

LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD

In the Matter of:

ORDER R4-2021-0113 (Proposed)

GLC El Monte LLC

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

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 Water Board), on behalf of the Regional Water Board Prosecution Team (Prosecution Team), and GLC El Monte LLC (Discharger) (collectively known as the Parties) and is presented to the Regional Water 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. The Discharger owns property located at 10150 Lower Azusa Road (also known as 4200-4300 Shirley Avenue), in El Monte, California (Site), having APNs: 8577-007-022; -023 and -021.
3. On September 10, 2018, the Discharger 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 (General 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 September 13, 2018. 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 General Permit, Water Code section 13376, and Clean Water Act section 301 by discharging sediment-laden stormwater to a water of the United States, and violated the General Permit by failing to implement best management practices (BMPs), as described in Attachment A, herein incorporated by reference.
5. Water Code section 13385 provides that any person who violates the General Permit, Water Code section 13376, and/or Clean Water Act section 301 is subject to administrative civil liability of up to ten thousand dollars (\$10,000) for each day the violation occurs. (Wat. Code, § 13385(a)(1), (a)(2), (a)(5), (c).)

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 Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.
7. Pursuant to the State Water Board's 2010 Water Quality Enforcement Policy section VI.B. (Settlement Considerations), the Prosecution Team agreed during settlement negotiations to reduce the administrative civil liability amount contained in the penalty methodology included as Attachment A in consideration of hearing and/or litigation risks.
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 the Discharger in the amount of two hundred eight thousand four hundred and sixty-eight dollars (\$208,468).
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 Water 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 eight thousand four hundred and sixty-eight dollars (\$208,468)** by the Regional Water Board to resolve the violations specifically alleged herein. No later than 30 days after the Regional Water Board, or its delegee, signs this Order, the Discharger shall submit a check for **two hundred eight thousand four hundred and sixty-eight dollars (\$208,468)** 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 Board, Office of Enforcement (Kailyn.Ellison@waterboards.ca.gov) and the Regional Water Board (Pavlova.Vitale@waterboards.ca.gov). The check may be tendered by and/or drawn on the account of Oltmans Construction Co. (or any of its affiliates); in which event the Order No. set forth above shall be noted on the check, and such check, duly honored, shall be fully credited in satisfaction of Discharger's payment obligations under this Stipulated Order.

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 Water 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:

Alan Cockburn
Vice President
GLC EI Monte LLC
18201 Von Karman Avenue, Suite 1170
Irvine, CA 92612
(949) 407-0100
Alan.Cockburn@goodman.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. **Matters Addressed by This Stipulated Order:** Upon the Regional Water Board's or its delegee's adoption, this Stipulated Order represents a final and binding resolution and settlement of the violations alleged above and in Attachment A, as of the effective date of this Stipulated Order. The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadline specified in section III, paragraph 11.
16. **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). Neither this Stipulated Order nor any of its provisions shall be offered or received in evidence in any action or proceeding or otherwise used as an admission or concession in any action or proceeding, to the merits of the alleged violations set out herein and Attachment A hereto, or the liability of any nature on the part of Discharger except to enforce its express terms.
17. **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 Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water 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 Water Board, or its delegee. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
18. **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.
19. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Regional Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Team or Regional Water 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 Water 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.

20. **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 Water Board or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
21. **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.
22. **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 Discharger and Regional Water Board or its delegee.
23. **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.
24. **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 Water Board as proposed. In the event that this Stipulated Order does not take effect because it is not approved by the Regional Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that the Prosecution Team may proceed to a contested evidentiary hearing before the Regional Water 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 Water 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 Water 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.

25. **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 Water Board, hereby waives its right to a hearing before the Regional Water Board prior to the Stipulated Order's adoption. However, should the settlement not be adopted, and should the matter proceed to the Regional Water Board or State Water Board for hearing, the Discharger does not waive the right to a hearing before an order is imposed.

26. **Waiver of Right to Petition:** Except in the instance where the settlement is not adopted by the Regional Water Board, the Discharger hereby waives the right to petition the Regional Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waives the right, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

27. **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. The Regional Water Board hereby covenants and agrees not to sue or take any civil, judicial, or administrative action, or pursue any claim, enter any order, or make any demand against the Discharger under the Water Code, Clean Water Act, or pursuant to other applicable laws, regulations, or civil or judicial or administrative authorities, with respect to the matters described in section II, paragraph 4 above and Attachment A hereto, provided that the Regional Water Board reserves the right to pursue all rights that may exist with respect to the Discharger's material failure to satisfy any obligation specified in this Stipulated Order within the time allowed for the same.

28. **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.

29. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Stipulated Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Regional Water 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.

30. **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.
31. **Severability:** This Stipulated Order is severable; should any provision be found invalid, the remainder shall remain in full force and effect.
32. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board, or its delegee, enters the Order incorporating the terms of this Stipulated Order.
33. **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.

IT IS SO STIPULATED.

Settlement Agreement and Stipulation for Entry of Administrative Civil Liability
Order R4-2021-0113
GLC El Monte LLC

Los Angeles Regional Water Quality Control Board Prosecution Team

By: Original Signed by Hugh Marley
Hugh Marley
Assistant Executive Officer

October 15, 2021
Date

Settlement Agreement and Stipulation for Entry of Administrative Civil Liability
Order R4-2021-0113
GLC El Monte LLC

GLC El Monte LLC

By: Original Signed by Alan Cockburn
Alan Cockburn
Vice President

October 7, 2021
Date

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 Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, 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 Water 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 Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order R4-2021-0113

Attachment A
Specific Factors Considered Settlement Agreement and Stipulation for Entry of
Administrative Civil Liability Order No. R4-2021-0113
GLC El Monte LLC
WDID 4 19C384563

GLC El Monte LLC (Discharger) is alleged to have violated the requirements of State Water Resources Control Board Order No. 2009-0009-DWQ, as amended by Order No. 2010-0014-DWQ and 2012-0006-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (General Permit), California Water Code (Water Code) section 13376, and Clean Water Act section 301 while conducting construction activities on the GLC El Monte LLC project located at 10150 Lower Azusa Road in El Monte, California (Site).

The Los Angeles Water Quality Control Board (Regional Water Board) Prosecution Team derived the proposed administrative civil liability for these alleged violations in accordance with the factors provided in Water Code section 13385, subdivision (e) and the State Water Resources Control Board's (State Water Board) 2017 Water Quality Enforcement Policy (Enforcement Policy).

Violation 1: Unauthorized discharges of sediment-laden stormwater

The Discharger violated General Permit Sections III.B. and V.A.2; General Permit, Attachment C Section A.1.b; Water Code section 13376; and Clean Water Act section 301 (33 U.S.C. § 1311) by discharging sediment-laden stormwater to Eaton Wash, a water of the state and United States, on February 11 and February 12, 2019.

General Permit Section III.B prohibits discharges of stormwater associated with construction activity except for the stormwater and non-stormwater discharges specifically authorized by the General Permit. Discharges associated with construction activity are authorized only if dischargers comply with all requirements, provisions, limitations, and prohibitions in the General Permit, including implementation of sediment and erosion control best management practices (BMPs). General Permit Section V.A.2. and General Permit, Attachment C Section A.1.b., require the Discharger to minimize or prevent pollutants in stormwater discharges and authorized non-stormwater discharges using controls, structures, and management practices that achieve best available technology economically achievable (BAT) for toxic and non-conventional pollutants and best conventional pollutant control technology (BCT) for conventional pollutants.

On February 11, 2019, Regional Water Board staff observed dewatering of sediment and dirt from the Site to a storm drain located on the southeast side of the Site boundary. Regional Water Board staff documented the unauthorized discharge with photographs and video. Regional Water Board staff observed turbid water actively being pumped from the southeast corner of the Site, through a vegetated swale without BMPs, and into a stormwater drainage culvert. On February 12, 2019, Regional Water Board staff

conducted an inspection at the Site and observed the same type of discharge from the same location as the discharge observed on February 11, 2019. Regional Water Board staff documented murky, turbid water pooled in some areas and actively flowing along a vegetated swale that directed flow to the same stormwater drainage culvert that was observed on February 11, 2019. There were insufficient and ineffective BMPs in place, that failed to achieve BAT and BCT, which resulted in the unauthorized discharge of sediment-laden stormwater on February 11 and 12, 2019.

The Site encountered several days of rainfall prior to the sediment-laden discharges on February 11 and 12, 2019, which were documented by on-site staff and by nearby National Oceanic and Atmospheric Association (NOAA) rain stations. On March 29, 2019, the Discharger emailed Regional Water Board staff a statement that dewatering activities on February 11 and 12, 2019 were a result of accumulated rain, approximately 5.5 inches, from a series of storms at the Site. The Discharger also provided a Rain Gauge Log Sheet for dates between January 12, 2019 and March 20, 2019; collectively, dates February 3, 4, 5, 9, and 10, 2020 on the log, leading to the dewatering events, reportedly had 2.16 inches of rain.

The NOAA rain gauge station, San Gabriel Fire Department, CA US SUC00047785, located approximately 3.1 miles west of the Site documented 7.98 inches of rain during February of 2019. During February 11, 2019, when Regional Water Board staff observed sediment laden stormwater discharges from the Site, the station reported 0.24 inches of precipitation.

