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11 GILLIBRAND INDUSTRIAL SANDS, LLC

**BEFORE THE CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD**

SWRCB/OCC File No.

**GILLIBRAND INDUSTRIAL SANDS,  
LLC'S PETITION FOR REVIEW OF  
THE LOS ANGELES REGIONAL  
WATER QUALITY CONTROL  
BOARD'S ORDER NO. R4-2025-0192;  
PRELIMINARY POINTS AND  
AUTHORITIES IN SUPPORT OF  
PETITION [WAT. CODE § 13320]**

[Submitted Concurrently with Request for Stay of Regional Board Order and Declarations of Meghan Neal and Joseph King]

Under Water Code section 13320 and California Code of Regulations (“CCR”), title 23, section 2050, Petitioner GILLIBRAND INDUSTRIAL SANDS, LLC (individually, “Gillibrand” or “Petitioner”) hereby submits this Petition for Review and Statement of Points and Authorities (“Petition”) to the State Water Resources Control Board (“State Board”). Petitioner requests that the State Board review the Los Angeles Regional Water Quality Control Board’s (“Regional Board”) adoption of Order No. R4-2025-0192 (“Order”).

This Petition satisfies the requirements of CCR, title 23, section 2050, subd. (a). Petitioner reserves and requests the right to file supplemental points and authorities in support of the Petition once the administrative record is available. Petitioner also reserves the right to submit additional arguments and evidence responsive to the Regional Board's or other interested parties' responses to the Petition for Review, to be filed in accordance with CCR, title 23, section 2050.5.

**I. NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS OF  
PETITIONER**

### The Petitioner:

Gillibrand Industrial Sands, LLC  
Attn: Brandon Theising  
4537 Ish Drive  
Simi Valley, CA 93063  
Phone: (805) 526-2195  
Email: brandon@pwgcoinc.com

Petitioner requests that all materials and documents generated in connection with this Petition for Review and administrative record to be provided to Petitioner's counsel at:

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## II. PETITIONER

Petitioner owns and operates the facility subject to the Order, which is located at 5810 Bennett Road, Simi Valley, California, WDID 4 56I003605 (the “Facility”). The Facility is registered under and subject to the requirements of National Pollutant Discharge Elimination System (“NPDES”) Order No. 2014-0057-DWQ, CAS000001, as amended by Order WQ 2015-0122-DWQ & Order WQ 2018-0028-DWQ, Permit for Stormwater Discharges Associated with Industrial Activities (the “Permit”). Petitioner and the Facility are subject to and thus directly impacted by the Regional Board’s Order.

1       **III. SPECIFIC ACTION OF THE REGIONAL BOARD THAT THE STATE BOARD**  
2       **IS REQUESTED TO REVIEW**

3       Petitioner requests that the State Board review the Regional Board's adoption of the Order.  
4       The specific actions and inactions of the Regional Board, and requirements of the Order that  
5       Petitioner requests the State Board to review are requirements in the Order for Petitioner to:

- 6       1) Update its stormwater monitoring implementation plan to require collection and  
7               analysis of every qualified storm event (QSE) for pH, oil and grease, total suspended  
8               solids (TSS), nitrite plus nitrate nitrogen, total recoverable metals scan, and hardness;
- 9       2) Record detailed information for each QSE, including dates, times, duration, and rainfall  
10               amounts;
- 11       3) Conduct and document visual observations for every QSE;
- 12       4) Submit all analytical results to the Board via the SMARTS database;
- 13       5) Update and resubmit the Facility's Level 2 Exceedance Response Action (ERA)  
14               Technical Report to evaluate and propose additional best management practices  
15               (BMPs), including Advanced and source control BMPs, to prevent future exceedances  
16               of numeric action levels (NALs);
- 17       6) Include and implement additional BMPs in the Level 2 Technical Report, including new  
18               basins and rerouting of stormwater to prevent discharges exceeding NALs; and
- 19       7) Upon approval, update the Facility's SWPPP to include any additional BMPs.

20       **IV. THE DATE ON WHICH THE REGIONAL BOARD ACTED**

21       The Regional Board issued the Order on December 15, 2025.

22       **V. STATEMENT OF REASONS WHY THE ACTION WAS IMPROPER**

23       A full and complete statement of the reasons why the Regional Board's actions were  
24       inappropriate or improper is provided in the accompanying Statement of Points and Authorities.

25       **VI. THE MANNER IN WHICH PETITIONER IS AGGRIEVED**

26       The Petitioner is filing this Petition on behalf of itself and its Facility, which are subject to  
27       the Order. The Petitioner and the Facility are aggrieved by the actions of the Regional Board

1 because it will be subject to, bear the cost, economic impacts, and administrative burden of the  
2 Order that is the subject of this Petition.

3 **VII. SPECIFIC STATE BOARD ACTION REQUESTED BY PETITIONER**

4 The Petitioner requests that the State Board review the Order, this Petition, the supporting  
5 declarations and evidence filed with this petition, and the rest of the record, and that the State Board  
6 issue an order or orders accomplishing the following:

7 1. Upon finding the Order is not supported by evidence in the record and/or exceeds the  
8 Regional Board's authority, the State Water Board would rescind the Order; and  
9 2. Make any other necessary orders and conforming changes to carry out the above.

10 **VIII. STATEMENT OF POINTS AND AUTHORITIES**

11 As required by CCR, title 23, section 2050, subd. (a)(7), Petitioner includes a statement of  
12 points and authorities in support of this Petition beginning on page 6, below.

13 **IX. STATEMENT THAT THE PETITION HAS BEEN SENT TO THE REGIONAL**  
14 **BOARD**

15 A true and correct copy of this Petition was sent electronically to the Regional Board at  
16 [susana.arredondo@waterboards.ca.gov](mailto:susana.arredondo@waterboards.ca.gov) and [info4@waterboards.ca.gov](mailto:info4@waterboards.ca.gov). A courtesy copy of this  
17 Petition was sent electronically to the attorney for the Regional Board at  
18 [adriana.nunez@waterboards.ca.gov](mailto:adriana.nunez@waterboards.ca.gov).

