

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

In the matter of:)	
)	
EAST BAY MUNICIPAL)	SETTLEMENT AGREEMENT AND
UTILITY DISTRICT,)	STIPULATION FOR ENTRY OF
CONTRA COSTA COUNTY)	ADMINISTRATIVE CIVIL LIABILITY
)	ORDER
October 24-25, 2021,)	
Unauthorized Discharge from)	R2-2022-1004
Point Isabel Wet Weather)	
Facility)	
)	
)	

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 the East Bay Municipal Utility District (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 the violation alleged herein by the imposition of administrative civil liability against the Discharger in the amount of **\$816,000**.

Section II: RECITALS

1. The Discharger owns and operates the Point Isabel Wet Weather Facility (Facility) at 2755 Isabel Street, in Richmond. The Facility provides storage and treatment for peak wet weather flows diverted from an interceptor system. If influent flows exceed the on-site storage capacity, the Facility provides treatment consisting of coarse screens, bar screens, grit chambers, and sedimentation/disinfection basins. The Facility discharges from Discharger Point 001 into the Richmond Inner Harbor in San Francisco Bay, a water of the United States.
2. On January 15, 2009, the United States of America, on behalf of the United States Environmental Protection Agency (U.S. EPA), and the People of the

Settlement Agreement and Stipulated Administrative Civil Liability
 East Bay Municipal Utility District

State of California, by and through the Regional Water Board, filed a complaint as co-plaintiffs against the Discharger for unpermitted and unauthorized discharges of waste in violation of federal Clean Water Act section 301, Water Code section 13376, and terms and conditions of NPDES permits. To eliminate discharges from the Facility during a precipitation event of a specified magnitude, the Discharger and upstream satellite agencies entered into a Consent Decree (Case Numbers C09-00186-RS and C09-05684-RS) on September 22, 2014. The Consent Decree requires the Discharger and upstream satellite agencies to implement improvements that will reduce inflow and infiltration into their respective wastewater conveyance and collection systems, and requires the Discharger to monitor and report discharges from the Facility.

3. Consent Decree paragraph 35 requires the Discharger to comply with the following effluent limitations for discharges from the Facility:

- a. pH: Discharges from the Facility must be within 6.5 and 8.5.
- b. Total Coliform: Discharges from the Facility must not exceed a daily maximum of 240 MPN/100 milliliters (ml). "MPN" refers to the "most probable number" index.
- c. Chlorine Residual: Discharges from the Facility must not exceed 0.0 milligrams per liter (mg/L).

4. Consent Decree paragraph 187 establishes stipulated penalties against the Discharger for exceeding the applicable effluent limitations as follows:

Effluent Limitation	Penalty Per Violation Per Day
pH	\$3,000
Total Coliform	\$3,000
Chlorine Residual	\$3,000, except that if the total volume discharged is greater than 50,000 gallons, the penalty is \$10,000

5. The Facility is also regulated under Regional Water Board Order R2-2020-0003 (Order). The Order prohibits any discharge from the Facility to waters of the United States (Discharge Prohibition III.A) and requires proper operation and maintenance of all facilities and systems of treatment and control installed or used by the Discharger to achieve compliance with the conditions of the Order (Standard Provision I.D of Attachment D).

6. During an Atmospheric River Category Level 5, 50-year storm, the Discharger discharged approximately 16.5 million gallons of partially treated wastewater from the Facility to San Francisco Bay from October 24, 2021, through October 25, 2021. The discharge exceeded the Consent Decree's pH effluent limitation on October 24, 2021, and the residual chlorine and total coliform effluent limitations on both days of discharge. The exceedances subject the

Settlement Agreement and Stipulated Administrative Civil Liability
East Bay Municipal Utility District

Discharger to \$29,000 in stipulated penalties (\$3,000 [1 day x \$3,000] for the pH exceedance, \$20,000 [2 days x \$10,000] for the chlorine exceedances, and \$6,000 [2 days x \$3,000] for the total coliform exceedances). A written demand for payment of the \$29,000 in stipulated penalties was sent to the Discharger on June 8, 2022, in accordance with the Consent Decree. U.S. EPA and the Regional Water Board received payment of their respective portions of the stipulated penalties on June 22, 2022, and July 1, 2022, respectively.

