

US EPA ARCHIVE DOCUMENT

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 9**

75 Hawthorne Street  
San Francisco, California 94105

IN THE MATTER OF:	)	DOCKET NO. CWA-09-2017-0001
	)	
Canyon Plastics, Inc.	)	
Valencia, California	)	
	)	<b>COMPLAINT/CONSENT AGREEMENT AND [PROPOSED] FINAL ORDER</b>
Respondent.	)	
	)	<i>Class II Administrative Penalty Proceeding</i>
	)	<i>under Section 309(g) of the Clean Water Act,</i>
	)	<i>33 U.S.C. § 1319(g), 33 U.S.C. §1319(g), and</i>
	)	<i>40 C.F.R. §§ 22.13(b) and 22.18</i>

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**CONSENT AGREEMENT**

**I. AUTHORITY**

1. This is a Class II civil administrative penalty proceeding under Section 309(g)(1)(A) and 2(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(1)(A) and (2)(B), and 40 C.F.R. Part 22 (*Consolidated Rules of the Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination, or Suspension of Permits*).
2. Complainant is the Director of the Enforcement Division, U.S. Environmental Protection Agency (“EPA”), Region 9, who brings this action pursuant to the authority delegated by the EPA Administrator and EPA Region 9 Administrator.
3. Respondent is Canyon Plastics, Inc.
4. This Consent Agreement and Final Order (“CA/FO”), which contains the elements of a complaint required by 40 C.F.R. § 22.14(a), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3).

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent by EPA and Respondent, it is hereby STIPULATED, AGREED, AND ORDERED:

**II. STATUTORY AND REGULATORY FRAMEWORK**

5. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by

any person from a point source into waters of the United States, except, among other things, in compliance with a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

6. CWA Section 502(5), 33 U.S.C. § 1362(5), defines “person” to mean an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.
7. CWA Section 502(6), 33 U.S.C. § 1362(6), defines “pollutant” to mean dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.
8. CWA Section 502(14), 33 U.S.C. § 1362(14), defines “point source” to mean any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
9. CWA Section 502(12), 33 U.S.C. § 1362(12), defines the term “discharge of pollutants” to mean any addition of any pollutant to navigable waters from any point source.
10. CWA Section 502(7), 33 U.S.C. § 1362(7), defines the term “navigable waters” to mean a “water of the United States.”
11. CWA Section 402, 33 U.S.C. § 1342, establishes the NPDES program and authorizes EPA and EPA-authorized states to issue permits governing the discharge of pollutants from point sources into waters of the United States.
12. CWA Section 402(p), 33 U.S.C. § 1342(p) requires that NPDES permits be issued for storm water discharges “associated with industrial activity.”
13. 40 C.F.R. 122.26(b)(14)(xi) defines storm water discharges associated with industrial activity to include plastic product manufacturing classified under SIC Major Group 30.
14. The State of California has an EPA-authorized NPDES program and issues permits, including industrial storm water permits, through its State Water Resources Control Board (“State Water Board”) and nine Regional Water Quality Control Boards (“Regional Boards”). On April 17, 1997, the State Water Board adopted General Permit No. CAS000001 for *Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities*, Water Quality Order No. 97-03-DWQ, which was in effect through June 30, 2015 and subsequently revised by the State Water Board on April 1, 2014, Water Quality Order No. 2014-0057-DWQ, which became effective on July 1, 2015 (“General Permit”).
15. CWA Section 308(a), 33 U.S.C. § 1318(a), and its implementing regulations authorize

EPA to, among other things, require the owner or operator of any point source to establish records, make reports, or submit other reasonably required information, including individual and general NPDES permit applications.

16. Pursuant to CWA Section 308(a), 33 U.S.C. § 1318(a), and 40 C.F.R. § 122.21, any person who discharges or proposes to discharge storm water associated with industrial activity must submit an application for an NPDES permit prior to commencing industrial activity.
17. Facilities seeking authorization to lawfully discharge storm water associated with industrial activities are required to submit a Notice of Intent (“NOI”) to comply with the General Permit to the State Water Board prior to commencing industrial operations. See General Permit, Section II(A) and (B).
18. Pursuant to CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. § Part 19.4, EPA may assess a Class II civil administrative penalty of up to \$16,000 per day of violation, not to exceed \$187,500 in total, against a person for CWA Section 301(a) violations that occurred after December 6, 2013. For penalties assessed on or after August 1, 2016 for violations that occurred after November 2, 2015, EPA may assess a penalty up to \$20,628 per day of violation, not to exceed \$257,848 in total.

