

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION**

In the Matter of:

ORDER R5-2016-0568

**City of Lincoln  
Wastewater Treatment and  
Reclamation Facility  
1245 Fiddymont Road, Lincoln  
Placer County**

**SETTLEMENT AGREEMENT AND  
STIPULATION FOR ENTRY OF  
ADMINISTRATIVE CIVIL LIABILITY  
ORDER**

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**INTRODUCTION**

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

**RECITALS**

2. The City owns and operates the City of Lincoln Wastewater Treatment and Reclamation Facility (Facility), which provides sewerage service for the City of Lincoln and adjacent areas. Treated municipal wastewater is discharged from the Facility to a reclamation area and to Auburn Ravine Creek, tributary to the East Side Canal, Cross Canal, and the Sacramento River, a water of the United States.
3. The treatment system consists of screening, oxidation ditches with anoxic zones, secondary clarification, maturation ponds, dissolved air flotation (DAF) units, coagulation, flocculation, sand filtration, and ultraviolet light (UV) disinfection. In addition, the Facility includes a lined emergency storage basin and two tertiary storage basins.
4. On 7 June 2012, the Central Valley Water Board issued WDRs Order R5-2014-0007 which prescribes requirements for the discharge of treated wastewater from the Discharger's Facility. The WDRs contain, among other items, discharge

- prohibitions, effluent limitations, and monitoring and reporting requirements with which the Discharger must comply.
5. On 27 March 2016, the Discharger left a voicemail notifying Board staff that a spill occurred at the Facility. The Discharger reported that 134,000 gallons of unfiltered, undisinfected, partially treated effluent was discharged to Auburn Ravine Creek and that the cause of the spill was under investigation.
  6. On 28 March 2016, the Discharger submitted a 24-hour notification report for the 26/27 March 2016 spill event. The Discharger reported that a bypass incident occurred between 2350 hours on 26 March 2016 and 0701 hours on 27 March 2016. The total flow during this period was 904,000 gallons, and of that, approximately 134,000 gallons bypassed filtration and UV disinfection before being mixed with the remainder of the discharge. The Discharger later revised the volume of bypass to 123,600 gallons and the total combined discharge to 893,600 gallons.
  7. On 1 April 2016, the Discharger submitted the final spill report notification summarizing the 26/27 March 2016 spill event. The report stated that the incident was caused by an operator opening a DAF pressurization pump inlet valve. This particular pressurized pump can be fed from either DAF #1 or DAF #2. If a certain series of inlet valves is left open, a pathway is created in which the wastewater will bypass the filtration and UV disinfection portions of the treatment facility. The standard practice is to leave the swing valve from DAF #2 closed, but the swing valve had been left open and when the operator opened a second valve, the bypass occurred.
  8. The Prosecution Team alleges that the City violated the WDRs. The alleged violations are associated with the improper operation of the Facility. Specifically, the Prosecution Team alleges the following:
    - 8.1 **Violation 1:** The Prosecution Team alleges that the City violated Discharge Prohibition III.A of WDRs R5-2014-0007 by discharging wastewater at a location or manner different from that described within the WDRs. This violation occurred when the City bypassed the filtration and UV disinfection portions of the Facility.

- 8.2 **Violation 2:** The Prosecution Team alleges that the City violated WDRs Order R5-2014-0007 Attachment D, Provision I.D by failing to properly operate and maintain all facilities and systems of treatment and control to achieve compliance with the conditions of the WDRs. This violation occurred when the City failed to operate the DAF pressurization unit in a manner that would prevent the wastewater from bypassing the filtration and UV disinfection portions of the Facility.
9. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation by presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption as an order by settlement pursuant to Government Code section 11415.60. The analysis in Exhibit A to this Stipulated Order assigned a factor of 1.2 for Culpability, a Potential For Harm of 2 (below moderate), and a total gallon assessment of 904,000 gallons of discharge. After further discussions with the City, the Parties now agree that the appropriate standard operating procedures were in place at the Facility that cover the incident that led to the discharge event, warranting a reduction in the culpability factor. The Prosecution Team has determined the culpability factor is 1.1. The Prosecution Team further finds that a potential for harm factor of 1 (Minor) is appropriate due to the high quality of the partially treated wastewater discharged from the Facility, and that the correct gallon assessment for purpose of calculating the penalty is 893,600 gallons. To resolve the alleged violations by consent and without further administrative proceedings, and in consideration of hearing and litigation risks, the Parties have agreed to the imposition of \$31,595 in liability against the City.
10. The Central Valley Water Board Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged herein, and that this Stipulated Order is in the best interest of the public.

