

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

In the matter of:)	
)	
MARTINEZ REFINING)	SETTLEMENT AGREEMENT AND
COMPANY LLC,)	STIPULATION FOR ENTRY OF
MARTINEZ, CONTRA COSTA)	ADMINISTRATIVE CIVIL LIABILITY
COUNTY)	ORDER
)	
NPDES Permit Effluent Limit)	ORDER NO. R2-2021-1007
Violations)	

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, Prosecution Team (Prosecution Team) and Martinez Refining Company LLC (Discharger) (collectively, Parties), and is presented to the California Regional Water Quality Control Board, San Francisco Bay Region (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 all the violations alleged herein by the imposition of administrative civil liability against the Discharger in the amount of **\$120,000**.

Section II: RECITALS

1. The Discharger owns and operates the Martinez Refinery in the City of Martinez in Contra Costa County (Facility). The Facility is a petroleum refinery that includes a wastewater treatment plant. The Facility processes an average crude oil throughput of approximately 150,000 barrels per day, producing a broad range of petroleum products. After treatment at the wastewater treatment plant, the Facility discharges process wastewater, non-process wastewater, sanitary wastewater, and stormwater to the Carquinez Strait via Discharge Point No. 001. The Facility also discharges stormwater runoff to Peyton Slough via Discharge Point Nos. 002 and 009, and to Peyton Creek via Discharge Point Nos. 004, 005, 007, and 008.
2. On October 12, 2017, the Regional Water Board reissued National Pollutant Discharge Elimination System (NPDES) Permit No. CA0005789 (Permit) to Equilon Enterprises LLC, doing business as Shell Oil Products US (Shell), through Order No. R2-2017-0039 for the Facility, which became effective December 1, 2017. On February 1, 2020, the Discharger acquired the Facility from Shell and Permit coverage was transferred from Shell to the Discharger. The Permit contains waste discharge requirements for the Facility, including effluent limitations.

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3. The Prosecution Team alleges the following discharges from Discharge Point No. 001 violated the maximum daily total suspended solids (TSS) effluent limit of 2,300 pounds per day (lbs/day) and the monthly average TSS effluent limit of 1,500 lbs/day, as specified in Table 4 of Permit section IV.A.1. TSS is a Group I pollutant, as specified in Appendix A to 40 Code of Federal Regulations section 123.45.
- a. On March 17, 18, 20, 21, 22, and 23, 2020, the Prosecution Team alleges that the Discharger discharged a combined total of approximately 29 million gallons. Over these six days of discharge, the Prosecution Team further alleges that the Discharger violated the maximum daily TSS limit six times as shown in the following table:

Date	Reported TSS Mass Load (lbs/day)	Reported Discharge Volume (million gallons)
3/17/2020	9,410	5.5
3/18/2020	10,140	4.6
3/20/2020	3,080	5.3
3/21/2020	4,850	4.5
3/22/2020	2,830	4.5
3/23/2020	4,090	4.7

- b. In March 2020, the Prosecution Team alleges that the Discharger discharged approximately 164 million gallons in March 2020. Over these 31 days of discharge, the Prosecution Team further alleges that the Discharger violated the monthly average TSS limit one time as shown in the following table:

Date	Reported Average TSS Mass Load (lbs/day)	Reported Discharge Volume (million gallons)
March 2020	2,083	164

The Prosecution Team alleges that the TSS effluent limit violations occurred when the Discharger returned the selenium processing unit's sludge thickener to service after performing maintenance from August 1, 2019, through March 4, 2020. While the sludge thickener was out of service, the Discharger used a smaller centrifuge system that operated intermittently and required less solids dredging from Pond 5D. When the Discharger resumed normal operations, it began dredging continuously in Pond 5D to accumulate enough solids for operation of the larger continuous sludge thickener. Increased dredging and pumping in Pond 5D agitated the pond water, increasing the solids settling time and the solids concentration in pond effluent. The final solids removal step in the selenium processing unit was unable to remove sufficient solids to meet the TSS effluent limits.