19 **X. REQUEST FOR EVIDENTIARY HEARING**

20 If the matter is not decided summarily to the satisfaction of Petitioner, Petitioner requests  
21 an evidentiary hearing. At the hearing Petitioner would present the arguments and evidence set  
22 forth in the Statement of Points and Authorities and the concurrently filed declarations.

23 **XI. STATEMENT AS TO WHETHER THE PETITIONER RAISED THE ISSUE OR**  
24 **OBJECTION IN THIS PETITION TO THE REGIONAL BOARD;**  
25 **SUPPLEMENTAL EVIDENCE**

26 The Regional Board provided no opportunity for Petitioner or the public to review,  
27 comment on or appeal the Order at the Regional Board level, and therefore Petitioner has no process  
28 available to it to submit any written or oral comments or other written evidence prior to submitting

1 this Petition. This Petition was timely submitted pursuant to Water Code section 13320 and CCR,  
2 title 23, section 2050, subd. (b), as it is submitted within thirty (30) days of the Regional Board's  
3 action on December 15, 2025.

4 The evidence submitted with the Petition and accompanying evidentiary declarations is  
5 evidence that should be included in the administrative record. As noted above, there was no  
6 opportunity to present the evidence to the Regional Board before it issued the Order. To the extent  
7 such evidence is not included in the record, it should nonetheless be considered by the State Board  
8 because the evidence is relevant to the matter at hand, as it involves the Facility's compliance with  
9 the Permit on issues directly implicated by the Order. The moving papers, declarations and evidence  
10 are being provided to the Regional Board concurrently with the submittal of this Petition. Petitioner  
11 reserves the right to resubmit and supplement the request for inclusion of the evidence herewith  
12 following receipt of the administrative record.

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## **STATEMENT OF POINTS AND AUTHORITIES**

Petitioner files this Statement of Points and Authorities in support of its Petition in accordance with CCR, title 23, section 2050(a). Petitioner reserves the right to file a supplemental or Reply memorandum after receipt of the administrative record and the responses of the Regional Board or other interested parties, if any.

## I. INTRODUCTION

Order No. R4-2025-0192 (the “Order”), issued by the Los Angeles Regional Water Quality Control Board (“Regional Board”), imposes unnecessary, burdensome, and improper requirements on Petitioner Gillibrand and its Facility. The Regional Board asserts that the Order is necessary to ensure compliance with the Industrial General Permit (Order 2014-0057-DWQ, as amended) (the “Permit”), but that assertion is not supported by the administrative record or the Permit, itself.

The Order rests on outdated information and inaccurate, demonstrably false allegations of Permit violations. Rather than advancing compliance with the Permit or improving water quality, it increases regulatory burden and risk without any corresponding environmental benefit.

As shown in the record—including the Facility’s Storm Water Pollution Prevention Plan (“SWPPP”), Level 2 Exceedance Response Action (“ERA”) Technical Report, inspection records, sampling data, and extensive compliance correspondence—Gillibrand has implemented required and feasible Best Management Practices (“BMPs”) in accordance with the Permit, addressed every issue raised by the Regional Board, and achieved substantial reductions in Total Suspended Solids (“TSS”) in stormwater discharges through extensive, costly, ongoing efforts. The Order disregards this record of compliance and improvement and instead imposes additional requirements that are neither required by the Permit nor justified by the facts.

Rather than advancing the State Board's objectives of predictable, performance-based stormwater regulation, the Order imposes *ad hoc*, duplicative, and increasingly onerous requirements that unjustifiably expand regulatory obligations, improperly mandate the implementation specific BMPs, and provide no demonstrated water quality benefit. If allowed to stand, the Order sets a troubling precedent that would undermine the Permit's statewide structure

1 by allowing Regional Boards to impose escalating obligations untethered from violations,  
2 feasibility, or evidence.

3 For these reasons, State Board intervention is warranted to ensure consistent application of  
4 the Permit and to reaffirm the limits of Regional Board authority. The Order is properly rescinded.

5 **II. FACTUAL AND LEGAL BACKGROUND**

6 **A. Legal Background**

7 The Permit is a regulatory compliance document under the Clean Water Act’s National  
8 Pollutant Discharge Elimination System (“NPDES”) program, designed to manage and control  
9 stormwater discharges associated with industrial activities. The Permit is available to facilities in  
10 specific industrial categories, as defined by Standard Industrial Classification (SIC) codes.

11 The Permit includes various regulatory mechanisms for controlling industrial stormwater  
12 discharges, including, as relevant here, effluent limitations, Numeric Action Levels (“NAL”), and  
13 requirements to develop and implement Best Management Practices (“BMPs”) set forth in a  
14 Storm Water Pollution Prevention Plan (“SWPPP”) that includes, among other elements, a  
15 comprehensive monitoring and reporting program.

16 Relevant here, the Permit adopts *technology-based* effluent limitations under the Clean  
17 Water Act’s Best Available Technology Economically Achievable/Best Conventional Pollutant  
18 Control Technology (“BAT/BCT”) standard. Consistent with federal law, these limitations do not  
19 impose numeric effluent limits but reflect “best industry practice considering technological  
20 availability and economic practicability and achievability.” (Permit, § X.H.1 & n.14; § I.D.33.)

21 The Permit also establishes Numeric Action Levels (“NALs”) for certain pollutants,  
22 including, as relevant here, TSS. NALs are not numeric effluent limitations. (Permit, §§ I.N.77;  
23 XII.D.) Exceedances of NALs are also not Permit violations. Instead, they trigger investigative  
24 and corrective Exceedance Response Actions (“ERAs”) by industrial permittees designed to  
25 evaluate BMP effectiveness and guide adaptive improvements. (Permit, § I.N.77; Declaration of  
26 Joseph King (“King Decl.”), ¶ 10.)

