

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

**COMPLAINT NO. R2-2013-1009  
ADMINISTRATIVE CIVIL LIABILITY  
IN THE MATTER OF**

**THE HERTZ CORPORATION  
DOING BUSINESS AS HERTZ RENT-A-CAR  
8000 EARHART ROAD  
OAKLAND, CA 94621**

This complaint to assess an administrative civil liability (Complaint) pursuant to California Water Code (Water Code) section 13350 (a)(3) and (e) is issued to The Hertz Corporation (hereinafter “Discharger”) for a discharge of at least 1,967 gallons of gasoline from its refueling facility in Oakland. An \$18,800 liability is proposed for the alleged Water Code violation.

**THE ASSISTANT EXECUTIVE OFFICER OF THE REGIONAL WATER BOARD  
FINDS THE FOLLOWING:**

1. The Discharger operates a rental car facility at 8000 Earhart Road, Oakland (hereinafter Facility), at the Port of Oakland (Port), Oakland International Airport. The Discharger constructed the Facility in 2003. The Facility includes a rental car fleet, a fueling system, a car wash and vacuum station, an administrative office, and a minor maintenance facility, primarily used for oil changes.
2. The fueling system at the Facility consists of a 12,000-gallon, above-ground storage tank (AST) containing gasoline and underground connections to fuel dispensers (see the attached site map prepared by AMEC). The Discharger completed construction of five of its originally planned six fuel dispensers. The underground product connections between the AST and the five active dispensers consist of a pressurized pipeline, shear valve, containment sump, and leak detection sensors. The sixth dispenser was never finished, but the underground product connections were installed, including a pressurized pipeline, shear valve, and containment sump. The product line to the unfinished dispenser terminates shortly after the share valve. The pipeline was not capped, and no leak detection sensor was installed to the unfinished sixth dispenser.
3. There is an in-ground oil-water separator at the Facility associated with the car-washing operation. Most of the water used in the car wash is recycled and reused, but some of the surplus rinse is collected and discharged through the oil-water separator to East Bay Municipal Utility District’s (EBMUD’s) sanitary sewer collection system.
4. On June 26, 2011, EBMUD staff detected a “strong” gasoline odor at a sanitary sewer lift station (designated Pump Station G), located about a half mile southeast of the Facility near the intersection of Earhart Road and Swann Way. EBMUD inspected sewer manholes in the vicinity of the Pump Station to identify the source of the gasoline and collected water samples from Pump Station G, which contained gasoline constituents

(benzene, toluene, ethyl benzene, and xylenes) at elevated concentrations. Benzene was detected at up to 5.9 milligrams per liter (mg/L), which exceeds the time weighted average or hazardous exposure limit for benzene of 0.5 mg/L.

5. On June 30, 2011, EBMUD determined that the source of the gasoline discharge was the oil-water separator at the Facility. EBMUD alleged that the Port was in violation of its Wastewater Discharge Permit and Ordinance No. 311, and it issued the Port a Notice of Violation on July 5, 2011, requiring the Port's tenant to immediately comply with the terms and conditions of the permit and the ordinance.
6. On July 2, 2011, TEC Environmental, on behalf of the Discharger, discovered a leak from the shear valve in the sump for the unfinished sixth fuel dispenser. TEC Environmental stopped the leak, capped the pipeline, and installed a leak detection sensor in the sump, and assisted the Discharger with spill response.
7. On July 5, 2011, the Discharger reported the unauthorized release of gasoline to the Regional Water Board. The Discharger estimated that a total of 1,967 gallons of gasoline was discharged to soil, groundwater, and the sanitary sewer system based on its daily fuel inventory records for the AST. The Discharger recorded losses of 552, 483, 468, and 464 gallons of gasoline on June 28, 29 and 30, and on July 1, 2011, respectively. The spilled gasoline apparently filled the underground sump and discharged to soil and groundwater at the Facility. Underground utilities provided a preferential pathway and the gasoline migrated to and along a sanitary sewer line (i.e., sewer lateral) connecting the onsite oil-water separator to EBMUD's sanitary sewer collection system. Gasoline entered this sewer lateral which was not sealed.
8. By July 6, 2011, the Discharger recovered all the gasoline from the underground containment sump of the unfinished sixth dispenser, thereby stopping the source of the discharge to soil and groundwater. This also had the effect of substantively stopping the discharge of gasoline to the sewer lateral.
9. On July 17, 2012, TEC Environmental excavated around the product and utility lines and around the onsite sewer lateral to investigate the extent of gasoline migration in the subsurface and recovered approximately 2,500 gallons of liquid during its spill response. The liquid was a mixture of free product (gasoline) and standing water from within the excavated trenches. TEC Environmental also repaired the oil-water separator and sealed the sewer lateral.
10. On September 14, 2011, EBMUD imposed an administrative civil liability in the amount of \$25,025 against the Port and Hertz for discharging gasoline to its sanitary sewer system for 10 days.
11. Additional corrective action is required to address the gasoline discharge to soil and shallow groundwater, and Regional Water Board staff continues to work with the Discharger to investigate and remediate the gasoline discharge.

