

LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD

In the matter of:)
) Order R4-2016-0304 (Proposed)
Alliance Residential Builders II G.P.,)
Inc.) SETTLEMENT AGREEMENT AND
) STIPULATION FOR ENTRY OF
) ADMINISTRATIVE CIVIL LIABILITY ORDER;
) ORDER (PROPOSED)
)

Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order ("Stipulation" or "Stipulated Order") is entered into by and between the Assistant Executive Officer of the Regional Water Quality Control Board, Los Angeles Region ("Regional Board"), on behalf of the Regional Board Prosecution Team ("Prosecution Team") and Alliance Residential Builders II G.P., Inc. ("Discharger")(collectively "Parties") and is presented to the Regional Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

Section II: RECITALS

- 1. The Discharger constructed the Trino at 525 Broadway Project (Project) from October 1, 2012 to June 29, 2015. The Project consisted of a residential commercial building located at 525 Broadway Street in Santa Monica, California (Site), approximately half a mile from Santa Monica State Beach.
2. Storm water discharges from the Site drain to a storm drain leading to the Pacific Ocean, a water of the United States.
3. The Site lies within the Santa Monica Beach Coastal Feature of the Los Angeles County Coastal Watershed. The beneficial uses designated for surface waters include existing navigation, water contact recreation, non-contact recreation, commercial and sport fishing, marine habitat, wildlife habitat, migration of aquatic organisms, spawning, reproduction, and/or early development, and shellfish harvesting.
4. On September 21, 2012, the Discharger filed a Notice of Intent (NOI) to comply with California State Water Resources Control Board (State Water Board) Order No. 2009-0009-DWQ, as amended by Order Nos. 2010-0014-DWQ and 2012-0006-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (General Permit). The NOI was processed on November 2, 2012 and the project was assigned Waste Discharge Identification (WDID) No. 4 19C364964.
5. The NOI identifies the Site as a Risk Level 2 construction site that must implement the requirements in Attachment D of the General Permit to achieve the best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT).

6. Pursuant to Attachment D, Provision B.1 of the General Permit, the Discharger is required to implement good site management (i.e. housekeeping) measures for construction materials that could potentially be a threat to water quality if discharged.
7. Pursuant to Attachment D, Provision E.1 of the General Permit, the Discharger shall establish and maintain effective sediment controls.
8. On December 9, 2014, the Regional Board received a complaint about a discharge of sediment and debris released from the Site on December 2, 2014.
9. On December 12, 2014, Regional Board staff responded to the complaint and were granted access and the authority to conduct an inspection of the Site. Regional Board staff observed a lack of housekeeping BMPs including exposed trash, debris, sediment, soil, cement, concrete, and construction waste. Regional Board staff also observed a lack of sediment control BMPs, as effective perimeter controls were not established, which allowed uncovered piles of sand, cement, debris, trash, dirt, and cut concrete to potentially be discharged offsite.
10. The Discharger subsequently took steps to come into compliance after the December 12, 2014 inspection. Prior to issuance of a Notice of Violation (NOV), the Discharger improved its housekeeping and management practices and immediately ordered sediment and erosion control devices that were installed the next day.
11. On April 15, 2015, the Regional Board issued an NOV for the violations observed on December 12, 2014.
12. The Discharger responded to the NOV on May 5, 2015 stating it was now implementing effective BMPs, and provided supporting documentation including photographs from a May 5, 2015 inspection, December 12, 2014 invoices for sediment and erosion control BMPs, and training logs for personnel.
13. Regional Board staff conducted an enforcement follow-up inspection of the Site on May 28, 2015. Regional Board staff observed that BMP corrections were made and the Site appeared clean and maintained.
14. The Discharger is subject to administrative civil liability under Water Code section 13385, subdivision (a)(2) for violating the waste discharge requirements of the General Permit related to the housekeeping and sediment control BMPs identified above.
15. Pursuant to Water Code section 13385, subdivision (a), a person that violates a waste discharge requirement, such as those in the General Permit, is subject to administrative civil liability pursuant to Water Code section 13385, subdivision (c) "in an amount not to exceed the sum of both of the following: (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs. (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."
16. Water Code section 13385, subdivision (e) states: "In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court,

as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require.”

