

LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD

In the Matter of:

ORDER R4-2020-0009 (Proposed)

GKGF, LLC

**SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY
ORDER; ORDER (PROPOSED)**

I. 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, Los Angeles Region (Regional Board), on behalf of the Regional Board Prosecution Team (Prosecution Team), and GKGF, LLC (Discharger or GKGF) (collectively known as the Parties) and is presented to the Regional Board, or its delegee, for adoption as an order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.

II. Recitals

2. GKGF owns the Sunhill Shopping Center located at 8842 W. Foothill Boulevard in Sunland, California (Site).
3. On December 13, 2016, GKGF filed a Notice of Intent (NOI) with the State Water Resources Control Board (State Water Board) to comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges associated with Construction and Land Disturbance Activities (Construction General Permit or Permit) Order No. 2009-0009-DWQ, as amended by Order No. 2010-0014-DWQ, NPDES No. CAS000002, WDID No. 4 19C378419, for a construction project located at the Site. The NOI was approved by the State Water Board on December 14, 2016. The NOI identifies the Project as Risk Level 2. Attachment D to the Construction General Permit details the requirements with which a Risk Level 2 discharger must comply.
4. The Prosecution Team alleges that the Discharger violated the Construction General Permit by failing to implement perimeter controls throughout the project area, by failing to implement good site management measures for construction materials, by failing to implement best management practices (BMPs) to protect stormwater inlets, by failing to implement good housekeeping measures for waste management, failing to retain a Qualified Stormwater Pollution Prevention Practitioner (QSP) and ensure all required actions were performed by the QSP, and by failing to submit Rain Event Action Plans (REAPs) at least 48 hours prior to likely precipitation events.

5. Water Code section 13385 provides that any person who violates the Construction General Permit may be subject to administrative civil liability of up to ten thousand dollars (\$10,000) for each day the violation occurs.
6. The Parties have engaged in confidential settlement negotiations and agree to fully settle the violations summarized above, and specifically identified in Attachment A, without administrative or civil litigation and by presenting this Stipulation to the Regional Board, or its delegee, for adoption as an Order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.
7. For purposes of settlement, the Prosecution Team agreed to reduce the administrative civil liability amount from \$276,482 to \$262,657 in consideration of hearing and/or litigation risks, pursuant to the State Water Resource Control Board's (State Board's) 2017 Water Quality Enforcement Policy (Enforcement Policy) section VI.B. (Settlement Considerations).
8. To resolve the violations by consent and without further administrative or civil proceedings, the Parties have agreed to the imposition of an administrative civil liability against GKGF in the amount of two hundred sixty-two thousand six hundred and fifty-seven dollars (\$262,657).
9. The 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.

III. Stipulations

The Parties stipulate to the following:

10. **Jurisdiction:** The Parties agree that the Regional Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulation.
11. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability in the amount of **two hundred sixty-two thousand six hundred and fifty-seven dollars (\$262,657)** to the Regional Board to resolve the violations specifically alleged herein. No later than 30 days after the Regional Board, or its delegee, signs this Order, the Discharger shall submit a check for **two hundred sixty-two thousand six hundred and fifty-seven dollars (\$262,657)** made payable to the "State Water Pollution Cleanup and Abatement Account," reference the Order number on page one of this Order, and mail it to:

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

The Discharger shall provide a copy of the check via email to the State Water Resources Control Board, Office of Enforcement (Heather.Jidkov@waterboards.ca.gov) and the Regional Board (Pavlova.Vitale@waterboards.ca.gov).

12. **Compliance with Applicable Laws and Regulatory Changes:** The Discharger understands that payment of an 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 additional violations of the type alleged may subject it to further enforcement, including additional administrative civil liabilities. Nothing in this Stipulated Order shall excuse the Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

13. **Party Contacts for Communications Related to Stipulated Order:**

For the Regional Board:

Pavlova Vitale
Senior Environmental Scientist
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013
(213) 576-6751
Pavlova.Vitale@waterboards.ca.gov

For the Discharger:

Aida Norhadian
Manager
GKGF, LLC
100 W. Broadway
Glendale, CA 91210
(818) 956-7599
aida@gaskainc.com

14. **Attorneys' 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. **Public Notice:** The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Regional Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional Board, or its delegee, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Regional Board,

or its delegee. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

16. **Procedure:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Order, will be adequate. In the event procedural objections are raised prior to this 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.
17. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Regional 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 this Stipulated Order. The failure of the Prosecution Team or Regional Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions, or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. The Regional Board reserves all rights to take additional enforcement actions, including without limitation, the issuance of administrative civil liability complaints or orders for violations other than those addressed by this Order.
18. **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 Regional Board or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
19. **Interpretation:** This Stipulated Order shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
20. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Order. All modifications must be made in writing and approved by the Regional Board or its delegee.
21. **Integration:** This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.
22. **If Order Does Not Take Effect:** The Discharger's obligations under this Stipulated Order are contingent upon the entry of the Order of the Regional Board as proposed. In the event that this Stipulated Order does not take effect because it is not approved by the Regional Board, or its delegee, or is vacated in whole or in part by the State Board or a court, the Parties acknowledge that the Prosecution Team may proceed to a contested evidentiary hearing before the Regional Board to determine whether to assess an administrative civil liability for the underlying alleged violations, or may

