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2 **United States Environmental Protection Agency**
3 **Region IX**
4 75 Hawthorne Street
San Francisco, California 94105

5 In re:) Docket No. CWA-309(a)-10-003
6 Stockton Port District,)
7 Respondent.) ADMINISTRATIVE ORDER ON CONSENT
8)
9) Proceeding under Clean Water Act § 309(a),
10) 33 U.S.C. § 1319(a)

11 **I. INTRODUCTION**

12 1. This Administrative Order on Consent ("AOC") is entered into voluntarily by the United
13 States Environmental Protection Agency, Region 9 ("EPA"), and the Stockton Port District
14 ("Respondent" or "Port") (collectively the "Parties") under the Clean Water Act ("CWA"), 33
15 U.S.C. § 1251, *et seq.* Respondent owns and operates the Port of Stockton and its storm sewer
16 system in Stockton, California. This AOC requires Respondent to undertake specified measures
17 to remedy deficiencies in its storm sewer discharge management and control programs under its
18 National Pollutant Discharge Elimination System ("NPDES") permit issued by the State of
19 California pursuant to the CWA. Respondent, in entering into this AOC, does not admit or deny
20 any of EPA's Findings of Fact or Conclusions of Law set forth in Section V below.

21 **II. JURISDICTION**

22 2. EPA issues this AOC under the authority vested in its Administrator by
23 Section 309(a) of the CWA, 33 U.S.C. § 1319(a). This authority has been delegated to the EPA
24 Region 9 Administrator and re-delegated to the Director of EPA Region 9's Water Division.

25 3. Respondent agrees not to contest EPA's jurisdiction or authority to enter into or enforce
this AOC. Respondent further agrees not to contest the validity of any term or condition of this

1 AOC in any action to enforce or arising from the AOC.

2 4. EPA's decision or actions in entering into or pursuant to this AOC are not
3 subject to judicial review prior to any initiation of judicial action by the United States to compel
4 compliance with the AOC.

5 **III. DEFINITIONS**

6 5. Unless defined herein, terms used in this AOC shall have the meaning as
7 assigned in the CWA or in regulations promulgated by EPA under the CWA. The following
8 definitions shall apply to this AOC.

9 6. "AOC" shall mean this document, all attachments hereto, all its
10 agreed-upon modifications, and all submissions, including, but not limited to, deliverables, plans,
11 schedules, reports, maps, and technical memoranda and specifications, that are required by this
12 AOC and approved by EPA. Upon EPA approval, Respondent's submissions are incorporated
13 and enforceable as part of this AOC. In case of inconsistency, this document and its subsequent
14 modifications shall control.

15 7. "Day" shall mean a calendar day unless otherwise specified to be a Business Day.
16 "Business Day" shall mean a day other than a Saturday, Sunday, or Federal legal holiday. In
17 computing a prescribed period of time, the day of the event shall not be included. If a stated time
18 period expires on a Saturday, Sunday or Federal legal holiday, it shall be extended to include the
19 next Business Day.

20 **IV. PARTIES BOUND**

21 8. The requirements in Section VI-XIII of this AOC shall be binding on Respondent and its
22 officials, officers, directors, partners, agents, employees, attorneys, successors and assigns, and
23 on all persons, independent contractors, contractors, and consultants acting in concert with
24 Respondent so long as Respondent holds an MS4 permit in its name.

25 9. No transfer of any interest in real property within the jurisdiction of the Port shall alter
or relieve Respondent of its obligations under this AOC. As a condition of any transfer affecting

1 either the Port, or access to the Port, Respondent shall reserve all rights necessary to comply
2 with the terms of this AOC. Respondent shall provide a copy of this AOC to any successor in
3 interest to the ownership, control, operation, or any other interest in any portion of the Port at
4 least thirty (30) days prior to the transfer, and shall simultaneously notify EPA in writing that
5 such notice has been given.

6 10. The undersigned signatory for Respondent certifies that the signatory has the authority to
7 execute this AOC and legally bind Respondent.

8 **V. EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

9 11. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants
10 from a point source into a navigable water except in compliance with, *inter alia*, a permit issued
11 under Section 402 of the CWA, 33 U.S.C. § 1412.

12 12. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as "the
13 waters of the United States." EPA's implementing regulations at 40 C.F.R. § 122.2 further
14 define "waters of the United States" to include all waters that are subject to the ebb and flow of
15 the tide.

16 13. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the NPDES program and
17 authorizes States with an EPA-approved NPDES program, such as California, to issue NPDES
18 permits.

19 14. Section 402(p) of the CWA, 33 U.S.C. § 1342, sets forth NPDES permit requirements
20 for storm water discharges. Under Section 402(p)(3)(B), an NPDES permit for discharges from
21 a municipal separate storm sewer system ("MS4") must: (i) include a requirement to effectively
22 prohibit non-storm water discharges into storm sewers; and (ii) require controls, including
23 management practices, control techniques and system, design and engineering methods, and
24 other control measures as appropriate, to reduce the discharge of pollutants to the Maximum
25 Extent Practicable ("MEP").

1 15. EPA has promulgated regulations at 40 C.F.R. § 122.26 to implement CWA Section
2 402(p). These regulations contain comprehensive NPDES permit application requirements
3 concerning the MS4's legal authority to develop and implement control programs to prevent
4 illicit discharges to municipal storm sewers, 40 C.F.R. § 122.26(d)(2)(i), and the MS4's proposed
5 storm water management program to reduce and monitor pollutants in storm sewer discharges
6 from industrial and other sources to the MEP, 40 C.F.R. § 122.26(d)(2)(iv). These application
7 requirements in turn provide the framework for MS4 NPDES permit requirements.

