

attached Order is consistent with a reasonable liability determination using the methodology in the Enforcement Policy (see Exhibit A, attached hereto and incorporated herein by this reference). The Prosecution Team believes that the resolution of the alleged violations set forth in Exhibit A is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning those violations, except as provided in this Stipulation, and that this Stipulation is in the best interest of the public.

4. Durham contests and does not admit the alleged violations in Exhibit A, and this Stipulation shall not be construed as an admission of liability or fault on the part of Durham. Durham instead enters into this Stipulation in good faith in an effort to work cooperatively and constructively with the Regional Water Board and to avoid further administrative proceedings and related costs.

5. To resolve by consent and without further administrative proceedings the alleged violations set forth in Exhibit A, the Parties have agreed to the imposition of administrative civil liability in the amount of \$131,000 against National Express, which includes \$11,250 for staff costs.

Section III: STIPULATIONS

The Parties stipulate to the following:

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

7. **Administrative Civil Liability:** No later than 30 days following the Regional Water Board's, or its delegee's, execution of this Order, Durham shall pay a total of \$131,000, which includes \$11,250 in Regional Water Board staff costs, in stipulated administrative civil liability by check made payable to the "State Water Resources Control Board" to be deposited into the State Water Pollution Cleanup and Abatement Account. The check shall reference the Order number listed on page one of this Stipulation. The original signed check shall be sent to the San Francisco Bay Regional Water Quality Control Board, 1515 Clay Street, Suite 1400, Oakland, CA 94612, with a copy to: David Boyers, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812, and Laurent Meillier, San Francisco Bay Regional Water Quality Control Board, 1515 Clay Street, Suite 1400, Oakland, CA 94612.

8. **Compliance with Applicable Laws:** Durham understands that payment of administrative civil liability in accordance with the terms of this Stipulation and/or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that subsequent violations of the type alleged in Exhibit A may subject Durham to further enforcement, including but not limited to additional administrative civil liability.

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

For the Regional Water Board:

Brian Thompson
San Francisco Bay Regional Water
Quality Control Board
1515 Clay Street, 14th Floor
Oakland, CA 94612
BRThompson@waterboards.ca.gov
(510) 622-2422

For Durham:

James Fields
Environmental Compliance
Durham School Services, L.P.
4300 Weaver Parkway
Warrenville, IL 60555
Cell Phone: 630-699-7749
James.Fields@NationalExpressCorp.com

Copy to:

Cristen Kogl
General Counsel
Durham School Services, L.P.
4300 Weaver Parkway
Warrenville, IL 60555
Phone: 630-821-5629
Cristen.Kogl@nationalexpresscorp.com

10. **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.

11. **Matters Covered by this Stipulation:** Upon adoption by the Regional Water 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 in Exhibit A or which could have been asserted based on the specific facts alleged in Exhibit A against Durham, as of the effective date of the Order. The provisions of this Paragraph are expressly conditioned on Durham's full payment of administrative civil liability by the deadline specified in Paragraph 7 herein.

12. **Public Notice:** The Parties agree that the proposed Order, which incorporates this Stipulation as signed by the Parties, will be noticed for a 30-day public comment period prior to being presented to the Regional Water Board for adoption.

13. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water 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. If the Regional Water Board Assistant Executive Officer receives significant new information 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 the Order to the Regional Water Board.

14. **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. The Parties are represented by counsel in this matter.

15. **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 Water Board, or its delegee.

16. **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 Water 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 may proceed to a contested evidentiary hearing before the Regional Water 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 the hearing. 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 Water Board members or their advisors and any other objections that 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 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 on the violations alleged in the Complaint 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.

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

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

19. **Durham's Covenant Not to Sue:** Durham 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.

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

21. **Counterpart Signatures:** 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.

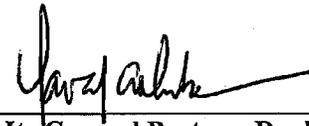
22. **Effective Date:** This Stipulation is effective and binding on the Parties upon the entry of this Order by the Regional Water Board, or its delegee, which incorporates the terms of this Stipulation.

