

STATE WATER RESOURCES CONTROL BOARD

In the matter of:

**MR. CHARLES GRACE**

)  
) **ORDER WQ 2011-0016-EXEC**

) Imposing Operator Certification Discipline  
) Pursuant to Settlement Agreement  
)  
)  
)

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INTRODUCTION:

This Stipulated Order imposing Operator Certification Discipline (hereafter "Stipulated Order") is entered into by and between the Director of the Office of Enforcement of the State Water Resources Control Board ("State Water Board"), and Mr. Charles Grace (collectively "Parties," and individually, a "Party") and is presented to the State Water Board's Executive Director for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

RECITALS:

WHEREAS, Mr. Charles Grace is certified by the State Water Board as a Grade V wastewater treatment plant operator.

WHEREAS, Mr. Grace, at certain times, was a supervising operator of the San Simeon Wastewater Treatment Plant ("WWTP") and the now closed Santa Paula WWTP.

WHEREAS, the Office of Enforcement issued a Letter of Proposed Disciplinary Action on January 12, 2009, alleging that Mr. Grace engaged in certain conduct between approximately 2004 and 2006 while employed as an operator at the San Simeon and Santa Paula WWTPs, which the Office of Enforcement contended subjected him to discipline pursuant to Water Code section 13627(e) and California Code of Regulations, title 23, section 3710.

WHEREAS, Mr. Grace appealed the Office of Enforcement's Letter of Proposed Disciplinary Action on February 12, 2009. The Parties continued to engage in the appeals process described in California Code of Regulations, title 23, section 3711, and the Division of Financial Assistance issued its Final Division Decision on December 10, 2009. On January 15, 2010, Mr. Grace timely filed with the State Water Board a Petition For Review of the Final Division Decision.

WHEREAS, the Parties have engaged in settlement negotiations and agree to settle the matter without further administrative or civil litigation and to avoid continuing to incur costs and expenses, and by presenting this Stipulated Order to the State Water Board for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The Office of Enforcement believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the specific violations alleged in the Office of Enforcement's initial Letter of Proposed Disciplinary Action, except as provided in the Stipulated Order, and that this Stipulated Order is in the best interest of the public.

THE DIRECTOR OF THE STATE WATER BOARD OFFICE OF ENFORCEMENT AND  
MR. CHARLES GRACE HEREBY STIPULATE AS FOLLOWS:

- A. The Parties agree that upon execution by the Executive Director (which date is referred to below as the "Effective Date"), this Stipulated Order represents a final and binding resolution and settlement, as of the Effective Date, of all claims, violations, or causes of action asserted by the Office of Enforcement in the Letter of Proposed Disciplinary Action or as part of the appeals process or which could have been asserted by the Office of Enforcement, based on the specific facts alleged in the Letter of Proposed Disciplinary Action and in the appeals process.
- B. Upon the Effective Date, Mr. Charles Grace shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against the State Water Board, including its officers, agents, directors, employees, contractors, subcontractors, attorneys, representatives, predecessors-in-interest, and successors and assigns for any and all claims or causes of action, of every kind and nature whatsoever, in law and equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which arise out of, or are related to, this action. Notwithstanding the foregoing, nothing contained in this Order shall be deemed to preclude Mr. Grace from opposing and raising all applicable defenses and objections with respect to any future claims, proceedings, or actions of any kind by the State Water Board, except as described in Paragraph G, below.
- C. The Parties agree to support, advocate for, and promote the Stipulated Order before the Executive Director.
- D. The Parties covenant and agree that they will not contest the Stipulated Order before the State Water Board, or any court.
- E. This Stipulated Order shall not constitute evidence of, or be construed as, a finding, adjudication, or acknowledgment of any fact, law or liability, nor shall it be construed as admission of violation of any law, rule, or regulation. In that regard, Mr. Grace expressly denies the allegations in the Letter of Proposed Disciplinary Action and/or which have been made by the Office of Enforcement as part of the appeals process, the findings and determinations in the Final Division Decision and any allegations made, contained or referred to in this Stipulated Order and further expressly denies that there is any basis for disciplinary action against him. He further disputes and denies that he willfully or negligently allowed a violation of waste discharge requirements or permits for the WWTPs or failed to use good judgment or care in their operation. He is willing to enter into this Stipulated Order, however, to avoid the expense and uncertainty of further litigation. This Stipulated Order may constitute evidence in actions seeking compliance with this Order. For a period of two years after the Effective Date, this Stipulated Order may also be used as evidence of a prior enforcement action in any future enforcement action or disciplinary proceeding initiated by the State Water Board against Mr. Grace.
- F. The Parties agree that:
1. Within thirty (30) days of the Effective Date of this Order, Mr. Grace will remit, by check, THIRTY THOUSAND DOLLARS (\$30,000.00) to the State Water Board, payable to the *State Water Pollution Cleanup and*