4. Pursuant to Water Code section 13385, subdivision (a)(2), a person who violates a waste discharge requirement is subject to administrative civil liability under Water Code section 13385, subdivision (c), as follows:

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...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. Water Code section 13385, subdivisions (h) and (i), require assessment of mandatory minimum penalties (MMPs) for certain discharge violations.
 - a. Water Code section 13385, subdivision (h)(1), states the following:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.
 - b. Water Code section 13385, subdivision (h)(2), states the following:

For the purpose of this section, a “serious violation” means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.
 - c. Water Code section 13385, subdivision (i)(1), states the following:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

 - (A) Violates a waste discharge requirement effluent limitation.
 - (B) Fails to file a report pursuant to Section 13260.
 - (C) Files an incomplete report pursuant to Section 13260.
 - (D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
 - d. Water Code section 13385, subdivision (i)(2), states the following:

For the purposes of this section, a “period of six consecutive months” means the period commencing on the date that one of the violations

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described in this subdivision occurs and ending 180 days after that date.

6. The alleged violations listed in Section II, paragraph 3, are subject to \$18,000 in MMPs under Water Code section 13385, subdivision (h). Except for the March 20 violation, the violations listed in Section II, paragraph 3 are serious violations under Water Code section 13385, subdivision (h) because the TSS loads were 40 percent or more above the allowable effluent limit. The March 20, 2020, alleged violation is not subject to an MMP because the TSS load was less than 40 percent of the allowable effluent limit, and there were no more than three violations within the prior 180 days. The Prosecution Team elected not to pursue MMPs, but instead elected to pursue discretionary administrative civil liability pursuant to Water Code section 13385, subdivision (c). Because a violation of a monthly average is deemed a violation for each day of the month that the Discharger allegedly discharged during that month, the Discharger's violation of the monthly average limit resulted in 31 days of violation. These 31 days of alleged violation encompass the six alleged violations of the daily maximum effluent limit because the discharge of a single pollutant, TSS, caused both the daily and monthly violations.
7. 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 \$120,000 against the Discharger as described in Section III, paragraph 1. The settlement amount is less than the liability the Prosecution Team calculated using Steps 1 through 10 of the State Water Resources Control Board's (State Water Board's) Water Quality Enforcement Policy adopted in April 2017 (Enforcement Policy), as shown in Attachment A, which is incorporated herein by reference. Pursuant to Enforcement Policy section VI.B, the final proposed liability was reduced by \$6,000 in consideration of hearing and/or litigation risks.
8. The Parties engaged in settlement negotiations and agreed to settle this matter 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.
9. The Prosecution Team contends that the resolution of the alleged violations is fair and reasonable, and fulfills all of its enforcement objectives; that no further action is warranted concerning the violations, 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:

1. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability of **\$120,000** to resolve the alleged violations set forth in Section II as follows:

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- a. No later than 30 days after the Regional Water Board or its delegate signs this Stipulated Order, the Discharger shall mail a check for **\$60,000** made payable to “State Water Pollution Cleanup and Abatement Account,” referencing the 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 Discharger shall email a copy of the check to the State Water Board, Office of Enforcement (paul.ciccarelli@waterboards.ca.gov), and the Regional Water Board (habte.kifle@waterboards.ca.gov).

- b. The Parties agree that the remaining **\$60,000** of the administrative liability shall be paid to the Regional Monitoring Program, care of the San Francisco Estuary Institute (SFEI), for implementation of a Supplemental Environmental Project (SEP) named “*Temporal Variability in Sediment Delivery to a San Francisco Bay Salt Marsh*,” as follows:

- i) **\$60,000** (SEP Amount) shall be paid in the manner described in Section III, paragraph 1.b.ii, solely for use toward the SEP Fund for the “*Temporal Variability in Sediment Delivery to a San Francisco Bay Salt Marsh*” project, as set forth in Attachment B, which is incorporated herein by reference. Funding this project will enable the investigation of the influence of tides, waves, and water levels on sediment delivery and deposition on a tidal marsh surface in San Francisco Bay. A full description of this project is provided in Attachment B.