IT IS SO STIPULATED.

**California Regional Water Quality Control Board,
San Francisco Region Prosecution Team**

Date: September 5, 2012 By: 
Thomas E. Mumley
Assistant Executive Officer

Durham School Services, L.P.

Date: _____ By: 
Its General Partner, Durham Holding II, L.L.C.

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ORDER

HAVING CONSIDERED THE ALLEGATIONS AND THE PARTIES' STIPULATIONS, THE REGIONAL WATER BOARD, OR ITS DELEGEE, FINDS THAT:

1. The Regional Water Board incorporates the foregoing Stipulation, set forth in Paragraphs 1 through 22 above, by this reference, as if set forth fully herein.
2. In accepting this Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in California Water Code section 13385, subsection (e). The Regional Water Board's consideration of these factors is based upon information obtained by the Prosecution Team in investigating the allegations in the Complaint, or otherwise provided to the Regional Water Board. This settlement also recovers the costs incurred by the Prosecution Team in investigating and pursuing enforcement of the allegations set forth in the Complaint as "other matters as justice may require."
3. 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 (Pub. Resources Code § 21000 et seq.), in accordance with section 15321, subdivision (a)(2), title 14, of the California Code of Regulations.
4. Fulfillment of Durham's obligations under this Order constitutes full and final satisfaction of any and all liability for the matters alleged in the Stipulation in accordance with the terms of the Order.

IT IS HEREBY ORDERED on behalf of the California San Francisco Bay Regional Water Quality Control Board, pursuant to California Water Code section 13323 and California Government Code section 11415.60, that the foregoing Stipulation is accepted in settlement of this action.

Bruce H. Wolfe
Executive Officer

Date

EXHIBIT A

ALLEGATIONS

1. Durham, at all times relevant to this matter, was the operator of the Concord Facility, the Hayward Facility, and the Campbell Facility. Each of the Facilities has individual coverage under the Industrial Stormwater General Permit.
2. Durham allegedly violated provisions of law for which the Regional Water Board may impose administrative civil liability pursuant to California Water Code section 13385.
3. **Violation 1:** Durham failed to submit an annual report by July 1, 2010, as required by the Industrial Stormwater General Permit.
 - a. Section B.14 of the Industrial Stormwater General Permit requires all facility operators to submit an Annual Report by July 1 of each year to the Regional Water Board's Executive Officer. Durham submitted annual reports for the Concord, Hayward, and Campbell Facilities on November 15, 2010—137 days late for each facility.
4. **Violation 2:** Durham failed to maintain an updated, accurate SWPPP onsite, as required by the Industrial Stormwater General Permit.
 - a. Regional Water Board staff inspected the Concord Facility on January 26, 2011, and May 4, 2011. Durham did not have an updated, accurate SWPPP on-site during either of those inspections. Durham provided a draft SWPPP for the Concord Facility to Regional Water Board staff on May 4, 2011 during Regional Water Board staff's inspection of the Hayward Facility. Durham submitted a compliant SWPPP to the Regional Water Board on June 10, 2011.
 - b. Regional Water Board staff inspected the Hayward Facility on December 15, 2010, March 23, 2011, and May 4, 2011. Durham did not have an updated, accurate SWPPP on-site during any of those inspections. Durham submitted a compliant SWPPP to the Regional Water Board on June 10, 2011.
 - c. Regional Water Board staff inspected the Campbell Facility on November 19, 2010, March 23, 2011, and May 4, 2011. Durham did not have an updated, accurate SWPPP on-site during any of those inspections. Durham submitted a compliant SWPPP to the Regional Water Board on June 10, 2011.
5. **Violation 3:** Durham failed to implement best management practices (BMPs) in compliance with the Industrial Stormwater General Permit.
 - a. During the January 26, 2011, inspection of the Concord Facility, Regional Water Board staff observed many petroleum stains in the parking lot and outside of garage areas, and degraded asphalt throughout the facility. During the May 4, 2011, inspection, Regional Water Board staff noted that most of the petroleum stains in the

parking lot observed during the January 26, 2011, inspection had been sealed with black sealant. Durham also stated that the asphalt repair is scheduled to be completed during the summers of 2012 and 2013.

