

1 **BEFORE THE DIRECTOR OF THE**
2 **DEPARTMENT OF PESTICIDE REGULATION**
3 **STATE OF CALIFORNIA**

4 In the Matter of:

STIPULATED

5 Waterworks Aquatic Management, Inc.
6 4120 Douglas Blvd, Suite 306-353
7 Granite Bay, CA 95746-5936

SETTLEMENT AGREEMENT

Case No.: 21-0001

8 Pest Control Business-Main, License No.
9 37461
10 and

11 Kevin M. Towle, Qualified Applicator License
12 No. 11645

13 Respondents/
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21 The California Department of Pesticide Regulation ("the Department") and Waterworks
22 Aquatic Management, Inc. ("Waterworks") a California corporation, its owner, Kevin M. Towle,
23 all collectively referred to as "the Parties" enter into this Stipulated Settlement Agreement. As
24 used herein, Waterworks shall include any subsidiaries or affiliated entities, and their
25 predecessors, successors and assigns. The Parties hereby enter into this stipulated settlement
Agreement, DPR No. 21-0001 ("DPR Stipulated Settlement Agreement" or "Stipulated
Settlement Agreement.")

1. Waterworks is a licensed pest control business with a Pest Control Business-Main License issued by the Department (PCM License No. 37461 [expires Dec. 31, 2023].) At all times relevant, Waterworks' license was current.

- 1 2. Waterworks' mailing address is 4120 Douglas Blvd, Suite 306-353, Granite Bay, CA
2 95746-5936. Waterworks' office location is 6216 Main Avenue, Suite B1, Orangevale,
3 CA 95662.
- 4 3. Kevin M. Towle is the owner of Waterworks. Kevin M. Towle holds a Qualified
5 Applicator License, Category F (Aquatic Pest Control) issued by the Department (QAL
6 License No. 11645 [expires Dec. 31, 2023].) At all times relevant, Mr. Towle's license
7 was current.
- 8 4. The term Licensees refers collectively to Waterworks and Mr. Towle.
- 9 5. The Department must ensure the proper, safe, and efficient use of pesticides and oversees
10 the administration and enforcement of Divisions 6 and 7 of the California Food and
11 Agricultural Code governing the sale and use of pesticides (Food & Agr. Code, § 11501.)
12 This includes licensing individuals and companies engaged in pest control under Food
13 and Agricultural Code sections 11401 et seq. and Title 3 of the California Code of
14 Regulations (3 CCR), section 6000 et seq.
- 15 6. The Department finds that, on the following occasions, one or both of the Licensees
16 violated California pesticide law:
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18 El Dorado County Violations
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20 On August 31, 2021, an inspector from the El Dorado County Agricultural
21 Commissioner's office conducted an inspection of a pesticide application conducted by
22 Licensees and found the following violations:
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- 1 a. Licensees violated 3 CCR 6726 related to emergency medical care posting. No
2 emergency posting displayed or available on vehicle utilized by Licensees.
3 Applicators did know the location of nearest hospital.
- 4 b. Licensees violated 3 CCR 6678 related to service container labelling. Backpack
5 sprayers utilized in the application both containing pesticide products were not
6 triple-rinsed as required and pesticide products were left in the bed of the work
7 truck without service container labeling.
- 8 c. Licensees violated 3 CCR 6738 related to personal protective equipment.
9 Pesticide applicator was not wearing gloves while handling pesticide containers
10 and performing the pesticide application as required.
- 11 d. Licensees violated Food and Agricultural Code, section 12973 for applying a
12 pesticide in conflict with its registered label related to applicator personal
13 protective equipment.
- 14 e. Licensees violated Food and Agricultural Code, section 12973 for applying a
15 pesticide in conflict with its registered label related to the pesticide application
16 rate for the use site.
- 17 f. Licensees violated 3 CCR 6670 related to leaving service containers containing
18 pesticide products unsecured and unattended in the work vehicles.
- 19 g. Licensees violated 3 CCR 6614 related to the protection of persons, animals or
20 property related to their application of pesticides such that pesticides products had
21 the potential to drift onto nontarget property and bystanders not involved in the
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1 application, including the El Dorado County Agricultural Commissioner inspector
2 and bystanders consuming food.

