
Central Valley Regional Water Quality Control Board

21 November 2016

Dan Biswas
SimonCRE Raylan III LLC
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***OFFER TO SETTLE ADMINISTRATIVE CIVIL LIABILITY, SIMONCRE RAYLAN III LLC,
DOLLAR GENERAL PIONEER, AMADOR COUNTY, WDID # 5S03C373733***

This letter contains an offer from the Central Valley Regional Water Quality Control Board (Central Valley Water Board) Prosecution Team to settle potential claims for administrative civil liability arising out of alleged violations by SimonCRE Raylan III LLC of the *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009 DWQ* (General Permit) at 16410 Meadow Vista Drive, Pioneer. As the owner of the Dollar General Construction project and the legally responsible person enrolled in the General Permit, SimonCRE Raylan III LLC (Discharger) is responsible for complying with all elements of the General Permit and strictly liable for penalties associated with non-compliance. Hereafter, this letter will be referred to as the "Settlement Offer."

This Settlement Offer provides the Discharger with an opportunity to resolve the alleged violations through payment of \$55,297 (fifty five thousand two hundred ninety seven dollars). Please read this letter carefully and respond no later than 21 December 2016.

Description of Violations

On 28 October 2016, Central Valley Water Board staff inspected the Discharger's construction site during a rain event. Staff observed the following violations of the General Permit: (1) a lack of erosion control Best Management Practices (BMPs) throughout the project; (2) areas that required additional sediment control BMPs, and (3) sediment-laden runoff in excess of 1,000 Nephelometric Turbidity Units discharging from the site. Please see the enclosed 4 November 2016 Notice of Violation and 28 October 2016 Inspection Report for a full description of the violations.

On 2 November 2016, Central Valley Water Board staff conducted a follow-up inspection and again observed the following violations of the General Permit: (1) a lack of erosion control BMPs; (2) improperly installed sediment control BMPs; (3) failure to apply linear sediment control BMPs on the face of the slopes and at grade breaks, and (4) evidence of a discharge of sediment-laden runoff. Please see the enclosed 2 November 2016 Inspection Report for a full description of the violations.

Statutory Liability

Pursuant to Section 13385 of the California Water Code, the Discharger is liable for administrative civil liabilities of up to \$10,000 per violation for each day in which the violation occurs and \$10 per gallon discharged in excess of the first 1,000 gallons. The statutory minimum civil liability is the economic benefit resulting from the violations. The State Water Resources Control Board's *Water Quality Enforcement Policy* (Enforcement Policy) states that the minimum penalty is to be the economic benefit plus 10%. For the violations described in the attachments, the maximum potential liability for the violations is over \$100,000 and the minimum liability is \$9,020.

Proposed Settlement Offer

The Central Valley Water Board's Prosecution Team proposes to resolve the violation(s) with this Settlement Offer of \$55,297. This Settlement Offer was determined based on an assessment of the factors set forth in Water Code section 13385(e) using the penalty methodology set forth in the Enforcement Policy. The enclosed "Penalty Calculation Methodology" describes in detail how the penalty amount was calculated. The Prosecution Team believes that the proposed resolution of the alleged violation(s) is fair and reasonable, fulfills the Central Valley Water Board's enforcement objectives, and is in the best interest of the public.

Should the Discharger choose *not* to accept this Settlement Offer, please be advised that the Central Valley Water Board Prosecution Team reserves the right to seek a higher liability amount, up to the maximum allowed by statute, either through issuance of a formal administrative civil liability complaint or by referring the matter to the Attorney General's Office. The Central Valley Water Board Prosecution Team also reserves the right to conduct additional investigation, including issuance of investigation orders and/or subpoenas to determine the number of gallons discharged and whether additional violations occurred. Any additional violations and gallons of discharge subjecting the Discharger to liability may be included in a formal enforcement action. The Discharger can avoid the risks inherent in a formal enforcement action and settle the alleged violation(s) by accepting this Settlement Offer. Please note that the Settlement Offer does not address liability for any violation that is not specifically identified in the attached inspection reports.

