

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD SAN FRANCISCO BAY REGION

IN THE MATTER OF:

ALLSTATE PLASTICS LLC)	SETTEMENT AGREEMENT AND
ALAMEDA COUNTY)	STIPULATION FOR ENTRY OF
)	ADMINISTRATIVE CIVIL LIABILITY
)	ORDER
)	
Failure to Comply with Industrial)	PROPOSED ORDER
Stormwater General Permit)	
)	

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order) is entered into by and between the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board), Prosecution Team (Prosecution Team), and Allstate Plastics LLC (Allstate Plastics or Settling Respondent) (collectively, Parties), and is presented to the Regional Water Board or its delegate for adoption as an Order by settlement pursuant to California Water Code (Water Code) section 13323 and Government Code section 11415.60. This Stipulated Order resolves the violations known to the Prosecution Team that were or could have been alleged herein related to stormwater related to industrial activities by the imposition of administrative civil liability against the Settling Respondent in the amount of **\$155,844**.

Section II: Recitals

1. Allstate Plastics manufactures plastic bags and is located at 1763 Sabre Street in Hayward (Facility). Storm water from the site flows offsite to the City of Hayward's municipal stormwater infrastructure, which eventually discharges into San Francisco Bay about one mile west of the site.
2. On February 24, 2020, Allstate Plastics enrolled under State Water Resources Control Board Order 2014-0057-DWQ, *General Waste Discharge Requirements and National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Industrial Activity* (General Permit) through submission of a No Exposure Certification (NEC). Requirements for NEC coverage are located in Section XVII of the General Permit and include a requirement of "no exposure of Industrial Materials and Activities to rain, snow, snowmelt, and/or runoff."

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3. On September 10, 2020, August 31, 2021, and September 8, 2022, Allstate Plastics received receipts for NEC coverage under General Permit, which was originally processed on March 4, 2020.
4. On March 20, 2023, Regional Water Board staff inspected the Facility and observed industrial materials stored outdoors and exposed to stormwater in violation of the No Exposure Condition of the General Permit (sections XVII.A.1 and XVII.C.1). In response, in June of 2023, Regional Water Board staff issued a Notice of Violation (NOV) to Allstate Plastics alleging failure to comply with the conditions of NEC coverage and requiring the Facility to obtain full coverage under the General Permit by submitting a Notice of Intent (NOI) by July 30, 2023. For various reasons, Allstate Plastics did not obtain NOI coverage until October 22, 2023, at which time an NOI and SWPPP meeting the requirements for General Permit coverage were submitted. Allstate Plastics has maintained continuous coverage under the NOI provisions of the General Permit since October 22, 2023.
5. These alleged actions constitute a violation of Water Code section 13385, subdivision (a), for which discretionary penalties may be assessed pursuant to Water Code section 13385, subdivision (c), of up to \$10,000 per day of violation.
6. To resolve any potential or alleged violations known to the Prosecution Team by consent and without further administrative proceedings, the Parties agree to the imposition of an administrative civil liability of **\$155,844** against the Settling Respondent. The Prosecution Team calculated the proposed liability using Steps 1 through 10 of the State Water Resources Control Board's 2024 Water Quality Enforcement Policy (Enforcement Policy) as shown in Attachment A, which is incorporated herein by reference. Pursuant to Enforcement Policy section VI.B (Settlement Considerations), in consideration of hearing and/or litigation risks, the Prosecution Team agreed during settlement negotiations to reduce the administrative civil liability amount calculated in Attachment A by ten percent.
7. The Parties engaged in confidential settlement negotiations and agree to fully settle all potential permit and Water Code violations known to the Prosecution Team that have been or could have been alleged up to and including the date of this Stipulated Order and Attachment A without administrative or civil litigation, and to present this Stipulated Order to the Regional Water Board or its delegate for adoption as an Order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.
8. The Prosecution Team contends that the resolution of the alleged violation is fair and reasonable, and fulfills all its enforcement objectives; that no further enforcement action is warranted, except as provided in this Stipulated Order; and that this Stipulated Order is in the public's best interest.

