

---

## Central Valley Regional Water Quality Control Board

15 February 2017

Robert Guerena  
RELP Metro LLC  
9830 Colonnade Blvd  
San Antonio, TX 78230

**CERTIFIED MAIL**  
**91 7199 9991 7035 8359 5269**

via email: RobertGuerena@Seefriedproperties.com

### ***OFFER TO SETTLE ADMINISTRATIVE CIVIL LIABILITY, RELP METRO LLC, METRO AIRPARK, SACRAMENTO COUNTY, WDID 5S34C376516***

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 RELP Metro LLC of the *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009 DWQ* (General Permit) at the Metro Airpark construction project (Project). As the owner of the Project and the legally responsible person enrolled in the General Permit, RELP Metro 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 \$214,920 (two hundred fourteen thousand nine hundred twenty dollars). Please read this letter carefully and respond no later than 17 March 2017.**

#### Description of Violations

On 10 December 2016, County of Sacramento storm water staff inspected the Project during a storm event and issued the Discharger a Notice of Violation (NOV) for discharging polluted storm water to the county's municipal separate storm sewer system. The NOV identified a severe lack of erosion controls throughout the project, ineffective perimeter protection, ineffective tracking control at construction entrances, and the discharge of sediment-laden water from the site to the County's storm drain system along West Elkhorn Boulevard.

On 15 December 2016, Water Board and County staff inspected the Project site during a storm event and observed similar conditions to those documented by County staff on 10 December 2016. The site generally lacked erosion control BMPs, had perimeter sediment control BMPs that required repair or replacement, and turbid runoff was discharging from the site. A storm water basin identified in the Project's storm water pollution prevention plan (SWPPP) had not been installed and storm water was ponded in several low areas around the site. Project staff indicated the on-site storm drain system had been plugged, but Water Board staff's inspection

of the manholes along West Elkhorn Boulevard showed the plugs were leaking turbid water into the County's storm drain system.

Water Board staff conducted additional inspections of the Project on 29 December 2016, 4 January 2017, 10 January 2017, and 20 January 2017 and found similar site conditions. In addition, the inspection on 29 December 2016 identified that the Discharger applied lime as an amendment to site soils and high pH was subsequently found in storm water discharging from the site on 4 January 2017 and 20 January 2017.

The enclosed Notices of Violation and inspection reports provide additional information about the site conditions and violations.

The Prosecution Team alleges the Discharger violated: (1) the effluent standards in the General Permit by discharging turbid and/or high pH runoff from the Project without using Best Management Practices (BMPs) that achieved the Best Available Technology Economically Achievable/Best Conventional Pollutant Control Technology (BAT/BCT) standard; (2) the sediment control provisions of the General Permit by failing to establish and maintain effective perimeter controls to sufficiently control erosion and sediment discharges from the site; and (3) the erosion control provisions of the General Permit by failing to implement appropriate erosion control BMPs throughout the project.

#### 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 \$560,000 and the minimum liability is \$48,235.

#### Proposed Settlement Offer

**The Central Valley Water Board's Prosecution Team proposes to resolve the violation(s) with this Settlement Offer of \$214,920.** 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 **17 March 2017** to the following address:

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

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 \$214,920 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 **17 March 2017**. 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](mailto:wwyels@waterboards.ca.gov).



ANDREW ALTEVOGT  
Assistant Executive Officer

Enclosures:

- Acceptance of Conditional Resolution and Waiver of Right to a Hearing
- 10 December Inspection Report
- 30 December 2016 Notice of Violation with 15 December 2016 Inspection Report
- 19 January 2017 Notice of Violation with 29 December 2016 and 4 and 10 January 2017 Inspection Reports
- 10 February 2017 Transmittal letter with 20 January 2017 Inspection Report
- Penalty Calculation Methodology

cc: Greg Gholson, U.S. Environmental Protection Agency, Region IX, San Francisco  
Pamela Creedon, Executive Officer, Central Valley Water Board, Rancho Cordova  
Andrew Deeringer, Office of Chief Counsel, State Water Board, Sacramento  
David Boyers, Office of Enforcement, State Water Board, Sacramento  
Archie Wright, Department of Water Resources, County of Sacramento, 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*.

REL P Metro LLC

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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

By: \_\_\_\_\_  
Pamela Creedon, Executive Officer

Date: \_\_\_\_\_



No: 1502

# County of Sacramento Notice of Violation

Sacramento County Code:

- Chapter 15.12.200 Stormwater Management & Discharge Control Ordinance
- Chapter 16.44 Land Grading and Erosion Control Ordinance

Date/Time of Violation: 12/10/16

Discharger's Name & Driver's License #: \_\_\_\_\_

Company Name: See Friad Properties

Mailing/Street address: 2201 E. Camelback Road, Suite 225B

City: Phoenix State/Zip: AZ 85016

Vehicle license plate/model/make/color, if applicable: \_\_\_\_\_

Method of delivery of notice: In person  Left at address or vehicle  US Mail  & e-mail

Location of Violation/Project Name: 9900 W. Elkhorn Blvd.

Permitted Site  Non Permitted Site  Unknown

Description of Violation: Maintaining an unmitigated stormwater pollution source. Discharging polluted stormwater into the County Municipal Separate Storm Sewer System.

Action Requested: Cease the discharge of polluted water. Implement an effective combination of erosion and sediment controls. Implement measures immediately and prior to next rain event.

You are required to immediately cease any illegal discharge to creeks, rivers, or any part of the County drainage system, including but not limited to storm drains, gutters, ditches, and channels.

\*Illicit connections must be removed in accordance with the Sacramento County Building Code. This may require a building permit.

