

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the matter of:)	
)	
ASSOCIATED SOILS)	SETTLEMENT AGREEMENT AND
ANALYSIS, INC.)	STIPULATION FOR ENTRY OF
)	ADMINISTRATIVE CIVIL LIABILITY
Alleged misrepresentations)	ORDER
submitted to the Underground)	
Storage Tank Cleanup Fund)	PROPOSED
)	ORDER
)	WQ 2022-XXXX-EXEC

Section I: INTRODUCTION

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order) is entered into by and among the State Water Resources Control Board (State Water Board) Prosecution Team, on behalf of the Underground Storage Tank Cleanup Fund (UST Cleanup Fund), with Associated Soils Analysis, Inc. (ASA) and the principals for ASA, Bartolome and Linda Racca (collectively Settling Respondents), and is presented to the State Water Board, or its delegee, for adoption as an order by settlement, pursuant to Government Code section 11415.60 and Health and Safety Code section 25299.80. The State Water Board Prosecution Team and the Settling Respondents are collectively referred to as the Parties, and are individually referred to as a Party. This Stipulated Order resolves the violations alleged herein by the imposition of administrative civil liability against the Settling Respondents in the amount of eighty-six thousand six hundred and fifty-one dollars (**\$86,651.00**).

Section II: RECITALS

2. The ASA investigation arose out of the conviction of environmental laboratory owner and director, Roobik Yaghoubi, for fraud related to environmental sample analysis. Mr. Yaghoubi pleaded guilty to submitting false data to the State Water Board in Los Angeles County Superior Court in Case No. BA450757. ASA was a client of Mr. Yaghoubi and Cal Tech Environmental Laboratory (CTEL). The Fraud Prevention Unit does not allege that Settling Respondents had knowledge of or participated in Mr. Yaghoubi's falsification of environmental sample data submitted to the State Water Board.
3. During the CTEL investigation, the Fraud Prevention Unit identified ASA as a party that allegedly submitted inflated invoices to the UST Cleanup Fund. Subsequently, the Fraud Prevention Unit identified B&L Rentals as an affiliate of ASA that it alleges received kickbacks from CTEL.
4. On November 17, 2017, the Director of the Office of Enforcement under delegated authority issued ASA a subpoena for records and documents and interrogatories pursuant to Government Code section 11180.
5. Subsequent to the review of the investigative materials related to CTEL, the Fraud Prevention Unit conducted further investigation of the billing practices of ASA across multiple UST Cleanup Fund claims. The Fraud Prevention Unit developed a number of findings summarized in paragraph 6.
6. After reviewing all the materials available, the Fraud Prevention Unit alleges ASA made numerous misrepresentations in multiple claims it submitted to the UST Cleanup Fund, including the following:
 - a. Two hundred and forty-two instances of inflated subcontractor costs, specifically, invoices that misrepresented the actual costs of laboratory analyses that caused the UST Cleanup Fund to pay ineligible costs.
 - b. Ninety-seven instances of inflated billing rates that misrepresented the classification of the employee.
 - c. Thirty-six instances of misrepresenting the hours and mileage invoiced to the UST Cleanup Fund.
 - d. One instance of ineligible markup on an affiliated subcontractor.
7. ASA is no longer in business. ASA surrendered its corporate status in California on January 25, 2021. ASA dissolved as a Nevada corporation on January 21, 2021.

8. On September 25, 2014, the Health and Safety Code was amended to add section 25299.80 providing for the imposition of administrative civil liability for misrepresentations made to the UST Cleanup Fund. (Stats. 2014, Ch. 547, Senate Bill 445 (Hill, 2014)). This provision of the Health and Safety Code authorizes the imposition of administrative civil liability for the alleged violations covered by this Stipulated Order.
9. By letter dated April 20, 2021, the Fraud Prevention Unit advised the Settling Respondents it had identified instances of alleged misrepresentations by ASA to the UST Cleanup Fund, and offered Settling Respondents an opportunity to discuss the allegations and potential settlement of civil liability under Health and Safety Code section 25299.80. The Parties have since engaged in settlement negotiations regarding the administrative civil liability prior to a complaint being issued and agree to settle the alleged violations for of **eighty-six thousand six hundred and fifty-one dollars (\$86,651.00)** without administrative action or civil litigation and by presenting this Stipulated Order to the State Water Board, or its delegee; for adoption as an order by settlement, pursuant to Government Code section 11415.60 and Health and Safety Code section 25299.80.

