the Central Valley Water Board has considered, where applicable, each of the factors prescribed in CWC sections 13327 and 13385(e). The consideration of these factors is based upon information and comments obtained by the Central Valley Water Board's staff in investigating the allegations herein or otherwise provided to the Central Valley Water Board or its delegate by the Parties and members of the public.
37. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The Central Valley Water Board finds that issuance of this 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.
38. The Central Valley Water Board's Executive Officer is hereby 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.
39. Fulfillment of the Discharger's obligations under the Order constitutes full and final satisfaction of any and all liability for each claim in the Complaint in accordance with the terms of the Order.

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



Pamela Creedon

Executive Officer

Date: 10/24/2014