

## State Water Resources Control Board

### NOTICE OF PROPOSED SETTLEMENT WITH THE WHITTAKER CORPORATION

FOR ALLEGED VIOLATIONS OF LOS ANGELES REGIONAL WATER QUALITY  
CONTROL BOARD ORDER NO. R4-2003-0111

WRITTEN COMMENTS DUE NO LATER THAN  
**5:00 P.M., APRIL 4, 2012**

On or after April 4, 2012, the State Water Resources Control Board, (State Water Board) or its delegee will consider approval of a proposed settlement with the Whittaker Corporation to resolve alleged violations that occurred at the former Whittaker Bermite facility. Second Amended Complaint OE-2011-0039 alleged that the following effluent limits set forth in Order No. R4-2003-0111 had been exceeded: Chromium VI, trichloroethene (TCE), tetrachloroethene (PCE), copper, dichlorobromomethane, nitrogen (nitrite + nitrate, as N), perchlorate, and selenium, totaling fifty-four thousand dollars (\$54,000) in mandatory minimum penalties. Since the issuance of the Second Amended Complaint, six (6) of the alleged eighteen (18) effluent limit violations were found to be in error. As a result, with this proposed settlement, the State Water Board is hereby dismissing, with prejudice, those six (6) violations, i.e., it is dismissing three (3) violations of the limit for chromium VI, two (2) violations of the limit for tetrachloroethene (PCE), and one (1) violation of the limit for trichloroethene (TCE). Thus, the Whittaker Corporation has agreed to pay a total of thirty-six thousand dollars (\$36,000) in mandatory minimum penalties.

The Whittaker Corporation and the Prosecution Team have entered into a tentative settlement to resolve any and all claims for civil liability the State Water Board or Regional Board have or may have against the Whittaker Corporation, arising from or relating to the violations of the Order No. R4-2003-0111 or Order No. R4-2008-0032 alleged in Complaint OE-2011-0039, First Amended Complaint OE-2011-0039 and Second Amended Complaint OE-2011-0039, and have agreed to jointly seek the State Water Board's approval of that settlement through the adoption of a Stipulated Administrative Civil Liability Order (Stipulated Order). The proposed Stipulated Order is available on the State Water Board's website at:

[http://www.swrcb.ca.gov/water\\_issues/programs/enforcement/orders\\_actions.shtml](http://www.swrcb.ca.gov/water_issues/programs/enforcement/orders_actions.shtml)

Persons may comment on the proposed settlement by submitting written comments no later than **5:00 p.m. on April 4, 2012**. Written comments should include "Whittaker Corporation; Proposed Stipulated Order" in the subject line, and should be submitted to the attention of Ms. Ann Carroll, State Water Resources Control Board, Office of Enforcement, 1001 "I" Street, Sacramento, CA, 95814, or by email at [ACarroll@waterboards.ca.gov](mailto:ACarroll@waterboards.ca.gov). If the State Water Board or its delegee does not adopt the proposed Order, the matter may be scheduled for an evidentiary hearing at a subsequent State Water Board meeting. Please check the State Water Board's website for any updates on this matter.

**STATE WATER RESOURCES CONTROL BOARD**

<b>In the matter of:</b>	)	
	)	<b>Order No. WQ-2012-XXXX (Proposed)</b>
<b>Whittaker Corporation</b>	)	
<b>Former Whittaker Bermite Facility</b>	)	<b>SETTLEMENT AGREEMENT AND</b>
	)	<b>STIPULATION FOR ENTRY OF</b>
<b>Administrative Civil Liability</b>	)	<b>ADMINISTRATIVE CIVIL LIABILITY ORDER;</b>
<b>Complaint No. OE-2011-0039;</b>	)	<b>ORDER (PROPOSED)</b>
<b>First Amended Complaint No.</b>	)	
<b>OE-2011-0039; and</b>	)	
<b>Second Amended Complaint No.</b>	)	
<b>OE-2011-0039</b>	)	

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**Section I: INTRODUCTION**

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulation) is entered into by and between the Director of the Office of Enforcement of the State Water Resources Control Board (State Water Board), on behalf of the State Water Board Prosecution Staff (Prosecution Staff), and the Whittaker Corporation (Discharger) (collectively "Parties"), and is presented to the State Water Board, or its delegee, for adoption as an Order by settlement pursuant to California Government Code section 11415.60 (Stipulated Order).