8 16. Respondent is a special district organized under California laws. It owns and operates
9 the Port of Stockton and its storm sewer system.

10 17. Respondent's primary activities at the Port are industrial unloading, warehousing, and
11 loading of goods for production and distribution. The Port is divided into a West Complex and
12 an East Complex. The 1,460-acre West Complex, a 2003 acquisition by Respondent, is under
13 development for full-scale shipping and manufacturing operations. Most of the shipping, loading
14 and unloading of bulk commodities by Respondent and its commercial and industrial tenants
15 currently take place at the 640-acre East Complex.

16 18. Discharges from the Port's storm sewer system flow either directly or indirectly to the
17 tidally-influenced San Joaquin River and Stockton Deep Water Channel, a tributary of the San
18 Joaquin River. Specifically, the East Complex discharges from the East Complex Retention
19 Basin to the San Joaquin River and from five major storm sewers via gravity to the Stockton
20 Deep Water Channel; the West Complex discharges from one major storm sewer via a pump
21 station to the Burns Cutoff, which forms part of the San Joaquin River.

22 **RESPONDENT'S NPDES PERMIT REQUIREMENTS**

23 19. Respondent's storm sewer discharges are regulated under NPDES Permit.No.
24 CAS0084077/ Order No. R5-2004-0136 (the "MS4 Permit"), which was adopted by the
25 California Regional Water Quality Control Board, Central Valley Region ("Regional Board"),

1 on October 15, 2004.

2 20. MS4 Permit Part A.3 prohibits discharges containing pollutants that have not been
3 reduced to the MEP. MS4 Permit Section C.1 and Section C.5(d) require Respondent to comply
4 with the MEP standard by developing and implementing a Storm Water Management Program
5 (“SWMP”) that has been approved by the Regional Board and includes, without limitation,
6 specified programs pertaining to the identification and enforcement of Best Management
7 Practices (“BMPs”) for discharges from construction activities, commercial and industrial
8 facilities and municipal operations, development standards, and compliance monitoring and
9 reporting. MS4 Permit Section C.5(a) further requires Respondent to submit an Annual Work
10 Plan listing the schedule for proposed activities in the upcoming fiscal year. Therefore,
11 compliance with the MS4 Permit requires that Respondent fully implement the SWMP that was
12 approved by the Regional Board on January 26, 2006, and all its schedules, appendices and
13 subsequently approved revisions, and all documents incorporated by reference as part of the
14 SWMP.

15 21. MS4 Permit Section C.3 requires Respondent to establish, maintain, and enforce
16 adequate legal authority to control pollutant discharges from its construction, commercial and
17 industrial tenants to its storm sewers by, among other things, using “enforcement mechanisms to
18 attain compliance with ... tenant agreements” (Section C.3.e); “carry[ing] out all inspections,
19 surveillance and monitoring necessary to determine compliance and noncompliance with tenant
20 agreements” (Section C.3.g); and requiring appropriate BMPs (Sections C.3.h and C.3.i). MS4
21 Permit Section C.4 requires Respondent to adopt a standardized lease agreement with a
22 progressive enforcement procedure to enforce these MS4 Permit requirements. Therefore,
23 compliance with the Permit requires that Respondent conduct regular inspections and take
24 appropriate measures to enforce its tenant agreements with construction projects and commercial
25 and industrial facilities, as more specifically described below.

1 **Requirements for Oversight of Construction Sites**

2 22. MS4 Permit Section C.7 requires Respondent to “implement the Construction Element
3 of its SWMP to reduce pollution discharges from construction sites to the MEP” and additional
4 “Construction Element” requirements listed in Section C.7. Section C.7.a requires Respondent
5 to “implement a program to control pollution discharges from all construction sites, regardless of
6 size, within its jurisdiction.” Among the requirements under Section C.7.a and Respondent’s
7 approved SWMP are:

8 a. **Project identification and review prior to construction:**

9 i. Under SWMP Section 2.1.1 and Respondent’s standard tenant agreement
10 Section 7.2, construction may commence only with Respondent’s prior
11 written consent.

12 ii. Under MS4 Permit Section C.7.a.i and SWMP Section 2.1.1.- 2.1.2, new
13 construction involving one acre or more of soil disturbance must also have a
14 Storm Water Pollution Prevention Plan (“SWPPP”)/Construction Work
15 Plan approved by Respondent prior to commencing construction.

16 b. **Regular inspection:** Under MS4 Permit Section C.7.a.ii and SWMP Section 2.3,
17 Respondent must inspect all construction sites to ensure implementation of an
18 effective combination of erosion and sediment control BMPs to the MEP and
19 compliance with the tenant agreement at least once every two weeks during the
20 wet season (October – April) and once a month during the dry season (May –
21 September) until construction is terminated.

22 c. **Progressive Enforcement:** Under MS4 Permit Section C.3.e as implemented
23 through SWMP Section 2.5, “[i]f visual observations or monitoring results
24 identify violations of the project’s SWPPP or the Port’s water quality objectives,”
25 Respondent will “require corrective action ... to address site conditions, ...

1 endeavor to obtain an agreement for achieving compliance with the construction
2 site manager, ... and subsequently re-inspect the construction site to ensure that
3 the violation(s) have been corrected.”

4 **Requirements for Oversight of Commercial and Industrial Facilities**

5 23. Under MS4 Permit Section C.8, Respondent must ensure that its commercial and
6 industrial facilities implement pollution reduction and control measures to reduce pollutants in
7 storm water runoff to the MEP. Among the requirements under the MS4 Permit and
8 Respondent’s approved SWMP are:

- 9 a. Regular inspection: Under MS4 Permit Section C.8.b and SWMP Section 3.2.1,
10 Respondent must conduct inspection once per year to ensure effective
11 implementation of BMPs to the MEP and tenant agreement compliance.
- 12 b. Progressive enforcement: Under MS4 Permit Sections C.8.c.ii.a through
13 C.8.c.ii.c and SWMP Section 3.3, Respondent must implement a progressive
14 enforcement policy that includes: conducting a follow-up inspection within two
15 weeks of the initial inspection; taking enforcement actions if failure to control
16 sources of pollution discharges continues after the follow-up inspection; and
17 maintaining records of all enforcement-related efforts.