- ii) No later than 30 days after the Regional Water Board or its delegate signs this Stipulated Order, the Discharger shall mail a check for **\$60,000**, made payable to “Regional Monitoring Program” and referencing the Order number on page one of this Stipulated Order, to:

Regional Monitoring Program
c/o San Francisco Estuary Institute
P.O. Box 632
2101 Pear Street
Pinole, CA 94564

The Discharger shall email a copy of the check to the State Water Board, Office of Enforcement (paul.ciccarelli@waterboards.ca.gov), and the Regional Water Board (habte.kifle@waterboards.ca.gov).

2. **SEP Description:** The Parties agree that the Discharger’s payment of the SEP Amount is a SEP, and that the SEP Amount shall be treated as a suspended administrative civil liability for purposes of this Stipulated Order. The Discharger’s SEP obligations shall be satisfactorily completed, and the SEP amount will be

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permanently suspended, upon SFEI's written notification to the Regional Water Board and the Discharger acknowledging that the Regional Monitoring Program received payment of the SEP Amount from the Discharger and that the payment will be spent on the project described in Section III, paragraph 1.b.i and Attachment B in accordance with the terms of this Stipulated Order. SFEI's annual and quarterly financial reports to the Regional Water Board shall be considered a final post-project accounting of expenditures.

3. **SEP Oversight:** SFEI will oversee SEP implementation in lieu of Regional Water Board staff oversight and will report solely to the Regional Water Board. The Discharger shall not have any implementation or oversight role for the SEP; rather, all its obligations with respect to the SEP will be completed upon SFEI's receipt of the SEP Amount and SFEI's written notification described in Section III, paragraph 2. SFEI has agreed to voluntarily cover any SEP-related oversight costs. Oversight costs are not included in the SEP Amount.
4. **Publicity Associated with the SEP:** Whenever the Discharger, or its agents or subcontractors, publicizes one or more SEP elements, it shall state in a prominent manner that the project is undertaken as part of a settlement of a Regional Water Board enforcement action against the Discharger.
5. **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 Discharger 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 Discharger or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order.
6. **Compliance with Applicable Laws:** The Discharger 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.

7. Party Contacts for Communications Related to This Stipulated Order:

For the Regional Water Board:

Habte Kifle
San Francisco Bay Regional Water
Quality Control Board
1515 Clay Street, 14th Floor
Oakland, CA 94612
Habte.Kifle@waterboards.ca.gov
(510) 622-2371

For the Discharger:

Jerry Forstell
Refinery Manager
Martinez Refining Company LLC
3485 Pacheco Boulevard
Martinez, CA 94553
Jerry.Forstell@pbfenergy.com
(925) 313-3333

8. Attorneys' Fees and Costs: Each Party shall bear its own attorneys' fees and costs incurred pursuant to this Stipulated Order.

9. 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 violations contained in Section II, paragraphs 3 and 6, as of the date the Regional 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.

10. Public Notice: The Discharger 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. Except for the Prosecution Team unilaterally declaring this Stipulated Order void and deciding not to present it to the Regional Water Board or its delegate, the Discharger agrees that it may not rescind or otherwise withdraw its approval of this Stipulated Order.

11. Addressing Objections Raised During Public Comment Period: 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 or the Regional 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.

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.

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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. **If the Stipulated Order Does Not Take Effect:** If this Stipulated Order does not take effect because the Regional Water Board or its delegate does not approve 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 an evidentiary hearing, which may be contested, before the Regional 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 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 this Stipulated Order and, therefore, may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged herein. 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 this period has been extended by these settlement proceedings.
15. **Waiver of Hearing:** The Discharger 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 the State Water Board for hearing, the Discharger does not waive the right to a hearing before an order is imposed.
16. **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 Discharger 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 California appellate court. This explicit waiver of rights includes potential future decisions by the Regional Water Board, or its delegate directly related to this Stipulated Order, including but not limited to time extensions, SEP completion, and other terms contained in this Stipulated Order.
17. **Covenant Not to Sue:** The Discharger 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

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out of or relating to any matter expressly addressed by this Stipulated Order or the SEP.