## STIPULATIONS

The Parties stipulate to the following:

11. **Administrative Civil Liability:** The City hereby agrees to the imposition of an administrative civil liability totaling THIRTY ONE THOUSAND FIVE HUNDRED NINETY FIVE DOLLARS (\$31,595) to resolve the alleged violations. Specifically:

- 11.1 Within thirty (30) days of issuance of the Order, the City agrees to remit, by check, THIRTY ONE THOUSAND FIVE HUNDRED NINETY FIVE DOLLARS (\$31,595) payable to the *State Water Resources Control Board Cleanup and Abatement Account*, and shall indicate on the check the number of this Order. The City shall send the original signed check to the State Water Resources Control Board Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, CA 95812-1888. Copies of the check shall be sent to John J. Prager, Attorney, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812 and to Wendy Wyels, Supervisor, Compliance/Enforcement Section, Regional Water Quality Control Board, Central Valley Region, 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670.
12. **Compliance with Applicable Laws:** The City understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in herein may subject it to further enforcement, including additional administrative civil liability.
13. **Party Contacts for Communications related to Stipulated Order:**
- For the Central Valley Water Board:**  
Wendy Wyels, Supervisor  
Compliance and Enforcement Section  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670  
[wwyels@waterboards.ca.gov](mailto:wwyels@waterboards.ca.gov)  
(916) 464-4835
- For the City of Lincoln:**  
Jennifer Hanson  
Public Services Director  
City of Lincoln

600 Sixth Street  
Lincoln, CA 95648  
[Jennifer.hanson@lincolnca.gov](mailto:Jennifer.hanson@lincolnca.gov)  
(916) 434-3248

14. **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.
15. **Matters Addressed by Stipulation:** Upon adoption by the Central Valley Water Board, or its delegee, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in the Complaint or which could have been asserted based on the specific facts alleged in the Complaint as of the effective date of this Stipulated Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on The City's payment of the administrative civil liability by the deadline specified in Paragraph 11.1.
16. **Public Notice:** The City understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Central Valley Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Central Valley Water Board, or its delegee. The City agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
17. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Central Valley Water Board's adoption of the settlement by the Parties and review by the public, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are raised prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
18. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or of the Central Valley Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the

- Order. The failure of the Prosecution Team or of the Central Valley Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.
19. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Prosecution Team or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
  20. **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.
  21. **Modification:** This Stipulated 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 Central Valley Water Board.
  22. **If Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the Central Valley Water Board, or its delegee, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Valley 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 Central Valley Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Central Valley 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 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.
  
23. **No Admission of Liability:** In settling this matter, the City does not admit to any of the allegations herein, or that it has been or is in violation of the Water Code, or any other federal, state, or local law or ordinance. Further, the City agrees to this Order solely for the purposes of settling the matter and does not agree that the methodology employed to determine the Administrative Civil Liability in this matter is applicable to any other potential violation. The City agrees that in the event of any future enforcement actions by the Central Valley Water Board, the Order may be used as evidence of the existence of a prior enforcement action consistent with Water Code sections 13327 and 13385.
  
24. **Waiver of Hearing:** The City has been informed of the rights provided by Water Code section 13323(b), and hereby waives its right to a hearing before the Central Valley Water Board prior to the adoption of the Stipulated Order.
  
25. **Waiver of Right to Petition:** The City hereby waives its right to petition the Central Valley Water Board's adoption of the Stipulated Order as written for review by the Regional Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
  
26. **Covenant Not to Sue:** The City 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 Covered Matter.
  