18
19 **Municipal Operations Program Requirements**

20 24. MS4 Permit Section C.9 requires Respondent to “implement a Municipal Operations
21 Program to prevent or reduce pollutants in runoff from all of its land use area, facilities, and
22 activities.” Among the program components required by the MS4 Permit and Respondent’s
23 approved SWMP are:

- 24 a. Pesticide Application Protocol for Landscape and Recreational Facilities
25 Management: Under MS4 Permit Section C.9.f, Respondent must prepare and

- 1 b. implement a standardized protocol for routine and non-routine application of
2 pesticides, herbicides (including pre-emergents), and fertilizers that, among other
3 things, requires proper storage practice and regular inspection of storage areas.
4 Respondent's standardized protocol is set forth in Appendix E of the SWMP.
- 5 c. Maintenance and Operation of Catch Basins and Sumps: Under MS4 Permit
6 Section C.9.g, Respondent's SWMP must specify maintenance procedures for
7 catch basins and sumps, including but not limited to: an inspection and cleaning
8 schedule, record keeping of cleaning and overall quantity of waste removed, and
9 proper disposal of removed waste. Respondent's maintenance procedures are set
10 forth in Appendix F of the SWMP.
- 11 d. Maintenance of Streets and Roads: Under MS4 Permit Section C.9.h, Respondent
12 must "designate appropriate sweeping frequencies for streets, material handling
13 and storage areas, and docks within its jurisdiction." Pursuant to this requirement,
14 SWMP Section 4.8 states that Respondent is to "operate a street sweeper that
15 maintains streets, roads, material handling and storage areas, and docks as part of
16 normal daily operations."
- 17 e. Operation and Maintenance of East Complex Retention Basin: Under MS4
18 Permit Section C.9.i, Respondent must "prepare and implement guidelines for
19 operating and maintaining retention basins within its jurisdiction" with specified
20 minimum elements, and notify the Regional Board within two weeks of evidence
21 of berm seepage. Pursuant to the guidelines prepared by Respondent in Appendix
22 G of the SWMP, Respondent is to inspect the East Complex Retention Basin once
23 a month during the dry season and once a week during the wet season," and to
24 inspect for "structural integrity during the dry season and from structural integrity
25 and seepage during the wet season."

1 **Development Standards Program Requirements**

2 25. The MS4 Permit requires Respondent to implement a Development Standards Plan
3 (“DSP”) to reduce discharges from new development and significant redevelopment projects to
4 the MEP, as follows:

- 5 a. Under MS4 Permit Section C.13, Respondent must implement the DSP within
6 three months of its approval by the Regional Board.
- 7 b. Under MS4 Permit Section C.14, Respondent must review and condition for
8 compliance with the Development Standards (“DS”) all Priority Development
9 Projects; i.e., all new development projects and all “significant redevelopment”
10 projects that fall within one of the seven priority development project categories
11 enumerated in MS4 Permit Section C.14.a.

12 26. Pursuant to Respondent’s SWMP Section 6.0 and the DSP, which became legally
13 operative for purposes of MS4 Permit compliance upon approval by the Regional Board in 2006,
14 Respondent is to implement the DSP by the following steps: ensuring the project developers
15 notify the Port of the proposed project; determining the applicability of the DSP to the
16 development project; if the DSP is applicable, identifying and incorporating into the project
17 design appropriate BMPs; undertaking approval process of the project design; and confirming
18 the implementation of BMPs through an inspection program.

19 **Toxicity Monitoring Requirements**

20 27. The MS4 Permit’s Monitoring and Reporting Program (“MRP”) requires Respondent to
21 conduct toxicity monitoring of urban runoff and receiving waters as follows:

- 22 a. Under MRP Section II.H, Respondent must conduct short-term chronic toxicity
23 testing at the downstream receiving water monitoring stations (Station ID Nos.
24 R-2, R-4 and R-5), the West Complex pump station (Station ID No. WC), and the
25 East Complex Retention Basin twice during the five-year permit term and for the

1 same three storm events for which receiving water and urban runoff are monitored.
2 If toxicity is detected at a given monitoring station, Respondent must continue the
3 toxicity testing and Toxicity Identification Evaluations (TIE) until the nature and
4 cause(s) of the toxicity are defined.

- 5 b. Under MRP Section III.D, Respondent must conduct all sampling, sample
6 preservation, and analyses according to the test procedures under 40 C.F.R. Part
7 136, unless other test procedures have been specified in the MS4 Permit.
8 Therefore, for toxicity testing, Respondent must follow the sample integrity
9 protocol, test acceptability criteria, and quality assurance and quality control
10 (QA/QC) measures set forth in EPA's most current (i.e. 2002) Part 136 toxicity
11 test procedures. Furthermore, under SWMP Section 7.3, Respondent is to
12 perform QA/QC in accordance with procedures established in its Quality
13 Assurance Plan for Sample Collection and Analysis appended to its Annual
14 Monitoring Work Plan.

15 **DESCRIPTION OF RESPONDENT'S COMPLIANCE DEFICIENCIES**

16 28. On March 18, 19 and 20, 2008, EPA, with Regional Board assistance, audited
17 Respondent's compliance with the MS4 Permit. The audit included file reviews, inspections of
18 four facilities owned and operated by Respondent, 26 individual inspections of Respondent's
19 commercial and industrial tenants, and interviews of Respondent's personnel. The EPA audit
20 report ("Audit Report"), dated July 9, 2008, is appended as Exhibit 1 to this AOC for reference.

