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## Santa Ana Regional Water Quality Control Board

March 18, 2024

Augustine Metals, Inc.  
Attn: Daniel Lynn Augustine  
Agent for Service of Process for Augustine Metals, Inc.  
2021 West Placentia Lane  
Colton, CA 92324  
(Via Certified Mail)

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUIRED**

Daniel Lynn Augustine  
[augustinemetals@gmail.com](mailto:augustinemetals@gmail.com)  
(Via Email)

Daniel Lynn Augustine  
11055 Lone Star Road  
Moreno Valley, CA 92557  
(Via Certified Mail)

### **TRANSMITTAL OF ADMINISTRATIVE CIVIL LIABILITY COMPLIANT NO. R8-2024-0037, AUGUSTINE METALS, INC AND DANIEL LYNN AUGUSTINE**

Dear Mr. Augustine:

Enclosed is Administrative Civil Liability Compliant No. R8-2024-0037 (Compliant) issued to Augustine Metals, Inc., and Daniel Lynn Augustine (hereafter referred to as Dischargers). The Complaint alleges that the Dischargers have violated provisions of the National Pollutant Discharge Elimination System (NPDES) Sector-Specific General Permit for Storm Water Runoff Associated with Industrial Activities from Scrap Metal Recycling Facilities within the Santa Ana Region, Regional Board Order No. R8-2018-0069, NPDES Permit No. CAG 618001 (Scrap Metal Permit) for the scrap metal recycling facility located at 2021 West Placentia Avenue, in the city of Colton.

This Complaint proposes that an administrative civil liability in the amount of two million twenty thousand two hundred eighty-two (\$2,020,282).

A public hearing on this matter is scheduled for the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) meeting on June 14, 2024. Pursuant to Water Code section 13323, the Dischargers have the option to waive their right to a hearing.

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KRISTINE MURRAY, CHAIR | JAYNE JOY, EXECUTIVE OFFICER

3737 Main Street, Suite 500, Riverside, CA 92501-3348 | [www.waterboards.ca.gov/santaana](http://www.waterboards.ca.gov/santaana)

If the Dischargers choose to waive their rights to a hearing, please sign and submit the enclosed Waiver Form. The Dischargers may waive their right to a hearing and pay the proposed liability (Option #1); ask to enter settlement negotiations (Option #2); or request additional time including an explanation of need (Option #3).

The Dischargers should submit the attached Waiver to the Advisory Team by contacting Lori Okun via phone at (916) 323-1667 or via e-mail at [Lori.Okun@waterboards.ca.gov](mailto:Lori.Okun@waterboards.ca.gov). Counsel for the Prosecution Team, Catherine Hawe, must be copied on that e-mail at [Catherine.Hawe@waterboards.ca.gov](mailto:Catherine.Hawe@waterboards.ca.gov). The Prosecution Team reserves the right to object to the Dischargers' request to pursue Options #2.

If the Dischargers waive their right to a public hearing and pay the proposed liability, by selecting Option #1 and submitting full payment of the proposed liability as described in the Waiver, the June 14, 2024 hearing will not be held. Instead, this will be considered a tentative settlement of the alleged violations. The settlement will be brought before the Santa Ana Water Board or its delegee for approval following a 30-day public comment, starting from the day this Complaint is issued. Interested persons may submit comment on the proposed action during this period by submitting written comments to the Santa Ana Water Board staff via e-mail to [Steven.Stephansen@waterboards.ca.gov](mailto:Steven.Stephansen@waterboards.ca.gov).


Should the Santa Ana Water Board receive new information or comments during this period, the Assistant Executive Officer may withdraw the Complaint, return payment, and issue a new complaint.

If this matter proceeds to hearing, the Advisory Team will issue a Hearing Procedure which will provide deadlines and establish a process for submitting evidence and argument in this matter. Procedural questions should be directed to the Advisory Team by contacting Lori Okun at the information listed above.

Included with this Complaint are two subpoenas, issued to Augustine Metals, Inc., and Daniel Lynn Augustine, commanding the production of papers, books, records, and documents in their possession or under their control in connection with this Complaint. The documents must be produced in accordance with the instructions included herein by **April 19, 2024**.

If you have any questions regarding the Complaint or the enclosed documents, please contact Catherine Hawe, attorney for the Prosecution Team, Office of Enforcement, via phone at (916) 322-3538 or via email at [Catherine.Hawe@waterboards.ca.gov](mailto:Catherine.Hawe@waterboards.ca.gov).

Sincerely,



Eric Lindberg, P.G., C.H.G.  
Assistant Executive Officer  
Santa Ana Water Board Prosecution Team

enclosures: Administrative Civil Liability Complaint No. R8-2024-0037  
Attachment A: Penalty Calculation Methodology  
Waiver Form  
Cover Letter to Subpoenas for Financial Records  
Subpoena to Augustine Metals, Inc.  
Subpoena to Daniel Lynn Augustine  
Affidavit in Support of Subpoenas for Financial Records

cc (w/encl): Santa Ana Water Board  
Jayne Joy, Santa Ana Water Board Executive Officer  
Lori Okun, State Water Board – Office of Chief Counsel  
Catherine Hawe, State Water Board – Office of Enforcement  
Arlene Chun, San Bernardino County FCD, NPDES Coordinator  
Moises Peralta, City of Colton, NPDES Coordinator



## Santa Ana Regional Water Quality Control Board

State of California  
California Regional Water Quality Control Board  
Santa Ana Region

<b>IN THE MATTER OF:</b>	)	
	)	
Augustine Metals, Inc.	)	Complaint No. R8-2024-0037
and	)	for
Daniel Lynn Augustine	)	Administrative Civil Liability

### **INTRODUCTION**

This Administrative Civil Liability Complaint is issued to Augustine Metals, Inc., and Daniel Lynn Augustine (together, Dischargers) pursuant to California Water Code (Water Code) section 13385, which authorizes the imposition of Administrative Civil Liability, and Water Code section 13323, which authorizes the Assistant Executive Officer to issue this Complaint. This Complaint is based on allegations that the Dischargers violated provisions of the National Pollutant Discharge Elimination System (NPDES) Sector-Specific General Permit for Storm Water Runoff Associated with Industrial Activities from Scrap Metal Recycling Facilities within the Santa Ana Region, Regional Board Order No. R8-2018-0069, NPDES Permit No. CAG 618001 (Scrap Metal Permit).

The Assistant Executive Officer of the Regional Water Quality Control Board, Santa Ana Region (Santa Ana Water Board) alleges the following:

### **BACKGROUND**

1. Augustine Metals, Inc. operates a scrap metal recycling business, which is classified under Standard Industrial Classification (SIC) Code 5093. The facility is located at 2021 West Placentia Lane in the City of Colton, California (Facility). Daniel Augustine Lynn is the Chief Executive Officer, Chief Financial Officer, and Secretary of Augustine Metals, Inc.
2. On February 10, 2012, the Santa Ana Water Board adopted Order No. R8-2012-0012, Sector-Specific General Permit for Storm Water Runoff Associated with Industrial Activities from Scrap Metal Recycling Facilities within the Santa Ana Region (Scrap Metal Permit). The Scrap Metal Permit underwent reissuance and was adopted on October 19, 2018, under Order No. R8-2018-0069.

KRISTINE MURRAY, CHAIR | JAYNE JOY, EXECUTIVE OFFICER

3. On May 31, 2012, a Notice of Intent (NOI) application was submitted by Augustine Metals, Inc. to comply with the requirements of the Scrap Metal Permit. Section III.E of the Scrap Metal Permit requires regulated facilities to select one of two compliance pathway options. The Dischargers, via SMARTS, selected Option 1 (Phased Approach with Numeric Action Levels), which includes requirements for facility information, preventative measures, and mitigative measures. Waste Discharge Identification (WDID) number 8 36MR000032 was subsequently issued. Mr. Daniel Lynn Augustine is the legally responsible person per the NOI.
4. On October 4, 2013, Augustine Metals, Inc. certified the 2012/2013 Annual Report. This report documented Numeric Action Level (NAL) exceedances for both oil and grease, and turbidity.
5. On September 24, 2014, the Santa Ana Water Board issued a Notice of Violation (NOV) for failure to submit a Phase II Corrective Action Plan (CAP) within one month of an exceedance determination per Section III.E.1.c.ii.3 of the Scrap Metal Permit. Since the discharger failed to submit the CAP by the deadline assigned in the first NOV, a second NOV was issued on July 1, 2015.
6. On July 6, 2015, Augustine Metals, Inc. submitted a Phase II CAP dated December 15, 2014. The Santa Ana Water Board then performed a routine compliance inspection on July 15, 2015; and later denied the Phase II CAP on October 14, 2015, because the submitted CAP stated that the intent was to allow non-treated stormwater to infiltrate throughout the facility. However, this directly opposes language in Section III.E.1.c.i.2.e of the Scrap Metal Permit, which states only runoff from non-industrial areas and uncontaminated runoff from industrial areas is acceptable to be infiltrated. The denial letter requested a revised CAP to propose treatment or control measures to prevent contaminated stormwater from entering the infiltration pond; and, to provide the expected discharge quality once the CAP is implemented.
7. Mr. Augustine, on behalf of Augustine Metals, Inc., submitted a letter to the Santa Ana Water Board on October 30, 2015. The letter described actions that would be taken on site and requested 2 years to complete the work. On November 12, 2015, a revised Phase II CAP dated September 12, 2015, was submitted by Mr. Augustine on behalf of Augustine Metals, Inc. Unprompted, on December 1, 2015, another revised Phase II CAP dated December 1, 2015, was submitted to the Santa Ana Water Board.
8. On December 15, 2015, Santa Ana Water Board staff approved the December 1, 2015, Phase II CAP. The Phase II CAP had an implementation date of December 30, 2016, which the Dischargers failed to implement as evidenced by observations made during an inspection at the facility on August 24, 2021 (Violation #1). To date, the approved Phase II CAP has not been implemented.