continue to pursue settlement. 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 any subsequent administrative or judicial proceeding or hearing and will be fully protected by California Evidence Code sections 1152 and 1154; California Government Code section 11415.60; Rule 408, Federal Rules of Evidence; and any other applicable privilege under federal and/or state law. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the Regional Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that the Regional Board members or their advisors were exposed to some of the material facts and the Parties settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter; or
 - b. Laches or delay or other equitable defenses based on the time period that the Order or decision by settlement may be subject to administrative or judicial review.
23. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and, if the settlement is adopted by the Regional Board, hereby waives its right to a hearing before the Regional Board prior to the Stipulated Order's adoption. However, should the settlement not be adopted, and should the matter proceed to the Regional Board or State Board for hearing, the Discharger does not waive the right to a hearing before an order is imposed.
24. **Waiver of Right to Petition:** Except in the instance where the settlement is not adopted by the Regional Board, the Discharger hereby waives the right to petition the Regional Board's adoption of the Stipulated Order as written for review by the State Board, and further waives the right, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
25. **Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulation and Order.
26. **No Admission of Liability:** In settling this matter, the Discharger does not admit to any of the allegations stated herein, or that it has been or is in violation of the Water Code, or any other federal, State, or local law or ordinance, with the understanding that in the event of any future enforcement actions by the Regional Board, the State Water Board, or any other Regional Water Quality Control Board, this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327 and/or section 13385, subdivision (e).

27. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that they are authorized to execute this Order on behalf of and to bind the entity on whose behalf the Order is executed.
28. **Necessity for Written Approvals:** All approvals and decisions of the Regional Board under the terms of this Stipulated Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Regional Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Stipulated Order.
29. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligation 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.
30. **Severability:** This Stipulated Order is severable; should any provision be found invalid, the remainder shall remain in full force and effect.
31. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Board, or its delegee, enters the Order incorporating the terms of this Stipulated Order.
32. **Counterpart Signatures:** This Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

Stipulated ACLO R4-2020-0009
GKGF, LLC

IT IS SO STIPULATED.

California Regional Water Quality Control Board, Los Angeles Region Prosecution Team

By: _____
Hugh Marley
Assistant Executive Officer

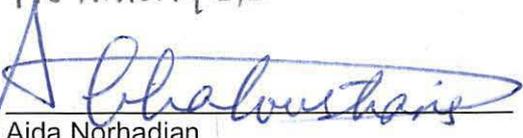
_____ Date

Stipulated ACLO R4-2020-0009
GKGF, LLC

GKGF, LLC

BY: GKGF, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY
ITS MANAGER

By:


Aida Norhadian
Manager

March, 30 2020
Date

ANP

Stipulated ACLO R4-2020-0009
GKGF, LLC

HAVING CONSIDERED THE PARTIES STIPULATIONS, THE LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD FINDS THAT:

1. The foregoing Stipulation is fully incorporated herein and made part of this Order.
2. This is an action to enforce the laws and regulations administered by the Regional Board. The Regional Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations.
3. The Executive Officer of the Regional Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this Order.

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

Renee Purdy
Executive Officer
Los Angeles Regional Water Quality
Control Board

Date

Attachment A: Specific Factors Considered for Stipulated ACLO R4-2020-0009

Attachment A – Specific Factors Considered
Settlement Agreement and Stipulated Order R4-2020-0009
Sunhill Shopping Center
GKGF, LLC
WDID 4 19C378419

The State Water Board's *Water Quality Enforcement Policy* (Enforcement Policy¹) established a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code section 13327 and 13385(e). Each factor of the ten-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf

Background

On December 14, 2016, GKGF, LLC (Discharger) submitted a Notice of Intent to comply with the National Pollutant Discharge Elimination System (NDPES) *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ* (Construction General Permit) for the construction project located in Sunland at the Sunhill Shopping Center. On July 17, 2018, Regional Board staff inspected the construction project to determine if the project was in compliance with the requirements of the Construction General Permit. During that inspection, Regional Board staff documented multiple violations. On subsequent inspections that took place August 7, 2018, August 23, 2018 and August 30, 2018, Regional Board staff continued to observe several violations documented during the July 17, 2018 inspection.

Violation 1:

Failure to implement project perimeter controls throughout the project site. During the inspections that occurred on July 17, 2018, August 7, 2018, August 23, 2018, and on August 30, 2018, staff observed no perimeter and sediment control best management practices (BMPs) near perimeter fences around the site. Additionally, staff found rust and sediment at the Foothill Boulevard construction entrance during the July 17, 2018, August 7, 2018, and August 23, 2018 inspections. Given the lack of perimeter and sediment control BMPs, there is a high probability that this rust and sediment could have been discharged off-site. The lack of perimeter control BMPs is a violation of the Construction General Permit Attachment D, Section E.1 and Section B.1.e.

¹ The version of the Enforcement Policy in effect at the time of each violation was used. The 2010 Enforcement Policy went into effect on May 20, 2010. The 2017 Enforcement Policy went into effect on October 5, 2017. Therefore, the 2017 Enforcement Policy was used for Violations 1-4 and 6. The 2010 Enforcement Policy was used for Violation 5.

