

LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD

In the Matter of:
Ventura Directional Drilling, Inc.

ORDER R4-2023-0139 (Proposed)
SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY
ORDER; ORDER (PROPOSED)

I. Introduction

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order or Order) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, Los Angeles Region (Regional Water Board), on behalf of the Regional Water Board Prosecution Team (Prosecution Team), and Ventura Directional Drilling, Inc. (Discharger) (collectively known as the Parties) and is presented to the Regional Water Board, or its delegee, for adoption as an order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.

II. Recitals

2. On June 30, 2020, the Los Angeles Regional Water Quality Control Board (Regional Water Board) received photo and video evidence from the City of Ventura Public Works (City) indicating there had been a discharge of unknown waste from a Ventura Directional Drilling, Inc. (Discharger) company truck (License Plate #9F77376 and CA Motor Carrier Permit #253748) into a storm drain.
3. The discharge of drilling fluid occurred on June 25, 2020 at the southeastern corner of the Amanzi Hotel's parking lot, located at 298 South Chestnut Street, Ventura, CA 93001.
4. On April 26, 2021, the Regional Water Board issued Investigative Order No. R4-2021-0065 requiring Ventura Directional Drilling, Inc. to prepare and submit a technical report to provide information regarding the unauthorized discharge. Ventura responded in July 2020, with such information. The discharge included potable water and a drilling additive known as CETCO Super Gel X.
5. After receiving information related to the discharge, Regional Water Board staff also sought additional information from the Discharger related to the unauthorized discharge and cleanup actions. Based on email correspondences from Mr. John Fields on February 17 and 23, 2023, the Discharger was unaware of the unauthorized discharge by its employee until notified via mail by the City of Ventura several days after the unauthorized discharge had occurred; the Discharger believes the June 25, 2020 unauthorized discharge did not flow

downstream and dried in place, and did not perform any cleanup following the unauthorized discharge. Based on staff's review of the Ventura County storm drain map, the storm drain leads to a stormwater outlet that terminates at Ventura Beach, approximately one thousand and fifteen feet from the storm drain inlet at the Amanzi Hotel parking lot. As the unauthorized discharge was not contained and cleaned up, pollutants contained in the unauthorized discharge could have been mobilized and discharged into the Pacific Ocean, a water of the United States, during subsequent wet weather events.

6. This discharge was unpermitted and in violation of Water Code sections 13376 and 13385(a)(1) and (a)(5). Water Code section 13385 states that a liability of up to ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons may be imposed administratively by the Regional Water Board. The per gallon liability is \$0 here since the waste discharged was less than 1,000 gallons. The proposed penalty is the one-day daily maximum, due to the intentional nature of the violation.
7. The Parties have engaged in confidential settlement negotiations and agree to fully settle the violations alleged in this Stipulated Order without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.
8. Attachment A to this settlement agreement is the Regional Water Board's analysis pursuant to the State Water Resource Control Board's (State Water Board) 2017 Water Quality Enforcement Policy. The Prosecution Team declined to reduce the penalty from the maximum daily amount, and the Discharger has elected to resolve the matter through settlement rather than proceed to a hearing.
9. To resolve the violations by consent and without further administrative or civil proceedings, the Parties have agreed to the imposition of an administrative civil liability against the Discharger in the amount of ten thousand dollars (\$10,000). The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violation alleged herein, and that this Stipulated Order is in the best interest of the public.

III. Stipulations

The Parties stipulate to the following:

10. **Jurisdiction:** The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulation.
11. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability in the amount of ten thousand dollars (\$10,000)

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to the Regional Water Board to resolve the violation specifically alleged in this Stipulated Order. No later than 30 days after the Regional Water Board, or its delegee, signs this Order, the Discharger shall submit a check for ten thousand dollars (\$10,000) made payable to the "Cleanup and Abatement Account," reference the Order number on page one of this Order, and mail it to:

State Water Resources Control Board Accounting Office
Attn: ACL Payment
P.O. Box 1888
Sacramento, CA 95812-1888

The Discharger shall provide a copy of the check via email to the State Water Resources Control Board, Office of Enforcement (Julie.Macedo@waterboards.ca.gov) and the Regional Water Board (Barbara.Guia@waterboards.ca.gov).