9. On December 16, 2016, a stormwater sample at the facility was taken by Augustine Metals, Inc. The laboratory report, dated January 10, 2017, provided data for the stormwater sample. The report stated that the sample had a copper concentration exceedance more than two times the NAL.
10. On March 3, 2021, the Santa Ana Water Board issued a NOV notifying the Dischargers that the Phase III CAPs submitted for review did not meet the requirements set forth by the Scrap Metal Permit; and requested the preparation and submittal of a revised Phase III CAP. Submittal of a Phase III CAP is required one month after a NAL exceedance determination per Section III.E.c.iii.2 of the Scrap metal permit. Prior to NOV issuance on March 3, 2021, Augustine Metals, Inc. had submitted Phase III CAPs as attachments to Annual Reports for the 2016/2017, 2017/2018, 2018/2019, and 2019/2020 Reporting Periods. Although multiple versions of Phase III CAPs had been submitted since the exceedance occurred, the Santa Ana Water Board has not approved a Phase III CAP due to the plans' failure to meet all permit requirements.
11. On March 31, 2021, Augustine Metals, Inc. submitted a revised Phase III CAP dated March 18, 2021, which included repeat photographs from the 2015 Phase II CAP and contained illegible site maps. Santa Ana Water Board staff contacted the Dischargers via email on May 13, 2021, to request additional information including an engineering report for the gravel percolation bed, current photographs of site conditions, and clear/legible site maps.
12. On May 21, 2021, Augustine Metals, Inc. submitted another revised Phase III CAP, dated May 20, 2021, in response to Santa Ana Water Board staff email; however, the revised Phase III CAP did not include any specifications for the gravel percolation bed, updated photographs, or clear/legible site maps as requested.
13. On April 19, 2022, a second NOV was issued to the Dischargers. The NOV requested a revised Phase III CAP to include the following information: identification of the pollutant(s) causing NAL exceedances; proposal of appropriate control measure(s) to reduce or eliminate metals' presence in stormwater discharges from the Facility, including best available technology (BAT) treatment to achieve the NALs; and a description of the expected stormwater discharge quality once the Phase III CAP is implemented.
14. On May 19, 2022, Augustine Metals, Inc. submitted another revised Phase III CAP, dated May 18, 2022. The revised CAP proposed a 2-year time extension for the paving of industrial areas and contained the same site maps from previous submittals. Unprompted, on June 17, 2022, the Discharger submitted yet another revised Phase III CAP, dated June 14, 2022, which proposed an unlined earthen basin at the center of the facility. The Phase III CAP submitted June 14, 2022, did not include any proposed BAT treatment, specifications for the gravel percolation bed, or identify potential pollutant sources throughout the facility. To date, the

Dischargers have failed to submit a Phase III CAP which meets the Scrap Metal Permit requirements (Violation #2).

15. Augustine Metals Inc. is responsible for the noncompliance with the Scrap Metal Permit because it carried out the activities that caused the violation. Mr. Augustine is liable for all these activities pursuant to the Responsible Corporate Officer Doctrine. “[A]n affirmative duty is properly placed on corporate officers by strict liability statutes regulating the public welfare. ‘[I]n the interest of the larger good it puts the burden of acting at hazard upon a person otherwise innocent but standing in responsible relation to a public danger. [Citation].’” (*People v. Matthews* (1992) 7 Cal. App.4th 1052, 20162, citing *U.S. v. Dotterweich* (1943) 320 U.S. 277, 281; *People v. Roscoe* (2008) 169 Cal.App.4th 829.) Mr. Augustine has been the chief executive officer of Augustine Metals, Inc. at all times during the alleged violations. Mr. Augustine’s actions and inactions facilitated the violations.

### **ALLEGED VIOLATION**

1. The Dischargers are alleged to have violated Scrap Metal Permit Section III.E.1.c.2.d for failure to implement the approved Phase II CAP. The Dischargers are also alleged to have violated Scrap Metal Permit Section III.E.1.c.3 for failure to develop and implement a Phase III CAP. Specifically, the Dischargers are alleged to have violated Scrap Metal Permit Section III.E.c.3.b, by failing to include an evaluation of the existing treatment controls and operation and maintenance procedures to improve system performance, additional reasonable source control measures that can be implemented to improve quality of stormwater runoff from the site and a time schedule for implementing the proposed corrective actions. The Phase III CAP must also meet the BAT/BCT effluent limitations which constitutes as a water-quality based effluent limitation as per 40 CFR §122.44(k).

### **CALCULATION OF PENALTIES PURSUANT TO WATER CODE SECTION 13385**

1. Water Code Section 13385 states, in relevant part:
  - (a) *Any person who violates any of the following shall be liable civilly in accordance with this section:*
    - (a)(2) *A waste discharge requirement or dredged or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.*
    - (a)(5) *A requirement of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the federal Clean Water Act, as amended.*
2. The Scrap Metal Permit was adopted by the Santa Ana Water Board on October 19, 2018, pursuant to the Clean Water Act. Section VIII.A.1 of the Scrap Metal Permit states, in part:

*... Any Permit noncompliance constitutes a violation of the CWA and the CWC and is grounds for enforcement action and/or removal from Permit coverage.*

3. The Dischargers' failure to implement the elements of the Scrap Metal Permit described above violated the Scrap Metal Permit and, therefore, violated the Clean Water Act and the Porter Cologne Water Quality Control Act. Water Code Section 13385 authorizes the imposition of administrative civil liability for such violations.
4. Water Code Section 13385 states, in relevant part:
  - (c) *Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2. 5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:*
    - (c)(1) *Ten thousand dollars (\$10,000) for each day in which the violation occurs.*
    - (c)(2) *Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.*
  - (e) *...At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.*
5. Pursuant to Water Code section 13385(c), the violations of the Scrap Metal Permit identified above are subject to penalties not to exceed \$10,000 per day. The Dischargers failed to implement the approved Phase II CAP requirements by the specified deadline of December 30, 2016, as observed during a site inspection on August 24, 2021. To date, the Dischargers have also failed to develop and submit for approval, a Phase III CAP that meets all the requirements set forth in the Scrap Metal Permit by the deadline of February 10, 2017, one month after the Dischargers received laboratory results which documented a NAL exceedance. Therefore, by counting the days between December 30, 2016, and August 24, 2021, and adding it to the number of days between February 10, 2017, and the issuance date of this Administrative Civil Liability Complaint, the total number of days in violation is 4293 days. The maximum penalty is \$10,000 multiplied by 4293 days, or \$42,930,000.
6. Pursuant to Water Code section 13385(e), at a minimum, civil liability must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violations. Violation 1 of the Scrap Metal Permit was due to a failure to implement preventative measures (e.g., paving industrial areas prone to erosion). Violation 2 of the Scrap Metal Permit was due to a failure to submit a



Phase III CAP which met all Scrap Metal Permit requirements within one month of a Phase II NAL exceedance determination. The economic benefit is the savings incurred by the Dischargers, valued at \$3,325, as described in the Specific Factors Considered (Attachment A).

### **PROPOSED LIABILITY**

1. Pursuant to Water Code section 13385(e), in determining the amount of any civil liability, the Regional Board shall consider the nature, circumstances, extent, and gravity of the violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge; and with respect to the Discharger, the ability to pay, the effect on the Discharger's ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters as justice may require.
2. The State Water Board adopted Resolution 2017-0020, thereby adopting the Water Quality Enforcement Policy (Enforcement Policy), which became effective October 5, 2017. The Enforcement Policy establishes a methodology for assessing administrative civil liability that addresses factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13385, subdivision, and section 13327. The required factors have been considered for the violation alleged herein using the methodology in the Enforcement Policy, as explained in detail in Attachment A.
3. Based on consideration of the above facts, the applicable law, and after applying the penalty calculation methodology in the Enforcement Policy, the Prosecution Team recommends that the Santa Ana Water Board impose civil liability against the Dischargers in the amount of two million twenty thousand two hundred eighty-two (\$2,020,282) for the violations alleged herein and set forth in full in the accompanying Attachment A.


### **REGULATORY CONSIDERATIONS**

1. Notwithstanding the issuance of this Complaint, the Santa Ana Water Board retains the authority to assess additional penalties for violations of the requirements of the Scrap Metal Permit for which penalties have not yet been assessed or for violations that may subsequently occur.
2. An administrative civil liability may be imposed pursuant to the procedures described in Water Code section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.

3. Issuance of this Administrative Civil Liability Complaint to enforce Water Code Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

**AUGUSTINE METALS, INC. AND DANIEL LYNN AUGUSTINE ARE HEREBY GIVEN NOTICE THAT:**

1. The Assistant Executive Officer of the Santa Ana Water Board proposes administrative civil liability in the amount of two million twenty thousand two hundred eighty-two (\$2,020,282). The amount of the proposed liability is based upon a review of the factors cited in Water Code section 13385, as well as the State Water Board's Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.
2. A hearing on this matter will be conducted at the Santa Ana Water Board meeting scheduled on June 14, 2024, unless the Dischargers waive their right to a hearing. Procedures for waiving this right are described in the attached Waiver Form.



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Eric Lindberg, P.G., C.H.G.  
Assistant Executive Officer  
Santa Ana Water Board Prosecution Team

**ATTACHMENT A**  
**Specific Factors Considered for**  
**Administrative Civil Liability Complaint No. R8-2024-0037**  
**Augustine Metals Inc. and Daniel Lynn Augustine**

Augustine Metals, Inc. and Daniel Lynn Augustine (together, Dischargers) violated the *Sector Specific General Permit for Storm Water Runoff Associated with Industrial Activities from Scrap Metal Recycling Facilities within the Santa Ana Region*, Regional Board Order No. R8-2018-0069, National Pollutant Discharge Elimination System (NPDES) Permit No. CAG 618001 (Scrap Metal Permit or Permit) at its facility located at 2021 West Placentia Lane in the City of Colton (Facility), WDID: 8 36MR000032.

The State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy) establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors required by Water Code sections 13327 and 13385(e). Each factor of the Enforcement Policy methodology and its corresponding score for the alleged violation is presented below:

**BACKGROUND**

Augustine Metals, Inc. is enrolled in the Scrap Metal Permit. Because it submitted a Notice of Intent (NOI) to enroll in the Permit on May 31, 2012, it has been subject to the terms of the Permit since that date. Mr. Augustine is the Chief Executive Officer of Augustine Metals, Inc. and is named as the legally responsible person (LRP) per the NOI.

The Scrap Metal Permit serves as a NPDES permit pursuant to Section 402(p) of the federal Clean Water Act (Clean Water Act). (Section VII.A.) "Any Permit noncompliance constitutes a violation of the [Clean Water Act] and the [California Water Code] and is grounds for enforcement action and/or removal from Permit coverage." (Section VIII.A.1.) Any failure to take appropriate corrective actions as specified in the Permit is also a violation of the Permit. (Section VIII.A.2.)

**Violation #1:**      **The Dischargers failed to implement the Santa Ana Regional Water Quality Control Board approved Phase II Corrective Action Plan as required by Scrap Metal Permit Section III.E.1.c.2.d.**

The Scrap Metal Permit offers two options for compliance. Both compliance options require the development and implementation of a facility-specific Stormwater Pollution Prevention Plan (SWPPP), which identifies facility-specific control measures including good housekeeping practices, Best Management Practices (BMPs), and mitigative measures, all to control or abate the discharge of pollutants to protect water quality objectives and beneficial uses of receiving waters, including groundwater. Compliance Option 1 (Phased Approach with Numeric Action Levels [NALs]) includes requirements for facility information, preventative measures, and mitigative measures. Each permittee who selects Compliance Option 1 begins in Phase I and is required to implement and maintain minimum control measures listed in Scrap Metal Permit Section III.E.1.c.1. Permittees

trigger Phase II if any of the following occur:

- (1) A single sampling event exceeds the NAL by at least two times the specified limit;  
or,
- (2) The annual average of any of the constituents exceeds the NAL; or,
- (3) If any pH value is outside the specified NAL range for pH (6.5 to 8.5).