### **III. GENERAL ALLEGATIONS**

19. Respondent is a California corporation. Respondent operates a plastic products manufacturing facility (“Facility”) located at 28455 Livingston Avenue in Valencia, California.
20. Respondent has been engaged in manufacturing plastic products from plastic resins, classified under SIC Major Group 30, specifically SIC Code 3089 (Plastic Products, Not Elsewhere Classified), at the Facility since at least September 1, 2014.
21. Storm water discharges from plastic products manufacturing facilities may contain waste from industrial processes, including virgin and recycled plastic resin pellets, powders, flakes, powdered additives, regrind, dust, other types of preproduction plastics, and other “pollutants,” as defined by CWA Section 502(6), 33 U.S.C. § 1362(6).
22. Storm water runoff from the Facility discharges into five (5) on-site storm drain inlets connected to the County of Los Angeles’ municipal separate storm sewer system (MS4) that discharges into Halsey Canyon Creek, a tributary to the Santa Clara River, and eventually to the Pacific Ocean. The Santa Clara River and its tributaries are waters of the United States.
23. On September 29, 2015, representatives of EPA Region 9 inspected the Facility to evaluate Respondent’s compliance with the General Permit. EPA inspectors found that Respondent had not submitted an NOI to the State Water Board seeking authorization to discharge industrial storm water under the General Permit and had not implemented best

management practices (BMPs) to eliminate or reduce the discharge of pollutants in storm water runoff from the Facility's industrial activities. Specifically, EPA observed: leaked or spilled resin pellets throughout the Facility's waste management area and shipping and receiving docks; exterior resin pellet storage silos lacking capture devices for use as secondary containment during pellet transfer operations; and five (5) on-site storm drain inlets lacking required containment systems (i.e. 1 mm mesh screen or equivalent) down gradient of areas of the Facility containing plastic material. See General Permit, Section X(H).

24. Respondent did not seek in advance or obtain an individual CWA Section 402 NPDES Permit or file an NOI with the State Water Board for authorization under the General Permit prior to the discharge of pollutants.
25. On March 7, 2016, Respondent submitted an application to the State Water Board via its Storm Water Multiple Application and Report Tracking System ("SMARTS") requesting No Exposure Certification ("NEC") coverage under the General Permit based on its certification that "all materials are stored indoors and there are no industrial activities/materials that are exposed to storm water." On March 10, 2016, the State Water Board granted Respondent NEC coverage and assigned Waste Discharge Identification (WDID) number 4 19NEC001893 to the Facility.
26. On or around July 28, 2016, Respondent submitted an NOI to the State Water Board seeking coverage under the General Permit for the Facility. On August 2, 2016, the State Water Board granted Respondent coverage under the General Permit and assigned WDID Number 4 19I026717 for the Facility. Prior to August 2, 2016, discharges from Respondent's industrial activities at the Facility were not authorized by the General Permit or an individual NPDES permit.
27. Between the start of operations on September 1, 2014 and the date of General Permit authorization on August 2, 2016, at least ten (10) days with rainfall in excess of 0.5 inches were recorded at the Van Nuys Municipal Airport. Upon information and belief, each of these ten (10) rainfall events generated storm water associated with industrial activity at the Facility sufficient to cause a discharge from the Facility.

#### **IV. VIOLATIONS**

##### **A. Discharge without an NPDES Permit**

28. Respondent is a corporation and thus a "person" within the meaning of CWA Sections 301(a) and 502(5), 33 U.S.C. §§ 1311(a) and 1362(5).
29. Respondent's operations at its Facility fall within the industrial activities classified under SIC Code 3089 ("Plastic Products, Not Elsewhere Classified"), and is therefore an "industrial activity" for purposes of CWA Section 402(p), 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26(b)(14)(xi).

30. The piping associated with the five (5) storm drain inlets at the Facility and the County of Los Angeles' MS4 are "point sources" within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).
31. Storm water runoff from the Facility that discharges to Halsey Canyon Creek, the Santa Clara River, and the Pacific Ocean is a "storm water discharge associated with industrial activity" as defined by 40 C.F.R. § 122.26(b)(14)(xi).
32. Halsey Canyon Creek, the Santa Clara River, and the Pacific Ocean are "waters of the United States" within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).
33. Respondent's discharge of pollutants in storm water into waters of the United States constitutes a "discharge of pollutants" within the meaning of CWA Section 502(12), 33 U.S.C. § 1362(12).
34. Respondent has violated CWA Sections 301(a) and 402(p), 33 U.S.C. §§ 1311(a), 1342(p) by discharging pollutants from a point source into waters of the United States without any permit under the CWA.
35. Upon information and belief, EPA alleges that each storm water discharge from the Facility between September 1, 2014 and August 2, 2016, was an unauthorized discharge of pollutants and together the discharges constitute no fewer than ten (10) days of violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