12. Compliance with Applicable Laws and Regulatory Changes: The Discharger understands that payment of an administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that additional violations of the type alleged may subject it to further enforcement, including additional administrative civil liabilities. Nothing in this Stipulated 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.

13. Party Contacts for Communications Related to Stipulated Order:

For the Regional Water Board:

Barbara Guia
Water Resources Control Engineer
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013
(213) 620-6361
Barbara.Guia@waterboards.ca.gov

For the Discharger:

John Fields
Ventura Directional Drilling, Inc.
17902 E. Telegraph Road
Santa Paula, CA 93060
Office: (805) 642-5000
John@venturadrilling.com

14. **Attorneys' Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
15. **Public Notice:** The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board, or its delegee, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Regional Water Board, or its delegee. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
16. **Procedure:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Order, will be adequate. In the event procedural objections are raised prior to this Stipulated 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.
17. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Regional Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Team or Regional Water 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 Water Board reserves all rights to take additional enforcement actions, including without limitation, the issuance of administrative civil liability complaints or orders for violations other than those addressed by this Order.
18. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Regional Water Board or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
19. **Interpretation:** This Stipulated Order shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
20. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Order.

All modifications must be made in writing and approved by the Regional Water Board or its delegee.

21. **Integration:** This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.
22. **If Order Does Not Take Effect:** The Discharger's obligations under this Stipulated Order are contingent upon the entry of the Order of the Regional Water Board as proposed. In the event that this Stipulated Order does not take effect because it is not approved by the Regional Water Board, or its delegee, or is vacated in whole or in part by the State Board or a court, the Parties acknowledge that the Prosecution Team may proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess an administrative civil liability for the underlying alleged violations, or may continue to pursue settlement. 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 sections 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 also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:
 - a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter; or
 - b. Laches or delay or other equitable defenses based on the time period that the Order or decision by settlement may be subject to administrative or judicial review.
23. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and, if the settlement is adopted by the Regional Water Board, hereby waives its right to a hearing before the Regional Water Board prior to the Stipulated Order's adoption. However, should the settlement not be adopted, and should the matter proceed to the Regional Water Board or State Board for hearing, the Discharger does not waive the right to a hearing before an order is imposed.
24. **Waiver of Right to Petition:** Except in the instance where the settlement is not adopted by the Regional Water Board, the Discharger hereby waives the right to petition the Regional Water Board's adoption of the Stipulated Order as written

for review by the State Board, and further waives the right, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

25. **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.
26. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that they are authorized to execute this Order on behalf of and to bind the entity on whose behalf the Order is executed.
27. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Stipulated Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Regional Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Stipulated Order.
28. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligation on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
29. **No Admission of Liability:** In settling this matter, the Discharger does not admit to any of the allegations stated herein, or that it has been or is in violation of the Water Code, or any other federal, State, or local law or ordinance, with the understanding that in the event of any future enforcement actions by the Regional Water Board, the State Water Board, or any other Regional Water Quality Control Board, this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327 and/or section 13385, subdivision (e).
30. **Mutual Release and Discharge of Claims:** In consideration for the promises, conditions, and covenants contained herein, each of the parties, for itself on behalf of its heirs, executors, administrators, successors and assigns, hereby irrevocably and unconditionally releases and discharges the other party and its respective agents, officers, directors, shareholders, employees, attorneys, subsidiaries, predecessors, successors and assigns, from any and all claims, liabilities, obligations, promises, causes of actions, actions, suits, costs, expenses, fees (including but not limited to attorneys' fees), damages or demands, of whatsoever kind or character, whether civil, criminal, or administrative, arising from or relating to the violations alleged herein. Each of the Parties understands, acknowledges and agrees that this Stipulated Order may be pleaded and introduced as evidence as a full and complete defense to

any claim, demand, action, or cause of action brought by any Party against the other Party related to the subject matter of this Stipulated Order.