Section III: Stipulations

The Parties incorporate the foregoing Recitals and stipulate to the following:

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1. **Jurisdiction:** For purposes of this Stipulation, the Parties agree that the Regional Water Board has regulatory jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulation.
2. **Administrative Civil Liability:** The Settling Respondent hereby agrees to the imposition of an administrative civil liability of **\$155,844** (one hundred and fifty-five thousand, eight hundred and forty-four dollars) to resolve the alleged violation set forth in Section II.

No later than 30 days after the Regional Water Board or its delegate signs this Stipulated Order, the Settling Respondent shall mail a check for **\$155,844** (one hundred and fifty-five thousand, eight hundred and forty-four dollars) payable to "State Water Pollution Cleanup and Abatement Account," referencing Order number on page one of this Stipulated Order, to:

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

The Settling Respondent shall email a copy of the check to the State Water Resources Control Board, Office of Enforcement (to Carson Capps at Carson.Capps@waterboards.ca.gov), and to the Regional Water Board (to Brian Thompson at Brian.Thompson@waterboards.ca.gov).

3. **Regional Water Board Not Liable:** The Regional Water Board and its members, staff, attorneys, and representatives shall not be liable for any injury or damage to persons or property resulting from negligent or intentional acts or omissions by the Settling Respondent or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order. The Regional Water Board, its members, and its staff shall not be held as parties to, or guarantors of, any contract entered into by the Settling Respondent or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order.
4. **Compliance with Applicable Laws:** The Settling Respondent understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that additional violations similar to the type alleged herein may subject it to further enforcement, including additional administrative civil liability.
5. **Party Contacts for Communications related to this Stipulated Order:**

For the Regional Water Board:	For the Settling Respondent
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Brian Thompson San Francisco Bay Regional Water Quality Control Board 1515 Clay Street, 14 th Floor Oakland, CA 94612 Brian.Thompson@waterboards.ca.gov (510) 622-2422	Benson Leung Allstate Plastics LLC 1763 Sabre Street Hayward, CA 94545 bleung@allstate-plastics.com
Counsel: Carson Capps State Water Resources Control Board Office of Enforcement 801 K Street, Suite 2300 Sacramento, CA 95614 Carson.Capps@waterboards.ca.gov (916) 341-5273	Counsel: Melissa Thorme and Nicole Granquist Stoel Rives LLP 500 Capitol Mall, Suite 1600 Sacramento, CA 95614 Melissa.Thorme@stoel.com Nicole.Granquist@stoel.com (916) 527-6244

6. **Attorney Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorney fees and costs incurred pursuant to this Stipulated Order.
7. **Matters Addressed by this Stipulated Order:** Upon the Regional Water Board's or its delegate's adoption, this Stipulated Order represents a final and binding resolution and settlement of the alleged violation as described in this Stipulated Order above and in all associated Reports of Inspection and Notices of Violation prepared by the San Francisco Water Board staff as of the effective date of this Stipulated Order. The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability, as specified in Section III, paragraph 2.
8. **Public Notice:** The Settling Respondent understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board or its delegate for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Regional Water Board or its delegate. The Settling Respondent agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
9. **Public Comment Procedures:** The Parties agree that the procedure contemplated for public review of this Stipulated Order and the Regional Water Board's or its delegate's adoption of this Stipulated Order is lawful and adequate. The Parties understand that the Regional Water Board or its delegate has the authority to require a public hearing on this Stipulated Order. If procedural objections are raised and the Regional Water Board or its delegate requires a public hearing prior to the

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Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust this Stipulated Order as necessary or advisable under the circumstances.

10. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Regional Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver or such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Team or Regional Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions, or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. The Regional Water Board reserves all rights to take additional enforcement actions, including without limitation, the issuance of administrative civil liability complaints or orders for violations after those addressed by this Order.
11. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order shall be construed to preclude the Regional Water Board or any state agency, department, or board, or any local agency from exercising its authority under any law, statute, or regulation.
12. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.
13. **Modification:** The Parties shall not modify this Stipulated Order by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board or its delegate.
14. **Integration:** This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.
15. **If the Stipulated Order Does Not Take Effect:** If the Stipulated Order does not take effect because the Regional Water Board or its delegate does not approve it, or because the State Water Resources Control Board (State Water Board) or a court vacates it in whole or in part, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liability for the underlying alleged violation, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing, or in any other administrative or judicial proceeding. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not

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limited to objections related to prejudice or bias of any of the Regional Water Board members or their advisors, or any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulated Order and, therefore, may have formed impressions or conclusions prior to any contested evidentiary hearing on the violation alleged herein in this matter. The parties also agree to waive any and all objections based on laches, delay, or other equitable defenses related to the period for administrative or judicial review to the extent such period has been extended by these settlement proceedings.

16. **Waiver of Hearing:** The Settling Respondent has been informed of the rights Water Code section 13323, subdivision (b), provides and, if the settlement is adopted by the Regional Water Board or its delegate, hereby waives its right to a hearing before the Regional Water Board prior to the Stipulated Order's adoption. However, if the settlement is not adopted, or if the matter proceeds to the Regional Water Board or State Water Board for hearing, the Settling Respondent does not waive its right to a hearing before an order is imposed.
17. **Waiver of Right to Petition or Appeal:** Except in the instance where the Stipulated Order is not adopted by the Regional Water Board or its delegate, the Settling Respondent hereby waives its right to petition the Regional Water Board's or its delegate's adoption of the Stipulated Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate court.
18. **Covenant Not to Sue:** The Settling Respondent covenants not to sue or pursue any administrative or civil claims against the State of California, any State agency, or its officers, Board members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order, except that this covenant is not intended to bar and does not limit the Settling Respondent's rights to sue over other Regional Water Board orders (e.g., permits or cease and desist orders) or limit the Settling Respondent's rights to defend against any additional enforcement or other actions taken by the Regional Water Board or its employees, representatives, agents, or attorneys. Moreover, this covenant shall not release any claims or complaints against any State agency or the State of California, its officers, Regional Water Board members, employees, representatives, agents, or attorneys to the extent that such covenant would be prohibited by California Business and Professions Code section 6090.5 or by any other statute, rule, regulation, or legal principle of similar effect.
19. **No Admission of Liability/No Waiver of Defenses:** In settling this matter, the Settling Respondent does not admit to liability, admit to the truth of the findings or allegations made by the Prosecution Team, admit to any of the findings in this Stipulated Order or its attachments, or admit to any violations of the Water Code,

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the Clean Water Act, any Regional Water Board order, or any other federal, State, or local laws or ordinances, but recognizes that this Stipulated Order may be used by the Water Boards as evidence of a prior enforcement action consistent with Water Code section 13327 or section 13385, subdivision (e), and the Enforcement Policy. By entering into this agreement, the Settling Respondent does not waive any defenses or arguments related to any new enforcement action the Regional Water Board may bring, including any brought under its discretionary enforcement authority reserved herein.

20. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board or its delegate under the terms of this Stipulated Order shall be communicated to the Settling Respondent in writing. No oral advice, guidance, suggestions, or comments from Regional Water Board employees or officials regarding submissions or notices shall be construed to relieve the Settling Respondent of its obligation to obtain any final written approval this Stipulated Order requires.
21. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that they are authorized to execute this Stipulated Order on behalf of, and to bind, the entity on whose behalf the Stipulated Order is executed.
22. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any right or obligation on any third party, and no third party shall have any right of action under this Stipulated Order for any cause whatsoever.
23. **Severability:** This Stipulated Order is severable; if any provision is found to be invalid, the remainder shall remain in full force and effect.
24. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.
25. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board or its delegate enters the Order incorporating the terms of this Stipulated Order.

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IT IS SO STIPULATED.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD SAN FRANCISCO
BAY REGION, PROSECUTION TEAM**

ORIGINAL COPY WITH SIGNATURES AVAILABLE UPON REQUEST.

