I. INTRODUCTION

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

II. JURISDICTION

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

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

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

III. DEFINITIONS

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

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

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

IV. PARTIES BOUND

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

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

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

V. EPA’S FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

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

14. Section 402(p) of the CWA, 33 U.S.C. § 1342, sets forth NPDES permit requirements for storm water discharges. Under Section 402(p)(3)(B), an NPDES permit for discharges from a municipal separate storm sewer system (“MS4”) must: (i) include a requirement to effectively prohibit non-storm water discharges into storm sewers; and (ii) require controls, including management practices, control techniques and system, design and engineering methods, and other control measures as appropriate, to reduce the discharge of pollutants to the Maximum Extent Practicable (“MEP”).
15. EPA has promulgated regulations at 40 C.F.R. § 122.26 to implement CWA Section 402(p). These regulations contain comprehensive NPDES permit application requirements concerning the MS4’s legal authority to develop and implement control programs to prevent illicit discharges to municipal storm sewers, 40 C.F.R. § 122.26(d)(2)(i), and the MS4’s proposed storm water management program to reduce and monitor pollutants in storm sewer discharges from industrial and other sources to the MEP, 40 C.F.R. § 122.26(d)(2)(iv). These application requirements in turn provide the framework for MS4 NPDES permit requirements.

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

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

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

RESPONDENT’S NPDES PERMIT REQUIREMENTS

19. Respondent’s storm sewer discharges are regulated under NPDES Permit No. CAS0084077/ Order No. R5-2004-0136 (the “MS4 Permit”), which was adopted by the California Regional Water Quality Control Board, Central Valley Region (“Regional Board”),
20. MS4 Permit Part A.3 prohibits discharges containing pollutants that have not been reduced to the MEP. MS4 Permit Section C.1 and Section C.5(d) require Respondent to comply with the MEP standard by developing and implementing a Storm Water Management Program ("SWMP") that has been approved by the Regional Board and includes, without limitation, specified programs pertaining to the identification and enforcement of Best Management Practices ("BMPs") for discharges from construction activities, commercial and industrial facilities and municipal operations, development standards, and compliance monitoring and reporting. MS4 Permit Section C.5(a) further requires Respondent to submit an Annual Work Plan listing the schedule for proposed activities in the upcoming fiscal year. Therefore, compliance with the MS4 Permit requires that Respondent fully implement the SWMP that was approved by the Regional Board on January 26, 2006, and all its schedules, appendices and subsequently approved revisions, and all documents incorporated by reference as part of the SWMP.

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

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

a. Project identification and review prior to construction:
   i. Under SWMP Section 2.1.1 and Respondent’s standard tenant agreement Section 7.2, construction may commence only with Respondent’s prior written consent.
   ii. Under MS4 Permit Section C.7.a.i and SWMP Section 2.1.1-2.1.2, new construction involving one acre or more of soil disturbance must also have a Storm Water Pollution Prevention Plan (“SWPPP”)/Construction Work Plan approved by Respondent prior to commencing construction.

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

c. Progressive Enforcement: Under MS4 Permit Section C.3.e as implemented through SWMP Section 2.5, “[i]f visual observations or monitoring results identify violations of the project’s SWPPP or the Port’s water quality objectives,” Respondent will “require corrective action ... to address site conditions, ...
endeavor to obtain an agreement for achieving compliance with the construction
site manager, ... and subsequently re-inspect the construction site to ensure that
the violation(s) have been corrected."

Requirements for Oversight of Commercial and Industrial Facilities

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

a. **Regular inspection**: Under MS4 Permit Section C.8.b and SWMP Section 3.2.1,
   Respondent must conduct inspection once per year to ensure effective
   implementation of BMPs to the MEP and tenant agreement compliance.

b. **Progressive enforcement**: Under MS4 Permit Sections C.8.c.ii.a through
   C.8.c.ii.c and SWMP Section 3.3, Respondent must implement a progressive
   enforcement policy that includes: conducting a follow-up inspection within two
   weeks of the initial inspection; taking enforcement actions if failure to control
   sources of pollution discharges continues after the follow-up inspection; and
   maintaining records of all enforcement-related efforts.

