

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**IN THE MATTER OF INTERNATIONAL INDUSTRIAL PARK, INC.
VIOLATIONS OF THE STATEWIDE NPDES CONSTRUCTION STORM WATER
PERMIT**

**SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY
ORDER NO. R9-2025-0052**

I. INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (“Stipulated Order”) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, San Diego Region (“San Diego Water Board”), on behalf of the Regional Water Board Prosecution Team (“Prosecution Team”), and International Industrial Park, Inc. (“IIP”) (individually, a “Party”, and collectively, “Parties”), and is presented to the San Diego Water Board, or its delegate, for adoption as an order by settlement pursuant to Water Code section 13323 and Government Code section 11415.60. This Stipulated Order resolves the violations alleged herein by the imposition of administrative civil liability against IIP in the amount of **\$102,789**.

II. RECITALS

1. IIP owns a 170-acre industrial development site in unincorporated San Diego County (“County”) in the Otay Mesa area near the United States/Mexico international border (“IIP Site”).¹ The IIP Site is located north of Otay Mesa Road, west of Alta Road in the County, and just south of the Richard J. Donovan Correctional Facility.
2. On November 28, 2022, IIP’s Vice President, David Wick, submitted a Notice of Intent (“NOI”) to comply with State Water Resources Control Board (“State Water Board”) Order No. 2009-0009-DWQ, NPDES No. CAS000002 (as amended), National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (“Construction Storm Water Permit”). The NOI stated a construction start date of January 2, 2023. The State Water Board issued Waste Discharge Identification (WDID) No. 9 37C399310 for the IIP Site on December 13, 2022, and listed it as a Risk Level 2 site.

¹ The IIP Site is composed of the following San Diego County Assessor Parcel Numbers (APNs): 646-080-34-00, 646-080-35-00, 648-040-20-00, and 648-040-25-00. IIP owns APNs 646-080-34-00, 646-080-35-00, and 648-040-25-00. Ranch Vista Del Mar, Inc. owns APN 648-040-20-00.

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3. The Prosecution Team alleges that IIP violated Attachment D of the Construction Storm Water Permit from June 2023 through December 2023 because it (a) failed to implement effective housekeeping measures for stockpiled construction and/or waste materials for at least 29 days; and (b) failed to implement effective erosion controls for at least 32 days. The allegations are detailed in Attachment A, which is attached and incorporated by reference.
4. Pursuant to Water Code section 13385, subdivision (a)(2), a person who violates the Construction Storm Water Permit is subject to administrative civil liability under Water Code section 13385, subdivision (c), as follows:

...in an amount not to exceed the sum of both of the following: (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs. (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
5. To resolve the alleged violations in Section II, paragraph 3, by consent and without further administrative proceedings, the Parties agree to the imposition of an administrative civil liability of **\$102,789** against IIP as described in Section III, paragraph 1. The liability proposed in this Stipulated Order is less than the liability the Prosecution Team calculated using the Penalty Calculation Methodology in the State Water Board's 2017 Water Quality Enforcement Policy² (Enforcement Policy), as shown in Attachment A. Pursuant to Enforcement Policy section VI.B, a reduction of the final proposed liability in Attachment A is appropriate in consideration of hearing and/or litigation risks and the following factors:
 - a. The violations alleged in this Stipulated Order were preceded by Clean Water Act sections 401 and 404 violations that occurred at the IIP Site between December 2022 and March 2023. IIP cooperated with state and federal investigators and agreed to jointly resolve the violations through separate and coordinated actions with the Prosecution Team and the United States Environmental Protection Agency (U.S. EPA);

² The State Water Board amended the [2017 Enforcement Policy](#) on December 5, 2023, and those amendments became effective on November 7, 2024. The Prosecution Team applied the 2017 Enforcement Policy's penalty methodology because the Parties reached an agreement-in-principle prior to November 7, 2024, and the alleged violations occurred when the 2017 Enforcement Policy was in effect.

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- b. The Clean Water Act section 401 violations were resolved through San Diego Water Board Order No. R9-2025-0021 for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements Order No. 2003-0017-DWQ (401 Permit). The 401 Permit requires IIP to implement additional off-site compensatory mitigation which is budgeted to cost over \$1.2 million;
 - c. U.S. EPA and IIP are also negotiating a joint resolution of an alleged Clean Water Act section 404 violation that may administratively impose a civil penalty but preserves U.S. EPA's right to pursue further relief if IIP does not successfully complete the off-site compensatory mitigation required in the 401 Permit; and
 - d. As required by the Enforcement Policy, the liability proposed in this Stipulated Order exceeds the economic benefit amount associated with the alleged violations by 10 percent and ensures that the liability cannot be construed as the cost of doing business. The liability provides a meaningful deterrent to future violations.
6. The Parties have engaged in settlement negotiations and agree to settle the alleged violations without administrative or civil litigation and to present this Stipulated Order to the San Diego Water Board, or its delegate, for adoption as an order by settlement pursuant to Water Code section 13323 and Government Code section 11415.60. The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable; that no further action is warranted concerning the alleged violations, except as provided in this Stipulated Order; and that this Stipulated Order is in the public's best interest.