7. Consent Decree section XX.B, paragraph 197, states that payment of the stipulated penalties pursuant to the Consent Decree shall be in addition to any other rights or remedies available to the Regional Water Board by reason of the Discharger's failure to comply with the Consent Decree, or any other applicable federal, State, or local laws, regulations, and NPDES permits. Where a violation of the Consent Decree is also a violation of the federal Clean Water Act, or comparable State law, the Discharger must be allowed a credit for any stipulated penalties paid against any statutory penalties imposed for such violation.
8. The Discharger discharged the most highly chlorinated portion of the unauthorized wastewater discharge, approximately 3,795,500 gallons, on October 24, 2021, from 7:17 p.m. to 9:06 p.m. In addition to the assessed stipulated penalties, the Prosecution Team has exercised its prosecutorial discretion to pursue discretionary administrative civil liability for this portion of the discharge, which violated Discharge Prohibition III.A and Standard Provision I.D of Attachment D of the Order. The discharge had a chlorine residual of 0.2 to 5.4 mg/l because the Discharger ran out of sodium bisulfite to dechlorinate the wastewater prior to discharge. The unauthorized discharge subjects the Discharger to administrative civil liability pursuant to Water Code section 13385, subdivisions (a)(2) and (c).
9. To resolve the alleged violation in Section II, paragraph 8, by consent and without further administrative proceedings, the Parties agree to the imposition of an administrative civil liability of **\$816,000** against the Discharger. The Prosecution Team calculated the proposed liability using Steps 1 through 10 of the State Water Resources Control Board's (State Water Board's) *Water Quality Enforcement Policy* (Enforcement Policy) (October 2017) as shown in Attachment A, which is incorporated herein by reference.
10. The Parties have engaged in settlement negotiations and agree 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.
11. The Prosecution Team contends that the resolution of the alleged violation is fair and reasonable, and fulfills all of its enforcement objectives; that no

Settlement Agreement and Stipulated Administrative Civil Liability
East Bay Municipal Utility District

further action is warranted concerning the violation, 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 **\$816,000** to resolve the alleged violation set forth in Section II as follows:

- a. The Discharger is credited **\$29,000** for its payment of stipulated penalties pursuant to Consent Decree section XX.B.
- b. No later than 30 days after the Regional Water Board or its delegate signs this Stipulated Order, the Discharger shall mail a check for **\$379,000**, 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 to the Regional Water Board (michael.chee@waterboards.ca.gov).

- c. The Parties agree that the remaining **\$408,000** 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 "San Francisco Bay Sediment Transport and Fate Modeling," as follows:
 - i. **\$408,000** (SEP Amount) shall be paid in the manner described in Section III, paragraph 1.c.ii, solely for use toward the SEP Fund for the "San Francisco Bay Sediment Transport and Fate Modeling" project. Funding this project will produce a foundational quantitative model of sediment transport and fate in San Francisco Bay that can be used to address management questions for polychlorinated biphenyls (PCBs), nutrients, and sediment. A description of this project is provided in Attachment B, which is incorporated herein by reference.
 - 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 **\$408,000**, made payable to "Regional Monitoring Program," referencing the Order number on page one of this Stipulated Order, to:

Settlement Agreement and Stipulated Administrative Civil Liability
East Bay Municipal Utility District

Regional Monitoring Program
c/o San Francisco Estuary Institute
4911 Central Avenue
Richmond, CA 94804

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

2. **The SEP and Suspended Liability:** In accordance with the State Water Board's *Policy on Supplemental Environmental Projects* (May 2018) and State Water Board Resolution 2018-0015, the Parties agree that the Discharger's payment of the SEP Amount to fund the "San Francisco Bay Sediment Transport and Fate Modeling" project 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 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.c.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. **Publicity Associated with the SEP:** Whenever the Discharger or its agents or subcontractors publicize one or more elements of the SEP, they shall state in a prominent manner that the project is undertaken as part of a settlement to a Regional Water Board enforcement action against the Discharger.
4. **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.
5. **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.

