

**STATE OF CALIFORNIA  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

COMPLAINT NO. R2-2010-0055

**ADMINISTRATIVE CIVIL LIABILITY  
IN THE MATTER OF  
FAILURE TO COMPLY WITH NPDES MUNICIPAL STORM WATER PERMIT  
REQUIREMENTS, ORDER NO. R2-2003-0021, COUNTY OF ALAMEDA**

This administrative civil liability complaint (“Complaint”) is issued under the authority of California Water Code (“CWC”) section 13323 to County of Alameda (“Discharger”) to assess administrative civil liability pursuant to CWC section 13385. The Complaint proposes administrative civil liability against the Discharger in the amount of \$522,429 for failing to incorporate revised standards and guidelines and implement site design and source control measures within the Discharger’s jurisdiction in accordance with the requirements of Provisions C.3.j.ii.3 and C.3.k of Order No. R2-2003-0021 (NPDES Permit No. CAS0029831)(“Permit”) for the Alameda Countywide Clean Water Program, which includes the Discharger.

The Assistant Executive Officer of the San Francisco Bay Regional Water Quality Control Board (“Regional Water Board”) hereby gives notice that:

1. The Discharger violated provisions of the law for which the Regional Water Board may impose civil liability pursuant to CWC Section 13385(c)(1). This Complaint proposes to assess \$522,429 in penalties for the violations cited based on the considerations described herein. The deadline for public comments on this Complaint is 5:00 p.m. on May 17, 2010. To have public comments considered, contact Habte Kifle with the Regional Water Board Prosecution Team at (510) 622-2371 or via email to [hkifle@waterboards.ca.gov](mailto:hkifle@waterboards.ca.gov).
2. Unless waived, the Regional Water Board will hold a hearing on this matter on July 14, 2010, at 9:00 a.m. in the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland, California, 94612. The Discharger or its representative(s) will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Water Board. An agenda will be mailed to the Discharger approximately ten days before the hearing date. The Discharger must submit any written evidence and/or information concerning this Complaint to the Regional Water Board not later than 5:00 p.m. on June 14, 2010, so that such evidence and information may be considered. Any written evidence submitted to the Regional Water Board after this date and time will not be accepted or responded to in writing.
3. At the hearing, the Regional Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

## ALLEGATIONS

4. The Discharger has jurisdiction over and/or maintenance responsibility for a municipal separate storm drain system (MS4) and/or watercourses in Alameda County regulated by the Permit. The Regional Water Board issued the Permit on February 19, 2003, and it became effective on April 10, 2003.
5. Permit Provision C.3.j required the Discharger to revise its approval processes to require site design measures to minimize stormwater pollution from new development and significant redevelopment projects. Site design measures that were provided as examples of appropriate controls included: (1) minimize land disturbance; (2) minimize impervious and maximize pervious surfaces; (3) minimum-impact street standards for new development and redevelopment; (4) minimum-impact parking lot design standards; (5) clustering of structures and pavement; (6) develop specifications or “acceptable design” guidelines for lot-level design measures; (7) preservation of high quality open space; (8) maintenance and/or restoration of riparian areas and wetlands as project amenities; and, (9) incorporate supplemental controls to minimize changes in the volume, flow rate, timing, and duration of runoff, for a given precipitation event or events etc. (See Exhibit A attached hereto). These approval process revisions were to be completed and fully implemented by November 15, 2005.
6. Permit Provision C.3.k required the Discharger to develop and submit enhanced performance standards that include requirements for source control measures to limit pollutant generation, discharge, and runoff from new development and significant redevelopment projects to the maximum extent practicable. (See Exhibit A attached hereto). Examples of appropriate source control measures include, but are not limited to, storm drain inlet stenciling, indoor mat/equipment wash racks, connecting swimming pool drains to the sanitary sewer system, installation of covered trash enclosures, draining covered trash enclosures to the sanitary sewer system, designing landscaping to minimize irrigation and runoff, and to minimize pesticide and fertilizer use, and to promote surface infiltration where appropriate. The performance standards were to be fully implemented by February 15, 2005. Beginning with the Discharger’s Annual Report due September 15, 2005, the Discharger is required to report the status of the performance standards and appropriate detail on projects reflecting the application of the enhanced performance standards in the Discharger’s Annual Report.
7. In September and October 2006, Regional Water Board staff reviewed portions of the Discharger’s 2005/2006 Annual Report and became aware that the Discharger was not fully and substantively complying with the Permit provisions that required implementation of appropriate controls to reduce pollution associated with new development and significant redevelopment activities.
8. On January 26, February 22, and March 20, 2007, Regional Water Board staff held meetings with representatives from the Discharger’s Public Works, Community Development, and General Services Agencies regarding the Discharger’s Permit