III. STIPULATIONS

The Parties incorporate the foregoing Recitals and stipulate the following:

1. **Administrative Civil Liability:** IIP hereby agrees to the imposition of an administrative civil liability of **\$102,789** to resolve the violations alleged in Section II, paragraph 3. No later than 30 days after the San Diego Water Board or its delegate signs this Stipulated Order, IIP must mail a check for **\$102,789** made payable to the "State Water Pollution Cleanup and Abatement Account," referencing Stipulated Order No. R9-2025-0052, to:

State Water Resources Control Board Accounting Office
ATTN: ACL Payment / Order No. R9-2025-0052
P.O. Box 1888
Sacramento, CA 95812-1888

IIP must provide a redacted copy of the check to the Prosecution Team Party Contact at the email address listed in Section III, paragraph 14.

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2. **Compliance with Applicable Laws:** IIP 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 continuing violations of the type alleged herein may subject it to further enforcement, including additional administrative civil liability.
3. **Attorneys' Fees and Costs:** Each Party shall bear its own attorneys' fees and costs incurred pursuant to this Stipulated Order.
4. **Matters Addressed by This Stipulated Order:** Upon the San Diego Water Board's or its delegate's adoption, this Stipulated Order represents a final and binding resolution and settlement of the alleged violations contained in Section II, paragraph 3, as of the date the San Diego Water Board or its delegate signs this Stipulated Order. The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadline specified in Section III, paragraph 1.
5. **Public Notice:** IIP understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the San Diego Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the San Diego 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 San Diego Water Board or its delegate. IIP agrees that it may not rescind or otherwise withdraw its approval of this Stipulated Order.
6. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for public review of this Stipulated Order and the San Diego Water Board's or its delegate's adoption of this Stipulated Order is lawful and adequate. The Parties understand that the San Diego Water Board or its delegate has the authority to require a public hearing on this Stipulated Order. If procedural objections are raised or the San Diego Water Board requires a public hearing prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections and may agree to revise or adjust the procedure and/or this Stipulated Order as necessary or advisable under the circumstances.
7. **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.
8. **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 San Diego Water Board or its delegate.

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9. **If the Stipulated Order Does Not Take Effect:** If this Stipulated Order does not take effect because the San Diego Water Board or its delegate does not adopt it, or because the 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 San Diego Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, 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 a 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 limited to the following:
- a. Objections related to prejudice or bias of any of the San Diego Water Board members or their advisors, or any other objections that are premised in whole or in part on the fact that the San Diego Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing this Stipulated Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the alleged violations; or
 - b. Laches, delay, or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.
10. **Waiver of Hearing:** IIP has been informed of the rights Water Code section 13323, subdivision (b) provides and hereby waives its right to a hearing before the San Diego Water Board prior to the Stipulated Order's adoption.
11. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or the San Diego Water Board to enforce any provision of this Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Order. The failure of the Prosecution Team or San Diego Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Order.
12. **Waiver of Right to Petition or Appeal:** IIP hereby waives its right to petition the San Diego Water Board's adoption of this Stipulated Order for review by the State Water Board, and further waives its right, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

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13. **Covenant Not to Sue:** Provided that the San Diego Water Board or its delegate adopts this Stipulated Order, IIP 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.
14. **Party Contacts for Communications Related to This Stipulated Order:**
 - a. San Diego Water Board
Chiara Clemente
California Regional Water Quality Control Board
San Diego Region
2375 Northside Drive, Suite 100
San Diego, CA 92108-2700
Telephone: (619) 521-3371
Email: Chiara.Clemente@waterboards.ca.gov
 - b. International Industrial Park, Inc.
David Wick
5440 Morehouse Drive, Suite 4000
San Diego, CA 92121
Telephone: (858) 623-9000 Extension 700
Email: dwick@natent.com
15. **No Admission of Liability:** In settling this matter, IIP does not admit to any of the allegations stated herein or admit to any violations of the Water Code, or any other federal, State, or local law or ordinance, but recognizes that this Stipulated Order may be used as evidence of a prior history of violation consistent with Water Code sections 13327 and 13385, subdivision (e), and the Enforcement Policy.
16. **Necessity for Written Approvals:** All approvals and decisions of the San Diego Water Board or its delegate under the terms of this Stipulated Order shall be communicated to IIP in writing.
17. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of, and to bind, the entity on whose behalf he or she executes this Stipulated Order.
18. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations on any third party, and no third party shall have any right of action under this Stipulated Order for any cause whatsoever.