Options for Responding to the Settlement Offer

Option A: Accept the Offer

If the Discharger chooses to accept this Settlement Offer, then the enclosed *Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver)* shall be completed and submitted no later than **21 December 2016** to the following address:

Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite A
Rancho Cordova, CA 95670
Attention: Wendy Wyels, Supervisor, Enforcement Section

Important! - Upon receipt of the *Acceptance and Waiver*, this settlement will be publically noticed for a 30-day comment period as required by federal regulations. If no substantive comments are received within the 30 days, the Prosecution Team will ask the Central Valley

Water Board's Executive Officer to formally endorse the *Acceptance and Waiver* as an order of the Central Valley Water Board. An invoice will then be mailed to the Discharger requiring payment of the \$55,297 administrative civil liability within 30 days of the date of the invoice.

If, however, substantive comments are received in opposition to this settlement and/or the Executive Officer declines to accept the settlement, then the Settlement Offer may be withdrawn. In this case, the Discharger will be notified and the Discharger's waiver pursuant to the *Acceptance and Waiver* will also be treated as withdrawn. The unresolved violation(s) will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued and the matter may be set for a hearing.

Option B: Contest the Alleged Violations

If the Discharger wishes to contest the violation(s) or the methodology used to calculate the proposed liability, it must submit a written response identifying the basis for the challenge, including any evidence to support its claims. The Discharger's response must be received by the Central Valley Water Board no later than **21 December 2016**. The Central Valley Water Board Prosecution Team will evaluate the Discharger's basis for a challenge and may seek clarifying information or schedule an in-person meeting. The Prosecution Team will inform the Discharger whether a reduction in the settlement amount is warranted, or whether the original settlement amount is appropriate. The Discharger will be provided a final opportunity to accept the revised/original settlement amount before proceeding to formal enforcement.

Option C: Reject Offer

If the Discharger chooses to reject this Settlement Offer and/or does not complete and return the *Acceptance and Waiver*, the Discharger should expect that the Prosecution Team will conduct further investigation of the violation(s), issue an administrative civil liability complaint, and schedule a hearing. The Discharger will receive notice of any deadlines associated with that action. As previously stated, in such an action, the liability amount sought and/or imposed may exceed the liability amount set forth in this Settlement Offer.

If you have any questions about this settlement offer, please contact Wendy Wyels at (916) 464-4835 or at wwyels@waterboards.ca.gov.



ANDREW ALTEVOGT
Assistant Executive Officer

Enclosures:

- Acceptance of Conditional Resolution and Waiver of Right to a Hearing
- 28 October Inspection Report
- 2 November 2016 Inspection Report
- 4 November 2016 Notice of Violation
- Penalty Calculation Methodology

cc: David Boyers, Assistant Chief Counsel, State Water Board Office of Enforcement
Pamela Creedon, Executive Officer, Central Valley Water Board, Rancho Cordova
Andrew Deeringer, Office of Chief Counsel, State Water Board, Sacramento

Waiver, prior to being formally endorsed by the Central Valley Water Board Executive Officer (acting as head of the Advisory Team), will be published as required by law for public comment

If no comments are received within the notice period that cause the Prosecution Team to reconsider the Settlement Offer, then the Prosecution Team will present this *Acceptance and Waiver* to the Central Valley Water Board's Executive Officer for formal endorsement on behalf of the Central Valley Water Board.

The Discharger understands that if significant comments are received in opposition to the settlement, then the offer may be withdrawn by the Prosecution Team. If the Settlement Offer is withdrawn, then the Discharger will be notified and the Discharger's waiver pursuant to the *Acceptance and Waiver* will also be treated as withdrawn. The unresolved violation(s) will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued and the matter may be set for a hearing.

The Discharger understands that once this *Acceptance and Waiver* is formally endorsed and an Order Number is inserted, then the full payment is a condition of this *Acceptance and Waiver*. An invoice will be sent upon endorsement, and full payment will be due within 30 days of the date of the invoice.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Discharger in the making and giving of this *Acceptance and Waiver*.