The Discharger did not adequately implement BMPs at the Site throughout the various days of rainfall to prevent the discharge of sediment-laden stormwater from the Site on February 11-12, 2019.

Step 1. Potential for Harm for Discharge Violations

Degree of Toxicity of the Discharge: 2

The evaluation of the degree of toxicity considers the physical, chemical, biological, and/or thermal characteristics of the discharge, waste, fill, or material involved in the violation or violations and the risk of damage the discharge could cause to the receptors or beneficial uses. A score between 0 and 4 is assigned based on a determination of the risk and threat of the discharged material. For this violation, the Prosecution Team assigned a score of 2. A score of 2 is defined as “[d]ischarged material poses a moderate risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material have some level of toxicity or pose a moderate risk or threat to potential receptors).”

A score of 2 was selected because discharges of sediment to surface waters can cloud the receiving water, thereby reducing the amount of sunlight

reaching aquatic plants, clog fish gills, and smothering aquatic habitat and spawning areas. Sediment can also transport other materials such as nutrients, metals, and oils and grease which can cause toxicity to aquatic organisms. Excess sediment in water poses a moderate level of concern to ecosystem health exposure pathways because of the likelihood that the discharged material would harm aquatic life.

Actual Harm or Potential Harm to Beneficial Uses: 3

The evaluation of the actual or potential harm to beneficial uses factor considers the harm to beneficial uses in the affected receiving water body that may result from exposure to the pollutants or contaminants in the discharge, consistent with the statutory factors of the nature, circumstances, extent, and gravity of the violation. The Water Boards may consider actual harm or potential harm to human health, in addition to harm to beneficial uses. The score evaluates direct or indirect actual harm or potential for harm from the violation. The Harm or Potential Harm to beneficial uses ranges between 0 and 5 based on a determination of whether the harm or potential for harm to beneficial uses is negligible (0), minor (1), below moderate (2), moderate (3), above moderate (4), or major (5).

The Site lies within the Los Angeles River Watershed, specifically within the boundaries of Rio Hondo Reach 3 and discharges to Eaton Wash. On February 11 and February 12, 2019, sediment-laden stormwater was discharged from the Site to Eaton Wash, tributary to the Rio Hondo, via a Los Angeles County stormwater drainage culvert located southeast of the Site. Eaton Wash is a water of the State and United States. The existing beneficial use of Eaton Wash, below the Eaton Wash dam, is wildlife habitat, and intermittent beneficial uses are warm freshwater habitat, water contact recreation, and non-contact water recreation, and potential beneficial uses are municipal and domestic supply.

For this violation, the Harm or Potential Harm is characterized as Moderate (3). The Enforcement Policy defines Moderate as impacts that are observed or reasonably expected potential impacts, where harm or potential harm to beneficial uses is moderate and likely to attenuate without appreciable medium or long term acute or chronic effects.

The Discharger failed to implement necessary BMPs to reduce or eliminate sediment in the stormwater discharge. This failure resulted in the discharge of sediment-laden water into Eaton Wash. Excess sediment in water poses a moderate level of concern to beneficial uses. Sediment discharge could harm existing beneficial and intermittent beneficial uses such as warm freshwater habitat, wildlife habitat, water contact and non-contact water recreation. Specifically, discharges of sediment can cloud sunlight into

waters and inhibit growth of aquatic plants. Excessive deposition of sediments can destroy spawning habitat, blanket benthic (bottom dwelling) organisms, and abrade the gills of larval fish. Sediment can also transport other materials such as nutrients, metals, and oil and grease, which can also negatively impact aquatic life. Additionally, sediment discharges are likely to attenuate without appreciable medium or long term acute or chronic effects. Therefore, a score of 3 was assigned for this violation, as excess sediment in the receiving water posed a moderate threat to beneficial uses.

Susceptibility to Cleanup or Abatement: 1

The Susceptibility to Cleanup or Abatement factor is assessed as either 0 or 1. A score of 0 is assigned if the discharger cleans up 50% or more of the discharge within a reasonable amount of time, whereas a score of 1 is appropriate where less than 50% of the discharge is susceptible to cleanup or abatement, or if 50% or more of the discharge is susceptible to cleanup or abatement, but the Discharger failed to clean up 50% or more of the discharge within a reasonable time. For this violation, sediment-laden stormwater was discharged from the Site to Eaton Wash via a stormwater drainage culvert. Because the discharge dispersed and likely dissipated in the watershed, cleanup or abatement of the sediment was not possible. Therefore, a score of 1 was assigned for this violation.

The scores of the factors are added to provide a Potential for Harm score for the violation. Here, the Potential for Harm score is 6.

Step 2. Assessment for Discharge Violations

Deviation from Requirement: Major

The Deviation from Requirement reflects the extent to which the violation deviates from the specific requirement that was violated. The violation is characterized as either a Minor, Moderate, or Major Deviation from Requirement. In this case, the Deviation from Requirement is considered Major because all discharges are prohibited except for stormwater and non-stormwater discharges specifically authorized by the General Permit. Only discharges that have been controlled with BMPs that achieved BAT and BCT are authorized. Because the Discharger did not effectively implement BMPs that achieved BAT and BCT, the discharge rendered the requirements in the General Permit, Water Code section 13376, and Clean Water Act section 301 ineffective in their essential function of protecting water quality.

Per Gallon Assessments: \$101,150

When there is a discharge, the Regional Water Board is to determine the initial liability on a per gallon basis using the Potential for Harm score from Step 1 and the Deviation from Requirement. The Potential for Harm score from Step 1 is 6. The Deviation from Requirement is considered Major. Table 1 of the Enforcement Policy (p. 14) is used to determine a “per gallon factor” for discharge violations based on the total score from Step 1 and the Deviation from Requirement. The per gallon factor is 0.28. The Discharger’s Qualified Stormwater Pollution Prevention Plan Practitioner (QSP) emailed Regional Water Board staff a calculation summary estimating 37,125 gallons of sediment-laden stormwater were discharged.

Water Code section 13385, subdivision (c)(2) provides that liability of up to \$10 per gallon shall apply to volumes of waste discharged but not cleaned up in excess of 1,000 gallons.

The Per Gallon Assessment is calculated as $(0.28) \times (37,125 \text{ gallons} - 1,000 \text{ gallons}) \times (\$10 \text{ per gallon}) = \$101,150$

Per Day Assessments: \$5,600

When there is a discharge, the Regional Water Board is to determine the initial liability on a per day basis using the Potential for Harm score from Step 1 and the Deviation from Requirement. The Potential for Harm score from Step 1 is 6. The Deviation from Requirement is considered Major, as indicated above.

Table 2 of the Enforcement Policy (p. 15) is used to determine a “per day factor” for discharge violations based on the total score from Step 1 and the Deviation from Requirement. The per day factor is 0.28. The discharge occurred for two days on February 11 and 12, 2019. Water Code section 13385, subdivision (c)(1) provides that liability of up to \$10,000 per day shall apply for each day of violation. The Per Day Assessment is calculated as $(0.28) \times (2 \text{ days}) \times (\$10,000 \text{ per day}) = \$5,600$.

Initial Liability: \$106,750

Per Gallon Assessment + Per Day Assessment = $\$101,150 + \$5,600 = \$106,750$

Step 3. Per Day Assessment for Non-Discharge Violations

This factor does not apply to this violation.

Step 4. Adjustment Factors

Culpability: 1.4

The culpability multiplier ranges between 0.75 and 1.5, with a higher multiplier for intentional misconduct and gross negligence, and a lower multiplier for more simple negligence. A multiplier of 1.4 was assigned for this violation because the Discharger failed to implement adequate BMPs and intentionally discharged sediment-laden stormwater from the Site. The Discharger knew of the requirement to implement adequate BMPs as evidenced in the SWPPP that was submitted and certified on August 31, 2018 via the Stormwater Multiple Application and Report Tracking System (SMARTS). SWPPP, Table 3.1 BMP Implementation Schedule identified sediment control BMPs to be implemented during the entirety of the project. BMPs included sediment basins, silt fencing, check dams, and street sweeping. Silt fencing was observed in the southeastern region of the Site but missing along the eastern perimeter and scattered sandbags and check dams were observed along a vegetative swale leading to the stormwater drainage culvert. However, these BMPs were intentionally rendered ineffective by the Discharger when a pump undermining the silt fence was installed to allow for the discharge of sediment-laden stormwater from the Site to the stormwater drainage culvert. Additionally, SWPPP, Section 2.1.3 Existing Drainage stated that the surface flows would be intercepted by inlets then directed to a proposed underground storage and Bio-filtration arrangements located at 5 different locations at the Site. However, this drainage system was not implemented at the Site to aid as a preventative measure for the unauthorized discharge. The Discharger acknowledged that the turbidity of the unauthorized discharge did not have enough time to completely settle before leaving the Project site. The Discharger alleged that all retention areas were at their maximum because of accumulated rainfall from a series of storm events. However, adequate BMP maintenance and implementation prior to the discharge events could have been implemented to prevent accumulation. A reasonable and prudent person would have ensured proper BMP implementation and prevented unauthorized discharges from the Site.