Municipal Operations Program Requirements

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

a. **Pesticide Application Protocol for Landscape and Recreational Facilities
   Management**: Under MS4 Permit Section C.9.f, Respondent must prepare and
b. implement a standardized protocol for routine and non-routine application of pesticides, herbicides (including pre-emergents), and fertilizers that, among other things, requires proper storage practice and regular inspection of storage areas. Respondent’s standardized protocol is set forth in Appendix E of the SWMP.

c. **Maintenance and Operation of Catch Basins and Sumps:** Under MS4 Permit Section C.9.g, Respondent’s SWMP must specify maintenance procedures for catch basins and sumps, including but not limited to: an inspection and cleaning schedule, record keeping of cleaning and overall quantity of waste removed, and proper disposal of removed waste. Respondent’s maintenance procedures are set forth in Appendix F of the SWMP.

d. **Maintenance of Streets and Roads:** Under MS4 Permit Section C.9.h, Respondent must “designate appropriate sweeping frequencies for streets, material handling and storage areas, and docks within its jurisdiction.” Pursuant to this requirement, SWMP Section 4.8 states that Respondent is to “operate a street sweeper that maintains streets, roads, material handling and storage areas, and docks as part of normal daily operations.”

e. **Operation and Maintenance of East Complex Retention Basin:** Under MS4 Permit Section C.9.i, Respondent must “prepare and implement guidelines for operating and maintaining retention basins within its jurisdiction” with specified minimum elements, and notify the Regional Board within two weeks of evidence of berm seepage. Pursuant to the guidelines prepared by Respondent in Appendix G of the SWMP, Respondent is to inspect the East Complex Retention Basin once a month during the dry season and once a week during the wet season,” and to inspect for “structural integrity during the dry season and from structural integrity and seepage during the wet season.”
Development Standards Program Requirements

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

a. Under MS4 Permit Section C.13, Respondent must implement the DSP within three months of its approval by the Regional Board.

b. Under MS4 Permit Section C.14, Respondent must review and condition for compliance with the Development Standards ("DS") all Priority Development Projects; i.e., all new development projects and all "significant redevelopment" projects that fall within one of the seven priority development project categories enumerated in MS4 Permit Section C.14.a.

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

Toxicity Monitoring Requirements

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

a. Under MRP Section II.H, Respondent must conduct short-term chronic toxicity testing at the downstream receiving water monitoring stations (Station ID Nos. R-2, R-4 and R-5), the West Complex pump station (Station ID No. WC), and the East Complex Retention Basin twice during the five-year permit term and for the
same three storm events for which receiving water and urban runoff are monitored.

If toxicity is detected at a given monitoring station, Respondent must continue the
toxicity testing and Toxicity Identification Evaluations (TIE) until the nature and
cause(s) of the toxicity are defined.

b. Under MRP Section III.D, Respondent must conduct all sampling, sample
preservation, and analyses according to the test procedures under 40 C.F.R. Part
136, unless other test procedures have been specified in the MS4 Permit.

Therefore, for toxicity testing, Respondent must follow the sample integrity
protocol, test acceptability criteria, and quality assurance and quality control
(QA/QC) measures set forth in EPA’s most current (i.e. 2002) Part 136 toxicity
test procedures. Furthermore, under SWMP Section 7.3, Respondent is to
perform QA/QC in accordance with procedures established in its Quality
Assurance Plan for Sample Collection and Analysis appended to its Annual
Monitoring Work Plan.