Step 1. Potential for Harm for Discharge Violation – not applicable – non-discharge violation alleged

Step 2. Assessments for Discharge Violation – not applicable – non-discharge violation alleged

Step 3. Per Day Assessment for Non-Discharge Violations: 0.55

a. Potential for Harm: Moderate

The potential for harm for this violation constitutes a Moderate potential for harm. The Discharger's failure to install perimeter controls could have led to discharges of sediment to the Los Angeles County Storm Drain system and the Big Tujunga Creek. The beneficial uses listed for Big Tujunga Creek in the Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties are municipal and domestic supply, ground water recharge, warm freshwater habitat, cold freshwater habitat, and wildlife habitat. 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 oil and grease which can also negatively impact aquatic life.

b. Deviation from Requirement: Major

The "Deviation from Requirement" is Major because the site lacked perimeter control BMPs throughout the project. Therefore, the requirement was rendered completely ineffective.

Per Day Factor

The Per Day Factor utilizing a Moderate Potential for Harm and Major Deviation from Requirement is 0.55 (see Table 3 on page 16 of the 2017 Enforcement Policy).

Initial Liability

Initial Liability: \$10,000/day X 4 days X .55 = \$22,000.

Step 4. Adjustment Factors

a. Culpability: 1.2

This factor considers a discharger's degree of culpability prior to the violation. Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. The test for whether a discharger is negligent is what a reasonable and prudent person would have done or not done under similar circumstances. Under the 2017 Enforcement Policy, the culpability multiplier ranges between 0.75 and 1.5, with a higher multiplier for intentional misconduct and gross negligence. A neutral assessment of 1.0 should be used when a discharger is determined to have acted as a reasonable and prudent person would have. A reasonable and prudent person would have ensured that their project followed all applicable regulations for construction sites. Therefore, a multiplier of 1.2 is assigned, as the Discharger did not act as a reasonable and

prudent person would have by failing to implement the required perimeter and sediment controls. A reasonable and prudent person would have installed perimeter control BMPs such as gravel bags berms and/or silt fencing along the perimeter of the site.

b. History of Violations: 1.0

The 2017 Enforcement Policy states that if a discharger has prior history of violations within the last five years, the Water Boards should use a multiplier of 1.1. Where a discharger has a history of similar or numerous dissimilar violations, the Water Boards should consider adopting a multiplier above 1.1. Since the Discharger has no prior history of violations, a multiplier of 1.0 has been assigned.

c. Cleanup and Cooperation: 1.2

This factor reflects the extent to which a discharger voluntarily cooperates with regulatory authorities in returning to compliance and correcting environmental damage after the violation. The cleanup and cooperation multiplier ranges from 0.75 to 1.5, using the lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where there is not. A reasonable and prudent response should receive a neutral adjustment as it is assumed a reasonable amount of cooperation is the warranted baseline. The Discharger's on-site representative was notified of the ongoing violations during the first inspection on July 17, 2018 and was notified that the violation was ongoing during the subsequent inspections on August 7, 2018, August 23, 2018, and August 30, 2018. The Discharger was alerted to the lack of perimeter and sediment control BMPs at the site but failed to take reasonable and prudent steps to correct the violation. Due to the violations being documented on multiple inspections, the Discharger's continued failure to correct the violations, a multiplier of 1.2 is appropriate.

Step 5. Determination of Total Base Liability Amount: \$31,680

$$\begin{aligned} & \$22,000 \text{ (Initial Liability)} \times 1.2 \text{ (Culpability Multiplier)} \times 1.0 \text{ (History of Violations} \\ & \text{Multiplier)} \times 1.2 \text{ (Cleanup and Cooperation Multiplier)} = \$31,680 \text{ (Total Base} \\ & \text{Liability)} \end{aligned}$$

Violation 2:

Poor site management measures for construction materials. During an inspection on July 17, 2018, staff observed inactive stockpiles of dirt on the construction site without cover or berms. Staff confirmed with the Discharger's representative that the stockpiles of dirt had been left inactive for several months. Inactive stockpiles are potential sources of pollutants and leaving them without BMPs for months increases the potential for discharge of these pollutants, which could harm beneficial uses of receiving waters. This is a violation of Construction General Permit Attachment D, section B.1.b.

Step 1. Potential for Harm for Discharge Violation – not applicable non-discharge violation alleged

Step 2. Assessments for Discharge Violation – not applicable – non-discharge violation alleged

Step 3. Per Day Assessments for Non-Discharge Violations: 0.55

a. Potential for Harm: Moderate

The Potential for harm for this Violation constitutes a Moderate potential for harm. The Discharger's failure to implement effective BMPs for stockpiles and leaving inactive dirt stockpiles unattended for months created a threatened discharge of pollutants, such as sediment, from the site into the Los Angeles County Storm Drain system and the Big Tujunga Creek. The beneficial uses listed for Big Tujunga Creek in the Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties are municipal and domestic supply, ground water recharge, warm freshwater habitat, cold freshwater habitat, and wildlife habitat. 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 oil and grease which can also negatively impact aquatic life.

b. Deviation from Requirement: Major

The "Deviation from Requirement" is Major because no BMPs were implemented at the site to prevent the discharge of pollutants from the inactive stockpiles, and stockpiles were left unprotected for months. Therefore, these requirements were completely disregarded.

Per Day Factor

The Per Day Factor utilizing a Moderate Potential for Harm and Major Deviation from Requirement is 0.55 (see Table 3 on page 16 of the 2017 Enforcement Policy).

Initial Liability

Initial Liability: \$10,000/day X 1 day X .55 = \$5,500.