21 29. Based on the audit and subsequent communications with Respondent and/or the
22 Regional Board, EPA finds that, while Respondent has corrected many of the deficiencies noted
23 in the Audit Report, the following deficiencies require and the Respondent agrees to undertake
24 longer-term remedial activities:

25 //

1 **Deficiencies in Oversight of Construction Sites**

2 30. As more fully set forth in Section 2.4 of the Audit Report, Respondent has not complied
3 with the MS4 Permit Sections C.3 and C.7 requirements to adequately exercise enforcement
4 authority over construction activities on its premises:

5 a. **Failure to conduct proper project identification and review prior to construction:**

6 Respondent has failed to review the SWPPPs of all construction and
7 redevelopments sites with one acre or more disturbed area prior to the
8 commencement of construction. For instance, Respondent did not review the 11-
9 acre Inland Cold Storage construction site until after construction had begun.

10 b. **Failure to inspect for BMP implementation and tenant agreement compliance:**

11 Respondent has failed to ensure that construction sites on its premises use
12 adequate source control and structural BMPs. For instance, EPA inspectors
13 observed during the audit that various parts of the Pacific Ethanol and Central
14 California Traction sites either lacked BMPs or had inadequate BMPs.

15 c. **Failure to enforce compliance with source control and structural BMP**
16 **requirements and tenant agreements:**

17 Respondent has failed to use enforcement mechanisms to attain compliance with
18 source control and structural BMP requirements. For instance, Respondent noted
19 in its March 19, 2008 inspection of the American Biodiesel construction site that
20 soil was improperly stockpiled in a drainage pathway without any down-gradient
21 BMPs but took no enforcement action to correct them. As a result, the lack of
22 BMPs at the construction site persisted during the EPA audit.

23 **Deficiencies in Oversight of Commercial and Industrial Facilities**

24 31. As more fully set forth in Section 5.1 of the Audit Report, Respondent has not complied
25 with MS4 Permit Sections C.3 and C.8 requirements to adequately exercise enforcement

1 authority over its commercial and industrial tenants:

2 a. Failure to demonstrate inspection frequency:

3 Respondent lacked an efficient inspection tracking system to show compliance
4 with the required inspection frequency.

5 b. Failure to conduct follow-up inspections:

6 Respondent has failed to conduct appropriate follow-up inspections of its
7 commercial and industrial tenants. For instance, although Respondent's
8 inspection of CenCal Recycling LLC indicated the need to re-inspect, it made no
9 follow-up inspection.

10 **Deficiencies in Municipal Operations Program**

11 32. Pesticide Management: As more fully set forth in Section 2.3.1 of the Audit Report,
12 Respondent has not complied with MS4 Permit Section C.9.f requirements to:

- 13 a. provide its staff adequate training on the SWMP and the standardized pesticide
14 application protocol set forth in Appendix E of the SWMP, which requires proper
15 cover and containment of pesticide storage areas on its premises; and
16 b. conduct regular inspection of pesticide storage areas on its premises.

17 33. Maintenance and Operation of Catch Basins and Sumps: As more fully set forth in
18 Section 2.3.2 of the Audit Report, Respondent has not complied with MS4 Permit Section C.9.g
19 requirements to:

- 20 a. document catch basin and sump cleaning, including but not limited to the amount
21 of material removed during cleaning as required by MS4 Permit Section C.9.g.ii
22 and the SWMP, Appendix F; and
23 b. demonstrate compliance with the annual inspection and cleaning schedule
24 specified in SWMP Section 1.2.4 and Annual Work Plan 2006–2007.

25 34. Maintenance of Streets and Roads: As more fully set forth in Section 2.3.3 of the Audit

1 Report, Respondent has not complied with MS4 Permit Section C.9.h. requirements to
2 implement SWMP Section 4.8, in that, instead of sweeping streets, roads or other municipal
3 areas as part of normal daily operations, Respondent did so allegedly on an as-needed basis.
4 Observations made during the audit indicated, however, that most streets and roads lacked
5 adequate sweeping.

6 35. Maintenance of (East Complex) Retention Pond: As more fully set forth in Section 2.3.4
7 of the Audit Report, Respondent has not complied with MS4 Permit Section C.9.i requirements
8 to implement the guidelines established by Respondent, as follows:

9 a. Failure to conduct regular inspections:

10 During the EPA audit, Respondent was unable to produce documentation or
11 otherwise demonstrate that it had inspected the retention basin at the frequencies
12 (monthly during the dry season and weekly during the wet season) called for by its
13 Annual Work Plans for the 2006-2007 and 2007-2008 permit years.

14 b. Failure to report potential berm seepage: During the Audit, EPA inspectors found
15 potential seepage along the eastern boundary of the retention basin adjacent to
16 Navy Drive. While Respondent had observed the potential seepage in previous
17 years and informally determined it to be caused by groundwater, it had failed to
18 document the steps taken to reach this conclusion or to report the potential
19 seepage to the Regional Board, as required by Respondent's SWMP, Appendix G,
20 Section 2.