31. **Admissibility:** The Parties understand and agree that the Stipulated Order shall not be admissible by any person, entity, organization, or government agency at any legal proceeding or hearing (including trial or arbitration) for any purpose other than enforcement of the terms of the Stipulated Order by a Party to the Stipulated Order or future enforcement actions as described in paragraph 32 above.
32. **Severability:** This Stipulated Order is severable; should any provision be found invalid, the remainder shall remain in full force and effect.
33. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board, or its delegee, enters the Order incorporating the terms of this Stipulated Order.
34. **Counterpart Signatures:** This Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulated Order 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.

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Ventura Directional Drilling, Inc.

IT IS SO STIPULATED.

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

By: **Hugh Marley**  Digitally signed by
Hugh Marley
Date: 2023.08.05
07:48:15 -07'00'

8/5/2023

Hugh Marley
Assistant Executive Officer

Date

Ventura Directional Drilling, Inc.

By: *John Fields* _____
John Fields
Ventura Directional Drilling, Inc.

08-04-23

Date

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HAVING CONSIDERED THE PARTIES STIPULATIONS, THE LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD FINDS THAT:

1. The foregoing Stipulation is fully incorporated herein and made part of this Order.
2. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water 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.
3. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this 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.

Susana Arredondo
Executive Officer
Los Angeles Regional Water Quality Control Board

Date

Attachment A: Specific Factors Considered Pursuant to Enforcement Policy

Attachment A

**Factors Considered and Penalty Calculation Methodology for
Administrative Civil Liability Complaint No. R4-2023-0139
Ventura Directional Drilling, Inc.
298 South Chestnut Street, Ventura, CA 93001**

The State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy), effective October 5, 2017, establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors required by California Water Code section 13385 subdivision (e). Each factor in the Enforcement Policy and its corresponding category, adjustment, and amount for the alleged violation are presented below. The Enforcement Policy should be used as a companion document in conjunction with this administrative civil liability assessment since the penalty methodology and definition of terms are not replicated herein.

The alleged violation will be outlined first followed by the steps set forth by the Enforcement Policy for calculating the penalty for these violations.

1. ALLEGED VIOLATION

Unauthorized discharge of drilling fluid at the southeastern corner of the Amanzi Hotel's parking lot, located at 298 South Chestnut Street, Ventura, CA 93001 on June 25, 2020.

On June 30, 2020, the Los Angeles Regional Water Quality Control Board (Regional Water Board) received photo and video evidence from the City of Ventura Public Works (City) indicating a discharge of unknown waste from a Ventura Directional Drilling, Inc. (Discharger) company truck (License Plate #9F77376 and CA Motor Carrier Permit #253748) into a storm drain. On April 26, 2021, the Regional Water Board issued Investigative Order No. R4-2021-0065 requiring Ventura Directional Drilling, Inc. to prepare and submit a technical report to provide information regarding the unauthorized discharge. On July 20, 2021, the Regional Water Board received a technical report (Technical Report) containing the following information:

- The discharge consisted of potable water and CETCO Super Gel X (Drilling Additive);
- A total of approximately 450 gallons of potable water and Drilling Additive mixture was discharged;
- Per 100 gallons of potable water, approximately 20-30 pounds of CETCO Super Gel X is also used, per the recommendations. Therefore, approximately 135 pounds of CETCO Super Gel X was mixed in the discharge.

2. PENALTY METHODOLOGY

Step 1. Potential for Harm for Discharge Violations

This initial step for discharge violations is used to determine the actual or potential harm to the water body's beneficial uses caused by the violation using a three-factor scoring system to quantify: (1) the degree of toxicity of the discharge; (2) the actual harm or potential harm to beneficial uses; and (3) the discharge's susceptibility to cleanup or abatement for each violation or group of violations. Because actual harm is not always quantifiable due to untimely reporting, inadequate monitoring, and/or other practical limitations, potential harm can be used under this factor.

a. Degree of Toxicity of the Discharge

The evaluation of the degree of toxicity considers the physical, chemical, biological and/or thermal characteristics of the discharge, waste, fill, or material involved in the violation or violations and the risk of damage the discharge could cause to the receptors or beneficial uses. A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material. Evaluation of the discharged material's toxicity should account for all the characteristics of the material prior to discharge, including, but not limited to, whether it is partially treated, diluted, concentrated and/or a mixture of different constituents. Toxicity analysis should include assessment of both lethal and sublethal effects such as effects on growth and reproduction.