SimonCRE Raylan III, LLC

By: _____

Title: _____

Date: _____

IT IS SO ORDERED, pursuant to California Water Code section 13385.

By: _____
Pamela Creedon, Executive Officer

Date: _____

Storm Water Construction General Permit Inspection Report Central Valley Regional Water Quality Control Board

Insp. Date & Time:	10/28/2016	Inspected By:	Rich Muhl
WDID #	5S03C373733	Site County:	Amador
Operator Name:	SimonCRE Raylan III LLC		
Facility Name:	Dollar General Pioneer		
Facility Address:	16410 Meadow Vista Drive, Pioneer, CA 95666		
Facility Contact:	Dan Biswas (480) 745-1956		

Inspection Type: X Compliance			
SWPPP on site?	Unknown	SWPPP Implemented/Updated?	No
Photos Taken?	Yes	Appropriate Monitoring Program?	Unknown
Weather:	Rain	Evidence of SW or Non-SW Discharge?	Yes

Inspection Summary / Comments:

On 28 October 2016, Central Valley Regional Water Quality Control Board staff inspected the Dollar General construction project in Pioneer. The construction project is located at 16410 Meadow Vista Drive in Pioneer. Subsequent to the inspection, staff reviewed the Storm Water Pollution Prevention Plan (SWPPP) uploaded into the Storm Water Multiple Application & Report Tracking System (SMARTS). The Dollar General site is a Risk Level 2 project. At the time of the inspection, subcontractors were unloading HVAC equipment. The inspection was conducted during a predicted rain event. The inspection was conducted to determine compliance with the Construction General Permit Order 2009-0009-DWQ.

During the inspection, staff observed the lack of erosion control Best Management Practices (BMPs), improperly installed sediment control BMPs, failure to apply linear sediment controls BMPs on the face of the slopes and at grade breaks, and a discharge of turbid storm water offsite. The 4-acre project was located on a hillside north of and directly above Highway 88. Storm water discharged downslope to the roadside ditch on Highway 88. Staff observed a light application of straw on a small portion of the project. However, the majority of the project did not have erosion control BMPs. Silt fence was installed in several areas. However, the silt fence was not installed around the perimeter of the project and was improperly installed in several areas. A construction entrance and base rock roadway had been constructed for ingress and egress. Staff observed significant rilling and movement of soil throughout the project. In multiple areas, concentrated flow breached the sediment control BMPs and discharged into the roadside ditch (see inspection photographs #1 to #9).

Staff observed that the roadside ditch had not been stabilized with erosion control BMPs and the contractor had installed a minimal amount of fiber rolls across the ditch to slow the downhill flow and capture sediment. The project SWPPP section 3.2.1 Erosion Control specified that the project would "Control erosion in concentrated flow paths by applying erosion control blankets, check

dams, erosion control seeding or alternate methods". These BMPs were not in place. The lack of erosion of sediment control BMPs resulted in a turbid storm water discharge in excess of 1000 Nephelometric Turbidity Unit (see inspection photograph #10 to #14).

The project has not fully implemented the SWPPP and has not complied with the Risk Level 2 permit requirements.

Signature



Date 11/01/2016

Date Entered: _____

Entered By: _____

Senior Review: _____



Photo 1. Overview of the project looking west along Highway 88 in Pioneer.



Photo 2. Overview of the eastern portion of the project. Note: the lack of erosion control BMPs and lack of linear sediment controls on the face of the slopes



Photo 3. View of project from Highway 88 showing slopes without the required sediment control and erosion control BMPs



Photo 4. Lower end of the project Note: the light application of straw mulch and the sediment deposited adjacent to Highway 88



Photo 5. Eastern portion of site with light application of straw mulch. Area lacked required sediment control BMPs on the slopes.



Photo 6. Another portion of the project. Note: the light application of straw mulch.



Photo 7. Northeast portion of the project. Note: the lack of erosion and sediment control BMPs.



Photo 8. Large rill conveying concentrated flow offsite. Note: the lack of erosion control BMPs.



Photo 9. Another portion of the project. Note: the rilling and areas without erosion control BMPs.