21 **Deficiencies in Development Standards Program**

22 36. As more fully set forth in Section 2.5 of the Audit Report, Respondent has not complied
23 with MS4 Permit Sections C.13 and 14 requirements to adequately implement the procedures of
24 SWMP Section 6.0 and the approved DSP. Respondent lacked a structured program to ensure
25 adequate coordination either externally with the City of Stockton, which maintains construction

1 permitting authority within Respondent's jurisdiction but does not notify Respondent of permit
2 approvals, or internally among its three organizational entities with authority over land
3 development process. As a result, Respondent could not identify all the Priority Development
4 Projects under MS4 Permit Section C.14.a, or ensure that their project plans are adequately
5 conditioned and implemented for DS compliance. For instance, at the time of the EPA's March
6 2008 audit, Respondent had identified only two Priority Development Projects: A-Plus Materials
7 Recycling Inc. and the Inland Cold Storage construction site, both in the East Complex. There
8 was no prior review and approval of the Inland Cold Storage site for DS compliance because, as
9 described in paragraph 30.a above, Respondent only identified the project after land-disturbing
10 activities had commenced. Furthermore, Respondent has failed to review or condition for DS
11 compliance at least the following Priority Development Projects in the West Complex: Daggett
12 Road Project, Lowe's Distribution Center, and Ferguson Distribution Center.

13 **Deficiencies in Toxicity Monitoring and Reporting**

14 37. As more fully set forth at Sections 2.6.4 through 2.6.9 of the Audit Report, Respondent
15 has not complied with MS4 Permit MRP Section II requirements to adequately collect and
16 analyze toxicity samples and report sample results, including:

- 17 a. failure to collect samples at the West Complex pump station or the East Complex
18 Retention Basin;
- 19 b. failure to comply with either the 1994 or the 2002 EPA toxicity test methods;
- 20 c. failure to store samples at the proper temperature (samples were found to be
21 stored at a temperature of 0-6 C);
- 22 d. failure to meet the required test acceptability criteria in EPA's 1994 or 2002
23 toxicity test methods, resulting in invalid test results;
- 24 e. failure to conduct an inadequate Toxicity Identification Evaluation as required;
25 and

1 f. failure to adequately interpret and report toxicity test results in its 2005 annual
2 report.

3 38. By failing to comply with the various requirements set forth in MS4 Permit Section C
4 and the SWMP, Respondent has also not complied with the discharge prohibition set forth in
5 MS4 Permit Section A.3.

6 39. The San Joaquin River and the Deep Water Ship Channel, the tidally-influenced
7 receiving waters for Respondent's storm sewer discharges, are "waters of the United States"
8 under 40 C.F.R. § 230.3(s)(1) and CWA Section 502(7), 33 U.S.C. § 1362(7).

9 40. Respondent is a "person" for purposes of the CWA, and an MS4 subject to NPDES
10 permit requirements under 40 C.F.R § 122.26 and CWA Section 402(p).

11 41. By discharging storm and non-storm water into waters of the United States via its storm
12 sewer system without complying with various MS4 Permit requirements, as summarized above,
13 Respondent has not complied with Section 301(a) of the CWA.

14 42. EPA finds that Respondent's compliance with the provisions of this AOC will satisfy the
15 objectives of the CWA and provide adequate and appropriate relief for the deficiencies identified
16 related to Respondent's CWA violations and MS4 Permit requirements summarized above.

17 **VI. WORK TO BE PERFORMED**

18 43. **Oversight of Construction Sites:** No later than ten (10) business days after the
19 effective date of the AOC, Respondent shall provide EPA and the Regional Board the following
20 documentation of its oversight of active construction sites for the period of August 1, 2008 to
21 July 31, 2009:

- 22 a. a list of all active construction sites, regardless of size, within Respondent's
23 jurisdiction, including without limitation the project name, location, and size of
24 disturbed area of each construction site;
- 25 b. a list of all active construction sites, regardless of size, inspected by Respondent,

1 including the inspection date;

2 c. an inventory of any and all violations observed by Respondent during inspection
3 of each of the active construction sites, regardless of size;

4 d. an inventory of any and all enforcement responses, including any re-inspection,
5 taken by Respondent in response to violations listed in c above; and

6 e. documentation of Respondent's review of SWPPP for each of the active
7 construction sites that involve one acre or greater disturbed area.

8 **44. Oversight of Commercial and Industrial Facilities:** No later than ten (10) business
9 days after the effective date of the AOC, Respondent shall submit the following documentation
10 of its oversight of commercial and industrial tenants for the period of August 1, 2008 to July 31,
11 2009:

12 a. a list of all commercial and industrial tenants inspected, including without
13 limitation the identity, location, and inspection date of each such tenant.

14 b. an inventory of any and all violations observed by Respondent during inspection
15 of each of the commercial and industrial tenants; and

16 c. an inventory of any and all enforcement responses, including any re-inspection,
17 taken by Respondent in response to violations listed in b above.

18 **45. Municipal Operations Program:**

19 a. Pesticides Management Practices: No later than ten (10) business days after the
20 effective date of the AOC, Respondent shall submit the following documentation
21 of its pesticides management practices for the period of August 1, 2008 to July 31,
22 2009:

23 i. photograph-documentation of cover and containment of each of its pesticide
24 storage areas; and

25 ii. copies of inspection reports of its pesticide storage areas.

1 b. Maintenance and Operation of Catch Basins and Sumps: No later than ten (10)
2 business days after the effective date of the AOC, Respondent shall submit the
3 following documentation of its maintenance and operation of all its catch basins
4 and sumps for the period of August 1, 2008 to July 31, 2009: A description of the
5 cleaning conducted by Respondent of each of the catch basins and sumps,
6 including without limitation the date of cleaning and the quantity of material
7 removed from each catch basin.

8 c. Maintenance of Streets and Roads:

9 i. No later than ten (10) business days after the effective date of the AOC,,
10 Respondent shall submit copies of its sweeping logs for streets and roads
11 within its jurisdiction for the period of August 1, 2008 to July 31, 2009.

12 ii. For the period of October 1, 2009 through September 30, 2010, Respondent
13 shall use GPS technology to track all areas swept.