Although any exceedance of a NAL is not considered a violation of the Permit, within 30 days of Phase I exceedance determinations, permittees are required to submit a Phase II Corrective Action Plan (CAP) for Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) staff approval according to Permit Section III.E.1.c.2.c. A Phase II CAP must be implemented within 90 days of Santa Ana Water Board approval.

Compliance Option 2 is a non-phased approach. All SWPPPs shall be developed to maintain compliance with the Numeric Effluent Limitations (NELs) specified in Section III.E.2 of the Scrap Metal Permit. Any exceedance of a NEL is considered a violation of the Scrap Metal Permit.

Augustine Metals, Inc., and Daniel Lynn Augustine., via SMARTS, selected Compliance Option 1. Stormwater discharges from the Facility exceeded the NALs for oil and grease and turbidity in the 2012/2013 Reporting Year, triggering the Permit's requirement to submit a Phase II CAP. The 2012/2013 Annual Report was certified by the Dischargers on October 4, 2013. Therefore, a Phase II CAP should have been submitted to the Santa Ana Water Board by November 4, 2013, at the latest.

Santa Ana Water Board staff issued a Notice of Violation (NOV) dated September 24, 2014, for failure to submit a Phase II CAP as required by the Scrap Metal Permit. A second NOV was issued on July 1, 2015, for failing to submit a Phase II CAP. The Dischargers finally submitted a Phase II CAP on July 6, 2015 (dated December 15, 2014), which was later denied by Santa Ana Water Board staff in a letter dated October 14, 2015, because it did not meet the requirements of the permit, and requested a revised Phase II CAP which identified proposed treatment or control measures to prevent contaminated stormwater from entering the infiltration pond, in addition to providing a description of the expected stormwater discharge quality from the Facility upon Phase II CAP implementation. In response, Mr. Augustine, on behalf of Augustine Metals, Inc., submitted a revised Phase II CAP on November 12, 2015 (dated September 12, 2015) and submitted a second revised Phase II CAP on December 1, 2015 (dated December 1, 2015). The December 1, 2015, Phase II CAP included the following control measures: removal/relocation of all piles of stored scrap metal materials to existing paved surfaces; the expansion of the existing concrete pad to approximately 60' x 60' and to be graded towards a containment pit with sump pump; and the installation of berms to eliminate stormwater runoff onto unpaved surfaces. The Phase II CAP also proposed the deployment of wattles and metal media socks at the southwest driveway prior to rain events to prevent offsite discharges, training for sample collection, and daily inspections/housekeeping activities. The Phase II CAP dated December 1, 2015, was approved by the Santa Ana Water Board in correspondence dated December 15, 2015. The approved Phase II CAP specified that full implementation of the Phase II CAP would be implemented by December 30, 2016. As of August 24, 2021, during a Santa Ana

Water Board staff inspection, Augustine Metals, Inc. had not implemented its Phase II CAP, in violation of Permit Section III.E.1.c.2.d.

A person who violates a waste discharge requirement for compliance with the provisions of the Clean Water Act shall be civilly liable. (Wat. Code, § 13385, subd. (a)(2).) Pursuant to Water Code section 13385(c)(1), the Regional Board may impose administrative civil liability for non-discharge violations on a daily basis. The maximum civil liability for each day of violation is ten thousand dollars (\$10,000).

## **ENFORCEMENT POLICY – PENALTY CALCULATION**

### **Step 1 and Step 2 – Harm or Potential Harm to Beneficial Uses and Assessments for Discharge Violations**

These steps are not applicable to the violation because this is a non-discharge violation.

### **Step 3 – Per Day Factor for Non-Discharge Violations**

Step 3 of the Enforcement Policy’s penalty calculation methodology directs the Regional Board to calculate a per day factor for non-discharge violations by considering the potential for harm deviation from requirement.

#### **Potential for Harm: Moderate**

The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm and/or threat to beneficial uses. A “moderate” potential for harm applies where “the characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most non-discharge violations should be considered to present a moderate potential for harm.” (2017 Enforcement Policy, page 16.)

The evaluation of the actual harm or the potential harm to beneficial uses factor considers the harm to beneficial uses in the affected receiving water body that may result from exposure to the pollutants or contaminants in the discharge, consistent with the statutory factors of the nature, circumstances, extent, and gravity of the violation. The Facility discharges to Springbrook Channel, which is tributary to the Santa Ana River, Reach 4. The Santa Ana Water Board Basin Plan designates beneficial uses applicable to Santa Ana River Reach 4 waters as: Groundwater Recharge (GWR), Water Contact and Non-Contact Water Recreation (REC1 and REC2, respectively), Warm Freshwater Habitat (WARM), Wildlife Habitat (WILD), Rare, Threatened, or Endangered Species (RARE), and Spawning, Reproduction, and Development (SPWN). Beneficial uses are the uses of water necessary for the survival or well-being of man, plants, and wildlife. These uses of water serve to promote tangible and intangible economic, social, and environmental goals.

Failure to implement the Phase II CAP results in an ongoing threat to beneficial uses and water quality in the Santa Ana region because the Facility discharges industrial pollutants

to both surface and groundwater without adequate best management practices in place. Constituents associated with industrial activities from scrap metal facilities include pH, suspended solids, dissolved solids, oil and grease, zinc, lead, aluminum, copper, iron, chemical oxygen demand (COD), and cadmium.

As documented in the Santa Ana Water Board inspection report from the August 24, 2021, site visit, industrial areas throughout the eastern portion of the Facility were bare earth, consisting of fine-grained soil. Staff applied a magnet to the surface of the soil at various locations and observed that the soil contained ferro-magnetic debris. The Facility also has a gravel infiltration area, and, according to the Discharger's SWPPP, stormwater flows south and southwest to the infiltration area. It was also noted that the infiltration area was not well maintained and had leaves and debris throughout and had various metal and wood materials being stored nearby. A groundwater well is also located on site towards the southern end of the Facility.

In addition, on June 21, 2022, the California Department of Toxic Substances Control (DTSC) conducted an inspection at the Facility and collected five soil samples according to their inspection report. Analytical results from the soil samples collected during that inspection indicate five locations at the Facility contained hazardous levels of metals concentrations in soils. DTSC issued a Class I Violation (22 CCR 66262.34(a)(4) and 66265.31) for toxic levels of lead, copper, cadmium, and zinc to the Facility.

The discharge of these pollutants may cause or contribute to exceedances of applicable water quality standards. Pollutants discharged from industrial facilities may adversely affect human health and/or aquatic organisms. Adverse human health effects include gastrointestinal diseases and infections. Adverse physiological responses in aquatic organisms to pollutants include impaired reproduction, growth anomalies, decreased diversity, and mortality. These responses may be the result of different mechanisms, including bioaccumulation of toxins. During bioaccumulation, toxins move up the food chain and may affect both aquatic and non-aquatic organisms, including human health and wildlife. These conditions may impair designated beneficial uses resulting in a condition of pollution, contamination, or nuisance.

Failure to implement the Phase II CAP also creates a burden to the regulatory program since additional Santa Ana Water Board staff resources are expended on following up with the Dischargers to obtain adequate submittals and track their implementation, or lack thereof.

Given that industrial areas remain unpaved and metals' concentrations in soils are elevated and/or toxic, the Dischargers' operation presents a substantial and ongoing threat to beneficial uses and surface water quality.

The Potential for Harm is moderate.

Deviation from Requirement: Major

The Enforcement Policy requires a determination of whether the violation resulted in a minor, moderate, or major deviation from requirement. A "major" deviation from

requirement is one where “the requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).”

The three-phased approach, as selected by the Dischargers, requires the phased implementation of control measures to meet the NALs as specified in Table 1a of the Scrap Metal Permit. Implementing preventative measures (i.e., paving of industrial areas prone to erosion) will minimize dust generation and erosion from the Facility, which can control metals and other pollutants from leaving the Facility. To date, the Dischargers have wholly failed to implement its Phase II CAP, rendering Section III.E.1.c.2 totally ineffective.

The Deviation from Requirement is major.

Per Day Factor: 0.70

The resulting per day factor is 0.70 based on the above potential for harm and deviation from requirement from the matrix in Table 3 of the Enforcement Policy. The higher end of the scale (0.4 – 0.7) is selected because the Dischargers’ failure to implement the plan several years after the compliance deadlines represents particularly egregious noncompliance with substantial threats to the regulatory program and water quality.

Days of Violation:

The Dischargers should have implemented the approved Phase II CAP by December 30, 2016. A site inspection on August 24, 2021, provided evidence that the CAP had not been implemented; 1699 days late.

Multiple Day Violation Reduction:

The Enforcement Policy establishes an alternative approach to civil liability calculations for violations that last more than 30 days and do not cause daily detrimental impacts to the environment or regulatory program. There is no evidence that this violation causes daily detrimental impacts to the Springbrook Channel and Santa Ana River; therefore, the days of violation are calculated using the alternative approach to the liability calculation for multiple day violations, the civil liability is assessed based on 90 days of violation (Enforcement Policy, page 18).

Initial Liability Amount:

\$10,000 [maximum statutory liability per day of violation] X 90 [days of violation] X 0.70  
[per day factor])

**\$10,000 X 90 days X 0.70 = \$630,000**

#### **Step 4 – Adjustment Factors**

There are three additional factors to be considered for modification of the amount of initial liability: the discharger’s culpability, efforts to clean up or cooperate with regulatory

authority, and the discharger's compliance history.

Culpability: 1.5

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.75 to 1.5, with the lower multiplier for simple negligence, and the higher multiplier for intentional misconduct and gross negligence.

The Dischargers wholly disregarded the Phase II CAP implementation requirement when they knew, or should have known, what the requirements of the Scrap Metal Permit were. A reasonable permittee would be familiar with the requirements of the Scrap Metal Permit such that they were aware of the Phase II CAP implementation triggers and due dates. The Dischargers demonstrated specific knowledge of this requirement when they submitted its Phase II CAP to the Santa Ana Water Board for approval. However, despite receiving prompt approval from the Santa Ana Water Board, the Dischargers wholly failed to implement the approved Phase II CAP.

In addition, the Santa Ana Water Board issued a Notice of Violation (NOV) dated April 19, 2022, specifically identifying the failure to comply with the requirements related to the Phase II CAP and providing instructions on how to correct the condition of noncompliance.

The Dischargers failed to act as a reasonable and prudent permittee under the Scrap Metal Permit. The long-term noncompliance with the Phase II CAP requirements, after several NOVs and discussions with Santa Ana Water Board staff, represents a willful disregard of the Permit requirements. The culpability factor is 1.5.

Cleanup and Cooperation: 1.5

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with the higher multiplier where there is a lack of cooperation.

The Dischargers have not made any efforts to comply with the underlying Permit requirement or to correct the condition of noncompliance as documented in Santa Ana Water Board correspondence to date. Such a response falls below the expected standard of care because a reasonable permittee would have taken immediate steps to implement the Phase II CAP upon approval and subsequent notices from the Santa Ana Water Board documenting its noncompliance.