17. On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (“Enforcement Policy”). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The Prosecution Staff considered the methodology set forth in the Enforcement Policy for the violations, as shown in Attachment A, which is attached hereto and incorporated by reference as though fully set forth herein.

Section III: SETTLEMENT

18. The Parties have engaged in settlement negotiations and agree to fully settle the alleged violations as summarized above without administrative or civil litigation and by presenting this Stipulation to the Regional Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The amount of administrative civil liability imposed pursuant to this Stipulated Order comports with the Enforcement Policy methodology, as shown in Attachment A. The Prosecution Staff believes that the resolution of the alleged violations is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the specific violations alleged above, except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

19. To resolve the violations by consent and without further administrative proceedings, the Parties have agreed to the imposition of an ACL in the amount of fourteen thousand dollars (\$14,000) against the Discharger.

Section IV: STIPULATIONS

The Parties stipulate to the following:

20. **Jurisdiction:** The Parties agree that the Regional Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.

21. **Administrative Civil Liability:** The Discharger agrees to the imposition of administrative civil liability in the amount of FOURTEEN THOUSAND DOLLARS (\$14,000.00). The Discharger shall pay the FOURTEEN THOUSAND DOLLARS (\$14,000.00) in administrative civil liability by check made payable to the “State Water Pollution Cleanup and Abatement Account,” no later than 30 days following the Regional Board, or its delegee, executing this Order. The check shall reference the Order number indicated on page one of this Stipulation. The original signed check shall be sent to:

State Water Resources Control Board
Division of Administrative Services
Accounting Office
1001 I Street, 18th Floor
Sacramento, California 95814

Copies of the check shall be sent to Hugh Marley, Los Angeles Regional Water Quality Control Board, 320 West Fourth Street, Suite 200 Los Angeles, California 90013 and Kailyn Ellison, State Water Resources Control Board, 1001 I Street, P.O. Box 100, Sacramento, California 95812.

22. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged above may subject it to further enforcement, including additional administrative civil liability. Nothing in this Order shall excuse the Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

23. **Party Contacts for Communications related to this Stipulation and Order:**

For the Regional Board:

Hugh Marley, Chief
Compliance and Enforcement Section
Regional Water Quality Control Board,
Los Angeles Region
320 West Fourth Street, Suite 200
Los Angeles, California 90013
(213) 620-6375
hugh.marley@waterboards.ca.gov

For the Discharger:

Diana Matheson
Alliance Residential
450 Newport Center Drive, Suite 550
Newport Beach, California 92660
(619) 929-5742
dmatheson@allresco.com

24. **Attorney's Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

25. **Matters Covered by this Stipulation:** Upon adoption by the Regional Board, or its delegee, as an Order, this Stipulation represents a final and binding resolution and settlement of all claims, violations or causes of action alleged above or which could have been asserted based on the specific facts alleged against the Discharger. The provisions of this Paragraph are expressly conditioned on the Discharger's full payment of administrative civil liability by the deadline specified in Paragraph 21 herein.

26. **Public Notice:** The Discharger and the Regional Board Prosecution Team understand that this Stipulation and Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Board, or its delegee. In the event objections are raised during the public review and comment period, the Regional Board or its delegee may, under certain circumstances, require a public hearing regarding the Stipulation and Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the proposed Stipulation and Order as necessary or advisable under the

circumstances. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this Stipulation and Order.

27. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

28. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Region Board to enforce any provision of this Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Order. The failure of the Prosecution Team or Regional Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions, or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. The Regional Board reserves all rights to take additional enforcement actions, including without limitation, the issuance of ACL complaints or orders for violations other than those address by this Order.

29. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.

30. **Modification:** This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Board or its delegee.

31. **If the Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in any subsequent administrative or judicial proceeding or hearing and will be fully protected by California Evidence Code section 1152 and 1154; California Government Code section 11415.60; Rule 408, Federal Rules of Evidence; and any other applicable privilege under federal and/or state law. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

- A. Objections related to prejudice or bias of any of the Regional Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing in this matter; or

B. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

32. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Board prior to the adoption of the Order.

33. **Waiver of Right to Petition:** The Discharger hereby waives its right to petition the Regional Board's adoption of the Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

34. **The Discharger's Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulation and Order.

35. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Order on behalf of and to bind the entity on whose behalf he or she executes the Order.

36. **Severability:** This Stipulation and Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.

37. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulation may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

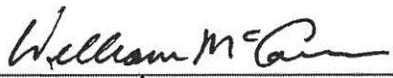
38. **Effective Date:** This Stipulation is effective and binding on the Parties upon the entry of this Order by the Regional Board or its delegee, which incorporates the terms of this Stipulation.

IT IS SO STIPULATED.

California Regional Water Quality Control Board,
Los Angeles Region Prosecution Team

Date: Sept. 20, 2016 By: 
Paula Rasmussen
Assistant Executive Officer

Alliance Residential Builders II G.P., Inc.

Date: 9-16-16 By: 
[Name] William McEan
[Title] President

HAVING CONSIDERED THE PARTIES' STIPULATIONS, THE REGIONAL BOARD, OR ITS DELEEGEE, FINDS THAT:

39. The Regional Board incorporates the foregoing Stipulation, set forth in Paragraphs 1 through 38 above, by this reference, as if set forth fully herein.

40. In accepting this Stipulation, the Regional Board has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e) (see Attachment A, incorporated herein by reference). The Regional Board's consideration of these factors is based upon information obtained by the Prosecution Team in investigating the allegations in Paragraphs 1 through 17 above. This settlement recovers the costs incurred by the Prosecution Staff in investigating and pursuing enforcement of the allegations set forth in Paragraphs 1 through 17 as "other matters as justice may require".

41. This is an action to enforce the laws and regulations administered by the Regional Board. The Regional Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations.

42. The Executive Officer is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under the Order.

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, Los Angeles Region.

Samuel Unger, P.E.
Executive Officer

Date: _____

Attachment A: Specific Factors Considered

Attachment A – Specific Factors Considered for
Settlement Agreement and Stipulation for Entry of
Administrative Civil Liability Order R4-2016-0304
Alliance Residential Builders II G.P., Inc.
WDID# 4 19C364964

California Water Code (Water Code) section 13385, subdivision (e) factors, along with corresponding State Water Resources Control Board, Water Quality Enforcement Policy (Enforcement Policy) scores, are presented for each violation below.

Violation 1: Failure to implement good site management “housekeeping” as observed during the December 12, 2014 follow-up inspection to the complaint.

On December 9, 2014, the Regional Board received a complaint wherein the complainant observed the discharge of sediment and debris from a construction site, located approximately ½ mile away from Santa Monica State Beach, in the City of Santa Monica. The discharge was due to the lack of best management practices (BMPs) during a storm event on December 2, 2014. The Regional Board responded to the complaint on December 12, 2014, after another storm event, and observed the lack of housekeeping BMPs. Pursuant to Attachment D, Provision B.1 of the General Permit, the Permittee is required to implement good site management (i.e. housekeeping) measures for construction materials that could potentially be a threat to water quality if discharged. Below are the steps set forth by the Enforcement Policy for calculating the penalty for this violation.