History of Violations: 1.0

Where the discharger has no prior history of violations, this factor should be neutral, or 1.0. Where the discharger has prior violations within the last five years, the Water Boards should use a multiplier of 1.1. Where the discharger has a history of similar or numerous dissimilar violations, the Water Boards should consider adopting a multiplier above 1.1. Since the Discharger does not have a history of violations, a neutral multiplier of 1.0 is appropriate.

Cleanup and Cooperation: 1.0

The cleanup and cooperation multiplier ranges from 0.75 to 1.5, with a 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 multiplier of 1.0 is assigned for this violation. Regional Water Board staff informed the Discharger of the BMP deficiencies and violation during an inspection on February 12, 2019, the second documented date of the unauthorized discharge. On February 15, 2020, with the Discharger emailed Regional Water Board staff, and stated that dewatering operations ceased and BMPs were updated on February 13, 2020. The Discharger stated stormwater would be diverted to one location to let turbidity levels decrease and that on-site training was completed with personnel responsible for BMP implementation. Photographs included in the Discharger's email showcased a silt fence around the southern, southeastern, and southwestern perimeters and visqueen with sandbags as weights to cover loose soil piles along the southern and eastern perimeters. On March 1, 2019, the Regional Water Board issued a Notice of Violation (NOV) formally informing the Discharger of the violation. The NOV required the Discharger to prevent pollutants in stormwater discharges through use of controls and BMPs and to visually inspect and document the discharge of stored or contained stormwater. On March 29, 2019, the Discharger responded to the Regional Water Board's NOV and stated that following the discharge events, remaining stormwater was diverted to on-site basins and would be discharged when measurable suspended solids were below allowable 250 NTUs. The response included photographs of a retention pond in the western area of the Site, visqueen covering sediment piles at the southern area of the Site, and silt fences and gravel bags at the western, eastern, and southern sides of the Site. The response stated BMPs would be continuously implemented using controls, structures, and project updates. The Discharger also stated that when the measurable suspended solids are below allowable discharge limits off-site discharge would be allowed with appropriate oversight and documentation.

Step 5. Total Base Liability

$\$106,750$ (Initial Liability) X 1.4 (Culpability) X 1.0 (History of Violations) X 1.0 (Cleanup and Cooperation) = $\$149,450$

Violations 2-3: Failure to implement effective soil cover for inactive sediment stockpiles

Attachment C, Section B.1.b of the General Permit requires Risk Level 1 dischargers to implement good site management measures for construction materials that could potentially be a threat to water quality if discharged including covering and installing berms around loose stockpiled construction materials that are not actively being used.

Violation 2: During the February 12, 2019 Regional Water Board inspection, Regional Water Board staff observed sediment stockpiles not actively being used without BMPs, prior to a forecasted qualifying rain event. Such loose sediment was located along the southern region of the Site and near a stormwater drainage culvert.

Violation 3: During the May 9, 2019 Regional Water Board inspection, sediment stockpiles not actively being used were observed uncovered and without BMPs in place. The stockpiles were located within the mid and southern regions of the project Site.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to these violations.

Step 2. Assessment for Discharge Violations

This factor does not apply to these violations.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: Moderate

Violations 2 and 3 are characterized as a Moderate Potential for Harm. The Enforcement Policy defines Moderate Potential for Harm as “[t]he characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.”

As mentioned above, stormwater at the Site drains indirectly to Eaton Wash. Discharges of sediment to surface waters can impact existing beneficial uses of Eaton Wash, below the Eaton Wash dam, including wildlife habitat, and intermittent beneficial uses are warm freshwater habitat, and water contact and non-contact water recreation, and potential beneficial uses are municipal and domestic supply.

During the February 12, 2019 and May 9, 2019 Regional Water Board inspections, Regional Water Board staff observed that the Discharger failed to implement covers or berms for loose stockpiled soil that was not actively being used.

The February 12, 2019 inspection occurred before a rain event. The NOAA rain gauge station, San Gabriel Fire Department, CA US SUC00047785, located approximately 3.1 miles west of the Site documented 1.58 inches of rain on February 13, 2019, following the February 12, 2019 Regional Water Board staff inspection. Failure to implement effective soil cover on February

12, 2019 led to an increased likelihood of sediment discharges in stormwater during the rain event on February 13, 2019.

The May 9, 2019 inspection occurred before a forecasted rain event; however, the forecasted rain never materialized. Nonetheless, the failure to covers or berms loose stockpiled soil could have led to discharges of sediment laden stormwater.

Discharges of excess sediment in water poses a moderate level of concern to ecosystem health exposure pathways because of the likelihood that the discharged material would harm aquatic life. Discharges of sediment to surface waters could harm beneficial and intermittent beneficial uses such as warm freshwater habitat, wildlife habitat, and water contact and non-contact water recreation. Specifically, discharges of sediment can cloud sunlight into waters and inhibit growth of aquatic plants. Excessive deposition of sediments can destroy spawning habitat, blanket benthic (bottom dwelling) organisms, and abrade the gills of larval fish. Sediment can also transport other materials such as nutrients, metals, and oil and grease, which can also negatively impact aquatic life. Additionally, sediment discharges are likely to attenuate without appreciable medium or long term acute or chronic effects. Therefore, the violations were assigned a score of moderate because loose sediment stockpiles without BMPs posed a substantial threat to beneficial uses.

Deviation from Requirement: Major

Violations 2 and 3 are characterized as a Major Deviation from Requirement. The Enforcement Policy defines a Major Deviation from Requirement as “[t]he requirement has been rendered ineffective (e.g., the requirement is rendered ineffective in its essential functions).” The Discharger failed to implement effective soil cover to prevent potential discharge of construction materials, including sediment, to stormwater.

The Discharger failed to implement effective soil cover controls at the Site necessary to prevent potential discharges of sediment. During the February 12, 2019 Regional Water Board staff inspections, sediment stockpiles that were not actively being used and did not have BMPs for coverage or stabilization. The Discharger continued not have BMPs to cover or berm loose stockpiles during the May 9, 2019 Regional Water Board staff inspection. Loose stockpiles were in proximity of the southern perimeter fence of the Site. The Discharger rendered the requirement ineffective in one of its essential functions of preventing discharges of sediment. Therefore, the Deviation from Requirement for these violations is characterized as Major.

Per Day Factor: 0.55

In accordance with Table 3 of the Enforcement Policy, the per day factor for Violations 2 and 3 is 0.55.

Initial Liability Amount: \$5,500

The Initial Liability Amount is the (per day factor) x (number of days of violation) x (per day statutory maximum liability).

For Violations 2 and 3, in accordance with Table 3, the per day factor is 0.55, days of the violation is 1, and the per day statutory maximum liability is \$10,000 under Water Code section 13385, subdivision (c).

Initial Liability Amount = $0.55 \times 1 \text{ day} \times \$10,000/\text{day} = \$5,500$

Step 4. Adjustment Factors

Culpability:

The culpability multiplier ranges between 0.75 and 1.5, with a higher multiplier for intentional misconduct and gross negligence, and a lower multiplier for more simple negligence.

Violation 2: 1.2

A multiplier of 1.2 is assigned for this violation because the Discharger knew of the requirement as evidenced by its SWPPP that was submitted and certified on SMARTS on August 31, 2018. The SWPPP, 3.3.2 Materials Management and Waste Management referenced the requirements of Attachment C, Section B to stabilize areas not actively being used and provided BMPs to fulfill the requirement, such as stockpile management. The SWPPP also attached a copy of the permit, which includes the requirements to address loose construction materials, including sediment, at the Site. The Discharger failed to have the necessary oversight and accountability measures in place to ensure effectiveness that is expected of a reasonably prudent person who applies for coverage under the General Permit.

Violation 3: 1.3

A multiplier of 1.3 is assigned for this violation because the Discharger knew of the requirement based on the project's SWPPP and prior notification by the Regional Water Board. On February 12, 2019, Regional Water Board staff conducted an inspection and informed the Discharger that soil cover was required for stockpiles at an area not actively

being used of the Site. Regional Water Board staff informed the Site's Superintendent of the BMP violation during the inspection. The Regional Water Board also notified the Discharger of the prior violation by issuing a NOV on March 1, 2019. The Discharger responded to the NOV on March 9, 2019, by providing corrective actions and photographs of covered stockpiles at the southern region of the Site. However, the same type of violation was observed during the Regional Water Board inspection on May 9, 2019 uncovered and not stabilized sediment stockpiles were observed at the mid and southern areas of the Site. The Discharger was previously informed of the requirement, but it failed to have the necessary oversight and accountability measures in place to ensure effectiveness that is expected of a reasonably prudent person who applies for coverage under the General Permit.

History of Violations: 1.0

Where the discharger has no prior history of violations, this factor should be neutral, or 1.0. Where the discharger has prior violations within the last five years, the Water Boards should use a multiplier of 1.1. Where the discharger has a history of similar or numerous dissimilar violations, the Water Boards should consider adopting a multiplier above 1.1. Since the Discharger does not have a history of violations, a neutral multiplier of 1.0 was assigned for Violations 2 and 3.

Cleanup and Cooperation:

The cleanup and cooperation multiplier ranges from 0.75 to 1.5, with a lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where there is not.