Step 4. Adjustment Factors

a. Culpability: 1.2

This factor considers a discharger's degree of culpability prior to the violation. Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. The test for whether a discharger is negligent is what a reasonable and prudent person would have done or not done under similar circumstances. Under the 2017 Enforcement Policy, the culpability multiplier ranges between 0.75 and 1.5, with a higher multiplier for intentional misconduct and gross negligence. A neutral assessment of 1.0 should be used when a discharger is determined to have acted as a reasonable and prudent person would have. A reasonable and prudent person would have ensured that their project

followed all applicable regulations for construction sites, including implementing BMPs, including providing effective soil cover such as plastic sheeting and gravel bags. A multiplier of 1.2 is assigned as the Discharger did not act as a reasonable and prudent person would have.

b. History of Violations: 1.0

The 2017 Enforcement Policy states that if a discharger has a prior history of violations within the last five years, the Water Boards should use a multiplier of 1.1. Where a discharger has a history of similar or numerous dissimilar violations, the Water Boards should consider adopting a multiplier above 1.1. Since the Discharger has no prior history of violations, a multiplier of 1.0 has been assigned.

c. Cleanup and Cooperation: 1.0

This factor reflects the extent to which a discharger voluntarily cooperates with regulatory authorities in returning to compliance and correcting environmental damage after the violation. The cleanup and cooperation multiplier ranges from 0.75 to 1.5, using the lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where there is not. A reasonable and prudent response should receive a neutral adjustment as it is assumed a reasonable amount of cooperation is the warranted baseline. After the first inspection on July 17, 2018, the Discharger responded as a reasonable and prudent person would have by working with the Regional Board to address the violation. Due to the timely actions taken by the Discharger in response to the violation, a multiplier of 1.0 is appropriate.

Step 5. Determination of Total Base Liability Amount: \$6,600

$$\$5,500 \text{ (Initial Liability)} \times 1.2 \text{ (Culpability Multiplier)} \times 1.0 \text{ (History of Violations Multiplier)} \times 1.0 \text{ (Cleanup and Cooperation Multiplier)} = \$6,600 \text{ (Total Base Liability)}$$

Violation 3:

Stormwater inlets were unprotected and without BMPs at the site. During the inspections that occurred on July 17, 2018 and August 7, 2018, staff determined the Discharger had failed to install BMPs to protect stormwater inlets, which increased the chance that pollutants from the construction site could be discharged to receiving waters. This is a violation of Construction General Permit Attachment D, Section E.6.

Step 1. Potential for Harm for Discharge Violation – not applicable non-discharge violation alleged

Step 2. Assessments for Discharge Violation – not applicable – non-discharge violation alleged

Step 3. Per Day Assessments for Non-Discharge Violations: 0.55

a. Potential for Harm: Moderate

The Discharger's failure to install BMPs to protect stormwater inlets created a threatened discharge of sediment and other pollutants to the Los Angeles County Storm Drain system and the Big Tujunga Creek. The beneficial uses listed for Big Tujunga Creek in the Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties are municipal and domestic supply, ground water recharge, warm freshwater habitat, cold freshwater habitat, and wildlife habitat. 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 oil and grease which can also negatively impact aquatic life.

b. Deviation from Requirement: Major

The "Deviation from Requirement" is Major because no BMPs to protect stormwater inlets were implemented at the site. Therefore, this requirement was disregarded and rendered completely ineffective.

Per Day Factor

The Per Day Factor utilizing a Moderate Potential for Harm and Major Deviation from Requirement is 0.55 (see Table 3 on page 16 of the 2017 Enforcement Policy).

Initial Liability

Initial Liability: \$10,000/day X 2 days X .55 = \$11,000.

Step 4. Adjustment Factors

a. Culpability: 1.2

This factor considers a discharger's degree of culpability prior to the violation. Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. The test for whether a discharger is negligent is what a reasonable and prudent person would have done or not done under similar circumstances. Under the 2017 Enforcement Policy, the culpability multiplier ranges between 0.75 and 1.5, with a higher multiplier for intentional misconduct and gross negligence. A neutral assessment of 1.0 should be used when a discharger is determined to have acted as a reasonable and prudent person would have. As a reasonable and prudent person would have ensured that their project followed all applicable regulations for construction sites, including installation of BMPs to protect storm inlets such as a gravel bag berm or fiber roll barrier. Therefore, a multiplier of 1.2 is assigned, as the Discharger did not act as a reasonable and prudent person would have.

b. History of Violations: 1.0

The 2017 Enforcement Policy states that if a discharger has a prior history of violations within the last five years, the Water Boards should use a multiplier of 1.1. Where a discharger has a history of similar or numerous dissimilar violations, the Water Boards should consider adopting a multiplier above 1.1. Since the Discharger has no prior history of violations, a multiplier of 1.0 has been assigned.

c. Cleanup and Cooperation: 1.1

This factor reflects the extent to which a discharger voluntarily cooperates with regulatory authorities in returning to compliance and correcting environmental damage after the violation. The cleanup and cooperation multiplier ranges from 0.75 to 1.5, using the lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where there is not. A reasonable and prudent response should receive a neutral adjustment as it is assumed a reasonable amount of cooperation is the warranted baseline. The Discharger's on-site representative was notified of the violation during the first inspection on July 17, 2018 and was notified that the violation was ongoing during the subsequent inspection on August 7, 2018. A reasonable and prudent person would have corrected the violation after it was brought to their attention after the first inspection. The Discharger did, however, install adequate BMPs to protect stormwater inlets prior to the third inspection on August 23, 2018. Therefore, a multiplier of 1.1 is appropriate.