Step 1. Potential for Harm for Discharge Violations

Not applicable (non-discharge violation alleged)

Step 2. Assessment for Discharge Violations

Not applicable (non-discharge violation alleged)

Step 3. Per Day Assessment for Non-Discharge Violations: 0.35

a. Potential for Harm: *Moderate*

The violation poses either a Minor, Moderate or Major threat to beneficial uses. The Potential for Harm for this violation is characterized as Moderate. The Enforcement Policy defines Moderate Potential for Harm as “[t]he characteristics of the violation present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.”

The impacted site is located within the Santa Monica Beach Coastal Feature of the Los Angeles County Coastal Watershed. The beneficial uses designated for surface waters include existing navigation, water contact recreation, non-contact recreation, commercial and sport fishing, marine habitat, wildlife habitat, migration of aquatic organisms, spawning, reproduction, and/or early development, and shellfish harvesting.

The characteristics of the violation presents a substantial threat to beneficial uses

because failure to implement good site management (i.e. housekeeping) could lead to the discharge of construction materials which can potentially be a threat to water quality. Trash and debris can clog waterways and potentially reach the ocean where it can kill marine wildlife and impact habitat. Excess sediment in water bodies, from construction sites, can reduce the amount of sunlight reaching aquatic plants, clog fish gills, smother aquatic habitat and spawning areas, and impede navigation. Sediment can also transport other materials such as nutrients, metals, and oils and grease.

During the December 12, 2014 inspection, poor housekeeping and management practices were noted throughout the site. Trash, debris, sediment, soil, cement, concrete, and construction waste were exposed showing the Permittees failure to implement good site management to reduce or eliminate pollutants in the storm water. Therefore, the violation was characterized as a Moderate threat to beneficial uses.

b. Deviation from Requirement: *Moderate*

The violation is characterized as either a Minor, Moderate, or Major deviation from the requirement. In this case, the Prosecution Team characterized the violation as a Moderate Deviation from Requirement. The Enforcement Policy defines a Moderate Deviation from Requirement as "[t]he intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved)."

The Permittee failed to implement good site management to reduce or eliminate pollutants in the storm water. Trash, debris, sediment, soil, cement, concrete, and construction waste were exposed showing ineffective housekeeping practices. Permittee's failure to implement good site management indicates that the requirement was only partially achieved. Therefore, the violation was characterized as a Moderate deviation from the requirement.

Step 4. Adjustment Factors

Additional factors are considered and can modify the amount of initial liability: Culpability; Cleanup and Cooperation; History of Violations and if applicable, Multiple Day Violations.

c. Culpability: *1.3*

The culpability multiplier ranges between 0.5 and 1.5, with the lower multiplier for accidental incidents, and higher multiplier for intentional or negligent behavior. The Prosecution Team assigns a multiplier of 1.3 for this violation because the Permittee failed to implement good site management practices, but failed to reduce or eliminate pollutants in the storm water. Therefore, a multiplier of 1.3 was selected.

d. Cleanup and Cooperation: *1.0*

This is the extent to which the discharger voluntarily cooperated in returning to

compliance and correcting environmental damage. The multiplier for this factor ranges between 0.75 to 1.5, with the lower multiplier being applied where there is a high degree of cleanup and cooperation, and a higher multiplier where this is absent.

The Permittee took steps to come into compliance after the December 12, 2014 inspection. Prior to issuance of an NOV, the Permittee improved its housekeeping and management practices. Trash, debris, sediment, soil, cement, concrete, and construction waste has been properly disposed of. The Permittee covered the dumpster, placed materials on pallets, which are either covered or in storage, and kept the streets and alleys well maintained. Also, training was provided to staff to maintain effective housekeeping BMPs on-site. Therefore, a multiplier of 1.0 was selected.

e. History of Violations: 1.0

The Permittee does not have a history of violations known to the Regional Board. Therefore, a multiplier of 1.0 was selected.

f. Multiple Day Violations: N/A

At this time, the Regional Board only has evidence that the Permittee failed to implement good site management to reduce or eliminate pollutants at the site on December 12, 2014. Therefore, a reduction for multiple days of violation does not apply to this violation.