Therefore, the Dischargers remain out of compliance with this requirement. The cleanup and cooperation factor is 1.5.

History of Violations: 1.0

The Dischargers do not have a history of violations that have been formally adjudicated by the Santa Ana Water Board. The history of violations factor is 1.0.

**Step 5 – Determination of Total Base Liability Amount**



The Total Base Liability Amount for the violation is determined by applying the adjustment factors from Step 4 to the Total Initial Liability Amount determined in Step 3.

\$630,000 [initial liability] x 1.5 [culpability factor] x 1.5 [cleanup and cooperation factor]  
x 1.0 [history of violations factor]

**\$630,000 X 1.5 X 1.5 X 1.0 = \$1,417,500**

**Violation #2: Dischargers failed to submit a Phase III Corrective Action Plan as required by Scrap Metal Permit Section III.E.1.c.3.**

As mentioned in Violation #1, the Dischargers selected Compliance Option 1, and upon exceedance of the NALs, advanced to Phase II. Permittees then advance to Phase III if any of the following are triggered after implementation of Phase II requirements:

- (1) A single sampling event exceeds the NAL by at least two times the specified limit;  
or
- (2) The annual average of any of the constituents exceeds the NAL; or
- (3) If any pH value is outside the specified NAL range for pH (6.5 to 8.5).

Within one month of Phase II exceedance determinations, Permittees are required to submit a Phase III CAP for Santa Ana Water Board staff approval. A Phase III CAP must include Best Available Technology Economically Achievable (BAT) treatment for toxic and non-conventional pollutants in order to meet the NALs per Section III.E.1.c.3.b. of the Scrap Metal Permit.

Stormwater discharges from the Facility exceeded the NAL for copper by at least two times the specified limit as documented in the Babcock Laboratories, Inc. report dated January 10, 2017, for a stormwater sample collected at the Facility on December 16, 2016, thereby triggering Phase III. Advancing to Phase III required Augustine Metals, Inc. to develop and submit a Phase III CAP to the Santa Ana Water Board within one month of the Phase II exceedance determination. Therefore, a Phase III CAP should have been submitted on or before February 10, 2017.

Augustine Metals, Inc. submitted CAPs as attachments to the 2016/2017, 2017/2018, 2018/2019 and 2019/2020 Annual Reports. Upon review, Santa Ana Water Board staff determined the submittals were updates to the 2015 Phase II CAP and could not be considered Phase III CAPs because they did not include the use of a BAT treatment (e.g., advanced media filtration system or other equivalent treatment controls) to meet the NALs and did not identify potential pollutant sources throughout the Facility. The Santa Ana Water Board issued a NOV on March 3, 2021, notifying the Dischargers that previous CAPs submitted for review do not meet the requirements set forth in the Scrap Metal Permit and requested the preparation and submittal of a revised Phase III CAP by April 2, 2021. The Dischargers submitted a revised Phase III CAP for the Facility on March 31, 2021 (dated March 18, 2021).

The revised Phase III CAP included repeat photographs from the 2015 Phase II CAP and

illegible site maps. On May 13, 2021, Santa Ana Water Board staff contacted the Dischargers via email requesting additional information for the Phase III CAP including an engineering/contractor report, if available, for the infiltration basin, current photographs of the site conditions, and clear/legible site maps. On May 21, 2021, Augustine Metals, Inc. submitted a revised Phase III CAP (dated May 20, 2021) signed by a civil engineer, however, the revision remained inadequate because it did not include any specifications for the gravel percolation bed, updated photographs, or clear/legible site maps as requested.

Another NOV was issued to the Dischargers on April 19, 2022, requesting a revised Phase III CAP by May 19, 2022. The NOV requested the following information required to be included in the Phase III CAP: identification of the pollutant(s) causing NAL exceedances; proposal of appropriate control measure(s) to reduce or eliminate metals' presence in stormwater discharges from the Facility, including BAT treatment to achieve the NALs; and a description of the expected stormwater discharge quality once the Phase III CAP is implemented.

Augustine Metals, Inc., submitted a revised Phase III CAP on May 19, 2022 (dated May 18, 2022), which proposed a two-year time extension for the paving of industrial areas at the Facility and included the same site maps from previous submittals. Unprompted, the Dischargers submitted an additional addendum to the May 18, 2022, Phase III CAP on June 17, 2022 (dated June 14, 2022), which proposed an unlined earthen basin at the center of the Facility.

Despite these revisions, the Phase III CAP remains inadequate because it does not include BAT treatment, identify pollutant reduction and the expected stormwater discharge quality, and does not identify the sources of pollutants causing the exceedance throughout the Facility.

A person who violates a waste discharge requirement for compliance with the provisions of the Clean Water Act shall be civilly liable. (Wat. Code, § 13385, subd. (a)(2).) Pursuant to Water Code section 13385(c)(1), the Regional Board may impose administrative civil liability for non- discharge violations on a daily basis. The maximum civil liability for each day of violation is ten thousand dollars (\$10,000).

## **ENFORCEMENT POLICY – PENALTY CALCULATION**

### **Step 1 and Step 2 – Harm or Potential Harm to Beneficial Uses and Assessments for Discharge Violations**

These steps are not applicable to the violation because this is a non-discharge violation.

### **Step 3 – Per Day Factor for Non-Discharge Violations**

Step 3 of the Enforcement Policy's penalty calculation methodology directs the Regional Board to calculate a per day factor for non-discharge violations by considering the potential for harm and deviation from requirement.

Potential for Harm: Moderate

The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm and/or threat to beneficial uses. A “moderate” potential for harm applies where the “characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most non-discharge violations should be considered to present a moderate potential for harm.” (2017 Enforcement Policy, page 16).

The evaluation of the actual harm or the potential harm to beneficial uses factor considers the harm to beneficial uses in the affected receiving water body that may result from exposure to the pollutants or contaminants in the discharge, consistent with the statutory factors of the nature, circumstances, extent, and gravity of the violation. The Facility discharges to Springbrook Channel, which is tributary to the Santa Ana River, Reach 4. The beneficial uses applicable to Santa Ana River Reach 4 waters are Groundwater Recharge (GWR), Water Contact and Non-Contact Water Recreation (REC1 and REC2, respectively), Warm Freshwater Habitat (WARM), Wildlife Habitat (WILD), Rare, Threatened, or Endangered Species (RARE), and Spawning, Reproduction, and Development (SPWN).

The NAL for copper is 18.9 micrograms per liter (ug/L). An exceedance occurs if a single sampling event exceeds the NAL by at least two times the specified limit. Laboratory results submitted by the Discharger from a stormwater sample taken on December 16, 2016, state that copper was found to be 61 ug/L, more than two times the specified limit.

Additional sample results demonstrated a continued exceedance of the copper NAL. Stormwater samples collected on December 4, 2019, and December 26, 2019, resulted in copper values of 150 ug/L and 210 ug/L, respectively. Both stormwater samples had copper concentrations that also exceeded the NAL by more than two times the specified limit.

During an August 24, 2021, compliance inspection, Santa Ana Water Board staff observed fine soils throughout the unpaved eastern portion of the Facility that contained ferro-magnetic debris. On June 21, 2022, the California Department of Toxic Substances Control (DTSC) conducted an inspection at the Facility. Analytical results from soil samples collected during the DTSC inspection indicated that five locations at the Facility contained hazardous concentrations of metals. DTSC issued a Class I Violation (22 CCR 66262.34(a)(4) and 66265.31) for toxic levels of lead, copper, cadmium, and zinc in soils at the Facility.

The Dischargers failed to implement minimum Phase I requirements, including implementing preventative measures such as the paving of industrial areas and preventing the commingling of runoff from non-industrial areas with uncontaminated runoff from industrial areas, failed to implement an approved Phase II CAP, and failed to submit a Phase III CAP which met Permit requirements. To date, several incomplete Phase III CAPs have been submitted, despite multiple communications from Santa Ana

Water Board staff. By failing to submit Phase III CAPs, the Dischargers increased the probability that pollutants would travel off-site and negatively impact the beneficial uses associated within Reach 4 of the Santa Ana River, or infiltrate to groundwater from untreated, industrially sourced stormwater.

Failure to submit the Phase III CAP also creates a burden to the regulatory program since additional Santa Ana Water Board staff resources are expended on following up with the Discharger to obtain adequate submittals and track their implementation, or lack thereof.

The Potential for Harm is moderate.

Deviation from Requirement: Moderate

The Enforcement Policy requires a determination of whether the violation resulted in a minor, moderate, or major deviation from requirement. A “moderate” deviation from requirement is one where “the intended effectiveness of the requirement was partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement was only partially achieved). If a facility has prepared a required plan, or submitted the required monitoring report, but significant elements are omitted or materially deficient, the deviation would be moderate.”

The Dischargers failed to submit a Phase III CAP in compliance with Permit requirements within one month of a Phase II exceedance determination and continued to fail to submit it in response to NOV's issued on March 3, 2021, and April 19, 2022.

In this case, the intended effect of the Phase III CAP is to achieve compliance with the copper NAL, and thus the protection of beneficial uses is partially compromised. Stormwater sampling results from the Dischargers revealed that copper concentrations in stormwater runoff exceeded the NAL by more than two times the specified limit on an ongoing basis. By failing to submit a complete Phase III CAP which met Permit requirements, Section III.E.1.c.3 was not met, and the intended effectiveness of the requirement was partially compromised.

The Deviation from Requirement is moderate.

Per Day Factor: 0.40

The resulting per day factor is 0.40 based on the above potential for harm and deviation from requirement from the matrix in Table 3 of the Enforcement Policy. The higher end of the scale (0.3 – 0.4) is selected because the Dischargers' failure to submit a Phase III CAP which met Permit requirements several years after the exceedance determination represents particularly egregious noncompliance with increased threats to the regulatory program and water quality.

Days of Violation:

The Dischargers should have submitted the required Phase III CAP one month after the copper NAL exceedance was determined. A laboratory report dated January 10, 2017,

provided the results of a stormwater sampling event that took place on December 16, 2016, therefore the Phase III CAP should have been submitted by February 10, 2017. A Phase III CAP meeting Permit requirements has not been submitted as of March 18, 2024; 2594 days late.

Multiple Day Violation Reduction:

The Enforcement Policy establishes an alternative approach to civil liability calculations for violations that last more than 30 days and do not cause daily detrimental impacts to the environment or regulatory program. There is no evidence that this violation causes daily detrimental impacts to the Springbrook Channel and Santa Ana River; therefore, the days of violation are calculated using the alternative approach to the liability calculation for multiple day violations, the civil liability is assessed based on 90 days of violation (Enforcement Policy, page 18).