27 The Permit does not require the immediate elimination of all NAL exceedances, nor does

1 it mandate the implementation of specific BMPs regardless of feasibility or cost. Rather, it  
2 requires permittees (not the Regional Board) to assess and implement, *where feasible*, BMPs from  
3 a list of “Minimum” and “Advanced” BMPs reflective of best industry practice and economic  
4 practicability. (Permit, § X.H.) In adopting the Permit, the State Board rejected a zero-exceedance  
5 or technology-forcing approach in favor of a structured, adaptive compliance pathway.

6       Under the ERA framework, facilities progress from “baseline” status to Level 1 after an  
7 initial NAL exceedance and to Level 2 following a subsequent exceedance for the same  
8 parameter. (Permit, §§ XII.C, XII.D; King Decl., ¶ 6.)

9       For Level 2 facilities, the Permit provides a defined compliance endpoint through the  
10 “Industrial Activity BMP Demonstration.” (Permit, § XII.D.4.b; King Decl., ¶ 10.) A facility may  
11 demonstrate that all feasible BMPs have been implemented and that additional measures are  
12 either infeasible or would not provide benefits commensurate with their cost. (*Id.*) Facilities that  
13 satisfy this demonstration remain in Level 2 regardless of subsequent sampling results, *i.e.*, even  
14 if there are four or more consecutive discharges under the applicable NAL. (King Decl., ¶ 16.)  
15 This provision reflects a deliberate State Board policy judgment that continued NAL exceedances  
16 alone do not justify perpetual regulatory escalation once feasibility-based compliance is achieved.

17       As discussed below, since entering Level 2 status in 2018, Gillibrand has gone well  
18 beyond what the Permit requires, devoting substantial resources to upgrading and improving  
19 BMPs at the Facility—efforts that have been demonstrably successful in substantially reducing  
20 TSS exceedances. These efforts are ignored by the Regional Board in its Order.

## 21 **B. Factual Background.**

### 22 1. General Information About the Facility and its History of Permit Compliance.

23       Gillibrand owns and operates the Facility, a 1,200-acre aggregate mining and processing  
24 facility located at 5810 Bennett Road in Simi Valley, California. The Facility is located within  
25 Reach 8 of the Calleguas Creek watershed. Operations include mining, processing, and  
26 stockpiling of specialty sand and gravel products with a broad range of applications. The Facility  
27 is subject to the Permit under the industrial category of gravel mines (SIC Code 1442). (See

1 Declaration of Meghan Neal (“Neal Decl.”), ¶ 4.)

2 The Facility is characterized by hilly terrain and receives substantial stormwater run-on  
3 from thousands of acres of surrounding upland areas, which include cattle ranching operations.  
4 (Neal Decl., ¶ 3, Ex. C at Att. 1.) The Facility has been in continuous operation since 1957 and is  
5 a significant local employer. (Neal Decl., ¶ 3.)

6 With respect to TSS, the Facility entered Level 1 status during the 2016–2017 water year  
7 and Level 2 status during the 2017–2018 water year due to NAL exceedances. The Facility’s  
8 2018 Level 2 ERA Technical Report satisfied the Permit’s requirements through the Industrial  
9 Activity BMP Demonstration. (Neal Decl., ¶10; King Decl., ¶ 8, Ex. P.)

10 The inability to guarantee zero TSS NAL exceedances at the Facility is attributable to site-  
11 specific factors, including the Permit’s low annual average TSS NAL of 100 mg/L (parts per  
12 million), the Facility’s large size and predominantly natural surfaces, substantial upstream run-on,  
13 canyon topography, and the absence of cost-effective, proven BMPs capable of fully eliminating  
14 stormwater discharges under all conditions. (Neal Decl., ¶11; King Decl., ¶10-12, Ex. P.)

15 The 2018 Level 2 ERA Technical Report evaluated two Advanced BMPs identified in the  
16 Permit that have been the subject of Regional Board scrutiny reflected in the Order—Exposure  
17 Minimization and Advanced Treatment. (King Decl., Ex. P, pp. 7-13, Attachment 2.) Exposure  
18 Minimization, defined as storm-resistant enclosures, was rejected as infeasible and prohibitively  
19 expensive given the Facility’s substantial scale and hilly terrain (estimated at \$1.7 billion in 2018  
20 dollars). An Advanced Treatment system was rejected because: (1) the cost of implementing such  
21 a system at the Facility at key discharge points, which would include the costs of the system itself  
22 and extension of electrical power, would be very high, approximately \$1.6 to \$2.2 million for  
23 capital construction costs, alone, depending on the system, and a likely additional annual  
24 operation and maintenance cost of \$40,000 to \$80,000; (2) such a system must be designed to  
25 meet a particular “design” storm standard, and can thus be overwhelmed and rendered ineffective  
26 by larger storms, the storms with the greatest potential for significant TSS loading, thus  
27 eliminating the ability to rely on the systems for eliminating NAL exceedances; (3) such systems

1 notoriously fail when needed most where, after a long period of inactivity due to no rain, they are  
2 turned on at the first large storm, which are the storms that produce the greatest pollutant  
3 discharges, yet another reason they cannot be relied on to eliminate NAL exceedances; and (4)  
4 the general and well documented unreliability of such systems for large-scale industrial  
5 operations. (King Decl., ¶11, Ex. P, pp. 7-13, Attachment 2.) Advanced Treatment should also  
6 not be considered consistent with the BAT/BCT standard because, due to the reasons stated  
7 above, such systems have not been adopted for common use by the construction product mining  
8 and manufacturing industry. (King Decl., ¶12.)