Violation 2: 1.1

A multiplier of 1.1 is assigned for this violation. Following the Regional Water Board's February 12, 2019 inspection, the Discharger provided photographs of covered stockpiles in the southern area of the Site on February 15, 2019. On March 29, 2019, in response to an NOV the Discharger stated BMPs would be maintained and included photographs that also showcased covered stockpiles. However, the BMP deficiency was observed during the May 9, 2019 Regional Water Board staff inspection.

Violation 3: 1.0

A multiplier of 1.0 is assigned for this violation. On May 13, 2019, following the Regional Water Board's May 9, 2019 inspection, the Discharger emailed Regional Water Board staff photographs of stockpiles with dyed glue that

was applied as a stabilization measure. Such response was considered sufficient by Regional Water Board staff to satisfy the BMP deficiency.

Step 5. Total Base Liability

Violation 2: \$5,500 (Initial Liability Amount) x 1.2 (Culpability) x 1.0 (History of Violations) x 1.1 (Cleanup and Cooperation) = \$7,260

Violation 3: \$5,500 (Initial Liability Amount) x 1.3 (Culpability) x 1.0 (History of Violations) x 1.0 (Cleanup and Cooperation) = \$7,150

Violations 4-5: Failure to implement effective perimeter sediment controls

Attachment C, Section E.1 of the General Permit requires Risk Level 1 dischargers to establish and maintain effective perimeter controls to sufficiently control erosion and sediment discharges from the Site.

Violation 4: On February 11, 2019 Regional Water Board staff photographed a pump that undermined a silt fence and layers of sandbags at the southeast perimeter of the Site. During the February 12, 2019 Regional Water Board staff inspection, an ineffective silt fence was observed in some areas of the eastern perimeter with other areas along the eastern perimeter missing perimeter sediment controls. Regional Water Board staff observed the ineffective perimeter sediment controls contributed to ponded and flowing turbid stormwater at a vegetated swale at the southeastern area of the Site, leading to a stormwater drainage culvert. Failure to install perimeter sediment controls at the eastern area of the Site contributed to a sediment laden stormwater discharge. Regional Water Board staff observed no perimeter controls in place in areas along the southern perimeter where loose sediment was stockpiled.

Violation 5: During the May 9, 2019 Regional Water Board staff inspection, there were missing perimeter sediment controls at the northwestern perimeter, along the sidewalk with loose sediment. Regional Water Board staff observed loose sediment along the southwestern perimeter was unprotected by a chain linked fence with windscreen, typically used as a wind erosion control. Sediment accumulation and turbid water was observed on Shirley Avenue, along the western perimeter. A broken silt fence was installed against the chain linked fence, facing the project Site. An inadequately installed silt fence was also observed at a cul-de-sac abandoned entrance at the southwestern perimeter. Failures to implement effective perimeter sediment controls along the western perimeter resulted in sediment discharge onto Shirley Avenue. Regional Water Board staff observed an inadequate silt fence along the southeastern perimeter near a large sediment stockpile. Uncovered stockpiles, identified in Violation 3, were also observed over-topping the broken silt fence. Additionally, a large sediment stockpile was observed over-topping a broken silt fence along the southern perimeter.

Step 1. Assessment for Discharge Violations

This factor does not apply to these violations.

Step 2. Per Day Assessment for Non-Discharge Violations

This factor does not apply to these violations.

Step 3. Potential for Harm for Non-Discharge Violations

Potential for Harm: Moderate

Violations 4 and 5 are characterized as a Moderate Potential for Harm. The Enforcement Policy defines Moderate Potential for Harm as “[t]he characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.”

As mentioned above, stormwater at the Site drains indirectly to Eaton Wash. Discharges of sediment to surface waters can impact existing beneficial uses of Eaton Wash, below the Eaton Wash dam, including wildlife habitat, and intermittent beneficial uses are warm freshwater habitat, and water contact and non-contact water recreation, and potential beneficial uses are municipal and domestic supply. During Regional Water Board inspections on February 12, 2019 and May 9, 2019, Regional Water Board staff observed missing and ineffective perimeter sediment control BMPs throughout the Site. On February 12, 2019, BMP deficiencies were observed by Regional Water Board staff at the eastern and southern perimeters near areas with loose sediment stockpiles. These stockpiles had the potential to be discharged to a stormwater drainage culvert at the southeastern area of the Site during precipitation events. Failures to implement effective perimeter sediment controls also contributed to sediment discharges at the southeastern area of the facility to a nearby stormwater drainage culvert on February 11-12, 2019. On May 9, 2019, sediment was observed tracked onto Shirley Avenue and turbid water was observed along the sidewalk at the western side. Such discharge had the potential to come in contact with stormwater during precipitation events and reach surface waters.

Discharges of excess sediment in water poses a moderate level of concern to ecosystem health exposure pathways because of the likelihood that the discharged material would harm aquatic life. Discharges of sediment to surface waters could harm beneficial and intermittent beneficial uses such as warm freshwater habitat, wildlife habitat, and water contact and non-

contact water recreation. Specifically, discharges of sediment can cloud sunlight into waters and inhibit growth of aquatic plants. Excessive deposition of sediments can destroy spawning habitat, blanket benthic (bottom dwelling) organisms, and abrade the gills of larval fish. Sediment can also transport other materials such as nutrients, metals, and oil and grease, which can also negatively impact aquatic life. Additionally, sediment discharges are likely to attenuate without appreciable medium or long term acute or chronic effects. Therefore, the violations were assigned a score of moderate because ineffective perimeter sediment controls at the Site posed a substantial threat to beneficial uses.

Deviation from Requirement: Major

Violations 4 and 5 are characterized as a Major Deviation from Requirement. The Enforcement Policy defines a Major Deviation from Requirement as “[t]he requirement has been rendered ineffective (e.g., the requirement is rendered ineffective in its essential functions).” The Discharger failed to implement effective perimeter sediment controls to prevent potential discharge of sediment to stormwater.

The Discharger failed to implement effective perimeter sediment controls at the Site necessary to prevent potential discharges of sediment. During the February 12, 2019 Regional Water Board staff inspections, missing or ineffective perimeter sediment controls at the eastern and western perimeter and a cul-de-sac entrance without perimeter sediment controls. The Discharger continued to not install perimeter sediment control BMPs at the eastern, western, and southern perimeters, as observed during the May 9, 2019 Regional Water Board staff inspection. The Discharger rendered the requirement ineffective in one of its essential functions of preventing discharges of sediment. Therefore, the Deviation from Requirement for these violations is characterized as Major.

Per Day Factor: 0.55

In accordance with Table 3 of the Enforcement Policy, the per day factor for Violations 4 and 5 is 0.55.

Initial Liability Amount: \$5,500

The Initial Liability Amount is the (per day factor) x (number of days of violation) x (per day statutory maximum liability).

For Violations 4 and 5, in accordance with Table 3, the per day factor is 0.55, days of the violation is 1, and the per day statutory maximum liability is \$10,000 under Water Code section 13385, subdivision (c).

Initial Liability Amount = $0.55 \times 1 \text{ day} \times \$10,000/\text{day} = \$5,500$

Step 4. Adjustment Factors

Culpability:

Violation 4: 1.2

A multiplier of 1.2 is assigned for this violation because the Discharger knew of the requirement as evidenced by its SWPPP that was submitted and certified on SMARTS on August 31, 2018. The SWPPP referenced the requirements of Attachment C, Section E.1 to establish and maintain effective perimeter sediment controls. BMPs identified in SWPPP, Section 3.2.2 Sediment Control, to comply with such requirement were installation of silt fences, gravel bag berms, and check dams. The SWPPP also attached a copy of the permit, which includes the requirements to address perimeter sediment controls.

The Discharger knew of the requirement as evidenced by having some perimeter sediment controls in place during the February 12, 2019 Regional Water Board inspection, but it failed to ensure their effectiveness as expected of a reasonably prudent person who applies for coverage under the General Permit.

Violation 5: 1.3

A multiplier of 1.3 is assigned for this violation because the Discharger knew of the requirement based on the project's SWPPP and prior notification by the Regional Water Board. Following the February 12, 2019 Regional Water Board staff inspection, the Discharger emailed Regional Water Board staff on February 15, 2019 with photographs of silt fences installed at perimeters of the Site and a training log for February 13, 2019 that stated sediment control and tracking control was discussed with Site personnel. Furthermore, on March 1, 2019, the Regional Water Board issued an NOV informing the Discharger of the violation based on the February 12, 2019 Regional Water Board inspection. The Discharger responded to the NOV on March 29, 2019, and provided corrective actions including installation of silt fences and gravel bags. However, during the Regional Water Board inspection on May 9, 2019, perimeter sediment controls were still missing throughout the eastern, western, and southern boundaries of the Site.

History of Violations: 1.0

Since the Discharger does not have a history of violations, a neutral multiplier of 1.0 was assigned for Violations 4 and 5.