#### B. Failure to Submit an NOI for General Permit Coverage

36. CWA Section 308(a), 33 U.S.C. § 1318(a), and 40 C.F.R. §§ 122.21(a)(1), 122.26(c)(1) and 122.28(b)(2)(i), require facility operators that discharge storm water associated with industrial activity to submit a NOI for coverage under the General Permit or an application for an individual NPDES permit prior to commencing industrial activity.
37. Respondent's failure to submit an NOI for coverage under the General Permit or an application for an individual NPDES permit before commencing industrial activities at the Facility constitutes a violation of CWA Section 308(a), 33 U.S.C. § 1318(a), and 40 C.F.R. §§ 122.21(a)(1) and 122.26(c)(1).

#### V. ADMINISTRATIVE PENALTY

38. In consideration of the penalty factors of CWA Section 309(g), 33 U.S.C. § 1319(g) and Respondent's performance of the tasks set forth in Section VI of this CA/FO, Respondent shall pay to the United States a civil administrative penalty in the amount of **NINETEEN THOUSAND DOLLARS (\$19,000)**, within thirty (30) calendar days of the Effective Date, as defined in Section XIII below, of this CA/FO.

39. Respondent shall make penalty payment by one of the options listed below:

- a. Check Payment. Payment by a cashier's or certified check shall be made payable to "Treasurer, United States of America" and be mailed as follows:

- i. *If by regular U.S. Postal Service Mail:*

U.S. Environmental Protection Agency  
Fines and Penalties  
PO BOX 979077  
St. Louis, MO 63197-9000

- ii. *If by overnight mail:*

U.S. Environmental Protection Agency  
Government Lockbox 979077  
USEPA Fines and Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

- b. Automated Clearinghouse Payment: Payment by Automated Clearinghouse (ACH) via Vendor Express shall be made through the U.S. Treasury as follows:

U.S. Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking

- c. Fedwire: Payment by wire transfer to EPA shall be made through the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
(Field Tag 4200 of the Fedwire message should read: D 68010727  
Environmental Protection Agency)

- d. Online Payment: This payment option can be accessed from the information below

Go to [www.pay.gov](http://www.pay.gov)  
Enter "SFO Form Number 1.1." in the search field



Open “EPA Miscellaneous Payments – Cincinnati Finance Center” form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at (513) 487-2091.

Payment instructions are available at: <https://www.epa.gov/financial/makepayment>.

40. To ensure proper credit, Respondent shall include the following transmittal information with the penalty payment:

- a. Respondent’s name (as appeared on the CA/FO), complete address, contact person, and phone number;
- b. the EPA case docket number;
- c. the EPA contact person; and
- d. the reason for payment.

41. Concurrent with the payment, Respondent shall send a true and correct copy of the payment and accompanying transmittal information to the following addresses:

Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Greg Gholson  
Water Enforcement Section II (ENF-3-2)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Desean Garnett  
Office of Regional Counsel (ORC-2)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

42. Respondent shall not, and shall not allow any other person to, deduct any penalties and interest paid under this CA/FO from federal, state, or local taxes.

43. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay the assessed penalty on time, EPA may request the U.S. Department of



Justice to bring a civil action to recover the overdue amount, plus interest at currently prevailing rates from the Effective Date of this CA/FO. In such an action, the validity, amount, or appropriateness of the assessed penalty shall not be subject to review. In addition to any assessed penalty and interest, Respondent shall pay attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty, which shall equal 20% of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter, for each quarter during which such failure to pay persists. EPA may also take other debt collection actions as authorized by law, including, but not limited to, the Debt Collection Act, 33 U.S.C. § 3711, and 33 C.F.R. Part 13.