Date: _____ By: _____
Ross Steenson
Assistant Executive Officer

Approved as to form: _____ By: _____
Carson Capps, Staff Counsel
State Water Resources Control Board
Office of Enforcement

ALLSTATE PLASTICS LLC

Date: _____ By: _____
Benson Leung, Owner

Approved as to form: _____ By: _____
Melissa A. Thorne, Counsel
Stoel Rives LLP

ORDER OF THE REGIONAL WATER BOARD

1. This Order incorporates the foregoing Sections I through III by this reference as if set forth fully herein.
2. In accepting this Stipulated Order, the Regional Water Board or its delegate has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e), and has applied the State Water Resource Control Board's Enforcement Policy, which is incorporated by reference herein. The consideration of these factors and application of the Enforcement Policy are based on information the Prosecution Team obtained in investigating the allegation set forth in the Stipulated Order or otherwise provided to the Regional Water Board.
3. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board or its delegate finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, § 21000 et seq.) in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations.
4. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Settling Respondent fails to perform any of its obligations under this Stipulated Order.

IT IS HEREBY ORDERED pursuant to Water Code section 13323 and Government Code section 11415.60, on behalf of the California Regional Water Quality Control Board, San Francisco Bay Region.

Eileen White
Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region

Date

ATTACHMENT A

Alleged Violation and Factors in Determining Administrative Civil Liability

Allstate Plastics LLC

Failure to comply with No Exposure Certification

Industrial Stormwater General Permit

1763 Sabre Street, Hayward, Alameda County

The State Water Resources Control Board *Water Quality Enforcement Policy*¹ (Enforcement Policy) establishes a methodology for assessing administrative civil liability. Use of the methodology addresses factors required by Water Code sections 13327 and 13385, subdivision (e). Each factor in the Enforcement Policy and its corresponding category, adjustment, and amount for the alleged violation is presented below.

ALLEGED VIOLATION

Allstate Plastics LLC violated the “Conditional Exclusion – No Exposure Certification (NEC)” (section XVII) requirements of the *General Permit for Storm Water Discharges Associated with Industrial Activities*, NPDES Permit CAS000001 (Permit).² The violations took place at 1763 Sabre Street, Hayward, in Alameda County. Allstate Plastics LLC violated Permit section XVII.A.1 by allowing the exposure of industrial materials and activities to rain and/or runoff and Permit section XVII.C.1 by not providing a storm-resistant shelter to protect industrial materials and activities from exposure to rain, run-on, and runoff. Allstate Plastics LLC received notice that it violated these conditions for NEC coverage in a Notice of Violation dated June 26, 2023, with instructions to transition from NEC coverage to Notice of Intent (NOI) coverage by submitting the required documents and a Stormwater Pollution Prevention Plan (SWPPP) on July 30, 2023 that was certified on October 22, 2023. Allstate Plastics LLC applied for NOI coverage on October 19, 2023.

ADMINISTRATIVE CIVIL LIABILITY CALCULATION STEPS

Step 1 – Potential for Harm for Discharge Violations

This step is not applicable because the violation is not a discharge violation.

¹ [Water Quality Enforcement Policy](#) – The 2017 Water Quality Enforcement Policy, effective on October 5, 2017, was the applicable policy when the alleged violations occurred and provides the substantive basis for this penalty assessment. Some aspects of the current policy (effective November 7, 2024), such as clarifications and procedural changes, do apply to this assessment as discussed in Appendix D of the 2024 policy.

² [Order WQ 2018-0028-DWQ](#) – Effective July 1, 2015.

Step 2 –Assessment for Discharge Violations

This step is not applicable because the violation is not a discharge violation.

Step 3 – Per Day Assessment for Non-discharge Violations

The Enforcement Policy specifies that, for non-discharge violations, an initial liability is determined from the maximum per-day liability multiplied by the number of days in violation and a per-day factor. Per-day factors range from 0.1 to 1, depending on the violation's Potential for Harm and Deviation from Requirements. The Potential for Harm reflects the characteristics and/or the circumstances of the violation and its threat to beneficial uses or the Water Boards' regulatory programs. Deviation from Requirement reflects the extent to which a violation deviates from the specific requirement violated.

