

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the matter of:)
)
AQUA SCIENCE ENGINEERS,) **SETTLEMENT AGREEMENT AND**
INC.) **STIPULATION FOR ENTRY OF**
) **ADMINISTRATIVE CIVIL LIABILITY**
Alleged misrepresentations) **ORDER**
submitted to the Underground)
Storage Tank Cleanup Fund)
)
) **ORDER WQ 2017-0012-EXEC**
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)
)

Section I: INTRODUCTION

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Order, Stipulation, or Stipulation and Order) is entered into by and between the State Water Resources Control Board (State Water Board), on behalf of the Underground Storage Tank Cleanup Fund (Cleanup Fund), and Aqua Science Engineers, Inc. (ASE), and its principals David Schultz and David Allen (Settling Respondents) (collectively Parties), 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. This Stipulation resolves the violations alleged herein by the imposition of administrative civil liability against ASE in the amount of **\$50,000.00**.

Section II: RECITALS

2. On October 30, 2014, the Office of Enforcement’s Fraud, Waste, and Abuse Prevention Unit (Fraud Prevention Unit) issued a request for information and investigative subpoena to ASE. The request notified ASE that the Fraud Prevention Unit was in the process of conducting an audit of invoices submitted, either directly or through claimants, by ASE to the Cleanup Fund.
3. The audit focused on alleged misrepresentations ASE made to the Cleanup Fund including invoicing the Cleanup Fund for the operation of equipment when the equipment was not operating; invoicing the Cleanup Fund for site visits that did not occur; overbilling for equipment; and overbilling for labor hours.
4. The above allegations are disputed by ASE.

5. On September 25, 2014, Senate Bill 445 amended the Health and Safety Code, adding section 25299.80 that allows the State Water Board to impose civil liability administratively for misrepresentations made to the Cleanup Fund.
6. On November 3, 2016, the Fraud Prevention Unit issued ASE a letter offering to enter into settlement negotiations related to the alleged misrepresentations to the Cleanup Fund.
7. The Parties have engaged in settlement negotiations and agree to fully and finally settle the alleged violations for **\$50,000.00** without administrative or civil litigation and by presenting this Stipulation 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.
8. The Cleanup Fund believes that the resolution of the alleged matter set forth herein is fair and reasonable and fulfills all of its enforcement objectives, that no further action against ASE is warranted concerning invoices ASE submitted to the Cleanup Fund, either directly or through claimants, except as provided in this Stipulation, and that this Stipulation is in the best interest of the public.
9. ASE desires not to engage in any further site assessment or remediation seeking reimbursement from the Cleanup Fund.

Section III: STIPULATIONS

The Parties stipulate to the following:

10. **Administrative Civil Liability:** The Settling Respondents hereby agree to pay the administrative civil liability totaling **\$50,000.00** by check made payable to the *State Water Resources Control Board*, no later than 30 days following execution of this Order by the State Water Board or its delegee. The memo line of the check shall reference *UST Cleanup Fund*. The original signed check shall be sent to the following address, and notification of payment shall be sent to Nickolaus.Knight@waterboards.ca.gov.

State Water Resources Control Board
Office of Enforcement
801 "K" St., Suite 2300
Sacramento, CA 95814
Attn: Kim Sellards

11. **Injunctive Relief/ Prohibitions:**
 - a. Settling Respondents agree that as of February 10, 2017, ASE and its principals are prohibited from performing any work for or in connection with claimants who seek reimbursement from the State Water Board's

Cleanup Fund. This includes, but is not limited to, investigation, corrective action, and associated work, including preparation of reimbursement requests, and concluding any work on current ASE sites post February 10, 2017. Unpaid invoices for reasonable and necessary incurred costs for work performed by ASE prior to February 10, 2017 are still eligible for reimbursement by the Cleanup Fund pursuant to the terms and limitations imposed herein.