DESCRIPTION OF RESPONDENT'S COMPLIANCE DEFICIENCIES

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

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

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

a. **Failure to conduct proper project identification and review prior to construction:**
   Respondent has failed to review the SWPPPs of all construction and redevelopments sites with one acre or more disturbed area prior to the commencement of construction. For instance, Respondent did not review the 11-acre Inland Cold Storage construction site until after construction had begun.

b. **Failure to inspect for BMP implementation and tenant agreement compliance:**
   Respondent has failed to ensure that construction sites on its premises use adequate source control and structural BMPs. For instance, EPA inspectors observed during the audit that various parts of the Pacific Ethanol and Central California Traction sites either lacked BMPs or had inadequate BMPs.

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

Deficiencies in Oversight of Commercial and Industrial Facilities

31. As more fully set forth in Section 5.1 of the Audit Report, Respondent has not complied with MS4 Permit Sections C.3 and C.8 requirements to adequately exercise enforcement
authority over its commercial and industrial tenants:

a. **Failure to demonstrate inspection frequency:**

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

b. **Failure to conduct follow-up inspections:**

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

**Deficiencies in Municipal Operations Program**

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

   a. provide its staff adequate training on the SWMP and the standardized pesticide application protocol set forth in Appendix E of the SWMP, which requires proper cover and containment of pesticide storage areas on its premises; and

   b. conduct regular inspection of pesticide storage areas on its premises.

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

   a. document catch basin and sump cleaning, including but not limited to the amount of material removed during cleaning as required by MS4 Permit Section C.9.g.ii and the SWMP, Appendix F; and

   b. demonstrate compliance with the annual inspection and cleaning schedule specified in SWMP Section 1.2.4 and Annual Work Plan 2006–2007.

34. **Maintenance of Streets and Roads:** As more fully set forth in Section 2.3.3 of the Audit
Report, Respondent has not complied with MS4 Permit Section C.9.h. requirements to implement SWMP Section 4.8, in that, instead of sweeping streets, roads or other municipal areas as part of normal daily operations, Respondent did so allegedly on an as-needed basis. Observations made during the audit indicated, however, that most streets and roads lacked adequate sweeping.

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

a. Failure to conduct regular inspections:

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

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

Deficiencies in Development Standards Program

36. As more fully set forth in Section 2.5 of the Audit Report, Respondent has not complied with MS4 Permit Sections C.13 and 14 requirements to adequately implement the procedures of SWMP Section 6.0 and the approved DSP. Respondent lacked a structured program to ensure adequate coordination either externally with the City of Stockton, which maintains construction
permitting authority within Respondent’s jurisdiction but does not notify Respondent of permit approvals, or internally among its three organizational entities with authority over land development process. As a result, Respondent could not identify all the Priority Development Projects under MS4 Permit Section C.14.a, or ensure that their project plans are adequately conditioned and implemented for DS compliance. For instance, at the time of the EPA’s March 2008 audit, Respondent had identified only two Priority Development Projects: A-Plus Materials Recycling Inc. and the Inland Cold Storage construction site, both in the East Complex. There was no prior review and approval of the Inland Cold Storage site for DS compliance because, as described in paragraph 30.a above, Respondent only identified the project after land-disturbing activities had commenced. Furthermore, Respondent has failed to review or condition for DS compliance at least the following Priority Development Projects in the West Complex: Daggett Road Project, Lowe’s Distribution Center, and Ferguson Distribution Center.

**Deficiencies in Toxicity Monitoring and Reporting**

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

a. failure to collect samples at the West Complex pump station or the East Complex Retention Basin;

b. failure to comply with either the 1994 or the 2002 EPA toxicity test methods;

c. failure to store samples at the proper temperature (samples were found to be stored at a temperature of 0-6 C);

d. failure to meet the required test acceptability criteria in EPA’s 1994 or 2002 toxicity test methods, resulting in invalid test results;

e. failure to conduct an inadequate Toxicity Identification Evaluation as required; and
f. failure to adequately interpret and report toxicity test results in its 2005 annual report.