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19. **Severability:** This Stipulated Order is severable; if any provision is found to be invalid, the remainder shall remain in full force and effect, providing that in so doing neither Party is deprived of the value received by entering into or adopting this Stipulated Order.
20. **Counterpart Signatures and Facsimile and Electronic Signatures:** 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.
21. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the San Diego Water Board or its delegate adopts the Order incorporating the terms of this Stipulated Order.

IT IS SO STIPULATED.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION
PROSECUTION TEAM**

**KELLY DORSEY
Assistant Executive Officer**

Approved as to form:

**PAUL CICCARELLI, ATTORNEY IV
California State Water Resources Control Board
Office of Enforcement**

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INTERNATIONAL INDUSTRIAL PARK, INC.

DAVID WICK, VICE PRESIDENT

Approved as to form:

CYNTHIA L. ELDRED, ESQ.

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ORDER OF THE SAN DIEGO WATER BOARD

1. This Stipulated Order incorporates the foregoing Sections I through III by this reference as if set forth fully herein.
2. In accepting this Stipulated Order, the San Diego Water Board or its delegate has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e). The San Diego Water Board's consideration of these factors is based on information the Prosecution Team obtained in investigating the allegations set forth in the Stipulated Order or otherwise provided to the San Diego Water Board.
3. This is an action to enforce the laws and regulations administered by the San Diego Water Board. Issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, § 21000 et seq.) in accordance with California Code of Regulations, title 14, section 15321, subdivision (a)(2).
4. The Executive Officer of the San Diego Water Board is authorized to refer this matter directly to the Attorney General for enforcement if IIP 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 Diego Region.

DAVID W. GIBSON
Executive Officer
California Regional Water Quality Control Board, San Diego Region

Attachment A
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Penalty Calculation Methodology
International Industrial Park, Inc.
Construction Storm Water Permit Violations
County of San Diego

The State Water Resources Control Board (State Water Board) developed a 2017 Water Quality Enforcement Policy ([2017 Enforcement Policy](#)¹) with a goal to protect and enhance the quality of the waters of the State by defining an enforcement process that addresses water quality problems in a fair, efficient, effective, and consistent manner. According to the 2017 Enforcement Policy, enforcement is a critical component in creating the deterrence needed to encourage the regulated community to anticipate, identify, and correct violations. Formal enforcement should always result when a noncompliant member of the regulated public begins to realize a competitive economic advantage over compliant members of the regulated public. Formal enforcement should be used as a tool to maintain a level playing field for those who comply with their regulatory obligations by setting appropriate administrative civil liabilities for those who do not.

I. INTRODUCTION

International Industrial Park Inc.'s (IIP's) 170 acre construction site in the County of San Diego, California (IIP Site) is a Risk Level 2 site enrolled under State Water Board Order No. 2009-0009-DWQ, NPDES No. CAS000002 (as amended), National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated With Construction and Land Disturbance Activities (Construction Storm Water Permit) with Waste Discharge Identification (WDID) No. 937C399310.² Provision X of the Construction Storm Water Permit states that all Risk Level 2 dischargers must comply with the requirements included in Attachment D of the Construction Storm Water Permit. The IIP Site is located at the northwest corner of the intersection of Enrico Fermi Drive and Paseo de la Fuente in the County, and just south of the Donovan State Prison. The IIP Site is composed of the following County Accessor Parcel Numbers (APNs): 646-080-34-00,³ 646-080-35-00,⁴ 648-

¹ The State Water Board amended the 2017 Enforcement Policy on December 5, 2023, and those amendments became effective on November 7, 2024. The Prosecution Team applied the 2017 Enforcement Policy's penalty methodology because the Parties reached an agreement-in-principle prior to November 7, 2024, and the alleged violations occurred when the 2017 Enforcement Policy was in effect. However, the [2024 Enforcement Policy](#) was used to the extent it provides clarifications or procedural changes to the 2017 Enforcement Policy (See 2024 Enforcement Policy, Appendix D).

² ECM Document Handle 11274825.

³ ECM Document Handle 11261235.

⁴ ECM Document Handle 11261236.

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040-20-00,⁵ and 648-040-25-00.⁶ IIP owns APNs 646-080-34-00, 646-080-35-00, and 648-040-25-00. Ranch Vista Del Mar, Inc.⁷ owns APN 648-040-20-00.