Photo 10. Significant soil movement on the project



Photo 11. Sediment accumulated within the roadside ditch. Note: the highly turbid water flowing in the ditch.



Photo 12. Concentrated flow breaching the silt fence. Note: lack of BMPs upslope.



Photo 13. Sediment-laden storm water flowing in the roadside ditch



Photo 14. Another view of sediment-laden storm water in the roadside ditch

Storm Water Industrial General Permit Inspection Report Central Valley Regional Water Quality Control Board

Insp. Date & Time:	11/02/2016	Inspected By:	Rich Muhl
WDID #	5S03C373733	Site County:	Amador
Operator Name:	SimonCRE Raylan III LLC		
Facility Name:	Dollar General Pioneer		
Facility Address:	16410 Meadow Vista Drive, Pioneer, CA 95666		
Facility Contact:	Dan Biswas (480) 745-1956		

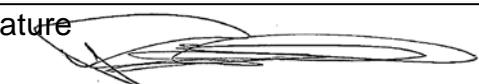
Inspection Type: Follow-up Enforcement

SWPPP on site?	Yes	SWPPP Implemented/Updated?	No
Photos Taken?	Yes	Appropriate Monitoring Program?	Unknown
Weather: Clear		Evidence of SW or Non-SW Discharge?	Yes

Inspection Summary / Comments:

On 2 November 2016, Regional Water Quality Control Board staff inspected the Dollar General project in Pioneer. Staff originally inspected the construction site on 28 October during a rain event. According to NOAA, rainfall occurred on the 27th, 28th and 30th of October in Pioneer. Staff reviewed the Storm Water Pollution Prevention Plan (SWPPP) and spoke with Site Superintendent, Andrew Baka. Staff identified that the project plans to construct two detention basins and hydroseed disturbed areas. According to Mr. Baka, the facility plans to hydroseed on Friday, 4 November 2016.

During the inspection, staff observed that the construction project had not added additional BMPs and had not improved the inadequate BMPs observed during the 28 October inspection. Staff again observed, the lack of erosion control Best Management Practices (BMPs), improperly installed sediment control BMPs, failure to apply linear sediment controls BMPs on the face of the slopes and at grade breaks. Additionally, staff observed deposited sediment in the roadside ditch and at the discharge location at the south west corner of the project (see inspection photograph #1 to #9).

Signature 

Date 11/18/2016

Date Entered: _____
Entered By: _____
Senior Review: _____



Photo 1. Overview of a portion of the project Note: the lack of sediment and erosion control BMPs



Photo 2. Another portion of the project Note: the lack of BMPs



Photo 3. Another view of the project Note: the light application of straw



Photo 4. Another view of the project Note: the lack of BMPs



Photo 5. Area where storm water discharged under the silt fence



Photo 6. Another view of the area where storm water discharged under the silt fence



Photo 7. Sediment accumulated in the roadside ditch along Highway #88



Photo 8. Another view of sediment accumulated in the roadside ditch along Highway #88



Photo 9. Sediment accumulated in the ditch close the discharge location on the southwest corner of the project

Central Valley Regional Water Quality Control Board

4 November 2016

Dan Biswas
SimonCRE Raylan III LLC
5111 North Scottsdale Road, #200
Scottsdale AZ 85250

CERTIFIED MAIL
91 7199 9991 7035 8365 4881

NOTICE OF VIOLATION, SIMONCRE RAYLAN III LLC, DOLLAR GENERAL PIONEER, AMADOR COUNTY, WDID # 5S03C373733

On 28 October 2016, Central Valley Water Board staff inspected the Dollar General project at 16410 Meadow Vista Drive in Pioneer to evaluate compliance with the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009 DWQ (General Permit). As the owner of the Dollar General project and the legally responsible person enrolled in the General Permit for this project, SimonCRE Raylan III LLC is responsible for complying with all elements of the General Permit for this project. This construction project is a Risk Level 2 site under the terms of the General Permit.