## **VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

44. As part of the settlement of this administrative civil penalty action, Respondent shall perform a pollution prevention Supplemental Environmental Project. Performance of the tasks detailed in this Section and Attachment A shall constitute satisfactory performance of the Supplemental Environmental Project, which the Parties agree is intended to provide significant environmental benefit.
45. Within **one hundred twenty (120) calendar days** of the Effective Date of this CA/FO, Respondent shall have completed the following tasks, as further described in detail in Respondent's "Recycling Plastic Tails and Scrap Supplemental Environmental Project" (the "SEP"), which is attached (Attachment A) and hereby incorporated by reference:
  - a. Respondent shall purchase two (2) complete plastic tail and scrap recycling systems consisting of, among other components, a plastic "take out" system, articulated vacuum conveyor, tail detabber tool, tail removal module, and interface between recycling system and existing on-site plastic molding equipment;
  - b. Respondent shall complete installation of plastic tail and scrap recycling systems at its 28455 Livingston Avenue, Valencia, California facility;
  - c. Respondent shall provide training addressing proper operation and maintenance of the plastic tail and scrap recycling equipment for all employees responsible for operation or maintenance of the systems;
  - d. Respondent shall calibrate and place both plastic tail and scrap recycling systems into full production; and
  - e. Respondent shall operate plastic tail and scrap recycling systems and existing on-site plastic material grinding and pelletizing equipment in such a manner as to ensure that at least 540,000 pounds of tail and scrap plastic materials are recycled annually on-site through use as raw material for the production of appropriate (i.e. non-food grade) plastic containers.

46. In performing this SEP, Respondent shall spend a minimum of TWO HUNDRED NINETY-TWO THOUSAND, SIX HUNDRED TWENTY-ONE DOLLARS AND THIRTY-EIGHT CENTS (**\$292,621.38**) in costs for the tasks described in Paragraph 45 and Attachment A.
47. Within sixty (60) calendar days of completing the SEP tasks described in Paragraph 45 above and Attachment A, and incurring the SEP costs set forth in Paragraph 46, Respondent shall submit a SEP Completion Report to EPA via electronic mail. Respondent shall include the following information in the SEP Completion Report:
- a. Itemization of the final costs of the Recycling Plastic Tails and Scrap SEP, including supporting documentation verifying Respondent's expenditures for this project. This documentation shall include, but is not limited to, copies of receipts, invoices, purchase orders and/or contracts.
  - b. Documentation in the form of a photographs showing plastic recycling equipment installed at Respondent's Facility;
  - c. Verification that Respondent's employees have been trained on how to operate the plastic tail and scrap recycle systems, including a list of employees that have received the training and the dates trainings were given; and
  - d. Certification by Respondent that the Recycling Plastic Tails and Scrap SEP has been fully implemented pursuant to the provisions of this CA/FO.
48. Respondent agrees that failure to submit the SEP Completion Report required by Paragraph 47 shall result in Respondent's becoming liable for stipulated penalties pursuant to Paragraph 52(b).
49. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:
- a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that the Respondent in good faith estimates that the cost to implement the SEP is a minimum of TWO HUNDRED NINETY-TWO THOUSAND, SIX HUNDRED TWENTY-ONE DOLLARS AND THIRTY-EIGHT CENTS (**\$292,621.38**).
  - b. That Respondent will not include employee oversight of the implementation of the SEP in its project costs;
  - c. That, as of the date of executing this CA/FO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

- d. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CA/FO;
  - e. That Respondent has not received and will not have receive credit for the SEP in any other enforcement action;
  - f. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
  - g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 45 and Attachment A to this CA/FO; and
  - h. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.
50. The SEP shall be deemed to be “satisfactorily performed” when Respondent has completed the tasks described in Paragraph 45 and Attachment A to this CA/FO, expended the minimum amount identified in Paragraph 46, and the Final Report has been submitted to EPA. Respondent shall maintain legible copies of all documentation relevant to the SEP or reports submitted to EPA pursuant to this CA/FO and shall provide such documentation or reports to EPA not more than seven (7) days after a request for such information.
51. Any public statement, oral or written, in print, film, or other media, made by Respondent or a representative of Respondent making reference to the SEP must include the following sentence: “This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Water Act.”

## **VII. STIPULATED PENALTIES**

52. If Respondent violates any requirement of this CA/FO relating to the SEP, Respondent shall pay stipulated penalties to the United States as follows:
- a. If the SEP is not satisfactorily completed within one hundred twenty (120) calendar days after the Effective Date of this CA/FO, Respondent shall pay a stipulated penalty of ONE HUNDRED DOLLARS (\$100) for each and every day that the completion of the SEP is delinquent.
  - b. For failure to submit the SEP Completion Report required by Paragraph 47 Respondent shall pay a stipulated penalty in the amount of FIVE HUNDRED DOLLARS (\$500) for each day after the date the SEP Completion Report was due until it is submitted.