18. **No Admission of Liability:** In settling this matter, the Discharger 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 enforcement action consistent with Water Code sections 13327 and 13385, subdivision (e).
19. **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 Discharger 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 Discharger of its obligation to obtain any final written approval this Stipulated Order requires.
20. **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 the Stipulated Order.
21. **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.
22. **Severability:** This Stipulated Order is severable; if any provision is found to be invalid, the remainder shall remain in full force and effect.
23. **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.
24. **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**

Date: March 25, 2021


By:
Thomas Mumley
Assistant Executive Officer

Approved as to form:


By:
Paul Ciccarelli, Attorney III
State Water Resources Control Board
Office of Enforcement

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MARTINEZ REFINING COMPANY LLC

Date: Mar 25, 2021

By: *Gerard Forstell*
Gerard Forstell (Mar 25, 2021 14:46 PDT)
Jerry Forstell, Refinery Manager
Martinez Refining Company LLC

Approved as to form:

By: *Darren W. Stroud*
Darren W. Stroud (Mar 25, 2021 14:42 PDT)
Darren W. Stroud, Refinery Attorney
Martinez Refining Company LLC

ORDER OF THE REGIONAL 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 Regional Water Board or its delegate has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e). The Regional 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 Regional Water Board.
3. This is an action to enforce the laws and regulations administered by the Regional 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 section 15321, subdivision (a)(2), title 14, of the California Code of Regulations. Additionally, this Stipulated Order generally accepts the plans proposed for the SEP prior to implementation. Mere submittal of plans is exempt from CEQA because submittal will not cause a direct or indirect physical change in the environment.
4. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger 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.

Michael Montgomery
Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region

Date

ATTACHMENT A

Factors in Determining Administrative Civil Liability

Martinez Refining Company LLC NPDES Permit Effluent Limit Violations Martinez, Contra Costa County

The State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy) establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors required by California Water Code section 13385, subdivision (e). Each Enforcement Policy factor and its corresponding category, adjustment, and amount for the alleged violation is presented below. The Enforcement Policy should be used as a companion document in conjunction with this administrative civil liability assessment since the penalty methodology and definition of terms are not replicated herein. The Enforcement Policy is available online at:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf

ALLEGED VIOLATIONS

Martinez Refining Company LLC (Discharger) owns and operates the Martinez Refinery in Contra Costa County (Facility). The Facility is a petroleum refinery that produces a broad range of petroleum products. The Facility's wastewater treatment plant treats process wastewater, non-process wastewater, sanitary wastewater, and stormwater runoff from refinery process areas. The treated wastewater is discharged to the Carquinez Strait via Discharge Point No. 001 pursuant to NPDES Permit No. CA0005789, Order No. R2-2017-0039 (Permit).

On March 17, 18, 20, 21, 22, and 23, 2020, the Prosecution Team alleges that Discharger discharged a combined total of approximately 29 million gallons of partially-treated wastewater via Discharge Point No. 001 in violation of the Permit's maximum daily effluent limit for total suspended solids (TSS). As set forth in Table 4 of Permit section IV.A.1, the allowable maximum daily effluent limit for TSS is 2,300 pounds per day (lbs/day). The Prosecution Team further alleges that the Discharger also violated the monthly average effluent limit for TSS in March 2020, discharging approximately 164 million gallons of partially-treated and fully-treated wastewater for 31 days via Discharge Point No. 001. As set forth in Table 4 of Permit section IV.A.1, the allowable monthly average effluent limit for TSS is 1,500 lbs/day. The 31 days of alleged violation for the monthly average effluent limit violation encompass the six violations of the daily maximum effluent limit because the discharge of a single pollutant, TSS, caused both the daily and monthly violations.