During the inspection, Water Board staff observed the lack of erosion control Best Management Practices (BMPs) throughout the project, areas that required additional sediment control BMPs, and sediment-laden runoff in excess of 1000 Nephelometric Turbidity Units discharging from the site. Please see the enclosed inspection report and site photographs for more information.

Violations

SimonCRE Raylan III LLC has failed to apply erosion control BMPs, failed install sediment control BMPs on much of the project, and discharged turbid water from the project. Therefore, SimonCRE Raylan III LLC is in violation of the following General Permit sections:

- Attachment D, Part E. Sediment Controls, which states in part:
 1. *Risk Level 2 dischargers shall establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.*
 3. **Additional Risk Level 2 Requirement:** *Risk Level 2 dischargers shall implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction.*

- Section V. Effluent Standards and Receiving Water Monitoring, part A. Narrative Effluent Limitations, which states in part:
 2. *Dischargers shall minimize or prevent pollutants in storm water discharges and authorized non-storm water discharges through the use of controls, structures, and management practices that achieve BAT for toxic and non-conventional pollutants and BCT for conventional pollutants.*

Response

In response to this Notice of Violation, SimonCRE Raylan III LLC must complete the following:

- Install an effective combination of erosion and sediment control BMPs throughout the site as required by the General Permit. This includes effectively stabilizing all disturbed soil areas and maintaining erosion and sediment control BMPs across the site.
- Ensure that site BMPs are effective and result in the reduction or elimination of pollutants in storm water discharges and authorized non-storm water discharges from construction activity to the Best Available Technology Economically Achievable/Best Conventional Pollutant Control Technology (BAT/BCT) standard.

In order to demonstrate compliance with the General Permit, Board staff requests that you submit the following documents using the site's SMARTS account by **30 November 2016**:

- A narrative description of the BMPs installed in response to the Notice of Violation.
- Copies of the Rain Event Action Plans (REAPs) for the 2016-2017 wet season. Include any photographs taken during the REAP inspections.
- An updated SWPPP map showing all BMPs installed across the project.

These violations of the General Permit have exposed SimonCRE Raylan III LLC to possible further enforcement action. Under Section 13385 of the California Water Code, the Central Valley Water Board can impose administrative civil liabilities (monetary fines) for violations of the General Permit. The maximum administrative civil liability for each violation is ten thousand dollars (\$10,000) per day and ten dollars per gallon of polluted storm water discharged in excess of 1,000 gallons.

If you have any questions, please contact Richard Muhl at (916) 464-4749 or Richard.Muhl@waterboards.ca.gov.



STEVE E. ROSENBAUM
Chief, Storm Water Compliance and Enforcement Unit

Enclosures: Inspection report with site photographs

cc: Greg Gholson, U.S. Environmental Protection Agency, Region IX, San Francisco
Aaron Brusatori, Amador County, Jackson

**PENALTY CALCULATION METHODOLOGY
FOR
SIMONCRE RAYLAN III, LLC
DOLLAR GENERAL CONSTRUCTION SITE, PIONEER
AMADOR COUNTY**

The State Water Board's *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code section 13385(e). Each factor of the nine-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf.

Violation 1 – Failure to minimize or prevent pollutants in storm water discharges

During the site inspection on 28 October 2016, Central Valley Water Board staff observed the general lack of erosion control BMPs throughout the project, areas that required additional sediment control BMPs, and sediment-laden runoff measured in excess of 1,000 NTU discharging from the site. The Prosecution Team alleges the discharge of sediment-laden storm water runoff without installing BMPs that meet the Best Available Technology Economically Achievable/Best Conventional Pollutant Control Technology (BAT/BCT) standard is a violation of the General Permit. Attachment D, section A.1.b, Effluent Standards, in the General Permit states: *Dischargers shall minimize or prevent pollutants in storm water discharges and authorized non-storm water discharges through the use of controls, structures, and management practices that achieve BAT for toxic and non-conventional pollutants and BCT for conventional pollutants.*

