

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF FINANCIAL ASSISTANCE

In the Matter of ENCON TECHNOLOGIES, INC. and G. JOSEPH SCATOLONI
Alleged misrepresentations submitted to the Underground Storage Tank Cleanup Fund

**SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY
OF ADMINISTRATIVE CIVIL LIABILITY ORDER AND
PROPOSED ORDER
WQ-2024-XXXX-EXEC**

I. INTRODUCTION

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Order or Stipulated Order) is entered into by and between the State Water Resources Control Board (State Water Board) Prosecution Team, on behalf of the Underground Storage Tank Cleanup Fund (Cleanup Fund), with ENCON Technologies, Inc. (ENCON) and its principal G. Joseph Scatoloni (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. This Stipulated Order resolves the violations alleged herein by the imposition of administrative civil liability against the Settling Respondents in the amount of one-hundred and seventy-five thousand dollars (**\$175,000.00**) and a disqualification from participating in any State Water Board financial program.
2. Settling Respondents deny the allegations set forth below. Settling Respondents deny that they committed fraud or abuse. Settling Respondents enter into this Stipulated Order to avoid the need to incur additional legal fees and costs.

II. RECITALS

3. The ENCON investigation arose out of complaints received by the State Water Board's Office of Enforcement from the Cleanup Fund regarding potential excessive labor rates charged by ENCON. The Office of Enforcement's Fraud, Waste and Abuse Prevention Unit (Fraud Prevention Unit) began investigating ENCON in May 2021.

4. The Fraud Prevention Unit reviewed documents including ENCON's invoices submitted to the Cleanup Fund for reimbursement on behalf of claimants, proof of payment to ENCON by those claimants, and publicly available records submitted to GeoTracker, which included technical documents and correspondence submitted by ENCON and regulators overseeing ENCON's work. From this review, the Fraud Prevention Unit observed that the labor hours for preparing routine semi-annual groundwater monitoring reports never varied in ENCON's invoices. ENCON invoiced Cleanup Fund claimants exactly eight hours a day for three days for preparation of semi-annual groundwater monitoring reports, even when the work was performed by various staff engineers. Upon discovery of this pattern and practice of invoicing identical labor hours for routine groundwater monitoring reports, the Fraud Prevention Unit broadened its investigation to review the reports submitted by ENCON for numerous Cleanup Fund sites from 2010 to 2022. The Fraud Prevention Unit discovered multiple instances of ENCON engineers invoicing for eight hours of labor at the exact same time and date for different sites, including days that exceeded a 24-hour day.
5. On June 22, 2023, the Office of Enforcement issued an Order for Information to ENCON and Mr. Scatoloni pursuant to Health and Safety Code section 25299.78. The Order requested ENCON's accounting records, employee resumes, employee timecards/timesheets, and payroll records, pertaining to specific claims and dates from 2016 to 2020. These specific claims and dates were identified by the Fraud Prevention Unit as having overlapping hours greater than 13 hours per day.
6. ENCON provided a partial response by submitting the required resumes on July 21, 2023 and accounting and payroll records for the four named employees on August 31, 2023. However, ENCON did not provide employee timecards for the specific dates and claims requested. In place of employee timecards, ENCON prepared tables summarizing employee labor hours for the claims and dates requested between 2016 and 2020.
7. Based on the Fraud Prevention Unit's investigation, the Prosecution Team alleges that ENCON intentionally misrepresented its costs to the Cleanup Fund in order to obtain additional reimbursement payments in violation of Health and Safety Code section 25299.80. Specifically, the Prosecution Team alleges that ENCON:
 - 1) submitted invoices that did not represent ENCON's actual costs (i.e., time and materials);
 - 2) classified and invoiced Mr. Scatoloni for tasks that necessitate a valid civil engineering degree and professional engineer registration despite his lack thereof; and
 - 3) inflated invoices by performing tasks and services that were not reasonable and necessary. The Prosecution Team alleged that two-hundred and

forty-five (245) misrepresentations were made by Settling Respondents in multiple claims¹ submitted to the Cleanup Fund that include the following:

- a. Between January 2016 and November 2020, ENCON's invoices were submitted to the Cleanup Fund on behalf of claimants forty-nine (49) times for lump sum labor hours on multiple claims during a single day for work performed by various employees;
 - b. Between 2015 to 2022, Mr. Scatoloni was classified as a Principal Engineer or Senior Engineer one hundred and ninety-three (193) times on invoices submitted to the Cleanup Fund. Each instance constitutes a misrepresentation to the Cleanup Fund as Mr. Scatoloni was not qualified to bill at the professional geologist/engineer rate;
 - c. Between 2019 and 2020, ENCON made three (3) misrepresentations by invoicing unnecessary and unreasonable costs to supervise a licensed civil surveyor performing routine tasks in the field and preparing unreasonable and unnecessary summary reports when the licensed surveyor report was sufficient.
8. Health and Safety Code section 25299.80 provides for the imposition of administrative civil liability for misrepresentations made to the Cleanup Fund. This provision in the Health and Safety Code authorizes the imposition of administrative civil liability for the alleged violations covered by this Stipulated Order.
 9. On October 2, 2023, the Prosecution Team sent a letter informing the Settling Respondents it had identified instances of alleged misrepresentations by ENCON and its principal and offered the Settling Respondents an opportunity to discuss the alleged violations and potential settlement of civil liability under Health and Safety Code section 25299.80.
 10. Settling Respondents and the Prosecution Team engaged in settlement negotiations and agree to settle the alleged violations for one-hundred and seventy-five thousand dollars (**\$175,000.00**) and disqualification of ENCON and Mr. Scatoloni from all work associated with Cleanup Fund, the Underground Storage Tank Petroleum Orphan Site Cleanup Fund (Orphan Fund), and all other financial assistance programs administered by the State Water Board without an administrative adjudication 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.

¹ This settlement agreement resolves the alleged violations in Paragraph 7, subdivisions a-c, associated with Cleanup Fund Claim Nos. 13666, 15436, 15748, 16660, 17427, 18252, 18498, 19108, 19984, and Underground Storage Tank Petroleum Orphan Site Cleanup Fund (Orphan Fund) Project No. B257.

11. Water Code section 13493, subdivision (c), provides:

“If the person convicted under Section 13499.2 of this code or Section 25299.80.5 of the Health and Safety Code or found to be civilly liable under Section 13499 of this code or Section 25299.78 or 25299.80 of the Health and Safety Code is a contractor or consultant, the state board may permanently disqualify the contractor or consultant from requesting reimbursement for work conducted pursuant to any financial assistance program administered by the state board, including participation in work conducted pursuant to financial assistance programs that are not the subject of that conviction under Section 13499.2 of this code or Section 25299.80.5 of the Health and Safety Code or finding of liability under Section 13499 of this code or Section 25299.78 or 25299.80 of the Health and Safety Code . . .”

12. 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, circumstances, extent, and gravity of the violation, the person’s ability to pay, any prior history of misrepresentations by the person to 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 Prosecution Team contends the conduct alleged in Paragraph 7 was intentional deception for financial gain resulting in significant financial damage to the Cleanup Fund; the alleged violations present harm to the 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 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 Prosecution Team believes legal and equitable principles support the negotiated administrative civil liability amount. 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.

13. The Prosecution Team believes that the resolution of the alleged violations set forth in Paragraph 7 is fair and reasonable and fulfills all of its enforcement objectives, and that this Stipulated Order is in the best interest of the public.

III. STIPULATIONS

The Parties stipulate to the following:

14. **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.
15. **Administrative Civil Liability:** The Settling Respondents hereby agree to pay the administrative civil liability totaling one-hundred and seventy-five thousand dollars (**\$175,000.00**) by check made payable to the “UST Cleanup Fund”, no later than thirty (30) days following the execution of the Order Approving this Stipulated Order by the State Water Board or its delegee. The memo line of the check shall indicate the number of this Order (WQ 2024-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 Patrick Lewis, Attorney III, State Water Resources Control Board, Office of Enforcement, 801 “K” Street, Suite 2300, Sacramento, California 95814.
16. **Injunctive Relief/Prohibitions:**
 - a. Settling Respondents agree that as of July 31, 2024, ENCON, and its principal G. Joseph Scatoloni, 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 pursuant to Health and Safety Code section 25299.71 and Water Code section 13493. This subparagraph 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. Settling Respondents are specifically disqualified from participation in any fund or account authorized under Division 20, Chapters 6.75 and 6.76 of the Health and Safety Code pursuant to this Order, Health and Safety Code section 25299.71, and Water Code section 13493.
 - c. Settling Respondents agree to waive and/or abandon all rights they may have by and through their clients to dispute, appeal, or petition, administratively or judicially, or in any forum or venue, any and all determinations of eligibility with respect to reimbursement of costs and work performed on claims within the meaning of Division 20, Chapters 6.75 and 6.76 of the Health and Safety Code. All determinations regarding whether costs submitted as part of a Reimbursement Request to the Cleanup Fund or Orphan Fund are eligible, reasonable, and necessary costs, are final, and Settling Respondents are not

entitled to any further payment from Cleanup Fund claimants or Orphan Fund grantees for any costs determined ineligible.