10. Health and Safety Code section 25299.80, subdivision (e), provides:

“In determining the amount of civil liability imposed under this section, the executive director of the board... shall take into account the nature, circumstance, extent, and gravity of the violation, the person’s ability to pay, any prior history of misrepresentations by the person to the board or local agency, any economic benefits or savings that resulted or would have resulted from the false statement, and other matters as justice may require.”

The State Water Board Prosecution Team contends the conduct alleged in Paragraph 6 was intentional deception for financial gain resulting in significant financial damage to the UST Cleanup Fund; the alleged violations present harm to the UST Cleanup Fund in the form of overpayment of non-qualifying costs induced by the Settling Respondents’ misrepresentations and harm to the claimants for the sites for which the fraudulent reimbursements were issued; and that each instance of misrepresentation represents a significant cost incurred by the UST Cleanup Fund, not only as an additional expense unrelated to cleaning up contamination, but also as additional resources required to detect, deter, and recover fraudulent reimbursement. For other factors as justice may require, the State Water Board Prosecution Team believes legal and equitable principles support the negotiated administrative civil liability amount. Significantly, the allegations resolved in this action were not detected until 2018 or earlier and Settling Respondents assert that at least some of the alleged violations are barred by the doctrine of laches. In addition, ASA is a Nevada corporation, and the evidence in this case does not support individual administrative civil liability for the shareholders. The laws incorporating this company limit shareholder liability to the amount each shareholder received in the distribution when the corporation was dissolved. ASA was dissolved on January 21, 2021, and the settlement recoups the majority of all the shareholder distributions on dissolution. The amount of the administrative civil liability imposed pursuant to this Stipulated Order takes into account the factors described in Health and Safety Code section 25299.80, the legal and equitable arguments discussed above, and considers the litigation risks associated with proceeding to an adjudicative proceeding.

11. 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 ASA is warranted concerning Covered Matters in Paragraph 6 above, either directly or through claimants, except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

12. Settling Respondents dispute the factual allegations and legal conclusions above. Settling Respondents nonetheless agree to settlement on the proposed terms, without any admission of wrongdoing or liability, to avoid the expense, time and uncertainty of a contested administrative hearing or civil litigation related to alleged misrepresentations by ASA to the UST Cleanup Fund.

Section III: STIPULATIONS

The Parties stipulate to the following:

13. **Jurisdiction:** The Parties agree that the State Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulated Order.
14. **Administrative Civil Liability:** Settling Respondents hereby agree to the imposition of eighty-six thousand six hundred and fifty-one dollars (\$86,651.00) in administrative civil liability to the State Water Board to resolve the violations alleged in this Stipulated Order. Settling Respondents agree to pay the following amounts:
 - a. **Eighty-six thousand six hundred and fifty-one dollars (\$86,651.00)** shall be paid to the UST Cleanup Fund. Payment shall be made no later than thirty (30) days after adoption of the order approving this Stipulated Order by the State Water Board, or its delegate, by check payable to the "UST Cleanup Fund." Settling Respondents shall indicate on the check the number of this Stipulated Order (WQ 2021-XXXX-EXEC). Settling Respondents shall send the original signed check to the State Water Resources Control Board, Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, California 95812-1888. A copy of the check shall be sent to Nickolaus Knight, Attorney IV, State Water Resources Control Board, Office of Enforcement, 801 "K" Street, Suite 2300, Sacramento, California 95814.
15. **Injunctive Relief/ Prohibitions:**
 - a. Settling Respondents agree that as of the date of this order, ASA and its principals are prohibited from performing any work for or in connection with any program administered, funded, or directed in any manner by the State Water Board. The prohibition in this paragraph includes, but is not limited to, any program, fund, or account authorized under division 20, chapters 6.75 and 6.76 of the Health and Safety Code.
 - b. ASA and its principals are specifically disqualified from participation in any fund or account authorized under division 20, chapter 6.75 of the Health and Safety Code pursuant to this Order and section 25299.71.
 - c. Settling Respondents agree that after the date of this order, any and all work performed by, supervised by, and/or directed by ASA that has not been submitted for reimbursement by the UST Cleanup Fund is not eligible reasonable and necessary costs and, therefore, not subject to reimbursement from the UST Cleanup Fund.

16. **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 the Settling Respondents, 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 the Settling Respondents, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.
17. **Covenant Not to Sue:** The Settling Respondents 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.
18. **Compliance with Applicable Laws and Regulatory Changes:** The Settling Respondents understand that payment of an administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that additional violations of the type alleged may subject it to further enforcement, including additional administrative civil liability. Nothing in this Stipulated Order shall excuse the Settling Respondents from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.
19. **Covered Matters:** Upon approval by the Settling Respondents, and adoption by the State Water Board, or its delegee, as an order, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged in relation to the conduct described in paragraph 6, which could have been asserted under Health and Safety Code section 25299.80, based on the facts alleged against the Settling Respondents. The provisions of this paragraph are expressly conditioned on Settling Respondents' full payment of the Administrative Civil Liability.