Initial Liability Amount:

\$10,000 [maximum statutory liability per day of violation] X 120 [days of violation] X 0.40 [per day factor]

$$\mathbf{\$10,000 \times 120 \text{ days} \times 0.40 = \$480,000}$$

Step 4 – Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the discharger's culpability, efforts to clean up or cooperate with regulatory authority, and the discharger's compliance history.

Culpability: 1.1

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.75 to 1.5, with the lower multiplier for simple negligence, and the higher multiplier for intentional misconduct and gross negligence.

The Dischargers failed to submit a compliant Phase III CAP on multiple occasions. All permittees are expected to be knowledgeable and to comply with the provisions of the Permit, including reporting requirements and applicable triggers for those requirements.

The Dischargers submitted documents labeled as Phase III CAPs as attachments to the 2016/2017, 2017/2018, 2018/2019, and 2019/2020 Annual Reports, proving the Dischargers were aware of the requirement to submit a Phase III CAP once an exceedance had been determined. However, these submittals were continually inadequate as communicated in Santa Ana Water Board NOVs issued on March 3, 2021; April 19, 2022; and by e-mail on May 13, 2021.

The Dischargers have failed to act as a reasonable and prudent permittee under the Scrap Metal Permit. The Dischargers' failure to submit a Phase III CAP which met Permit requirements after repeated outreach attempts by Santa Ana Water Board staff demonstrates a willful disregard of their obligation. The culpability factor is 1.1.

Cleanup and Cooperation: 1.1

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with the higher multiplier where there is a lack of cooperation.

On May 18, 2022, the Dischargers submitted a revised Phase III CAP for the Facility that proposed a 2-year time extension for the paving of industrial areas at the Facility. The paving or lining of all industrial areas is a Phase I preventative measure permit requirement (Section III.E.1.c.1.b.iii), which the Dischargers should have already implemented at the Facility. The Santa Ana Water Board NOVs explained why a more detailed Phase III CAP was necessary and explained the requirements upon triggering Phase III (Section III.E.1.c.3). The Dischargers failed to comply with the Scrap Metal Permit requirements even after repeated attempts via email, site visit, and letters by Santa Ana Water Board staff to obtain compliance.

The Dischargers may have modified business practices to reduce pollutant concentrations in the stormwater runoff, however, failed to submit a Phase III CAP which met the Scrap Metal Permit requirements or provide any evidence of efforts to implement the requirements despite repeated Santa Ana Water Board staff attempts to obtain the required information. The cleanup and cooperation factor is 1.1.

History of Violations: 1.0

The Dischargers do not have a history of violations that have been formally adjudicated by the Santa Ana Water Board. The history of violations factor is 1.0.

**Step 5 – Determination of Total Base Liability Amount**

The Total Base Liability Amount for the violation is determined by applying the adjustment factors from Step 4 to the Total Initial Liability Amount determined in Step 3.

$$\begin{aligned} & \$480,000 \text{ [initial liability]} \times 1.1 \text{ [culpability factor]} \times 1.1 \text{ [cleanup and cooperation factor]} \times \\ & 1.0 \text{ [history of violations factor]} \end{aligned}$$

$$\mathbf{\$480,000 \times 1.1 \times 1.1 \times 1.0 = \$580,800}$$

**Step 6 – Ability to Pay and Ability to Continue in Business**

The Enforcement Policy provides that if there is sufficient financial information necessary to assess the violator's ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on the violator's ability to continue in business, the Total Base Liability Amount may be adjusted to address the ability to pay or to continue in business. There is no obligation to ensure that a violator has the ability to pay or continue in business, but, rather, are obligated to consider these factors when imposing a civil liability under the Water Code.

The Santa Ana Water Board Prosecution Team has reviewed publicly available information related to Dischargers. The Business Profile Record for Augustine Metals, Inc. reported sales from the Facility in 2022 to exceed \$11 million dollars. Mr. Augustine also owns real estate assets. Based on this publicly available information, the Dischargers have the ability to pay the proposed penalty and remain in business.

### **Step 7 – Economic Benefit**

The Enforcement Policy requires the Economic Benefit Amount to be estimated for every violation. The economic benefit is any saving or monetary gain derived from the act or omission that constitutes the violation.

The Enforcement Policy provides that the United States Environmental Protection Agency's Economic Benefit of Noncompliance Model (BEN model) should be used to calculate the economic benefit equal to the present value of the avoided costs plus the "interest" on delayed costs. This calculation reflects the fact that the Discharger has had the use of the money that should have been used to avoid the instance of noncompliance. Using the BEN Model, the Dischargers have derived an economic benefit of three thousand three hundred twenty-five (\$3,325) based on the delayed cost of constructing berms, installing socks, conducting monitoring, paving the site, and submitting a complete Phase III CAP for the Facility.

### **Step 8 – Other Factors as Justice May Require**

The Santa Ana Water Board Prosecution Team finds it appropriate to increase the Total Base Liability Amount by \$21,982 in consideration of investigation and enforcement staff costs incurred in prosecuting this matter. Increasing the Total Base Liability Amount in this manner serves to create a more appropriate deterrent against future violations.

In addition, the Prosecution Team notes that the City of Colton is an environmental justice community. According to CalEnviroScreen, the City of Colton is among the 25% most disadvantaged communities in California and therefore, its residents bare an undue burden of pollution.

### **Step 9 – Maximum and Minimum Liability Amounts**

The Enforcement Policy directs the Regional Board to consider the maximum and minimum liability amounts for each alleged violation.

**Maximum Liability Amount:** \$42,930,000

The maximum administrative liability is the maximum allowed by Water Code section 13385, subdivision (c)(1): \$10,000 for each day which the violation occurs. The maximum liability amount is \$42,930,000 = (\$10,000 x 2594 days of violation 2) + (\$10,000 x 1699 days of violation 1).

**Minimum Liability Amount:** \$3,657.50

Regional Boards are bound by statute to recover a minimum of the economic benefit to the violator in an action for violations of Water Code section 13385. The Regional Boards should strive to impose civil liabilities 10 percent greater than the economic benefit to the violator. The Enforcement Policy (pg. 21), states that “the adjusted Total Base Liability Amount should be at least 10 percent higher than the Economic Benefit Amount so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations.” The minimum liability amount is \$3,325 x 1.1.

**Step 10 – Final Proposed Liability Amount**

Final Proposed Liability Amount: \$2,020,282

The final liability amount consists of the added amounts for each violation with any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts. The final liability proposed is \$2,020,282.



## Santa Ana Regional Water Quality Control Board

### WAIVER FORM FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2024-0037

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Augustine Metals, Inc., and Daniel Lynn Augustine in connection with Administrative Civil Liability Complaint No. R8-2024-0037 (Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, “a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing.”

**(OPTION 1: Check here if Augustine Metals, Inc. and Daniel Lynn Augustine waive the hearing requirement and will pay the liability in full.)**

- a. I hereby waive any right Augustine Metals, Inc. and Daniel Lynn Augustine may have to a hearing before the Santa Ana Water Board.
- b. I certify that Augustine Metals, Inc., and Daniel Lynn Augustine will remit payment for the proposed penalty in the full amount of **two million twenty thousand two hundred eighty-two dollars (\$2,020,282)** by submitting a check made payable to the “*Cleanup and Abatement Account*,” that references “Complaint No. R8-2024-0037.”
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Santa Ana Water Board receive significant new information or comments from any source (excluding the Santa Ana Water Board’s Prosecution Team) during this comment period the Santa Ana Water Board’s Assistant Executive Officer may withdraw the Complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Santa Ana Water Board (or the Santa Ana Water Board’s delegee), and that the Santa Ana Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in Augustine Metals, Inc. and Daniel Lynn Augustine having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type

alleged in the Complaint may subject Augustine Metals, Inc., and Daniel Lynn Augustine to further enforcement, including additional civil liability.

***(OPTION 2: Check here if Augustine Metals, Inc. and Daniel Lynn Augustine waive the 90-day hearing requirement to engage in settlement negotiations.)***

I hereby waive any right Augustine Metals, Inc., and Daniel Lynn Augustine may have to a hearing before the Santa Ana Water Board within 90 days after service of the Complaint, but I reserve the ability to request a hearing in the future. I certify that Augustine Metals, Inc., and Daniel Lynn Augustine will promptly engage the Santa Ana Water Board Prosecution Team in settlement negotiations to attempt to resolve the alleged violations. By checking this box, Augustine Metals, Inc., and Daniel Lynn Augustine request that the Santa Ana Water Board delay the hearing so that they can discuss settlement with the Prosecution Team. Any proposed settlement is subject to the conditions described above in "Option 1."

***(OPTION 3: Check here if Augustine Metals, Inc. and Daniel Lynn Augustine waive the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)***

I hereby waive any right Augustine Metals, Inc., and Daniel Lynn Augustine may have to a hearing before the Santa Ana Water Board within 90 days after service of the Complaint. By checking this box, Augustine Metals, Inc., and Daniel Lynn Augustine requests that the Santa Ana Water Board delay the hearing and/or hearing deadlines so that Augustine Metals, Inc., and Daniel Lynn Augustine may have additional time to prepare for the hearing. Please provide a written explanation of why additional time is needed. It remains within the discretion of the Santa Ana Water Board to approve the extension and the Prosecution Team reserves the right to object to this delay.

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(Print Name and Title)

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(Signature)

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(Date)



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## State Water Resources Control Board

March 18, 2024

*(Via email and Certified Mail with ACL R8-2024-0037)*

Augustine Metals, Inc.  
Attn: Daniel Lynn Augustine  
Agent for Service of Process  
2021 West Placentia Lane  
Colton, CA 92324

Daniel Lynn Augustine  
[augustinemetals@gmail.com](mailto:augustinemetals@gmail.com)

Daniel Lynn Augustine  
11055 Lone Star Road  
Moreno Valley, CA 92557

**SUBJECT: ADMINISTRATIVE SUBPOENAS AND NOTICE OF EVIDENCE  
PRESERVATION IN THE MATTER OF AUGUSTINE METALS, INC.  
AND DANIEL LYNN AUGUSTINE, ADMINISTRATIVE CIVIL LIABILITY  
R8-2024-0037**

Dear Mr. Augustine:

You are hereby served with administrative subpoenas for records and documents concerning the above-referenced proceeding before the California Water Quality Control Board, Santa Ana Region (Santa Ana Water Board).

Please find enclosed are two Subpoenas for Records and Documents issued pursuant to California Water Code sections 1075 and 1080, and California Government Code section 11450.05 *et seq.*, and an Affidavit in Support of the Subpoenas for Records and Documents in the matter of administrative civil liability complaint (ACL Complaint) R8-2024-0037. A Subpoena is included for Augustine Metals, Inc. and Daniel Lynn Augustine, an individual.