Inspector or Issuer: Brett Nichols

Department (check one) CMID  DOM  WR  WQ  OTHER

Inspector/ Issuer Signature: [Signature]

Inspector/ Issuer Telephone Number: \_\_\_\_\_

Receipt Acknowledgment: Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

White Copy – Discharger Pink Copy – DWR Yellow Copy – Issuer

**See Reverse Side for Additional Rights and Actions**

**Failure to comply.** Failure to discontinue an illegal discharge is an additional violation of the Stormwater Ordinance for each day the discharge continues.

**Additional enforcement actions.** You may be subject to additional enforcement actions, depending on the severity of the discharge and its consequences. Issuance of this Notice of Non-Compliance does not prevent the County from pursuing additional enforcement actions.

**Enforcement costs and right of appeal.** Pursuant to Section 15.12.430 of the Stormwater Ordinance and Section 16.44.350 of the Land Grading and Erosion Control Ordinance, you are hereby informed that you may be liable for all enforcement costs incurred by the County in correcting this violation. You also have the right to appeal this matter as set forth in Section 15.12.440 of the Stormwater Ordinance and Section 16.44.300 of the Land Grading and Erosion Control Ordinance.

---

**Compliance Assistance:** For more information about compliance with stormwater requirements, contact the following:

- ◆ Business Environmental Resource Center (BERC): (916) 364-4110. (free and confidential compliance assistance for businesses)
- ◆ County of Sacramento Stormwater Management Program: (916) 874-6851



Photo #1 - 12/10/16 - Sediment laden water at onsite connection to active system. Southside of site

Photo #2 - 12/10/16 - Severe lack of erosion control throughout project. Water from this area flows to active drainage system. Southside of site



Photo #3 - 12/10/16 - Ineffective tracking control. Sediment deposition on West Elkhorn. Southside of site.

Photo #4 - 12/10/16 - Ineffective perimeter protection. Turbid water flowing off site. Southside of site



Photo #5 - 12/10/16 - 12/10/16 - Sediment laden water discharging into County of Sacramento Municipal Separate Storm Sewer System (MS4). Southside of site

Photo #6 - 12/10/16 - Severe lack of erosion control and tracking. Southside of site



Photo #7 - 12/10/16 - Sediment laden water flowing through County MS4. Structure shown in photo #6

Photo #8 -- 12/10/16 - Sediment laden water discharging into County MS4. Manhole shown in photo #6

---

## Central Valley Regional Water Quality Control Board

30 December 2016

Robert Guarena  
RELP Metro  
9830 Colonnade Blvd  
San Antonio, TX 78230

**CERTIFIED MAIL**  
**91 7199 9991 7035 8360 5616**

### ***NOTICE OF VIOLATION, METRO AIRPARK, SACRAMENTO COUNTY, W DID 5S34C376516***

On 15 December 2016, staff from the Central Valley Water Board and Sacramento County inspected the Metro Airpark project in Sacramento County. The purpose of the inspection was 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 Metro Airpark project and the legally responsible person enrolled in the General Permit for this project, RELP Metro is responsible for complying with all elements of the General Permit for this project.

The inspection was conducted after Sacramento County contacted the Water Board about storm water pollution at the project. The county issued a Notice of Violation on 10 December 2016 for inadequate best management practices (BMPs) and the discharge of sediment-laden storm water to the municipal storm drain system. During the 15 December 2016 inspection, Water Board staff also observed the lack of erosion control BMPs throughout the project, sediment control BMPs that required repair or replacement, and sediment-laden runoff discharging from the site. Please see the enclosed inspection report and site photographs for more information.

In addition, this construction project is registered in the State Water Board's online database SMARTS as a Risk Level 1 site under the terms of the General Permit. Board staff reviewed the risk level assessment in SMARTS and determined that the project should be in Risk Level 2 based on the receiving water beneficial uses listed as cold freshwater habitat, spawning and migration. RELP Metro needs to correct the risk level in SMARTS using the Change of Information process.

#### **Violations**

RELP Metro has failed to apply erosion control BMPs, failed to maintain sediment control BMPs, and discharged turbid water from the project. Therefore, RELP Metro 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, RELP Metro must complete the following:

- Immediately submit a Change of Information in SMARTS to change the project to Risk Level 2.
- Immediately 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.
- Conduct a training class using a Trainer of Record for all employees, contractors, and subcontractors associated with General Permit compliance on the project to ensure that they are properly trained and understand the requirements of the General Permit. This training should be completed as soon as possible but no later than **30 January 2017**.

In order to demonstrate compliance with the General Permit, Board staff requests that you submit the following documents using the project's SMARTS account by **30 January 2017**:

- A revised Storm Water Pollution Prevention Plan (SWPPP) prepared by a Qualified SWPPP Developer that includes a map showing all BMPs installed at the site. The BMP map should also be available at the jobsite trailer and updated as BMPs are added or removed.
- Copies of inspections for the 2016 wet season. Include any photographs taken during the inspections. The Risk Level 2 REAPs done after this notice should be uploaded as soon as

completed or within five days of qualified storm events requiring REAPs and should include photographs showing site conditions.

By **15 February 2017**, please submit into SMARTS all storm water training records for staff, contractors, and subcontractors responsible for SWPPP implementation on this project. Copies of material covered during the Trainer of Record training session should also be included.

These violations of the General have exposed RELP Metro 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. Please note that coming into compliance with the General Permit does not resolve the violations identified in this document, but may have bearing upon the magnitude of further enforcement actions.

