

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the matter of:)
)
ALLTERRA ENVIRONMENTAL,)
INC.)
) **SETTLEMENT AGREEMENT AND**
) **STIPULATION FOR ENTRY OF**
) **ADMINISTRATIVE CIVIL LIABILITY**
) **ORDER**
Alleged misrepresentations)
submitted to the Underground)
Storage Tank Cleanup Fund)
) **PROPOSED**
) **ORDER**
) **WQ 2020-0013-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), with ALLTERRA Environmental, Inc. (ALLTERRA) and its Chief Executive Officer (CEO), James Allen, (Settling Respondent), 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 ALLTERRA in the amount of \$106,533.00.

Section II: RECITALS

2. Effective September 25, 2014, chapter 6.75 of the Health and Safety Code was amended and contains several provisions, including section 25299.80 that allows the State Water Board to impose up to \$500,000 civil liability administratively for each misrepresentation made to the Cleanup Fund. The Health and Safety Code also provides for the recovery of enforcement costs and disqualification of persons from participation in the Cleanup Fund for violations of section 25299.80.

3. The ALLTERRA investigation arose out of complaints submitted to the Office of Enforcement's Fraud, Waste, and Abuse Prevention Unit (Fraud Prevention Unit) by Central Valley Regional Water Quality Control Board staff, regarding suspected fraud related to "penalty of perjury" statements submitted to the State.
4. On July 11, 2018, the Fraud Prevention Unit issued a request for information to ALLTERRA. The letter requested ALLTERRA provide the Fraud Prevention Unit with documentation detailing the hours worked and qualifications of a remedial systems technician for the Gold Flat Service Station, Cleanup Fund Claim No. 14869.
5. On July 20, 2018, ALLTERRA responded and provided a description of the technician's training, as well as their job application, payroll records, and a W2 form, documenting that they were an employee of ALLTERRA.
6. The Fraud Prevention Unit compared the information ALLTERRA provided to the invoices ALLTERRA submitted to the Cleanup Fund in Reimbursement Request Numbers 21, 22, 23, and 24 and noted potential discrepancies. Invoices submitted to the Cleanup Fund by ALLTERRA requested mileage reimbursement for miles to and from the Site, but the requests were unnecessary and unreasonable according to the cost guidelines. The costs were paid due to the erroneous reimbursement requests.
7. On December 14, 2018, the Fraud Prevention Unit conducted a telephone interview with the technician. The Fraud Prevention Unit determined that ALLTERRA improperly obtained reimbursements for mileage for the technician that was not a reasonable or necessary cost.
8. The Fraud Prevention Unit determined ALLTERRA submitted 2 reports with improper responsible party "penalty of perjury" signatures accompanying the reports. The claimant predeceased the date the reports were finalized.
9. The Fraud Prevention Unit determined ALLTERRA submitted Reimbursement Requests on behalf of the claimant that contained misrepresentations of the number of hours for Project Management. In the opinion of the Fraud Prevention Unit, the number of hours claimed for reimbursement were excessive, wasteful and unsupported by the documents submitted to the Cleanup Fund, and misrepresented the reasonable and necessary costs for the site.
10. ALLTERRA denies the factual allegations and legal conclusions above. However, it agrees with the Cleanup Fund that this resolution, by settlement and without any admission of liability or wrongdoing, makes the most practical sense for resolving this matter. ALLTERRA is not seeking to perform any work on Cleanup Fund sites in the future.

11. On November 22, 2019, the Fraud Prevention Unit issued ALLTERRA a letter offering to enter into settlement negotiations related to the alleged misrepresentations to the Cleanup Fund.
12. Mr. Allen, on behalf of ALLTERRA, and the State Water Board (collectively "Parties") have engaged in settlement negotiations and agree to fully and finally settle the alleged violations for **\$106,533.00** 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.
13. 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, and that this Stipulation is in the best interest of the public.

Section III: STIPULATIONS

The Parties stipulate to the following:

14. **Administrative Civil Liability:** The Settling Respondents hereby agree to pay the administrative civil liability totaling **\$106,533.00** 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 amantha.henkel@waterboards.ca.gov.