The San Diego Water Board inspected the IIP Site for compliance with the Construction Storm Water Permit on the following days and based upon those inspections allege violations of the Construction Storm Water Permit on August 2, 2023;⁸ August 23, 2023;⁹ October 5, 2023;¹⁰ November 14, 2023;¹¹ and January 4, 2024.¹²

In addition, San Diego Water Board staff reviewed IIP's self-inspection reports uploaded by IIP to SMARTS. IIP self-inspected the IIP Site on the following days and based upon those self-inspections the San Diego Water Board alleges violations of the Construction Storm Water Permit on June 27, 2023;¹³ August 17, 2023;¹⁴ August 20, 2023;¹⁵ August 21, 2023;¹⁶ September 1, 2023;¹⁷ September 8, 2023;¹⁸ September 14, 2023;¹⁹ September 21, 2023;²⁰ September 28, 2023;²¹ October 12, 2023;²² October 19, 2023;²³ October 26, 2023;²⁴ November 2, 2023;²⁵ November 9, 2023;²⁶ November 13, 2023;²⁷ November 16, 2023;²⁸ November 17, 2023;²⁹

⁵ ECM Document Handle 11261237.

⁶ ECM Document Handle 11261238.

⁷ Rancho Vista Del Mar, Inc. is a California Corporation, Entity No. 1099942. David Wick is the Chief Financial Officer, Secretary, Vice President, and Agent for Service of Process. ECM Document Handle 11263457.

⁸ ECM Document Handle 10437747.

⁹ ECM Document Handle 10439111.

¹⁰ ECM Document Handle 10439365.

¹¹ ECM Document Handle 10439841.

¹² ECM Document Handle 10439846.

¹³ ECM Document Handle 11572433.

¹⁴ ECM Document Handle 11572439.

¹⁵ ECM Document Handle 11572441.

¹⁶ ECM Document Handle 11572443.

¹⁷ ECM Document Handle 11572448.

¹⁸ ECM Document Handle 11572450.

¹⁹ ECM Document Handle 11572451.

²⁰ ECM Document Handle 11572453.

²¹ ECM Document Handle 11572456.

²² ECM Document Handle 11572460.

²³ ECM Document Handle 11572463.

²⁴ ECM Document Handle 11572464.

²⁵ ECM Document Handle 11572465.

²⁶ ECM Document Handle 11572466.

²⁷ ECM Document Handle 11572468.

²⁸ ECM Document Handle 11572469.

²⁹ ECM Document Handle 11572470.

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November 20, 2023;³⁰ November 22, 2023;³¹ November 27, 2023;³² November 30, 2023;³³ December 1, 2023;³⁴ December 8, 2023;³⁵ December 14, 2023;³⁶ December 18, 2023;³⁷ December 21, 2023;³⁸ and December 22, 2023.³⁹

II. ALLEGED VIOLATIONS

1. Failure to protect stockpiled construction and/or waste materials in violation of Construction Storm Water Permit Attachment D, section B for 29 days.

Section B of Attachment D to the Construction Storm Water Permit requires Risk Level 2 dischargers to, among other things, implement good site management (housekeeping) measures for construction materials and waste management. More specifically, Section B.1.b of Attachment D to the Construction Storm Water Permit requires Risk Level 2 dischargers to “Cover and berm loose stockpiled construction materials that are not actively being used (i.e., soil, spoils, aggregate . . . etc.)” Section B.2.f of Attachment D to the Construction Storm Water Permit requires Risk Level 2 dischargers to “Contain and securely protect stockpiled waste material from wind and rain at all times unless actively being used.”

The Prosecution Team alleges that IIP violated Section B.1.b and/or Section B.2.f of Attachment D to the Construction Storm Water Permit on at least **29 days** (dates of violations identified below) when it failed to implement effective housekeeping measures for stockpiled construction and/or waste materials on the IIP Site that were not actively being used.

The 2017 Enforcement Policy establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors that must be considered pursuant to California Water Code (Water Code) section 13385(e). Each factor in the Enforcement Policy and its corresponding category, adjustment, and amount are presented below.

³⁰ ECM Document Handle 11572471.

³¹ ECM Document Handle 11572472.

³² ECM Document Handles 11572473, and 11572474.

³³ ECM Document Handle 11572477.

³⁴ ECM Document Handle 11572478.

³⁵ ECM Document Handle 11572480.

³⁶ ECM Document Handle 11572486.

³⁷ ECM Document Handle 11572487.

³⁸ ECM Document Handle 11572493.

³⁹ ECM Document Handle 11572495.