If you have any questions, please contact Jacque Kelley at (916) 464-4764 or [Jacque.Kelley@waterboards.ca.gov](mailto:Jacque.Kelley@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  
Carol Oz, California Department of Fish and Game, Rancho Cordova  
Archie Wright, Sacramento County, Sacramento

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

Insp. Date:	15 December 2016	Inspected By:	Jacque Kelley
WDID #	5S34C376516	Site County:	Sacramento
Owner Name:	RELP Metro		
Site Name:	Metro Airpark		
Site Address:	4900 W Elkhorn Blvd., Sacramento, CA 95835		
Inspection Contact:	Dave West, Big-D Construction		

Inspection Type: <input type="checkbox"/> A Type Compliance <input checked="" type="checkbox"/> B Type Compliance <input type="checkbox"/> Complaint	
<input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Inspection from Vehicle <input type="checkbox"/> NOT <input type="checkbox"/> Non-filer <input type="checkbox"/> Noncompliance follow-up	
SWPPP on site? Yes	Evidence of Erosion? Yes
Photos Taken? Yes	Evidence of Tracking? Undetermined
Weather: Raining	Evidence of Non-SW Discharge? No

**Inspection Summary / Comments:**

On 15 December 2016, Water Board staff and Sacramento County staff inspected the Metro Airpark construction site during a predicted rain event. The inspection was conducted to follow up on the county's Notice of Violation issued 10 December 2016 citing a lack of appropriate storm water Best Management Practices (BMPs) at this large construction site. Water Board staff evaluated compliance with the Construction General Permit requirements. Prior to the inspection, staff reviewed the Permit Registration Documents uploaded to SMARTS and noted that the site was registered as a Risk Level 1 site. The receiving water risk had been manually selected to indicate a low receiving water risk and the supporting documentation did not acknowledge that the storm drain system is tributary to the Sacramento River. The site is a Risk Level 2 based on the receiving water beneficial uses of cold freshwater habitat, spawning, and migration.

Prior to the site walk, the site superintendent indicated that all storm water was being retained onsite in a basin and that all onsite storm drain inlets were plugged. We reviewed the project plans which showed a sediment basin was planned to capture and retain storm water. However, the storm water basin described in the plans had not been installed, but some water was being retained in a low spot on the project.

During the inspection, I observed inadequate erosion and sediment control BMPs on many portions of the site (Photos 1 to 4). Sacramento County staff pulled the manhole covers along West Elkhorn Boulevard adjacent to the project where I observed sediment-laden storm water discharging from the project into the county's storm drain system (Photos 5 and 6). Based on the observed discharges, the drain inlet plugs were apparently leaking. I also observed turbid storm water runoff going into the roadside ditch (Photo 7). We returned to the jobsite trailer and informed the superintendent about the sediment-laden storm water discharging from the site.

RELP Metro will need to submit a Change of Information in SMARTS to reflect the appropriate risk level. In addition, the SWPPP will need to be updated to include the General Permit's Risk Level 2 requirements including runoff sampling and Rain Event Action Plans.

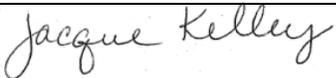
Signature: 	Date: 12-30-16	Date Entered: _____ Senior Review: _____
--	----------------	---



Photo 1. Unstabilized exposed soil throughout the site.



Photo 2. No erosion control BMPs observed. DI plugs are being used but are leaking.



Photo 3. Another view of site conditions. Some vegetation along Powerline Road.



Photo 4. Photo taken from Powerline Road.



Photo 5. Sediment laden storm water discharging into manhole on West Elkhorn Blvd.



Photo 6. Another manhole on West Elkhorn Blvd discharging sediment laden storm water.



Photo 7. Drainage ditch along Powerline Road. Sediment laden storm water was discharging from the site into the ditch.

---

**Central Valley Regional Water Quality Control Board**

19 January 2017

Robert Guerena  
RELP Metro  
9830 Colonnade Blvd  
San Antonio, TX 78230

**CERTIFIED MAIL**  
**91 7199 9991 7035 8421 1069**

***INSPECTION REPORT TRANSMITTAL AND NOTICE OF VIOLATION, RELP METRO,  
METRO AIRPARK, SACRAMENTO COUNTY, WDID# 5S34C376516***

Attached are copies of inspection reports for the 29 December 2016, 4 January 2017, and 10 January 2017 inspections conducted by Central Valley Regional Water Quality Control Board staff at the Metro Airpark construction project (Project). The inspections were conducted to evaluate compliance with the *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009 DWQ* (General Permit). The Project is enrolled in the General Permit as a Risk Level 2 Project under Waste Discharge Identification Number (WDID) 5S34C376516.

As described in the enclosed inspection reports, violations previously identified in the Board's 30 December 2016 Notice of Violation continue to occur resulting in the discharge of turbid storm water from the Project. In addition, discharges with pH in excess of General Permit limits were identified. Storm water best management practices (BMPs) installed at the site did not effectively control pH and turbidity in discharges. Board staff understands that an advanced treatment system (ATS) is being installed to treat storm water. This system should address pH and turbidity in the treated water. Operation of the ATS should start as soon as possible to help achieve compliance with the General Permit and limit potential civil liability. Please note, however, RELP Metro is still required to install appropriate erosion and sediment control BMPs throughout the site in compliance with the General Permit. Special attention should be given to any Project areas where runoff is discharged without being treated by the ATS.

Please continue to correct the violations and deficiencies identified in the attached inspection reports and submit documentation as corrections are made. Please submit all REAPs, inspection reports, and sampling data (as ad hoc reports) into SMARTS as they are completed.