- b. Settling Respondents agree to submit any and all unpaid reimbursement requests for any work they have performed prior to February 10, 2017 no later than February 28, 2017, not to exceed \$15,500.00. After February 28, 2017, settling respondents shall not submit any further reimbursement requests to the Cleanup Fund, or any program listed in paragraphs 11(c) and (d).
- c. Settling Respondents agree that as of February 28, 2017, ASE and its principals are prohibited from materially participating in any work and/or project overseen, directed, funded, submitted to or administered by the State Water Board's Cleanup and Abatement Account Program, any State Water Board's Proposition 1 program, and the State Water Board's Cleanup Fund, which includes, but is not limited to the following: Emergency, Abandoned, and Recalcitrant Account (EAR) Program; Orphan Site Cleanup Fund (Orphan) Program; Expedited Claim Account Program (ECAP); and the Site Cleanup Subaccount Program (SCAP). This also includes, but is not limited to, investigation, corrective action, and associated work, including preparation of reimbursement requests to the Cleanup Fund and the State Water Board programs mentioned above where reimbursement is sought, either directly or indirectly.
- d. Settling Respondents agree that as of February 28, 2017, ASE and its principals may no longer be employed by, own in whole or in part, an entity that consults or provides contract services on behalf of any entity that performs work or provides services on any project that seeks payment or reimbursement from the State Water Board's Cleanup and Abatement Account Program, any State Water Board's Proposition 1 Program, or the State Water Board's Cleanup Fund, including but not limited to any entity providing services that may be considered for reimbursement from the following programs: EAR, Orphan, ECAP, or SCAP.
- e. Settling Respondents agree to waive all rights to appeal, administratively or judicially, or in any forum or venue, any and all determinations of eligibility made by the Cleanup Fund with respect to reimbursement of costs and work performed at any site. All determinations regarding whether costs invoiced to the Cleanup Fund are eligible reasonable and necessary costs are final.

- f. Settling Respondents agree that after February 28, 2017, any and all work performed, supervised by and/or directed by ASE and its principal that has not been submitted for reimbursement by the Cleanup Fund are not eligible reasonable and necessary costs and, therefore, not subject to reimbursement from the Cleanup Fund. This includes, but is not limited to, work performed by a third party or subcontractor to ASE not submitted as part of a reimbursement request by February 28, 2017.
 - g. Settling Respondents agree they are not entitled to any further payment based upon any reimbursement request submitted to the State Water Board's Cleanup Fund, including costs submitted or pending appeal before the State Water Board, submitted but determined ineligible, or for work completed but not yet submitted or appeals not yet submitted, with the exception of those reimbursement requests submitted pursuant to paragraph 11(b) – reimbursement requests submitted by February 28, 2017 are excepted from this Clause.
 - h. Settling respondents agree they will seek no further payment from any claimants for any work performed that was or will be reimbursed from the Cleanup Fund from the effective date of this order.
 - i. Settling Respondents will provide written notice to existing site claimants who are clients of ASE that they are no longer doing site remediation where the Cleanup Fund offers reimbursement.
 - j. Except for the obligations imposed herein, this is a full and complete release by the State Water Board for those matters set forth in the Recitals, and as to ASE, its principals, shareholders, spouses, agents, employees, and former employees.
12. The State Water Board's Cleanup Fund agrees to review reimbursement requests and reimburse ASE's Claimants for eligible reasonable and necessary work performed on sites where ASE was active and authorized to work as of February 1, 2017 for which ASE has not already been paid. These reimbursement requests will be paid within 90 days after execution of this Order by the State Water Board.
13. **Covered Matters:** This agreement covers all the administrative actions the State Water Board could have alleged under Health and Safety Code Section 25299.80 on February 1, 2017. This agreement is a full and complete Settlement of all those matters against ASE and its principals, spouses, shareholders, agents, employees, and former employees except for the obligations imposed herein.