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- a. STEP 1 - Potential for Harm for Discharge Violations
Step 1 does not apply to Non-Discharge Violations.
- b. STEP 2 – Assessment for Discharge Violations
Step 2 does not apply to Non-Discharge Violations.
- c. STEP 3 – Per Day Assessment of Non-Discharge Violations
Non-discharge violations harm or undermine the regulatory program and some have the potential to directly or indirectly impact beneficial uses. Per day assessments of non-discharge violations are determined based on the Potential for Harm and the extent of Deviation from Requirement, which are used in Table 3 of the Enforcement Policy to determine the Per Day Factor. The Per Day Factor is multiplied by the Statutory Maximum Liability amount allowed under Water Code section 13385 (\$10,000 per day of violation).

Potential for Harm

A violation poses either a Minor, Moderate, or Major threat to beneficial uses. Here, the Potential for Harm for the alleged violation is characterized as **Moderate**. The Enforcement Policy defines Moderate Potential for Harm as “[t]he characteristics of the violation present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most non-discharge violations should be considered to present a moderate potential for harm.” IIP’s Site is a Risk Level 2 site enrolled under the Construction General Storm Water Permit, which requires IIP to take additional measures to implement Best Management Practices (BMPs) to control sediment transport off site because the Site presents an increased risk to water quality. The absence of BMPs creates a substantial threat of sediment discharges.

An unnamed tributary to Otay River flows through the Site and Johnson Canyon. Among its beneficial uses designated in the Basin Plan are WILD and WARM, which are uses that support biological integrity in the tributary. Otay River is designated pursuant to Clean Water Act section 303(d) as an impaired water body for Benthic Community Effects, Bifenthrin, Copper, Cyfluthrin, Indicator Bacteria, Dissolved Nitrogen, Phosphorus, Pyrethroids, Total Dissolved Solids, Toxicity, and Zinc. Sediment in receiving waters can reduce the sunlight for aquatic plants, clog fish gills, smother aquatic habitat and breeding areas.

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Fine sediments associated with construction stormwater discharges do not settle easily using conventional measures for sediment control (i.e., sediment basins). Given their long settling time, dislodging these soils results in a significant risk that fine particles will be released into receiving waters and cause unacceptable downstream impacts. Stormwater runoff containing sediment from the Site had the potential to transport other pollutants, such as nutrients (phosphorus and nitrogen), pesticides, metals, and oil and grease, potentially further degrading the already impaired waters of Otay River. Many of these constituents can be toxic to aquatic life in minute amounts.

Deviation from Requirement

Deviation from Requirement considers the extent to which a discharger achieved the purpose of a given requirement, without regard to whether the discharger acted reasonably or what similarly situated dischargers might do or whether the discharger was trying in good faith to comply. A violation represents a Minor, Moderate, or Major deviation from the applicable requirement. **Major** was selected because on at least 29 days over the period of nearly five months (see below), IIP had inadequate stockpile BMPs on Site, thus rendering the requirement ineffective in its essential function.

Per Day Factor

Using a Potential for Harm determination of **Moderate** and Deviation from Requirement determination of **Major**, and using the midpoint in Table 3 of the Enforcement Policy, the Per Day Factor for the failure to implement the stockpile management requirement is **0.55**.

Days of Non-Discharge Violation

As documented in San Diego Water Board and IIP inspection reports, IIP failed to implement effective housekeeping measures for stockpiled construction and/or waste materials in alleged non-discharge violation of Construction Storm Water Permit Attachment D, section B for at least 29 days: August 2, 2023; August 17, 2023; August 20, 2023; August 21, 2023; August 23, 2023; September 1, 2023; September 8, 2023; September 14, 2023; September 21, 2023; September 28, 2023; October 5, 2023; October 12, 2023; October 19, 2023; October 26, 2023; November 2, 2023; November 9, 2023; November 13, 2023; November 16, 2023; November 17, 2023; November 20, 2023; November 22, 2023; November 27, 2023; November 30, 2023; December 1, 2023; December 8, 2023; December 14, 2023; December 18, 2023; December 21, 2023; and December 22, 2023.

Initial Liability Amount

The Initial Liability Amount calculated on a per-day basis is **\$159,500** (\$10,000 [per day statutory maximum] x 0.55 [per day factor] x 29 [days of violation]).

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d. STEP 4 – Adjustment Factors

There are three additional factors that are considered for modification of the Initial Liability Amount: A discharger's Culpability, the discharger's History of Violations, and the discharger's efforts for Cleanup and Cooperation after the violation. These three factors are discussed below.

