

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION

In the matter of: )  
)  
HOC TRAN (dba EAGLE )  
SCRAP METAL) ) Order No. R8-2016-0041  
)  
Violation of Regional Board ) Settlement Agreement and Stipulation for  
Order No. R8-2012-0012, ) Entry of Order  
NPDES Permit No. CAG618001 )  
)

**Section I: INTRODUCTION**

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order) is entered into by and between the California Regional Water Quality Control Board, Santa Ana Region, Prosecution Team (Prosecution Team) and Hoc Tran (dba Eagle Scrap Metal) (Settling Respondent) (collectively Parties), and is presented to the California Regional Water Quality Control Board, Santa Ana Region (Regional Water Board), or its delegate, for adoption as an Order by settlement, pursuant to Government Code section 11415.60. This Stipulated Order resolves the violation alleged herein by the imposition of administrative civil liability against Settling Respondent in the amount of **\$155,940**.

**Section II: RECITALS**

2. The Settling Respondent is the owner of Eagle Scrap Metal located at 741 Monroe Way, Placentia, Orange County (Facility). The Facility is subject to the requirements set forth in the *Sector-Specific General Permit for Storm Water Runoff Associated with Industrial Activities from Scrap Metal Recycling Facilities within the Santa Ana Region*, Regional Board Order No. R8-2012-0012, NPDES Permit No. CAG618001 (Scrap Metal Permit). Settling Respondent selected Scrap Metal Permit compliance Option 1, a three-phased approach based on Numeric Action Levels (NALs), for storm water discharges from the Facility.

3. On November 29, 2012, discharge from the Facility exceeded the copper NAL by at least two times the specified Scrap Metal Permit limit, requiring the Settling Respondent to develop and submit a Phase II Corrective Action Plan (CAP) by July 31,

2013, to address the copper exceedances.<sup>1</sup> Within 18 months of Scrap Metal Permit adoption, Scrap Metal Permit section III.D.2 requires all CAPs to be developed and certified by a Scrap Metal Qualified Storm Water Pollution Prevention Plan Developer (SM-QSD).

4. In response to a Notice of Violation dated April 3, 2014, the Settling Respondent submitted a CAP on May 6, 2014, which was neither developed nor certified by a SM-QSD. Since May 2014, Regional Water Board staff has made repeated efforts to obtain Settling Respondent's compliance with Scrap Metal Permit section III.D.2. Regional Water Board staff repeatedly notified and explained the requirements of Scrap Metal Permit section III.D.2 during a Facility inspection on December 8, 2014, and in a comment letter and/or Notices of Violations dated August 11, 2014, December 22, 2014, and July 1, 2015. The Settling Respondent did not submit a CAP developed and certified by a SM-QSD to Regional Water Board staff until October 29, 2015, 821 days past the requirement's due date.

5. To resolve the alleged violation in Section II, paragraph 4, by consent and without further administrative proceedings, the Parties have agreed to the imposition of an administrative civil liability of **\$155,940** against the Settling Respondent; the liability amount the Prosecution Team calculated and asserted using Steps 1 through 10 of the State Water Resources Control Board's Water Quality Enforcement Policy (May 2010) (Enforcement Policy) as shown in Attachment A. Payment of **\$155,940** to the State Water Pollution Cleanup and Abatement Account is due no later than 30 days following the Regional Water Board executing this Order.

6. The Parties agree to settle the matter without administrative or civil litigation and to present this Stipulated Order to the Regional Water Board, or its delegate, for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

7. The Prosecution Team believes that the resolution of the alleged violation is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the violation except as provided in this Stipulated Order, and that this Stipulated Order is in the public's best interest.

### **Section III: STIPULATIONS**

The Parties incorporate the foregoing Recitals and stipulate to the following:

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<sup>1</sup> The Permit sets the copper NAL at 0.0189 milligrams/liter (mg/L). Results from Discharger's storm water sample dated November 29, 2012, show a discharge for copper at 0.17 mg/L, more than twice the copper NAL.

8. **Administrative Civil Liability:** The Settling Respondent hereby agrees to pay the administrative civil liability totaling **\$155,940** as set forth in Section II, paragraph 5.

9. **Payment:** The Settling Respondent shall submit a check for **\$155,940** no later than 30 days following the date the Regional Water Board or its delegate signs this Stipulated Order. The check shall be made payable to "State Water Pollution Cleanup and Abatement Account," reference ACL Order R8-2016-0041, and submitted to:

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

The Settling Respondent shall provide a copy of the check via e-mail to the State Water Resources Control Board, Office of Enforcement ([Paul.Ciccarelli@waterboards.ca.gov](mailto:Paul.Ciccarelli@waterboards.ca.gov)) and the Regional Water Board ([Michelle.Beckwith@waterboards.ca.gov](mailto:Michelle.Beckwith@waterboards.ca.gov)).

