

ATTORNEY GENERAL
OF WASHINGTON

JUL 17 2009

GOVERNMENT COMPLIANCE
& ENFORCEMENT

**BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD**

In the Matter of:

LAURA CUSACK,

Respondent.

No. 08-027

STIPULATED FACTS,
CONCLUSIONS AND
ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, LAURA CUSACK, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through MELANIE DeLEON, Executive Director. The following stipulated facts, conclusions, and agreed order will be binding upon the parties if fully executed, and if accepted by the Board without modification(s), and will not be binding if rejected by the Board, or if the Respondent does not accept the Board's proposed modification(s), if any, to the stipulation.

Section 1: Procedural Facts

1.1. The Executive Ethics Board (EEB) received this complaint on October 23, 2007. The complaint alleges that Laura Cusack, a former employee of the Washington State Department of Ecology (Ecology), violated the Ethics in Public Service Act when she accepted a job with a private contractor, CH2M Hill – Hanford Group, Inc. (CH2M). The complaint

1 alleges a conflict of interest pertaining to Ms. Cusack's role as the Tri-Party Agreement (TPA)
2 Administrator and her participation in negotiations of portions of the TPA with the United
3 States Department of Energy (USDOE) and federal Environmental Protection Agency (EPA)
4 and her present position with CH2M.

5 1.2. On September 12, 2008, upon receiving the Board staff's investigative report
6 and recommendation, the Board made the determination that there was reasonable cause to
7 believe that, although acceptance of employment with CH2M was not a violation, Laura
8 Cusack had committed one or more violations of chapter 42.52 RCW after accepting
9 employment with CH2M, and that the potential penalty for these violations is in excess of
10 \$500.00.

11 1.3. The Board is authorized under RCW 34.05.060 to establish procedures for
12 attempting and executing informal settlement of matters in lieu of more formal proceedings
13 under the Administrative Procedures Act, including adjudicative hearings. The Board has
14 established such procedures under WAC 292-100-090.

15 1.4. Laura Cusack understands that if Board staff proves any or all of the alleged
16 violations at a hearing, the Board may impose sanctions, including a civil penalty under
17 RCW 42.52.480(1)(b) of up to \$5,000, or the greater of three times the economic value of
18 anything received or sought in violation of chapter 42.52 RCW, for each violation found. The
19 Board may also order the payment of costs, including reasonable investigative costs, under
20 RCW 42.52.480(1)(c).

21 1.5. Without admitting to any of the allegations upon which the reasonable cause
22 determinations were made, Laura Cusack nevertheless recognizes that based on the evidence
23 before it, the Board may conclude that Ms. Cusack violated RCW 42.52.020, even if only
24 unintentionally or unknowingly. Therefore, in the interest of seeking an informal and
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1 expeditious resolution of this matter, the parties agree to entry of the stipulated findings of fact,
2 conclusions of law and agreed order set forth below.

3 1.6. Laura Cusack waives the opportunity for a hearing, contingent upon acceptance
4 of this stipulation by the Board, or her acceptance of any modification(s) proposed by the
5 Board, pursuant to the provisions of WAC 292-100-090(2) which provides in part:

6 The board has the option of accepting, rejecting, or modifying the proposed stipulation
7 or asking for additional facts to be presented. If the board accepts the stipulation or
8 modifies the stipulation with the agreement of the respondent, the board shall enter an
9 order in conformity with the terms of the stipulation. If the board rejects the stipulation
10 or the respondent does not agree to the board's proposed modifications to the
11 stipulation, the normal process will continue. The proposed stipulation and information
12 obtained during formal settlement discussions shall not be admitted into evidence at a
13 subsequent public hearing.

14 1.7. If the Board accepts this stipulation, the Board will release and discharge
15 Laura Cusack from all further ethics proceedings under chapter 42.52 RCW for matters arising
16 out of the facts contained in the complaint in this matter and in this stipulation and agreed
17 order, subject to payment of the full amount of the civil penalty due and owing, any other costs
18 imposed, and compliance with all other terms and conditions of the agreed order. Ms. Cusack
19 in turn agrees to release and discharge the Board, its officers, agents and employees from all
20 claims, damages, and causes of action arising out of this complaint and this stipulation and
21 agreed order.