14 iii. No later than **November 1, 2010**, Respondent shall provide GPS
15 documentation of areas swept for the period of October 1, 2009 through
16 September 30, 2010.

17 d. Maintenance and Operation of East Complex Retention Basin:

18 i. No later than ten (10) business days after the effective date of the AOC,
19 Respondent shall submit copies of documentation that Respondent
20 inspected the retention basin at the frequencies (monthly during the dry
21 season and weekly during the wet season) for the period of August 1, 2008
22 to July 31, 2009.

23 ii. No later than **July 1, 2010**, Respondent shall submit a geological and
24 engineering assessment report, along with any recommended repairs, for the
25 retention basin.

1 **46. Development Standards Plan:** No later than ten (10) business days after the effective
2 date of the AOC, Respondent shall provide a list of all projects that qualify as Priority
3 Development Projects (i.e., all new development projects and all significant development
4 projects that fall within the categories enumerated in MS4 Permit Section C.14.a), along with
5 documentation of DS approval and BMP selection for each such Project for the period of August
6 1, 2008 to July 31, 2009

7 **47. Toxicity Monitoring:** For the period from the effective date of the AOC to **July 31,**
8 **2010**, Respondent shall conduct short-term chronic toxicity monitoring and reporting according
9 to the following requirements:

10 a. Toxicity Sampling Locations and Procedures:

11 i. Respondent shall collect toxicity samples at receiving water monitoring
12 stations R-1 through R-5, the West Complex pump station (Station WC),
13 and the East Complex Retention Basin (when it discharges to the San
14 Joaquin River) for four storm events for which receiving water and urban
15 runoff are monitored, each preceded by seven (7) days of dry weather.

16 Each monitoring event shall be separated by at least 20 days. Respondent
17 shall target the first storm event that produces a rainfall of at least 0.25
18 inches.

19 ii. Unless otherwise specified herein, Respondent shall conduct all sampling,
20 sample preservation, and analyses according to 40 C.F.R. Part 136 test
21 procedures and Attachment C of Respondent's "Sampling and Analysis Plan
22 2008-2009 Storm Season - Port of Stockton," which is appended as Exhibit
23 2 and incorporated as part of this AOC.

24 iii. Respondent shall collect sufficient sample volume to perform the required
25 toxicity tests, and conduct any potential Toxicity Identification Evaluation

1 (TIE) as required in c. below.

2 b. Toxicity Testing Protocols:

3 i. Toxicity tests shall comply with 40 C.F.R. Part 136.3, Table IA and *Short-*
4 *Term Methods for Estimating the Chronic Toxicity of Effluents and*
5 *Receiving Waters to Freshwater Organisms* (2002), EPA/821/R-02/013.
6 (“2002 Short Term Chronic Toxicity Method”).

7 ii. Respondent shall test with all three test species and endpoints: (1) the
8 fathead minnow (*Pimephales promelas*) survival and growth endpoints, (2)
9 the water flea (*Ceriodaphnia dubia*) survival and reproduction endpoints,
10 and (3) Green alga, (*Selenastrum capricornutum*) growth endpoint. The
11 preceding toxicity test species shall not be substituted with another
12 organism except with prior written authorization from EPA or the Regional
13 Board.

14 iii. Respondent shall use the short-term test methods for estimating the chronic
15 toxicity of NPDES effluents found in the 2002 Short Term Toxicity
16 Method; and 40 C.F.R. Part 136.3 Table IA. Respondent shall conduct on
17 all three test species:

18 1. a static renewal toxicity test with the fathead minnow, *Pimephales*
19 *promelas* (Larval Survival and Growth Test Method 1000.0- daily
20 observations for mortality to calculate toxicity for survival and
21 measure growth endpoints of the test);

22 2. a static renewal toxicity test with the daphnid, *Ceriodaphnia dubia*
23 (Survival and Reproduction Test Method 1002.0 - daily
24 observations for mortality to calculate toxicity for survival and
25 reproduction endpoints of the test); and

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- 3. a static non-renewal toxicity test with the green alga, *Selenastrum capricornutum* (also named *Raphidocelis subcapitata*) (Growth Test Method 1003.0).
- iv. Respondent shall analyze the survival and sub-lethal endpoint data from the chronic tests using a standard t-test approach and statistical analysis methods consistent with *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms* (2002), EPA/821/R-02/012, page 86). Respondent shall compare toxicity of each undiluted sample to a laboratory control. Additionally, Respondent shall compare the toxicity of downstream receiving water sample(s) to corresponding upstream receiving water sample(s), if available, as defined in paragraph b.v below. Statistically significant chronic toxicity is thus defined as toxicity of downstream receiving water sample(s) relative to the upstream receiving water sample, if available. If an upstream location is not available, statistically significant chronic toxicity is defined as toxicity of downstream receiving water sample(s) relative to the laboratory control.
- v. Receiving water locations denoted as “upstream” and “downstream” will be dependent on the tidal stage and, therefore, direction of flow present at the time of discharge and sampling. Due to the nature of the tides, in some cases all receiving water locations will be influenced by Port discharges, and therefore will be designated “downstream” locations.
- vi. Upon detection of statistically significant chronic toxicity in a sample as defined in paragraph b.iv above, Respondent shall perform a multi-concentration test design in the preceding tests for all downstream receiving water sites demonstrating statistically significant toxicity, concurrently with

1 requirements under paragraph c.i below.