Step 5. Total Base Liability: \$4,550

0.35 (Per Day Factor) \times 1 days \times $\$10,000$ per day (statutory max) \times 1.3 (culpability) \times 1.0 (cleanup and cooperation) \times 1.0 (history of violations) = $\$4,550$

Step 6 through 10 apply to the Combined Total Base Liability Amount for all violations and are discussed in Attachment A after the Total Base Liability Amounts have been determined for the remaining violation.

Violation 2: Failure to establish and maintain effective perimeter controls to sufficiently control erosion and sediment discharges from the site as observed during the December 12, 2014 follow-up inspection to the complaint.

On December 9, 2014, the Regional Board received a complaint wherein the complainant observed the discharge of sediment and debris from a construction site, located approximately ½ mile away from Santa Monica State Beach, in the City of Santa Monica. The discharge was due to the lack of best management practices (BMPs) during a storm event on December 2, 2014. The Regional Board responded to the complaint on December 12, 2014, after another storm event, and observed the lack of sediment control BMPs. Pursuant to Attachment D, Provision E.1 of the General Permit, the Permittee shall establish and maintain effective sediment controls. Below are the steps set forth by the Enforcement Policy for calculating the penalty for this violation.

Step 1. Potential for Harm for Discharge Violations

Not applicable (non-discharge violation alleged)

Step 2. Assessment for Discharge Violations

Not applicable (non-discharge violation alleged)

Step 3. Per Day Assessment for Non-Discharge Violations: 0.35

a. Potential for Harm: *Moderate*

The violation poses either a Minor, Moderate or Major threat to beneficial uses. The Potential for Harm for this violation is characterized as Moderate. The Enforcement Policy defines Moderate Potential for Harm as “[t]he characteristics of the violation present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.”

The impacted site is located within the Santa Monica Beach Coastal Feature of the Los Angeles County Coastal Watershed. The beneficial uses designated for surface waters include existing navigation, water contact recreation, non-contact recreation, commercial and sport fishing, marine habitat, wildlife habitat, migration of aquatic organisms, spawning, reproduction, and/or early development, and shellfish harvesting.

The characteristics of the violation present a substantial threat to beneficial uses because sediment in water bodies from construction sites can reduce the amount of sunlight reaching aquatic plants, clog fish gills, smother aquatic habitat and spawning areas, and impeded navigation. Sediment can also transport other materials such as nutrients, metals, and oils and grease.

During the December 12, 2014 inspection, effective perimeter controls were not established, therefore allowing the uncovered piles of sand, cement, debris, trash, dirt, and cut concrete to be discharged offsite. Therefore, the violation was characterized as a Moderate threat to beneficial uses.

b. Deviation from Requirement: *Moderate*

The violation is characterized as either a Minor, Moderate, or Major deviation from the requirement. In this case, the Prosecution Team characterized the violation as a Moderate Deviation from Requirement. The Enforcement Policy defines a Moderate Deviation from Requirement as “[t]he intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved).”

The Permittee failed to properly implement perimeter controls to sufficiently control sediment discharges from the site. The effectiveness of the BMP was only partially achieved. Therefore, the violation was characterized as a Moderate deviation from the requirement.

Step 4. Adjustment Factors

Additional factors are considered and can modify the amount of initial liability: Culpability; Cleanup and Cooperation; History of Violations and if applicable, Multiple Day Violations.

a. Culpability: 1.3

The culpability multiplier ranges between 0.5 and 1.5, with the lower multiplier for accidental incidents, and higher multiplier for intentional or negligent behavior. The Prosecution Team assigns a multiplier of 1.3 for this violation because the Permittee did not implement proper perimeter controls to control sediment runoff from the site. Therefore, a multiplier of 1.3 was selected.

b. Cleanup and Cooperation: 1.0

This is the extent to which the discharger voluntarily cooperated in returning to compliance and correcting environmental damage. The multiplier for this factor ranges between 0.75 to 1.5, with the lower multiplier being applied where there is a high degree of cleanup and cooperation, and a higher multiplier where this is absent.