PENALTY FACTOR	VALUE	DISCUSSION
Harm or potential for harm to beneficial uses	3	The sediment laden water discharged to a tributary to the Mokelumne River. Staff observed silt in the channel and silt plugging the drainage channels on Hwy 88 to the extent that Caltrans had to clear the road. The beneficial uses of the Mokelumne River include aquatic freshwater habitat, spawning, and migration. The discharge was reasonably expected to have a moderate impact to beneficial uses, but the impact is likely to attenuate without appreciable acute or chronic effects.
Physical, chemical, biological, or thermal characteristics of the discharge	2	Discharges of sediment can cloud the receiving water (which reduces the amount of sunlight reaching aquatic plants), clog fish gills, smother aquatic habitat and spawning areas, and impede navigation. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can also negatively impact aquatic life and aquatic habitat.
Susceptibility to cleanup or abatement	1	The sediment discharged was dispersed by storm water over a long distance and cleanup or abatement of 50% or more of the material would not be possible.
Per gallon and per day factor for discharge violations	0.22	The "Deviation from Requirement" is major because the Discharger essentially ignored several requirements of the General Permit rendering the permit's BAT/BCT effluent standard ineffective. The value of 0.22 was determined from Table 1 of the Enforcement Policy.
Volume discharged	n/a	The Prosecution Team is choosing not to calculate the volume of discharge at this time. If this matter goes to hearing, then the volume will be included in the penalty calculation.

PENALTY FACTOR	VALUE	DISCUSSION
Adjustment for high volume discharges	n/a	The Prosecution Team is choosing not to calculate the volume of discharge at this time. If this matter goes to hearing, then the volume will be included in the penalty calculation.
Days of discharge	1	Although there were probably additional days of discharge, staff only observed a discharge on 28 October 2016. If this matter goes to hearing, then additional days of violation may be alleged.
Initial Liability for Violation #1	\$2,200	The liability is calculated as per day factor multiplied by the number of days multiplied by the maximum liability per day (\$10,000/day).
Adjustments for Discharger Conduct		
Culpability	1.1	The Discharger has applied for and received permit or waiver coverage under the General Permit for at least 10 construction sites in California. Therefore, the Discharger should be aware of the General Permit's requirements.
Cleanup and Cooperation	1.1	No improvements were observed during staff's second inspection.
History of Violations	1	There is no known history of violations. It is noted that Board staff have not yet inspected the Discharger's other construction sites.
Total Base Liability for Violation #1	\$2,662	The base liability is calculated as the initial liability multiplied by each of the above three factors.

Violation 2 – Failure to establish and maintain effective perimeter controls

During the site inspections on 28 October 2016 and 2 November 2016, Central Valley Water Board staff observed that sediment control BMPs, such as silt fencing and straw wattles, were improperly installed at some locations and were not installed at some perimeter locations where they should have been installed. In multiple areas, concentrated flow breached the silt fencing and sediment discharged into the roadside ditch along Highway 88. The Prosecution Team alleges that failure to establish and maintain effective perimeter controls is a violation of the General Permit. Attachment D, section E.1 in the General Permit states: *Risk Level 2 dischargers shall establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.*

PENALTY FACTOR	VALUE	DISCUSSION
Discharge violations	n/a	This step is not applicable because the violation is not a discharge violation.
Potential for harm	moderate	The failure to install effective perimeter controls led to the discharge, or potential for discharge of sediment laden water. Discharges of sediment can cloud the receiving water (which reduces the amount of sunlight reaching aquatic plants), clog fish gills, smother aquatic habitat and spawning areas, and impede navigation. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can also negatively impact aquatic life and aquatic habitat.
Deviation from requirement	moderate	The "Deviation from Requirement" is moderate because the Discharger only partially complied with the perimeter control requirement reducing the intended effectiveness of the requirement related to protecting an active construction site during storm events.