27. **Central Valley Water Board is Not Liable:** Neither the Central Valley Water Board members nor the Central Valley Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the City, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Central Valley Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the City, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

28. **The City is Not Liable:** Neither the City, its directors, officers, employees, agents, representatives or contractors shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Central Valley Water Board members, or the Central Valley Water Board staff, attorneys, or representatives in carrying out activities pursuant to this Stipulated Order, nor shall the City, its directors, officers, employees, agents, representatives or contractors be held as parties to or guarantors of any contract entered into by the Central Valley Water Board, its members or staff the City, in carrying out activities pursuant to this Stipulated Order.
29. **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 Order.
30. **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.
31. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Central Valley Water Board, or its delegee, enters the Order.
32. **Counterpart Signatures:** 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.
33. **Incorporation of Exhibits:** Exhibit "A" is hereby incorporated by reference.

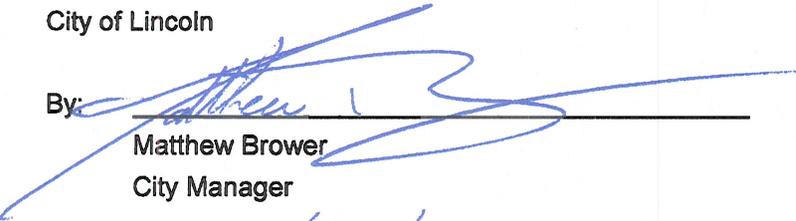
**IT IS SO STIPULATED.**

California Regional Water Quality Control Board Prosecution Team  
Central Valley Region

By:   
Andrew Altevogt  
Assistant Executive Officer

Date: 3/21/17

City of Lincoln

By:   
Matthew Brower  
City Manager

Date: 3/15/17

**Order of the Central Valley Water Board**

1. In adopting this Stipulated Order, the Central Valley Water Board has considered, where applicable, each of the factors prescribed in Water Code sections 13327 and 13385(e). The consideration of these factors is based upon information and comments obtained by the Central Valley Water Board's staff in investigating the allegations described in the Complaint or otherwise provided to the Central Valley Water Board or its delegee by the Parties and members of the public.
2. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The method of compliance with this enforcement action consists entirely of payment of amounts for administrative civil liability. As such, the Central Valley Water Board finds that issuance of this Order is not considered subject to the provisions of the California Environmental Quality Act (CEQA) as it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not considered a "project" (Public Resources Code sections 21065, 21080(a); sections 15060(c)(2) and (3); 15378(a), Title 14, of the California Code of Regulations). In addition, the Central Valley Water Board finds that issuance of this Order is also exempt from the provisions of CEQA in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations as an enforcement action by a regulatory agency and there are no exceptions that would preclude the use of this exemption.
3. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the Central Valley Water Board.

Pursuant to Water Code sections 13323 and 13385 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, Central Valley Region.



Pamela C. Creedon  
Executive Officer

5-15-2017

Date

**Attachment A to Stipulated Agreement R5-2016-0568  
Specific Factors Considered for Administrative Civil Liability  
City of Lincoln Wastewater Treatment and Reclamation Facility**

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

Background

The City of Lincoln (Discharger) owns and operates the City of Lincoln Wastewater Treatment and Reclamation Facility. A discharge of partially treated water occurred at the Facility between 2350 hours on 26 March 2016 and 0701 hours on 27 March 2016. The discharge occurred due to operator error when trying to start a DAF pressurization pump. During the 431 minutes of the spill, approximately 123,600 gallons of wastewater bypassed the filtration and disinfection processes prior to mixing with the remaining wastewater. A total of 893,600 gallons of partially treated wastewater was discharged to Auburn Ravine Creek during the spill event.

**Step 1 – Potential for Harm for Discharge Violations**

The “potential harm to beneficial uses” factor considers the harm that may result from exposure to the pollutants in the illegal discharge, while evaluating the nature, circumstances, extent, and gravity of the violation(s). A three-factor scoring system is used for each violation or group of violations: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) whether the discharge is susceptible to cleanup or abatement.