Please contact Jacque Kelley (916) 464-4764 or [Jacque.Kelley@waterboards.ca.gov](mailto:Jacque.Kelley@waterboards.ca.gov) with any questions.



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

cc: see next page

Enclosures: 12/29/2016, 1/4/2017 and 1/10/2017 Water Board Inspection Reports with site photographs

cc: Greg Gholson, U.S. Environmental Protection Agency, Region IX, San Francisco  
Carol Oz, California Department of Fish and Game, Rancho Cordova  
Archie Wright, Sacramento County, Sacramento

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

Insp. Date:	29 December 2016	Inspected By:	Jacque Kelley
WDID #	5S34C376516	Site County:	Sacramento
Owner Name:	RELP Metro		
Site Name:	Metro Airpark		
Site Address:	4900 W Elkhorn Blvd., Sacramento, CA 95835		
Inspection Contact:	Dave West, Big-D Construction		

Inspection Type: <input type="checkbox"/> A Type Compliance <input checked="" type="checkbox"/> B Type Compliance <input type="checkbox"/> Complaint	
<input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Inspection from Vehicle <input type="checkbox"/> NOT <input type="checkbox"/> Non-filer <input type="checkbox"/> Noncompliance follow-up	
SWPPP on site? Yes	Evidence of Erosion? Yes
Photos Taken? Yes	Evidence of Tracking? Undetermined
Weather: Sunny	Evidence of Non-SW Discharge? No

**Inspection Summary / Comments:**

On 29 December 2016, Water Board staff and Sacramento County staff did a follow up inspection at the Metro Airpark construction site. The county had scheduled the inspection to assess progress with site stabilization and ongoing violations at the site.

Prior to the site walk, the site superintendent and the QSP for the project were given an opportunity to explain what they were doing to bring the site into compliance. At the time of the inspection, the original QSD was no longer associated with the site and the QSP company did not have a QSD on staff to provide assistance. The QSP was not able to provide an overview of the actions being taken and it appeared that there was confusion about what exactly needed to be done to bring the site into compliance with the CGP or the county's erosion and sediment control ordinance. The QSP stated that he was not the regular QSP for the site and that they visited the site about once a month.

The site still lacked erosion control on most of the exposed soil areas. Straw wattle along W Elkhorn Blvd and Powerline Rd were still needed maintenance or replacement. There were some areas along the site perimeter that had been sprayed with erosion control but the spray-on product was only in some areas and did not extend to the street. County staff pulled the manhole covers adjacent to the project and no discharge was occurring during the dry weather inspection. There was a large area on the southeast side of the site that had been lime treated and some areas had been compacted. Lime was visible on the soil surface during the inspection. There were new basins that had been created along the east perimeter of the site. The superintendent stated that they were pumping from the east basins into a road cut to the north and then to the adjacent field to the north. Along the east perimeter adjacent to the basin there were concrete washout bins that were leaking or had spilled (Photo 12). The water in the basin behind the concrete washout bins tested high for pH using pH paper. This water should be tested before pumping offsite.

RELP Metro will need to develop a plan for storm water management, assign appropriate personnel roles onsite and update the permit registration documents to reflect all current personnel and site conditions.

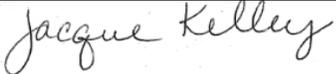
Signature: 	Date: 1-3-2017	Date Entered: _____ Senior Review: _____
--	----------------	---



Photo 1. Unstabilized soil exposed throughout the site. Looking north along Powerline Road at ditch where previous discharge was observed. New silt fence in ditch.



Photo 2. No erosion control BMPs observed. Looking north along east boundary of site.



Photo 3. Southwest corner of site with lime treatment.



Photo 4. Looking northeast at project and lime treated area.



Photo 5. Looking southwest from W Elkhorn Blvd.



Photo 6. Looking north along Powerline Rd. Areas need erosion control. Some spray on erosion has been sprayed on some of the stockpiled soil.



Photo 7. Skyking Road cut. Water is being pumped from east basins to road cut and then to adjacent north field.



Photo 8. Material storage area along north boundary.



Photo 9. Looking southeast along east boundary.



Photo 10. Exposed soil looking southeast.



Photo 11. East basin area. Concrete washout area in Photo 12 had spilled or leaked on the ground.



Photo 12. Concrete waste on the ground between bin and basin. High pH measured in basin water.



Photo 13. Looking north along east boundary. Building footings being pumped to second basin on east boundary.



Photo 14. View of additional east basin looking south along east boundary. Building footings were being pumped into this basin.

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

Insp. Date:	4 January 2017	Inspected By:	Jacque Kelley
WDID #	5S34C376516	Site County:	Sacramento
Owner Name:	RELP Metro		
Site Name:	Metro Airpark		
Site Address:	4900 W Elkhorn Blvd., Sacramento, CA 95835		
Inspection Contact:	Dave West, Big-D Construction		

Inspection Type: <input type="checkbox"/> A Type Compliance <input type="checkbox"/> B Type Compliance <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Inspection from Vehicle <input type="checkbox"/> NOT <input type="checkbox"/> Non-filer <input type="checkbox"/> Noncompliance follow-up	
SWPPP on site? Yes	Evidence of Erosion? Yes
Photos Taken? Yes	Evidence of Tracking? Undetermined
Weather: Overcast	Evidence of Non-SW Discharge? No

**Inspection Summary / Comments:**

On 4 January 2017, Water Board staff and Sacramento County staff did a follow up inspection at the Metro Airpark construction site. The inspection was conducted to assess progress with site stabilization and ongoing violations at the site.