Culpability

An adjustment to the Initial Liability Amount based on a discharger's Culpability should result in a multiplier between 0.5 to 1.5, with a lower multiplier for accidental or non-negligent violations, and a higher multiplier for intentional or negligent violations. The test is what a reasonable and prudent person would have done or not done under similar circumstances. The Prosecution Team assigned a Culpability multiplier of **1.2** for this violation because IIP failed to exercise the ordinary care that a reasonable person would under similar circumstances for implementing the BMP on a construction site the size of IIP's. The Construction Storm Water Permit sets the applicable performance standards in this case.

San Diego Water Board staff provided written and oral notifications to IIP of the failure to cover and berm stockpiles on the Site pursuant to the Construction Storm Water Permit during two onsite discussions and in three inspection reports delivered to IIP. Additionally, IIP's Qualified Storm Water Pollution Prevention Practitioner (QSP) provided written notifications in its self-monitoring reports that "stockpiles require perimeter controls and stabilization." There was no reason BMPs could not reasonably have been implemented in compliance with the Construction Storm Water Permit.

A reasonably prudent developer would have implemented the BMP to comply with the Construction Storm Water Permit when the stockpiles were created. While IIP ultimately complied with the Construction Storm Water Permit requirement, it took several months and repeated notifications of the violations from both Water Board inspectors and the stormwater pollution expert hired by IIP.

History of Violations

Where there is a history of repeated violations, a minimum multiplier of 1.1 should be used. The Prosecution Team assigned a History of Violations multiplier of **1.0** for this violation because IIP does not have a history of construction stormwater violations.

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Cleanup and Cooperation

A reasonable and prudent response to a notice of violation should receive a neutral adjustment (1.0) as it is assumed a reasonable amount of cooperation is the warranted baseline. Here, IIP's five-month delay to cooperate with San Diego Water Board staff to correct the housekeeping violation is longer than reasonable. IIP claimed that the approximately five-month delay in implementing the BMPs was due to its difficulty obtaining labor to install the BMPs at the Site. However, before electing to mass grade a 143-acre site, a reasonable and prudent person would have ensured that it had the labor and materials available to protect the Site immediately and to comply with the Construction Storm Water Permit's requirements. Here, IIP ultimately obtained compliance with the requirement. During several large storm events after obtaining compliance, IIP demonstrated the effectiveness of the BMPs because there were no discharges of sediment laden stormwater runoff from the Site. Given the delay in obtaining compliance, however, IIP was assigned a Cleanup and Cooperation multiplier of **1.1**.

- e. STEP 5 – Determination of Total Base Liability Amount
The Total Base Liability Amount is **\$210,540** (\$159,500 [initial liability amount] x 1.2 [degree of culpability] x 1.0 [history of violations] x 1.1 [cleanup and cooperation]).
- f. STEP 6 –Ability to Pay and Ability to Continue in Business
See Section III below.
- g. STEP 7 – Economic Benefit
See Section III below.
- h. STEP 8 – Other Factors as Justice May Require
See Section III below.
- i. STEP 9 – Maximum and Minimum Liability Amounts
See Section III below.
- j. STEP 10 – Final Liability Amount
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2. Failure to implement effective soil cover for inactive areas in violation of Construction Storm Water Permit Attachment D, section D for 32 days.

Section D of Attachment D to the Construction Storm Water Permit requires Risk Level 2 dischargers to, among other things, implement effective erosion control BMPs. More specifically, Section D.2 of Attachment D to the Construction Storm Water Permit requires IIP to “provide effective soil cover for inactive areas and all finished slopes, open space, utility backfill, and completed lots.” The Prosecution Team alleges that IIP violated Section D.2 of Attachment D to the Construction Storm Water Permit for at least 32 days (dates of violation identified below) when it failed to implement effective soil cover for inactive areas on the Site. Each factor in the Enforcement Policy and its corresponding category, adjustment, and amount are presented below.

- a. STEP 1 - Potential for Harm for Discharge Violations
Step 1 does not apply to Non-Discharge Violations.
- b. STEP 2 – Assessment for Discharge Violations
Step 2 does not apply to Non-Discharge Violations.
- c. STEP 3 – Per Day Assessment of Non-Discharge Violations

Potential for Harm

The Potential for Harm is **Moderate**. The failure to implement erosion control BMPs, particularly soil cover, for a Risk Level 2 site in inactive areas poses a substantial potential for harm because there is a higher risk of erosion which could lead to additional sediment in stormwater runoff to receiving waters. As discussed above, sediment in receiving waters can reduce the sunlight for aquatic plants, clog fish gills, smother aquatic habitat and breeding areas, and transport other pollutants such as nutrients, pesticides, metals, oils, and grease. Many of these constituents can be toxic to aquatic life in minute amounts. As explained in the Construction Storm Water Permit, p. 30:

Particular attention must be paid to large, mass graded sites where the potential for soil exposure to the erosive effects of rainfall and wind is great and where there is potential for significant sediment discharge from the site to receiving waters. Until permanent vegetation is established, soil cover is the most cost-effective and expeditious method to protect soil particles from detachment and transport by rainfall. Temporary soil stabilization can be the single most important factor in reducing erosion at construction sites.