Factor 1: Harm or Potential Harm to Beneficial Uses.

This factor evaluates direct or indirect harm or potential for harm from the violation. A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm to beneficial uses ranges from negligible (0) to major (5). The designated beneficial uses of Auburn Ravine Creek that could be impacted by the unauthorized discharge include municipal and domestic supply; agricultural irrigation; agricultural stock watering; industrial process water supply; industrial service supply; water contact recreation; other non-contact water recreation; warm freshwater aquatic habitat; cold freshwater aquatic habitat; warm fish migration habitat; cold fish migration habitat; warm spawning habitat; wildlife habitat; and navigation.

Discharges to surface water typically must be treated to a high standard to prevent adverse impacts to public health and aquatic life. Toxicity is the degree to which a substance can damage a living or non-living organism. Toxicity can refer to the effect on a whole organism, such as an animal, bacterium, or plant, as well as the effect on a substructure of the organism, such as a cell or an organ. In this case, the discharge consisted of partially treated secondary wastewater mixed with tertiary treated water. A portion of the flow bypassed the tertiary filtration and UV disinfection systems. The tertiary filtration is critical to filter colloidal suspensions of fine solids and disinfection eliminates pathogenic bacteria. The main objective of the UV disinfection is to reduce the number of waterborne pathogens to safe levels, and thereby lowering the risk of exposing the public to infectious diseases.

The Discharger collected receiving water samples, upstream and downstream of the discharge, approximately 90 minutes after the partially-treated spill ceased. The samples were analyzed for ammonia and fecal coliform and the results included in the 1 April 2016 *Noncompliance Incident Report*

(Attachment A to this Complaint). The results do not show any discernable difference; however, Auburn Ravine Creek was flowing at rate eight times greater than the discharge<sup>1</sup> so it is entirely possible that the spill was diluted and/or had already moved downstream below the sampling point. Furthermore, sampling was conducted over an hour and a half after the spill event ended, resulting in potentially unrepresentative results.

The Discharger monitors turbidity on a continuous basis and states that the bypass event did not cause it to exceed the WDR's turbidity limits. However, the discharge is only monitored once per day for total coliform organisms, and a sample was not collected during the discharge event. Therefore, the Discharger's assertion that "the environment was not harmed as all water quality test results were well within the discharge limits" is unsubstantiated.

Given the nature of the treatment systems that were bypassed, it is appropriate to assign a "minor" potential harm to beneficial uses. "Minor" is defined as "low threat to beneficial uses (i.e., no observed impacts but potential impacts to beneficial uses with no appreciable harm)". Therefore, a score of 1 is assigned for this factor.

#### Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge.

A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material. "Potential receptors" are those identified considering human, environmental, and ecosystem exposure pathways. The effluent was partially treated wastewater and received only partial disinfection. The Discharger did not collect samples of the partially treated effluent discharge during the incident, but it is reasonable to assume that, due to the fact that 15% of the effluent bypassed tertiary treatment, the effluent had a higher-than-normal concentration of total coliform organisms, total suspended solids, and settleable solids. Elevated levels of these constituents can lead to low dissolved oxygen in the receiving water, impacts to aquatic life, and impacts to human health. A moderate factor is appropriate when the chemical and/or physical characteristics of the discharged material have some level of toxicity. Therefore, it is appropriate to assign a "Moderate" risk to this discharge and a score of 2 was assigned for this factor.

#### Factor 3: Susceptibility to Cleanup or Abatement.

A score of 0 is assigned for this factor if 50% or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned if less than 50% of the discharge is susceptible to cleanup or abatement. This factor is evaluated regardless of whether the discharge was actually cleaned up or abated by the discharger. In this case, less than 50% of the discharge was susceptible to cleanup or abatement because all of the 123,600 gallons of wastewater bypassed the filtration and disinfection processes prior to mixing with the remaining 770,000 of fully treated wastewater. Therefore, a total of 893,600 gallons of partially treated wastewater was discharged to Auburn Ravine Creek during the spill event during the incident, preventing any meaningful cleanup. Therefore, a factor of 1 is assigned.