**Section II: RECITALS**

1. The Discharger operates the groundwater treatment system for the Former Whittaker-Bermite facility (Facility) located at 2216 Soledad Canyon Road, Santa Clarita, CA 91350. The Facility, a 996-acre property, is a former manufacturing facility with multiple historic owners and uses. Manufacturing included munitions, explosives, flares, and components for the aerospace industry. To facilitate remediation and manage the investigation and cleanup, the Facility was divided into soil Operable Units (OUs 1 through 6); groundwater and deep soils were designated as OU 7. The treatment plant is in OU 5 of the Facility.
2. Groundwater beneath the Facility is impacted with volatile organic compounds (VOCs) and perchlorate. The Permittee discharges treated groundwater from a groundwater remediation project to a storm water conveyance system near Soledad Canyon Road and Commuter Way (Latitude 34° 25' 00" North, Longitude 118° 31' 15" West). The discharge from the storm-water conveyance system flows into the Santa Clara River (between the Lang Gauging Station and the Bouquet Canyon Road Bridge). The Santa Clara River is a navigable water of the United States.
3. On May 4, 2004, the Executive Officer (Executive Officer) of the Los Angeles Regional Water Quality Control Board (Regional Board) determined that the waste discharges from the Discharger's Facility met the conditions to be enrolled under Order No. R4-2003-0111 (General NPDES Permit No. CAG994004) *Waste Discharge Requirements for Discharges of Groundwater from Construction Dewatering to Surface Waters*, adopted by the Regional Board on August 7, 2003.

4. NPDES Order No. R4-2003-0111 (Effluent Limitations E.1.b.i), as applied to the Discharger through the May 4, 2004 enrollment approved by the Executive Officer, contains effluent limitations for copper, dichlorobromomethane, nitrogen (nitrite + nitrate, as N), perchlorate, and selenium, as summarized below:

Constituent	Unit of Measure	Discharge Limitations (Daily Maximum)	Discharge Limitations (Monthly Average)
Copper	µg/L	20.8	10.4
Dichlorobromomethane	µg /L	1.1	0.56
Nitrogen <sup>1</sup>	mg/L	5	---
Perchlorate	µg/L	4	---
Selenium	µg/L	8	4

5. On or about July 25, 2011, the Director of the Office of Enforcement (Director) issued Administrative Civil Liability Complaint No. OE-2011-0039 (Complaint) against the Discharger for Mandatory Minimum Penalties in the amount of \$84,000. The Complaint alleged thirty one (31) effluent limit violations of the NPDES Order No. R4-2003-0111, as applied to the Discharger through the Discharger's May 4, 2004 enrollment approved by the Executive Officer (hereafter, NPDES Order), and one (1) effluent limitation violation of Order No. R4-2008-0032, as applied to the Discharger through the Discharger's September 19, 2008 enrollment approved by the Executive Officer.

6. On or about September 9, 2011, the Director issued First Amended Administrative Civil Liability Complaint No. OE-2011-0039 (First Amended Complaint) for mandatory minimum penalties that reduced the penalty amount to \$63,000. The first Amended Complaint alleged twenty one (21) effluent limit violations of the NPDES Order as begin subject to mandatory minimum penalties. With the First Amended Complaint, the Director dismissed the one (1) effluent limit violation of Order No. R4-2008-0032, and ten (10) of the thirty one (31) effluent limit violations of the NPDES Order that were found to be in error.

7. On November 8, 2011, the Director issued Second Amended Administrative Civil Liability Complaint No. OE-2011-0039 (Second Amended Complaint) for mandatory minimum penalties that futher reduced the penalty amount to \$54,000. The Second Amended Complaint alleged eighteen (18) effluent limit violations of the NPDES Order as being subject to mandatory minimum penalties. With the Second Amended Complaint, the Director dismissed three (3) of the effluent limit violations of the NPDES Order alleged in the First Amended Complaint that were found to be in error.

8. Since the issuance of the Second Amended Complaint, six (6) of the alleged eighteen (18) effluent limit violations of the NPDES Order alleged in the Second Amended Complaint were found to be in error. As a result, with this Stipulated Order, the State Water Board is hereby dismissing, with prejudice, these six (6) violations, i.e., it is dismissing three (3) violations of the limit for chromium VI, two (2) violations of the limit for tetrachloroethene (PCE), and one (1) violation of the limit for trichloroethene (TCE).

<sup>1</sup> Nitrate-nitrogen plus nitrite nitrogen.