22 1.8. If this Stipulation is accepted, this Stipulation and Order does not purport to
23 settle any other claims between Laura Cusack and the Washington State Executive Ethics
24 Board, the State of Washington, or other third party, which may be filed in the future.

25 1.9. If this Stipulation is accepted, this Stipulation and Order is enforceable under
26 RCW 34.05.578 and any other applicable statutes or rules.

1.10. If the Board rejects this stipulation, or if Laura Cusack does not accept the
Board's proposed modification(s), if any, Ms. Cusack waives any objection to participation at
any subsequent hearing by any Board member to whom this stipulation was presented for

1 approval under WAC 292-100-090(2). Further, Ms. Cusack understands and agrees that this
2 proposed stipulation and information obtained during any formal settlement discussions held
3 between the parties shall not be admitted into evidence at a subsequent public hearing, unless
4 otherwise agreed by the parties.

5 **Section 2: Findings Of Fact**

6 2.1. Laura Cusack was an employee of Ecology from January 9, 1995 to
7 September 7, 2007. From March 12, 2003 to September 7, 2007. Ms. Cusack was the Section
8 Manager of the Tank Waste Treatment and Tri-Party Agreement Section (TWT & TPA) in
9 Ecology's Nuclear Waste Program (NWP).

10 2.2. In 1989, the US Department of Energy (USDOE), the Washington Department
11 of Ecology (DOE) and the Environmental Protection Agency (EPA) reached an agreement on
12 how the Hanford site would be cleaned up. This agreement became known as the "Tri-Party
13 Agreement" and provided a roadmap of how the numerous regulatory schemes would interface
14 on the cleanup effort.

15 2.3. The USDOE, under the oversight of the EPA and Ecology, manage the cleanup
16 of the Hanford site. USDOE hired many contractors to work different parts of the cleanup
17 effort. Bechtel National Inc. is the prime contractor for tank waste treatment and the waste
18 treatment plant. CH2M is another contractor. The Tri-Party agreement has been changed over
19 400 times for a variety of reasons since 1989.

20 2.4. As Section Manager of TWT & TPA, Ms. Cusack was responsible for
21 regulatory activities pertaining to the final treatment of tank waste, including the permitting
22 and construction oversight of the Waste Treatment and Immobilization Plant (WTP), as well as
23 being designated as Ecology NWP's "TPA Administrator."

24 2.5. Ms. Cusack was the TPA Administrator for approximately the last 4 years of
25 her tenure at Ecology. Ms. Cusack was a lead negotiator for issues with USDOE under the
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1 provisions of the TPA including cleanup milestones. She also worked on certain milestone
2 revisions. One of the milestones revised during her tenure was the M 45-55 milestone, which
3 set a date for revising a particular report.

4 2.6. On September 7, 2007, Ms. Cusack resigned from her Ecology position to
5 accept a position with CH2M as the Senior Technical Advisor of Environmental Programs. As
6 such, she was an advisor to the Vice President of Environmental Programs. Her duties focused
7 on providing direction to improve the quality of CH2M's products and developing regulatory
8 and integration strategies. She also advised CH2M and its clients on hazardous waste
9 permitting and compliance matters.

10 2.7. Ms. Cusack, in her position at Ecology, did not have direct oversight over
11 permitting which involves her current scope of work at CH2M. She was involved with
12 permitting the Waste Treatment Plant (WTP), which is carried out by Bechtel--not CH2M.

13 2.8. Ms. Cusack did not play a substantial role in developing the new site-wide
14 permit. The Waste Management Section did that work under the oversight of Ron
15 Skinnarland. Ms. Cusack never had any role in those sections of the permit in which CH2M
16 would have involvement regarding the Single Shell Tank and Double Shell Tank units.

17 2.9. Although Ms. Cusack was the TPA Administrator, Ms. Cusack did not work
18 directly on the majority of activities agreed to under the TPA.

19 **Employment Offer**

20 2.10. Ms. Cusack sought to clarify the limitations on her post-employment prospects
21 with former EEB Executive Director, Susan Harris, through a series of e-mail messages from
22 January 19, 2007 through April 2, 2007.