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

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

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

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

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

VI. WORK TO BE PERFORMED

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

   a. a list of all active construction sites, regardless of size, within Respondent's jurisdiction, including without limitation the project name, location, and size of disturbed area of each construction site;

   b. a list of all active construction sites, regardless of size, inspected by Respondent,
including the inspection date;

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

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

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

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

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

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

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

45. Municipal Operations Program:

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

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

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

c. **Maintenance of Streets and Roads:**
   
   i. No later than ten (10) business days after the effective date of the AOC, Respondent shall submit copies of its sweeping logs for streets and roads within its jurisdiction for the period of August 1, 2008 to July 31, 2009.
   
   ii. For the period of October 1, 2009 through September 30, 2010, Respondent shall use GPS technology to track all areas swept.
   
   iii. No later than **November 1, 2010**, Respondent shall provide GPS documentation of areas swept for the period of October 1, 2009 through September 30, 2010.

d. **Maintenance and Operation of East Complex Retention Basin:**
   
   i. No later than ten (10) business days after the effective date of the AOC, Respondent shall submit copies of documentation that Respondent inspected the retention basin at the frequencies (monthly during the dry season and weekly during the wet season) for the period of August 1, 2008 to July 31, 2009.
   
   ii. No later than **July 1, 2010**, Respondent shall submit a geological and engineering assessment report, along with any recommended repairs, for the retention basin.
46. **Development Standards Plan:** No later than ten (10) business days after the effective date of the AOC, Respondent shall provide a list of all projects that qualify as Priority Development Projects (i.e., all new development projects and all significant development projects that fall within the categories enumerated in MS4 Permit Section C.14.a), along with documentation of DS approval and BMP selection for each such Project for the period of August 1, 2008 to July 31, 2009.

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

   a. **Toxicity Sampling Locations and Procedures:**

      i. Respondent shall collect toxicity samples at receiving water monitoring stations R-1 through R-5, the West Complex pump station (Station WC), and the East Complex Retention Basin (when it discharges to the San Joaquin River) for four storm events for which receiving water and urban runoff are monitored, each preceded by seven (7) days of dry weather. Each monitoring event shall be separated by at least 20 days. Respondent shall target the first storm event that produces a rainfall of at least 0.25 inches.

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

      iii. Respondent shall collect sufficient sample volume to perform the required toxicity tests, and conduct any potential Toxicity Identification Evaluation.
(TIE) as required in c. below.

b. **Toxicity Testing Protocols:**

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

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

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

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

2. a static renewal toxicity test with the daphnid, *(Ceriodaphnia dubia)* *(Survival and Reproduction Test Method 1002.0*-daily observations for mortality to calculate toxicity for survival and reproduction endpoints of the test)*; and
3. a static non-renewal toxicity test with the green alga, *Selenium 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
requirements under paragraph c.i below.

c. **TIE Protocols**

i. Upon detection of statistically significant chronic toxicity, as defined in paragraph b.iv. above, Respondent shall perform an TIE to identify the causes of toxicity using the same species and test method and according to the following U.S. EPA test method manuals: *Toxicity Identification Evaluation: Characterization of Chronically Toxic Effluents, Phase I (1992)* EPA/600/6-91/005F; *Methods for Aquatic Toxicity Identification Evaluations, Phase II Toxicity Identification Procedures for Samples Exhibiting Acute and Chronic Toxicity (1993)*, EPA/600/R-92/080; and *Methods for Aquatic Toxicity Identification Evaluations, Phase III Toxicity Confirmation Procedures for Samples Exhibiting Acute and Chronic Toxicity (1993)*, EPA/600/R-92/081.

ii. Respondent may utilize a TIE Prioritization Metric to rank sites for TIEs.

iii. If Respondent discovers new toxicants in any of the toxicity testing, the Respondent will perform additional toxicity tests as directed by EPA or the Regional Board.

iv. In consultation with EPA and the Regional Board, Respondent has retained a neutral third party, Sierra Foothill Laboratories, to perform any necessary TIE.