- a. On June 6, 2012, Regional Water Board staff approved a *Preliminary Site Assessment Workplan*, dated May 23, 2012.
  - b. On December 13, 2012, Regional Water Board required technical reports from the Discharger pursuant to Water Code section 13267. Thus far, the Discharger has submitted a *Technical Report on Waste Discharge* for the Facility, dated January 31, 2013, and a *Preliminary Site Assessment* report, dated March 15, 2013.
12. On March 8, 2013, Regional Water Board prosecution staff visited the Facility to further evaluate the gasoline discharge and potential for impacts to surface water through storm drain systems. As a follow-up to the inspection, Regional Water Board staff requested an identification of the potential stormwater drain inlets impacted by the gasoline discharge and an explanation for how the Discharger determined the duration and volume of the unauthorized discharge. The Discharger submitted the additional information on March 15, 2013. Based on the additional information, prosecution staff concluded that the discharge was confined to soil and groundwater and that surface water was not impacted.

## ALLEGATIONS

13. The Discharger discharged at least 1,967 gallons of gasoline to soil and groundwater for at least 10 days.
- a. The gasoline discharge started as soon as on June 26, 2011, when EBMUD detected gasoline in its sanitary sewer system until July 6, 2011, when the Discharger recovered the available gasoline from the underground sump thereby stopping the source of the discharge to soil and groundwater. Note that while unauthorized discharge continues until the residual gasoline cleanup is complete, this Complaint does not address this residual discharge.
  - b. The Discharger's estimate of the volume of discharge (1,967 gallons) is based on a fuel inventory record, which suggests that gasoline was not lost from the system until June 28, 2011. The first loss recorded in the inventory records is two days after direct evidence of gasoline discharged into EBMUD's sanitary sewer system. The prosecution asserts that the Discharger's calculation from inventory records underestimates the actual volume of the gasoline discharge.
14. Residual gasoline remains in the subsurface at the Facility and requires further corrective action. Based on the preliminary soil and groundwater investigation results, gasoline-range hydrocarbons are present in soil and groundwater at concentrations of up to 5,600 milligrams per kilogram (mg/kg) and 340,000 microgram per liter ( $\mu\text{g/L}$ ), respectively. Benzene is present in soil and groundwater at concentrations of up to 3.8 mg/kg and 12,000  $\mu\text{g/L}$ , respectively. The drinking water maximum contaminant level for benzene is 5  $\mu\text{g/L}$ .

## **STATUTORY LIABILITY**

15. An administrative civil liability may be imposed pursuant to Water Code section 13323. This Complaint provides the act, or failure to act, that constitutes a violation of law, the provision of law authorizing administrative civil liability, and the proposed administrative civil liability.
16. Pursuant to Water Code section 13350 (a)(3), any person who causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the State, except in accordance with waste discharge requirements or other actions or provisions of this division, shall be civilly liable Pursuant to Water Code section 13350 (e)(1) administrative civil liability may be imposed in an amount not to exceed five thousand dollars (\$5,000) for each day that the violation occurs.