*Abatement Account*, and shall indicate on the check the number of this Stipulated Order. Mr. Grace shall send the original signed check to the State Water Resources Control Board, Division of Administrative Services, P.O. Box 1888, Sacramento, California 95812-1888, with copies sent to: Mark Bradley, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento California, 95812, and David Boyers, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento California, 95812. The Parties agree that this payment serves as a sanction imposed pursuant to Government Code section 11415.60, subdivision (c).

2. As of the Effective Date, a letter of reprimand, in the form attached hereto as Exhibit A ("Letter of Reprimand"), will be placed in Mr. Grace's Office of Operator Certification file and will remain in such file for a period of two years. The Letter of Reprimand may be used as evidence of a prior enforcement action in any future enforcement action or disciplinary proceeding initiated by the State Water Board against Mr. Grace for a period of two years, beginning on the Effective Date. The State Water Board represents and agrees that, as of the date this Stipulated Order is executed by the Director of the Office of Enforcement, there is no other enforcement action or discipline pending or contemplated against Mr. Grace by the Office of Enforcement. Upon the expiration of the two year period, the Office of Operator Certification shall remove the Letter of Reprimand from Mr. Grace's Office of Operator Certification file and shall notify him in writing that it has done so.
3. Mr. Grace will take the Grade V Certification Examination in October 2011 (October 2011 Exam). If Mr. Grace passes the October 2011 Exam, he will retain his Grade V Certificate. If Mr. Grace does not pass the October 2011 Exam, however, he will surrender his Grade V Certificate to the Office of Operator Certification within 10 business days of receiving notice that he did not pass the October 2011 Exam, and Mr. Grace will be issued a Grade III Certificate. Mr. Grace will be reissued a Grade V Certificate after passing a subsequent Grade V Certification Examination. In the event of illness or other extenuating circumstances that prevent Mr. Grace from taking the October 2011 Exam, Mr. Grace will be permitted to take the Grade V Certification Examination in April 2012 (April 2012 Exam). If Mr. Grace does not pass the April 2012 Exam, he will surrender his Grade V Certificate to the Office of Operator Certification within 10 business days of receiving notice that he did not pass the April 2012 Exam, and Mr. Grace will be issued a Grade III Certificate. Mr. Grace will be reissued a Grade V Certificate after passing a subsequent Grade V Certification Examination. In the event of illness or other extenuating circumstances that prevent Mr. Grace from taking the April 2012 Exam, Mr. Grace will surrender his Grade V Certificate to the Office of Operator Certification within 10 days of the date of the April 2012 Exam, and Mr. Grace will be issued a Grade III Certificate. Mr. Grace will be able to regain his Grade V Certificate only after passing a subsequent Grade V Certification Examination. All application and examination fees associated with the requirements in this Paragraph are not waived and shall be borne by Mr. Grace.