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The Discharger is subject to administrative civil liability for the alleged violations pursuant to Water Code section 13385, subdivision (a)(2). The factors considered in determining the liability for the violations are described below:

Determination of Initial Liability		
Penalty Factor	Score	Discussion
Degree of Toxicity of the Discharge Violations	3	<p>A score of 3 (above-moderate) is appropriate because the “Discharged material poses an above-moderate risk or a direct threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material exceed known risk factors or there is substantial threat to potential receptors).” (Enforcement Policy, p. 12.)</p> <p>The TSS in the discharge exhibited an above-moderate degree of toxicity. Refinery TSS includes both organic and inorganic fractions. The inorganic fraction of refinery TSS may include metals, sand, silt, and clay. The organic fraction contains trace amounts of toxic constituents such as hydrocarbons and other byproducts of refinery operations that can harm aquatic life. In the Carquinez Strait, the organic fraction has the potential to be toxic to aquatic organisms when TSS particles are trapped in fish gills and harmful constituents are absorbed in fish tissue. Deposition of the organic fraction in the bottom sediments can inhibit normal benthic growth and thus interrupt the aquatic food chain.</p> <p>The Discharger initiated a 96-hour flow-through bioassay on March 17, 2020, with results of 97 percent survival, demonstrating compliance with the acute toxicity limit.</p>
Actual Harm or Potential Harm to Beneficial Uses for Discharge Violations	2	<p>A score of 2 (below moderate) is appropriate because there was “less than moderate harm or potential harm to beneficial uses. A score of below moderate is typified by observed or reasonably expected potential impacts, but based on the characteristics of the discharge and applicable beneficial uses, harm or potential harm to beneficial uses is measurable in the short term, but not appreciable.” (Enforcement Policy, p. 12.)</p> <p>The Discharger allegedly discharged approximately 164 million gallons of partially-treated and fully-treated wastewater to the Carquinez Strait over 31 days in violation of the Permit’s TSS effluent limits. Although no acute toxicity, harm, or loss of beneficial uses was observed as a result of the discharge, TSS from refineries includes both organic and inorganic fractions that may contain constituents potentially toxic to aquatic life. In the Carquinez Strait, the organic fraction (i.e., hydrocarbons and other refinery byproducts) has the potential to pose harm to aquatic organisms (e.g., as sediment particles are trapped in fish gills). Thus, estuarine habitat and fish spawning beneficial uses would potentially be adversely affected.</p>
Susceptibility to Cleanup or Abatement	1	<p>A score of 1 is appropriate because the discharges commingled with the receiving waters and were not susceptible to cleanup or abatement. (Enforcement Policy, p. 13.)</p>
Final Total Score	6	<p>The scores for the above three factors are added together to provide a “Potential for Harm” score of 6 (3+2+1 = 6).</p>

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Deviation from Requirement	Major	A major deviation from requirement is appropriate because the TSS effluent limits were “rendered ineffective in [their] essential functions.” (Enforcement Policy, p. 14.) The Permit requires the discharge to be treated to achieve concentrations below effluent limits prior to discharge to the Carquinez Strait. Because treatment did not achieve the effluent limits and the discharge had the potential to affect aquatic life, the Permit requirements were rendered ineffective in their essential functions.
Per-Day Factor for Discharge Violations	0.28	In accordance with the Enforcement Policy’s guidance, the NPDES effluent limit violations are addressed on a per day basis only. (Enforcement Policy, p. 13.) Enforcement Policy Table 2 contains per-day factors based on the Potential for Harm score and the Deviation from Requirement. (Enforcement Policy, p. 15.) A Potential for Harm score of 6 and a major Deviation from Requirement results in a per-day factor of 0.28.
Initial Liability	\$86,800	The Discharger violated the maximum daily and monthly average effluent limits for TSS in March 2020. Monthly effluent limit violations extend across each day of the month during which the violations occurred. Because the Discharger allegedly exceeded the monthly effluent limit for 31 days in March, it violated the monthly limit for 31 days. ¹ The maximum daily effluent limit violations occurring during these periods are not counted as separate days of violation when they involve the same pollutant. Therefore, the initial liability calculated on a per-day basis is as follows: Initial Liability: \$86,800 = (\$10,000/day x 31 days x 0.28)
Adjustments for Discharger Conduct		
Penalty Factor	Score	Discussion
Culpability	1.2	A score of 1.2 (above neutral) is appropriate because a reasonable and prudent discharger would have ensured that its selenium processing unit and procedures were sufficient to ensure compliance with its NPDES Permit’s effluent limits.
History of Violations	1.1	A score of 1.1 is appropriate because the Facility has a history of violations, as demonstrated by the following enforcement orders: <ul style="list-style-type: none"> • Order No. R2-2021-1001: \$9,000 penalty for March 2017 and April 2018 NPDES Permit effluent limit violations; and • Order No. R2-2018-1001: \$86,000 penalty for January and February 2017 NPDES Permit effluent limit violations.