The Permittee took steps to come into compliance after the December 12, 2014 inspection. Prior to issuance of an NOV, the Permittee immediately ordered sediment and erosion control devices that were installed the next day. Therefore, a multiplier of 1.0 was selected.

c. History of Violations: 1.0

The Permittee does not have a history of violations known to the Regional Board. Therefore, a multiplier of 1.0 was selected.

d. Multiple Day Violations: N/A

At this time, the Regional Board only has evidence that the Permittee failed to control sediment runoff from the site only on December 12, 2014. Therefore, a reduction for multiple days of violation does not apply to this violation.

Step 5. Total Base Liability: \$4,550

0.35 (Per Day Factor) \times 1 days \times \$10,000 per day (statutory max) \times 1.3 (culpability) \times 1.0 (cleanup and cooperation) \times 1.0 (history of violations) = \$4,550

Step 6 through 10 apply to the Combined Total Base Liability Amount for all violations and are discussed in Attachment A.

Application of Steps 6-10 to Combine Total Base Liabilities

Step 6. Ability to Pay: 1

The Enforcement Policy provides that if the Regional Board has sufficient financial information necessary to assess the violators' ability to pay the Total Base Liability or to assess the effect of the Total Base Liability on the violators' ability to continue in business, then the Total Base Liability may be adjusted downward.

Alliance Residential Builders II G.P., Inc. has the ability to pay the proposed administrative civil liability and the assessment of the proposed administrative civil liability would not jeopardize its ability to continue in business. Alliance Residential Builders II G.P., Inc. is a national company incorporated in Texas and with headquarters in Phoenix, Arizona. According to the company's website, "Alliance has become one of the largest private apartment owners and the seventh largest management company in the nation, boasting a \$13.0+ billion portfolio of 81,000 units in 29 metropolitan markets." With 35 regional offices, the company's annual revenue is over \$10 million. Therefore, an ability to pay factor of 1 was selected.

Step 7. Other Factors as Justice May Require

a. Staff Cost: \$4,900

To date, the Regional Board has incurred \$4,900 in staff costs associated with the investigation, preparation and enforcement of the violation. This represents approximately 33 hours of staff time expended on meetings, communications and drafting the enforcement documents at a rate of \$150 an hour.

Step 8. Economic Benefit: *Negligible*

The Enforcement Policy directs the Regional Board to determine any economic benefit of the violations based on the best available information and suggests that the amount of the administrative civil liability should exceed this amount whether or not economic benefit is a statutory minimum.

The economic benefit for the violations is the estimated cost of the delay to 1) implement good site management, 2) establish and maintain effective erosion and sediment controls, and 3) minimize or prevent pollutants in storm water discharges through the use of controls, structures, and management practices that achieve BAT/BCT, which when calculated, is negligible.

Step 9. Maximum and Minimum Liability Amounts

The Enforcement Policy directs the Regional Board to consider maximum and minimum liability amounts set forth in the applicable statutes.

b. **Statutory Maximum: \$20,000**

The statutory maximum is the maximum amount allowed by CWC section 13385 which is \$10,000 per day per violation. The Permittee could be assessed up to \$10,000 of each alleged violations for a total statutory maximum of \$20,000 in administrative civil liabilities for the alleged violations.

c. **Statutory Minimum: *Negligible***

The Enforcement Policy requires the Regional Board to recover, at a minimum, 10% more than the economic benefit. The economic benefit was determined to be negligible; therefore, the statutory minimum is also negligible.

Step 10. Final Liability Amount: \$14,000

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided that amounts are within the statutory minimum and maximum amounts. The final liability amount calculation for the violation is the total base liability plus staff cost which sums up to \$14,000 and is within the statutory minimum and maximum amounts.