violations and the corrective actions necessary for the Discharger to come into full compliance with the Permit.

9. On May 4, 2007, the Regional Water Board Executive Officer issued a Notice of Violation and CWC Section 13267 technical report order (“May 4 NOV”) to the Discharger to come into full compliance with the requirements of Permit Provisions C.3.a through C.3.o, including, but not limited to, Provision C.3.j: site design measures guidance and standards development, and Provision C.3.k: source control measures guidance development (See Exhibit B attached hereto).
10. On August 20, 2007, the Regional Water Board Executive Officer issued a second Notice of Violation and CWC 13267 technical report Order (“August 20 NOV”) to the Discharger because the Discharger had failed to submit the technical reports required by the May 4 NOV and had not come into full compliance with the Permit (See Exhibit C attached hereto).
11. Following issuance of the August 20 NOV, Regional Water Board staff held additional meetings in February 2008 and May 2008 with the Discharger, had multiple communications with the Discharger regarding the violations cited in the May 4 NOV and August 20 NOV, and conducted an audit of the Discharger’s files related to the violations cited in the two May 4 and August 20 NOVs. As of May 2008, the Discharger remained out of compliance with the Permit.
12. As of June 30, 2008, the deadline to compile activities for the Discharger’s 2007/2008 Annual Report, the Discharger reported that it had not required source controls to be incorporated in new development and significant redevelopment projects subject to the requirements of the Permit.<sup>1</sup>
13. On March 11, 2009, the Regional Water Board’s Assistant Executive Officer issued a letter regarding the Discharger’s compliance status with the May 4 NOV. (See Exhibit D attached hereto). The letter notified the Discharger of its ongoing noncompliance with specific Permit provisions, including Provisions C.3.j and C.3.k, and the Regional Water Board’s intent to take further enforcement action.
14. As of June 30, 2009, the standard and guidance revisions required by Permit provision C.3.j were still in an administrative draft form. The Discharger’s Community Development Agency plans to release them for public review in January 2010.<sup>2</sup> Thus,

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<sup>1</sup> The Discharger’s 2007/2008 Annual Report included tables of projects that were required to implement Provision C.3.k. For those projects, the applicable section on source control measures was either left blank or stated that “Construction BMPs and grading erosion control” were implemented. While effective construction BMPs, such as erosion and sediment controls, are required during construction, these BMPs are not post-construction source control measures consistent with Provision C.3.k requirements. The projects listed in the tables for which appropriate source control measures were not required included, but were not limited to, a McDonald’s restaurant, multi-unit higher-density residential projects, mixed-use residential/commercial projects, and single-family residential subdivision projects.

<sup>2</sup> E-mail message dated November 30, 2009, documenting phone conversation between Selina T Louie of the Regional Water Board and Sharon Gosselin of Alameda County.

the Discharger remains out of compliance with Permit provision C.3.j.ii as it has not revised its approval process and has not fully implemented the revised standards and guidance.