Here, IIP mass graded and disturbed 143 acres and failed to provide effective soil cover, thereby increasing the potential for high volume sediment discharges to leave the IIP Site and discharge into receiving waters, posing a substantial potential for harm.

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Deviation from Requirement

The Deviation from Requirement is **Major**. Erosion and sediment control BMPs are the foundation of the Construction Storm Water Permit requirements protecting the environment. “Erosion control BMPs should be the primary means of preventing storm water contamination, and sediment control techniques should be used to capture any soil that becomes eroded.” (Construction Storm Water Permit, p. 30.) For this enforcement action, the Prosecution Team is exercising its prosecutorial discretion to only pursue days of documented violation of IIP’s failure to implement effective erosion control BMPs, specifically the failure to provide effective soil cover for inactive areas on Site.

The Construction Storm Water Permit requires an effective combination of erosion and sediment control BMPs because it is best to prevent erosion and sedimentation from happening in the first place. Any erosion and sedimentation that does occur is then prevented from being discharged offsite by implementing sediment control BMPs in combination with erosion control BMPs. As documented in San Diego Water Board staff inspection reports, there were inactive areas throughout the Site without sediment and erosion control BMPs. IIP’s Qualified SWPPP Practitioner (QSP) also documented the lack of effective soil cover in inactive areas in its weekly inspection reports over the course of almost six consecutive months. The failure to implement effective soil cover at the mass graded Site rendered the Construction Storm Water Permit requirement ineffective its essential function.

Per Day Factor

Using a Potential for Harm determination of **Moderate** and Deviation from Requirement determination of **Major**, and using the midpoint in Table 3 of the Enforcement Policy, the Per Day Factor for the failure to implement the stockpile management requirement is **0.55**.

Days of Non-Discharge Violation

As documented in San Diego Water Board and IIP inspection reports, IIP failed to implement effective erosion controls in alleged non-discharge violation of Construction Storm Water Permit Attachment D, section D for at least 32 days: June 27, 2023; August 2, 2023; August 17, 2023; August 20, 2023; August 21, 2023; August 23, 2023; September 1, 2023; September 8, 2023; September 14, 2023; September 21, 2023; September 28, 2023; October 5, 2023; October 12, 2023; October 19, 2023; October 26, 2023; November 2, 2023; November 9, 2023; November 13, 2023; November 14, 2023; November 16, 2023; November 17, 2023; November 20, 2023; November 22, 2023; November 27, 2023; November 30, 2023; December 1, 2023; December 8, 2023; December 14, 2023; December 18, 2023; December 21, 2023; December 22, 2023; January 4, 2024.

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Initial Liability Amount

The Initial Liability Amount calculated on a per-day basis is **\$176,000** (\$10,000 [per day statutory maximum] x 0.55 [per day factor] x 32 [days of violation]).

d. STEP 4 – Adjustment Factors

There are three additional factors that are considered for modification of the Initial Liability Amount: A discharger's Culpability, the discharger's History of Violations, and the discharger's efforts for Cleanup and Cooperation after the violation. These three factors are discussed below.

Culpability

An adjustment to the Initial Liability Amount based on a discharger's Culpability should result in a multiplier between 0.5 to 1.5, with a lower multiplier for accidental or non-negligent violations, and a higher multiplier for intentional or negligent violations. The test is what a reasonable and prudent person would have done or not done under similar circumstances. The Prosecution Team assigned a Culpability multiplier of **1.2** for this violation because IIP failed to exercise the ordinary care that a reasonable person would under similar circumstances for implementing BMPs on a construction site.

San Diego Water Board staff provided written and oral notifications to IIP of the failure to implement erosion control BMPs on the Site during three onsite discussions and in five inspection reports delivered to IIP. Additionally, IIP's QSP provided written notifications in its self-monitoring reports. There was no reason BMPs could not reasonably have been implemented in compliance with the Construction Storm Water Permit.

A reasonably prudent person would have implemented the required BMPs to comply with the Construction Storm Water Permit when the Site was disturbed. While IIP ultimately complied with the Construction Storm Water Permit requirements, it took several months and repeated warnings of the violations from both Water Board inspectors and the stormwater pollution expert hired by IIP.