Potential for Harm

The Potential for Harm for this violation is **moderate**. A "moderate" Potential for Harm applies to violations that "...indicate a substantial potential for harm. Most incidents would be considered to present a moderate potential for harm." By applying for NEC coverage, Allstate Plastics LLC certified that no industrial operations were exposed to rain or stormwater runoff. By operating as a no-exposure facility, the appropriate stormwater monitoring, training, and reporting required under full-permit (NOI) coverage, as necessary for Allstate Plastics LLC's operations, were not completed. This substantially impaired the Water Boards' ability to perform their regulatory functions, and their ability to protect stormwater quality in accordance with their mission to protect State and federal waters.

Deviation from Requirement

The Deviation from Requirement for this violation is **moderate**. A "moderate" Deviation from Requirement applies to violations where, "The intended effectiveness of the requirement was partially compromised." The requirement for Allstate Plastics LLC to operate without exposure was partially achieved. Allstate Plastics LLC conducts some operations indoors and has some coverage from rain outside. Considering the combination of indoor and outdoor activities, the intended effectiveness of the requirement was partially compromised.

The resulting per-day factor is **0.3** based on the moderate Potential for Harm and moderate Deviation from Requirement (see Table 3 of the Enforcement Policy).

Initial Liability Amount

For this violation, the maximum per-day liability is \$10,000/day.

For violations lasting more than 30 days, the Enforcement Policy allows adjustment of the per-day basis in some circumstances. A multiday adjustment could be applied in this case because, while the violation did result in an economic benefit, the economic

Exhibit A – Administrative Civil Liability Factors Allstate Plastics LLC

benefit was not gained on a daily basis. For this adjustment, days of violation for the initial liability are counted on the first day of the violation, plus a day for each five-day period until the 30th day, plus a day for each 30 days of violation thereafter. Days of violation are reduced in this way for this assessment. The 82 days of violation (from July 30, 2023, through October 19, 2023) are adjusted to 37 days.

Initial Liability: Maximum Liability (\$10,000/day) x Per-Day Factor (0.3) x Adjusted Days (37 days) = **\$111,000**

Step 4 – Adjustments to Initial Liability

The Enforcement Policy specifies that three additional factors be considered to potentially modify the initial liability amount: the violator's culpability, efforts to clean up or cooperate with the regulatory authority, and compliance history.

Culpability

The Enforcement Policy specifies that higher liabilities should result from intentional or negligent violations as opposed to accidental violations. It specifies a multiplier between 0.5 and 1.5, with a higher multiplier for intentional or negligent behavior.

The culpability multiplier for this case is **1.3**. Allstate Plastics LLC received significant assistance and information from Water Board staff about obtaining and complying with correct permit coverage. Allstate Plastics LLC was initially notified of a violation for failing to enroll for any Permit coverage. Water Board staff contacted Allstate Plastics LLC multiple times using multiple modes of communication and provided Allstate Plastics LLC with information on the different types of permit coverage (NEC and NOI), how to assess which type of coverage to apply for, and who to contact with any questions on the application process. Allstate Plastics LLC received a Notice of Requirement [to obtain permit coverage] letter on September 4, 2019. During a site inspection on October 4, 2019, prior to Allstate Plastics LLC filing for coverage, Water Board staff observed and reported outdoor activities that disqualified Allstate Plastics from NEC coverage; however, Allstate Plastics LLC still filed for NEC coverage. Allstate Plastics LLC excluded from the Facility Map attached to its NEC Certification (submitted on February 24, 2020) the outdoor portion of its facility. This filing for NEC coverage contradicted information and input that Water Board staff provided to Allstate Plastics LLC and instructions in the Permit for "Who May File for NEC Coverage" (Appendix D), which states that no exposure means that industrial activities and materials are not exposed to stormwater.