#### ALLEGED VIOLATIONS

15. An administrative civil liability may be imposed pursuant to the procedures described in CWC section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.
16. Pursuant to CWC section 13385(a)(2), any person who violates any waste discharge requirement issued pursuant to the Federal Water Pollution Control Act (Clean Water Act) is subject to administrative civil liability pursuant to CWC section 13385(c)(1) in an amount not to exceed ten thousand dollars (\$10,000) for each day in which the violation occurs.
17. The Discharger violated Permit Provision C.3.j.ii.3 for 1,324 days (November 15, 2005, through June 30, 2009), as reported in the Discharger's 2008/2009 Annual Report that was submitted on September 15, 2009, because it failed to review, revise, and fully implement the revised standards and guidance in its new development and significant redevelopment project approval process. Specifically, it did not incorporate changes to its project approval process to ensure that its own projects and private projects within its jurisdiction have incorporated appropriate design, source control, and post-construction treatment measures to reduce pollutants from stormwater runoff and maintain stable post-construction runoff flows consistent with Permit requirements.
18. The Discharger violated Permit Provision C.3.k for over 1,232 days (February 15, 2005, through June 30, 2008), as reported in the Discharger's 2007/2008 Annual Report that was submitted on September 15, 2008, because it approved construction projects subject to the requirements of the Permit without developing and/or fully implementing appropriate performance standards that included requirements for appropriate source control measures to reduce stormwater runoff pollution from new development and significant redevelopment projects.
19. The Discharger is administratively liable for these violations pursuant to CWC section 13385(a)(2) and (c)(1) for up to \$10,000 for each day in which the violations occur.

#### PROPOSED CIVIL LIABILITY

20. **Maximum Liability:** Pursuant to CWC section 13385(c)(1), the total maximum potential liability for the identified violations is \$25.56 million dollars (\$25,560,000), as described below.
  - (i) As stated above, the Discharger violated Permit provision C.3.j.ii.3 from at least November 15, 2005, through June 30, 2009, a period of 1,324 days. The

maximum civil liability the Regional Water Board may impose is ten thousand dollars (\$10,000) for each day in which the violation occurred. The corresponding maximum potential fine for this violation is 13.24 million dollars (\$13,240,000).

- (ii) As stated above, the Discharger violated Permit Provision C.3.k from at least February 15, 2005, through September 15, 2008, a period of 1,232 days. The maximum civil liability the Regional Water Board may impose is ten thousand dollars (\$10,000) for each day in which the violation occurred. The corresponding maximum potential fine for this violation is 12.32 million dollars (\$12,320,000).

21. **Minimum Liability:** Pursuant to CWC section 13385(e), at a minimum, liability shall be assessed at a level that recovers the economic benefit or savings, if any, the Discharger derived from the acts that constitute the violations.

#### CONSIDERATION OF FACTORS

22. Under CWC Section 13385(e) of the CWC, the Regional Water Board shall consider the following factors in determining the amount of civil liability to be imposed:

The Nature, Circumstances, Extent, and Gravity of the Violation:

23. The Discharger violated two Permit Provisions: C.3.j and C.3.k. These two Provisions required review and modification of existing requirements for new development and significant redevelopment projects, followed by implementation of the revised requirements by the Discharger in its project review process. Pursuant to previous NPDES permits that regulated the Discharger, the Discharger was required to implement appropriate BMPs to control and reduce pollutant discharges from new development and significant redevelopment projects similar to those in the Permit, which was adopted in February 2003. The Permit allowed the Discharger adequate time to revise and implement the revised requirements—approximately 33 months for Provision C.3.j, and approximately 24 months for Provision C.3.k. However, the Discharger, with the exception of a few projects under the control and direction of its General Services Agency, had only limited implementation of the requirements, which occurred after the deadlines set forth in the Permit. The Discharger admitted in its 2007/2008 Annual Report that it has not implemented Provision C.3.j, and the tables in the Annual Report that summarize the applications received for new development and significant redevelopment projects revealed the absence of implementation of source control measures pursuant to Provision C.3.k. requirements. As a result of the Discharger's non-compliance with the Permit, projects were built without appropriate design and source control measures to reduce pollutants from stormwater runoff and minimize stormwater runoff from those projects.
24. The Discharger failed to adequately respond to the May 4, 2007, Order for a technical report under CWC 13267. The Discharger's inadequate response to the May 2007,

13267 Order, prompted the issuance of a second Order for a technical report pursuant to CWC 13267 on August 20, 2007. The Discharger again failed to adequately respond to the August 2007, 13267 Order. The Discharger's inadequate and late responses to the Regional Water Board's 13267 Orders for technical reports increased the length of time the Discharger was in violation and complicated Regional Water Board staff's attempts to assist the Discharger with coming into compliance with the Permit.