Prior to the site walk, staff met with the project staff including the Seefried Properties owner representative, Jason Quintel. Staff was asked to attend a meeting that was going on when we arrived. Staff answered questions regarding storm water issues and expressed concern over the on-going site conditions and observed discharges. The owner's rep was meeting with the QSD in the afternoon. There still appeared to be confusion as to what actions needed to be taken onsite to address the current site condition.

The site still lacked erosion control on most of the exposed soil areas. Straw wattle was being added along the perimeter and construction entrances were being worked on during the inspection. In addition, plastic was being installed along Powerline Road but did not appear to be installed correctly. The plastic was only covering some of the areas and was not keyed in to prevent erosion underneath the plastic. The spray on erosion control was sprayed when conditions were wet and has not dried. The spray was sparse and did not extend to bottom of the slope. The disturbed soil below the sprayed area was still exposed which will allow erosion. Additional spray on erosion control had been added to the perimeter berms in some areas. The site superintendent stated that they had replugged the outfall into the county storm drain system. Sacramento County pulled the manhole covers along W Elkhorn Blvd and staff observed that some of the plugs were holding. The 3<sup>rd</sup> manhole in from Powerline Road adjacent to the recently lime treated area was discharging sediment and a cloudy white substance. We sampled the discharge into the manhole and tested for pH using pH test strips. The pH was measured at approximately 11 at the discharge point. We also walked onsite adjacent to the manhole and sampled the ponded water which also had a pH of about 11. We also observed sediment in the gutter at the storm drain inlet on W Elkhorn Blvd and evidence of sediment laden storm water discharge at the site entrances along W Elkhorn Blvd and into the drainage ditch along Powerline Road.

RELP Metro will need to develop a plan for storm water management, assign appropriate staff roles onsite and update the permit registration documents to reflect all current personnel and site condition.

Signature: 	Date: 1-9-2017	Date Entered: _____ Senior Review: _____
--	----------------	---



Photo 1. Addition of a spray on erosion.



Photo 2. Plastic added to area along Powerline Road.



Photo 3. Site condition along Powerline Road.



Photo 4. Looking northeast at project.



Photo 5. Looking at storm drain inlet and manhole along W Elkhorn Blvd. Sediment in gutter and around manhole.



Photo 6. Looking north along Powerline Rd. Areas need erosion control. Spray on erosion control was applied on some of the stockpiled soil.



Photo 7. Looking northeast from RD 1000 ditch. Sediment laden storm water entering ditch.

Photo 8. Another view of RD 1000 drainage ditch.



Photo 9. Discharge into manhole on W Elkhorn Blvd. adjacent to recently lime treated area.



Photo 10. Sampled water in manhole from photo 9 shows pH of approximately 11.

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

Insp. Date:	10 January 2017	Inspected By:	Jacque Kelley
WDID #	5S34C376516	Site County:	Sacramento
Owner Name:	RELP Metro		
Site Name:	Metro Airpark		
Site Address:	4900 W Elkhorn Blvd., Sacramento, CA 95835		
Inspection Contact:	Dave West, Big-D Construction		

Inspection Type: <input type="checkbox"/> A Type Compliance <input type="checkbox"/> B Type Compliance <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Inspection from Vehicle <input type="checkbox"/> NOT <input type="checkbox"/> Non-filer <input type="checkbox"/> Noncompliance follow-up	
SWPPP on site? Yes	Evidence of Erosion? Yes
Photos Taken? Yes	Evidence of Tracking? Undetermined
Weather: Raining	Evidence of Non-SW Discharge? No

**Inspection Summary / Comments:**

On 10 January 2017, Water Board staff did a follow up drive by inspection at the Metro Airpark construction site. The inspection was conducted to assess progress with site stabilization and ongoing violations at the site.

Staff observed failing spray on erosion control along Powerline Road. The previously sprayed berm was eroding into roadside drainage area. The drainage area had been excavated and some areas were covered in plastic but the plastic was covered with sediment laden storm water and eroded soil. Some of the plastic had blown off and sediment laden storm water discharged into the RD 1000 ditch. New large areas of soil disturbance and stockpiles were observed at the first segment of the RD 1000 ditch. Fabric had been installed along W Elkhorn Blvd to cover exposed slopes. Some of the fabric was slipping off the slope but was helping to prevent erosion. The entrances along W Elkhorn were discharging sediment laden storm water and pumps and rock bags were being used to pump these areas back onsite. Accumulated sediment laden storm water was observed throughout the site. The water storage area on Skyking Roadcut and along W Elkhorn Blvd appeared to be reaching capacity to contain storm water.

The site still lacked appropriate BMPs to meet the BAT/BCT standard in the Construction General Permit and sediment laden storm water was discharging from the site.

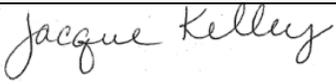
Signature: 	Date: 1-17-2017	Date Entered: _____ Senior Review: _____
--	-----------------	---



Photo 1. Failing spray on erosion control on Powerline Road..



Photo 2. Erosion along Powerline Road into drainage ditch.



Photo 3. Plastic covered roadside drainage area on Powerline Road..



Photo 4. Powerline Road at first segment of RD 1000 drainage ditch.



Photo 5. At RD 1000 drainage ditch.



Photo 6. Overview at RD 1000 ditch looking northeast.



Photo 7. Along Powerline Road near Skyking Road.



Photo 8. Skyking Road storage basin was full.



Photo 9. Looking northwest from W Elkhorn Blvd.



Photo 10. Entrance to site. Pumping and rock bags installed to help prevent discharge to street.



Photo 11. Looking northwest from W Elkhorn Blvd.