The enclosed Subpoenas for Records and Documents are issued in coordination with the ACL Complaint on March 18, 2024 issued to Augustine Metals, Inc. and Daniel Lynn Augustine. Attachment A to the ACL Complaint includes the Prosecution Team's initial showing that you have the ability to pay the proposed liability and remain in business. If you wish to dispute the Prosecution Team's showing at the ACL Complaint administrative hearing before the Santa Ana Water Board set for June 14, 2024, you

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Office of Enforcement | 801 K Street, Suite 2300 | Sacramento, CA 95814 | 916.341.5272

E. JOAQUIN ESQUIVEL, CHAIR | ERIC OPPENHEIMER, EXECUTIVE DIRECTOR

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1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | [www.waterboards.ca.gov](http://www.waterboards.ca.gov)

must respond to the enclosed Subpoena by submitting any evidence you wish for the Santa Ana Water Board Prosecution Team to consider by **April 19, 2024**.

The Prosecution Team requires the documents listed herein by April 19, 2024 in order to conduct a complete analysis of Augustine Metal, Inc.'s and Daniel Lynn Augustine's ability to pay the proposed liability. Failure to produce the records and documents as required by the enclosed Subpoenas may prevent you from presenting evidence to the Santa Ana Water Board on your ability to pay and remain in business.

If you decide not to dispute the initial ability to pay analysis, you must respond to the Subpoena by submitting a signed statement agreeing to waive your right to argue inability to pay the proposed liability in your defense. The statement would serve as your response to the enclosed Subpoenas.

In addition, this letter puts Augustine Metals, Inc. and Daniel Lynn Augustine, and their employees, agents, or other representatives on notice to preserve all evidence that might be relevant to this proceeding. Any person who destroys or conceals any such evidence, or, agrees with, or facilitates, any other person to do so, may be subject to any legal remedies for such conduct. Relevant evidence includes, but is not limited to, documents that describe or relate to the subject matter of the Subpoenas for Records and Documents.

If you have questions regarding this correspondence of any of the matters in the Subpoena for Records and Documents, please call me at 916-322-3538 or contact me by e-mail at [Catherine.Hawe@waterboards.ca.gov](mailto:Catherine.Hawe@waterboards.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Catherine M. Hawe". The signature is written in a cursive style with a large, looping initial "C".

Catherine M. Hawe  
Attorney for the Santa Ana Water Board Prosecution Team

1 YVONNE WEST, DIRECTOR (SBN 221414)  
2 CATHERINE M. HAWE (SBN 312055)  
3 OFFICE OF ENFORCEMENT  
4 STATE WATER RESOURCES CONTROL BOARD  
5 801 K Street, Suite 2300  
6 Sacramento, California 95814  
7 Telephone: (916) 341-5272  
8 Facsimile: (916) 341-5896  
9 Email: Catherine.Hawe@waterboards.ca.gov

10 Attorneys for the Prosecution Team

11 BEFORE THE SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD

12 STATE OF CALIFORNIA

13 In the Matter of: )

14 AUGUSTINE METALS, INC. AND DANIEL )  
15 LYNN AUGUSTINE )

16 Complaint No. R8-2024-0037 )

17 ) SUBPOENA FOR RECORDS AND  
18 ) DOCUMENTS  
19 ) (California Water Code, §§ 1075, 1080,  
20 ) California Government Code, § 11450.05  
21 ) *et seq.*)

22  
23  
24  
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26  
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28  

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29 TO: **Daniel Lynn Augustine**

30 **NOTICE:**

31 ( ) You are served as an individual.

32 ( ) You are served as (or on behalf of) the person

33 doing business under the fictitious name

34 of

35 ( X ) You are served on behalf of: Augustine Metals, Inc.

36 Pursuant to the powers conferred by California Water Code Sections 1075 and 1080 and  
37 Government Code Sections 11450.05 *et seq.*:

38 **AUGUSTINE METALS, INC., IS ORDERED** to produce the papers, books, records and  
documents in your possession or under its control described below in connection with the above-

1 titled on or before **April 19, 2024**. Documents must be sent to: Catherine Hawe, Attorney, Office  
2 of Enforcement, State Water Resources Control Board, 801 K Street, Suite 2300, Sacramento, CA  
3 95814.

4 You may seek the advice of an attorney in any matter connected with this subpoena. You  
5 should consult your attorney promptly so that any problems concerning your production of  
6 documents may be resolved within the time required by this subpoena.

7 **IF YOU INTEND TO WAIVE YOUR RIGHT TO CHALLENGE THE LIABILITY**  
8 **AMOUNT PROPOSED IN ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R8-**  
9 **2024-0037 ON THE BASIS OF YOUR ABILITY TO PAY AND/OR CONTINUE IN**  
10 **BUSINESS, PROVIDE A SIGNED STATEMENT AGREEING TO WAIVE YOUR RIGHT**  
11 **TO USE INABILITY TO PAY THE PROPOSED LIABILITY IN YOUR DEFENSE. THE**  
12 **CALIFORNIA WATER QUALITY CONTROL BOARD, SANTA ANA REGION MAY**  
13 **CONSIDER YOUR WAIVER AND STATEMENT AS AN ADMISSION THAT YOU ARE**  
14 **ABLE TO PAY THE PROPOSED LIABILITY AND THAT THE PROPOSED LIABILITY**  
15 **WILL NOT AFFECT YOUR ABILITY TO CONTINUE IN BUSINESS.**

16 **FAILURE TO COMPLY WITH THE COMMANDS OF THIS SUBPOENA WILL**  
17 **SUBJECT YOU TO THE PROCEEDINGS AND PENALTIES PROVIDED BY LAW.**

18  
19  
20 **DEFINITIONS**

21 Definitions for industry or trade terms contained herein are to be construed broadly. Where  
22 the industry or trade definition set forth herein does not coincide precisely with your definition, the  
23 question, inquiry or production request should be responded to or answered by using the definition  
24 which you apply and/or recognize in your usage of the term, further documenting your definition in  
25 the response. Non-industry or non-trade definitions should be applied as defined herein.

26 (1) The term "COMMUNICATION" or "COMMUNICATIONS" means every disclosure,  
27 transfer, exchange or transmission of information, whether oral or written and whether face to face  
28 or by telecommunications, computer, mail, telecopier or otherwise.

1 (2) The terms "RELATING TO" or "RELATE TO" includes referring to, alluding to,  
2 responding to, concerning, connected with, commenting on, in respect of, about, regarding,  
3 discussing, showing, describing, mentioning, reflecting, analyzing, constituting, evidencing, or  
4 pertaining to.

5 (3) (a) The term "DOCUMENT" means a document whose existence is known to  
6 you, your employees, superiors, representatives or assigns, regardless of its location or origin,  
7 including the original and all non-identical copies, whether written, printed or recorded, including,  
8 with limitations, contracts, agreements, leases, receipts, invoices, payment vouchers, purchase  
9 orders, books, booklets, brochures, reports, notices, announcements, minutes and other  
10 communications, including inter and intra-office communications, studies, analyses, maps, charts,  
11 tables, questionnaires, indices, telegrams, messages (including reports of telephone conversations  
12 and conferences), tapes, letters, electronic mail, notes, records, drafts, proposals, authorizations,  
13 negotiations, canceled checks, financial statements, deposit slips, bank drafts, books of account,  
14 summaries, reports, tests, projections, studies, charts, notebooks, worksheets, recordings, calendars,  
15 or other materials which are written, recorded, printed, typed, or transcribed. "DOCUMENT" also  
16 means data stored in any digital format, including on internal and external hard drives, thumb  
17 drives, disks, cloud-based storage systems, or photographs, videotapes or any other matter of any  
18 kind or nature however produced or reproduced and each copy of any of the foregoing which is not  
19 identical because of margin notations or otherwise. If any such documents were, but no longer are,  
20 in your possession or control, state what disposition was made of them and when.

21 (b) The term "DOCUMENT" shall also include all documents necessary to  
22 interpret, translate, decode or understand any other document requested or produced. If a form of  
23 document (i.e., magnetic tape) cannot be read, such form must be converted to a paper document  
24 that can be read.

25 (4) The term "THE COMPANY" means Augustine Metals, Inc.

26 (5) The term "THE SITE" means Augustine Metals located at 2021 La Placentia Lane,  
27 Colton, California.

28 (6) The term the "STATE OF CALIFORNIA" means all land within the geopolitical  
boundaries of the State of California.

1 (7) The terms “AND” and “OR” have both conjunctive and disjunctive meanings.

2 (8) The terms “YOU” or “YOUR” refer to Augustine Metals, Inc.

3  
4 **INSTRUCTIONS**

5 i. **Unless otherwise indicated, the time period covered by this subpoena is from**  
6 **January 1, 2020 to up to five days before YOUR full compliance with this subpoena. Any**  
7 **documents relating to this time period are to be produced, regardless of whether the**  
8 **documents came into existence before or during this period.**

9 ii. YOUR response to the subpoena should include a declaration or affidavit. It should  
10 state that a diligent search for all requested DOCUMENTS has been conducted and that the affiant  
11 or declarant was in charge of the search or otherwise monitored and reviewed the search  
12 sufficiently to be able to represent under oath that such a search was conducted. It should be  
13 signed under oath by the person most knowledgeable about the DOCUMENTS and YOUR efforts  
14 to comply with the subpoena. If different people are the most knowledgeable about portions of the  
15 search (e.g., one person is most knowledgeable about DOCUMENTS contained in computer media  
16 and a different person is most knowledge about DOCUMENTS contained on paper) each should  
17 sign an affidavit or declaration identifying the category in the request for DOCUMENTS for which  
18 that person is the most knowledgeable.

19 iii. Unless otherwise indicated, for any DOCUMENT stored in a computer or other  
20 digital or cloud-base system, including all electronic mail messages, YOU should produce the  
21 DOCUMENT in the original electronic file format in which it was created (e.g., Microsoft email  
22 should be provided in its original format, which would have the .pst suffix, not in a pdf file;  
23 spreadsheets should be in their original file form, such as an Excel file and word-processed  
24 DOCUMENTS should be in their original file format, such as a Word or WordPerfect file),  
25 together with instructions and all other materials necessary to use or interpret the data. Electronic  
26 mail messages should be provided, even if only available on backup or archive tapes or disks.  
27 Computer media should be accompanied by (a) an identification of the generally available software  
28 needed to open and view the DOCUMENTS or (b) a copy of the software needed to open and view  
the DOCUMENT. Note, however, that if a print-out from a computer DOCUMENT is a



1 non-identical copy of the electronic form in which it was created (non-identical as described in the  
2 definition of "DOCUMENT," by way of example, but not limitation, because it has a signature,  
3 handwritten notation, or other mark or attachment not included in the computer DOCUMENT),  
4 both the electronic form in which the DOCUMENT was created and the original print-out should  
5 be produced.

6 iv. For each DOCUMENT contained in an audio or video medium, YOU should  
7 provide both the tape, disk or other device from which the audio or video can be played and the  
8 transcript of the DOCUMENT.