9 **2. Ongoing BMP Improvements and Results.**

10 Instead, the best practical way to effectively control NAL exceedances of TSS at the  
11 Facility is by eliminating or otherwise reducing discharges through utilizing onsite retention  
12 capacity. (Neal Decl., ¶¶ 15-17; King Decl., ¶13.) Onsite retention is an Advanced BMP under  
13 the Permit. (Permit, § X.H.2.b.ii., p. 38.) The Facility has an extensive network of retention  
14 facilities onsite including designed retention facilities and various mining pits, which have the  
15 capacity to retain nearly 1931-acre feet<sup>1</sup> of water, **84 times greater** than the Permit “design storm”  
16 volume for the 85<sup>th</sup> percentile/24-hour storm. (Neal Decl., ¶¶ 18-19, Exs. B and C.)

17 Since entering Level 2, and particularly since 2020, Gillibrand has implemented a  
18 comprehensive, multi-year program of Facility redesigns and BMP upgrades aimed at reducing  
19 and ultimately eliminating stormwater discharges by expanding and leveraging the Facility’s  
20 water retention capacity. As described in detail in the Declaration of Meghan Neal, these efforts  
21 include major grading projects to alter roads and create flow paths into the Facility’s deep wells,  
22 the elimination and reconfiguration of outfalls, the construction of new basins, the expansion and  
23 deepening of existing basins, installation of spillways, riprap, check dams, and diversion  
24 infrastructure, and extensive annual and bi-annual basin cleanouts. (Neal Decl., ¶¶ 22-57.)

25 The estimated outlay of direct capital cost for most of these activities is \$560,500 in just  
26 the last five years, reflecting the substantial commitment of time, money, and effort expended by  
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<sup>1</sup> One acre-foot of water is 325,851 gallons.

1 Gillibrand to address TSS discharges at the Facility. (Neal Decl., ¶ 57.) This figure is also  
2 significantly underinclusive, as it does not capture all the work and much of the internal personnel  
3 time and company equipment use. (Neal Decl., ¶¶ 22-57.) These efforts are also ongoing, with  
4 plans being implemented to further reduce and ultimately eliminate discharges. (*Id.*)

5 The work thus far has eliminated discharges from substantial portions of the Facility,  
6 leaving only DA-1 and DA-3 – which have been reduced in size over time – as the remaining  
7 drainage areas that discharge. (Neal Decl., ¶¶ 22-57; see also Ex. B.) Devising effective retention  
8 BMPs to prevent discharges from such a large and complex facility is an expensive, time-  
9 consuming iterative process. (Neal Decl., ¶¶ 22-25.) But Gillibrand’s well-informed assessment is  
10 that these ongoing efforts will be more fruitful than other Advanced BMPs.

11 To that end, these improvements implemented over the last six years have resulted in  
12 substantial reductions in TSS concentrations, particularly since 2023. During the 2023-2024  
13 stormwater year, the average TSS concentration in stormwater discharges was 95% less than the  
14 2015-2016 reporting year and 90% less than the previous reporting year. (Neal Decl., ¶ 13 Ex. A;  
15 King Decl., ¶ 14.) The current numbers are even lower and ***comply with the Permit’s TSS NALs.***  
16 Thus far in the 2025–2026 water year, two Qualified Storm Event (“QSE”) samples were well  
17 below both the annual and instantaneous NALs for TSS—43.4 mg/L and 51.2 mg/L, respectively,  
18 compared to NALs of 100 mg/L and 400 mg/L, ***reflecting a 99% reduction in TSS from the***  
19 ***exceedances measured in 2015-16.*** (Neal Decl., Ex. A.) Gillibrand remains committed to  
20 ongoing improvements and additional capital investments to further reduce and ultimately  
21 eliminate stormwater discharges from the Facility.

22 3. Recent Actions and Communications with the Regional Board Before the Order.

23 Since January 2024, Gillibrand has had numerous communications with the Regional  
24 Board regarding stormwater compliance at the Facility. On January 18, 2024, the Board issued a  
25 Compliance Documentation Request seeking information on BMPs, basin capacity, and design  
26 storm standards. (Neal Decl., Ex. D.) Gillibrand responded on February 2, 2024, providing 182  
27 pages of detailed information in response to the request. (Neal Decl., Ex. E.)

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1                   On June 20, 2024, the Board issued a Notice of Violation (“NOV”) alleging BMP,  
2 SWPPP, recordkeeping, and ERA report violations. (Neal Decl., Ex. F.) On July 22, 2024,  
3 Gillibrand issued a letter comprehensively disputing each of the alleged violations, demonstrating  
4 them to be contrary to Permit requirements and otherwise without merit. (Neal Decl., ¶61, Ex.  
5 G.) The Regional Board has not responded to Gillibrand’s July 22, 2024 NOV response letter or  
6 otherwise addressed or refuted the points raised therein. (Neal Decl., ¶62.)

7                   On July 9, 2024, the Board issued a 13383 Order (R4-2024-0188) to all Level 2 facilities  
8 in Compliance Groups within the Board’s jurisdiction – which we understand to be more than 100  
9 facilities – requiring expanded sampling, reporting, and SWPPP updates. (Neal Decl., Ex. H.)  
10 Among other requirements, this order expanded the Facility’s prior requirement to test 2 QSEs  
11 per year to 4 QSEs per year, doubling the number of required samples at the Facility. (Neal Decl.,  
12 Ex. H.) Gillibrand complied with this order and updated its SWPPP and inspection forms and  
13 sampling procedures in September 2024. (Neal Decl., ¶ 64, Ex. I.)