23 2.11. Ms. Cusack informed her supervisor, Jane Hedges, the Program Manager of the
24 NWP, about her interest in seeking other employment before the TPA negotiations were
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1 scheduled to commence. Ms. Cusack's role was significantly revised so that she was no longer
2 a lead negotiator for the state.

3 2.12. CH2M made an offer of employment to Ms. Cusack on August 20, 2007.
4 Ms. Cusack accepted the offer on August 21, 2007. Ms. Cusack notified her supervisor of her
5 acceptance of employment with CH2M and subsequently separated from Ecology on
6 September 7, 2007. Ms. Cusack began employment with CH2M on September 10, 2007.

7 2.13. Ms. Cusack left employment with Ecology while the TPA negotiations were
8 ongoing.

9 **Screening procedures**

10 2.14. CH2M screens Ms. Cusack from any potential conflicts of interest that could
11 arise, including evaluating and determining which CH2M activities Ms. Cusack should be
12 barred from participation. CH2M bars Ms. Cusack from participation on matters in which she
13 personally and substantially worked on in her position with Ecology.

14 **M45-55 Milestone – Phase 1 Activities**

15 2.15. The M-45-55 milestone was originally negotiated in the late 1990s, before
16 Ms. Cusack was the TPA Administrator. Ms. Cusack was not involved in its development.
17 The milestone pertains to the production of a “Phase 1 RCRA Facility Investigation (RFI)
18 Report,” which is a field investigation report, regarding a variety of data gathering and
19 evaluation activities, “including groundwater monitoring and impacts assessment using
20 Hanford Site groundwater models, with conclusions and recommendations.” The specific
21 milestone referred to was for a report that would summarize all the Phase 1 activities that
22 would occur between when the milestone was established (about 1998) and when the report
23 was due (January 2007).

24 2.16. As the TPA Administrator, Ms. Cusack was required to administratively review
25 all change packages prior to agency approval. In 2006 and 2007, Ms. Cusack reviewed a
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1 change package that (among other things) adjusted the due date for and consolidated existing
2 milestone requirements into the interim M-45-55 milestone.

3 2.17. Other Ecology employees handled the negotiations and development of those
4 changes, but Ms. Cusack reviewed this work for consistency with other portions of the TPA.
5 Ms. Cusack had the responsibility to insure that the milestones met DOE's needs by assuring
6 that management considered all of the strategic and policy issues before they made changes.
7 Ms. Cusack determined that the changes made to the M-45-55 milestone did not present any
8 strategic or policy issues.

9 2.18. CH2M assigned Ms. Cusack to work on the M-45-55 milestone deliverable in
10 about October 2007 and then again in January 2008. In October 2007, Ms. Cusack reviewed
11 Unit 1, and Chapter 12 of the Tier 1 portion of the RFI report. Starting January 2008,
12 Ms. Cusack provided management oversight to individuals involved in responding to
13 Ecology's questions and comments.

14 2.19. The RFI document was due to Ecology in January 2008, therefore it had to be
15 delivered to USDOE by December 2007. In October 2007, Ms. Cusack, while employed by
16 CH2M, reviewed portions of Tier 1 for readability and clarity; she did not review any of
17 Tiers 2 or 3 (the bulk of the technical information).

18 2.20. In January 2008, CH2M delivered the document to Ecology. Ms. Cusack was
19 involved in setting up meetings with the Tribal Nations and the Oregon Department of Energy
20 to present the findings of the document. She provided management oversight to facilitate
21 Ecology's review process because the manager under whose leadership the report was
22 developed had left the Hanford office for another assignment. Her work included ensuring that
23 the correct technical staff were available to answer any questions Ecology might have with
24 their review. Ms. Cusack was involved in the initial briefing to Ecology that lasted
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1 approximately 30 minutes. In about April 2008, the original manager's replacement was
2 identified and the new manager took over facilitating Ecology's review.

3 2.21. CH2M asserts that prior to Ms. Cusack performing any work on this milestone,
4 Ms. Cusack's manager at CH2M evaluated the tasks to be performed and determined that
5 Ms. Cusack could perform the work at issue, without violation of the state ethics law.