PENALTY FACTOR	VALUE	DISCUSSION
Per day factor	0.35	Determined from Table 3 in the Enforcement Policy. The middle value was chosen, but could be increased if this action goes to hearing.
Days of violation	3	Violations occurred on 27, 28 and 30 October 2016 because local rainfall data indicated rainfall occurred on each of these days and Water Board staff observed deficient BMPs on 28 October 2016 and 2 November 2016.
Initial Liability for Violation #2	\$10,500	The liability is calculated as per day factor multiplied by the number of days multiplied by the maximum liability per day (\$10,000/day).
Adjustments for Discharger Conduct		
Culpability	1.1	The Discharger has applied for and received permit or waiver coverage under the General Permit for at least 10 construction sites in California. Therefore, the Discharger should be aware of the General Permit's requirements.
Cleanup and Cooperation	1.1	No improvements were observed during staff's second inspection.
History of Violations	1	There is no known history of violations. It is noted that Board staff have not yet inspected the Discharger's other construction sites.
Total Base Liability for Violation #2	\$12,705	The base liability is calculated as the initial liability multiplied by each of the above three factors.

Violation 3 – Failure to implement appropriate erosion and sediment control BMPs

During the site inspections on 28 October 2016 and 2 November 2016, Central Valley Water Board staff observed that erosion control BMPs, such as straw mulch, were either not installed or were not appropriately installed. Large areas of the site lacked any erosion control BMPs and limited areas along Highway 88 had a thin application of straw mulch that did not adequately protect the underlying soil from erosion. The Prosecution Team alleges that failure to implement appropriate erosion control BMPs is a violation of the General Permit. Attachment D, section E.1 in the General Permit states in part: *Risk Level 2 dischargers shall implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction. Areas under active construction are defined in the General Permit as areas undergoing land surface disturbance, including construction activity during the preliminary stage, mass grading stage, streets and utilities stage and the vertical construction stage.*

PENALTY FACTOR	VALUE	DISCUSSION
Discharge violations	n/a	This step is not applicable because the violation is not a discharge violation.
Potential for harm	moderate	The failure to install appropriate erosion and sediment controls led to the discharge, or potential for discharge of sediment laden water. Discharges of sediment can cloud the receiving water (which reduces the amount of sunlight reaching aquatic plants), clog fish gills, smother aquatic habitat and spawning areas, and impede navigation. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can also negatively impact aquatic life and aquatic habitat.

PENALTY FACTOR	VALUE	DISCUSSION
Deviation from requirement	major	The "Deviation from Requirement" is major because the Discharger essentially ignored this requirement by not installing erosion control BMPs on all disturbed soil areas prior to a storm event rendering this requirement ineffective.
Per day factor	0.55	Determined from Table 3 in the Enforcement Policy. The middle value was chosen, but could be increased if this action goes to hearing.
Days of violation	3	Violations occurred on 27, 28 and 30 October 2016 because local rainfall data indicated rainfall occurred on each of these days and Water Board staff observed deficient BMPs on 28 October 2016 and 2 November 2016.
Initial Liability for Violation #3	\$16,500	The liability is calculated as per day factor multiplied by the number of days multiplied by the maximum liability per day (\$10,000/day).
Adjustments for Discharger Conduct		
Culpability	1.1	The Discharger has applied for and received permit or waiver coverage under the General Permit for at least 10 construction sites in California. Therefore, the Discharger should be aware of the General Permit's requirements.
Cleanup and Cooperation	1.1	No improvements were observed during staff's second inspection.
History of Violations	1	There is no known history of violations. It is noted that Board staff have not yet inspected the Discharger's other construction sites.
Total Base Liability for Violation #3	\$19,965	The base liability is calculated as the initial liability multiplied by each of the above three factors.

Violation 4 – Failure to install linear sediment controls

During the site inspections on 28 October 2016 and 2 November 2016, Central Valley Water Board observed that linear sediment control BMPs, such as straw wattles or silt fencing, were not installed on all exposed slopes at the site. In particular, the large slope on the north side of the site and the steep slopes adjacent to Highway 88 did not have linear sediment controls along the toe of the slope and on the face of the slope. Prosecution Team alleges that failure to apply linear sediment control BMPs is a violation of the General Permit. Attachment D, section E.4 in the General Permit states in part: *Risk Level 2 dischargers shall apply linear sediment controls along the toe of the slope, face of the slope, and at the grade breaks of exposed slopes to comply with sheet flow lengths in accordance with Table 1.*

