

Attachment A
Penalty Methodology for
Administrative Civil Liability Complaint No. R1-2026-0008
Factors Considered in Developing Recommended Civil Liability
In the Matter of Xavier Zavala

This technical analysis provides a summary of factual and analytical evidence that supports the findings in Administrative Civil Liability Complaint No. R1-2026-0008 (Complaint) and the recommended assessment of administrative civil liability in the amount of \$50,000. The Complaint alleges that Xavier Zavala (the Respondent) failed to implement the Required Actions of the North Coast Regional Water Quality Control Board's (North Coast Water Board's) Cleanup and Abatement Order No. R1-2025-0046 (Cleanup and Abatement Order) for Mendocino County Assessor's Parcel Number 056-350-20-00 (the Property).

SUMMARY OF VIOLATION

The Complaint alleges that the Respondent violated Water Code section 13304 by failing to implement corrective actions by November 14, 2025, as required under the Cleanup and Abatement Order. The Respondent has been in violation of the Cleanup and Abatement Order as of November 15, 2025, and remains in violation.

Nevertheless, the Prosecution Team¹ exercised prosecutorial discretion in selecting the days of violation for which assessment of administrative civil liability is proposed. The North Coast Water Board's Cannabis Program Enforcement Strategy proposes that North Coast Water Board staff (Staff) pursue penalties early in the progressive enforcement process. Based on the facts and alleged violation in this case, the Prosecution Team determined that 10 days would have been an appropriate amount of time to issue the Complaint; however, in determining the date of issuance, the Prosecution Team was required to consider the Board's meeting schedule (meetings are generally held every other month) and the Board's ability to accommodate an

¹ To maintain impartiality of the North Coast Water Board, during potential enforcement hearings as a standard practice in progressive enforcement cases, Staff organizes a group of Staff that works on case development (the Prosecution Team), which consists of the Assistant Executive Officer as the lead prosecutor together with Staff that has inspected the site and reviewed associated enforcement documents. Another group of Staff that has not been involved in the enforcement case can help advise the Regional Water Board (the Advisory Team).

enforcement action on the meeting agenda, as well as the Respondent's right to a hearing within 90 days of service of the Complaint.

Based on these considerations, the earliest the Prosecution Team could issue the Complaint was January 16, 2026, to be heard by the Board at the April meeting. Despite the delay in issuance, the Prosecution Team asserts that assessment for 10 days of violation, between November 15, 2025, the first date following the required deadline in the Cleanup and Abatement Order, and November 24, 2025, is appropriate for this case.

Water Code section 13350, subdivision (e)(1), provides that the North Coast Water Board may impose civil liability administratively in response to violations of Board-issued cleanup and abatement orders in an amount of up to five thousand dollars (\$5,000) per day of violation. **As described below, the Prosecution Team recommends administrative civil liability in the amount of \$50,000, which reflects the statutory maximum.**

PENALTY METHODOLOGY

The State Water Resources Control Board's (State Water Board's) *Water Quality Enforcement Policy*² (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that must be considered under Water Code section 13327, specifically:

“the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.”

Each factor of the Enforcement Policy's ten-step approach is discussed below, along with the basis for assessing the corresponding scores and proposed administrative civil liability amount.

The violation alleged in the Complaint, and assessed herein, involves failure to implement corrective actions under the Cleanup and Abatement Order. This violation is

² The Prosecution Team applied the 2024 Water Quality Enforcement Policy, which was approved by the Office of Administrative Law and went into effect on November 7, 2024, prior to the violations alleged in the Complaint and discussed herein. A copy of the 2024 [Water Quality Enforcement Policy](https://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/2024/2024-enforcement-policy.pdf) can be found at: (https://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/2024/2024-enforcement-policy.pdf).

a “non-discharge violation” for purposes of the Enforcement Policy penalty methodology.

Step 1. Actual Harm or Potential for Harm for Discharge Violations

Enforcement Policy Step 1 is only applicable to discharge violations, which are not alleged in the Complaint.

Step 2. Per Gallon and Per Day Assessments for Discharge

Enforcement Policy Step 2 is only applicable to discharge violations, which are not alleged in the Complaint.