6 **M45-55 Milestone -- Phase 2 Activities**

7 2.22. Between the fall of 2006 and spring of 2007, Ms. Cusack participated in
8 technical meetings internal to Ecology in which ambiguities in proposed Phase 2 milestones
9 (which involves a long-term closure plan for single shell waste tanks) were discussed and
10 clarified. Ms. Cusack subsequently supported one technical meeting with the contractor
11 regarding those Phase 2 changes. Specific changes to the scope of work in the Phase 2
12 activities may have been discussed at these meetings.

13 2.23. Ms. Cusack stopped working on the Phase 2 changes once she notified Ms.
14 Hedges of her outside employment discussions. The Phase 2 milestones were subsequently
15 reviewed by others and finalized three months after Ms. Cusack left state employment. Ms.
16 Cusack did not assist CH2M on any Phase 2 activities as a CH2M employee.

17 **Section 3: Conclusions Of Law**

18 3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction
19 over Laura Cusack and over the subject matter of this complaint.

20 3.2. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this
21 matter under the terms contained herein, subject to Board approval.

22 **RCW 42.52.080 Employment After Public Service**

23 3.3. Ethical standards restrict former state officers and employees from accepting
24 certain offers of employment. RCW 42.52.080(3) prohibits acceptance of an offer of
25 employment or the receipt of compensation if a state officer or state employee has reason to
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1 believe that the offer or compensation was intended to influence the employee or to reward for
2 the performance or nonperformance of an official duty while employed by the state. RCW
3 42.52.080(4) prohibits the offer of employment or the receipt of compensation if a reasonable
4 person would believe that the offer or compensation was for influencing the performance or
5 nonperformance of official duties while employed by the state. RCW 42.52.080(5) prohibits a
6 former state employee from assisting in a transaction in which they participated as a state
7 employee. RCW 42.52.080 states in part:

8 (1) No former state officer or state employee may, within a period of one year from the
9 date of termination of state employment, accept employment or receive compensation
10 from an employer if:

11 (a) The officer or employee, during the two years immediately preceding termination of
12 state employment, was engaged in the negotiation or administration on behalf of the
13 state or agency of one or more contracts with that employer and was in a position to
14 make discretionary decisions affecting the outcome of such negotiation or the nature of
15 such administration; ...

16 (c) The duties of the employment with the employer or the activities for which the
17 compensation would be received include fulfilling or implementing, in whole or in part,
18 the provisions of such a contract or contracts or include the supervision or control of
19 actions taken to fulfill or implement, in whole or in part, the provisions of such a
20 contract or contracts. This subsection shall not be construed to prohibit a state officer
21 or state employee from accepting employment with a state employee organization. ...

22 (3) No former state officer or state employee may accept an offer of employment or
23 receive compensation from an employer if the officer or employee knows or has reason
24 to believe that the offer of employment or compensation was intended, in whole or in
25 part, directly or indirectly, to influence the officer or employee or as compensation or
26 reward for the performance or nonperformance of a duty by the officer or employee
during the course of state employment.

(4) No former state officer or state employee may accept an offer of employment or
receive compensation from an employer if the circumstances would lead a reasonable
person to believe the offer has been made, or compensation given, for the purpose of
influencing the performance or nonperformance of duties by the officer or employee
during the course of state employment.

(5) No former state officer or state employee may at any time subsequent to his or her
state employment assist another person, whether or not for compensation, in any
transaction involving the state in which the former state officer or state employee at any
time participated during state employment. ...

1 **Advisory Opinion 98-11. Can a state employee pursue prospective employment with an**
2 **employer without violating the state's ethics law?**

3 3.4. A state employee may pursue prospective employment; however, the state
4 ethics law restricts prospective employment in circumstances where there is a conflict of
5 interest. In Advisory Opinion 98-11, the Board stated that "prospective employment" begins
6 when a state employee has accepted an interview for a position outside of state government.
7 "Prospective employment" ends when a state employee has accepted or declined an offer of
8 employment, or when the prospective employer has informed the state employee that he or she
9 is no longer under consideration for employment. **The opinion further states that to avoid a**
10 **conflict of interest, the state employee may disclose the fact that he or she is considering**
11 **prospective employment to a supervisor and ask that he or she be removed from**
12 **participating in any matter that involves the prospective employer. In choosing to**
13 **disclose and recuse from participation, the state employee may effectively remove**
14 **concerns that his or her judgment has been affected, or that prospective employment has**
15 **influenced the performance of official duties. [Emphasis Added.]**