The Enforcement Policy assigns a score ranging from 0 to 4 based on a determination of the risk or threat level of the discharged material to potential receptors (i.e., human, environmental, and ecosystem health exposure pathways) being negligible (0) to significant (4).

The discharged material consists of approximately 450 gallons of potable water and approximately 135 pounds of CETCO Super Gel X which is a drilling fluid additive providing increased lubrication and cooling, solids transport ability, and stabilization of bore holes.

Based on the toxicological information in the Safety Data Sheet, Version #45 revised on September 20, 2021 (Safety Data Sheet) for the drilling additive, prolonged inhalation may be harmful, causes damage to organs through prolonged or repeated exposure and prolonged exposure may cause chronic effects. Acute toxicity of the product is unknown. The ecotoxicity in the Safety Data Sheet states that the product is not classified as environmentally hazardous. However, this does not exclude the possibility that large or frequent spills can have a harmful or damaging effect on the environment.

Given these facts, the unauthorized discharge posed a moderate risk or threat to potential receptors and the chemical characteristics of the discharged material have some level of toxicity. These considerations therefore warrant a factor of **2 (moderate)**.

b. Actual Harm or Potential Harm to Beneficial Uses

This evaluation considers the actual or potential 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(s). The Prosecution Team may consider actual harm or potential harm to human health, in addition to harm to beneficial uses. The score evaluates direct or indirect actual harm or potential for harm from the violation. Actual harm as used in this section means harm that is documented and/or observed. Potential harm should be evaluated in the context of the specific characteristics of the waste discharged and the specific beneficial uses of the impacted waters.

The Enforcement Policy specifies a score ranging from 0 to 5 based on a determination of whether direct or indirect harm or potential for harm from a violation is negligible (0) to major (5).

The Prosecution Team determines that the actual or potential harm to beneficial uses from the discharges is minor (1). "Minor" is assigned when there is a lack of observed impacts but based on the characteristics of the discharge and applicable beneficial uses; there is potential short-term impact to beneficial uses with no appreciable harm.

c. Susceptibility to Cleanup or Abatement

A score of 0 is assigned for this factor if the discharger cleans up 50 percent or more of the discharge within a reasonable amount of time. A score of 1 is assigned for this factor if less than 50 percent of the discharge is susceptible to cleanup or abatement, or if 50 percent or more of the discharge is susceptible to cleanup or abatement, but the discharger failed to clean discharged pollutants in the environment is not considered cleanup or abatement for purpose of evaluating this factor.

The Prosecution Team determined that a factor of 1 is appropriate. Based on the information provided, the Discharger did not conduct any cleanup of the discharged pollutant in the storm drain channel after the event.

Step 1 Final Score – Harm or Potential Harm to Beneficial Uses

The Potential for Harm score for the alleged violation is 4, calculated as the sum of the scores from the factors discussed above.

Step 2. Assessment for Discharge Violations

a. Per Gallon Assessments for Discharge Violations

The Enforcement Policy specifies that where there is a discharge, the Water Boards shall determine an initial liability amount on a per gallon basis using the Potential for Harm score from Step 1 and the extent of Deviation from Requirement of the violation. The Deviation from Requirement reflects the extent the violation deviated from the specific requirement at issue, and are categorized as either minor, moderate, or major.

The Potential for Harm score from Step 1 and the Deviation from Requirement determination in Step 2 are used to determine a Per Gallon Factor by consulting Table 1 of the Enforcement Policy. The per gallon assessment is then determined by multiplying the Per Gallon Factor by the number of gallons subject to penalty and the maximum per gallon penalty amount allowed under the California Water Code.