## **MAXIMUM ADMINISTRATIVE CIVIL LIABILITY**

17. Maximum Liability: Pursuant to Water Code section 13350 (e)(1), the total maximum potential liability for the identified violation is \$50,000. As stated above, the Discharger discharged at least 1,967 gallons of gasoline to soil and groundwater for over ten days from June 26 to July 6, 2011, before the Discharger stopped the source of discharge by recovering all available gasoline from the under sump. The maximum civil liability the Regional Water Board may impose is five thousand dollars (\$5,000) for each day the violation occurs or on a per gallon basis that may not exceed ten dollars (\$10) for each gallon of waste discharged, but not both. Thus, the corresponding maximum potential for the violation is \$50,000, and it is calculated based on the days of violation.

## **YOU ARE HEREBY GIVEN NOTICE THAT:**

18. This Complaint is issued pursuant to Water Code sections 13323 and 13350 (e)(1).
19. The Assistant Executive Officer of the Regional Water Board proposes that administrative civil liability be imposed in the amount of \$18,800, of which \$9,000 is for the recovery of staff costs incurred thus far. This proposed penalty is consistent with the State Water Board Water Quality Enforcement Policy, as described in Exhibit A.
20. A Regional Water Board hearing on this matter is scheduled on **November 13, 2013**, in accordance with the Notice of Pending Enforcement Action and the Hearing Procedure for Administrative Civil Liability prepared for this Complaint.
21. The Discharger may waive its right to the scheduled hearing and pay the recommended administrative civil liability.
22. If a hearing on this matter is held, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented,

including, but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal, and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing. At the hearing, the Regional Water Board will consider whether to affirm, reject, or modify (i.e., increase the proposed civil liability above the mandatory minimum) the proposed civil liability, or whether to refer the matter to the Attorney General for assessment of judicial civil liability.

23. There are no statutes of limitation that apply to administrative proceedings. The statutes of limitation that refer to “actions” and “special proceedings” and are contained in the Code of Civil Procedure apply to judicial proceedings, not administrative proceeding. (See *City of Oakland v. Public Employees’ Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, Section 405(2), p. 510.)
24. Notwithstanding the issuance of this Complaint, the Regional Water Board and/or the State Water Board shall retain the authority to assess additional penalties for further unauthorized discharge for which penalties have not yet been assessed or for violations that may subsequently occur.
25. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code section 21000 et seq., in accordance with California Code of Regulations, Title 14, section 15321.
26. Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.

August 7, 2013

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Dyan C. Whyte  
Assistant Executive Officer

Date

Exhibit A –Factors Considered to Determine Administrative Civil Liability

Facility Map

## EXHIBIT A

### Factors Considered in Determining Administrative Civil Liability

The Assistant Executive Officer assessed administrative civil liability based on the violations alleged in Complaint No. R2-2013-1009, requirements of Water Code section 13385(e), and the penalty calculation methodology described in the Water Quality Enforcement Policy (Enforcement Policy), effective May 20, 2010.

- **Water Code section 13385(e)**

This statute requires consideration of the following factors for administrative civil liability assessments: the nature, circumstances, extent, and gravity of the violation or violations; susceptibility of the discharge to cleanup or abatement; degree of toxicity of the discharge; ability of the violator to pay and the effect on the violator's ability to continue its 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 that justice may require.

- **Enforcement Policy**

The State Water Resources Control Board Enforcement Policy addresses factors required by statute (above), and it provides a statewide methodology for calculating administrative civil liabilities. The methodology considers duration of the violation and volume of discharge (if applicable), and it allows for quantitative assessments of the following: (1) potential for harm to beneficial uses; (2) physical, chemical, biological or thermal characteristics of the discharged material; (3) susceptibility of the discharge to cleanup; (4) deviation from regulatory requirements; (5) culpability; (6) cleanup and cooperation; (7) history of violations; (8) ability to pay; (9) economic benefit; and (10) other factors as justice may require.

The prosecution's discussion of how the liability factors were considered in the assessment of the alleged violation is provided below. The Enforcement Policy should be used as a companion document in conjunction with this administrative civil liability assessment since the penalty calculation methodology and definition of terms that are in the policy are not replicated herein. A copy of the Enforcement Policy can be found at: [http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final111709.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf)

### **Violation: Discharge of At Least 1,967 Gallons of Gasoline to Soil and Groundwater**

The Discharger is responsible for a discharge of at least 1,967 gallons of gasoline, from at least June 26 until July 6, 2011, at its Facility. The discharge occurred because of a shear-valve failure on an unused pipeline which was not capped. Gasoline leaked into an underground sump and discharged from there into soil and groundwater. For the purposes of this Complaint, liability is assessed only up until July 6, 2011, when the Discharger removed most of the free product from

groundwater. (Residual gasoline remains in the soil and groundwater at the Facility, and this Complaint does not address that discharge.)