Cleanup and Cooperation

The Enforcement Policy specifies that liabilities should reflect the extent to which a violator voluntarily cooperated in returning to compliance. It specifies a multiplier between 0.75 and 1.5, with a higher multiplier where there is a corresponding lack of cooperation.

Exhibit A – Administrative Civil Liability Factors Allstate Plastics LLC

The cleanup and cooperation multiplier for this case is **1.2**. Water Board staff had multiple communications with Allstate Plastics LLC about being in violation of NEC coverage, and Water Board staff were denied access to the facility for inspections. During a facility inspection on March 30, 2023; in a Notice of Violation dated June 26, 2023; and in multiple email communications that followed, Allstate Plastics LLC was told that it had not complied with the conditions for NEC coverage and, based on the way it was operating, needed to transition to NOI coverage. Allstate Plastics LLC sought workarounds and delayed the transition for multiple months. Additionally, Allstate Plastics LLC denied Water Board inspectors access to the facility twice, on August 31, 2023, and May 10, 2024, citing safety concerns in the first case.

History of Violations

The Enforcement Policy provides that, when there is a history of repeat violations, a higher liability should be imposed, starting with a minimum multiplier of 1.1.

The history of violations multiplier for this case is **1.0** because the Water Boards have not taken action against the Discharger for past violations.

Step 5 – Determination of Total Base Liability

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 3.

Total Base Liability Amount

Total Base Liability: Initial Liability (\$111,000) x Culpability Multiplier (1.3) x Cleanup and Cooperation Multiplier (1.2) x History of Violations Multiplier (1.0) = **\$173,160**

Step 6 – Ability to Pay and to Continue in Business

The Enforcement Policy provides that, if there is 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 ability to continue business, then the Total Base Liability amount may be adjusted downward if warranted.

In this case, Regional Water Board prosecution staff conducted a search of available documents to assess Allstate Plastic LLC's ability to pay that resulted in no or inconclusive information. Allstate Plastic LLC did not provide records of financial information or assets as evidence of its inability to pay. Therefore, the prosecution team proposes no adjustment to the liability, which it believes is otherwise fair and consistent with similar violations and past administrative liability cases.

Step 7 – Other Factors as Justice May Require

The Enforcement Policy provides that, if the amount determined using the above factors is inappropriate, it may be adjusted to reflect "other factors as justice may require." The

Exhibit A – Administrative Civil Liability Factors Allstate Plastics LLC

Enforcement Policy cites the costs of investigation and enforcement as “other factors as justice may require” to be added to the liability amount.

The cost of investigation and enforcement could be added to the liability. However, prosecution staff have chosen not to include these costs in the interest of settlement.

Step 8 – Economic Benefit

The Enforcement Policy requires recovery of the economic benefit gained as a result of the violation plus 10 percent. Economic benefit is any savings or monetary gain derived from the act or omission that constitutes the violation.

To fully comply with the conditions of NEC coverage, Allstate Plastics LLC had numerous options at their disposal, ranging from moving all outdoor materials (and associated activities) indoors to extending its building, thereby fully enclosing its operations. Moving all outdoor materials within the facility would have taken days at most and could have been completed by Allstate Plastics LLC staff. The average hourly pay for a warehouse worker in the Bay Area is \$20.39 an hour.³ The estimated pay for two employees to move all materials indoors over one work week is about \$1,600.

Step 9 – Maximum and Minimum Liability

Minimum Liability

The minimum administrative civil liability for the violation is \$1,760. This is based on the requirement in the Enforcement Policy that the Minimum Liability must be at least 10% higher than the Economic Benefit.

Maximum Liability

The maximum administrative civil liability is \$820,000. This is based on the maximum allowed by Water Code Section 13385(c)(1): \$10,000 for each day in which the violation occurs.

Step 10 – Final Liability

The final calculated liability amount is **\$173,160** for the violation alleged, based on consideration of the penalty factors discussed above. It is within the minimum and maximum liabilities.

³ As of April 22, 2025, per ZipRecruiter.