16 **Advisory Opinion 01-01. Are there any precautions a company can follow prior to and**
17 **during the employment of a former state employee to assure compliance with RCW**
18 **42.52.080?**

19 3.5. A company may take precautions during the employment of a former state
20 employee to assure compliance with the provisions of RCW 42.52.080. However, compliance
21 is primarily the responsibility of the former state officer or employee and not the new
22 employer. Once an offer of employment is accepted by the state officer or state employee, the
23 new employer should ensure that the employee does not perform duties that could create a
24 violation of RCW 42.52.080 with regard to contracts or other transactions involving the state
25 that the former officer or employee may have participated in while in state service, or that
26 could involve the disclosure of confidential information gained by reason of state employment.

1 3.6. In the matter analyzed in Advisory Opinion 01-01, a company that primarily
2 contracts with state agencies was interested in filling a high-level position in marketing with a
3 state employee who has participated in state transactions involving the company. The position
4 for which the employee may be hired would include marketing the company's products to in-
5 state and out-of-state clients, including state agencies. The position would develop new
6 contracts, and would not have duties relating to monitoring, fulfilling, or implementing the
7 provisions of any existing contracts, state agency or otherwise.

8 3.7. RCW 42.52.080(1) does not prohibit a former state officer or employee from
9 working for any particular employer, but it does limit the kind of work that can be performed.
10 Thus, the fact that a prospective employer entered into contracts with the employee's or former
11 officer's agency does not prohibit employment with a post-state employer. However, RCW
12 42.52.080(1)(c) would not permit a former state officer or employee to perform duties for the
13 new employer that would involve fulfilling or implementing the contracts with his or her
14 former agency, or supervising or controlling actions taken to fulfill or implement those
15 contracts.

16 3.8. Based on Findings of Fact 2.1 through 2.14, the Board concludes that
17 Ms. Cusack did *not* violate the Ethics Act when she merely accepted employment with CH2M.
18 However, the Board further concludes, based on Findings of Fact 2.1 through 2.21, that Ms.
19 Cusack *did* violate the Ethics Act when she performed duties for CH2M that involved
20 fulfillment and implementation of Phase 1 of the M45-55 milestone.

21 **Advisory Opinion 97-06. Does RCW 42.52.080(5) prohibit a former state**
22 **employee from accepting employment assisting a person seeking a water right**
23 **permit when the employee worked on the same permit application while employed**
by the state?

24 3.9. In 1993, the state employee worked on a particular application for a water right
25 preparing three draft reports of examination. However, no permit was issued and the
26 application was put on hold, pending litigation. The employee had no further involvement

1 with the permit. After the employee left state service the application for the permit was denied.
2 The applicant appealed the denial and the employee asked the Board whether he may assist the
3 applicant in appealing the denial.

4 3.10. The Board stated that it is clear that an application for a water rights permit is a
5 transaction involving the state. It is an "application" that will be subject to "state action".
6 RCW 42.52.010(17)(a) defines "state action" to include a "decision, determination, finding,
7 ruling, or order". It is true that the employee was involved with the permit during only a part
8 of the process and had left state service by the time the permit application was denied.
9 Nevertheless, the Board concludes that the application for a permit is a single transaction that
10 begins with the application and ends when the permit is finally granted or denied. The Board
11 further stated that this is not to say that everything connected with the permit is a single
12 transaction. After the permit is granted there may be other transactions connected with it, such
13 as issues about compliance with terms and conditions of the permit. However, the Board
14 views the application for a permit as a single transaction.

15 3.11. Since the former employee participated in the processing of the application
16 while in state service, the employee may not assist the applicant with regard to the permit
17 application process.