14                   On October 4, 2024, Gillibrand met with Board staff to discuss further testing  
15 requirements. (Neal Decl., ¶ 65.) On February 14, 2025, Board staff inspected the Facility. (Neal  
16 Decl., ¶ 66.) At the February 14th site inspection, the Regional Board inspectors took three  
17 turbidity samples each from OF-1 and OF-3, respectively. Turbidity and TSS are closely related,  
18 as higher concentrations of TSS generally cause higher water murkiness (turbidity); while TSS is  
19 a quantitative weight measurement (mg/L) of suspended material, turbidity is an optical  
20 measurement of light scattering, measured by Nephelometric Turbidity Units (“NTU”). They  
21 often correlate. (King Decl., Ex. 19.) Though turbidity testing is not required by the Permit, the  
22 Construction General Permit adopts an NAL of 250 NTU. At OF-1, the Regional Board’s sample  
23 results were 85 NTU, 84 NTU, and 85 NTU.<sup>2</sup> At OF-3, the results were 53 NTU, 55 NTU, and 52  
24 NTU. (Neal Decl., ¶ 69, Ex. J.) All samples were thus well under the 250 NTU standard under the  
25 Construction General Permit, strongly indicating no TSS concerns.

26                   Also at the February 14th the inspection, the Regional Board argued that additional BMPs

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27                   <sup>2</sup> The Regional Board inspection report references FTU (Formazin Turbidity Unit); these are the  
28 equivalent of NTU, i.e., (1 FTU = 1 NTU). (King Decl., ¶ 19.)

1 in the form of straw waddles should be implemented for certain material piles, allegations the  
2 Regional Board repeats in the Order. (Neal Decl., ¶ 67.) The allegation is erroneous; the material  
3 piles are designed to drain back into the Facility, ending up in a deep onsite pit that does not  
4 discharge, so they are being effectively managed. (*Id.*) The waddles would also not work, as they  
5 would be quickly compromised by heavy equipment usage. (*Id.*)

6 The Board sent a follow-up letter on February 20, 2025, formally requesting voluntary  
7 metals testing until the Facility returns to baseline status. (Neal Decl., ¶ 71, Ex. K.) Gillibrand  
8 responded on March 6, 2025, disputing the need for permanent metals testing, reiterating its  
9 extensive BMP improvements, and noting that the Facility is prohibited from returning to  
10 baseline status, regardless of positive TSS results. (Neal Decl., Ex. L; King Decl. ¶ 16-17.) No  
11 further response was received from the Board until the issuance of the December 13, 2025 Order.

12 Gillibrand has thus implemented all required BMPs, submitted all required reports, and  
13 responded fully to every Regional Board inquiry and order. The Facility's SWPPP, Level 2 ERA  
14 Technical Report, and recent compliance correspondence document a robust and proactive  
15 stormwater management program. Beyond that, Gillibrand has continued to expend significant  
16 resources to eliminate TSS discharges, efforts that are proving to be highly successful.

17 **4. The Order.**

18 On December 15, 2025, the Regional Board issued the Order. It requires Gillibrand to: (1)  
19 update its stormwater monitoring implementation plan to require collection and analysis of every  
20 qualified storm event (QSE) for pH, O&G, TSS, N+N, and to add to this total recoverable metals  
21 and hardness; (2) record detailed information for each QSE, including dates, times, duration, and  
22 rainfall amounts; (3) conduct and document visual observations for every QSE; (4) submit all  
23 analytical results to the Board via the SMARTS database; (5) update and resubmit the Facility's  
24 Level 2 Technical Report to include additional retention and rerouting BMPs, and evaluate  
25 additional BMPs, including Advanced Treatment and/or "source control" BMPs, to prevent future  
26 exceedances of TSS NALs; and (6) upon approval, update the Facility's SWPPP.

### III. ARGUMENT

The Order is not supported by substantial evidence in the administrative record, improperly demands the imposition of specified BMPs, and is premised on outdated, inaccurate, and demonstrably false allegations of Permit violations against a Facility that had made exemplary efforts to protect water quality through reducing TSS discharges. The Order relies on various justifications. As addressed below, each of these justifications lacks merit.

## **A. The Order's Allegation that Its Requirements Are Necessary to Comply With the Permit Is Incorrect**

The Order asserts that its expanded requirements—including sampling every QSE, additional metals and hardness testing, and a new BMP evaluation—are necessary to ensure compliance with the Permit due to past NAL exceedances for TSS. This assertion is not supported by the Permit or the facts in the record. The Permit does not require facilities to implement BMPs that guarantee elimination of all NAL exceedances. Rather, the Permit provides a clear framework: facilities must implement a SWPPP, feasible Minimum and Advanced BMPs, and respond to NAL exceedances through the ERA Level 1 and 2 compliance process. (Permit, §§ X.H, XII.D; King Decl. ¶¶ 10-11.)

Gillibrand has complied with these requirements. As detailed in the Declarations of Joseph King and Meghan Neal, the Facility has implemented all required Minimum and Advanced BMPs, submitted all required reports, and responded to every Board inquiry and order. (King Decl. ¶¶ 13-18; Neal Decl. ¶¶ 7, 14, 17, 57; King Decl., Exs. N-Q.) The Facility’s Level 2 ERA Technical Report, prepared in accordance with the Permit, included a comprehensive evaluation of additional BMPs, including Advanced Treatment and Exposure Minimization, and provided cost analyses and justifications for BMP selection. (King Decl. ¶¶ 11, 14; Neal Decl. ¶¶ 16-17; see also Level 2 ERA Technical Report, Ex. P.) Moreover, the Order’s allegation that no source control BMPs are implemented is false. (See Subsection D., below.)

The Permit allows facilities to comply with Level 2 requirements through an “Industrial Activity BMP Demonstration,” which Gillibrand has done. (Permit, § XII.D.2.a.iv; King Decl. ¶¶

1 10-11, 15-16.) The Permit further provides that facilities using this demonstration are not required  
2 to implement infeasible or non-industry-standard BMPs, nor are they eligible to return to baseline  
3 status, regardless of subsequent compliance. (Permit, § XII.D.4.b; King Decl. ¶ 16-17.)