### **Step 1 – Potential for Harm for Discharge Violations**

The “potential harm” factor considers the harm to beneficial uses that resulted or that may result from exposure to the pollutants in the discharge, while evaluating the nature, circumstances, extent, and gravity of the violation(s). A three-factor scoring system is used for each violation or group of violations: (1) the harm or potential harm to beneficial uses; (2) the degree of toxicity of the discharge, and (3) whether the discharge is susceptible to cleanup or abatement.

#### Factor 1: Harm or Potential Harm to Beneficial Uses

A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm to beneficial uses is negligible (0) to major (5).

The potential harm to beneficial uses is minor (i.e., a score of 1). There was no evidence that gasoline discharged to surface water, such as through a storm drain system. A portion of the discharge traveled through the sanitary sewer system to EBMUD’s treatment plant, resulting in no significant impact to waters of the State. The Discharger recovered approximately 2,500 gallons of liquid, a mixture of free product (gasoline) and water, from excavations at its Facility. Because of this response, the potential for impacts to soil and shallow groundwater was reduced.

#### Factor 2: The Physical, Chemical, Biological or Thermal Characteristics for the Discharge

A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material.

The risk or threat of the discharge is major (i.e., a score of 4). The discharged was pure gasoline and gasoline constituents include benzene, ethyl benzene, toluene, and xylenes, which are regulated compounds with known risk factors, and benzene is identified as a carcinogenic compound.

#### Factor 3: Susceptibility to Cleanup or Abatement

A score of 0 is assigned for this factor if 50 percent or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned if less than 50 percent of the discharge is susceptible to cleanup or abatement. This factor is evaluated regardless of whether the discharge was actually cleaned up or abated.

Greater than 50 percent of the discharge is susceptible to cleanup or abatement (i.e., factor of 0). The Discharger took action within days of becoming aware of the leak to removing more than 50 percent that was discharged through excavating soil, and removing the free product and standing groundwater in the excavation.

The final score for potential for harm is the sum of the above factors. In this case the potential for harm is 5.

## **Step 2 – Assessments for Discharge Violations**

When there is a discharge, the Regional Water Board determines an initial liability amount on a per-gallon and/or a per-day basis using the sum of the Potential for Harm scores from Step 1 (score of 5) and a determination of the degree to which the Discharger deviated from what was required (Deviation from Requirement).

The Deviation from Requirement is considered major. The requirement is for no unauthorized discharges, and the Enforcement Policy defines a major Deviation from Requirement as one where “the requirement has been rendered ineffective.”

Per Water Code section 13350 (e), State and Regional Water Boards may impose civil liability administratively either on a daily basis or on a per gallon basis, but not both. Prosecution staff calculated the amount of the initial liability using a per-day factor of 0.15, based on a Potential for Harm score of 5 and a “Major” Deviation from Requirement.

### **Initial Liability Amount**

Per Day Liability: \$5,000/day x (0.15) x (10 days) = \$7,500

Total Initial Liability = \$7,500

## **Step 3 – Per Day Assessment for Non-Discharge Violations**

The violation was a discharge violation. Step 3 applies to non-discharge violations.

## **Step 4 – Adjustments to Determine Initial Liability for Violation**

There are three additional factors to be considered as potential adjustments to 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**

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is used, with a higher multipliers applied to increasingly negligent behavior.

For this violation, the multiplier for culpability is 1.3. The discharge could have been prevented had the Discharger taken preventive measures, including but not limited to, the following:

- (a) Install a leak detection sensor in the sump.

- (b) Cap the open end of the shear-valve in the sump; the prosecution asserts that capping pipelines that will temporarily not be used is a standard practice in plumbing systems.

The Discharger did not notice the gasoline loss from its system for over four days, until it was alerted by EBMUD.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is used, with a higher multiplier when there is a lack of cooperation.