25. In 2008, the Regional Water Board staff (1) made two additional informal requests for information, (2) met with the Discharger's staff to discuss the violations and how to come into compliance with the Permit, and (3) conducted an audit of the Discharger's files at the Discharger's offices in order to determine its Permit compliance status. In 2008, the Discharger initiated a process to incorporate the necessary performance standards into its project approval process in compliance with the Permit requirements after concerted regulatory efforts by Regional Water Board staff, including numerous telephone and electronic communications, several meetings, an audit of the Discharger's files, and issuance of three letters, including two Notices of Violation/13267 Orders for technical report information.
26. The Discharger's failure to require implementation of appropriate design and source control measures resulted in water quality impacts. The absence of proper design and source control measures increased the stormwater runoff volumes and pollutant loads in the Discharger's urban runoff discharges relative to the loads that would have been achieved had the Discharger complied with the Permit. These increases likely increased the toxicity of the stormwater discharges from projects approved by the Discharger, relative to the toxicity levels that would have been observed had appropriate controls been required.
27. The pollutants found in urban runoff can have short and long-term damaging effects on both human health and aquatic ecosystems. Stormwater runoff from developed areas contains heavy metals; excessive sediment; petroleum hydrocarbons from sources such as used motor oil; microbial pathogens that originate from illicit domestic sewage discharges and sewer system overflows; certain pesticides associated with the risk of acute aquatic toxicity; excessive nutrient loads that may cause or contribute to the depletion of dissolved oxygen and/or toxic concentrations and dissolved ammonia; trash, which impairs beneficial uses, including but not limited to, support for aquatic life; and other pollutants, which may cause aquatic toxicity in the receiving waters. Other development impacts also include flooding, creek incision, excess sedimentation, erosion, and creek bank instability. This pollution would have been minimized or avoided if the Discharger had complied with the Permit.
28. The discharges that result from non-compliance with the Permit are generally not susceptible to cleanup. Implementation of the revised approval process for new and significant redevelopment projects, as required by the Permit, provides the most cost-effective opportunity to protect water quality. The water quality impacts from new development and redevelopment projects are most effectively minimized when site design, source control, and permanent treatment measures can be incorporated into

project designs during the planning process, and prior to commencing project construction. After completion of project construction, such controls can often be retrofitted into built projects, but only at significantly greater expense, as compared to including the controls in the initial project design. Often, there remains no regulatory process or requirement that would result in such a retrofit. Therefore, it is unlikely that controls will be incorporated into built projects after-the-fact, which results in urban runoff pollutant load discharged to creeks and the Bay from these projects, with corresponding impacts to beneficial uses.

29. Further, the Discharger's lack of compliance compromises its authority to effectively regulate private construction projects.

Degree of toxicity of discharge, Susceptibility of the discharge to cleanup or abatement, Voluntary cleanup actions taken:

30. These factors are not addressed herein because the Complaint imposes penalties for non-compliance with Permit requirements that are non-discharge violations.

Discharger's ability to pay and continue business:

31. The Discharger's fiscal year 2009/2010 Final Budget includes appropriations of \$2.43 billion. The General Government Program portion, which funds the General Services Agency, the Community Development Agency, and the Public Works Agency, has an annual budget of approximately \$245.5 million (\$245,490,041).<sup>3</sup> The Discharger is funded through a variety of revenues from state, federal, and local government, local property taxes, and revenues from charges for services. The proposed administrative civil liability is a small fraction of the Discharger's annual budget, and the Discharger has a variety of funding sources available. Regional Water Board staff believes the proposed liability amount will not jeopardize the County's ability to continue operations.

Prior history of violations:

32. The Discharger has had other Permit violations. The Discharger was 1,096 days late (i.e., from February 15, 2005 until February 15, 2008) before coming into compliance with Permit Provision C.3.b: modification of project review process; and, 1,503 days late (i.e., from July 1, 2004 through August 11, 2008) before coming into compliance with Permit Provision C.3.e: operation and maintenance of treatment measures. These two late compliance violations were cited in the May 4 and August 2007 Notices of Violation and Section 13267 Orders sent to the Discharger.