18 **Definitions of Transaction and Participation.**

19 3.12. State ethics law prohibits a former state employee from assisting any person in a
20 "transaction" involving the state in which the employee participated during public
21 employment. RCW 42.52.080(5). The term "transaction involving the state" is defined under
22 state law to mean, among other things, an application, contract, or other similar matter that the
23 former state employee in question believes, or has reason to believe (1) is the subject of a state
24 action; (2) is one to which the state is a party; or (3) is one in which the state has a direct and
25 substantial proprietary interest. RCW 42.52.010(23).
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1 3.13. "Participation" is defined broadly under RCW 42.52.010(13) as follows:
2 "Participate" means to participate in state action or a proceeding personally and substantially
3 as a state officer or state employee, through approval, disapproval, decision, recommendation,
4 the rendering of advice, investigation, or otherwise...."

5 3.14. Based on Findings of Fact 2.1 through 2.21, the Board concludes that
6 Ms. Cusack violated RCW 42.52.080(5) when she assisted CH2M with Phase 1 of the M-45-
7 55 milestone after having participated in the development of Phase 1 changes to the same
8 milestone in her capacity as a state employee. Based on findings of fact 2.1-2.13 and 2.22-
9 2.23, the Board further concludes that Ms. Cusack did not violate RCW 42.52.080(5) in
10 relation to her Phase 2 work at Ecology because she stopped working on Phase 2 as soon as she
11 knew she might become employed by CH2M and because she has not assisted CH2M with any
12 Phase 2 activities.

13 3.15. The Board is authorized to impose sanctions for violations to the Ethics Act
14 pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 292-120-030 for
15 imposing sanctions and consideration of any mitigating or aggravating factors. While intent is
16 not a prerequisite to finding a violation of the Ethics Act, the Board may consider lack of intent
17 as a mitigating factor pursuant to WAC 292-120-030(4)(d). Ms. Cusack's communications
18 with the Board's executive director regarding post state employment and with her Ecology
19 supervisor regarding her then-potential employment with CH2M demonstrate that Ms. Cusack
20 intended to comply with the Ethics Act. Such actions are therefore mitigating factors. It is
21 also a mitigating factor that Ms. Cusack and CH2M established and utilized a review process
22 to identify and attempt to avoid potential conflicts of interest and that both appear to have had
23 a good faith belief that it was not a conflict for Ms. Cusack to work on the M-45-55 milestone
24 for CH2M.

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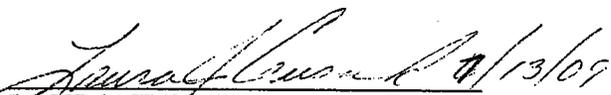
Section 4: Agreed Order

4.1. For the violation of RCW 42.52.080(5), Laura Cusack will pay a civil penalty in the amount of five hundred dollars (\$500.00).

4.2. The civil penalty of \$500.00 is payable to the state Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board.

CERTIFICATION

I, Laura Cusack, hereby certify that I have read this Stipulation and Agreed Order in its entirety; that my counsel of record, if any, has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that it may be presented to the Board without my appearance. I knowingly and voluntarily waive my right to a hearing in this matter; and if the Board accepts the Stipulation and Agreed Order, I understand that I will receive a signed copy.


LAURA CUSACK Date
Respondent

Stipulated to and presented by:


MELANIE DELEON Date
Executive Director

1 **II. ORDER**

2 Having reviewed the proposed Stipulation, WE, THE STATE OF WASHINGTON
3 EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the
4 Stipulation is

5 _____ ACCEPTED in its entirety;

6 _____ REJECTED in its entirety;

7 _____ MODIFIED. This Stipulation will become the Order of the Board if the

8 Respondent approves* the following modification(s):

9 A total penalty of \$250⁰⁰ payable to the EEB
10 within 45 days.

11 _____
12 DATED this 11th day of September 2009.

13 Neil Gorrell
14 NEIL GORRELL, Chair

15 Linnaea Jablonski
16 LINNAEA JABLONSKI, Vice-Chair

17 Judith K. Golberg
18 JUDITH K. GOLBERG, Member

19 Michael F. Connelly
20 MICHAEL F. CONNELLY, Member

21 Martin Biegelman
22 MARTIN BIEGELMAN, Member

23 * I, Laura Cusack, accept / do not accept (circle one) the proposed modification(s).

24 Laura Cusack
25 _____
26 _____