3 Placer County Violation

4 On December 19, 2019, File No. 003-ACP-PLA-19/20, a Notice of Proposed Action was
5 issued by the Placer County Agricultural Commissioner. Licensees violated Food and
6 Agricultural Code section 11732 for advertising, soliciting and/or performing pest control
7 work for hire in Placer County in 2018 and 2019 without having registered with the
8 Placer County Agricultural Commissioner.
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10 Solano County Violations

11 On July 26, 2021, the Solano County Agricultural Commissioner / Sealer of Weights and
12 Measures issued Violation Notice No. 101-INV-48-20210524-012. The Violation Notice
13 provide that Licensees violated:

- 14 a. Food and Agricultural Code section 11732 for advertising, soliciting and/or
15 performing pest control work for hire in Solano County in 2021 without having
16 registered with the Solano County Agricultural Commissioner;
- 17 b. Licensees violated 3 CCR 6630 for failing to keep each ground rig, service rig
18 and similar equipment used for mixing or applying pesticides conspicuously and
19 legibly marked with either the businesses' name, or with "Licensed Pest Control
20 Operator," "Fumigation Division," "Licensed Fumigator," or substantially similar
21 wording and the pest control operator license number of the person or firm. The
22 markings shall be large enough to be readable from a distance of 25 feet;
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1 c. Licensees violated 3 CCR 6724, subdivisions (a) and (d) related to the training of
2 employees who handle pesticides and the employer's responsibility to retain the
3 required training records.

4 d. Licensees acted as an agricultural pest control advisor by offering a treatment
5 recommendation without an agricultural pest control advisor's license, in violation
6 of Food and Agricultural Code section 12051.

7 Sacramento County Violation

8 On October 30, 2021, the Sacramento County Agricultural Commissioner / Sealer of
9 Weights and Measures issued a Notice of Proposed Action, File No. ACP-SAC-20/21-
10 015 for violations of 3 CCR section 6626, for Licensee's failure to timely submit a
11 pesticide use report and for a violation of Food and Agricultural Code, section 11732,
12 whereby Licensee advertised, solicited and/or performed pest control work in Sacramento
13 County without having registered with the Sacramento County Agricultural
14 Commissioner. The NOPA was based on an inspection conducted on September 3, 202 at
15 6216 Main Ave, Suite B3 in Orangevale, California where the Commissioner issued
16 Notice of Violation No. DJS-110-34-20-M00A-010.

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18 7. On April 30, 2018, a *Permanent Injunction and Final Judgment Pursuant to Stipulation*
19 *Between Plaintiff and Settling Defendant Kevin M. Towle and Waterworks Aquatic*
20 *Management, Inc.* ("2018 Stipulated Final Judgment") was entered in Sacramento
21 Superior Court in *the People of the State of California v. Kevin M. Towle et al.*, Case
22 Number 34-2018-00231930 ("Prior Case.") The named defendants in that case included
23 Licensees. The Stipulated Final Judgment in the Prior Case included mandatory and
24 prohibitory injunctions. In relevant part, the terms of the injunctions included: 1)
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1 paragraph 4.1: “Defendants shall not violate any of the laws and/or regulations detailed in
2 the First, Second, Third and Fourth Causes of Action in the complaint;” 2) paragraph 4.2
3 (a): “Defendants shall obtain all legally required permits and licenses prior to operating
4 any business;” and 3) paragraph 4.2 (e): “Defendants shall contract out training required
5 for employees required under the Food and Agricultural Code or the Health and Safety
6 Code.”
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8 8. Licensees understand and agree that the violations in Paragraph 6 are a violation the 2018
9 Final Stipulated Judgement.

10 9. As a result of the above-referenced Prior Case and subsequent violations, Licensees have
11 entered into a Permanent Injunction and Final Judgment Pursuant to Stipulation Between
12 Plaintiff and Defendants with the People of the State of California, Sacramento County
13 Office of the District Attorney on May 24, 2022 (“2022 Stipulated Settlement
14 Agreement.”) The 2022 Stipulated Settlement Agreement is incorporated by reference as
15 if fully set forth herein.
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17 10. As a result of the above-referenced Prior Case and subsequent violations involving the
18 Licensees, the Department has determined that it will take action to revoke and suspend
19 Licensees' licenses or take other measures designed to obtain consistent future
20 compliance with all applicable pesticide laws and regulations.

21 11. In lieu of the Department bringing a formal licensing suspension and revocation action,
22 the Parties agree by this DPR Stipulated Settlement Agreement to stay a revocation and
23 suspension action and resolve this matter consistent with the terms herein.
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2 **THEREFORE**, the Parties agree as follows:

3 12. Licensees have carefully read, fully discussed with counsel, and understand the effect of
4 the DPR Stipulated Settlement Agreement.