---

## Central Valley Regional Water Quality Control Board

10 February 2017

Robert Guerena  
RELP Metro  
9830 Colonnade Blvd  
San Antonio, TX 78230

**CERTIFIED MAIL**  
**91 7199 9991 7035 8360 5654**

***INSPECTION REPORT TRANSMITTAL, RELP METRO, METRO AIRPARK, SACRAMENTO COUNTY, WDID# 5S34C376516***

Attached is the inspection report for the 20 January 2017 inspection conducted by Central Valley Regional Water Quality Control Board staff at the Metro Airpark construction project (Project). The inspection was conducted to evaluate compliance with the *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009 DWQ* (General Permit). The Project is enrolled in the General Permit as a Risk Level 2 Project under Waste Discharge Identification Number (WDID) 5S34C376516.

As described in the enclosed inspection report, corrective actions for violations previously identified in the Board's 19 January 2017 Notice of Violation are being implemented, but at the time of the inspection, the Project still had the potential to discharge sediment laden storm water into the RD 1000 channel. In addition, discharges with pH in excess of General Permit limits were identified. Storm water best management practices (BMPs) installed at the site did not effectively control pH in discharges. Board staff understands that an advanced treatment system (ATS) has been installed to treat storm water which should address pH and turbidity in the discharge. Please note, however, RELP Metro is still required to install appropriate erosion and sediment control BMPs throughout the site in compliance with the General Permit. Special attention should be given to any Project areas where runoff is discharged without being treated by the ATS.

Please continue to correct the violations and deficiencies identified in the attached inspection report and submit documentation as corrections are made. Please submit all REAPs, inspection reports, and all sampling data (as ad hoc reports) into SMARTS as they are completed.

Please contact Jacque Kelley (916) 464-4764 or [Jacque.Kelley@waterboards.ca.gov](mailto:Jacque.Kelley@waterboards.ca.gov) with any questions.



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

cc: see next page

Enclosure: 1/20/2017 Water Board Inspection Report with site photographs

cc: Greg Gholson, U.S. Environmental Protection Agency, Region IX, San Francisco  
Carol Oz, California Department of Fish and Game, Rancho Cordova  
Archie Wright, Sacramento County, Sacramento

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

Insp. Date:	20 January 2017	Inspected By:	Jacque Kelley
WDID #	5S34C376516	Site County:	Sacramento
Owner Name:	RELP Metro		
Site Name:	Metro Airpark		
Site Address:	4900 W Elkhorn Blvd., Sacramento, CA 95835		
Inspection Contact:	Dave West, Big-D Construction, Dave Koffman (QSD)		

Inspection Type: <input type="checkbox"/> A Type Compliance <input type="checkbox"/> B Type Compliance <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Inspection from Vehicle <input type="checkbox"/> NOT <input type="checkbox"/> Non-filer <input type="checkbox"/> Noncompliance follow-up	
SWPPP on site? Yes	Evidence of Erosion? Yes
Photos Taken? Yes	Evidence of Tracking? Undetermined
Weather: Overcast	Evidence of Non-SW Discharge? No

**Inspection Summary / Comments:**

On 20 January 2017, Water Board staff and Sacramento County staff conducted a follow up inspection at the Metro Airpark construction site (Project). The inspection was performed to assess current site conditions and progress made to stabilize the site and resolve ongoing violations observed during previous inspections. Prior to the site walk, staff met with the project QSD, Dave Koffman. Staff reviewed the erosion control drawing in the jobsite trailer and determined that it did not reflect current site conditions.

The interior of the site still lacked erosion control on most of the exposed soil areas. The majority of the disturbed soils on the perimeter of the site along W Elkhorn Blvd and Powerline Road were covered with a spray on erosion control BMP, geotextile fabric, or plastic sheeting. The spray on erosion control BMP was eroding in some areas and did not appear to have had an appropriate curing time due to the rain and cold temperatures. The disturbance at the north segment of the RD 1000 ditch was covered with plastic and had rock bag check-dams installed to create a small sediment basin. The sediment basin created in the RD 1000 channel was nearly full but not discharging at the time of the inspection. The basin formed by the Skyking Road cut was full and run-on from the fields to the north of the Project were flowing into the road cut. The adjacent field to the north was flooding the shoulder of Powerline Road. An ATS was in the process of being deployed to treat several million gallons of storm water ponded at the site. The tanks for the ATS were installed along the north perimeter of the site and had been filled with storm water but the piping between the tanks and the ATS system had not been completed. The QSD stated that they were waiting for parts to complete the system and that the system would be running by 24 January 2017. During the inspection, the County and the QSD pulled the manhole covers on W Elkhorn Blvd. A discharge was observed in the second and third manholes east of Powerline Road. The discharge was clear but samples measured by Board staff had a pH of approximately 11 in these locations. The sediment basin in the RD 1000 channel was not discharging during the inspection, however staff is concerned that this area still has the potential to discharge during rain future events.

Signature: 	Date: 2-6-2017	Date Entered: _____ Senior Review: _____
--	----------------	---



Photo 1. W Elkhorn Blvd looking northwest. Spray-on erosion control BMP on berm has washed away.



Photo 2. Close-up of sprayed area from Photo 1 shows spray-on erosion control BMP has washed away.



Photo 3. W Elkhorn Blvd at jobsite trailer looking east. No discharge onto W Elkhorn from the Project was observed.



Photo 4. RD 1000 channel disturbance covered with plastic. Turbid water from the airport was discharging into the RD 1000 channel through a culvert under the road.



Photo 5. Powerline Road at RD 1000 channel disturbance looking northeast. Basin has potential to discharge into the channel during storm events.