For this violation, the cleanup and cooperation factor multiplier is 1. Once the Discharger became aware of the discharge, it took responsibility to investigate and cleanup the discharge. The Discharger has been cooperative and, to date, is complying with corrective action requirements. The Discharger fixed the leaking shear valve and installed a leak detection sensor in the containment sump for the unused, underground dispenser. The Discharger also sealed the unsealed or poorly sealed sewer lateral.

History of Violations

This factor is used to increase the liability when there is a history of repeat violations using a minimum multiplier of 1.1.

There is no previous history of violations for the Discharger at this Facility. .

**Step 5 – Determination of Total Base Liability Amount**

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.

**Total Base Liability Amount**

$\begin{aligned} & \$7,500 \text{ (Initial Liability)} \times 1.3 \text{ (Culpability Multiplier)} \times 1 \text{ (Cleanup and Cooperation} \\ & \text{Multiplier)} \times 1 \text{ (History of Violations Multiplier)} = \text{Total Base Liability} \\ & \text{Total Base Liability} = \$9,750 \end{aligned}$
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**OTHER FACTORS APPLIED TO THE VIOLATION**

**Step 6 – Ability to Pay and to Continue in Business**

The Enforcement Policy provides that if the Regional Water Board has sufficient financial information to assess the violator’s ability to pay the Total Base Liability, or to assess the effect

of the Total Base Liability on the violator's to continue in business, then the Total Base Liability amount may be adjusted downward if warranted.

The Discharger has the ability to pay the proposed liability. It owns and operates equipment and car rental businesses nationwide. In its press release in the fourth quarter of 2012, the Discharger forecasted revenue for 2013 in the range of \$10.850 to \$10.950 billion. The prosecution asserts that the Discharger is able to pay the proposed liability and that payment of the proposed liability would not cause undue financial hardship.

#### **Step 7 – Other Factors as Justice May Require**

The time incurred by members of prosecution staff to prepare this analysis and supporting information is 60 hours. Based on an average cost to the State of \$150 per hour, the total staff cost is estimated to be \$9,000. The Assistant Executive Officer reserves the right to seek additional liability for staff costs incurred to resolve this matter through settlement or a hearing. Although the final amount for such costs cannot be determined until completion of the matter, such costs could be quite substantial.

#### **Step 8 – Economic Benefit**

The Enforcement Policy directs the Regional Water Board to determine any economic benefit associated with the violations and to recover the economic benefit gained plus 10 percent in the liability assessment.

The economic benefit associated with the violation is well below the assessed liability. Nonetheless, the Discharger realized some economic savings by not taking preventative measures, like the ones discussed above, to prevent the discharge. The cost associated with the preventative measures, such as installing a leak detection sensor, is estimated to be less than \$1,000.

#### **Step 9 – Maximum and Minimum Liability Amounts**

##### **a) *Minimum Liability Amount***

The Enforcement Policy requires that the minimum liability amount imposed not to be below a Discharger's economic benefit plus 10 percent (i.e., \$1,100). The proposed liability is above this amount.