Degree of culpability:

33. The Discharger is fully culpable for failing to comply with the Permit requirements. The Discharger has been regulated by an NPDES municipal stormwater permit since October

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<sup>3</sup> [http://www.acgov.org/budget/2010\\_final\\_budget.pdf](http://www.acgov.org/budget/2010_final_budget.pdf)

16, 1991. Subsequent NPDES permits were adopted in February 1997 and February 2003. The Provision C.3 requirements referenced herein are updated versions of similar requirements in the rescinded 1991 and 1997 permits. Although the updated Provision C.3 requirements include more specific compliance requirements, the design and source control measures are basic requirements of the municipal stormwater programs and should have been familiar to the Discharger.

34. Given the maturity of the municipal stormwater program that regulates the Discharger and other permittees in the Bay Area, the Discharger knew or should have known of the Permit Provisions, should have already implemented very similar requirements, and had the appropriate tools available to comply with the violated Provisions. For the past 18 years, the Discharger and the other permittees have implemented established performance standards for the various Permit components, including public information and participation, illicit discharge controls and non-stormwater discharges, municipal operation and maintenance, watershed management and monitoring, and new development and redevelopment activities.

Economic benefit or savings resulting from the violation:

35. The Discharger claimed that it did not fill seven of its twelve staff planning positions<sup>4</sup>, thereby limiting its ability to review the projects for compliance with Provision C.3 requirements and require appropriate pollution control measures during that project review process. Due to the Discharger's lack of designated personnel to oversee the implementation of the Permit requirements, the Discharger realized an economic savings. At the very least, from on or about February 2005 until June 30, 2009, the Discharger realized up to \$492,129 in economic savings. This benefit is based on the salary and benefits the Discharger would have paid to employ a Planner I staff person oversee the implementation of the Permit requirements.

Other matters that justice may require:

36. Staff time to review relevant information and prepare the Complaint and supporting information is estimated to be 200 hours. Based on an average cost to the State of \$150 per hour, the total cost for staff time is \$30,000. Issuance of the Complaint requires publishing a Public Notice in a newspaper of general circulation, at a cost of approximately \$300. The total staff cost to prepare the Complaint is thus approximately \$30,300.

Basis for Liability Amount

37. The proposed liability is based on the above consideration of factors pursuant to CWC Section 13385(e), as well as the monetary assessment guidance set forth State Water Resources Control Board's Enforcement Policy.

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<sup>4</sup> Email message dated August 31, 2007, from Bruce Wolfe, Executive Officer of the Regional Water Board, to Dale Bowyer, Senior Engineer, documenting Bruce's phone conversation with Mr. Buzz Sorensen, Director of the County's Community Development Agency.



38. The Assistant Executive Officer of the Regional Water Board proposes that an administrative civil liability be imposed in the amount of \$522,429. Of this amount, \$30,300 is for recovery of staff costs and \$492,129 is the proposed liability. The proposed liability amount is less than 2 percent of the maximum liability of \$25.56 million.
39. If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed civil liability amount to conform to the evidence presented, including, but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal, and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.
40. The Discharger may submit information demonstrating an inability to pay the proposed liability. Such information should substantively demonstrate that the Discharger cannot, and could not, pay the proposed liability.
41. Further failure to comply with applicable CWC sections and Permit requirements beyond the date of this Complaint may subject the Discharger to further administrative civil liability and/or other appropriate enforcement action(s), including referral to the Attorney General.
42. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code 21000 et seq.) in accordance with Section 15321 of Title 14, California Code of Regulations.

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Thomas E. Mumley  
Assistant Executive Officer

April 15, 2010  
Date



**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
NO. R2-2010-0055**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent the County of Alameda (hereinafter “Discharger”) in connection with Administrative Civil Liability Complaint No. R2-2010-0055 (hereinafter the “Complaint”). I am informed that California Water Code section 13323, subdivision (b), states that, “a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing.”