9 v. For all DOCUMENTS YOU do not produce in the original, as defined in Evidence  
10 Code section 255, YOU may submit copies (black and white copies if the original was in black and  
11 white, color copies if the original was in color, and, if the original was in electronic format, in the  
12 same electronic medium as the original) in lieu of original DOCUMENTS provided that such  
13 copies are accompanied by an affidavit stating that the copies of all three types of DOCUMENTS  
14 are true, correct, and complete copies of the original DOCUMENTS. If there is in YOUR  
15 possession, custody or control no original, but only a copy or photographic record thereof, then  
16 YOU should produce a true and legible copy of each such DOCUMENT. The accompanying  
17 affidavit should state that the DOCUMENT is only a copy or photographic record and not the  
18 original.

19 vi. If a DOCUMENT is responsive to this subpoena and is in YOUR control, but is not  
20 in YOUR possession or custody, in addition to obtaining and producing the DOCUMENT, identify  
21 the person who had possession or custody of the DOCUMENT, their telephone number and current  
22 business and residence addresses.

23 vii. If any DOCUMENT subpoenaed is no longer in YOUR possession, custody, control  
24 or care, YOU should provide a written statement identifying the DOCUMENT with specificity,  
25 stating whether it is lost or missing, has been destroyed, has been transferred to others, or has  
26 otherwise been disposed of. The written statement should also identify the person who disposed of  
27 the DOCUMENT, explain the circumstances and authorization for the disposition and the  
28 approximate date of the disposition of the DOCUMENT. If there are no DOCUMENTS

1 responsive to a document request, as to each such document request, YOU should include a  
2 statement to that effect in the accompanying declaration or affidavit.

3       viii. DOCUMENTS provided in response to this subpoena should be complete and,  
4 unless privileged, unredacted, submitted as found in YOUR files (*e.g.*, DOCUMENTS that in their  
5 original condition were stapled, clipped, attached as a "post-it," or otherwise fastened together shall  
6 be produced in the same form).

7       ix. Each DOCUMENT produced pursuant to this subpoena should be identified  
8 according to the category in the subpoena to which it is responsive. In lieu of indicating on each  
9 DOCUMENT the category to which it is responsive, on the date set for production, YOU may  
10 instead provide an index if YOU provide it in both paper and in electronic form (such as a  
11 computerized spread sheet in Excel or a Word or WordPerfect DOCUMENT set up in a table  
12 format) of all DOCUMENTS YOU produce, as long as this index shows by document control  
13 number the request(s) to which each DOCUMENT or group of DOCUMENTS is responsive.  
14 Responsive DOCUMENTS from each person's files should be produced together, in one box or in  
15 consecutive boxes, or on one thumb drive or consecutive thumb drives. Mark each page of a paper  
16 DOCUMENT and each tangible thing containing audio, video, computer or other electronic  
17 DOCUMENTS (*e.g.* cassette, thumb drive, tape or CD) with identification and consecutive  
18 document control numbers (*e.g.*, S.I. 00001, S.I. CD 001, S.I. audio tape 001). Number each box  
19 of DOCUMENTS produced and mark each with the name(s) of the person(s) whose files are  
20 contained therein, the requests(s) to which they are responsive, and the document control numbers  
21 contained therein.

22       x. For data produced in spreadsheets or tables, include in the declaration or affidavit  
23 the identification of the fields and codes and a description of the information contained in each  
24 coded field.

25       xi. The document requests contained in this subpoena should be deemed to include a  
26 request for all relevant DOCUMENTS in the personal files, including but not limited to files  
27 contained on laptops, mobile phones, home computers and home files of all YOUR officers,  
28 employees, accountants, agents and representatives, including sales agents who are independent  
contractors, and unless privileged, attorneys.

1           xii.     If any DOCUMENTS are withheld from production based on a claim of privilege,  
2 provide a log under oath by the affiant or declarant, which includes each DOCUMENT'S authors,  
3 addressees, date, a description of each DOCUMENT, all recipients of the original, and any copies,  
4 and the request(s) of this subpoena to which the DOCUMENT is responsive. Attachments to a  
5 DOCUMENT should be identified as such and entered separately on the log. For each author,  
6 addressee, and recipient, state the person's full name, title, and employer or firm, and denote all  
7 attorneys with an asterisk. To the extent the claim of privilege relates to any employee, agent,  
8 representative, or outside attorney, identify the person's name, division, and organization. Include  
9 the number of pages of each DOCUMENT and in the description of the DOCUMENT, provide  
10 sufficient information to identify its general subject matter without revealing information over  
11 which a privilege is claimed. For each DOCUMENT withheld under a claim that it constitutes or  
12 contains attorney work product, also state whether YOU assert that the DOCUMENT was prepared  
13 in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial on which  
14 the assertion is based. Submit all non-privileged portions of any responsive DOCUMENT  
15 (including non-privileged or redactable attachments) for which a claim of privilege is asserted  
16 (except where the only non-privileged information has already been produced in response to this  
17 instruction), noting where redactions in the DOCUMENT have been made. DOCUMENTS  
18 authored by outside lawyers representing YOU that were not directly or indirectly furnished to  
19 YOU or any third-party, such as internal law firm memoranda, may be omitted from the log.

20           xiii.    Whenever necessary to bring within the scope of this subpoena DOCUMENTS that  
21 might otherwise be construed as outside its scope:

22                   (a) the use of the verb in any tense shall be construed as the use of that verb in all  
23 other tenses;

24                   (b) the use of a word in its singular form shall be deemed to include within its use  
25 the plural form as well; and

26                   (c) the use of the word in its plural form shall be deemed to include within its use  
27 the singular form as well.

28           xiv.     Whenever responsive DOCUMENTS apply to more than one site, such  
DOCUMENTS shall be organized by address of the site.

xv. The subpoenaing party will comply with all laws regarding payment of reasonable costs incurred for the production of DOCUMENTS. Prior to the production and copying of DOCUMENTS, the undersigned requests to be contacted to confer on the most efficient manner in which to proceed.

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**DOCUMENTS TO BE PRODUCED**

This subpoena commands production of the original of each and every DOCUMENT now or at any time in the possession, custody or control of YOU without regard to the person(s) by whom or for whom said DOCUMENTS were prepared, including, but not limited to, all DOCUMENTS in the personal, business, or other files of all present or former agents, employees, attorneys, and accountants of THE COMPANY, which refers OR RELATES TO any of the following subjects:

- (1) Complete and unredacted federal tax returns for THE COMPANY for the last five years (e.g., years ending December 31, 2016 through December 31, 2021), including ALL schedules, attachments, AND other related documents.
- (2) Year-to-date financial data for the months since December 31, 2021 to the present, including ALL profit and loss (P&L) statements, balance sheets, AND cash flow statements for the period.
- (3) ALL business plans prepared by OR for THE COMPANY OR any other person RELATING TO any real estate leased, rented, OR owned by THE COMPANY in the last five years.
- (4) ALL DOCUMENTS that refer OR RELATE TO any real property owned by THE COMPANY, including but not limited to, ALL DOCUMENTS which RELATE to the business use of the property; the original purchase price of the property; loans, liens, or judgments supported by OR issued against the property; AND the present value of the property, including but not limited to, county tax assessor records, appraisals, market trends, economic conditions, AND mortgage statements.
- (5) ALL DOCUMENTS that refer OR RELATE TO any sale(s) of real property owned by THE COMPANY.
- (6) ALL DOCUMENTS that refer OR RELATE TO any acquisition(s) of real estate by THE COMPANY.

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(7) ALL rental, lease, OR sublease agreements for property owned, operated, OR occupied by THE COMPANY within the last three (3) years for property owned by THE COMPANY.

(8) ALL DOCUMENTS that refer OR RELATE TO ALL loans to AND from THE COMPANY, with ALL schedules and attachments, including the underlying documentation that was the basis on which the loans were extended, AND ALL DOCUMENTS which identify whether the loans are to a RELATED PARTY.

(9) ALL DOCUMENTS that refer OR RELATE TO any lines of credit to THE COMPANY, with ALL schedules and attachments, including the underlying documentation that was the basis on which the lines of credit were extended.

(10) ALL Profit and Loss Statements for THE COMPANY for the last five (5) years.

(11) ALL Balance Sheets for THE COMPANY for the last five (5) years.

(12) ALL cash flow statements for THE COMPANY for the last five (5) years.

(13) Any other DOCUMENTS which evidence, RELATE TO, OR describe THE COMPANY's financial condition, solvency, OR ability to timely pay debts.

ALL DOCUMENTS which refer OR RELATE TO depreciation schedules for ALL non-real property assets owned by THE COMPANY (e.g., an asset ledger).

(14) For any non-real property asset valued above \$5,000, provide ALL DOCUMENTS that refer OR RELATE TO the original purchase date AND price, the business use of the asset, the current market value of the asset, AND any loans secured by the asset OR liens OR judgments against the asset.

(15) ALL DOCUMENTS RELATED TO insurance contracts AND policies held by OR on behalf of THE COMPANY RELATED TO THE SITE with coverage from January 1, 2012 to present.

Given under my hand this 18th day of March, 2024.



Catherine M. Hawe  
Attorney, Office of Enforcement  
State Water Resources Control Board

1 YVONNE WEST, DIRECTOR (SBN 221414)  
2 CATHERINE M. HAWE (SBN 312055)  
3 OFFICE OF ENFORCEMENT  
4 STATE WATER RESOURCES CONTROL BOARD  
5 801 K Street, Suite 2300  
6 Sacramento, California 95814  
7 Telephone: (916) 341-5272  
8 Facsimile: (916) 341-5896  
9 Email: Catherine.Hawe@waterboards.ca.gov

10 Attorneys for the Prosecution Team

11 BEFORE THE SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD

12 STATE OF CALIFORNIA

13 In the Matter of: )

14 AUGUSTINE METALS, INC. AND DANIEL )  
15 LYNN AUGUSTINE )

16 Complaint No. R8-2024-0037 )

17 ) SUBPOENA FOR RECORDS AND  
18 ) DOCUMENTS  
19 ) (California Water Code, §§ 1075, 1080,  
20 ) California Government Code, § 11450.05  
21 ) *et seq.*)

22 \_\_\_\_\_  
23 TO: DANIEL LYNN AUGUSTINE

24 **NOTICE:**

25 ( X ) You are served as an individual.

26 ( ) You are served as (or on behalf of) the person

27 doing business under the fictitious name

28 of

( ) You are served on behalf of:

Pursuant to the powers conferred by California Water Code Sections 1075 and 1080 and  
Government Code Sections 11450.05 *et seq.*:

**DANIEL LYNN AUGUSTINE, IS ORDERED** to produce the papers, books, records and  
documents in your possession or under your control described below in connection with the above-

1 titled on or before **April 19, 2024**. Documents must be sent to: Catherine Hawe, Attorney, Office  
2 of Enforcement, State Water Resources Control Board, 801 K Street, Suite 2300, Sacramento, CA  
3 95814.

4 You may seek the advice of an attorney in any matter connected with this subpoena. You  
5 should consult your attorney promptly so that any problems concerning your production of  
6 documents may be resolved within the time required by this subpoena.