Step 5. Determination of Total Base Liability Amount: \$14,520

$$\$11,000 \text{ (Initial Liability)} \times 1.2 \text{ (Culpability Multiplier)} \times 1.0 \text{ (History of Violations Multiplier)} \times 1.1 \text{ (Cleanup and Cooperation Multiplier)} = \$14,520 \text{ (Total Base Liability)}$$

Violation 4:

Staff observed poor housekeeping measures for waste management throughout the project site during all four inspections. During the inspections on July 17, 2018, August 7, 2018, and August 23, 2018, staff also observed portable toilets without secondary containment. During the inspections on July 17, 2018, August 7, 2018, August 23, 2018 and August 30, 2018, staff observed concrete and oil spills on the ground throughout the site. Additionally, during the inspections on July 17, 2018, August 7, 2018, August 23, 2018 and August 30, 2018, staff observed piles of construction waste materials without BMPs. Poor waste management increases the chance that pollutants will be discharged from the site. This is a violation of Construction General Permit Attachment D, Sections B.2.b, B.2.f, and B.2.h.i.

Step 1. Potential for Harm for Discharge Violation – not applicable non-discharge violation alleged

Step 2. Assessments for Discharge Violation – not applicable – non-discharge violation alleged

Step 3. Per Day Assessments for Non-Discharge Violations: 0.55

a. Potential for Harm: Moderate

The Discharger's failure to implement good housekeeping created a threatened discharge of concrete, oil, and other pollutants to the Los Angeles County Storm Drain system and the Big Tujunga Creek. The beneficial uses listed for Big Tujunga Creek in the Basin Plan for the Coastal Watersheds of Los Angeles and Ventura

Counties are municipal and domestic supply, ground water recharge, warm freshwater habitat, cold freshwater habitat, and wildlife habitat. Discharges of concrete can change the pH of receiving waters, which can harm sensitive aquatic organisms. Discharges of oil can be toxic to aquatic organisms and can cause harm to aquatic organisms by interfering with physiological processes such as feeding and reproduction. Discharges of sewage from portable toilets can contain bacteria that could be toxic to aquatic organisms and could suffocate aquatic organisms by removing oxygen from waterbodies.

b. Deviation from Requirement: Major

The "Deviation from Requirement" is Major because good housekeeping BMPs were not implemented at the site. Therefore, this requirement was disregarded and rendered completely ineffective.

Per Day Factor

The Per Day Factor utilizing a Moderate Potential for Harm and Major Deviation from Requirement is 0.55 (see Table 3 on page 16 of the 2017 Enforcement Policy).

Initial Liability

Initial Liability: \$10,000/day X 4 days X .55 = \$22,000.

Step 4. Adjustment Factors

a. Culpability: 1.2

This factor considers a discharger's degree of culpability prior to the violation. Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. The test for whether a discharger is negligent is what a reasonable and prudent person would have done or not done under similar circumstances. Under the 2017 Enforcement Policy, the culpability multiplier ranges between 0.75 and 1.5, with a higher multiplier for intentional misconduct and gross negligence. A neutral assessment of 1.0 should be used when a discharger is determined to have acted as a reasonable and prudent person would have. A reasonable and prudent person would have ensured that their project followed all applicable regulations for construction sites. A multiplier of 1.2 is assigned as the Discharger did not act as a reasonable and prudent person would have by implementing good housekeeping practices such as spill prevention and cleanup, and stockpile management using plastic sheeting and gravel bags.

b. History of Violations: 1.0

The 2017 Enforcement Policy states that if a discharger has a prior history of violations within the last five years, the Water Boards should use a multiplier of 1.1. Where a discharger has a history of similar or numerous dissimilar violations, the Water Boards should consider adopting a multiplier above 1.1. Since the Discharger has no prior history of violations, a multiplier of 1.0 has been assigned.

c. Cleanup and Cooperation: 1.2

This factor reflects the extent to which a discharger voluntarily cooperates with regulatory authorities in returning to compliance and correcting environmental

damage after the violation. The cleanup and cooperation multiplier ranges from 0.75 to 1.5, using the lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where there is not. A reasonable and prudent response should receive a neutral adjustment as it is assumed a reasonable amount of cooperation is the warranted baseline. The Discharger's on-site representative was notified of the violation during the first inspection on July 17, 2018 and was notified that the violation was ongoing during the subsequent inspections on August 7, 2018, August 23, 2018 and August 30, 2018. The Discharger was alerted to inadequate waste management at the site but failed to take reasonable and prudent steps to correct the violation. Because of the Discharger's continued failure to correct the violation, a multiplier of 1.2 is appropriate.

Step 5. Determination of Total Base Liability Amount: \$31,680

$$\$22,000 \text{ (Initial Liability)} \times 1.2 \text{ (Culpability Multiplier)} \times 1.0 \text{ (History of Violations Multiplier)} \times 1.2 \text{ (Cleanup and Cooperation Multiplier)} = \$31,680 \text{ (Total Base Liability)}$$

Violation 5:

The Permittee failed to appoint a Qualified SWPPP Practitioner (QSP) and ensure all BMPs required by the Construction General Permit were implemented by the QSP and that all inspections, maintenance repairs and sampling activities were performed or supervised by the QSP. Staff determined this violation occurred from the construction start date on July 31, 2017 and continued until August 16, 2018, for a total of 382 days. The QSP for the project was hired and completed his first inspection for the site on August 17, 2018. The QSP is required to ensure that the BMPs listed in the SWPPP are implemented correctly, and to conduct inspections required by the permit. These inspections are performed to identify and record BMPs that need maintenance to operate effectively, that have failed or that could fail to operate as intended, and to identify any additional BMPs necessary and revise the SWPPP accordingly. The failure to retain a QSP or ensure all required actions of the QSP were performed from July 31, 2017 to August 17, 2018 is a violation of Construction General Permit Section I.F.44, Section VII.B.3, and Attachment D, Sections G.1-2 and I.3.