4 The Order's requirements go beyond what the Permit authorizes and are not justified by  
5 any evidence of ongoing violations. The Facility's recent sampling data and compliance record  
6 establish that its BMPs are increasingly effective and that it continues to be in compliance with  
7 the Permit. (Neal Decl. ¶¶ 13-14, 57; King Decl. ¶¶ 13-14, 18.)

8 The State Board has emphasized that Regional Boards must act within the four corners of  
9 statewide permits and may not impose requirements that effectively amend or supplement those  
10 permits on a facility-specific basis. (See, e.g., Water Code, § 40055(b).) Here, the Order imposes  
11 requirements—sampling every Qualified Storm Event, permanent metals and hardness testing,  
12 implementing additional BMPs, and renewed evaluation of infeasible BMPs—that are not  
13 required by the Permit and are inconsistent with its structure. The Permit provides that:

- 14 • NAL exceedances are not violations;
- 15 • Level 2 ERA compliance may be achieved through a feasibility-based Industrial Activity  
16 BMP Demonstration;
- 17 • Facilities are not required to implement BMPs that are infeasible, non-industry-standard,  
18 or disproportionate in cost; and
- 19 • The determination of what BMPs to implement is left to permittees.

20 By expanding testing and compliance requirements despite a well-documented record of  
21 compliance and mandating perpetual escalation and re-evaluation of BMPs, the Order exceeds the  
22 Regional Board's delegated authority and effectively rewrites the Permit for the Facility.

23 **B. The Order's Reliance on Elevated Levels of TSS in 2017-2018 Improperly Ignores**

24 **Gillibrand's Significant Subsequent Efforts and Results**

25 The Order cites and relies on TSS exceedances from the 2016-2018 reporting years as  
26 justification for its requirements, but this reliance unfairly ignores the substantial, well-  
27 documented improvements made at the Facility since that time. As detailed in the Declarations of  
28

1 Meghan Neal and Joseph King, Gillibrand has invested significant resources in redesigning the  
2 Facility, expanding and improving stormwater retention capacity, and implementing a suite of  
3 BMP upgrades targeted at reducing TSS discharges. (Neal Decl. ¶¶ 14, 17, 23-57; King Decl. ¶¶  
4 13-14.) These efforts have been effective. In the current 2025-2026 water year, the two QSE  
5 discharges sampled were 43.4 mg/L and 51.2 mg/L—well below both the annual and  
6 instantaneous NALs for TSS, reflecting a 99% reduction from 2015-16 levels. (Neal Decl. ¶ 13;  
7 see also sampling data, Ex. A; King Decl. ¶ 14)

8 The Order’s failure to acknowledge these improvements and its continued reliance on  
9 outdated data and information is not only unreasonable, but also contrary to the Permit’s intent,  
10 which is to encourage and recognize effective BMP implementation and continuous  
11 improvement. (Permit, § I.N.75-78.) The Facility’s record demonstrates a robust and proactive  
12 stormwater management program that has achieved substantial reductions in TSS, rendering the  
13 Order’s additional requirements unfair, unnecessary and unsupported by the current facts. The  
14 Order’s failure to grapple with this evidence renders its findings unsupported and arbitrary.

15 **C. The Order Improperly Demands Specific Additional BMPs**

16 The Order improperly mandates that Gillibrand construct additional retention basins and  
17 reroute stormwater to prevent future TSS exceedances. This demand exceeds the Regional  
18 Board’s statutory and regulatory authority.

19 Water Code section 13383 authorizes the Regional Board to establish monitoring,  
20 inspection, reporting, and recordkeeping requirements for permittees. It does not authorize the  
21 Board to compel the implementation of specific BMPs at a facility. The Order therefore goes  
22 beyond the scope of authority conferred by section 13383 and is improper on that basis alone.

23 The Industrial General Stormwater Permit likewise does not authorize the Regional Board  
24 to dictate particular BMPs. While the Permit requires permittees to develop, implement, and  
25 revise BMPs as necessary to reduce or prevent pollutants in stormwater discharges, it expressly  
26 leaves the selection, design, and implementation of BMPs to the discretion of the permittee, based  
27 on site-specific conditions. (See, e.g., Permit §§ I.D.33, 36; Permit Fact Sheet, §§ I.D. p 5; II.D.5.

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1 pp. 23-24.) The Permit’s Level 2 ERA provisions require evaluation of potential sources,  
2 assessment of BMP effectiveness, and identification of additional or modified BMPs, not the  
3 imposition of engineering solutions by a Regional Board. Accordingly, the Order’s directive that  
4 the Facility add *unspecified* additional retention basins and rerouting BMPs converts the Permit’s  
5 performance-based framework into a prescriptive mandate the Permit does not authorize.

6 Moreover, as noted above, the Facility is already in the process of upgrading retention and  
7 diversion BMPs at Outfalls 1 and 3—the only outfalls that have discharged stormwater in the past  
8 five years. Requiring an updated Level 2 ERA Technical Report to impose specific structural  
9 controls is therefore not only *ultra vires*, but also duplicative and unnecessary, particularly where  
10 the Permit contemplates an iterative, facility-driven approach to BMP evaluation and  
11 improvement rather than Regional Board-directed requirements.

#### 12 **D. The Order’s Allegation of No “Source Control” BMPs at the Facility is Incorrect**

13 The Order alleges that the Facility lacks “source control” BMPs, but this claim is both  
14 factually and legally incorrect. The Permit does not define “source control” BMPs as a separate,  
15 mandatory category; it requires implementation of Minimum BMPs and, where feasible,  
16 Advanced BMPs, which include a range of source control measures such as erosion control, good  
17 housekeeping, and containment. (Permit, § X.H.1-2; see also Fact Sheet, p. 133; King Decl. ¶ 10;  
18 Neal Decl. ¶¶ 7, 22-24.) As explained in the Declarations of Joseph King and Meghan Neal, the  
19 Facility’s SWPPP and compliance documentation identify and describe a comprehensive suite of  
20 BMPs, including numerous source control measures. These include erosion and sediment  
21 controls, stormwater containment, diversion of run-on, regular basin maintenance, and robust  
22 housekeeping practices. (Neal Decl. ¶¶ 7, 18, 22-24, 57; King Decl. ¶¶ 13-14, 18.) The Facility’s  
23 basins, pits, and retention structures are specifically designed to capture and settle sediment  
24 before discharge, and the Facility’s ongoing BMP upgrades have further increased retention  
25 capacity and reduced the frequency and volume of discharges. (Neal Decl. ¶¶ 17-18, 23-57.)