- b. Regional Water Board staff observed the following violations at the Hayward Facility during the December 15, 2010, and March 23, 2011, inspections: servicing vehicles outside; leaving spilled petroleum products on the ground that resulted in or could result in sheening; storing automotive fluids outside without cover or secondary containment; discharging wash water from partially enclosed car wash area; and operating large vehicles on unpaved areas, which contributes to total suspended solids(TSS) to storm water runoff. During the May 4, 2011, inspection, Regional Water Board staff noted that most of the petroleum stains in the parking lot had been sealed with black sealant, maintenance on its buses was under the covered facility, stored automotive fluids had secondary containment systems, there were additional BMPs to address some of the previously observed violations.
- c. Regional Water Board staff observed the following violations at the Campbell Facility during the November 19, 2010, and March 23, 2011, inspections: servicing vehicles outside; leaving spilled petroleum products on the ground, resulting in sheening; and by storing automotive fluids outside without cover or secondary containment. During the May 4, 2011, inspection, Regional Water Board staff noted that the violations observed during the previous inspections had been resolved through implementation of adequate BMPs.

ENFORCEMENT POLICY METHODOLOGY

Steps 1 and 2: Potential for Harm for Discharge Violations and Assessments for Discharge Violations

These steps only apply to cases involving a discharge. Violations 1, 2, and 3 are non-discharge violations, which start with Step 3, as described below.

VIOLATION 1: Failure to submit an annual report by July 1

Step 3 – Per Day Assessment for Non-Discharge Violations

For non-discharge violations, the Regional Water Board determines an initial liability amount on a per-day basis by considering the Potential for Harm and the Deviation from Requirement.

For Violation 1, the Potential for Harm is minor, and the Deviation from Requirement is moderate, resulting in a factor of 0.2 (from Table 3 of the Enforcement Policy).

The Potential for Harm to beneficial uses is minor because the lateness of the reports has little or no direct impact on the storm water pollution prevention practices actually implemented by Durham for the year that was covered by the late report. However, the lateness does have some impact for the next wet season because a late report impairs Regional Water Board staff's ability

to assess Durham's compliance with permit requirements, and to provide timely feedback on improvements needed to reduce and eliminate pollutants to storm water runoff that has potential to harm beneficial uses.

The Deviation from Requirement is moderate because Durham did submit the report, but only after prompting from Regional Water Board staff.

Step 4 – Adjustment Factors

The Enforcement Policy allows multiple-day violations to be consolidated provided specific criteria are satisfied. The Enforcement Policy also describes three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's compliance history.

Multiple Day Violations:

The Enforcement Policy provides that, for violations lasting more than 30 days, the Regional Water Board 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 violation.

For Violation 1, a multiday adjustment is appropriate, because in this case, the late reports did not result in an economic benefit that can be measured on a daily basis. The preparation and submission of those reports resulted in a one-time cost to Durham.

Using the multiday adjustment approach described in the Enforcement Policy, the adjusted days include the first day of violation, plus one additional day of violation for each five-day period up to the 30th day of violation, and thereafter, plus one additional day of violation for each 30-day period. Thus, the total number of days of violation for each facility is adjusted to 10 days of violation for each late annual report.

Initial Liability Amount

The initial liability amount for Violation 1 calculated on a per-day basis, is as follows:

Per Day Liability (Concord Facility): $\$10,000 \times (0.2) \times (10 \text{ days}) = \$20,000$

Per Day Liability (Hayward Facility): $\$10,000 \times (0.2) \times (10 \text{ days}) = \$20,000$

Per Day Liability (Campbell Facility): $\$10,000 \times (0.2) \times (10 \text{ days}) = \$20,000$

Total Initial Liability = \$60,000

Culpability:

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior.