Step 1. Potential for Harm for Discharge Violation – not applicable – non-discharge violation alleged

Step 2. Assessments for Discharge Violation – not applicable – non-discharge violation alleged

Step 3. Per Day Assessments for Non-Discharge Violations: 0.55

a. Potential for Harm: Moderate

The Discharger's failure to have the QSP on site meant that a qualified individual was not overseeing implementation of BMPs listed in the SWPPP and was not conducting required inspection which could have resulted in the discharge of

pollutants, such as sediment, to the Los Angeles County Storm Drain system and the Big Tujunga Creek. The beneficial uses listed for Big Tujunga Creek in the Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties are municipal and domestic supply, ground water recharge, warm freshwater habitat, cold freshwater habitat, and wildlife habitat. 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 oil and grease which can also negatively impact aquatic life.

b. Deviation from Requirement: Major

The "Deviation from Requirement" is Major because there was no QSP for the site, which completely disregarded the permit provisions that require a QSP to implement all BMPs. In the absence of a QSP, these essential functions could not be performed as required by the Construction General Permit.

Per Day Factor

The Per Day Factor utilizing a Moderate Potential for Harm and Major Deviation from Requirement is 0.55 (see Table 3 on page 16 of the 2010 Enforcement Policy).

Multiple day violations days reduction: 18 days

The 2010 Enforcement Policy allows for violations that last more than thirty (30) days, the daily assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit resulting from the violation. For these cases, the Water Board must make an express finding that the violation: (1) is not causing daily detrimental impacts to the environment or the regulatory program, (2) results in no economic benefit that can be measured on a daily basis, or (3) occurred without the knowledge or control of the violator. Staff have determined the Discharger's failure to have a QSP did not cause daily detrimental impacts to the environment or regulatory program and did not result in an economic benefit that could be measured on a daily basis. Under the alternate approach to penalty calculation for multiple day violations, the days of violation are reduced to the first day of violation, plus an assessment for each five-day period of violation until the 30th day, plus an assessment for each thirty days of violation. Using this methodology, the total days of violation were reduced from three hundred eighty-two (382) to eighteen (18) days.

Initial Liability

Initial Liability: \$10,000/day X 18 days X .55 = \$99,000.

Step 4. Adjustment Factors

a. Culpability: 1.2

This factor considers a discharger's degree of culpability prior to the violation. Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. The test for whether a discharger is negligent is what a reasonable and prudent person would have done or not done under similar

circumstances. Under the 2010 Enforcement Policy, the culpability multiplier ranges between 0.5 and 1.5, with a higher multiplier for intentional misconduct and gross negligence. A neutral assessment of 1.0 should be used when a discharger is determined to have acted as a reasonable and prudent person would have. A reasonable and prudent person would have ensured that their project followed all applicable regulations for construction sites, including retaining a QSP to conduct inspection and to ensure that BMPs and the SWPPP were being implemented. Therefore, a multiplier of 1.2 is assigned, as the Discharger did not act as a reasonable and prudent person would have by failing to hire a QSP.

b. History of Violations: 1.0

The 2010 Enforcement Policy states that if a discharger has a history of repeat violations, the Water Boards should use a minimum multiplier of 1.1. Since the Discharger has no prior history of violations, a multiplier of 1.0 has been assigned.

c. Cleanup and Cooperation: 1.0

This factor reflects the extent to which a discharger voluntarily cooperates with regulatory authorities in returning to compliance and correcting environmental damage after the violation. Under the 2010 Enforcement Policy, the cleanup and cooperation multiplier ranges from 0.75 to 1.5, using the lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where there is not. A reasonable and prudent response should receive a neutral adjustment as it is assumed a reasonable amount of cooperation is the warranted baseline. The Discharger's on-site representative was notified of the violation during the first inspection on July 17, 2018 and by August 17, 2018, the Discharger corrected the violation by hiring a QSP and having them perform a site inspection on August 17, 2018. Because the Discharger responded as a reasonable and prudent person would have by working with the Regional Board to address the violation and retain a QSP within a reasonable amount of time, a multiplier of 1.0 is appropriate.

Step 5. Determination of Total Base Liability Amount: \$118,800

$\$99,000$ (Initial Liability) \times 1.2 (Culpability Multiplier) \times 1.0 (History of Violations Multiplier) \times 1.0 (Cleanup and Cooperation Multiplier) = $\$118,800$ (Total Base Liability)

Violation 6:

Failure to develop Rain Event Action Plans (REAPs). Staff determined there were at least ten likely precipitation events between the project's start date on July 31, 2017, and project securing the services of a QSP, which occurred on August 17, 2018. REAPs are required to be developed by the QSP forty-eight (48) hours prior to any likely precipitation event. A likely precipitation event is any weather pattern that is forecast to have a 50% or greater probability of precipitation in the project area. REAPs are designed to protect all exposed portions of their sites. The REAP requirement is designed to ensure that the discharger has adequate materials, staff, and time to implement erosion and sediment controls that are intended to reduce the amount of sediment and other pollutants generated from the active site. Failure to ensure a QSP

develops a REAP 48 hours prior to a likely precipitation event is a violation of Construction General Permit Attachment D, Section H.1.