PENALTY FACTOR	VALUE	DISCUSSION
Discharge violations	n/a	This step is not applicable because the violation is not a discharge violation.
Potential for harm	moderate	The failure to install linear sediment controls led to the discharge, or potential for discharge of sediment laden water. Discharges of sediment can cloud the receiving water (which reduces the amount of sunlight reaching aquatic plants), clog fish gills, smother aquatic habitat and spawning areas, and impede navigation. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can also negatively impact aquatic life and aquatic habitat.

PENALTY FACTOR	VALUE	DISCUSSION
Deviation from requirement	major	The "Deviation from Requirement" is major because the Discharger essentially ignored all aspects of this General Permit requirement by not installing linear sediment controls on slopes prior to storm events rendering this requirement ineffective.
Per day factor	0.55	Determined from Table 3 in the Enforcement Policy. The middle value was chosen, but could be increased if this action goes to hearing.
Days of violation	3	Violations occurred on 27, 28 and 30 October 2016 because local rainfall data indicated rainfall occurred on each of these days and Water Board staff observed deficient BMPs on 28 October 2016 and 2 November 2016.
Initial Liability for Violation #4	\$16,500	The liability is calculated as per day factor multiplied by the number of days multiplied by the maximum liability per day (\$10,000/day).
Adjustments for Discharger Conduct		
Culpability	1.1	The Discharger has applied for and received permit or waiver coverage under the General Permit for at least 10 construction sites in California. Therefore, the Discharger should be aware of the General Permit's requirements.
Cleanup and Cooperation	1.1	No improvements were observed during staff's second inspection.
History of Violations	1	There is no known history of violations. It is noted that Board staff have not yet inspected the Discharger's other construction sites.
Total Base Liability for Violation #4	\$19,965	The base liability is calculated as the initial liability multiplied by each of the above three factors.

The Enforcement Policy states that five other factors must be considered before obtaining the final liability amount.

Total Base Liability for all violations: \$55,297		
Other Factor Considerations		
Ability to pay and continue in business	No adjustment	Simon Commercial Real Estate is a nationwide company. According to its website (simoncre.com), the company is currently involved with 81 projects nationwide, including the Dollar General store in Pioneer. A company of this size has the ability to pay the penalty and remain in business.
Economic benefit	\$8,200	The avoided cost of properly stabilizing the site with linear sediment control BMPs and temporary erosion control BMPs was calculated to be approximately \$8,200. The cost for the linear control BMPs is based on an assumed 2,000 linear feet of fiber rolls needed to meet the linear sediment control BMP requirement at an installed cost of \$1.50/linear foot (2,000 * \$1.50 = \$3,000). The cost for erosion control BMPs are based on application of straw mulch with tackifier on an assumed 2.6 acres of disturbed soil at a cost of \$2,000 per acre (2.6 * \$2,000 = \$5,200). ¹ (\$3,000 + \$5,200 = \$8,200)

¹ Estimated costs from the November 2009 CASQA Storm Water Best Management Practice Handbook for Construction

Other factors as justice may require	No adjustment	The costs of investigation and enforcement are “other factors as justice may require”, and could be added to the liability amount. The Central Valley Water Board has incurred over \$5,000 in staff costs associated with the investigation and enforcement of the alleged violations. While this amount could be added to the penalty, it is not added at this time.
Maximum liability	Over \$100,000	Based on California Water Code section 13385: \$10,000 per day per violation and \$10 per gallon. Note that staff has chosen to not calculate the gallons discharged, but will do so if this matter goes to hearing.
Minimum liability	\$9,020	Based on California Water Code section 13385, civil liability must be at least the economic benefit of non-compliance. Per the Enforcement Policy, the minimum liability is to be the economic benefit plus 10%.
Final Liability	\$55,297	The final liability amount is the total base liability plus any adjustment for the ability to pay, economic benefit, and other factors. The final liability must be more than the minimum liability and less than the maximum liability.