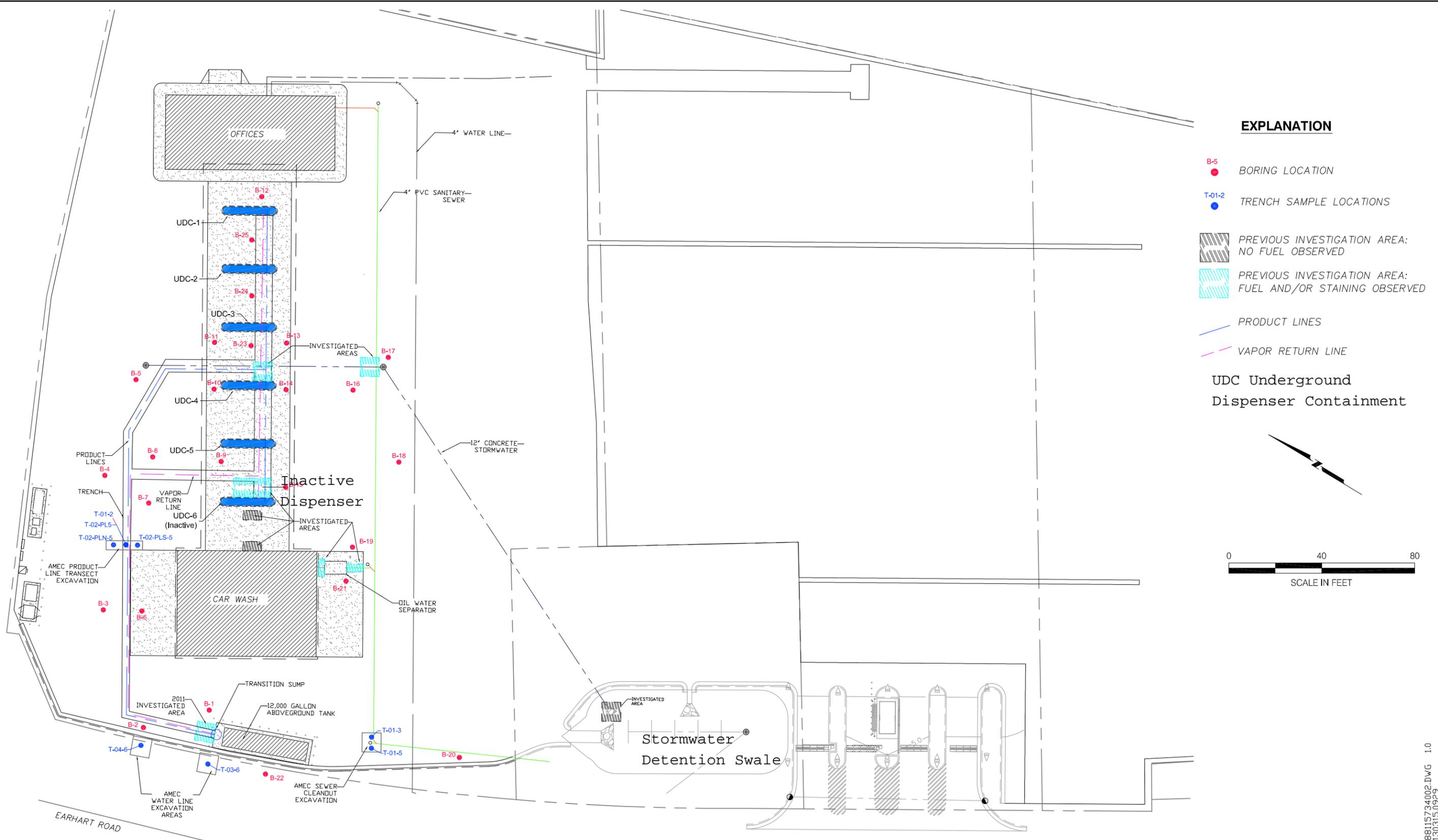
##### **b) *Maximum Liability Amount***

The maximum administrative civil liability amount is the maximum amount allowed by Water Code section 13350 (e)(1). The maximum liability, calculated using \$5,000 for each of the 10 days in which the violation occurred, is \$50,000.

#### **Step 10 – Final Liability Amount**

Exhibit A  
Administrative Civil Liability Complaint No. R2-2013-1009

The final liability proposed for the unauthorized discharge of gasoline to soil and groundwater, from June 26 to July 6, 2011, is **\$18,800** (rounded to the nearest hundred). This proposed liability is based on the prosecution's consideration of penalty factors, as discussed above. It consists of a Total Base Liability of \$9,750 plus \$9,000 for the recovery of staff costs. It is within the calculated maximum and minimum liabilities for the alleged violation.



**EXPLANATION**

- B-5 BORING LOCATION
- T-01-2 TRENCH SAMPLE LOCATIONS
- PREVIOUS INVESTIGATION AREA: NO FUEL OBSERVED
- PREVIOUS INVESTIGATION AREA: FUEL AND/OR STAINING OBSERVED
- PRODUCT LINES
- VAPOR RETURN LINE

UDC Underground  
Dispenser Containment



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**Site Map and Boring/Trench Locations**  
Hertz Northfield QTA Facility  
Oakland, California

FIGURE

**2**

DRAWN TJH	JOB NUMBER 4088115734 04	CHECKED	CHK'D DATE 3/2013	APPROVED	APPR'D DATE
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