26 The Regional Board’s suggestion that additional “source control” BMPs are required  
27 appears to solely be based on a claim that straw waddles or other controls are required around  
28

1 certain material piles identified in the February 14, 2025 inspection. As explained above and in  
2 the Neal Declaration, such measures would be ineffective and unnecessary: the material piles in  
3 question drain into onsite pits that do not discharge, and the piles are actively handled by heavy  
4 equipment, which would quickly compromise any straw waddles. (Neal Decl. ¶ 67.) The Permit  
5 does not require implementation of infeasible BMPs, and it expressly allows facilities to justify  
6 their BMP selections based on economic practicability and site-specific conditions. (Permit, §  
7 X.H.1 n.14; King Decl. ¶¶ 10-12.) Here, because runoff from the piles does not discharge from  
8 the Facility but is channeled into permanent onsite retention facilities, the piles are being  
9 adequately and effectively controlled through Advanced channeling and retention BMPs. The  
10 Order does not assert and cannot establish that additional source control BMPs are required by the  
11 Permit, particularly not straw waddles that would serve no purpose and quickly be destroyed. The  
12 Facility implements various source control BMPs, and the BMPs for the identified material piles  
13 comply with Permit requirements, unlike the ineffective BMPs demanded by the Regional Board.  
14 The Order's contrary allegations lack merit.

15 **E. The June 2024 NOV Does Not Validate the Order**

16 The Order references the June 20, 2024 NOV as a basis for its findings, but the NOV's  
17 allegations were comprehensively addressed and refuted by Gillibrand in its July 22, 2024  
18 response letter. (Neal Decl. ¶¶ 60-62; see also NOV Response Letter, Ex. G.) Gillibrand  
19 demonstrated that its SWPPP and supporting documents identify all required BMPs, specifically  
20 refuting the claim that older basins did not have size and capacity information by demonstrating  
21 that basin sizing/design information is not required for pre-2015 basins (but the size information  
22 was nonetheless provided), that Advanced Treatment BMPs are not mandated or industry  
23 standard but were in any event fully evaluated, and that all tracking, recordkeeping, and ERA  
24 requirements were met. (Neal Decl., ¶ 72, Ex. G; King Decl., Ex. Q, pp. 27-40.) The Board has  
25 not responded to Gillibrand's detailed rebuttal, nor has it provided any evidence to support the  
26 NOV's claims despite Gillibrand's detailed response. (Neal Decl., ¶¶ 73-74.) The Order's  
27 continued reliance on the NOV is therefore misplaced and unsupported by the record.

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1           **F. The Regional Board’s Prior July 9, 2024 13383 Order Does Not Justify the Current**  
2           **Order—Quite the Opposite.**

3           The Order also references the Regional Board’s prior July 9, 2024 Water Code section  
4           13383 Order (R4-2024-0188), which we understand was issued to over 100 Level 2 facilities in  
5           Compliance Groups, which required expanded sampling, reporting, and SWPPP updates,  
6           including doubling the Facility’s QSE sampling requirement from 2 to 4 per year. (Neal Decl. ¶  
7           63.) Gillibrand has fully complied with this order, updating its SWPPP and inspection forms in  
8           September 2024 and expanding its sampling program. (Neal Decl. ¶¶ 63-64.)

9           The Facility’s compliance with the prior 13383 order demonstrates its commitment to  
10           meeting all regulatory requirements and renders the new Order’s further expansion of sampling  
11           requirements unnecessary and duplicative. There is no evidence that the Facility’s compliance  
12           with the prior order was inadequate or that further expansion of requirements is warranted at this  
13           time so soon after the prior order was issued. The Order’s requirement to sample every QSE is  
14           excessive, duplicative of other recent orders, unsupported by the Permit, and, as set forth below,  
15           not reasonably calculated to improve water quality.

16           **G. The 2/14/2025 Inspection Does Not Provide a Valid Justification for the Order**

17           The February 14, 2025 inspection is cited in the Order as evidence of ongoing violations,  
18           but the inspection report and subsequent correspondence do not support this conclusion. Indeed,  
19           the Regional Board’s own turbidity testing conducted during the inspection strongly indicates  
20           effectiveness of its BMPs for TSS by being well under the NAL for turbidity – a close corollary  
21           of TSS – under the Construction General Permit. (Neal Decl., ¶ 69, Ex. J; King Decl., ¶ 19.)  
22           During the inspection, Board staff observed material piles and suggested additional BMPs (straw  
23           waddles), but as explained above and in the Neal Declaration, these measures would be  
24           ineffective and unnecessary because the piles are controlled by Advanced retention BMPs with no  
25           discharge from the Facility, supporting the conclusion that effective erosion and sediment  
26           controls are already being implemented. (Neal Decl. ¶ 67.)