Cleanup and Cooperation:

Violation 4: 1.1

A multiplier of 1.1 is assigned for this violation because Regional Water Board staff continued to observe similar violations after the initial observation. On February 15, 2019, following the Regional Water Board's February inspection, the Discharger emailed Regional Water Board staff photographs of silt fences at the southern and eastern perimeter and at a cul-de-sac at the southwestern perimeter. On March 29, 2019, in response to an NOV the Discharger stated BMPs were either re-installed or updated. The response included photographs of silt fences and gravel bags at the eastern, western, and southern boundaries of the Site. However, the BMP deficiency was observed during the May 9, 2019 Regional Water Board staff inspection.

Violation 5: 1.0

A multiplier of 1.0 is assigned for this violation. On May 13, 2019, following the Regional Water Board's May inspection, the Discharger emailed Regional Water Board staff photographs of silt fences at the southern and eastern perimeter and at a cul-de-sac at the southwestern perimeter. Photographs of straw wattles installed at the western perimeter were also included. Such response was considered sufficient by Regional Water Board staff to satisfy the BMP deficiency.

Step 5. Total Base Liability

Violation 4: \$5,500 (Initial Liability Amount) x 1.2 (Culpability) x 1.0 (History of Violations) x 1.1 (Cleanup and Cooperation) = \$7,260

Violation 5: \$11,000 (Initial Liability Amount) x 1.3 (Culpability) x 1.0 (History of Violations) x 1.0 (Cleanup and Cooperation) = \$7,150

Violation 6: Failure to stabilize construction entrances and exits at the Site

Attachment C, Section E.1 of the General Permit requires dischargers to stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site. Attachment C, Section B.1.e of the General Permit requires Risk Level 1

dischargers to implement BMPs to prevent the off-site tracking of loose construction and landscape materials.

During the May 9, 2019 Regional Water Board staff inspection, rumble plates at two construction entrances and exits at the western perimeter were filled with accumulated sediment and rendered ineffective. Additional construction entrances and exits at the western perimeter were not stabilized with BMPs. Absence of, and inadequate installation of, BMPs caused sediment track-out onto Shirley Avenue.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to this violation.

Step 2. Assessment for Discharge Violations

This factor does not apply to this violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: Moderate

Violation 6 is characterized as a Moderate Potential for Harm. The Enforcement Policy defines Moderate Potential for Harm as “[t]he characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.”

As mentioned above, the Site drains indirectly to Eaton Wash. Discharges of sediment to surface waters can impact existing beneficial uses of Eaton Wash, below the Eaton Wash dam, including wildlife habitat, and intermittent beneficial uses are warm freshwater habitat, and water contact and non-contact water recreation, and potential beneficial uses are municipal and domestic supply. During the Regional Water Board’s May 9, 2019 inspection, missing and ineffective sediment control BMPs were observed at two construction entrances and exits at the western perimeter; as a result, sediment was tracked onto Shirley Avenue. Discharges of sediment to surface waters can cloud the receiving water, thereby reducing the amount of sunlight reaching aquatic plants, clog fish gills, smother aquatic habitat and spawning areas. Sediment can also transport other materials such as nutrients, metals, and oils and grease which can cause toxicity to aquatic organisms. Excess sediment in water poses a moderate level of concern to ecosystem health exposure pathways because of the likelihood that the discharged material would harm aquatic life. Therefore, the Potential for Harm for this violation is characterized as Moderate.

Deviation from Requirement: Major

Violation 6 is characterized as a Major Deviation from Requirement. The Enforcement policy defines a Major Deviation from Requirement as “[t]he requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).” The Discharger failed to stabilize the construction entrance and exit and to install off-site tracking controls of loose construction materials, as necessary to prevent potential discharge of construction materials to stormwater.

During the May 9, 2019 Regional Water Board staff inspections, sediment control BMPs were not installed to stabilize construction entrances at the western side of the Site. The failure to install BMPs resulted in sediment track-out and accumulation onto Shirley Avenue. The Discharger disregarded the purpose of the requirement to sufficiently control potential sediment discharges from the Site that could harm beneficial uses of receiving waters. Therefore, the Deviation from Requirement is characterized as Major.

Per Day Factor: 0.55

In accordance with Table 3 of the Enforcement Policy, the per day factor for Violation 6 is 0.55.

Initial Liability Amount: \$5,500

The Initial Liability Amount is the (per day factor) x (number of days of violation) x (per day statutory maximum liability).

For Violation 6, in accordance with Table 3, the per day factor is 0.55, days of the violation is 1, and the per day statutory maximum liability is \$10,000 under Water Code section 13385, subdivision (c).

Initial Liability Amount = $0.55 \times 1 \text{ day} \times \$10,000/\text{day} = \$5,500$

Step 4. Adjustment Factors

Culpability: 1.2

A multiplier of 1.2 is assigned for this violation because the Discharger knew of the requirement as evidenced by its SWPPP that was submitted and certified on SMARTS on August 31, 2018. The SWPPP, Section 3.2.2 Sediment Control referenced the implementation of CASQA BMP Stabilized Construction/Exit TC-1 to comply with such requirement. The SWPPP also

attached a copy of the permit, which includes the requirements to address sediment controls.

On March 29, 2019, the Discharger emailed a training log to Regional Water Board Staff for February 13, 2019 that stated sediment control and tracking control were discussed with Site personnel. However, during the Regional Water Board inspection on May 9, 2019 construction entrances and exits were not stabilized effectively. The Discharger knew of the requirement as evidenced by having some sediment controls, such as rumble plates at both the northwestern and southwestern entrances and exits of the Site, during the May 9, 2019 Regional Water Board inspection, but it failed to ensure their effectiveness as expected of a reasonably prudent person who applies for coverage under the General Permit.

History of Violations: 1.0

Since the Discharger does not have a history of violations, a neutral multiplier of 1.0 was assigned.

Cleanup and Cooperation: 1.0

A multiplier of 1.0 is assigned for this violation. On May 13, 2019, following the Regional Water Board's May inspection, the Discharger emailed Regional Water Board staff photographs of clean rumble plates at a construction entrance/exit and of Shirley Avenue. The response also stated that construction entrances and Shirley Avenue were swept. Such response was considered sufficient by Regional Water Board staff to satisfy the BMP deficiency.

Step 5. Total Base Liability

$\$5,500$ (Initial Liability Amount) x 1.2 (Culpability) x 1.0 (History of Violations) x 1.0 (Cleanup and Cooperation) = $\$6,600$

Violation 7: Failure to effectively manage run-on and run-off at the Site

Attachment C, Section F of the General Permit requires Risk Level 1 dischargers to effectively manage all run-on, all run-off within the site and all run-off that discharges off the site. Run-on from offsite shall be directed away from all disturbed areas or shall collectively be in compliance with the effluent limitations in this General Permit.

During the February 12, 2019 Regional Water Board inspection, run-on and runoff controls intended to direct flow away from disturbed areas of the site were not in place and caused erosion. Regional Water Board staff observed major erosion of graded areas at the east side of the project Site and concentrated flows of stormwater, without BMPs,

that undermined perimeter controls, such as a silt fence and sandbags. Additional erosion was observed at the southeast area of the Site, along the east bank of a vegetated swale where concentrated flows of turbid stormwater were directed to a stormwater drainage culvert. Run-on and run-off measures were not effectively in place to divert stormwater flow during rain and discharge events between February 11 and 12, 2019.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to this violation.

Step 2. Assessment for Discharge Violations

This factor does not apply to this violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: Moderate

Violation 7 is characterized as a Moderate Potential for Harm. The Enforcement Policy defines Moderate Potential for Harm as “[t]he characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.”

As mentioned above, stormwater at the Site drains indirectly to Eaton Wash. Discharges of sediment to surface waters can impact existing beneficial uses of Eaton Wash, below the Eaton Wash dam, including wildlife habitat, and intermittent beneficial uses are warm freshwater habitat, and water contact and non-contact water recreation, and potential beneficial uses are municipal and domestic supply. During the February 12, 2019 Regional Water Board inspection, Regional Water Board staff observed that the Discharger failed to implement necessary run-on and runoff control measures. Failure to install necessary control measures resulted in major erosion at the Site that undermined perimeter controls and in concentrated flows of sediment-laden stormwater off-site. Discharges of excess sediment in water poses a moderate level of concern to ecosystem health exposure pathways because of the likelihood that the discharged material would harm aquatic life. Discharges of sediment to surface waters could harm beneficial and intermittent beneficial uses such as warm freshwater habitat, wildlife habitat and water contact and non-contact water recreation. Specifically, discharges of sediment can cloud sunlight into waters and inhibit growth of aquatic plants. Excessive deposition of sediments can destroy spawning habitat, blanket benthic (bottom dwelling) organisms, and abrade the gills of larval fish. Sediment can also transport other materials such as nutrients,

metals, and oil and grease, which can also negatively impact aquatic life. Additionally, sediment discharges are likely to attenuate without appreciable medium or long term acute or chronic effects. Therefore, the Prosecution Team assigned a score of moderate for Violation 7 as it posed a substantial threat to beneficial uses.

Deviation from Requirement: Major

Violation 7 is characterized as a Major Deviation from Requirement. The Enforcement Policy defines a Major Deviation from Requirement as “[t]he requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).” The Discharger failed to implement effective run-on and run-off controls to prevent potential discharge of construction materials to stormwater.