#### Final Score – "Potential for Harm"

The scores of the three factors are added to provide a Potential for Harm score for each violation or group of violations. In this case, **a final score of 4** was calculated. The total score is then used in Step 2, below.

#### Step 2 – Assessment for Discharge Violations

This step addresses administrative civil liabilities for the unauthorized discharge based on both a per-gallon and a per-day basis.

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<sup>1</sup> According to the Discharger's 1 April 2016 document, during the spill event, the wastewater discharge was at a rate of 2,100 gpm while Auburn Ravine Creek was flowing at 16,600 gpm.

1. Per Gallon Assessments for Discharge Violations

When there is a discharge, the Central Valley Water Board is to determine an initial liability amount on a per gallon basis using the Potential for Harm score and the Extent of Deviation from Requirement of the violation.

The Potential for Harm Score was determined in Step 1, and is 4. The Extent of Deviation is considered “moderate” because the WDRs prohibit the discharge of wastewater at a location or in a manner different from that described in the WDRs, and prohibits the by-pass or overflow of wastes to surface waters, except as allowed by Federal Standard Provisions. Table 1 of the Enforcement Policy (p. 14) is used to determine a “per gallon factor” based on the total score from Step 1 and the level of Deviation from Requirement. For this particular case, the factor is 0.016. This value is multiplied by the volume of discharge and the per gallon civil liability, as described below.

This Complaint assesses penalties for a discharge of 893,600 gallons. Approximately 123,600 gallons of unfiltered, undisinfected wastewater was mixed with 770,000 gallons of fully treated wastewater and then discharged into Auburn Creek. The WDRs do not allow mixing of a partially treated portion of the waste with the remainder of the fully treated water. Therefore, the entire 893,600 gallons was discharged in violation of the WDRs.

Water Code section 13385(c)(2) states that the civil liability amount is to be based on the number of gallons discharged—but not cleaned up—over 1,000 gallons, which for this Complaint, is 892,600 gallons. The maximum civil liability allowed under Water Code section 13385 on a per gallon basis is \$10/gallon. However, the Enforcement Policy allows for a reduced per gallon penalty for high volume discharges. In this case, the discharge can be considered a high volume discharge and the reduced per volume factor of \$2/gallon applies.

<u>Initial Liability Per Gallon</u> (0.016 factor from Table 1) x (892,600 gallons) x (\$2/gallon) = \$28,563
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2. Per Day Assessments for Discharge Volumes

When there is a discharge, the Central Valley Water Board is to determine an initial liability amount on a per day basis using the same Potential for Harm and the Extent of Deviation from Requirement that were used in the per-gallon analysis. The “per day” factor (determined from Table 2 of the Enforcement Policy) is 0.016. There was one day of violation.

<u>Initial Liability Per Day</u> (0.016 factor from Table 2) x (1 Day) x (\$10,000/Day) = \$160
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**Initial Liability Amount:** The value is determined by adding together the per gallon assessment and the per day assessment. For this case, the total is \$28,563 + \$160 for a total initial liability amount of **\$28,723**.

Step 3 – Per Day Assessment for Non-Discharge Violation

This step is not applicable.

Step 4 – Adjustment Factors

There are 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. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

#### 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. The Discharger was given a multiplier value of 1.1.

The 26/27 March 2016 unauthorized discharge resulted from the operator responding to the alarm was not aware that the swing valve between DAF #1 and DAF #2 allows effluent to bypass filtration and UV disinfection. Although SOPs were in place, the Discharger is culpable for the unauthorized discharge because all wastewater treatment facility operators should have a good understanding of the flow paths within the treatment facility, and the status of different valves within the facility should be readily apparent.

#### Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperates 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. Approximately 893,600 gallons of partially treated wastewater was discharged to Auburn Ravine Creek, a water of the United States. Because the wastewater was discharged to a surface water body, the possibility to clean-up the unauthorized discharge was negated. However, the Discharger did respond to the unauthorized discharge as soon as it had knowledge of the problem, took measures to minimize the potential for a greater discharge, and made the proper notifications. Therefore, the Discharger was given a multiplier value of 1.0.