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

**For the Regional Water Board:**

Michelle Beckwith  
3737 Main Street, Suite 500  
Riverside, CA 92501  
(951) 782-4433  
[Michelle.Beckwith@waterboards.ca.gov](mailto:Michelle.Beckwith@waterboards.ca.gov)

**For Settling Respondent:**

Hoc Tran, Owner  
Eagle Scrap Metal  
741 Monroe Way  
Placentia, CA 92870  
(714) 996-9560  
[eaglescrap@gmail.com](mailto:eaglescrap@gmail.com)

11. **Attorney's 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.

12. **Matters Addressed by this Stipulation:** Upon the Regional Water Board's or its delegate's adoption, this Stipulated Order represents a final and binding resolution and settlement of the alleged violation as of the effective date of this Stipulated Order. The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadline specified in Section III, paragraphs 5 and 9.

13. **Public Notice:** The Settling Respondent understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board, or its delegate, for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Regional Water

Board or its delegate. The Settling Respondent agrees that it may not rescind or otherwise withdraw its approval of this Stipulated Order.

14. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Regional Water Board's or its delegate's adoption of the Order and public review of this Stipulated Order is lawful and adequate. The Parties understand that the Regional Water Board, or its delegate, have the authority to require a public hearing on this Stipulated Order. In the event procedural objections are raised or the Regional Water Board requires a public hearing 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 and/or this Stipulated Order as necessary or advisable under the circumstances.

15. **Interpretation:** This Stipulated 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.

16. **Modification:** The Parties shall not modify this Stipulated Order 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 delegate.

17. **If the Order Does Not Take Effect:** In the event that the Order does not take effect because the Regional Water Board or its delegate does not approve it, or the State Water Resources Control Board (State Water Board) or a court vacates it in whole or in part, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violation(s), 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 the following:

- 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 violation alleged herein 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.

18. **Waiver of Hearing:** Settling Respondent has been informed of the rights Water Code section 13323, subdivision (b) provides, and hereby waives its right to a hearing before the Regional Water Board prior to the Order's adoption.

19. **Waiver of Right to Petition or Appeal:** Settling Respondent hereby waives its right to petition the Regional Water 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. This explicit waiver of rights includes potential future decisions by the Regional Water Board or its delegate directly related to this Stipulated Order, including, but not limited to time extensions, SEP completion, and other terms contained in this Stipulated Order.

20. **Covenant Not to Sue:** Settling Respondent 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 Stipulated Order.

21. **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 Settling Respondent in writing. No oral advice, guidance, suggestions, or comments from Regional Water Board employees or officials regarding submissions or notices shall be construed to relieve the Settling Respondent of its obligation to obtain any final written approval this Stipulated Order requires.

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

23. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations 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.

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

25. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulated 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.

26. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board, or its delegate, enters the Order incorporating the terms of this Stipulated Order.

**IT IS SO STIPULATED.**

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD SANTA ANA REGION, PROSECUTION TEAM**

Date: 6/16/16

By:   
Hope A. Smythe, Division Chief  
Regional Water Quality Control Board

Approved as to form:

By:   
Paul Ciccarelli, Attorney  
State Water Resources Control Board  
Office of Enforcement

**Settling Respondent**

Date: 6-15-16

By:   
Hoc Tran, Owner  
Eagle Scrap Metal

**ORDER OF THE REGIONAL WATER BOARD**

27. This Order incorporates the foregoing Sections I through III by this reference as if set forth fully herein.

28. In accepting this Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e), and has applied the Penalty Calculation Methodology set forth in the State Water Resource Control Board's Enforcement Policy, which is incorporated herein by this reference. The Regional Water Board's consideration of these factors and application of the Penalty Calculation Methodology is based upon information obtained by the Prosecution Team in investigating the allegations set forth in the Stipulation, or otherwise provided to the Regional Water Board. In addition to these considerations, this Order recovers staff costs incurred by the Regional Water Board for this matter.

29. 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, § 21000 et seq.) in accordance with California Code of Regulations, Title 14, section 15321, subdivision (a)(2).

30. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if Settling Respondent fails to perform any of its obligations under the Order.