During the February 12, 2019, and May 9, 2019 Regional Water Board staff inspections, run-on and run-off controls were not installed to stabilize construction entrances at the western side of the Site. The failure to install BMPs contributed to sediment-laden stormwater discharges off-site and to a drainage culvert. The Discharger disregarded the purpose of the requirement to sufficiently control potential sediment discharges from the Site that could harm beneficial uses of receiving waters. Therefore, the Deviation from Requirement is characterized as Major.

Per Day Factor: 0.55

In accordance with Table 3 of the Enforcement Policy, the per day factor for Violation 7 is 0.55.

Initial Liability Amount: \$5,500

The Initial Liability Amount is the (per day factor) x (number of days of violation) x (per day statutory maximum liability).

For Violation 7, in accordance with Table 3, the per day factor is 0.55, days of the violation is 1, and the per day statutory maximum liability is \$10,000 under Water Code section 13385, subdivision (c).

Initial Liability Amount = 0.55 x 1 day x \$10,000/day = \$5,500

Step 4. Adjustment Factors

Culpability: 1.2

A multiplier of 1.2 is assigned for this violation because the Discharger knew of the requirement as evidenced by its SWPPP that was submitted and

certified on SMARTS on August 31, 2018. The SWPPP, Section 3.2.1 Erosion Control stated that erosion would be controlled in concentrated flow paths by applying erosion control blankets, check dams, erosion control seeding or alternate methods, to provide effective temporary and final erosion control during construction. SWPPP, Table 3.2 also stated that run-on from offsite would be directed away from all disturbed areas via earth dike and drainage swales. The SWPPP also attached a copy of the permit, which includes the requirements to address run-on and run-off controls.

Failure to install run-on and run-off controls results in sediment erosion and undermined some silt fences and sandbags perimeter at the eastern area of the Site by erosion and concentrated flows of stormwater, A reasonably prudent person who applies for coverage under the General Permit should have implemented effective measures at the Site to fulfill the General Permit requirement.

History of Violations: 1.0

Since the Discharger does not have a history of violations, a neutral multiplier of 1.0 was assigned.

Cleanup and Cooperation: 1.0

A multiplier of 1.0 is assigned for this violation because the Discharger took corrective actions following notification of the violation by the Regional Water Board. On March 1, 2019, the Regional Water Board issued an NOV informing the Discharger of the violation and requiring the Discharger to fix all major erosion channels and rills throughout the project Site and prevent water from discharging without BMPs. On March 29, 2019, the Discharger responded to the Regional Water Board's NOV and provided supporting photographs that disturbed areas throughout the east, west, and south areas of the Site were regraded and stabilized with BMPs. The Discharger's photographs also showcase the installation of an onsite desilting basin. This violation was not observed during the Regional Water Board's subsequent inspection on May 9, 2019.

Step 5. Total Base Liability

\$5,500 (Initial Liability Amount) X 1.2 (Culpability) X 1.0 (History of Violations) X 1.0 (Cleanup and Cooperation) = \$6,600

Violation 8: Failure to implement good site management measures for vehicle storage and maintenance

Attachment C, Section B.3 of the General Permit requires Risk Level 1 dischargers to

implement good housekeeping for vehicle storage and maintenance including at a minimum:

- Preventing oil, grease, or fuel to leak into the ground, storm drains or surface waters;
- Placing all equipment or vehicles, which are to be fueled, maintained and stored in a designated area fitted with appropriate BMPs; and
- Cleaning leaks immediately and disposing of leaked materials properly.

During the February 12, 2019 Regional Water Board inspection, oil leaks were observed under equipment without BMPs; oil was on the ground and some spill kit containers were filled with oil. Regional Water Board staff observed inactive equipment that were stored in a designated area without appropriate BMPs.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to this violation.

Step 2. Assessment for Discharge Violations

This factor does not apply to this violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: Moderate

Violation 8 is characterized as a Moderate Potential for Harm. The Enforcement Policy defines Moderate Potential for Harm as “[t]he characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.”

As mentioned above, stormwater at the Site drains indirectly to Eaton Wash. Discharges of oil to surface waters can impact existing beneficial uses of Eaton Wash, below the Eaton Wash dam, including wildlife habitat, and intermittent beneficial uses are warm freshwater habitat, and water contact and non-contact water recreation, and potential beneficial uses are municipal and domestic supply. During the February 12, 2019 Regional Water Board inspection, Regional Water Board staff observed that the Discharger failed to implement necessary vehicle storage and maintenance housekeeping practices. Discharges of oil to surface waters form a film on the water surface. Oily films can coat birds and aquatic organisms,

impacting respiration and thermal regulation, and cause death. Oil and grease can also cause nuisance conditions (odors and taste) and are aesthetically unpleasant. Excess oil in water poses a moderate level of concern to ecosystem health exposure pathways because of the likelihood that the discharged material would harm aquatic life. Therefore, the Potential for Harm for this violation is characterized as Moderate.

Deviation from Requirement: Moderate

Violation 8 is characterized as a Moderate Deviation from Requirement. The Enforcement Policy defines a Moderate Deviation from Requirement as “[t]he intended effectiveness of the requirement was partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement was only partially achieved).” The Discharger failed to implement effective BMPs to prevent oil, grease, or fuel to leak into the ground, storm drains or surface waters.

During the February 12, 2019 Regional Water Board staff inspection, oil leaks and spill kits that were filled with oil underneath equipment were observed. The failure to install or maintain BMPs resulted in oil leaks onto surface soils at the Site. The Discharger did not sufficiently control potential sediment discharges from the Site. Therefore, the Deviation from Requirement is characterized as Moderate.

Per Day Factor: 0.35

In accordance with Table 3 of the Enforcement Policy, the per day factor for Violation 8 is 0.35.

Initial Liability Amount: \$3,500

The Initial Liability Amount is the (per day factor) x (number of days of violation) x (per day statutory maximum liability).

For Violation 8, the per day factor is 0.35, days of violation is 1, and the per day statutory maximum liability is \$10,000 under Water Code section 13385, subdivision (c).

$$\text{Initial Liability Amount} = 0.35 \times 1 \text{ day} \times \$10,000/\text{day} = \$3,500$$

Step 4. Adjustment Factors

Culpability: 1.2

A multiplier of 1.2 is assigned for this violation because the Discharger knew of the requirement as evidenced by its SWPPP that was submitted and

certified on SMARTS on August 31, 2018. SWPPP, Section 3.3.2 Materials Management and Waste Management referenced the implementation of spill prevention controls to comply with such requirement. The SWPPP also attached a copy of the permit, which includes the requirements to address good site management measures for vehicle storage and maintenance.

Additionally, the Discharger knew of the requirement as evidenced by having spill kits and base material beneath some equipment during the February 12, 2019 Regional Water Board inspection. However, the Discharger failed to have all the necessary good housekeeping measures in place and failed to maintain the spill kits and base material that were in place. The Discharger's actions fell below the standard expected of a reasonably prudent person who applies for coverage under the General Permit.

History of Violations: 1.0

Since the Discharger does not have a history of violations, a neutral multiplier of 1.0 is assigned.

Cleanup and Cooperation: 1.0

A multiplier of 1.0 for this violation because the Discharger took corrective actions following notification of the violations by the Regional Water Board. Regional Water Board staff informed the Site's Superintendent of the BMP violation during the February 12, 2019 inspection, and the Regional Water Board issued a NOV on March 1, 2019 notifying the Discharger of the violation. On March 29, 2019, the Discharger responded to the NOV and provided supporting photographs that oil leaks were cleaned and removed. The Discharger's photographs also showcase that equipment was placed in a staging area with BMPs and oil containment tray BMPs were placed with each equipment. This violation was not observed during the Regional Water Board's subsequent inspection on May 9, 2019.

Step 5. Total Base Liability

$\$3,500$ (Initial Liability Amount) \times 1.2 (Culpability) \times 1.0 (History of Violations) \times 1.0 (Cleanup and Cooperation) = $\$4,200$

Violations 9-10: Failure to contain concrete washout areas

Attachment C, Section B.2.i of the General Permit requires Risk Level 1 dischargers to implement good housekeeping measures for waste management including the containment of concrete washout areas and other washout areas that may contain

additional pollutants so there is no discharge into the underlying soil and onto the surrounding areas.

Violation 9: During the February 12, 2019 Regional Water Board inspection, concrete debris and minor spills were observed near the concrete washout without adequate BMPs. The concrete washout was observed completely full and without cover. Concrete residue was overflowing and on the surrounding ground. The Site's Superintendent informed Regional Water Board staff that the washout was not covered prior to a forecasted rain event. Regional Water Board staff documented that such deficiencies were observed prior to a forecasted qualifying storm event. The NOAA rain gauge station, San Gabriel Fire Department, CA US SUC00047785, located approximately 3.1 miles west of the Site documented 1.58 inches of rain on February 13, 2019, following the February 12, 2019 Regional Water Board staff inspection.

Violation 10: During the May 9, 2019 Regional Water Board inspection, concrete debris was observed on the ground and uncovered in a concrete low boy disposal bin.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to these violations.