#### History of Violation

When there is a history of repeat violations, the Enforcement Policy requires a minimum multiplier of 1.1 to be used. The Discharger does not have a history of violations of this nature and therefore, a multiplier value of 1.0 is appropriate for this case.

#### **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.

<u>Total Base Liability Amount</u> $(\$28,723) \times (1.1) \times (1.0) \times (1.0) = \$31,595$
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#### **Step 6 - Ability to Pay and Ability to Continue in Business**

The ability to pay and to continue in business factor must be considered when assessing administrative civil liabilities. The City of Lincoln is a public entity with the ability to raise funds. The City's 2014-2015 budget was \$82 million<sup>2</sup> with a wastewater fund of \$5.2 million.

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

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 incurred over \$15,000 (100 hours at a statewide average of \$150/hour) in staff costs associated with the investigation and enforcement of the violations alleged herein. The Prosecution Team, in its discretion, is not recommending an increase in

<sup>2</sup> <http://lincolncalifornia.gov/home/showdocument?id=38>

the Total Base Liability amount in consideration of these costs incurred as the proposed liability amount serves as a sufficient general and specific deterrent against future violations.

### **Step 8 – Economic Benefit**

Pursuant to Water Code section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute a violation. As documented in this complaint, the Discharger released a significant quantity of partially treated wastewater to waters of the United States. Had the Discharger performed certain actions, the discharge could have been prevented or minimized. As determined by the Discharger and Regional Board staff, the discharge was caused by operator error related to valve operation at the facility. During the investigation, Regional Board staff reviewed the Facility's program and concluded that standard operating procedures (SOPs) and training related to valve operation were inadequate from at least the date of the discharge (26 March 2016). Specific procedures and training should be provided to Facility staff to prevent future discharges that can easily be avoided.

Regional Board staff has estimated that development of a SOP related to the bypass valve involved in this complaint will consume approximately 20 hours of staff time. Training personnel, which may include review of the SOP and hands-on scenario training, is expected to last four hours. Although the economic benefit assessment is based on a single training event, it is expected that future routine training will include this topic. Based on a labor rate of approximately \$59 per hour, the cost of developing a SOP and implementing a training program is \$1,188 and \$974, respectively. The economic benefit for these actions is assumed to be a delayed cost, as it is expected to be completed by the facility in the near future. For the purposes of computation, the compliance date for these actions is assumed to be 12 October 2016, the date of the proposed hearing. In addition, it is the understanding of the Regional Board that a valve position indicator will be designed and installed to further prevent accidental discharges. This cost is estimated to be \$1,000 and is expected to be implemented by 12 October 2016.

The BEN financial model provided by the United States Environmental Protection Agency was used to compute the total economic benefit of noncompliance. Cost estimate and other assumptions are detailed in the attached table. For computational purposes, the penalty payment date was established as the projected hearing date, 12 October 2016. Changes to this date, or the compliance date of the actions described above, will affect the total economic benefit. Based on specific assumptions within the model, the total economic benefit of noncompliance was determined to be approximately \$33. 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." Therefore the minimum total liability associated with the economic benefit is approximately \$36.

### **Final adjusted liability**

The final adjusted liability is \$31,595.

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

The maximum and minimum amounts for discharge violation must be determined for comparison to the amounts being proposed. These values are calculated in the ACL Complaint, and the values are repeated here.

Maximum Liability Amount:

<u>Maximum Liability Amount</u> ((892,600gal) x (\$10/gal)) + ((1 day) x (\$10,000/day)) = \$8,936,000
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Minimum Liability Amount: the minimum liability is equal to the economic benefit plus 10%, which estimated to be \$36.

**Step 10 – Final liability Amount**

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided amounts are within the statutory minimum and maximum amounts. Without further investigation of the discharge, calculation of economic benefits, and additional staff time, the proposed Administrative Civil Liability is **\$31,595**.