¹ The Water Boards interpret Water Code section 13385, subdivision (c)(1) the same as Clean Water Act section 309(d). (Wat. Code, § 13372 (requiring state provision be construed to ensure consistency with the federal program requirements); *Atlantic States Legal Foundation, Inc. v. Tyson Foods, Inc.* (11th Cir. 1990) 897 F.2d 1128 (holding that a violation of a monthly average is a violation for each day of the month); *Natural Resources Defense Council Inc. v. Texaco Refining and Marketing, Inc.* (3d Cir. 1993) 2 F.3d 493 (assessing penalties for a violation of a monthly average based on the number of days of facility was in operation).)

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Cleanup and Cooperation	1.1	A score of 1.1 (above neutral) is appropriate because the Discharger took seven days to return to compliance once it became aware of the violation. The Discharger eventually installed a “barrier corral” and an additional pump in Pond 5D, and increased dredging and pumping rates to reduce solids and comply with the Permit’s effluent limits.
Total Base Liability	\$126,000 (rounded)	The initial liability is multiplied by each factor related to the Discharger’s conduct to determine the Total Base Liability as follows: \$126,034 = \$86,600 x 1.2 (culpability) x 1.1 (history of violations) x 1.1 (cleanup and cooperation)
Ability to Pay and Continue in Business	No adjustment	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 in business, then the liability may be adjusted downward if warranted. PBF Energy Inc., the Discharger’s parent corporation, is a large energy business with multiple refineries throughout the United States and did not raise the issue of the ability to pay during negotiations. Therefore, the Prosecution Team believes that the Discharger can pay the proposed liability without undue financial hardship.
Economic Benefit	\$2,000	The Enforcement Policy requires recovery of any economic benefit derived from the act or omission that constitutes the violation, plus 10 percent. The economic benefit is “the present value of the avoided costs plus the ‘interest’ on delayed costs.” (Enforcement Policy, p. 21.) For this case, the Prosecution Team calculated the economic benefit using the United States Environmental Protection Agency’s Economic Benefit Model (BEN) version 2020.0.0. Using standard economic principals such as time-value of money and tax deductibility of compliance costs, BEN calculates a discharger’s economic benefit derived from delaying or avoiding compliance with environmental statutes. The Discharger delayed installation of a barrier corral and pumping system at Pond 5D. The cost of installing and operating the new equipment was about \$90,000. The Discharger would likely have mitigated the TSS violations if it had implemented these corrective actions prior to returning the sludge thickener to service. Therefore, the noncompliance date for these corrective actions is assumed to be March 4, 2020 – the startup date for the sludge thickener. The compliance date is assumed to be the last day the Discharger indicated it implemented corrective and enhanced compliance actions to mitigate future TSS violations – November 24, 2020. For calculation purposes, the penalty payment date is conservatively assumed to be the initial date of settlement discussions – December 14, 2020. Based on these inputs to the BEN model, the economic benefit of noncompliance is approximately \$2,000.
Other Factors as Justice May Require		
Penalty Factor	Score	Discussion
Staff Costs	No adjustment	Staff costs are not included in the final proposed liability.

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Maximum Liability	\$1.64 Billion	Water Code section 13385 allows up to \$10,000 for each day in which a violation occurs and \$10 for each gallon exceeding 1,000 gallons discharged and not cleaned up. The maximum liability calculated based on 152 million gallons and 31 days of violation is as follows: \$1, 640,300,000 = (164,000,000 gallons – 1,000 gallons) x \$10/gallon + (31 days x \$10,000/day)
Minimum Liability	\$18,000	The Enforcement Policy states that the final liability must be at least 10 percent higher than the economic benefit. (Enforcement Policy, p. 21.) The economic benefit derived from the alleged violations plus 10 percent is approximately \$2,200. The mandatory minimum penalty under Water Code section 13385, subdivision (h), for the alleged violations is \$18,000. Because the economic benefit plus 10 percent is lower than the mandatory minimum penalty, the minimum liability is \$18,000.
Final Liability	\$126,000	The final liability of \$126,000 is the total base liability after adjusting for ability to pay, economic benefit, other factors, and maximum and minimum liabilities.