Photo 6. East side of project looking southeast at another basin.



Photo 7. Skyking Road looking east. The pump was used to move water from the basin to the low area on the west side of the building.



Photo 8. ATS tanks staged along north perimeter of site full of storm water. The ATS system installation was not complete at the time of the inspection



Photo 9. Skyking Road cut basin looking east. Road cut is flooded and receiving run-on at the northwest corner of the Project from the fields to the north.



Photo 10. Low area on the west side of project was flooded.

**PENALTY CALCULATION METHODOLOGY  
FOR  
REL P METRO LLC  
METRO AIRPARK  
SACRAMENTO 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](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 six site inspections on 10 December 2016, 15 December 2016, 29 December 2016, 4 January 2017, 10 January 2017, and 20 January 2017, staff from the Central Valley Water Board and/or the County of Sacramento observed a general lack of erosion control BMPs throughout the project and ineffective perimeter erosion and sediment control BMPs. A storm water basin described in the Project's original storm water pollution prevention plan (SWPPP) had not been installed and storm water was ponded in various locations around the site. Sediment-laden and/or high pH runoff was found discharging from the site during five of these inspections. Additional information about site conditions and discharges is available in the inspection reports for each of the dates cited above. The Prosecution Team alleges the discharge of sediment-laden and/or high pH 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.*

<b>PENALTY FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
Harm or potential for harm to beneficial uses	1	The sediment-laden water discharged from the project site to the County of Sacramento Municipal Separate Storm Sewer System (MS4) and to the Reclamation District (RD) 1000 ditch. These conveyances are tributary to the Sacramento River. The beneficial uses of the Sacramento River include aquatic freshwater habitat, spawning, and migration. The discharge likely had a minor harm to beneficial uses because the MS4 system discharges to a storm water basin where sediment can settle before going to the river. In addition, the upstream turbidity in RD1000 was generally high and significant visual impacts from site discharges on the ditch were not noted during the inspections. The harm from pH is not included; however the Prosecution Team reserves the right to consider the discharge of high pH water on the potential harm to beneficial uses should this matter proceed to hearing.
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	1	The sediment discharged was dispersed by storm water over a long

PENALTY FACTOR	VALUE	DISCUSSION
cleanup or abatement		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	0.025	The "Deviation from Requirement" is major because the Discharger disregarded the permit's requirement to use BMPs that achieved BAT/BCT. The value of 0.025 was determined from Table 1 of the Enforcement Policy.
Volume discharged	n/a	A proposed liability based on the volume discharged is not included; however, the Prosecution Team reserves the right to propose liability on a per gallon basis should this matter proceed to hearing.
Adjustment for high volume discharges	n/a	A proposed liability based on the volume discharged is not included; however, the Prosecution Team reserves the right to propose liability on a per gallon basis should this matter proceed to hearing.
Days of discharge	5	Although there were likely additional days of discharge, staff only observed a discharge on the five days during the inspections identified above. The Prosecution Team reserves the right to propose additional days of violation should this matter proceed to hearing.
<b>Initial Liability for Violation #1</b>	\$1,250	The liability is calculated as per day factor multiplied by the number of days multiplied by the maximum liability per day (\$10,000/day).
<b>Adjustments for Discharger Conduct</b>		
Culpability	1.2	The Discharger had a site-specific SWPPP prepared by a Qualified SWPPP Developer. Therefore, the Discharger should be aware of the General Permit's requirements.
Cleanup and Cooperation	1.2	The Discharger took six weeks to complete certain BMP improvements and in late January installed an Advanced Treatment System (ATS) to treat discharges.
History of Violations	1	There is no known history of violations.
<b>Total Base Liability for Violation #1</b>	\$1,800	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 10 December 2016, 15 December 2016, 29 December 2016, 4 January 2017, 10 January 2017, and 20 January 2017, Sacramento County or Water Board staff observed that perimeter sediment control BMPs, such as silt fencing, straw wattles and berms, were inadequate to control erosion and sediment in runoff from the site. 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.* The Prosecution Team alleges the Discharger violated this requirement on each day from the first documented inspection by Sacramento County staff on 10 December 2016 through the inspection by Water Board staff on 20 January 2017. Therefore, perimeter erosion controls were deficient for a total of 41 days.

PENALTY FACTOR	VALUE	DISCUSSION
Discharge violations	n/a	This step is not applicable because the violation is not a discharge violation.

PENALTY FACTOR	VALUE	DISCUSSION
Potential for harm	Minor	The failure to install effective perimeter controls led to the discharge of sediment laden water to the Sacramento County storm drain system and the RD 1000 ditch. 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. These potential impacts were likely mitigated because the MS4 system discharges to a storm water basin where sediment can settle before going to the river and the high upstream turbidity in the RD 1000 ditch.
Deviation from requirement	Moderate	The "Deviation from Requirement" is moderate because the sediment control BMPs installed by the Discharger did not meet the permit requirement and the intended effectiveness of the requirement was only partially achieved.
Per day factor	0.25	Determined from Table 3 in the Enforcement Policy. The middle value was chosen, but could be increased if this matter proceeds to hearing.
Days of violation	41	Sediment control BMPs were considered deficient for 41 days starting with the County inspection on 10 December 2016 until the Water Board inspection on 20 January 2017.
<b>Initial Liability for Violation #2</b>	\$102,500	The liability is calculated as per day factor multiplied by the number of days multiplied by the maximum liability per day (\$10,000/day).
<b>Adjustments for Discharger Conduct</b>		
Culpability	1.2	The Discharger had a site-specific SWPPP prepared by a Qualified SWPPP Developer. Therefore, the Discharger should be aware of the General Permit's requirements.
Cleanup and Cooperation	1.2	The Discharger took six weeks to complete certain BMP improvements and in late January installed an ATS to treat discharges.
History of Violations	1	There is no known history of violations.
<b>Total Base Liability for Violation #2</b>	\$147,600	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 six site inspections on 10 December 2016, 15 December 2016, 29 December 2016, 4 January 2017, 10 January 2017, and 20 January 2017, Sacramento County or Water Board staff observed that erosion control BMPs, such as hydraulic mulch, were not installed over large areas of the site. The Prosecution Team alleges that failure to implement appropriate erosion control BMPs on areas of active construction 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.* This requirement applies during storm events because active areas must have appropriate erosion and sediment controls installed prior to rainfall to protect exposed soil during rain events. 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. For the purpose of this Settlement Offer, the Prosecution Team considered the project to have no inactive areas for the time period considered