Step 1. Potential for Harm for Discharge Violation – not applicable non-discharge violation alleged

Step 2. Assessments for Discharge Violation – not applicable – non-discharge violation alleged

Step 3. Per Day Assessments for Non-Discharge Violations: 0.55

a. Potential for Harm: Moderate

The Discharger's failure to develop a REAP for likely precipitation events meant that during rain events, exposed portions of the construction project were not protected by BMPs. This could have resulted in the discharge of pollutants, such as sediment, to the Los Angeles County Storm Drain system and the Big Tujunga Creek. The beneficial uses listed for Big Tujunga Creek in the Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties are municipal and domestic supply, ground water recharge, warm freshwater habitat, cold freshwater habitat, and wildlife habitat. 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 oil and grease which can also negatively impact aquatic life.

b. Deviation from Requirement: Major

The "Deviation from Requirement" is Major because no REAPs were developed for the site, which completely disregarded the permit provisions that require a QSP develop a site specific REAP to protect exposed portions of the construction site. Without development of the REAP exposed areas of the site were likely not protected during QSEs as required by the General Permit.

Per Day Factor

The Per Day Factor utilizing a Moderate Potential for Harm and Major Deviation from Requirement is 0.55 (see Table 3 on page 16 of the 2017 Enforcement Policy).

Initial Liability

Initial Liability: \$10,000/day X 10 days X .55 = \$55,000.

Step 4. Adjustment Factors

a. Culpability: 1.2

This factor considers a discharger's degree of culpability prior to the violation. Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. The test for whether a discharger is negligent is what a reasonable and prudent person would have done or not done under similar circumstances. Under the 2017 Enforcement Policy, the culpability multiplier

ranges between 0.75 and 1.5, with a higher multiplier for intentional misconduct and gross negligence. A neutral assessment of 1.0 should be used when a discharger is determined to have acted as a reasonable and prudent person would have. A reasonable and prudent person would have ensured that their project followed all applicable regulations for construction sites. A multiplier of 1.2 is assigned as the Discharger did not act as a reasonable and prudent person would have by ensuring that a QSP developed REAPs for the site for likely precipitation events.

b. History of Violations: 1.0

The 2017 Enforcement Policy states that if a discharger has a prior history of violations within the last five years, the Water Boards should use a multiplier of 1.1. Where a discharger has a history of similar or numerous dissimilar violations, the Water Boards should consider adopting a multiplier above 1.1. Since the Discharger has no prior history of violations, a multiplier of 1.0 has been assigned.

c. Cleanup and Cooperation: 1.0

This factor reflects the extent to which a discharger voluntarily cooperates with regulatory authorities in returning to compliance and correcting environmental damage after the violation. The cleanup and cooperation multiplier ranges from 0.75 to 1.5, using the lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where there is not. A reasonable and prudent response should receive a neutral adjustment as it is assumed a reasonable amount of cooperation is the warranted baseline. The Discharger's on-site representative was notified of the violation during the first inspection on July 17, 2018 and by August 17, 2018, the Discharger corrected the violation by hiring a QSP who would then be able to develop REAPs for the site for likely precipitation events. Because the Discharger responded as a reasonable and prudent person would have by working with the Regional Board to address the violation by retaining a QSP within a reasonable amount of time, who could prepare a REAP when required, a multiplier of 1.0 is appropriate.

Step 5. Determination of Total Base Liability Amount: \$66,000

\$55,000 (Initial Liability) x 1.2 (Culpability Multiplier) x 1.0 (History of Violations Multiplier) x 1.0 (Cleanup and Cooperation Multiplier) = \$66,000 (Total Base Liability)

Total Liability for All Violations

Violation Number	Number of Days or Gallons	Total Base Liability	Maximum Liability	Proposed Liability
1	4 days	22,000	\$40,000	\$31,680
2	1 days	\$5,500	\$10,000	\$6,600
3	2 days	\$11,000	\$20,000	14,520
4	4 days	\$22,000	\$40,000	\$31,680
5	382 days	\$99,00	\$3,820,000	\$118,800
6	10 days	\$55,000	\$100,000	\$66,000
TOTAL			\$4,030,000	\$269,280

Note: Steps 6 through 10 apply to all violations, so they are performed only once.

Step 6. Ability to Pay and Ability to Continue in Business: No Adjustment

If the Regional Board has sufficient financial information necessary to assess a discharger's ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on a discharger's ability to continue in business, the Total Base Liability Amount may be adjusted to address the ability to pay or to continue in business.

GKGF, LLC owns the Sunhill Shopping Center, the site of this construction project, located on Los Angeles County Assessor Parcel Number (APN) 2547-027-005. The property is valued at \$12,954,000. Based on this information, GKGF, LLC likely has the ability to pay the penalty and remain in business.

Step 7. Economic Benefit: \$10,489

The Enforcement Policy provides that the economic benefit of noncompliance should be calculated using the United States Environmental Protection Agency's (US EPA) Economic Benefit Model (BEN)² penalty and financial modeling program unless it is demonstrated that an alternative method of calculating the economic benefit is more appropriate. Economic benefit was calculated using BEN Version 5.8.0. For this case, BEN was determined to be the appropriate method. Using standard economic principals such as time-value of money and tax deductibility of compliance costs, BEN calculates a discharger's economic benefit derived from delaying or avoiding compliance with environmental statutes.