5 13. Licensees understand and agree that the violations in Paragraphs 6 and 7 above, if proven
6 at hearing, constitute cause for imposing discipline upon Licensees. Licensees agree that,
7 at a hearing, the Department would have an opportunity to and could possibly establish a
8 factual basis for the violations in Paragraphs 6 and 7 above, and Licensees hereby, and in
9 consideration of the DPR Stipulated Settlement Agreement, give up their right to contest
10 those violations.
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12 14. Licensees agree to a probationary period of twenty-four (24) months commencing on the
13 effective date of the DPR Stipulated Settlement Agreement. During the probationary
14 period, the Department and county agricultural commissioners will continue to monitor
15 Licensees and may conduct headquarter and other inspections in order to confirm
16 Licensees' compliance with the laws and regulations governing the sale, handling and
17 application of pesticides.
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19 15. Licensees must comply with all of the terms of the 2022 Stipulated Agreement in in
20 *People v. Kevin M. Towle and Waterworks Aquatic Management, Inc., Sacramento*
21 *Superior Court, Case No. 34-2022-00318793*. Failure to satisfy said settlement or
22 judgment shall be deemed a violation of probation.

23 16. Licensees agree to comply with all state and local laws and regulations relating to pest
24 control activities within the borders of the State of California. Specifically, Licensees
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1 agree to register and maintain registration with the county agricultural commissioner in
2 each county in which it conducts pest control operations in the State of California.

3 Licensees further agree to submit pesticide use reports, negative or otherwise, in
4 accordance with California Code of Regulations, title 3, section 6624 et seq.

5 17. Upon execution of this agreement, Licensees will provide the Department with a list of
6 all counties where they are currently registered to advertise, solicit and/or perform pest
7 control services for hire.

8 18. Within ninety (90) days of the effective date of this agreement, Licensees will provide the
9 Department with training records for each employee.

10 19. Licensee Kevin M. Towle will complete qualified applicator continuing education
11 training (“CE”) within six months of the effective date of this agreement. Such training
12 is in addition to any and all other required CE. CE shall be from a Department-approved
13 provider. Training shall be as follows: eight (8) hours of CE in Pesticide Laws and
14 Regulations education with 5 of those hours focused on pesticide safety education
15 training, which must include training on pesticide handler safety, pesticide first aid and
16 emergency response, personal protective equipment, and the training of pesticide
17 handlers. Licensees will provide the Department with the certificates of completion,
18 certifying compliance with this provision. Notification will occur as stated in Paragraph
19 26.

20 20. Within ninety (90) days of the effective date of this agreement Licensee will provide the
21 Department with a copy of their written handler training program, as mandated by 3 CCR
22 6724, subdivision (a). The written training program shall comply with the requirements
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1 of 3 CCR 6724, subdivision (b) and all other regulatory and statutory provisions related
2 to pesticide handler training.

3 21. Within 72 hours (three days) of submitting documentation to register to advertise, solicit
4 and/or perform pest control services for hire in any additional county, Licensees will
5 notify the Department. Notification will occur as stated in Paragraph 26.

6 Licensees will: (1) notify, in writing, the California Department of Pesticide
7 Regulation's (DPR) Legal Office, via email to:

8 waterworkspesticidenotice@cdpr.ca.gov, of all pesticide applications of restricted
9 materials (as defined by California Code of Regulations, Title 3, section 6400) at
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11 least 48 hours in advance, and include in such notice: (i) the name of the

12 applicator(s) conducting the application; (ii) the location of the areas to be treated;

13 (iii) the crop or commodity to be treated, or if there is no crop or commodity, the site
14 to be treated; (iv) the approximate acres to be treated; (v) the pesticide(s) to be

15 applied; (vi) the dilution, volume per acre, and dosage of the pesticide(s) to be

16 applied; (vii) the pests to be controlled; (viii) the date and approximate time the

17 intended application is to commence; and (ix) whether any portion of the target

18 treatment area is within 500 feet of each of the following that is not part of the

19 application site identified above; (a) any natural or human-made waterway, including
20 but not limited to rivers, creeks, streams, lakes, ponds, and wetlands. The notice shall

21 include the location of such feature(s), which can include a map indicating the