here. As described in the “Days of violation” section of the table below, the Prosecution Team alleges the Discharger violated the section E.1 requirement for a total of 13 days when rain events occurred between 10 December 2016 and 20 January 2017.

<b>PENALTY FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
Discharge violations	n/a	This step is not applicable because the violation is not a discharge violation.
Potential for harm	Minor	The failure to install appropriate erosion and sediment controls led to the 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. These potential impacts were likely mitigated because the MS4 system discharges to a storm water basin where sediment can settle before going to the river and the upstream turbidity in the RD 1000 ditch was high.
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 exposed soil areas prior to storm events, rendering this requirement ineffective.
Per day factor	0.35	Determined from Table 3 in the Enforcement Policy. The middle value was chosen, but could be increased if this matter proceeds to hearing.
Days of violation	13	Violations occurred on 10, 15, and 23, December 2016 and 2, 3, 4, 7, 8, 9, 10, 12, 18, and 20 January 2017 because local rainfall data indicated more than 0.1 inches of rainfall occurred on each of these days and deficient BMPs were observed from 10 December 2016 through 20 January 2017.
<b>Initial Liability for Violation #3</b>	\$45,500	The liability is calculated as per day factor multiplied by the number of days multiplied by the maximum liability per day (\$10,000/day).
<b>Adjustments for Discharger Conduct</b>		
Culpability	1.2	Until early January 2017, the Discharger’s SWPPP incorrectly identified the site as Risk Level 1 under the General Permit. Erosion control BMPs are not mandated for Risk Level 1 sites. The SWPPP, however, did describe an on-site storm water basin to control sediment discharges, but that basin was not constructed. Once the site was correctly identified as Risk Level 2 in early January, erosion control BMPs remained deficient through the 20 January 2017 inspection.
Cleanup and Cooperation	1.2	The Discharger did not apply erosion control BMPs to the interior portions of the site but in late January installed an ATS to treat discharges.
History of Violations	1	There is no known history of violations.
<b>Total Base Liability for Violation #3</b>	\$65,520	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.

<b>Total Base Liability for all violations: \$214,920</b>		
Other Factor Considerations		
Ability to pay and continue in business	No adjustment	Metro RELP is a limited liability corporation developing an 855,000 square foot Amazon distribution center on a 68-acre parcel. A company with a project of this size likely has the ability to pay the penalty and remain in business.
Economic benefit	\$43,850	<p>The economic benefit is based on the avoided costs associated with properly stabilizing the Project with erosion control BMPs, installing a basin as identified in the SWPPP for use as a sediment control BMP, and installing and maintaining perimeter control BMPs on this project.</p> <p>The avoided cost of properly stabilizing the site with temporary erosion control BMPs was calculated to be approximately \$26,000. The cost for erosion control BMPs are based on application of hydraulic mulch with tackifier on an assumed 13 acres of disturbed soil at a cost of \$2,000 per acre (13 * \$2,000 = \$26,000).<sup>1</sup> The cost of this BMP is assumed to be avoided because this is a temporary BMP that would have needed to be re-applied after the January 2017 storm events.</p> <p>The avoided cost of installing a sediment basin as identified in the SWPPP as one of the sediment control BMPs planned for the Project is conservatively estimated to be \$15,000. Basin costs are highly variable and dependent on site conditions<sup>2</sup>; however, the cost of properly engineering and installing a basin that meets CASQA requirements is significant and estimated to be at least \$15,000.</p> <p>The avoided cost of properly stabilizing the site with perimeter sediment control BMPs was calculated to be approximately \$2,850. The cost for the sediment control BMPs is based on an assumed 3,800 linear feet of fiber rolls needed to meet the BMP requirement at an installed cost of \$1.50/linear foot<sup>1</sup> (3,800 * \$1.50 = \$5,700). These types of BMPs are assumed to be temporary and require maintenance and/or repairs following storm events. While these BMPs were installed by 20 January 2017, the avoided cost associated with not fully installing and maintaining this BMP is estimated be approximately half of the costs of the total installation (\$5,700 * 0.5 = \$2,850). The delayed cost of not installing sediment control BMPs for a period of 41 days is assumed to be negligible.</p> <p>The total economic benefit is estimated to be \$43,850 (\$26,000 + \$15,000 + \$2,850 = \$43,850).</p>

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

<sup>2</sup> 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 \$590,000	Based on California Water Code section 13385: \$10,000 per day per violation and \$10 per gallon.
Minimum liability	\$48,235	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%. ( $\$43,850 \times 10\% = \$4,385$ ; $\$43,850 + \$4,385 = \$48,235$ )
<b>Final Liability</b>	<b>\$214,920</b>	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.