Step 2. Assessment for Discharge Violations

This factor does not apply to these violations.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: Moderate

Violations 9 and 10 are characterized as a Moderate Potential for Harm. The Enforcement Policy defines Moderate Potential for Harm as “[t]he characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.”

As mentioned above, stormwater from the Site drains indirectly to Eaton Wash. Discharges of concrete washout water to surface waters can impact existing beneficial uses of Eaton Wash, below the Eaton Wash dam, including wildlife habitat, and intermittent beneficial uses are warm freshwater habitat, and water contact and non-contact water recreation, and potential beneficial uses are municipal and domestic supply. During the February 12, 2019 Regional Water Board inspection, the concrete washout was not adequately contained, and concrete spills were observed on the surrounding ground. Concrete debris was also observed on the ground

without BMPs on the May 9, 2019 Regional Water Board inspection. Concrete washout water discharges are caustic, which can harm fish gills, eyes, and reproduction. They can also increase the pH in the receiving water; a high pH can increase the toxicity of other substances in surface waters and soils. Concrete washout water can cloud the receiving water and cause decreased levels of dissolved oxygen, which is harmful to aquatic life. Concrete washout in water poses a moderate level of concern to ecosystem health exposure pathways because of the likelihood that the discharged material would harm aquatic life. Therefore, the Potential for Harm for this violation is characterized as Moderate.

Deviation from Requirement: Major

Violations 9 and 10 are characterized as a Major Deviation from Requirement. The Enforcement Policy defines a Major Deviation from Requirement as “[t]he requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).” The Discharger failed to effectively contain concrete washout areas to prevent the discharge of concrete wastes into the underlying soil and stormwater.

During the February 12, 2019 Regional Water Board staff inspection, the concrete washout area was inadequately contained and resulted in minor spills and debris on underlying soil. The Discharger continued to inadequately contain concrete washout, as observed during the May 9, 2019. The Discharger disregarded the purpose of the requirement to sufficiently control potential discharges from the Site that could harm beneficial uses of receiving waters. Therefore, the Deviation from Requirement for this violation is characterized as Major.

Per Day Factor: 0.55

In accordance with Table 3 of the Enforcement Policy, the per day factor for Violations 9 and 10 is 0.55.

Initial Liability Amount: \$11,000

The Initial Liability Amount is the (per day factor) x (number of days of violation) x (per day statutory maximum liability).

For Violations 9 and 10, in accordance with Table 3, the per day factor is 0.55, days of the violation is 1, and the per day statutory maximum liability is \$10,000 under Water Code section 13385, subdivision (c).

Initial Liability Amount = 0.55 x 1 day x \$10,000/day = \$5,500

Step 4. Adjustment Factors

Culpability:

Violation 9: 1.2

A multiplier of 1.2 is assigned for this violation because the Discharger knew of the requirement as evidenced by its SWPPP that was submitted and certified on SMARTS on August 31, 2018. The SWPPP referenced the requirements of Attachment C, Section B.2.i to contain concrete washout areas and provided BMPs to fulfill the requirement. The SWPPP, Section 3.3.2 Materials Management and Waste Management referenced the implementation of concrete waste management via maintenance of temporary concrete washout facilities and removal and disposal of hardened concrete to comply with such requirement. The SWPPP also attached a copy of the permit, which includes the requirements to address loose construction materials, including sediment, at inactive areas at the Site.

The Discharger knew of the requirement as evidenced by having some controls, including a waste roll-off bin, during the February 12, 2019 Regional Water Board inspection, but it failed to ensure their effectiveness as expected of a reasonably prudent person who applies for coverage under the General Permit. The Discharger did not implement BMPs necessary to contain concrete washout, which resulted in concrete spills at the Site during both Regional Water Board inspections. A reasonable and prudent person would have ensured proper SWPPP implementation to prevent unauthorized discharges.

Violation 10: 1.3

A multiplier of 1.3 is assigned for this violation because the Discharger knew of the requirement based on the project's SWPPP and prior notification by the Regional Water Board. During the Regional Water Board inspection on May 9, 2019 the concrete washout area was not adequately contained resulting in concrete waste observed on the ground. The Discharger was aware of the requirement but failed to implement effective maintenance practices of the concrete washout. Regional Water Board staff informed the Site's Superintendent of the BMP violation during the February 12, 2019 inspection. On February 15, 2019, the Discharger emailed Regional Water Board staff a photograph of a covered concrete low boy disposal bin and a training log for February 13, 2019 that stated waste management and materials pollution control was discussed with Site personnel. Furthermore, on March 1, 2019, the Regional Water Board issued an NOV informing the Discharger of the violation based on the February 12, 2019 Regional Water Board inspection. The Discharger

responded to the NOV on March 29, 2019 and provided corrective actions and photographs. However, during the Regional Water Board inspection on May 9, 2019 the concrete washout area was not adequately maintained. A reasonable and prudent person would have ensured proper SWPPP implementation to prevent unauthorized discharges.

History of Violations: 1.0

Since the Discharger does not have a history of violations, a neutral multiplier of 1.0 is appropriate for Violations 9 and 10.

Cleanup and Cooperation:

Violation 9: 1.1

A multiplier of 1.1 is assigned for this violation because Regional Water Board staff continued to observe similar violations after the initial observation. Following the Regional Water Board's February 12, 2019 inspection, the Discharger emailed Regional Water Board staff a photograph of a covered concrete washout low boy disposal bin on February 15, 2019. On March 29, 2019, in response to an NOV the Discharger stated BMPs would be maintained and included photographs that also showcased covered a concrete washout bin. The response also stated that when the washout bins were not in use they would be covered and that minor spills were addressed. However, the BMP deficiency was observed during the May 9, 2019 Regional Water Board staff inspection.

Violation 10: 1.0

A multiplier of 1.0 is assigned for this violation. On May 13 and 29, 2019, the Discharger emailed Regional Water Board staff a photograph of a covered concrete washout bin. Such response was considered sufficient by Regional Water Board staff to satisfy the BMP deficiency.

Step 5. Total Base Liability

Violation 9: \$5,500 (Initial Liability Amount) x 1.2 (Culpability) x 1.0 (History of Violations) x 1.1 (Cleanup and Cooperation) = \$7,260

Violation 10: \$5,500 (Initial Liability Amount) x 1.3 (Culpability) x 1.0 (History of Violations) x 1.0 (Cleanup and Cooperation) = \$7,150

Violation 11: Failure to implement and maintain good housekeeping practices for waste management

Attachment C, Section B.2.d-f of the General Permit requires Risk Level 1 dischargers to implement good housekeeping measures for waste management including:

- a. Cover waste disposal containers at the end of every business day and during a rain event.
- b. Prevent discharges from waste disposal containers to the storm water drainage system or receiving water.
- c. Contain and securely protect stockpiled waste material from wind and rain at all times unless actively being used.

During the February 12, 2019 Regional Water Board inspection, poor housekeeping was observed on-site; stockpiled construction demolition debris and metal waste materials were observed without proper BMPs to contain and securely protect waste from mobilization. Concrete debris was observed on the ground and several waste roll-off bins were observed without covering mechanisms at the Site. At the time of the inspection Site's Superintendent informed Regional Water Board staff that he was unaware of the requirement to cover waste bins at the end of every business day and during a rain event; he also confirmed that waste bins were not covered during past storm events.

During the May 9, 2019 Regional Water Board inspection, broken wood was observed at a discharge point by a cul-de-sac and piled at the base of a sediment stockpile at the southern boundary. Waste roll-off bins were observed without cover and covering mechanisms were not observed on-site.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to this violation.

Step 2. Assessment for Discharge Violations

This factor does not apply to this violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: Moderate

Violation 11 is characterized as a Moderate Potential for Harm. The Enforcement Policy defines Moderate Potential for Harm as "[t]he characteristics of the violation have substantially impaired the Water Boards' ability to perform their statutory and regulatory functions, present a

substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.”

As mentioned above, stormwater from the Site drains indirectly to Eaton Wash. Discharges of concrete washout water to surface waters can impact existing beneficial uses of Eaton Wash, below the Eaton Wash dam, including wildlife habitat, and intermittent beneficial uses are warm freshwater habitat, and water contact and non-contact water recreation, and potential beneficial uses are municipal and domestic supply.

During Regional Water Board inspections, Regional Water Board staff observed that the Discharger failed to adequately contain and protect waste materials at the Site. During inspections that occurred on February 12, 2019 and on May 9, 2019, the Discharger failed to cover and prevent discharges of waste onto the surrounding ground where it could be mobilized and enter a stormwater draining system. Failure to adequately contain and protect waste materials at the Site could lead to discharges in stormwater. Discharges of waste to surface waters can transport other materials such as nutrients, metals, and oils and grease which can cause toxicity to aquatic organisms. Failure to provide covers waste containers could lead to waste discharges in stormwater. Discharges of trash, settleables and floatables, in receiving waters can contribute to sediment contamination and impede the growth of aquatic vegetation, decreasing spawning areas and habitats for fish and other living organisms. Wildlife can be harmed by ingesting or becoming entangled in floating trash. Additionally, trash in receiving waters is not aesthetically pleasing and deters recreational uses. Trash accumulation in water poses a potential harm to ecosystem health exposure pathways because of the likelihood that the discharged material would harm aquatic life. Wastes in water poses a moderate level of concern to ecosystem health exposure pathways because of the likelihood that the discharged material would harm aquatic life. Therefore, the Potential for Harm for this violation is characterized as Moderate.