22 locations of such property or properties; or (b) the property boundary of any property

23 that is a sensitive site, which is defined as any property frequented by people,
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1 including, but not limited to, all property with buildings occupied by people for
2 residential or commercial purposes, such as, but not limited to, homes, apartments,
3 garages, farmworker housing, schools, daycare centers, nursing homes, hospitals,
4 parking lots, and retail stores; pedestrian sidewalks; outdoor recreational areas or
5 parks; and any other area defined as a sensitive site by the label of the pesticide(s)
6 being applied. The notice shall include the location of such feature(s), which can
7 include a map indicating the location(s) of such property or properties. This written
8 notice shall be emailed to waterworkspesticidenotice@cdpr.ca.gov; and (2) for any
9 pesticide application for which the local county agricultural commissioner's office
10 notifies Licensees at least 24 hours in advance of the application that an employee of
11 that office intends to observe the application, not conduct such an application unless
12 and until the employee of the local county agricultural commissioner's office is
13 present at the application site or informs Licensees that Licensees may proceed with
14 the application without observation.
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16 22. If, during the twenty-four (24) month probationary period, Licensees are determined by
17 the Department to have committed any new violation of California pesticide laws or
18 regulations under the jurisdiction of the Department or county agricultural commissioners
19 (the term "new violation" means a violation allegedly occurring on or after the effective
20 date of this Stipulated Settlement Agreement), or are determined by the Department to
21 have failed to comply with the terms of this DPR Stipulated Settlement Agreement or the
22 2022 Stipulated Settlement Agreement, the Department may confer with Licensees to
23 renegotiate the terms of this Stipulated Settlement Agreement or set aside this Stipulated
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1 Settlement Agreement and proceed with a formal proceedings to revoke one or more of
2 the licenses identified in Paragraphs 1, 2 and 3. Any licensing action may consider the
3 previous violations set forth in Paragraphs 6 and 7.

4 23. Licensees waive any right to a hearing in this matter under Food and Agricultural Code
5 sections 11708 or 12205, or otherwise, unless the Department decides to proceed with a
6 formal licensing proceeding, as set forth in Paragraph 22.

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8 24. In considering an application for license following a revocation, or any further licensing
9 action including Licensees, the Department may consider any and all violations set forth
10 in Paragraphs 6 and 7, violations of the 2021 Stipulated Settlement Agreement and
11 violations of this DPR Stipulated Settlement Agreement.

12 25. At least quarterly during the probation period, Licensees shall provide copies of all
13 pesticide use reports filed with County Agricultural Commissioners. Electronic copies of
14 the use reports shall be emailed to the Department no later than fifteen (15) days after the
15 end of each quarter. Quarters occur as follows: January, February, and March (Q1);
16 April, May, and June (Q2); July, August, and September (Q3); and October, November,
17 and December (Q4). The first quarterly report shall be due to the Department on or
18 before October 15, 2022. Licensee shall, upon execution of this Stipulated Settlement
19 Agreement, file with the Department's Licensing Division, and notify the Department as
20 directed in writing as directed in Paragraph 26 of the Licensee's current ownership,
21 reflecting any and all name, address or entity changes.

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23 26. Reports, records and all information required to be provided to the Department pursuant
24 to this agreement shall be sent both via email and physical mail as follows:
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1 Sara F. Dudley
2 Office of Legal Affairs
3 Department of Pesticide Regulation
4 1001 I Street
5 Sacramento, California 95812
6 Sara.dudley@cdpr.ca.gov

7 27. Communication with Licensees shall be as follows:

8 Kevin Towle
9 Waterworks Aquatic Management, Inc.
10 4120 Douglas Blvd, Suite 306-353

11 Granite Bay, CA 95746-5936
12 Darrin Gambelin
13 Downey Brand
14 455 Market Street, Suite 1500
15 San Francisco, CA 94105

16 28. Except as expressly provided in this DPR Stipulated Settlement Agreement, nothing in
17 this DPR Stipulated Settlement Agreement is intended nor shall be construed to preclude
18 the Department, county agricultural commissioners, or any state, county, or local agency,
19 department, board, or entity from exercising its authority under any law, statute, or
20 regulation. Further, nothing in this Stipulated Settlement Agreement is intended nor shall
21 be construed as a limit on the Department or county agricultural commissioners to
22 commence, subject to all applicable statutes of limitations, any future enforcement action
23 against Licensees for violations of any state and local laws and regulations relating to
24 pest control activities within the borders of the State of California, if any, not covered in
25 this DPR Stipulated Settlement Agreement. The parties agree that any known or
reasonably knowable violations by Licensees occurring prior to the effective date of this
DPR Stipulated Settlement Agreement shall not be grounds to set aside this DPR

1 Stipulated Settlement Agreement. However, in the event Licensees violate any of the
2 terms of this DPR Stipulated Settlement Agreement and the Department proceeds with a
3 formal licensing action against either Licensee, additional violations not covered by
4 Paragraphs 6 and 7 above may be used in such formal licensing action.