2 c. TIE Protocols

- 3 i. Upon detection of statistically significant chronic toxicity, as defined in
4 paragraph b.iv. above, Respondent shall perform an TIE to identify the
5 causes of toxicity using the same species and test method and according to
6 the following U.S. EPA test method manuals: *Toxicity Identification*
7 *Evaluation: Characterization of Chronically Toxic Effluents, Phase I (1992)*
8 *EPA/600/6-91/005F; Methods for Aquatic Toxicity Identification*
9 *Evaluations, Phase II Toxicity Identification Procedures for Samples*
10 *Exhibiting Acute and Chronic Toxicity (1993), EPA/600/R-92/080; and*
11 *Methods for Aquatic Toxicity Identification Evaluations, Phase III Toxicity*
12 *Confirmation Procedures for Samples Exhibiting Acute and Chronic*
13 *Toxicity (1993), EPA/600/R-92/081.*
- 14 ii. Respondent may utilize a TIE Prioritization Metric to rank sites for TIEs.
- 15 iii. If Respondent discovers new toxicants in any of the toxicity testing, the
16 Respondent will perform additional toxicity tests as directed by EPA or the
17 Regional Board.
- 18 iv. In consultation with EPA and the Regional Board, Respondent has retained
19 a neutral third party, Sierra Foothill Laboratories, to perform any necessary
20 TIE.

21 d. Toxicity Reduction Evaluation ("TRE") Protocols

- 22 i. When the same pollutant or class of pollutants is identified through two TIE
23 evaluations at a monitoring location, Respondent shall perform a TRE of
24 the same pollutant or the class of pollutants that has been identified through
25 the TIE process in accordance with *Generalized Methodology for*

1 *Conducting Industrial Toxicity Reduction Evaluations (1989) (EPA/600/2-*
2 *88/070).*

- 3 ii. Respondent shall use staff or consultants with experience in conducting
4 TREs for stormwater applications.
- 5 iii. No later than 90 days from the detection of statistically significant chronic
6 toxicity in a sample as defined in paragraph b.iv above, Respondent shall
7 submit to EPA and the Regional Board for approval an TRE Corrective
8 Action Plan that shall, at a minimum, discuss the following items:
- 9 1. the potential sources of pollutant(s) causing toxicity;
 - 10 2. recommended BMPs to reduce the pollutant(s) causing toxicity;
 - 11 3. proposed post-construction control measures to reduce the
12 pollutant(s) causing toxicity for new development and re-
13 development projects; and
 - 14 4. proposed follow-up monitoring to demonstrate that toxicity has
15 been removed.
- 16 iv. Upon approval by EPA and the Regional Board, Respondent shall
17 implement the TRE Corrective Action Plan and take all reasonable steps to
18 eliminate toxicity.
- 19 v. If TRE implementation for a specific pollutant coincides with Total
20 Maximum Daily Load ("TMDL") implementation for the pollutant, the
21 efforts shall be coordinated wherever possible. (For instance, if a TMDL
22 for diazinon is being implemented at the same time a TRE for diazinon is
23 required, the efforts shall be coordinated to the extent practicable to avoid
24 overlap). If applicable, Respondent may use the same TRE for the same
25 toxic pollutant or pollutant class in different watersheds or basins.

1 e. Toxicity Testing Notification and Reporting Requirements:

2 i. If Respondent is unable to perform any toxicity test and comply with the
3 requirements under paragraph 47 of this AOC (hereinafter the "Triggering
4 Event") for any reasons, Respondent shall, within 48 hours of the missed
5 test, submit the following to EPA and the Regional Board:

- 6 1. a written explanation, with documentation, of the Triggering
7 Event; and
- 8 2. a plan, including measures to be taken and the timetable for
9 implementing the measures, to correct, prevent or avoid the
10 circumstances giving rise to the Triggering Event.

11 ii. Respondent shall submit the following toxicity data and reports to EPA and
12 the Regional Board:

- 13 1. Within 45 days of completion of toxicity tests, Respondent shall
14 provide a copy of all sample documents, including chain of
15 custody forms, the toxicity test results and all associated laboratory
16 documents.
- 17 2. Within 30 days of completion of the TIE, Respondent shall provide
18 a copy of the TIE results and all associated laboratory documents.
- 19 3. Within 30 days of completion of TRE, Respondent shall provide a
20 copy of the TRE results and all associated laboratory documents.

21 iii. **By September 1, 2010**, Respondent shall submit a report that shall include:

- 22 1. a full laboratory report for all toxicity testing pursuant to this
23 Order;
- 24 2. the dates of sample collection and initiation of each toxicity test;
- 25 3. a summary of the reported toxicity test results according to the test
methods manual chapter on report preparation and test review;

- 1 4. all results for urban runoff parameters monitored concurrently with
2 the toxicity test(s);
3 5. TIE Phase testing (Phase I, Phase II, and Phase III) conducted for
4 each monitoring station; and
5 6. the development, implementation, and results for each TRE
6 Corrective Action Plan.

7 **VII. SUBMISSIONS AND NOTIFICATIONS**

8 48. All submissions required by this AOC shall be signed by a duly authorized
9 representative of Respondent. The authorization must be in writing and specify either an
10 individual or a position having responsibility for the overall operation of the activities being
11 reported or for Respondent's environmental matters.

12 49. The person signing Respondent's submissions shall make the following certification:

13 I certify under penalty of law that the information submitted is true and
14 correct to the best of my knowledge and belief. I am aware that there are
15 significant penalties for submitting false information, including, but not
16 limited to, the possibility of fines and imprisonment for knowing
17 violations under § 309 of the Clean Water Act, 18 U.S.C. § 1001, and
18 other relevant federal statutes.