27           **H. The Requirement for an Updated BMP Evaluation and BMPs Is Impermissibly Vague**

28           The Order requires Gillibrand to update its Level 2 ERA Technical Report to evaluate and

1 propose additional BMPs, including Advanced Treatment and “source control” BMPs, and to  
2 implement additional retention and rerouting BMPs to prevent future TSS exceedances. The  
3 Facility’s existing Level 2 ERA Technical Report already includes a comprehensive evaluation of  
4 Advanced Treatment systems and Exposure Minimization through enclosure of the Facility, with  
5 detailed cost analyses and justifications for rejecting those BMPs. (King Decl. ¶¶ 11-12; Level 2  
6 ERA Technical Report, Ex. C.) Thus, the Level 2 Technical Report complies with the Permit and  
7 no violation is established by the Order. The requirement to re-evaluate these same BMPs is  
8 provided without justification or adequate explanation. As addressed above, neither Water  
9 Code section 13383 nor the Permit sanctions Regional Board-mandated BMPs.

10 Moreover, the Level 2 Technical Report was issued in 2018 and only now, seven years  
11 later, the Regional Board found it inadequate. (King Decl., Ex. P.) This extraordinary delay  
12 undermines the credibility of the Regional Board’s attack. The Regional Board should be deemed  
13 to have accepted the Level 2 report after so many years of inaction.

14 With respect to additional BMPs to retain and reroute stormwater, as noted above,  
15 Gillibrand has actively continued to implement such BMPs, with plans to do more in the future.  
16 It is unclear, however, if such activities will meet the Regional Board’s unspecified demand.

17 Finally, the Order does not explain why the analysis in the Level 2 Technical Report was  
18 allegedly inadequate and what can be done to achieve alleged compliance; there is no clarity  
19 provided in the Order regarding what additional BMPs and analysis would be adequate, in the  
20 Regional Board’s view, just a vague demand to do more. The Order thus directs Gillibrand to  
21 amend the report but does not identify any specific deficiency, error, or required correction.  
22 Without notice of what is allegedly deficient or how the report fails to meet applicable standards,  
23 Gillibrand cannot meaningfully comply. An amendment directive that identifies neither the  
24 problem nor any indication of the fix is arbitrary, deprives Gillibrand of fair notice, and is  
25 unenforceable as written.

26 **I. The Order Undermines Statewide Consistency and Predictability of the Permit**

27 The Order replaces the well-established Permit framework with an *ad hoc*, site-specific

1 escalation untethered from Permit standards, feasibility, or performance. If upheld, it would set a  
2 precedent allowing Regional Boards to:

- 3 • Mandate perpetual BMP escalation despite Permit compliance;
- 4 • Impose monitoring obligations far beyond Permit requirements untethered from viable  
5 claims of non-compliance;
- 6 • Make vague demands for additional BMPs without clarity or justification (where the  
7 Facility is already implementing BMPs that may or may not meet the vague description);  
8 and
- 9 • Effectively seek to impose specific technology-forcing standards rejected by the State  
10 Board.

11 Such an outcome would undermine statewide consistency and invite regional enforcement  
12 of the Permit inconsistent with its standards.

#### 13 **J. The Order is Not Reasonably Calculated to Protect Water Quality**

14 The Order's expanded requirements—including sampling every QSE, additional metals  
15 and hardness testing, and a new BMP evaluation—are not reasonably calculated to protect water  
16 quality at the Facility or in the receiving waters.

17 The Facility's recent performance demonstrates that its existing BMPs are effective: TSS  
18 concentrations in stormwater discharges in the current 2025-26 water year have been reduced by  
19 99% compared to 2015-2016 levels. (Neal Decl. ¶ 14; King Decl. ¶ 14.) The Facility's robust  
20 retention capacity, ongoing BMP upgrades, and proactive compliance efforts have resulted in  
21 substantial and sustained improvements in stormwater quality. (Neal Decl. ¶¶ 17-18, 23-57; King  
22 Decl. ¶¶ 13-14, 18.) To be sure, the job is not done and the work is ongoing with plans for further  
23 improvements in the next year and in future years, but undeniable progress has been made. (*Id.*)

24 No evidence shows that the Order's additional requirements will result in any meaningful  
25 improvement in water quality. To the contrary, the Order imposes unnecessary and burdensome  
26 additional reporting, testing, and BMP implementation obligations that will divert resources away  
27 from the continuous and ongoing improvement that is being achieved at the Facility.

1           **K. The Order Improperly Disregards the Permit’s Level 2 Compliance Framework**

2           The Permit establishes a deliberate compliance endpoint for Level 2 facilities through the  
3           Industrial Activity BMP Demonstration. This framework reflects a State Board policy judgment  
4           that continued NAL exceedances alone do not justify endless regulatory escalation once  
5           feasibility-based compliance has been achieved.

6           Gillibrand has satisfied this compliance pathway and, in fact, goes far beyond it through  
7           continuous and ongoing substantial capital investment and operational changes proven to be  
8           highly effective. The Order disregards this framework entirely, effectively treating NAL  
9           exceedances as *de facto* violations and imposing requirements the Permit expressly does not  
10          require. This approach conflicts with the Permit’s text, structure, and intent.

11          **L. The Order is Overbroad In Addressing Additional Parameters Not At Issue.**

12          The Order specifically asserts additional TSS and metals testing is required due to past  
13          TSS exceedances, and yet it seeks to impose the same expanded testing requirement to sample all  
14          QSE’s for pH, O&G, and N+N. The Order does not even attempt to justify expanded testing for  
15          these parameters. The Order is thus overbroad and improper as to these additional testing  
16          requirements.

17          **IV. CONCLUSION**

18          For the foregoing reasons, Petitioner respectfully requests that the State Board grant the  
19          relief requested in this Petition. Because the Order exceeds the Regional Board’s Permit authority,  
20          lacks substantial evidentiary support, improperly ignores key facts and evidence, conflicts with  
21          statewide policy, and is not reasonably calculated to protect water quality, we believe rescission—  
22          not modification—is the appropriate remedy.

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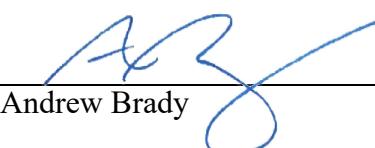
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1 Dated: January 14, 2026

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