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

Kt v. Bltll

Kurt V. Berchtold  
Executive Officer  
Regional Water Quality Control Board  
Santa Ana Region

7/25/16

Date

## ATTACHMENT A

### Specific Factors Considered For Eagle Scrap Metal

Hoc Tran (dba Eagle Scrap Metal) (Discharger) allegedly violated the *Sector-Specific General Permit for Storm Water Runoff Associated with Industrial Activities from Scrap Metal Recycling Facilities within the Santa Ana Region*, Regional Board Order No. R8-2012-0012, NPDES Permit No. CAG 618001 (Scrap Metal Permit or Permit) at its facility located on 741 Monroe Way in the City of Placentia (Facility), WDID: 8 30MR000002.

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

**Violation: Discharger failed to submit a Corrective Action Plan prepared by a certified Scrap Metal Qualified Storm Water Pollution Prevention Plan Developer (SM-QSD) as required by Scrap Metal Permit Section III.D.2**

Discharger is covered under the Scrap Metal Permit and selected Permit compliance Option 1, a three-phased approach based on Numeric Action Levels (NALs), for storm water discharges from the Facility. Each Permittee in Phase I of Option 1 must implement Phase II if any triggers for exceedance of Option 1 NALs occur. Discharge from the Facility exceeded the trigger for copper. Sample results submitted in the Discharger's 2012-2013 Annual Report show that storm water discharge from the facility exceeded the copper NAL by at least two times the specified Permit limit, requiring the Discharger to comply with, among other things, Phase II, step 3.<sup>1</sup> (See Scrap Metal Permit Sections III.E.1.b.ii, III.E.1.c.ii.<sup>1,2</sup>) Phase II, step 3 requires the Discharger to develop and submit for Regional Board staff approval, a Phase II Corrective Action Plan (Corrective Action Plan or CAP) by July 31, 2013. Within 18 months of Permit adoption, all Corrective Action Plans shall be developed and certified by a SM-QSD. (Permit Section III.D.2.) The Discharger failed to submit an adequate CAP because the CAP submitted by the Discharger was, among other things, neither developed nor certified by a SM-QSD as required by Permit Section III.D.2.

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

A person who violates a waste discharge requirement for compliance with the provisions of the Clean Water Act shall be civilly liable. (Wat. Code, § 13385, subd. (a)(2).) Pursuant to Water Code section 13385(c)(1), the Regional Board may impose administrative civil liability for non-

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<sup>1</sup> The Permit sets the copper NAL at 0.0189 milligrams/liter (mg/L). Results from Discharger's storm water sample dated November 29, 2012, show a discharge for copper at 0.17 mg/L, more than twice the copper NAL.

<sup>2</sup> All citations are to the Scrap Metal Permit unless otherwise specified.

discharge violations on a daily basis. The maximum civil liability for each day of violation is ten thousand dollars (\$10,000).

### **ENFORCEMENT POLICY – PENALTY CALCULATION**

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

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

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

Step 3 of the Enforcement Policy's penalty calculation methodology directs the Regional Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the extent of deviation from the applicable requirements (Deviation from Requirement).

Potential for Harm: Moderate

The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm and/or threat to beneficial uses. A "moderate" Potential for Harm applies where the "characteristics of the violation present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most incidents would be considered to present a moderate potential for harm." (Enforcement Policy, page 16.) The Facility is located in the Santa Ana River, Reach 2 subwatershed. The beneficial uses applicable to the Santa Ana River Reach 2 are Agriculture Supply, Groundwater Recharge, Water Contact and Non-Contact Water Recreation, Wildlife Habitat, and Rare, Threatened, or Endangered Species.

Triggers for exceedances of Numeric Action Levels (NALs) for Option 1 occurs when the geometric means of all sampling results for the reporting period exceed the specific NAL; for copper, the NAL is 0.0189 mg/L. An exceedance also occurs if a single sample result exceeds twice the NAL; for copper, twice the NAL is 0.0378 mg/L. The Discharger exceeded the copper NAL during the 2012-2013 reporting period by approximately 9x's the NAL (0.17 mg/L), triggering the requirement for the Discharger to develop and submit for Regional Board staff approval, a CAP to address the copper exceedances. The Discharger failed to submit a CAP developed and certified by a SM-QSD. Instead, the Discharger submitted a CAP on May 6, 2014 (2014 CAP), which did not provide any information as to the sources of copper which caused the exceedance, nor did the CAP propose any additional measures not already proposed in their Storm Water Pollution Prevention Plan to prevent future exceedances.

Additional sample results demonstrated a continued exceedance of the copper NAL. Samples collected on February 3, 2014 (Cu 0.41 mg/L), February 27, 2014 (Cu 0.43 mg/L), December 1, 2014 (Cu 0.042 mg/L), and January 12, 2015 (Cu 0.030 mg/L) had copper concentrations that also exceeded the NAL.