For Violation 1, the culpability multiplier is 1.1. The Industrial Stormwater General Permit clearly requires Durham to submit an annual report for each of its Facilities by July 1 of each year. Durham should be well aware of this requirement (from past Regional Water Board staff communications about its late reports).

Cleanup and Cooperation:

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 a higher multiplier when there is a lack of cooperation.

For Violation 1, the cooperation factor is 1 because Durham has made good faith efforts to come into compliance and has reached out to Regional Water Board staff to resolve the compliance issues alleged herein.

History of Violations

This factor is used to increase the liability when there is a history of repeat violations, using a minimum multiplier of 1.1.

For Violation 1, the history multiplier is 1.1, because the Regional Water Board issued previous Administrative Civil Liability Complaints for noncompliance with the Industrial Stormwater General Permit. The first action was a \$14,000 liability (\$3,500 for each of the four facilities owned by Durham at that time) to resolve alleged failure to submit 2008/2009 annual reports by July 1, 2009.¹ The Regional Water Board also assessed Durham \$1,000 through an expedited settlement offer to resolve alleged failure to submit the 2009/2010 annual report by July 1, 2010.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.

¹ Administrative Civil Liability Complaints Nos. R2-2010 0026, R2-2010 0029, R2-2010 0036, and R2-2010 0046. National Express waived its right to a hearing and paid the proposed civil liability.

Total Base Liability Amount

\$60,000 (Initial Liability) x 1.1 (Culpability Multiplier) x 1 (Cleanup and Cooperation Multiplier) x 1.1 (History of Violations Multiplier) = Total Base Liability

Total Base Liability = \$72,600

VIOLATION 2: Failure to maintain an updated, accurate Stormwater Pollution Prevention Plan (SWPPP) onsite, as required by the Industrial Stormwater General Permit

Step 3 – Per Day Assessment for Non-Discharge Violations

For Violation 2, the Potential for Harm is minor, and the Deviation from Requirement is minor, resulting in a factor of 0.15 (from Table 3 of the Enforcement Policy).

The Potential for Harm is minor because the absence of a SWPPP does not in and of itself constitute a direct threat to beneficial uses; some management practices were in place to address potential storm water pollution despite the absence of an updated SWPPP.

The Deviation from Requirement is minor because although an updated and complete SWPPP was not available onsite during Regional Water Board staff inspections, Durham did have outdated SWPPPs and Durham did ultimately submit updated and adequate SWPPPs for the Facilities.

Step 4 – Adjustment Factors

Multiple Day Violations:

Durham failed to have a SWPPP onsite at its Concord Facility available for Regional Water Board staff review on January 26, 2011, which resulted in one day of violation. Thus, no adjustment is necessary.

Multiple day adjustment is appropriate for the late SWPPPs for the Hayward Facility and Campbell Facility since these were late by over 30 days. These violations do not result in an economic benefit that can be measured on a daily basis. The economic benefit is the one-time cost of preparing and producing the SWPPP.

Following the calculation in the Enforcement Policy, the total number of days of violation for the Hayward Facility is adjusted from 168 days to 11 days, and the total number of days of violation for the Campbell Facility is adjusted from 194 days to 12 days.

Initial Liability Amount

The initial liability amount for Violation 2 calculated on a per-day basis, is as follows:

Per Day Liability (Concord Facility): $\$10,000 \times (0.15) \times (1 \text{ day}) = \$1,500$

Per Day Liability (Hayward Facility): $\$10,000 \times (0.15) \times (11 \text{ days}) = \$16,500$

Per Day Liability (Campbell Facility): $\$10,000 \times (0.15) \times (12 \text{ days}) = \$18,000$

Total Initial Liability = \$36,000

Culpability:

For Violation 2, the culpability factor is 1.1 because the Industrial Stormwater General Permit clearly requires Durham to maintain a facility-specific copy of the SWPPP at each of its Facilities. Regional Water Board staff inspected the Concord, Hayward, and Campbell Facilities multiple times. The first inspection occurred on or about November 19, 2010, and the most recent inspection occurred on May 4, 2011. Despite the fact that Regional Water Board staff informed Durham during each inspection that a facility-specific SWPPP needed to be maintained at each facility, Durham failed to do so.