Step 3. Per Day Assessment for Non-Discharge Violations

The Enforcement Policy provides that “[t]he Water Boards shall calculate an initial liability factor for each non-discharge violation, considering Potential for Harm and the extent of deviation from applicable requirements. These violations include, but are not limited to, failure to conduct routine monitoring and reporting, failure to provide required information, and the failure to prepare and implement required plans. While all non-discharge violations harm or undermine the Water Boards’ regulatory programs and compromise the Water Boards’ ability to perform their statutory and regulatory functions, some non-discharge violations have the potential to directly or indirectly impact beneficial uses and should result in more serious consequences.” (Enforcement Policy, p. 21.)

To determine the initial liability factor for each violation, the Water Boards use the matrix set forth in Table 3 of the Enforcement Policy to determine a per-day assessment factor for each violation. The matrix considers the potential for harm resulting from the violation, and the deviation from the applicable requirement. Each of these can be “Minor,” “Moderate,” or “Major.”

Potential for Harm:

The Potential for Harm categories are as follows:

- *Minor – The characteristics of the violation have little or no potential to impair the Water Boards’ ability to perform their statutory and regulatory functions, present only a minor threat to beneficial uses, and/or the circumstances of the violation indicate a minor potential for harm.*
- *Moderate – The 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. Most non-discharge violations should be considered to present a moderate potential for harm.*

- *Major – The characteristics of the violation have wholly impaired the Water Boards' ability to perform their statutory or regulatory functions, present a particularly egregious threat to beneficial uses, and/or the circumstances of the violation indicate a very high potential for harm. Non-discharge violations involving failure to comply with directives in cleanup and abatement orders, cease and desist orders, and investigative orders, involving reports relating to impaired water bodies and sensitive habitats, should be considered major. (Emphasis added.)*

(Enforcement Policy, pp. 21-22)

Implementation of the Required Actions under the Cleanup and Abatement Order is necessary to clean up the waste or abate the effects of the waste, or in the case of threatened pollution or nuisance, take other necessary remedial actions. By failing to implement the corrective actions, the Respondent wholly impaired the North Coast Water Board's ability to perform its regulatory functions.

Additionally, the waterbodies intended to be protected through the implementation of corrective actions are impaired. The Cleanup and Abatement Order was issued as a result of discharges and threatened discharges of waste to tributaries of the Middle Fork Eel River watershed. The federal Clean Water Act section 303, subdivision (d), impaired waterbodies list identifies the Middle Fork Eel River as impaired due to elevated sedimentation/siltation and elevated temperature. The U.S. Environmental Protection Agency established Total Maximum Daily Loads (TMDLs) for temperature and sediment for the Middle Fork Eel River in December 2003.

Since this non-discharge violation involves failure to comply with a directive in a cleanup and abatement order relating to an impaired waterbody, the Potential for Harm of the violation is **Major**.

Deviation from Requirement:

The Deviation from Requirement categories are as follows:

- *Minor – The intended effectiveness of the requirement remained generally intact (e.g., while the requirement was not met, its intended effect was not materially compromised).*
- *Moderate – The 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).*
- *Major – The requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).*

(Enforcement Policy, p. 22)

The failure to implement corrective actions required by the Cleanup and Abatement Order is **Major**. The Respondent has provided no response to Staff's multiple attempts to contact him, and has failed to demonstrate that the corrective actions have been implemented, rendering the requirement ineffective in its essential functions.

Per Day Factors:

Utilizing a Potential for Harm score of **Major** and Deviation from Requirement score of **Major**, Staff selected a Per Day Factor of 0.85, consistent with the midpoint of the range listed Table 3 on page 21 of Enforcement Policy.

Multiple-Day Violations

The Enforcement Policy's Multiple-Day Violations factor applies only to violations lasting more than 30 days. The Complaint seeks administrative civil liability for only 10 days of violation. As such, the alternative approach to penalty calculation for Multiple-Day Violations is not applicable.

Initial Liability Amounts:

The initial liability amount is ***calculated on a per-day basis as follows:***

Per-Day Liability (10 (days) x 0.85 (per day factor) x \$5,000 (statutory maximum per day liability)) = **\$42,500**

Step 4. Adjustment Factors

Under this step, the initial liability amount is adjusted by factors addressing the violator's conduct.

Violator's Conduct:

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's compliance history.