- d. With the exception of reimbursement for Orphan Fund Project No. B267 as set forth in subparagraph (e), Settling Respondents agree to work with their clients to submit for reimbursement by the Cleanup Fund or the Orphan Fund the cost of any and all work performed, supervised by, and/or directed by Settling Respondents and/or its principals within 30 days following the execution of an order approving this Stipulated Order. Any cost not submitted in a Reimbursement Request by this deadline is not an eligible, reasonable, and necessary cost, and, therefore, is not subject to reimbursement from the Cleanup Fund or Orphan Fund. This includes, but is not limited to, costs for work performed by a third party or subcontractor to Settling Respondents not submitted as part of a Reimbursement Request by this deadline.
- e. Settling Respondents agree to work with their client to submit for reimbursement by the Orphan Fund the costs of any and all work performed, supervised by, and/or directed by Settling Respondents and/or its principals related to Orphan Fund Project No. B267 within 30 days following the execution of an amendment of Agreement No. D2109056. Any cost not submitted in a Reimbursement Request by this deadline is not an eligible, reasonable and necessary cost, and therefore, is not subject to reimbursement from the Orphan Fund. This includes, but is not limited to, costs for work performed by a third party or subcontractor to Settling Respondents not submitted as part of a Reimbursement Request by this deadline.
- f. Except as set forth above in paragraphs 16.d and 16.e, and except for the work already performed by ENCON and reimbursement payments already made to claimants or grantees prior to the execution of this Stipulated Order, Settling Respondents agree they are not entitled to any further payment from any claimants, grantees, or borrowers for any work performed on a claim, grant, or loan within the meaning of Division 20, Chapters 6.75 and 6.76 that is reimbursed by the State Water Board after the effective date of this Stipulated Order.
- g. Settling Respondents will provide written notice to all existing site claimants (clients) of ENCON and Mr. Scatoloni, stating that they are no longer doing any work for any claims, grants, or loans within the meaning of Division 20, Chapters 6.75 and 6.76 of the Health and Safety Code. Copies of the written notices shall be submitted to the contacts in Paragraph 18 within 30 days of the effective date of this Stipulated Order.

17. **Covered Matters:** Upon adoption by the State Water Board, or its delegee, this Stipulated Order represents a final and binding resolution and settlement of the alleged violations described in Paragraph 7 above. Additionally, this agreement resolves any claims related to Settling Respondents' response to the Fraud Prevention Unit's June 22, 2023 Order for Information. The provisions of this paragraph are expressly conditioned on Settling Respondents' satisfying the obligations set forth in this Stipulated Order.
18. **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 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 Settling Respondents, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.
19. **Party Contacts for Communications related to this Stipulated Order:**
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| <u>For the Cleanup Fund:</u> | <u>For Settling Respondents:</u> |
| Patrick Lewis, Staff Counsel | G. Joseph Scatoloni |
| State Water Resources Control Board | ENCON Technologies, Inc. |
| 801 "K" Street, Suite 2300 | 12145 Mora Drive, Suite 7 |
| Sacramento, CA 95814 | Santa Fe Springs, CA 90670 |
| Patrick.Lewis@waterboards.ca.gov | encon@encontech.net |
| (916) 327-0140 | (562) 777-2200 |
20. **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.
21. **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, or its delegee. The Settling Respondents agree that they may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.
22. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Stipulated Order by the

State Water Board, or its delegee, and review 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.

23. **No Waiver of the 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.
24. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The State Water Board was represented by counsel in this matter. Settling Respondents were represented by counsel in this matter.
25. **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, signed by all Parties, and approved by the State Water Board or its delegee.
26. **Severability:** The Stipulated Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.
27. **If the Order Does Not Take Effect:** The Settling Respondents' obligations under this Stipulated Order are contingent upon the execution of an order approving this Stipulated Order by the State Water Board, or its delegee, 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 Administrative Hearings Office or 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 the 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 based on settlement communications in 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 Stipulated Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

28. **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.

29. **Waiver of Right to Petition or Appeal:** except in this instance where the Stipulated Order is not adopted by the State Water Board or its delegee, the Settling Respondents hereby waive their rights, if any, to petition the adoption of this Stipulated 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.

30. **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 Stipulated Order.

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 it 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 is effective and binding on the Parties upon the date the State Water Board, or its delegee, executes the order approving the terms of this Stipulated Order.

IT IS SO STIPULATED.

State Water Board

Date: _____

By: Original signed version available upon request
Adrian Pérez
Assistant Deputy Director
Division of Financial Assistance
State Water Resources Control Board

Settling Respondents

Date: _____

By: Original signed version available upon request
G. Joseph Scatoloni

Date: _____

By: Original signed version available upon request
ENCON Technologies, Inc.
G. Joseph Scatoloni
President

**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 as if set forth fully herein.
2. In accepting this settlement, the State Water Board, or its delegee, has considered the factors set forth in Health and Safety Code section 25299.80, subsection (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 this Order.
5. The State Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Settling Respondents fail to perform any of their 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.

Dated: _____

Joe Karkoski
Deputy Director
Division Financial Assistance