9. The Parties have engaged in discussions concerning the allegations in the Second Amended Complaint and agree to settle the matter without administrative action or resorting to civil litigation by presenting this Stipulation to the State Water Board, or its delegee, for adoption as an order pursuant to Government Code section 11415.60. The Prosecution Staff believes that this resolution is fair and reasonable and fulfills its requirement to impose mandatory penalties under the California Water Code. Therefore, except as provided in this Stipulation and/or the Stipulated Order, no further action is warranted concerning the violations alleged in the Complaint, the First Amended Complaint, or the Second Amended Complaint.

**Section III: STIPULATIONS**

The Parties hereby stipulate to the following:

10. **INCORPORATION OF RECITALS:** The terms and agreements set forth in Section II Recitals are incorporated herein as a part of these Stipulations.

11. **ADMINISTRATIVE CIVIL LIABILITY:** The Discharger shall pay a total of thirty-six thousand (\$36,000) in mandatory minimum penalties by check made payable to the State Water Pollution Cleanup and Abatement Account no later than thirty (30) days following the State Water Board, or its delegee, executing the Stipulated Order. The check shall reference the order number listed on page one of the Stipulated Order. The original signed check shall be sent to the Party Contact for the State Water Board set forth in Paragraph 13.

12. **COMPLIANCE WITH APPLICABLE LAWS:** The Discharger understands that payment of mandatory minimum penalties in accordance with the terms of this Stipulation and Order and/or compliance with the terms of this Stipulation and Order is not a substitute for compliance with applicable laws, and that future violations of the type alleged in the Second Amended Complaint may subject it to further enforcement, including additional administrative civil liability.

13. **PARTY CONTACTS FOR COMMUNICATIONS RELATED TO THIS STIPULATION AND ORDER:**

**For the State Water Board:**

Ann Carroll, State Counsel  
Office of Enforcement  
1001 I Street, 16th Floor  
P.O. Box 100  
Sacramento, CA 95812  
[ACarroll@waterboards.ca.gov](mailto:ACarroll@waterboards.ca.gov)

**For the Discharger:**

Eric Lardiere, Esq.  
President and General Counsel  
Whittaker Corporation  
1955 N. Surveyor Avenue  
Simi Valley, CA 93063

14. **ATTORNEYS' FEES AND COSTS:** Each Party shall bear all of their own attorneys' fees and costs arising from the matters set forth herein.

15. **MATTERS ADDRESSED BY STIPULATION:** Upon the State Water Board's adoption of the Stipulated Order incorporating the terms of this Stipulation, this Stipulation and Order shall represent a final and binding resolution and settlement of any and all claims for civil liability the State Water Board or Regional Board have or may have against the Discharger, arising from or relating to the violations of the NPDES Order or Order No. R4-2008-0032 alleged in the Complaint, the First Amended Complaint and the Second Amended Complaint (Covered Matters). The State Water Board and the Regional Board hereby covenant not to sue or take any further administrative action against Discharger with respect to the Covered Matters. The provisions of this Paragraph are expressly conditioned on the full payment of the mandatory minimum penalties by the deadline specified in Paragraph 10.

16. **NO PENDING INVESTIGATION INTO OTHER ALLEGED VIOLATIONS:** The State Water Board and the Regional Board represent that they are not currently aware of any other possible alleged violations by the Discharger of the NPDES Order or Order No. R4-2008-0032, and that there is presently no investigation pending into any such other possible violations.

17. **PUBLIC NOTICE:** The Discharger understands that this Stipulation will be noticed for a 30-day public review and comment period prior to consideration by the State Water Board, or its delegee. The Prosecution Staff will promptly notify the Discharger of any comments received during the 30-day public review period and will promptly communicate those comments to the Discharger. The Discharger agrees that they may not rescind or otherwise withdraw their approval of this Stipulation. If significant new information is received during the 30-day public review and comment period that reasonably affects presenting this Stipulation to the State Water Board, or its delegee, for adoption as an order, the Director may unilaterally declare this Stipulation void and decide not to present it to the State Water Board, or its delegee.

18. **ADDRESSING OBJECTIONS DURING PUBLIC COMMENT PERIOD:** The Parties agree that the procedure contemplated for adopting the Stipulated Order by the State Water Board 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.

19. **INTERPRETATION:** This Stipulation shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.

20. **NO WAIVER OF RIGHT TO ENFORCE:** The failure of the Prosecution Staff or State Water Board to enforce any provision of the Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Stipulated Order. The failure of the Prosecution Staff or State Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of the Stipulated Order.

21. **MODIFICATION:** Neither this Stipulation nor the Stipulated Order shall 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.