***OPTION 1: PAY THE CIVIL LIABILITY***

***(Check here if the Discharger waives the hearing requirement and will pay the liability in full.)***

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of five hundred twenty-two thousand and four hundred twenty-nine dollars (\$522,429) by check that references “ACL Complaint No. R2-2010-0055.” made payable to the “San Francisco Bay Regional Water Quality Control Board.” Payment must be received by the Regional Water Board by 5:00 p.m., on May 17, 2010, or the Regional Water Board may adopt an Administrative Civil Liability Order requiring payment.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board’s Prosecution Team) during this comment period, the Regional Water Board’s Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board or its Executive Officer, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

**OPTION 2: REQUEST A TIME EXTENSION**

*(Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)*

I hereby waive any right the Discharger may have to a hearing before the Regional Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Regional Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Regional Water Board Advisory Team to approve the extension.

**OPTION 3: ENGAGE IN SETTLEMENT DISCUSSIONS**

*(Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)*

I hereby waive any right the Discharger may have to a hearing before the Regional Water Board within 90 days after service of the Complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will contact the Regional Water Board Prosecution Team within five business days of submittal of this waiver to request that the Prosecution Team engage in settlement discussions to attempt to resolve the outstanding violation(s). As part of a settlement discussion, the Discharger may propose a supplemental environmental project to the extent such a project is authorized by law. By checking this box, the Discharger requests that the Regional Water Board Advisory Team delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Water Board Advisory Team to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1c and d."

**OPTION 4: SUBMIT A SUPPLEMENTAL ENVIRONMENTAL PROJECT**

*(Check here if the discharger waives the hearing requirement and will submit a proposed supplemental environmental project. If the proposal is rejected, the Discharger will pay the civil liability in full.)*

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.
- b. I certify that the Regional Water Board Prosecution Team has authorized the Discharger to submit a proposed supplemental environmental project in lieu of payment of two hundred forty-six thousand and sixty-four dollars (\$246,064) of the proposed civil liability. I agree to submit the proposal and the remainder of the proposed civil liability (two hundred seventy-six thousand and three hundred sixty-five dollars [\$276,365]) within 60 days of the date of the Complaint. I understand that the proposal must conform to the requirements specified in the State Water Resources Control Board's Water Quality Enforcement Policy. If I receive written notice from the Prosecution Team that the Discharger has failed to timely submit a proposal or that the Prosecution Team has rejected the proposal, I certify that the

Discharger will remit payment of the proposed civil liability in amount of two hundred forty-six thousand and sixty-four dollars (\$246,064) by check that references "ACL Complaint No. R2-2010-0055" made payable to the "San Francisco Bay Regional Water Quality Control Board" within ten days of the notice. If payment is not timely received, the Regional Water Board may adopt an Administrative Civil Liability Order requiring payment.

- c. I understand the acceptance or rejection of the proposed supplemental environmental project and payment of the remainder of the proposed civil liability constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Water Board received significant new information or comments from any source (excluding the Regional Water Board Prosecution Team) during this comment period, the Regional Water Board's Assistance Executive Officer may withdraw the Complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board or its Executive Officer, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

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(Print Name and Title)

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(Signature)

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(Date)

**EXHIBIT A**  
**Permit Provisions C.3.j and C.3.k**

The specific language of Permit Provisions C.3.j and k are quoted below:

**C.3.j *Site Design Measures Guidance and Standards Development***

- i. *The Permittees shall review their local design standards and guidance for opportunities to make revisions that would result in reduced impacts to water quality and beneficial uses of waters. In this event, the Permittees shall make any such revisions and implement the updated standards and guidance, as necessary.*

*Areas of site design that may be appropriate to address include the following, which are offered as examples:*