In this case, the Discharger failed to implement best management practices as required under the Construction General Permit, including adequate perimeter controls, good site management for construction materials, protection of storm drain inlets, and good housekeeping measures for waste

² US EPA Economic Benefit Model, or BEN. At the time this document was prepared, BEN was available for download at <http://www2.epa.gov/enforcement/penalty-and-financial-models>.

management throughout the site from July 2018 through August 2018. The Discharger's consultants developed a site-specific Storm Water Pollution Prevention Plan (SWPPP); however, the Discharger failed to ensure the BMPs listed in the SWPPP were being implemented at the site. In addition, the actions taken by the Discharger were not consistent with standard industry practices described in the California Stormwater Quality Association's to adequately prevent sediment loss. As a result, the Discharger avoided and/or delayed significant costs associated with the implementation of BMPs over that period.

The Prosecution Team reviewed the site conditions via inspection by Regional Board staff and CASQA standard practices to identify compliance actions that would have mitigated the alleged violations. In summary, the Prosecution Team determined that linear controls and erosion controls could have been installed along the perimeter of the site, at the stockpiles, and at all storm water inlets within the site. In total, staff estimates that BMP implementation would have cost the Discharger approximately \$20,867.

For the compliance actions described above, the noncompliance date is assumed, for conservative purposes, to be July 17, 2018 – the date of the first Regional Board Inspection. Because the Discharger eventually did implement the required BMPs around the site, the compliance action is considered delayed. For the compliance date, the Prosecution Team used the date on which the Prosecution Team confirmed the violation was resolved, through either staff's documentation that the required BMPs were implemented at a subsequent site inspection or through the information provided in the Dischargers September 19, 2018 response to the Notice of Violation. Changes to this date will affect the economic benefit calculation.

Additionally, the discharger failed to designate a QSP from July 31, 2017, through August 16, 2018. The Discharger failed to ensure that BMPs listed the SWPPP were being implemented at the site by a QSP, and that all inspections, maintenance repairs and sampling activities at the location were performed or supervised by a QSP. Additionally, the Discharger failed to have a QSP prepare a Rain Event Action Plan for ten (10) likely precipitation events between July 31, 2017 and August 16, 2018. As a result, the Discharger avoided labor costs over that period.

The Prosecution Team reviewed the labor requirements for QSPs for construction sites. In total, staff estimates that QSP labor would cost the Discharger approximately \$17,100.

For all compliance actions described above, the noncompliance date is assumed, to be July 31, 2017 – the start of date of construction. Because the Discharger did not hire a QSP and perform a site inspection until August 17, 2018, the labor costs are considered avoided. Changes to this date will affect the economic benefit calculation.

Based on information above, in addition to standard accounting assumptions, the BEN model was used to determine the economic benefit of the avoided and delayed expenditures described above to be approximately \$10,489.

Step 8. Other Factors as Justice May Require

If the Regional Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for “other factors as justice may require.” Express finding must be made to justify the adjustment. Circumstances warranting an adjustment under this step include the cost of investigation and enforcement.

Staff Cost: \$ 7,202

The Regional Board has incurred \$7,202 in Staff costs associated with the investigation, preparation, and enforcement of the violation. This represents approximately 76.25 hours of Staff time devoted to inspecting the Site, meetings and communications, and drafting the enforcement documents.

Step 9. Maximum and Minimum Liability Amounts

The Enforcement Policy directs the Regional Board to consider maximum and minimum liability amounts set forth in the applicable statutes.

a. **Statutory Maximum under Water Code section 13385(c): \$4,030,000**

The statutory maximum for Violation 1 is \$10,000 per day. The Regional Board calculates that the violation occurred for 4 days. Therefore, the statutory maximum for Violation 1 is \$40,000.

The statutory maximum for Violation 2 is \$10,000 per day. The Regional Board calculates that the violation occurred for 1 day. Therefore, the statutory maximum for Violation 2 is \$10,000.

The statutory maximum for Violation 3 is \$10,000 per day. The Regional Board calculates that the violation occurred for 2 days. Therefore, the statutory maximum for Violation 3 is \$20,000.

The statutory maximum for Violation 4 is \$10,000 per day. The Regional Board calculates that the violation occurred for 4 days. Therefore, the statutory maximum for Violation 4 is \$40,000.

The statutory maximum for Violation 5 is \$10,000 per day. The Regional Board calculates that the violation occurred for 382 days. Therefore, the statutory maximum for Violation 5 is \$3,820,000.

The statutory maximum for Violation 6 is \$10,000 per day. The Regional Board calculates that the violation occurred for 10 days. Therefore, the statutory maximum for Violation 6 is \$100,000.

- b. Mandatory Minimum required under the Enforcement Policy: The minimum liability for a discretionary penalty is equal to the economic benefit of noncompliance plus 10%. Using an economic benefit of \$10,489, the mandatory minimum liability amount is \$11,537.

Step 10. Final Liability Amount: \$ 276,482

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts were within the statutory minimum and maximum amounts. The final liability amount was calculated by adding the Total Base Liability for the violations with the Staff cost accrued by the Regional Board associated with the investigation, preparation, and enforcement of the violations. Therefore, the proposed final liability amount is \$276,482.