20. **Party Contacts for Communications related to this Stipulation and Order:**

For the UST Cleanup Fund:

Nickolaus Knight, Senior Counsel
State Water Resources Control Board
Office of Enforcement
801 "K" Street, Suite 2300
Sacramento, California 95814
nickolaus.knight@waterboards.ca.gov
916.327.0169

For Settling Respondents:

Daniel J. O'Hanlon
Kronick, Moskovitz, Tiedemann &
Girard
1331 Garden Highway, 2nd Floor
Sacramento, California 95833
dohanlon@kmtg.com
916.321.4500

21. **Attorney's Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
22. **Public Notice:** The Parties understand that this Stipulated Order will be noticed for a thirty (30)-day public review 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 Assistant Deputy Director of the Division of Financial Assistance may unilaterally declare this Stipulated Order void and decide not to present it to the State Water Board. The Settling Respondents agree that they may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.
23. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting this Stipulated Order by the State Water Board, or its delegee, and review of this Stipulated Order by the public is lawful and adequate. In the event procedural objections are raised 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 as necessary or advisable under the circumstances.
24. **No Waiver of Right to Enforce:** The failure of any Party 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 to enforce any such provision shall not preclude any Party 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 under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. The State Water Board reserves all rights to take additional enforcement actions, including without limitation, the issuance of administrative civil liability complaints or orders for violations other than those addressed by this Stipulated Order.

25. **Interpretation:** This Stipulated Order shall not be construed against the Party preparing it, but shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties were represented by counsel in this matter.
26. **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 and approved by each Party or its delegee.
27. **Severability:** The provisions of this Stipulated Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.
28. **If the Order Does Not Take Effect:** The Settling Respondents' obligations under this Stipulated Order are contingent upon the entry of this Stipulated Order by the State Water Board as proposed. 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 they expect to proceed to a contested evidentiary hearing before the State Water Board to determine whether to assess administrative civil liabilities 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 of the Federal Rules of Evidence, and any other applicable privilege under federal and/or state law. The Parties 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 that are premised in whole or in part on the fact that the 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 of the alleged violations to the extent this period has been extended by these settlement proceedings.

29. **Waiver of Hearing:** The Settling Respondents have been informed of the rights provided by Health and Safety Code section 25299.80, subdivision (c), and Water Code section 13323, subdivision (b), and, if this Stipulated Order is adopted by the State Water Board, hereby waive their right to a hearing before the State Water Board prior to the Stipulated Order's adoption. However, should the Stipulated Order not be adopted, and should the matter proceed to the State Water Board for hearing, the Settling Respondents do not waive the right to a hearing before an order is imposed.
30. **Waiver of Right to Petition or Appeal:** Except in the instance where the Stipulated Order is not adopted by the State Water Board or its delegee, the Settling Respondents hereby waive their rights to petition for writ of administrative mandate in the California Superior Court or to appeal to a California Superior Court and/or any California appellate level Court regarding the matters resolved hereby.
31. **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.
32. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, or claimants, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
33. **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.
34. **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 Order incorporating the terms of this Stipulated Order.

IT IS SO STIPULATED.

Date: May 10, 2022

Original signed by

Diane Barclay
UST Cleanup Fund Manager
Assistant Deputy Director

Settling Respondents

Date: April 18, 2022

signed copy available upon request

Bartolome Racca

Date: April 18, 2022

signed copy available upon request

Linda Racca

**FINDINGS AND ORDER OF THE
STATE WATER RESOURCES CONTROL BOARD**

Having considered the allegations and the Parties' stipulations, the State Water Board finds that:

1. This Order incorporates Paragraphs 1 through 34 by reference as if set forth fully herein.
2. In accepting this settlement, the State Water Board has considered, where applicable, the factors prescribed in Health and Safety Code section 25299.80, subdivision (e).
3. This is an action to enforce the laws and regulations administered by the State Water Board. The State Water Board finds that issuance of this 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. Fulfillment of the Settling Respondents' obligations under the Order constitutes full and final satisfaction of any and all liability for Covered Matters in accordance with the terms of the Order.
5. The State Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Settling Respondents fails to perform any of its obligations under the Stipulated Order.
6. The Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order between the State Water Board Prosecution Team and the Settling Respondents is approved pursuant to Health and Safety Code section 25299.80 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.

Date: _____

Joe Karkoski
Deputy Director
Division of Financial Assistance