14. **State Water Board is not Liable:** Neither the State Water Board members nor the State Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Settling Respondent, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and Order, nor shall the State Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Settling Respondent, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and Order.
15. **Necessity for Written Approvals:** All approvals and decisions of the State Water Board under the terms of this Stipulation and Order shall be communicated to the Settling Respondents in writing. No oral advice, guidance, suggestions or comments by employees or officials of the State Water Board regarding submissions or notices shall be construed to relieve the Settling Respondents of their obligation to obtain any final written approval required by this Order.
16. **Party Contacts for Communications related to this Stipulation and Order:**
- | For the Cleanup Fund: | For Settling Respondents: |
|---|---|
| Nickolaus Knight
Senior Counsel
State Water Board, OE
801 K Street, Suite 2300
Sacramento, CA 95814
Nickolaus.Knight@waterboards.ca.gov
916.327.0169 | Charles A. Mollis, Esq.
Mollis & Mollis, Inc.
4621 Teller Avenue, Suite 200
Newport Beach, CA 92660
charles@mollislaw.com
949.222.0736 |
17. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
18. **Matters Addressed by this Stipulation:** Upon adoption of the Order incorporating the terms set forth herein, this Stipulation represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged herein. The provisions of this paragraph are expressly conditioned on Settling Respondents' full payment of the Stipulated Administrative Civil Liability by the deadline specified above.
19. **No Admission of Liability:** In settling this matter, Settling Respondents do not admit to any of the allegations stated herein, or that it has been or is in violation of the Health and Safety Code, Water Code or any other federal, State or local law or

ordinance. This agreement is admissible evidence for the requirements of Health and Safety Code section 25299.80(e).


20. **Public Notice:** The Parties understand that this Stipulation and Order must be noticed for a 30-day public review and comment period prior to consideration by the State Water Board or its delegee. In the event objections are raised during the public review and comment period, the State Water Board or its delegee may, under certain circumstances, require a public hearing regarding the Stipulation and Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the proposed Order as necessary or advisable under the circumstances.
21. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the State Water Board, or its delegee, and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
22. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.
23. **Modification:** This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the State Water Board or its delegee.
24. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.
25. **If the Order Does Not Take Effect:** In the event that the Order does not take effect because it is not approved by the State Water Board or its delegee, the parties agree to meet to attempt to resolve any issues prior to this matter proceeding to a contested hearing, and that all discussions of settlement and this Settlement Agreement shall not be referred to in any such hearing.
26. **Waiver of Right to Petition or Appeal:** Settling Respondents hereby waive their rights, if any, to petition the adoption of this order to the State Water Board, 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 if not approved.
27. **Covenant Not to Sue:** Settling Respondents covenant not to sue or pursue any administrative or civil claim(s) against any State agency or the State of California,

their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulation and Order.

28. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.
29. **No Third Party Beneficiaries:** This Stipulation is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulation for any cause whatsoever.
30. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulation 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.
31. **Effective Date:** This Stipulation is effective and binding on the Parties upon the entry of this Order by the State Water Board, or its delegee, which incorporates the terms of this Stipulation.


IT IS SO STIPULATED.

Date: 5/11/17

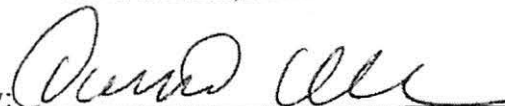
By: 
Leslie Laudon, Deputy Director
Division of Financial Assistance
State Water Resources Control Board

Aqua Science Engineers, Inc.

Date: 5-8-17

By: 
Dave Schultz, President

Date: 5-8-17

By: 
David Allen, Vice President

ORDER OF THE STATE WATER BOARD

1. This Order incorporates the foregoing Stipulation.
2. The Parties believe that settlement of this matter is in the best interest of the People of the State. Therefore, to settle this matter, the Settling Respondent agrees to comply with the terms and conditions of this Order.
3. The Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.
4. The State Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Settling Respondent fails to perform any of its obligations under the Stipulation and Order.

PURSUANT to Government code section 11415.60 and Health and Safety code section 25299.80, IT IS HEREBY ORDERED on behalf of the State Water Resources Control Board.



Michael Lauffer
Acting Executive Director

June 26, 2017
Date