19 50. Unless otherwise specified or requested by EPA or the Regional Board, Respondent
20 shall provide each deliverable required under this AOC by first-class mail to:

21 Team Leader, Stormwater and
22 Wetlands Enforcement Team
23 CWA Compliance Office (WTR-7)
24 U.S.EPA Region IX
25 75 Hawthorne St.
San Francisco, CA 94105-3901
(415) 947-4198

Mike Conway
Central Valley Regional Water Quality
Control Board
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114
(916) 464-4742

1 **VIII. DELAY OF PERFORMANCE/FORCE MAJEURE**

2 51. "Force Majeure," for purposes of this AOC, is any event entirely beyond the control of
3 Respondent or any entity controlled by Respondent that delays or prevents performance of any
4 obligation under this AOC, notwithstanding Respondent's best efforts to fulfill the obligation.
5 The best efforts requirement includes using best efforts to anticipate any such event and to
6 minimize the delay caused by any such event to the greatest extent practicable. Any delays due
7 to Respondent's failure exercise best efforts or due to normal inclement weather shall not, in any
8 event, be considered to be circumstances beyond Respondent's control.

9 52. Unless otherwise specified, in any event may occur or has occurred that may delay the
10 performance of any obligation under this AOC, whether or not caused by a force majeure,
11 Respondent shall notify by telephone the EPA contact identified in Paragraph 50 of this AOC,
12 or, in that person's absence, the Manager of the Clean Water Act Compliance Office (WTR-7),
13 EPA, Region IX, within two (2) business days of when Respondent knew or reasonably should
14 have known that the event might cause a delay. Within fifteen (15) days thereafter, Respondent
15 shall provide in writing the reasons for the delay, the anticipated duration of the delay, the
16 measures taken or to be taken to prevent or minimize the delay, and a timetable by which those
17 measures will be implemented. Respondent shall exercise its best efforts to avoid or minimize
18 any delay and any effects of a delay. Failure to comply with the notice requirement of this
19 paragraph shall preclude Respondent from asserting any claim of force majeure, unless that
20 failure was also due to force majeure.

21 53. If EPA agrees that an actual or anticipated delay is attributable to force majeure, the time
22 for performance of the obligation shall be extended by written agreement of the parties. An
23 extension of the time for performing an obligation directly affected by the force majeure event
24 shall not, of itself, extend the time for performing a subsequent obligation.

25 54. Respondent shall have the burden of demonstrating that the actual or anticipated delay

1 has been or will be caused by a force majeure event, that the duration of the delay was or will be
2 warranted under the circumstances, that Respondent did exercise or is using its best efforts to
3 avoid and mitigate the effects of the delay, and that Respondent complied with the requirements
4 of this section.

5 **IX. FAILURE TO COMPLY WITH AOC**

6 55. EPA reserves all available legal and equitable remedies to enforce this AOC,
7 and the right to seek recovery of any costs and attorney fees incurred by EPA in any judicial
8 actions against Respondent for non-compliance with the requirements of this AOC.

9 56. EPA expressly reserves its right to seek civil, administrative or criminal penalties against
10 any entity responsible for violations of the CWA that occur or occurred at the Port or elsewhere.

11 57. Failure to comply with this AOC is a violation of the CWA. Such violation
12 may subject Respondent to civil penalties not to exceed \$37,500 per day for each violation under
13 CWA § 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4. Respondent reserves all legal and
14 equitable defenses in any further enforcement actions taken by EPA or a third party to enforce
15 this AOC or the Respondent's MS4 Permit.

16 **X. SCOPE OF THE AOC**

17 58. This AOC is not and shall not be construed to be a permit under the CWA, nor
18 shall it in any way relieve or affect Respondent's obligations under the CWA, or any other
19 applicable federal, state or local laws, regulations and permits. EPA, by entering into this AOC,
20 does not warrant or aver in any manner that Respondent's compliance with this AOC will result
21 in the compliance with the provisions of the CWA and with any NPDES permit.

22 59. Neither the issuance of this AOC, nor Respondent's compliance with it, shall in any way
23 affect the rights of EPA or the United States against any person not a party hereto.

24 60. This AOC shall in no way affect EPA's authority to enter, inspect, sample or monitor
25 compliance under any law, permit, court order or agreement, and Respondent shall use its best

1 efforts to arrange for access by EPA or its authorized representatives for determining compliance
2 with this AOC. For purposes of this AOC, EPA's authorized representatives shall include all
3 EPA employees and contractors, all Regional Board employees and contractors, and such other
4 persons as EPA may designate.

6 **XI. MODIFICATION**

7 61. Either Party may request to modify the AOC as it deems appropriate. Situations that
8 could potentially give rise to such request may include subsequent formal permit actions by the
9 Regional Board on Respondent's MS4 Permit. This AOC may be modified only by a subsequent
10 written agreement by the Parties.

11 62. Should the Respondent no longer be a permittee subject to the MS4 Permit for
12 stormwater discharges, the Port shall so notify EPA in writing and then this AOC shall no longer
13 apply to the Respondent.

14 **XII. SEVERABILITY**

15 63. The provisions of this AOC shall be severable. Should any provision be
16 declared by a court of competent jurisdiction to be unenforceable, the remaining provisions shall
17 remain in full force and effect.

18 **XIII. EFFECTIVE AND TERMINATION DATES**

19 64. This AOC shall take effect upon signature by all parties.

20 65. Upon compliance with all requirements pursuant to Section VI of this AOC,
21 Respondent may submit to EPA a Request for Termination, together with all necessary
22 supporting documentation. Following receipt of Respondent's Request for Termination, if EPA
23 determines that Respondent has satisfactorily complied with the requirements for termination,
24 EPA will issue a notice terminating the AOC. This AOC is deemed to be terminated if EPA
25

1 does not communicate with Respondent, either verbally or in writing, concerning Respondent's
2 compliance with the AOC within 90 days of receipt of Respondent's Request for Termination.

3 IT IS SO AGREED AND ORDERED:

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5 For U.S. Environmental Protection Agency
6 Region 9

7 Dated: 4 December 2009

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10 For Stockton Port District

11 Dated: DEC. 3 2009

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