- c. If Respondent does not expend the entire amount specified in Paragraph 46, while otherwise meeting the requirements of the SEP, then Respondent shall pay a stipulated penalty equal to the difference between the amount expended as demonstrated in the SEP Completion Report and the amount specified in Paragraph 46, plus an additional Stipulated Penalty of 10% of the remaining balance paid. Respondent shall pay the stipulated penalty using one of the methods of payment specified in Paragraph 39, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.
53. If Respondent fails to pay the assessed civil administrative penalty specified in Paragraph 38 by the deadline also specified in Paragraph 38, Respondent shall pay to EPA a stipulated penalty of TWO HUNDRED FIFTY DOLLARS (**\$250**) per day for each day the assessed penalty is late, in addition to the assessed penalty. In addition, failure to pay the civil administrative penalty by the deadline specified in Paragraph 38 may lead to any or all of the following actions:
- a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
  - b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.
  - c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
  - d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13 interest, penalty charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the deadline specified in Paragraph 38. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of

Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

54. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.
55. Respondent shall pay any stipulated penalties within thirty (30) calendar days of receiving EPA's written demand for such penalties. All penalties shall begin to accrue on the first date of noncompliance, and shall continue to accrue through the date of completion. Respondent shall use one of the methods of payment specified in Paragraph 39, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.
56. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the requirements of this CA/FO.

#### **IX. APPLICABILITY**

57. This CA/FO shall apply to and be binding on Respondent, Respondent's officers, directors, partners, employees, contractors, successors and assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondent's obligations under this CA/FO.

#### **VIII. RESPONDENT'S ADMISSIONS AND WAIVERS**

58. In accordance with 40 C.F.R. § 22.18(b), for the purpose of this proceeding, Respondent:
- a. admits that EPA has jurisdiction over the subject matter of this CA/FO;
  - b. neither admits nor denies the specific factual allegations contained in Section III above;
  - c. consents to any and all conditions specified in this CA/FO and to the assessment of the civil administrative penalty under Section V above;
  - d. waives any right to contest the allegations contained in this CA/FO; and
  - e. waives any right to appeal the CA/FO.

#### **X. RESERVATION OF RIGHTS**

59. In accordance with 40 C.F.R. § 22.18(c), this CA/FO only resolves Respondent's CWA civil penalty liabilities for the violations specifically alleged herein. EPA reserves the

right to take enforcement action against Respondent for any past, current or future violations not resolved in this proceeding.

60. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations, and shall in no way relieve or affect Respondent's obligations under any applicable federal, state or local laws, regulations, or permits.

## **XI. ATTORNEY'S FEES AND COSTS**

61. Each party shall bear its own attorney fees and costs.

## **XII. NOTICES**

62. Respondent shall send all required submissions and any other written communications via email to each of the following individuals:

Desean Garnett  
Attorney-Advisor  
U.S. Environmental Protection Agency, Region 9  
Office of Regional Counsel  
[garnett.desean@epa.gov](mailto:garnett.desean@epa.gov)

and

Greg Gholson  
Physical Scientist  
U.S. Environmental Protection Agency, Region 9  
Enforcement Division  
[gholson.greg@epa.gov](mailto:gholson.greg@epa.gov)

63. Written communications includes, but is not limited to, all notices, documents, and reports required by this CA/FO.
64. The person signing Respondent's submissions, as referenced in Paragraph 62, shall make the following certification:

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and*

*imprisonment for knowing violations.*

### **XIII. EFFECTIVE DATE AND TERMINATION**

65. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall take effect on the date that the Final Order, having been signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk (the “Effective Date”), and shall terminate when Respondent has complied with the requirements of this CA/FO in full.

### **XIV. PUBLIC NOTICE**

66. Pursuant to CWA Section 309(g)(4), 33 U.S.C. §1319(g)(4), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order, Complainant reserves the right to withhold or withdraw consent to this Consent Agreement if public comments disclose relevant and material information that was not considered by Complainant in entering into this Consent Agreement. Respondent may withdraw from this Consent Agreement only upon receipt of written notice from EPA that it no longer supports entry of this Consent Agreement.
67. Pursuant to CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), EPA has provided notice to the State of California regarding this penalty action.



For Complainant the U.S. Environmental Protection Agency, Region 9

/s/  
Kathleen H. Johnson  
Director  
Enforcement Division

11/30/2016  
Date

**US EPA ARCHIVE DOCUMENT**

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/s/

Kirit Gajera  
President & CEO

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11/04/2016

Date