The Prosecution Team determines that the Deviation from Requirement for the alleged violation is Major. A score of Major is assigned because the Discharger intentionally discharged the drilling fluid into a catch basin within a parking lot that flowed into a storm drain without a permit. Clean Water Act section 301 prohibits any person to discharge any pollutant into waters of the United States without authorization. The unauthorized discharge rendered the requirement not to discharge pollutant to waters of the United States without a permit entirely ineffective in its essential function. Therefore, the violation was characterized as a Major deviation from the requirement. As determined in Step 1, the Potential for Harm factor for the alleged violation is 4. Therefore, the Prosecution Team determines that the Per Gallon Factor is 0.08 in accordance with Table 1 of the Enforcement Policy.

b. Per Day Assessments for Discharge Violations

The Enforcement Policy also specifies that where there is a discharge, the Regional Water Board shall determine an initial liability factor per day based on the Potential for Harm score and the extent of Deviation from Requirement of the violation as discussed above. These factors are used to determine a Per Day Factor for the violation by consulting Table 2 of the Enforcement Policy. The per day assessment is then determined by multiplying the Per Day Factor by the maximum per day amount allowed under the California Water Code. Where deemed appropriate, both per gallon and per day amounts are considered under California Water Code section 13385.

As discussed in Step 2.a above, the Prosecution Team determines that the Deviation from Requirement for the alleged violation is Major. As determined in Step 1, the Potential for Harm factor for the alleged violation is 4. Therefore, the Prosecution Team determines that the Per Gallon Factor is 0.08 in accordance with Table 2 of the Enforcement Policy.

Initial Liability amount for the alleged violation:

Per gallon liability: \$0

Water Code section 13385 states that a liability of up to ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons may be imposed administratively by the Regional Water Board. The per gallon liability is \$0 here since the waste discharged was less than 1,000 gallons.

Per day liability: $\$10,000 \times 0.08 \times 1 \text{ day} = \800

Step 3. Per Day Assessment for Non-Discharge Violations

Not applicable for Alleged Violation (This is a discharge violation)

Step 4. Adjustment Factors

a. Degree of Culpability

The culpability multiplier ranges between 0.75 and 1.5 with the lower multiplier for accidental and higher multiplier for intentional or negligent behavior.

On June 30, 2020, the Regional Water Board received photographs and video evidence from the City of drilling fluid being discharged into a catch basin within a parking lot that flowed into a storm drain on June 25, 2020, by a company truck owned and operated by the Discharger. The drilling additive's Safety Data Sheet's Section 6, Accidental release measures, states that large quantity discharges of the drilling additive to drains should be prevented as an environmental precaution. As previously mentioned, 135 pounds of CETCO Super Gel X was mixed in the discharge. Also, the Safety Data Sheet's Section 13 states that disposal of contents should be done in accordance with local, regional, and national regulations. In the Technical Report, the Discharger indicated they understand the serious nature of the incident and that the employee was disciplined as the unauthorized discharge of drilling fluids goes against its disposal policies. In addition to being against internal company policies, intentional discharges can be subject to administrative, civil, or criminal penalties.

A reasonable and prudent person who owns and maintains a drilling service company would have additional oversight and accountability measures in place to prevent an unauthorized discharge as that occurred on June 25, 2020. Such measures include educating employees about the potential monetary liabilities related to intentional discharges, as well as possible costs to remediate environmental damage stemming from the discharge's impacts. The Discharger's employee intentionally discharged the drilling fluid onto a parking lot which drains to a nearby storm drain. Therefore, a multiplier of **1.5** was selected.

b. History of Violations

The Enforcement Policy recommends a neutral multiplier of 1.0 where the discharger has no prior history of violations. Where the discharger has prior violations within the last five years, the Enforcement Policy recommends a multiplier of 1.1. Where the discharger has a history of similar or numerous dissimilar prosecuted violations, the Enforcement Policy recommends that a multiplier above 1.1 should be considered.