ATTACHMENT B

**Martinez Refining Company LLC (MRC)
Project Description for
Supplemental Environmental Project (SEP) Fund for the
San Francisco Bay Regional Monitoring Program**

1. Project Name

Temporal Variability in Sediment Delivery to a San Francisco Bay Salt Marsh

2. Project Amount

\$60,000

3. Project Lead

San Francisco Estuary Institute (SFEI)

4. SFEI Contacts

- Technical: Melissa Foley, melissaf@sfei.org, (510) 746-7345
- Financial: Jennifer Hunt, jhunt@sfei.org, (510) 746-7347

5. Project Description

The goal of this work is to investigate the influence of tides, waves, and water levels on sediment delivery and deposition on a tidal marsh surface in San Francisco Bay. The project will include measurements of suspended sediment concentration (SSC) and suspended sediment flux (SSF) in the shallows adjacent to a marsh, SSF into the marsh through a tidal creek, deposition and accretion on the marsh, and the variation in deposition with elevation and vegetation density and type. Data will be collected in summer 2021 and data analyzed and reported by summer 2023. Study results will inform shoreline and tidal marsh sea level rise resilience and adaptation management strategies.

6. Compliance with SEP Criteria

A SEP must directly benefit or study groundwater, surface water, or drinking water quality or quantity and the beneficial uses of waters of the State, and it must fit within one or more of designated categories. This SEP directly benefits surface water quality and the beneficial uses of waters of the State, and it fits into the assessment and audit SEP category.

7. Above and Beyond Discharger's Obligations

This SEP provides no direct benefit to Martinez Refining Company LLC, which has no obligation to provide financial or other support for this project, will receive no direct or indirect benefit from this effort, and will not directly or indirectly exercise any control over the SEP. This SEP is above and beyond what is required in permits or orders issued by the Regional Water Board or what can be accomplished with required monetary contributions to the Regional Monitoring Program for Water Quality in San Francisco Bay.

8. No Benefit to the Water Board Functions, Members, or Staff

This SEP provides no direct fiscal benefit to the Regional Water Board’s functions, its members, its staff, or family of its members or staff.

9. Nexus to Nature or Location of Violations

This SEP has a nexus to the location of the alleged violations. This SEP includes a study in San Francisco Bay that will inform shoreline and tidal marsh sea level rise resilience and adaptation management strategies. San Francisco Bay includes the Carquinez Strait, the receiving water to which the partially-treated wastewater discharges occurred.

10. Study Milestones and Performance Measures

Data collection will begin in summer 2021. The data will be available within 18 months of the start of work. The final report will be completed within two years of the start of work. The report will describe the relationship between sediment dynamics in the shallows and sediment delivery to the marsh, and its seasonal variation.

11. Study Budget and Reports to Water Board

Pursuant to the October 2015 Supplement to the Memorandum of Understanding (MOU) between SFEI and the Regional Water Board, SFEI is responsible for identifying in each annual work plan and annual budget for the RMP those studies or elements, or portions of a study or element, that are to be funded by SEP funds. SFEI will keep a copy of accounting records of SEP fund contributions and expenditures separately from regular RMP funds. In its annual and quarterly financial reports to the Regional Water Board, SFEI will separately itemize SEP fund contributions and expenditures by each SEP funder.

SFEI will provide notice to the Regional Water Board within one month after receiving funds from Martinez Refining Company LLC for the SEP and the notice will state SFEI’s agreement to use the funds received as described herein.

12. Publicity

Pursuant to the 2015 MOU, SFEI will indicate on its Regional Monitoring Program website, and annual and other reports, that funding for the study is the result of settlement of “San Francisco Bay Water Board” enforcement action.