History of Violations

The Prosecution Team assigned a History of Violations multiplier of **1.0** for this violation because IIP does not have a history of construction stormwater violations.

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Cleanup and Cooperation

A reasonable and prudent response to a notice of violation should receive a neutral adjustment (1.0) as it is assumed a reasonable amount of cooperation is the warranted baseline. Here, IIP took longer than reasonable to cooperate with San Diego Water Board staff to correct the violation. Although IIP claimed that the delay in implementing erosion control was due to its difficulty obtaining labor to install the BMPs at the Site, it was IIP that consciously elected to mass grade the 143-acre Site while aware of the Construction Storm Water Permit's requirements. At the time that IIP elected to open the entire 143-acre Site, a reasonable and prudent person would have ensured that it had the labor and materials available to protect the Site immediately and to comply with the Construction Storm Water Permit's requirements. IIP ultimately obtained compliance with the requirement. During several large storm events after obtaining compliance, IIP demonstrated the effectiveness of the BMPs because there were no discharges of sediment laden stormwater runoff from the Site. Given the six-month delay in obtaining compliance, however, IIP was assigned a Cleanup and Cooperation multiplier of **1.1**.

- e. STEP 5 – Determination of Total Base Liability Amount
The Total Base Liability Amount is **\$232,320** (\$176,000 [initial liability amount] x 1.2 [degree of culpability] x 1.0 [history of violations] x 1.1 [cleanup and cooperation]).
- f. STEP 6 –Ability to Pay and Ability to Continue in Business
See Section III below.
- g. STEP 7 – Economic Benefit
Section III below.
- h. STEP 8 –Other Factors as Justice May Require
See Section III below.
- i. STEP 9 – Maximum and Minimum Liability Amounts
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- j. STEP 10 – Final Liability Amount
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III. Factors Associated with All Violations

1. STEP 6 –Ability to Pay and Ability to Continue in Business

The Water Code and the Enforcement Policy require the San Diego Water Board to consider a violator's ability to pay when imposing civil liabilities. Civil liabilities should be imposed at levels that do not allow violators to obtain a competitive economic advantage over dischargers that voluntarily incur the costs of regulatory compliance, whether or not the violator is able to continue in business after incurring the liability. A civil liability may never be imposed below the economic benefit realized by the violator for violations of Water Code section 13385.

A review of publicly available information reveals that IIP, a land developer in Southern California, and its affiliated companies have significant assets exceeding the proposed liability. The Prosecution Team has no evidence of IIP's inability to pay the proposed liability.

2. STEP 7 – Economic Benefit

The Economic Benefit is any savings or monetary gains derived from the act or omission that constitutes the violation. The Economic Benefit calculated using the United States Environmental Protection Agency BEN Model for Violation Nos. 1 and 2 is \$93,444. The Economic Benefit Analysis spreadsheet documenting the BEN Model calculation is available upon request.

3. STEP 8 –Other Factors as Justice May Require

The Enforcement Policy allows an adjustment to the administrative civil liability in consideration of the costs of investigating and enforcing the matter. Here, San Diego Water Board staff expended over 240 staff hours and accrued \$50,140 in staff costs associated with the investigation and preparation of this penalty methodology between August 2, 2023, to February 9, 2024. Generally, it is appropriate to increase the Total Base Liability Amount by \$50,140 for the two violations given the totality of the circumstances and is intended to serve as a sufficient general and specific deterrent against future violations.

4. STEP 9 – Maximum and Minimum Liability Amounts

Maximum Liability Amount

The alleged violations are subject to a maximum liability of \$10,000 per day of violation pursuant to Water Code section 13385(a)(2) and (c).

The Maximum Liability Amount for Violation No. 1 is **\$290,000** (\$10,000/day x 29 days).

The Maximum Liability Amount for Violation No. 2 is **\$320,000** (\$10,000/day x 32 days).

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Minimum Liability Amount

Water Code section 13385 requires recovery of economic benefit. The Enforcement Policy states that the minimum liability should be at least ten percent higher than the economic benefit amount. The Minimum Liability Amount for Violation Nos. 1 and 2 is **\$102,789** (\$93,444 + 10%).

5. STEP 10 – Final Liability Amount

The Total Base Liability Amount for Violation Nos. 1 and 2 is \$210,540 and \$232,320, respectively.

Based on the unique facts of this case, and application of the Penalty Calculation Methodology within Section VI of the Enforcement Policy, the proposed Final Liability Amount for Violations 1 and 2 is **\$493,000** (\$210,540 [Violation No. 1] + \$232,320 [Violation No. 2] + \$50,140 [staff costs]), which is between the minimum and maximum liabilities.