1. *Minimize land disturbance;*
2. *Minimize impervious surfaces (e.g., roadway width, driveway area, and parking lot area), especially directly connected impervious areas;*
3. *Minimum-impact street design standards for new development and redevelopment, including typical specifications (e.g., neo-traditional street design standards and/or street standards recently revised in other cities, including Portland, Oregon, and Vancouver, British Columbia);*
4. *Minimum-impact parking lot design standards, including parking space maximization within a given area, use of landscaping as a stormwater drainage feature, use of pervious pavements, and parking maxima;*
5. *Clustering of structures and pavement;*
6. *Typical specifications or “acceptable design” guidelines for lot-level design measures, including:*
  - *Disconnected roof downspouts to splash blocks or “bubble-ups;”*
  - *Alternate driveway standards (e.g., wheelways, unit pavers, or other pervious pavements); and,*
  - *Microdetention, including landscape detention and use of cisterns (may also be considered treatment measures);*
7. *Preservation of high-quality open space;*
8. *Maintenance and/or restoration of riparian areas and wetlands as project amenities, including establishing vegetated buffer zones to reduce runoff into waterways, allow for stream channel change as a stream’s contributing watershed urbanizes, and otherwise Order R2-2003-0021 30 ACCWP Permit mitigate the effects of urban runoff on waters and beneficial uses of waters (may also be considered treatment measures); and,*
9. *Incorporation of supplemental controls to minimize changes in the volume, flow rate, timing, and duration of runoff, for a given precipitation event or events. These changes include cumulative hydromodification caused by site development. Measures may include landscape-based measures or other features to reduce the*

*velocity of, detain, and/or infiltrate stormwater runoff (may also be considered treatment measures).*

- ii. *The standards and guidance review shall be completed according to the schedule below. A summary of review, revision, and implementation status shall be submitted for acceptance by the Executive Officer and reported in the Permittees' Annual Reports, beginning with the Annual Report due September 15, 2005.*
  1. *No later than August 15, 2003: The Permittees shall submit a detailed workplan and schedule for completion of the review of standards and guidelines, any proposed revisions thereto and any implementation of revised standards and guidance;*
  2. *No later than November 15, 2004: The Permittees shall submit a draft review and analysis of local standards and guidance, opportunities for revision, and any proposed revised standards and guidance; and,*
  3. *No later than November 15, 2005: The Permittees shall incorporate any revised standards and guidance into their local approval processes and shall fully implement the revised standards and guidance.*

### **C.3k Source Control Measures Guidance Development**

*The Permittees shall, as part of their improvement process, submit enhanced new development and significant redevelopment Performance Standards, which summarize source control requirements for such projects to limit pollutant generation, discharge, and runoff, to the maximum extent practicable. Examples of source control measures may include the following, which are offered as examples:*

- i. *Indoor mat/equipment wash racks for restaurants, or covered outdoor wash racks plumbed to the sanitary sewer;*
- ii. *Covered trash and food compactor enclosures with a sanitary sewer connection for dumpster drips and designed such that run-on to trash enclosure areas is avoided;*
- iii. *Sanitary sewer drains for swimming pools;*
- iv. *Sanitary drained outdoor covered wash areas for vehicles, equipment, and accessories;*
- v. *Sanitary sewer drain connections to take fire sprinkler test water;*
- vi. *Storm drain system stenciling;*
- vii. *Landscaping that minimizes irrigation and runoff, promotes surface infiltration where appropriate, minimizes the use of pesticides and fertilizers, and where feasible removes pollutants from stormwater runoff; and,*
- viii. *Appropriate covers, drains, and storage precautions for outdoor material storage areas, loading docks, repair/maintenance bays, and fueling areas.*

*A model enhanced new development and significant redevelopment source control Performance Standard and proposed workplan for its implementation shall be submitted by August 15, 2004. Implementation shall begin no later than February 15, 2005, and the status shall thereafter be reported in the Permittees' Annual Reports beginning with the Annual Report due September 15, 2005, which shall also provide appropriate detail on projects reflecting the application of the enhanced Performance Standards consistent with Provision C.3.b, above.*

**EXHIBIT B**

**Notice of Violation and CWC Section 13267 Technical Report Order  
Issued on May 4, 2007**



**EXHIBIT C**

**Notice of Violation and CWC Section 13267 Technical Report Order  
Issued on August 20, 2007**

**EXHIBIT D**

**Letter from the Regional Water Board's Assistant Executive Officer to the Discharger  
Dated March 11, 2009**