5 29. This DPR Stipulated Settlement Agreement constitutes the entire understanding between
6 the Parties and fully supersedes all prior written or oral agreements or negotiations,
7 express or implied, with regards to the matters set forth in this DPR Stipulated Settlement
8 Agreement.

9 30. If any provision or portion of this Stipulated Settlement Agreement is held to be invalid,
10 illegal, or unenforceable, such legality, validity, or enforceability shall not affect the
11 balance of the DPR Stipulated Settlement Agreement.

12 31. A decision by the Department to not enforce any provision of this DPR Stipulated
13 Settlement Agreement shall neither be deemed a waiver of the provision, nor in any way
14 affect the validity of this DPR Stipulated Settlement Agreement or the Department's
15 enforcement authority.

16 32. This DPR Stipulated Settlement Agreement binds the Licensees, their officers, directors,
17 agents, employees, contractors, consultants, receivers, trustees, successors and assignees,
18 subsidiary and parent corporations, and the Department and any successor agency that
19 may have responsibility for and jurisdiction over the subject matter of this Stipulated
20 Settlement Agreement.

21 33. Each Party to this DPR Stipulated Settlement Agreement shall bear its own respective
22 costs and attorneys' fees, including costs of investigation, in connection with this matter
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1 and the negotiations leading up to and the preparation of this Stipulated Settlement
2 Agreement. In addition, and in consideration of this Stipulated Settlement Agreement,
3 the Department is giving up its right to seek fines and penalties for the violations alleged
4 in Paragraphs 6 and 7.

5 34. If the California Attorney General files a civil action to enforce this DPR Stipulated
6 Settlement Agreement, the Licensees will pay all costs of investigating and prosecuting
7 the action, including expert fees, reasonable attorneys' fees, and costs, but only if the
8 California Attorney General is the prevailing party in such an action.

9 35. This DPR Stipulated Settlement Agreement constitutes the entire agreement between the
10 Parties and may only be amended, supplemented, modified, or revoked in writing.

11 36. This DPR Stipulated Settlement Agreement is deemed to have been entered into in the
12 State of California, and will be interpreted and governed by the laws of the State of
13 California, regardless of the physical locations of the individuals executing this Stipulated
14 Settlement Agreement at the time of execution.

15 37. Each person who signs this DPR Stipulated Settlement Agreement affirms that he or she
16 is fully authorized by the Party he or she represents to sign the Stipulated Settlement
17 Agreement on that Party's behalf, and has the authority to bind that Party to the
18 obligations and commitments set forth in this Stipulated Settlement Agreement.

19 38. The parties understand and agree that Portable Document Format ("PDF") and facsimile
20 copies of this DPR Stipulated Settlement Agreement, including PDF and facsimile
21 signatures thereto, shall have the same force and effect as the originals.

22 The effective date of this DPR Stipulated Settlement Agreement is the date it is signed by the
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Parties.



Julie Henderson, Director
Department of Pesticide Regulation

on July 26, 2022, 2022
at Sacramento, California

(printed name and title)
for Waterworks Aquatic Management, Inc.

on _____, 2022
at _____ (City and State)

Kevin M. Towle

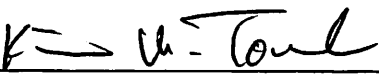
on _____, 2022
at _____ (City and State)

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4 The effective date of this DPR Stipulated Settlement Agreement is the date it is signed by the
5 Parties.

6 _____ on _____, 2022
7 Julie Henderson, Director at Sacramento, California
8 Department of Pesticide Regulation

9  on Friday, August 12, 2022
10 Kevin M. Towle (printed name and title) at Granite Bay, CA (City and State)
11 for Waterworks Aquatic Management, Inc.

12  on Friday, August 12, 2022
13 Kevin M. Towle at Granite Bay, CA (City and State)