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

15. Injunctive Relief/ Prohibitions:

- a. Settling Respondents agree that as of January 14, 2020, ALLTERRA, and its CEO, Mr. Allen, 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. The prohibition in this paragraph 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, chapter 6.75 of the Health and Safety Code pursuant to this Order and section 25299.71.
- c. Settling Respondents agree to waive all rights to appeal or petition, 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.
- d. Settling Respondents agree to waive and/or abandon all appeals or petitions related to any Reimbursement Requests for costs incurred on claims within the meaning of division 20, chapter 6.75 of the Health and Safety Code presently before the State Water Board and/or any court in California or anywhere in the United States of America.
- e. Settling Respondents agree that after January 14, 2020, any and all work performed, supervised by, and/or directed by Settling Respondents and/or its principals that has not been submitted for reimbursement by the Cleanup Fund is 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 Settling Respondents not submitted as part of a Reimbursement Request by January 14, 2020.
- f. Settling Respondents agree they are not entitled to any further payment from Cleanup Fund claimants based upon any reimbursement request submitted to the State Water Board's Cleanup Fund, including costs submitted or pending appeal or petition before the State Water Board, submitted but determined ineligible, or for work completed but not yet submitted or appeals or petitions not yet submitted, with the exception of the costs in paragraph 15, subdivision (g) of this Order.
- g. Settling Respondents agree they will seek no 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 of the Health and Safety Code that was or will be reimbursed by the State Water Board after the effective date of this order with only the exceptions listed herein:
 - i. Eligible costs submitted under Cleanup Fund Claim Number 14364 Reimbursement Request No. 23 in the amount of \$41,794 will only be reimbursed if a successor claimant is approved by the Cleanup Fund and the successor claimant is determined eligible to receive reimbursement for the costs incurred.

- ii. All costs incurred, but not yet submitted for reimbursement under Cleanup Fund Claim Number 3930 shall be submitted to the Cleanup Fund no later than February 21, 2020. Any eligible costs shall be reimbursed in the normal course of business for the Cleanup Fund, notwithstanding the other provisions of this Order.
- iii. The Cleanup Fund will not make any reimbursements that are otherwise contrary to statutes, regulations, or decisional authority.

16. Covered Matters: This agreement covers all the administrative actions the State Water Board alleged in relation to the conduct described above under Health and Safety Code section 25299.80. This agreement is a full and complete Settlement of those matters against ALLTERRA, its officers and employees as of the date of this agreement, except for the obligations imposed herein.

17. 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 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 Respondents, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and Order.

18. 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.

19. Party Contacts for Communications related to this Stipulation and Order:

For the Cleanup Fund:
Nickolaus Knight
Senior Counsel
State Water Resources Control Board
Office of Enforcement
801 "K" St., Suite 2300
Sacramento, CA 95814
nickolaus.knight@waterboards.ca.gov
(916)327-0169

For Settling Respondents:
Mr. James Allen, CEO
ALLTERRA Environmental, Inc.
207-B McPherson Street
Santa Cruz, CA 95060
info@allterraenv.com

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. **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.
22. **Public Notice:** The Parties understand that this Order may be noticed for a 30-day public review period prior to consideration by the State Water Board. In the event objections are raised during the public comment period for the Order, the State Water Board or Executive Director may, under certain circumstances, require a public hearing regarding the Order. In that event, the Parties agree to meet and confer concerning any such objections and may agree to revise or adjust the Order as necessary or advisable under the circumstances. If the State Water Board does not elect to notice this settlement, the Order will be effective upon execution by the Executive Director.
23. **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.
24. **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.
25. **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.
26. **Severability:** This Stipulation and 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:** In the event that this 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 a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the

State Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. 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. 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 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 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 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.

29. **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, State Water Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulation and Order.

30. **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.

31. **No Third-Party Beneficiaries:** This Stipulation 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 Stipulation for any cause whatsoever.

32. **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.

33. **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: 3/30/2020

Original signed version is available upon request

Leslie S. Laudon, Deputy Director
Division of Financial Assistance
State Water Resources Control Board

ALLTERRA and Officer

Date: 3/30/2020

Original signed version is available upon request

James Allen

**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.

Original signed version is available
upon request

6/18/2020

Eileen Sobeck, Executive Director

Date