- G. In the event that this Stipulated Order does not take effect because it is not approved by the Executive Director, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the State Water Board on the Petition to determine whether to assess operator certification discipline for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to: 1) objections related to prejudice or bias of any of the State Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the State Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing on the Petition in this matter; or 2) laches or delay or other equitable defenses based on the time period that the Stipulated Order may be subject to administrative or judicial review.
- H. Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
- I. Each Party having incurred investigative, attorneys' fees, expert witness fees and other costs, each Party shall pay his or its own attorneys' fees, expert witness fees and costs, and all costs of litigation and investigation to date.
- J. This Order shall not be construed against the Party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against either Party.
- K. This Order shall not be modified by either of the Parties by oral representation made before or after the execution of this Order. All modifications must be made in writing and approved by the State Water Board.
- L. This Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

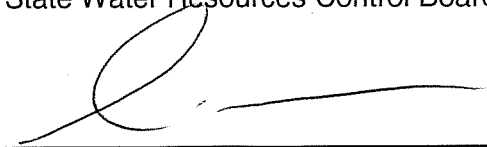
IT IS SO STIPULATED



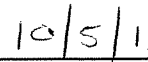
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Reed Sato  
Director  
State Water Resources Control Board, Office of Enforcement



\_\_\_\_\_  
Date



\_\_\_\_\_  
Charles Grace




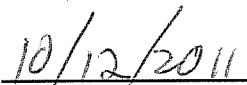
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HAVING CONSIDERED THE ALLEGATIONS DESCRIBED ABOVE AND THE PARTIES' STIPULATIONS, THE STATE WATER BOARD FINDS THAT:

1. Issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.
2. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the State Water Board, and capitalized terms used in this Order and not otherwise defined shall have the same meaning as in the Stipulation.

IT IS HEREBY ORDERED, pursuant to section 11415.60 of the California Government Code

  
\_\_\_\_\_  
Thomas R. Howard  
Executive Director

  
\_\_\_\_\_  
Date



EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

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State Water Resources Control Board

**EXHIBIT A**

September 30, 2011

Letter of Reprimand

This Letter of Reprimand is issued to Mr. Charles Grace by the State Water Resources Control Board Office of Enforcement in accordance with Order WQ-2011-0016-EXEC Imposing Operator Certification Discipline Pursuant to Settlement Agreement (Stipulated Order), after an investigation and upon a determination by the Office of Enforcement, that Mr. Grace engaged in the actions listed below while serving as a wastewater treatment plant operator during the period from approximately 2004 to 2006:


1. Willfully or negligently allowing a violation of waste discharge requirements for the San Simeon Wastewater Treatment Plant ("WWTP") by not following industry-wide standards of care related to the application and control of chlorine residual.
2. Failing to use good care or judgment in the operation of the San Simeon WWTP or willfully or negligently allowing a violation of waste discharge requirements for the San Simeon WWTP relating to sampling and reporting frequency.
3. Failing to use good care or judgment in the operation of the San Simeon WWTP or willfully or negligently allowing a violation of waste discharge requirements for the San Simeon WWTP relating to coliform sampling location.
4. Failing to use good care or judgment in the operation of the Santa Paula WWTP or willfully or negligently allowing a violation of waste discharge requirements for the Santa Paula WWTP by not following industry-wide standards of care related to the application and control of chlorine residual.

A more detailed description of the actions alleged above is contained in the Office of Enforcement Disciplinary Action Letter dated January 12, 2009.

A copy of this Letter of Reprimand will be placed in Mr. Grace's Office of Operator Certification file. It shall remain in that file for a period of two years from the Effective Date of the Stipulated Order.

**Acknowledgment of Receipt**

I, Charles Grace, acknowledge receipt of this written reprimand. I dispute and do not admit that there is any basis for the discipline, and entered into the Stipulated Order on that basis. I understand that a copy of this reprimand will be placed in my Office of Operator Certification file for a period of two years, beginning on the date that Order WQ 2011-0016-EXEC takes effect and that, during that two year period, the reprimand may be used as evidence of a prior enforcement action in any future enforcement action or disciplinary proceeding initiated by the State Water Resources Control Board against me.

  
\_\_\_\_\_  
Charles Grace

10/5/11  
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Date