The Discharger does not have a history of violations known to the Prosecution Team. Therefore, a multiplier of **1.0** was selected.

c. Cleanup and Cooperation

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 Discharger did not perform any cleanup of the unauthorized discharge. On February 23, 2023, the Discharger stated via email to Regional Water Board staff that the Discharger was unaware of the unauthorized discharge by its employee until it was notified via mail by the City of Ventura several days after the unauthorized discharge had occurred; once informed, the Discharger then inspected the discharge and downstream inlets. The Discharger asserted they did not see any wet materials and have observed only dry silts, vegetation and other debris, and if wet material had been found, a vacuum truck would have been used to remove the discharge. The Discharger believes the June 25, 2020 unauthorized discharge did not flow downstream and dried in place.

The Discharger was cooperative in providing a Technical Report upon request by the Region Water Board. Also, in the Technical Report, the Discharger indicates they understand the serious nature of the company's actions and that the employee was disciplined as the unauthorized discharge of drilling fluids goes against its disposal policies. Therefore, a multiplier of **1.3** is appropriate. This reflects a reduction from the maximum score for this factor, but an elevated score beyond the base liability as no cleanup occurred after the unauthorized discharge.

d. Multiple Day Violations

The Enforcement Policy provides that for violations lasting more than 30 days, the Prosecution Team may adjust the per day basis for civil liability if certain findings are made and provided that the adjusted per day basis is no less than the per day economic benefit, if any, resulting from the violations.

An alternate approach to penalty calculation does not apply for the alleged violation.

Step 5. Total Base Liability

The Total Base Liability amount for the alleged violation is calculated by multiplying the initial amount by the adjustment factors: Total Base Liability = (Initial Liability from Step 2) x (Degree of Culpability Factor) x (History of Violations Factor) x (Cleanup and Cooperation Factor). The Total Base Liability amount for the alleged violation is \$800.

$\$800$ (Initial Liability from Step 2) X 1.5 (Culpability) X 1.0 (History of Violations) X 1.3 (Cleanup and Cooperation) = \$1,560

Total Base Liability Amount: \$1,560

Step 6. Ability to Pay and Ability to Continue Business

Given its assets, it is presumed that the Discharger has the ability to pay. The Prosecution Team has not received any substantiation from the Discharger of its inability to pay.

Step 7. Economic Benefit

The Enforcement Policy directs the Regional Water Board to determine any economic benefit of the violations based on the best available information. 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.

Based on the information available, the Discharger received an economic benefit of \$1,237 by not properly disposing the drilling fluid. This economic benefit represents the money saved over time during which the Discharger was in noncompliance. The total base liability is more than 10 percent higher than the Economic Benefit Amount.

Step 8. Other Factors as Justice May Require

a. Staff Costs: \$5,957

In addition, the Prosecution Team spent 48 hours of staff time at \$124.11 per hour, for a total of \$5,957 to investigate this case and prepare this analysis and supporting information. The Prosecution Team finds that it is appropriate to increase the Total Base Liability amount by \$5,957 in consideration of the investigation and enforcement costs. Increasing the Total Base Liability Amount in this manner serves to create a more appropriate deterrent against future violations.

Step 9. Maximum and Minimum Liability Amounts

a. Statutory Maximum: \$10,000

b. Statutory Minimum: \$1,360.77

The Enforcement Policy requires the Regional Water Board to recover, at a minimum, 10% more than the economic benefit ($\$1,237 + 10\%$). Therefore, the statutory minimum is set at \$1,360.77.

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

The Total Base Liability Amount calculated from Steps 1-5 above results in an unreasonably small penalty for the intentional nature of the violation. The statutory maximum is an appropriate penalty for the intentional nature of this behavior, especially since two of the Regional Water Board's core principles were violated: discharges are prohibited without a permit and conduct must be self-reported. The Discharger's employee intentionally discharged drilling fluid onto a parking lot which

drained into a nearby storm drain without a permit. This conduct might have gone undetected without information from the City. In order to discourage the Discharger and the regulated community in general from similar conduct, the Final Liability Amount is set at the statutory maximum of \$10,000. Staff costs are not added to the penalty as the Final Liability Amount is already the maximum allowed by statute.