Cleanup and Cooperation:

For Violation 2, the Cleanup and Cooperation multiplier is neutral at 1 because Durham made a sufficient effort to come into compliance and has reached out to Regional Water Board staff to resolve the compliance issues alleged herein.

History of Violations

For Violation 2, the history multiplier is neutral at 1 because Regional Water Board staff is unaware of any past failure to maintain a SWPPP onsite by Durham.

Step 5 - Determination of Total Base Liability Amount

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

Total Base Liability Amount

$\$36,000 \text{ (Initial Liability)} \times 1.1 \text{ (Culpability Multiplier)} \times 1 \text{ (Cleanup and Cooperation Multiplier)} \times 1 \text{ (History of Violations Multiplier)} = \text{Total Base Liability}$

Total Base Liability = \$39,600

VIOLATION 3: Failure to implement best management practices (BMPs) in compliance with the Industrial Stormwater General Permit.

Step 3 – Per Day Assessment for Non-Discharge Violations

For Violation 3, the Potential for Harm is minor, and the Deviation from Requirement is moderate, resulting in a factor of 0.25 (from Table 3 of the Enforcement Policy).

The Potential for Harm to beneficial uses is minor because BMPs alleged to be lacking did not constitute substantial or egregious threat to beneficial uses, and there is no evidence of any discharge to a water supply or actual harm to the environment. The absence of some BMPs would result in relatively minor harm to beneficial uses (i.e., potential for small quantities of automotive fluids from leaks, some sheen, and non-substantial elevation of total suspended solids in storm water runoff).

The Deviation from Requirement is moderate because Durham performed much of the ongoing maintenance work under cover (i.e., protected from rainfall) and had implemented other BMPs that would reduce pollution of runoff.

Initial Liability Amount

The initial liability amount for Violation 3 calculated on a per-day basis, is as follows:

Per Day Liability (Concord Facility): $\$10,000 \times (0.25) \times (1 \text{ day}) = \$2,500$

Per Day Liability (Hayward Facility): $\$10,000 \times (0.25) \times (1 \text{ day}) = \$2,500$

Per Day Liability (Campbell Facility): $\$10,000 \times (0.25) \times (1 \text{ day}) = \$2,500$

Total Initial Liability = **\$7,500**

Step 4 – Adjustment Factors

Culpability:

For Violation 3, the culpability multiplier is 1.1. The Industrial Stormwater General Permit requires Durham to implement BMPs at each of its Facilities. While Durham implemented some BMPs, it did not implement all BMPs Regional Water Board Prosecution Staff determined are reasonably expected for this industry.

Cleanup and Cooperation:

For Violation 3, the Cleanup and Cooperation multiplier is neutral at 1 for the Concord and Hayward Facilities, and is 0.75 for the Campbell Facility. The multiplier of 1 and 0.75 is because Durham has made good faith efforts to come into compliance and has reached out the Regional Water Board staff to resolve the compliance issues alleged herein. Durham corrected all BMP violations observed by Regional Water Board staff by the time of the next inspection, with the exception of the asphalt repair at the Concord Facility, which will be completed the summer

of 2012. The cooperation multiplier for Campbell Facility is lower value due to the clear nexus between the BMP improvements at the facility and the likely reduction of pollutants discharged from that facility.

History of Violations

For Violation 3, the History multiplier is neutral at 1 because the Regional Water Board Prosecution Team is not aware of prior failure to implement BMPs by Durham at the Facilities.