Copper and other metals are known to be toxic to fish and other aquatic species. Copper and other metals in storm water may remain in the dissolved phase, adsorb to suspended particles, and settle. Benthic organisms living in the sediments may ingest these metals which can bioaccumulate, and pose a risk to species in higher trophic levels.

Given that copper concentrations continue to be elevated, the Potential for Harm is moderate.

Deviation from Requirement: Moderate

The Enforcement Policy requires a determination of whether the violation resulted in a minor, moderate, or major deviation from requirement. A “moderate” deviation from requirement is one where “the intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved).”

The Permit requires a SM-QSD to develop and certify a CAP to achieve compliance with effluent limitations (i.e., NALs) to meet water quality standards: the intended effect of the requirement. A SM-QSD has the proper training and certification to develop a CAP that identifies the source of the pollutant(s) causing the exceedance and proposes appropriate control measures to comply with NALs. Discharges that exceed one or more NALs represent a high risk of violating water quality standards.

The Discharger failed to submit the required Corrective Action Plan by July 31, 2013, as mandated by Scrap Metal Permit Section III.E.c.ii.3. On April 3, 2014, Regional Board staff issued a Notice of Violation to the Discharger. On the Notice of Violation deadline, the Discharger submitted the 2014 CAP to reduce copper discharges from the Facility. The 2014 CAP was not developed by a SM-QSD and was deemed wholly inadequate by Regional Board staff. (See Comment Letter.) Despite the inadequacies and staff disapproval, the Discharger implemented the 2014 CAP.

In this case, the intended effect of the CAP is to achieve compliance with the copper NAL. Sampling results from the Discharger reveal that copper discharges have reduced since May 2014. In January 2015, copper was reported less than twice the NAL, but the Discharger has yet to comply with the NAL. By failing to submit a CAP developed and certified by a SM-QSD for Regional Board staff approval, Permit Section III.D.2 was not met and the intended effectiveness of the requirement was only partially achieved.

The Deviation from Requirement is moderate.

Per Day Factor: 0.30

The resulting per day factor is 0.30 based on the above Potential for Harm and Deviation from Requirement from the matrix in Table 3 of the Enforcement Policy. The lower end of the scale (0.3 – 0.4) is selected because the violation is for only one (1) pollutant and not multiple exceedances of additional pollutant NALs.

Days of Violation

The Discharger was to submit the required Corrective Action Plan by July 31, 2013. The Corrective Action Plan was to be prepared by a SM-QSD and developed according to specifications in the Scrap Metal Permit. Regional Board staff received the Discharger’s Correction Action Plan developed and certified by a SM- QSD on October 29, 2015, 821 days late.

Multiple Day Violation Reduction

The Enforcement Policy establishes an alternative approach to civil liability calculations for violations that last more than 30 days and do not cause daily detrimental impacts to the

environment or regulatory program. The Discharger's failure to submit the required Corrective Action Plan has not caused a daily detrimental impact to the receiving water. Therefore, using the alternative approach to the liability calculation for multiple day violations, the civil liability is assessed based on 33 days of violation (Enforcement Policy, page 18).

#### Initial Liability Amount

\$10,000 [maximum statutory liability per day of violation] X 33 [adjusted number of days of violation] X 0.30 [per day factor]

$$\mathbf{\$10,000 \times 33 \text{ days} \times 0.30 = \$99,000}$$

#### **Step 4 – Adjustment Factors**

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

#### Culpability: 1.3

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior.

The Discharger disregarded the Corrective Action Plan requirement on multiple occasions. Beyond the Discharger being on notice of the requirement starting from the time the Discharger submitted its Notice of Intent for the Scrap Metal Permit on May 3, 2012, the Discharger was explicitly reminded of the requirement in a comment letter and/or Notices of Violation (NOV) dated April 3, 2014, August 11, 2014, December 22, 2014, and July 1, 2015.

The Discharger submitted monitoring results in its 2012-2013 Annual Report and self-reported a trigger exceedance for copper, requiring the Discharger to develop and submit a Corrective Action Plan by July 31, 2013 per Permit Section III.E.1.c.ii.3. The Discharger failed to meet this deadline. In response to a NOV dated April 3, 2014, the Discharger submitted an inadequate Correction Action Plan on May 6, 2014. Regional Board staff notified the Discharger of the plan's inadequacies in a comment letter dated August 11, 2014 (Comment Letter). The Comment Letter requested the Discharger to submit a Corrective Action Plan and provided the Discharger with information on how to hire or become a SM-QSD. Regional Board staff inspected the Facility after the Discharger failed to respond to the Comment Letter. During the inspection, Regional Board staff explained Corrective Action Plan requirement to the Discharger and explained why the Discharger would receive a NOV for its failure to comply. On December 22, 2014, and July 1, 2015, Regional Board staff subsequently sent NOVs for the Discharger's failure to submit a Corrective Action Plan developed and certified by a SM-QSD. Regional Board staff also attempted to contact the Discharger via telephone and email on May 27, 2015. Despite Regional Board staff efforts, the Discharger had not responded to the multiple requests for a Correction Action Plan since August 2014. Regional Water Board staff received the Discharger's required Certified Corrective Action for staff review on October 29, 2015.