7 **IF YOU INTEND TO WAIVE YOUR RIGHT TO CHALLENGE THE LIABILITY**  
8 **AMOUNT PROPOSED IN ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R8-**  
9 **2024-0037 ON THE BASIS OF YOUR ABILITY TO PAY AND/OR CONTINUE IN**  
10 **BUSINESS, PROVIDE A SIGNED STATEMENT AGREEING TO WAIVE YOUR RIGHT**  
11 **TO USE INABILITY TO PAY THE PROPOSED LIABILITY IN YOUR DEFENSE. THE**  
12 **CALIFORNIA WATER QUALITY CONTROL BOARD, SANTA ANA REGION MAY**  
13 **CONSIDER YOUR WAIVER AND STATEMENT AS AN ADMISSION THAT YOU ARE**  
14 **ABLE TO PAY THE PROPOSED LIABILITY AND THAT THE PROPOSED LIABILITY**  
15 **WILL NOT AFFECT YOUR ABILITY TO CONTINUE IN BUSINESS.**

16 **FAILURE TO COMPLY WITH THE COMMANDS OF THIS SUBPOENA WILL**  
17 **SUBJECT YOU TO THE PROCEEDINGS AND PENALTIES PROVIDED BY LAW.**

18  
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20 **DEFINITIONS**

21 Definitions for industry or trade terms contained herein are to be construed broadly. Where  
22 the industry or trade definition set forth herein does not coincide precisely with your definition, the  
23 question, inquiry or production request should be responded to or answered by using the definition  
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9 orders, books, booklets, brochures, reports, notices, announcements, minutes and other  
10 communications, including inter and intra-office communications, studies, analyses, maps, charts,  
11 tables, questionnaires, indices, telegrams, messages (including reports of telephone conversations  
12 and conferences), tapes, letters, electronic mail, notes, records, drafts, proposals, authorizations,  
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13 in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial on which  
14 the assertion is based. Submit all non-privileged portions of any responsive DOCUMENT  
15 (including non-privileged or redactable attachments) for which a claim of privilege is asserted  
16 (except where the only non-privileged information has already been produced in response to this  
17 instruction), noting where redactions in the DOCUMENT have been made. DOCUMENTS  
18 authored by outside lawyers representing YOU that were not directly or indirectly furnished to  
19 YOU or any third-party, such as internal law firm memoranda, may be omitted from the log.

20           xiii.    Whenever necessary to bring within the scope of this subpoena DOCUMENTS that  
21 might otherwise be construed as outside its scope:

22                   (a) the use of the verb in any tense shall be construed as the use of that verb in all  
23 other tenses;

24                   (b) the use of a word in its singular form shall be deemed to include within its use  
25 the plural form as well; and

26                   (c) the use of the word in its plural form shall be deemed to include within its use  
27 the singular form as well.

28           xiv.     Whenever responsive DOCUMENTS apply to more than one site, such  
DOCUMENTS shall be organized by address of the site.

xv. The subpoenaing party will comply with all laws regarding payment of reasonable costs incurred for the production of DOCUMENTS. Prior to the production and copying of DOCUMENTS, the undersigned requests to be contacted to confer on the most efficient manner in which to proceed.

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2 **DOCUMENTS TO BE PRODUCED**

3 This subpoena commands production of the original of each and every DOCUMENT now  
4 or at any time in the possession, custody or control of YOU without regard to the person(s) by  
5 whom or for whom said DOCUMENTS were prepared, including, but not limited to, all  
6 DOCUMENTS in the personal, business, or other files of all present or former agents, employees,  
7 attorneys, and accountants of THE COMPANY, which refers or relates to any of the following  
8 subjects:

- 9 (1) Federal tax returns for DANIEL LYNN AUGUSTINE for the tax years 2020, 2021,  
10 2022, AND 2023, including all schedules, attachments, AND other related documents.
- 11 (2) Provide ALL DOCUMENTS that refer or RELATE TO any real property owned by  
12 DANIEL LYNN AUGUSTINE.
- 13 (3) Provide ALL DOCUMENTS that refer or RELATE TO the present value of any  
14 real property owned by DANIEL LYNN AUGUSTINE, including but not limited to,  
15 county tax assessor records, any appraisal(s) conducted in the last three (3) years, OR  
16 mortgage statements.
- 17 (4) Provide ALL DOCUMENTS that refer or RELATE TO any sale(s) of real property  
18 owned by DANIEL LYNN AUGUSTINE.
- 19 (5) Provide ALL DOCUMENTS that refer or RELATE TO any acquisition(s) of real  
20 estate by DANIEL LYNN AUGUSTINE.
- 21 (6) Provide ALL DOCUMENTS that refer or RELATE TO liens against any real  
22 property owned by DANIEL LYNN AUGUSTINE.
- 23 (7) Provide ALL rental and/or lease agreements entered into by lessee(s) and YOU  
24 within the last three (3) years for property owned by DANIEL LYNN AUGUSTINE.
- 25 (8) Provide ALL DOCUMENTS that refer or RELATE TO ALL loans to and from  
26 DANIEL LYNN AUGUSTINE.
- 27 (9) Provide ALL DOCUMENTS that refer or RELATE TO any credit lines to DANIEL  
28 LYNN AUGUSTINE.

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- (10) Provide the last twelve (12) months of monthly summary statements for ALL savings and checking accounts held in DANIEL LYNN AUGUSTINE's name.
- (11) Provide any other DOCUMENT(S) which evidence, RELATE TO, or describe DANIEL LYNN AUGUSTINE's financial condition, solvency, or ability to timely pay debts.
- (12) Provide all DOCUMENTS which refer or RELATE TO operating costs at THE COMPANY, including, but not limited to, operating costs for labor, electricity, water, any and all utilities, fuel and lubrication, machinery repairs, repairs, maintenance, and rental equipment.
- (13) Provide all DOCUMENTS which refer or RELATE TO cash overhead costs, including, but not limited to, office expenses, managers, property taxes, liability insurance, property insurance, any and all insurance coverage, and investment repairs.
- (14) Provide all DOCUMENTS which refer or RELATE TO non-cash overhead costs, including, but not limited to, buildings, equipment and machinery.
- (15) Provide all DOCUMENTS which refer or RELATE TO depreciation schedules for all assets related to the operation of THE COMPANY.

Given under my hand this 18th day of March, 2024.



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Catherine M. Hawe  
Attorney, Office of Enforcement  
State Water Resources Control Board



1 YVONNE WEST, DIRECTOR (SBN 221414)  
2 CATHERINE M. HAWE (SBN 312055)  
3 OFFICE OF ENFORCEMENT  
4 STATE WATER RESOURCES CONTROL BOARD  
5 801 K Street, Suite 2300  
6 Sacramento, California 95814  
7 Telephone: (916) 341-5272  
8 Facsimile: (916) 341-5896

9 Attorneys for the Prosecution Team

10 BEFORE THE SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD  
11 STATE OF CALIFORNIA

12 In the Matter of:

13 AUGUSTINE METALS, INC. AND DANIEL  
14 LYNN AUGUSTINE

15 Complaint No. R8-2024-0037

16 )  
17 ) AFFIDAVIT OF CATHERINE HAWE  
18 ) SUPPORTING SUBPOENA FOR  
19 ) RECORDS AND DOCUMENTS

20 **I, Catherine Hawe, declare as follows:**

21 1. I am an attorney with the State Water Resources Control Board's (State Water  
22 Board) Office of Enforcement. I am the attorney of record for the Santa Ana Regional Water  
23 Quality Control Board (Santa Ana Water Board) Prosecution Team (Prosecution Team) in this  
24 action.

25 2. I have personal knowledge of all facts stated in this declaration and, if called as a  
26 witness, could and would testify competently under oath.

27 3. The Assistant Executive Officer of the Santa Ana Water Board issued  
28 Administrative Civil Liability Complaint No. R8-2024-0037 (Complaint) for this matter on March  
18, 2024 to Augustine Metals, Inc. and Daniel Lynn Augustine (Dischargers).

4. The following issues, among others, are involved in this case: alleged violation of  
Clean Water Act and the Sector-Specific General Permit for Storm Water Runoff Associated with  
Industrial Activities from Scrap Metal Recycling Facilities within the Santa Ana Region (Scrap  
Metal Permit), Order R8-2018-0069.

5. California Water Code section 13385 requires the Santa Ana Water Board to "take

1 into consideration the nature, circumstances, extent, and gravity of the violation or violations,  
2 whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the  
3 discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in  
4 business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of  
5 culpability, economic benefit or savings, if any, resulting from the violation, and other matters as  
6 justice may require.”

7           6. Step 6 of the State Water Board’s Water Quality Enforcement Policy requires the  
8 Water Boards to consider a violator’s ability to pay a proposed liability amount and to consider the  
9 effect the proposed liability will have on the violator’s ability to continue in business. The  
10 Prosecution Team evaluated the Dischargers’ ability to pay the proposed liability in Attachment A  
11 of the Complaint using publicly available information to initially demonstrate the Dischargers’  
12 ability to pay the Proposed Liability and thus, shift the burden to the Dischargers to submit  
13 contrary information into the record for this proceeding. Based on the total liability alleged in the  
14 Complaint, it is reasonable for the Prosecution Team to expect the Dischargers to raise an inability  
15 to pay claim in this proceeding.

16           7. The Dischargers have in their possession or under their control additional  
17 documents that may support an alternative finding in Step 6 of the methodology. In anticipation of  
18 the Dischargers raising an inability to pay claim, the Prosecution Team is seeking production of  
19 these relevant documents so that the Prosecution may fully respond to the Dischargers’ ability to  
20 pay and/or ability to pay and continue in business arguments. There are no Hearing Procedures  
21 governing this matter at issuance of the Complaint, but the Prosecution Team needs these  
22 documents by April 19, 2024 in order to prepare its rebuttal evidence submission. The Prosecution  
23 Team anticipates that the Advisory Team will issue Hearing Procedures that will require the  
24 submittal of evidence prior to the scheduled hearing date. Because the hearing is scheduled for  
25 June 14, 2024, there is a limited time frame in order to fully consider and review any documents  
26 provided by the Dischargers.

27           8. Each document or other item described in the Subpoenas for Records and  
28 Documents and Affidavit attached hereto is material to the issues in this proceeding and is  
admissible in that these documents or other items are relevant and necessary in determining the  
Dischargers’ ability to pay the Proposed Liability and continue in business.

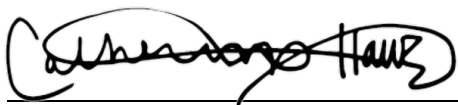
          9. Good cause exists for the production of documents or other items described in the

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Subpoena for Records and Documents attached hereto because such evidence is within the Dischargers' possession and is probative of the Dischargers' ability to pay the proposed liability and continue in business, a factor the Santa Anna Water Board is statutorily required to consider.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: March 18, 2024



Catherine M. Hawe  
Attorney for the Prosecution Team  
Office of Enforcement  
State Water Resources Control Board