Deviation from Requirement: Major

The Enforcement policy defines a Major Deviation from Requirement as “[t]he requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).” The Discharger failed to implement good housekeeping measures for waste management to prevent the discharge of wastes to stormwater.

During the February 12, 2019 Regional Water Board inspection, the Discharger failed to have necessary measures to cover waste materials and prevent discharges to stormwater and failed to securely contain stockpiled wastes. Additionally, during the May 9, 2019 Regional Water Board staff

inspection, the Discharger failed to have necessary measures to cover waste bins and to contain broken wood throughout the Site. The Discharger disregarded the purpose of the requirement to sufficiently control potential waste discharges from the Site that could harm beneficial uses of receiving waters. Therefore, the Deviation from Requirement for this violation is Major.

Per Day Factor: 0.55

In accordance with Table 3 of the Enforcement Policy, the per day factor for Violation 11 is 0.55.

Initial Liability Amount: \$11,000

The Initial Liability Amount is the (per day factor) x (number of days of violation) x (per day statutory maximum liability).

For Violation 11, in accordance with Table 3, the per day factor is 0.55, days of violation is 2, and the per day statutory maximum liability is \$10,000 under Water Code section 13385, subdivision (c).

Initial Liability Amount = 0.55 x 2 days x \$10,000/day = \$11,000

Step 4. Adjustment Factors

Culpability: 1.2

A multiplier of 1.2 is assigned for this violation because the Discharger knew of the requirement as evidenced by its SWPPP that was submitted and certified on SMARTS on August 31, 2018. The SWPPP referenced the requirements of Attachment C, Sections B.2.d-f to implement waste management BMPs and provided BMPs to fulfill the requirement. The SWPPP, Section 3.3.2 Materials Management and Waste Management referenced the implementation of solid waste management to comply with such requirement. The SWPPP also attached a copy of the permit, which includes the requirements to address waste management practices at the Site.

The Discharger knew of the requirement as evidenced by having some controls, including waste roll-off bins, during the February 12, 2019 Regional Water Board inspection, but it failed to ensure their effectiveness. Additionally, personnel responsible for implementing the SWPPP at the Site were unaware of the waste management requirements. Regional Water Board staff informed the Site's Superintendent of the BMP violation during the February 12, 2019 inspection. On February 15, 2019, the Discharger emailed Regional Water Board staff a photograph of a covered waste bins

and a training log for February 13, 2019 that stated waste management and materials pollution control was discussed with Site personnel. Furthermore, on March 1, 2019, the Regional Water Board issued an NOV informing the Discharger of the violation based on the February 12, 2019 Regional Water Board inspection. The Discharger responded to the NOV on March 29, 2019 and provided corrective actions and photographs. However, during the Regional Water Board inspection on May 9, 2019 the broken wood was observed throughout the Site and onto Shirley Avenue and waste bins did not have necessary measures in place in anticipation of a rain event. A reasonable and prudent person would have ensured proper SWPPP implementation to prevent unauthorized discharges.

History of Violations: 1.0

Since the Discharger does not have a history of violations, a neutral multiplier of 1.0 was assigned.

Cleanup and Cooperation: 1.1

A multiplier of 1.1 for this violation because Regional Water Board staff continued to observe similar violations after the initial observation. Following the Regional Water Board's February 12, 2019 inspection, the Discharger emailed Regional Water Board staff a photograph of a covered waste bin on February 15, 2019. The Regional Water Board issued the Discharger an NOV on March 1, 2019 that identified the violation and required actions to comply with the General Permit requirement. On March 29, 2019, in response to an NOV the Discharger stated personnel were trained to cover bins during rain events and when not in use. The response also included photographs of covered waste bins. However, poor housekeeping practices were observed during the May 9, 2019 Regional Water Board staff inspection. On May 13 and 29, 2019, the Discharger emailed Regional Water Board staff photographs of covered bins. Such response was considered sufficient by Regional Water Board staff to satisfy the BMP deficiency.

Step 5. Total Base Liability

\$11,000 (Per Day Assessment) x 1.2 (Culpability) x 1.0 (History of Violations) x 1.1 (Cleanup and Cooperation) = \$14,520

Settlement Agreement and Stipulation for Entry of Administrative Civil Liability
 Order R4-2021-0113
 Attachment A
 GLC El Monte LLC

Table 1. Total Base Liability for All Violations

Violation	Violation Description	Proposed Liability	Maximum Liability	No. of Days
1	Unauthorized discharges of sediment-laden stormwater	\$149,450	\$381,250	2 days
2	Failure to implement effective soil cover for inactive sediment stockpiles on February 12, 2019	\$7,260	\$10,000	1 day
3	Failure to implement effective soil cover for inactive sediment stockpiles on May 9, 2019	\$7,150	\$10,000	1 day
4	Failure to implement effective perimeter sediment controls on February 12, 2019	\$7,260	\$10,000	1 day
5	Failure to implement effective perimeter sediment controls on May 9, 2019	\$7,150	\$10,000	1 day
6	Failure to stabilize construction entrances and exits at the Site	\$6,600	\$10,000	1 day
7	Failure to effectively manage run-on and run-off at the Site	\$6,600	\$10,000	1 day
8	Failure to implement good site management measures for vehicle storage and maintenance	\$4,200	\$10,000	1 day
9	Failure to contain concrete washout areas on February 12, 2019	\$7,260	\$10,000	1 day
10	Failure to contain concrete washout areas on May 9, 2019	\$7,150	\$10,000	1 day
11	Failure to implement and maintain good housekeeping practices	\$14,520	\$20,000	2 days
Total		\$224,600	\$471,250	13 days

Step 6. Ability to Pay:

The Enforcement Policy requires the Regional Water Board to analyze the Discharger's ability to pay the Total Base Liability and the effect paying the Total Base Liability may have on the Discharger's ability to continue in business. The Discharger has the ability to

pay the Total Base Liability and continue in business. The Discharger owns property at 4200 Shirley Avenue and 4300 Shirley Avenue in El Monte. Based on 2019 Los Angeles County Tax Assessor records, these properties have an assessed value of \$70,784,894 and \$97,037,067, respectively, for a combined value of \$167,821,961. Therefore, the Discharger's assets are more than sufficient to pay the Total Base Liability.

Step 7. Economic Benefit: \$1,602

The Enforcement Policy provides that the economic benefit of noncompliance should be calculated using the United States Environmental Protection Agency's (U.S. EPA) Economic Benefit Model (BEN) 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.

The Prosecution Team reviewed the Site conditions via inspection photos by Regional Water Board staff, QSP recommendations, SWPPPs, and CASQA standard practices to identify compliance actions that would have mitigated the alleged violations.

The Discharger failed to implement adequate perimeter sediment controls. The economic benefit of non-compliance associated with silt fences, fiber rolls, and sandbags was \$486.

The Discharger's failure to stabilize the construction entrance/exit along Shirley Avenue resulted in an economic benefit of non-compliance of \$3 related to installation and maintenance of the necessary BMPs.

The lack of runoff BMPs also resulted in an economic benefit of non-compliance of \$887 and the lack of stockpile soil binders resulted in an economic benefit of non-compliance of \$11.

The Discharger also failed to contain concrete washout areas and concrete waste at least from April 9, 2019 through July 16, 2020. The Site should have had another concrete washout bin and the estimated benefit of non-compliance was \$215.

Therefore, the total economic benefit for the alleged violations is \$1,602.

Step 8. Other Factors As Justice May Require

If the Regional Water 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," but only if express findings are made to justify this adjustment.

Staff Cost: \$7,031

The Enforcement Policy allows for the costs of investigation and enforcement to be considered under other factors as justice may require. To date, the Regional Water Board has incurred \$7,031 in staff costs associated with the investigation, preparation, and enforcement of the violations. This represents approximately 57.65 hours of staff time devoted to inspecting the Site, meetings, communications, and drafting the enforcement documents. No attorneys' fees are included in this calculation. The Prosecution Team finds that it is appropriate to increase the Total Base Liability by \$7,031 in consideration of investigation and enforcement costs incurred in prosecuting this matter. Increasing the Total Base Liability in this manner serves to create a more appropriate deterrent against future violations.

Step 9. Maximum and Minimum Liability Amounts

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

- a. Maximum: Water Code section 13385, subdivision (c) provides that liability of up to \$10 per gallon shall apply to volumes of waste discharged but not cleaned up in excess of 1,000 gallons plus \$10,000 per day for each violation. Therefore, the statutory maximum is set as \$491,250
- b. Minimum: The Enforcement Policy requires the Regional Water Board to recover, at a minimum, 10% more than the economic benefit. Therefore, the minimum is set at \$1,762.

Step 10. Final Liability Amount: \$231,631

To determine the final liability amount, liabilities for each violation were added together, provided the amounts were within the minimum and maximum amounts. The total amount for liabilities of violations was added to the total staff cost accrued by the Regional Water Board. Therefore, the final liability amount is \$231,631.