The Discharger has failed to act as a reasonable and prudent permittee under the Scrap Metal Permit. A reasonable and prudent permittee would have reviewed its monitoring results, determined there was a trigger exceedance for copper, and submitted the required Corrective

Action Plan by July 31, 2013. The Discharger's willful disregard of its obligation to submit a Corrective Action Plan that was developed by a SM-QSD and according to specifications in the permit caused the alleged violation. The culpability factor is 1.3.

Cleanup and Cooperation: 1.2

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 where there is a lack of cooperation.

The Discharger submitted an inadequate Corrective Action Plan after receiving a NOV dated April 3, 2014. The NOV requested the Discharger to prepare and submit a Corrective Action Plan that focuses on pollution control preventative measures for copper by May 9, 2014. On May 6, 2014, the Discharger submitted a one paragraph Corrective Action Plan for the Facility that proposed a best management practice (BMP), sweeping, as the proposed pollution control measure for copper. Sweeping is a baseline BMP Permit requirement (Section III.E.1.c.i.2)) that the Discharger should have already implemented at the Facility. The Regional Board Comment Letter explained why a more detailed Corrective Action Plan was needed and explained the requirements of Permit Section III.D.2. The Discharger failed to comply with the Scrap Metal Permit requirements even after repeated attempts via email, site visits and letters by Regional Board staff to obtain compliance.

The Discharger may have modified business practices to reduce copper concentrations in the storm water runoff, however, failed to provide any correspondence or communication of such efforts despite repeated Regional Board staff attempts to make contact. The cleanup and cooperation factor is 1.2.

History of Violations: 1.0

The Discharger does not have a history of violations that have been formally adjudicated by the Regional Board. The history of violations factor is 1.0.

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

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

\$99,000 [initial liability] x 1.3 [culpability factor] x 1.2 [cleanup and cooperation factor] x 1.0 [history of violations factor]

$$\mathbf{\$99,000 \times 1.3 \times 1.2 \times 1.0 = \$154,440}$$

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

The Enforcement Policy provides that if there is sufficient financial information to assess the violator's ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on the violator's ability to continue in business, then the Total Base Liability Amount may be adjusted downward if warranted.

Regional Board Prosecution Staff has sufficient information to suggest that the Discharger has the ability to pay the proposed liability. The Discharger's Business Profile Record reported sales

from the Facility in 2014 to exceed \$1.6 million dollars.

#### **Step 7 – Other Factors as Justice May Require**

The Prosecution Team finds it appropriate to increase the Total Base Liability Amount by \$1,500 in consideration of investigation and enforcement costs incurred in prosecuting this matter (10 hours @ \$150/hour). Increasing the Total Base Liability Amount in this manner serves to create a more appropriate deterrent against future violations.

#### **Step 8 – Economic Benefit**

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

The Enforcement Policy provides that the United States Environmental Protection Agency's Economic Benefit Model (BEN model) should be used to calculate the economic benefit a violator derives from delaying and/or avoiding compliance. Using the BEN Model, the Discharger has derived an economic benefit of sixty-four dollars (\$64) based on the delayed cost of hiring a SM-QSD to develop and certify the required Corrective Action Plan for the Facility.

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

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

Maximum Liability Amount: \$8,210,000

The maximum administrative liability is the maximum allowed by Water Code section 13385, subdivision (c)(1): \$10,000 for each day in which the violation occurs. The maximum liability amount is \$8,210,000 (\$10,000 x 821 days of violation).

Minimum Liability Amount: \$70.40

The Enforcement Policy states (p. 21) that the total liability shall be at least 10% higher than the economic benefit, "so that liabilities are not construed as the cost of doing business and the assessed liability provides meaningful deterrent to future violations." The minimum liability amount is \$70.40 (\$64.00 x 1.1).

#### **Step 10 – Final Proposed Liability Amount**

Final Proposed Liability Amount: \$155,940

The final liability proposed is \$155,940, based on consideration of the penalty factors discussed above. It is within the minimum and maximum liabilities.