Culpability:

This factor assesses a violator's degree of culpability prior to the violation. The Enforcement Policy provides that "[h]igher liabilities should result from intentional or negligent violations" as opposed to accidental violations. (Enforcement Policy, p. 24.)

A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier for intentional misconduct or gross negligence, a lower multiplier for more simple negligence, and a neutral assessment of 1.0 where a violator is determined to have acted as a reasonable and prudent person would have. (*Ibid.*)

On September 30, 2025, the Respondent, while at the Property, signed receipt for a letter inviting him to provide comments to Staff by October 15, 2025 on a draft Cleanup and Abatement Order, which proposed the November 14, 2025 deadline to complete

cleanup. On September 30, 2025, General Logistics Systems (GLS) delivered, without a signature, a separate transmittal of the draft Cleanup and Abatement Order to the Respondent's address in Sanger, California (Mailing Address) on record with Mendocino County. The Respondent did not respond to either delivery of the draft Cleanup and Abatement Order.

On October 17, 2025, the Executive Officer for the North Coast Water Board issued the Cleanup and Abatement Order to the Respondent, which GLS delivered to the Respondent's Mailing Address on October 20, 2025.

As of the date of the Complaint, the Respondent has not contacted Staff or provided evidence of implementation of the Required Actions under the Order. A reasonable and prudent person would have made efforts to comply with the deadline contained in the Cleanup and Abatement Order. The Respondent's conduct fell below that of a reasonable and prudent person. The Respondent's failure to implement the corrective actions constitutes an intentional violation of the Cleanup and Abatement Order; thus, a value of **1.25** is appropriate for this violation.

History of Violations:

The Enforcement Policy advises that "[w]here 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." (Enforcement Policy, p. 24.)

There are no previous orders assessing administrative civil liability against the Respondent for previous violations within the last five years. Accordingly, a neutral factor of **1.0** is selected.

Cleanup and Cooperation:

This factor assesses voluntary efforts to clean up and/or to cooperate with regulatory agencies in returning to compliance after the violation. The Enforcement Policy states that 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 reasonable and prudent response to a discharge violation or timely response to a North Coast Water Board order should receive a neutral adjustment as it is assumed a reasonable amount of cooperation is the warranted baseline. (Enforcement Policy, p. 24.)

The Complaint alleges non-compliance with requirements set forth in the Cleanup and Abatement Order. As such, the relevant considerations for this factor are the Respondent's cooperation with Staff and the actions, if any, taken by the Respondent to comply with the Cleanup and Abatement Order after the deadline passed. Following transmittal of the Cleanup and Abatement Order to the Respondent's Mailing Address on October 20, 2025, Staff received no communication from the Respondent. On

November 20, 2025, Staff transmitted a Notice of Violation, with a copy of the Cleanup and Abatement Order enclosed, to the Respondent's Mailing Address, which was delivered on November 24, 2025. The Notice of Violation explained that the Respondent risked the North Coast Water Board imposing administrative civil liability if he did not comply with the Required Actions of the Cleanup and Abatement Order. Despite the delivery of this notice, the Respondent did not contact Staff or provide any evidence that he had taken, or planned to take, steps to resolve the violation. Based on the Respondent's failure to cooperate with Staff and resolve the violation of the Cleanup and Abatement Order, a score of **1.25** has been assessed for the violation.

Step 5. Determination of Total Base Liability Amount

The Total Base Liability is determined by adding the amounts above for each violation, including any adjustment for multiple day violations. Depending on the statute controlling the liability assessment for a violation, the liability can be assessed as either a per day penalty, a per gallon penalty, or both.

The Total Base Liability amount for the violation is calculated on a per-day basis as follows:

$\$42,500 \text{ (Initial Liability)} \times 1.25 \text{ (Culpability Factor)} \times 1.0 \text{ (History of Violations Factor)} \times 1.25 \text{ (Cleanup and Cooperation Factor)} = \$66,406$

Total Base Liability Amount: \$66,406

Step 6. Economic Benefit

Under this step, the Enforcement Policy requires the proposed liability amount to be at least 10 percent higher than any economic benefit realized by the Respondent to ensure that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations. Because the Respondent is still required to complete the Required Actions under the Cleanup and Abatement Order, the Prosecution Team determined that the sole economic benefit for the Respondent's violation of the Cleanup and Abatement Order is the time value of the money the Respondent would have needed to spend to comply with the Order, which is negligible.