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

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

ii. Respondent shall use staff or consultants with experience in conducting TREs for stormwater applications.

iii. No later than 90 days from the detection of statistically significant chronic toxicity in a sample as defined in paragraph b.iv above, Respondent shall submit to EPA and the Regional Board for approval an TRE Corrective Action Plan that shall, at a minimum, discuss the following items:

1. the potential sources of pollutant(s) causing toxicity;
2. recommended BMPs to reduce the pollutant(s) causing toxicity;
3. proposed post-construction control measures to reduce the pollutant(s) causing toxicity for new development and re-development projects; and
4. proposed follow-up monitoring to demonstrate that toxicity has been removed.

iv. Upon approval by EPA and the Regional Board, Respondent shall implement the TRE Corrective Action Plan and take all reasonable steps to eliminate toxicity.

v. If TRE implementation for a specific pollutant coincides with Total Maximum Daily Load ("TMDL") implementation for the pollutant, the efforts shall be coordinated wherever possible. (For instance, if a TMDL for diazinon is being implemented at the same time a TRE for diazinon is required, the efforts shall be coordinated to the extent practicable to avoid overlap). If applicable, Respondent may use the same TRE for the same toxic pollutant or pollutant class in different watersheds or basins.
e. **Toxicity Testing Notification and Reporting Requirements:**

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

1. a written explanation, with documentation, of the Triggering Event; and

2. a plan, including measures to be taken and the timetable for implementing the measures, to correct, prevent or avoid the circumstances giving rise to the Triggering Event.

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

1. Within 45 days of completion of toxicity tests, Respondent shall provide a copy of all sample documents, including chain of custody forms, the toxicity test results and all associated laboratory documents.

2. Within 30 days of completion of the TIE, Respondent shall provide a copy of the TIE results and all associated laboratory documents.

3. Within 30 days of completion of TRE, Respondent shall provide a copy of the TRE results and all associated laboratory documents.

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

1. a full laboratory report for all toxicity testing pursuant to this Order;

2. the dates of sample collection and initiation of each toxicity test;

3. a summary of the reported toxicity test results according to the test methods manual chapter on report preparation and test review;
4. all results for urban runoff parameters monitored concurrently with the toxicity test(s);
5. TIE Phase testing (Phase I, Phase II, and Phase III) conducted for each monitoring station; and
6. the development, implementation, and results for each TRE Corrective Action Plan.

VII. SUBMISSIONS AND NOTIFICATIONS

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

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

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

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

Team Leader, Stormwater and Wetlands Enforcement Team
CWA Compliance Office (WTR-7)
U.S.EPA Region IX
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
VIII. DELAY OF PERFORMANCE/FORCE MAJEURE

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

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

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

54. Respondent shall have the burden of demonstrating that the actual or anticipated delay
has been or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that Respondent did exercise or is using its best efforts to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this section.

IX. FAILURE TO COMPLY WITH AOC

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

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

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

X. SCOPE OF THE AOC

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

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

60. This AOC shall in no way affect EPA’s authority to enter, inspect, sample or monitor compliance under any law, permit, court order or agreement, and Respondent shall use its best
efforts to arrange for access by EPA or its authorized representatives for determining compliance with this AOC. For purposes of this AOC, EPA’s authorized representatives shall include all EPA employees and contractors, all Regional Board employees and contractors, and such other persons as EPA may designate.

XI. MODIFICATION

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

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

XII. SEVERABILITY

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

XIII. EFFECTIVE AND TERMINATION DATES

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

65. Upon compliance with all requirements pursuant to Section VI of this AOC, Respondent may submit to EPA a Request for Termination, together with all necessary supporting documentation. Following receipt of Respondent’s Request for Termination, if EPA determines that Respondent has satisfactorily complied with the requirements for termination, EPA will issue a notice terminating the AOC. This AOC is deemed to be terminated if EPA
does not communicate with Respondent, either verbally or in writing, concerning Respondent's compliance with the AOC within 90 days of receipt of Respondent's Request for Termination.

IT IS SO AGREED AND ORDERED:

For U.S. Environmental Protection Agency
Region 9

Dated: 4 December 2009

For Stockton Port District

Dated: Dec 3, 2009