Step 5 - Determination of Total Base Liability Amount

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

Total Base Liability Amount

Concord Facility: \$2,500 (Initial Liability) x 1.1 (Culpability Multiplier) x 1 (Cleanup and Cooperation Multiplier) x 1 (History of Violations Multiplier) = Total Base Liability

Hayward Facility: \$2,500 (Initial Liability) x 1.1 (Culpability Multiplier) x 1 (Cleanup and Cooperation Multiplier) x 1 (History of Violations Multiplier) = Total Base Liability

Campbell Facility: \$2,500 (Initial Liability) x 1.1 (Culpability Multiplier) x 0.75 (Cleanup and Cooperation Multiplier) x 1 (History of Violations Multiplier) = Total Base Liability

Total Base Liability = **\$7,562.50**

Steps 6 through 10 apply to Violations 1, 2, and 3:

Combined Total Base Liability Amount for Violations 1, 2, and 3:

\$72,600 (Violation 1) + \$39,600 (Violation 2) + \$7,562.50 (Violation 3)

Combined Total Base Liability = **\$119,762.50**

Step 6: Ability to Pay and Ability to Continue in Business

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

In this case, Durham does not dispute that it has the ability to pay the proposed liability. Therefore, the Regional Water Board staff did not adjust the proposed liability.

Step 7: Other Factors as Justice May Require

Based on an average cost to the State of \$150 per hour, Regional Water Board Prosecution Team incurred \$11,250 in staff costs associated with the investigation and enforcement of the violations alleged in Exhibit A. In accordance with the Enforcement Policy, this amount is added to the Combined Total Base Liability Amount.

Combined Total Base Liability Amount for Violations 1, 2, and 3 + Staff Costs:

\$119,762.50 (Combined Total Base Liability) + \$11,250 (staff costs) = \$131,012.50

***It is the Regional Water Board Prosecution Team's practice to round the liability amount to the nearest hundred. Thus, the liability amount is \$131,000.**

Step 8: Economic Benefit

The Enforcement Policy directs the Regional Water Board to determine any economic benefit associated with the violation. The total calculated economic benefit for the three Facilities is assessed at \$7,400. Durham is estimated to have obtained an economic benefit of \$1,000 for each delayed submittal of an annual report (three), \$4,000 in avoided costs for maintaining SWPPPs at the Hayward and Campbell Facilities, \$100 in avoided costs for maintaining the Concord SWPPP, and \$300 for the failure to implement compliant BMPs at the Concord, Hayward, and Campbell Facilities.

Step 9: Maximum and Minimum Liability Amounts

The maximum liability that the Regional Water Board may impose pursuant to Water Code section 13385, subdivision (c), for Violations 1, 2, and 3 is summarized below:

Violation 1:

Concord Facility: 137 days of violation x \$10,000 per day of violation = \$1,370,000

Hayward Facility: 137 days of violation x \$10,000 per day of violation = \$1,370,000

Campbell Facility: 137 days of violation x \$10,000 per day of violation = \$1,370,000

Violation 2:

Concord Facility: 1 day of violation x 10,000 per day of violation = \$10,000

Hayward Facility: 168 days of violation x \$10,000 per day of violation = \$1,680,000

Campbell Facility: 194 days of violation x \$10,000 per day of violation = \$1,940,000

Violation 3:

Concord Facility: 1 day of violation x \$10,000 per day of violation = \$10,000

Hayward Facility: 1 day of violation x 10,000 per day of violation = \$10,000

Campbell Facility: 1 day of violation x 10,000 per day of violation = \$10,000

Total Maximum Liability = \$9,930,000

Pursuant to Water Code section 13385, subdivision (e), the Regional Water Board shall recover, at a minimum, the economic benefits, if any, derived from the acts that constitute the violation. Further, the Enforcement Policy states that the Total Base Liability shall 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. As stated above, the proposed liability exceeds the economic benefit. The Regional Water Board Prosecution Team believes that the proposed liability also exceeds the economic benefit plus 10 percent.

Step 10: Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the proposed administrative civil liability is **\$131,000**.