The cost to comply with the Required Actions of the Cleanup and Abatement Order, (e.g. picking up trash, transporting the trash to a licensed waste disposal facility, implementing erosion and sediment control Best Management Practices where a road is hydrologically connected to a watercourse, and submitting pictures and receipts demonstrating that this has been completed) are anticipated to cost approximately \$400 for sixteen (16) hours of general labor at \$25 per hour, \$500 in equipment rental and fuel, and \$100 in disposal fees at a licensed waste disposal facility, totaling \$1,000.

Using the EPA BEN model, Staff determined the economic benefit from delaying the expenditures associated with complying with the Cleanup and Abatement Order. Staff

used the estimated compliance cost of \$1,000 as a one-time non-depreciable expenditure, \$0 in capital investment, and \$0 in annual recurring costs with a noncompliance date of November 15, 2025, the day after the November 14, 2025 deadline, and an estimated compliance date of April 16, 2026, the anticipated hearing date. The resulting economic benefit from delaying the cleanup expenditure is \$15. The economic benefit plus ten percent for this violation is calculated to be \$16.50 (\$15 + \$1.50), which the Total Base Liability Amount for this violation exceeds. Additionally, Water Code section 13350, subdivision (e)(1)(B), sets a higher minimum liability amount for this violation, which the proposed liability exceeds, as further discussed in Step 9.

Step 7. Other Factors as Justice May Require

The Enforcement Policy states that “[i]f the 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.” (Enforcement Policy, p. 27.) The North Coast Water Board may exercise its discretion to include some of the costs of investigation and enforcement in the total administrative civil liability.

Staff Costs

The North Coast Water Board incurred \$3,008 in Staff costs associated with this enforcement action. The total Staff time needed to investigate the alleged violation and prepare the Complaint was 15.93 hours. Staff labor included the work of a Senior Engineering Geologist, Supervising Environmental Scientist, Supervising Water Resources Control Engineer, and Assistant Executive Officer. Although the Prosecution Team has calculated its Staff costs for this action, the Prosecution Team did not assess these costs against the Respondent. This decision was reached after consideration of the Total Base Liability Amount for this violation, which already exceeds the statutory maximum liability amount and will need to be adjusted under Step 9.

Step 8. Ability to Pay and Continue in Business

The Enforcement Policy provides that “[i]f the Water Boards have sufficient financial information necessary to assess the violator’s ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on the violator’s ability to continue in business, the Total Base Liability Amount may be adjusted to address the ability to pay or to continue in business. The ability of a Respondent to pay is determined by its income (revenues minus expenses) and net worth (assets minus liabilities).” (Enforcement Policy, pp. 28-29.)

The Respondent owns the Property, which has a 2025 assessed value of \$426,516. Staff does not have information about the Respondent’s revenues or liabilities that would further inform the Respondent’s ability to pay. Based on the information available, Staff proposes no adjustment to the Total Base Liability Amount.

Step 9. Maximum and Minimum Liability Amounts

The Enforcement Policy requires the North Coast Water Board to consider the maximum and minimum liability amounts that may be assessed for each violation. For all violations, the applicable statute sets a maximum liability amount. For some violations, the statute also establishes a minimum liability amount. The maximum and minimum liability amounts for each violation must be determined for comparison to the liability amounts proposed.

Pursuant to Water Code section 13350, subdivision (e)(1), civil liability may be administratively imposed by the North Coast Water Board on a daily basis in an amount that shall not exceed five thousand dollars (\$5,000) for each day the violation occurs. The Complaint proposes liability for 10 days of violation. Accordingly, the statutory maximum liability amount that can be imposed for this violation is \$50,000. The Total Base Liability of \$66,406 exceeds the maximum amount permitted by statute. Therefore, the Total Base Liability is adjusted to \$50,000 to reflect the maximum liability amount.

Water Code section 13350, subdivision (e)(1)(B), further provides that, “[w]hen there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.” Accordingly, the statutory minimum liability amount that can be imposed for the violation is \$1,000.

After the adjustment under this step, the proposed liability for the violation falls within the statutory maximum and minimum liability amounts.

Step 10. Final Liability Amount:

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts. In consideration of the maximum liability amount determined under Step 9, the Final Liability Amount for the violation is \$50,000, which is the statutory maximum amount.