22. **IF ORDER DOES NOT TAKE EFFECT:** In the event that this Stipulation does not take effect because it is not approved by the State Water Board, or its delegee, or the Stipulated Order is vacated in whole or in part by a court, the Parties acknowledge that they expect to proceed to a

contested evidentiary hearing before a Hearing Officer of the State Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations in the Second Amended Complaint, unless the Parties agree otherwise. The Parties agree that no oral and written statements and agreements made during the course of settlement discussions will be admissible as evidence in the hearing. The Parties agree to waive any and all 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 State Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the proposed Stipulated Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Second Amended Complaint in this matter. In the event that this Stipulated Order does not take effect or is vacated in whole or in part, any and all objections related to laches or delay or other equitable defenses, based on the time period from the date the Second Amended Complaint was issued until the date of any Administrative or Judicial review of the alleged violations in the Second Amended Complaint, may not be asserted and all such objections based on this time period are hereby waived.

23. **NO ADMISSION OF LIABILITY:** By entering into this Stipulation and agreeing to the Stipulated Order, the Discharger admits no liability or wrong doing for any of the violations alleged in the Complaint, the First Amended Complaint, or the Second Amended Complaint. The Parties hereto acknowledge and agree that the Discharger is making the payment provided for herein solely for purposes of compromise and as a means of resolving the matter without expending additional attorney fees, consultant fees, and/or other costs and related litigation expenses.

24. **ALLEGED VIOLATIONS ARE TECHNICAL IN NATURE:** The Parties acknowledge and agree that the alleged violations in the Second Amended Complaint are all understood to be alleged technical violations, and that none of the alleged violations are asserted to be violations as a result of any intentional wrong doing or willful non-compliance with any term or provision in the NPDES Order or any applicable law or regulation.

25. **WAIVER OF HEARING:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the State Water Board prior to the adoption of the Stipulated Order.

26. **WAIVER OF RIGHT TO APPEAL:** The Discharger hereby waives its rights, if any, to appeal the State Water Board's adoption of the Stipulated Order to a California Superior Court and/or any California appellate level court.

27. **STATE WATER BOARD IS NOT LIABLE:** Neither the Regional Board or State Water Board members nor the Regional or 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 the Discharger its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and/or the Stipulated Order; nor shall the Regional Board or State Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Discharger, its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulation and/or the Stipulated Order.

28. **DISCHARGER COVENANT NOT TO SUE:** The Discharger covenants 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 Covered Matter.

29. **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.

30. **NO THIRD PARTY BENEFICIARIES:** Neither this Stipulation, nor the Stipulated Order, is intended to confer any rights or obligations on any third party(ies), and no third party(ies) shall have any right of action under this Stipulation or the Stipulated Order for any cause whatsoever.

31. **COUNTERPART SIGNATURES:** 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.

32. **EFFECTIVE DATE:** This Stipulation shall be effective and binding on the Parties upon the date the State Water Board, or its delegate, adopts and signs the Stipulated Order.

**IT IS SO STIPULATED.**

**State Water Resources Control Board,  
Prosecution Staff**

Date: 2/29/12

By: 

**Cris Carrigan,  
Director, Office of Enforcement**

**Whittaker Corporation**

Date: 2/28/12

By: 

**Eric Lardiere  
President and General Counsel**

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**HAVING CONSIDERED THE PARTIES' STIPULATIONS, THE STATE WATER BOARD FINDS THAT:**

33. This Order incorporates the foregoing Stipulation, set forth in Paragraphs 1 through 32 above, by this reference, as if set forth fully herein in this Order of the State Water Board.

34. The Discharger is hereby ordered to cause a check to be remitted for thirty-six thousand (\$36,000) and made payable to the State Water Pollution Cleanup and Abatement Account no later than thirty (30) days following the State Water Board, or its delegee, executing this Order. The check shall reference the Order Number listed on page one of this Order.

35. Fulfillment of the Discharger's obligations under this Stipulated Order constitutes full and final satisfaction of any and all claims for civil liability the State Water Board or Regional Board have or may have against the Discharger arising from or relating to violations of the NPDES Order No. R4-2003-0111 or NPDES Order No. R4-2008-0032 alleged in the Complaint, the First Amended Complaint, or the Second Amended Complaint.

36. The Executive Director of the State Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under the Stipulated Order.

37. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with section 15321, subdivision (a)(2), title 14, of the California Code of Regulations.

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the State Water Resources Control Board.

\_\_\_\_\_  
Thomas Howard, Executive Director

Date: \_\_\_\_\_