Settlement Agreement and Stipulated Administrative Civil Liability
East Bay Municipal Utility District

6. Party Contacts for Communications related to this Stipulated Order:

For the Regional Water Board:

Michael Chee
San Francisco Bay Regional Water
Quality Control Board
1515 Clay Street, 14th Floor
Oakland, CA 94612
michael.chee@waterboards.ca.gov
(510) 622-2333

Counsel:

Paul Ciccarelli
State Water Resources Control Board
Office of Enforcement
801 K Street, 23rd Floor
Sacramento, CA 95814
paul.ciccarelli@waterboards.ca.gov
(916) 322-3227

For the Discharger:

Director of Wastewater
EBMUD
375 11th Street, MS 702
Oakland, CA 94607
(510) 287-1149

Counsel:

Jon Salmon
Asst. Gen. Counsel, EBMUD
375 11th Street, MS 904
Oakland, CA 94607
jon.salmon@ebmud.com
(510) 287-0176

7. **Attorney Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorney fees and costs incurred pursuant to this Stipulated Order.
8. **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 violations alleged in Section II as of the effective date of this Stipulated Order. The provisions of this paragraph are in consideration of the payment of \$29,000 in stipulated penalties as specified in Section II, paragraph 6, and are expressly conditioned on the full payment of the administrative civil liability by the deadlines specified in Section III, paragraph 1.
9. **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. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
10. **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

Settlement Agreement and Stipulated Administrative Civil Liability
East Bay Municipal Utility District

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 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.

11. **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.
12. **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.
13. **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 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 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.
14. **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 State Water Board for hearing, the Discharger does not waive its right to a hearing before an order is imposed.

Settlement Agreement and Stipulated Administrative Civil Liability
East Bay Municipal Utility District

15. **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 any 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.
16. **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 out of or relating to any matter expressly addressed by this Stipulated Order or the SEP.
17. **No Admission of Liability/No Waiver of Defenses:** 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 "history of violations" consistent with Water Code sections 13327 and 13385, subdivision (e).
18. **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.
19. **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 they execute the Stipulated Order.
20. **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.
21. **Severability:** This Stipulated Order is severable; if any provision is be found to be invalid, the remainder shall remain in full force and effect.
22. **Counterpart Signatures; 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

Settlement Agreement and Stipulated Administrative Civil Liability
East Bay Municipal Utility District

be an original, but such counterparts shall together constitute one document. Furthermore, 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.

23. **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.

Settlement Agreement and Stipulated Administrative Civil Liability
East Bay Municipal Utility District

IT IS SO STIPULATED.

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

Date: 07/15/2022
Original Signature on File

By:
Thomas Mumley
Assistant Executive Officer

Settlement Agreement and Stipulated Administrative Civil Liability
East Bay Municipal Utility District

IT IS SO STIPULATED.

EAST BAY MUNICIPAL UTILITY DISTRICT

Date: 07/14/2022
Original Signature on File

By:
Clifford C. Chan
General Manager

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 Board's Enforcement Policy, which is incorporated herein by reference. 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. Additionally, this 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.

Lisa Horowitz McCann
Assistant Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region

Date

ATTACHMENT A

**Factors in Determining
Administrative Civil Liability**

**EAST BAY MUNICIPAL UTILITY DISTRICT
UNAUTHORIZED DISCHARGE FROM POINT ISABEL WET WEATHER
FACILITY
OCTOBER 24, 2021
RICHMOND, CONTRA COSTA COUNTY**

The State Water Resources Control Board's *Water Quality Enforcement Policy* (April 2017) (Enforcement Policy) establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors required by California Water Code (Water Code) section 13385, subdivision (e). Each factor in the Enforcement Policy 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 may not be replicated herein. The Enforcement Policy is at:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final_adopted_policy.pdf

ALLEGED VIOLATION

On October 24, 2021, from 7:17 p.m. to 9:06 p.m., the East Bay Municipal Utility District (Discharger) allegedly discharged without authorization approximately 3,795,500 gallons of chlorinated wastewater from its Point Isabel Wet Weather Facility to San Francisco Bay. The wastewater had a chlorine residual of 0.2 to 5.4 milligrams per liter (mg/l) because the Discharger ran out of sodium bisulfite to dechlorinate the wastewater.

The chlorinated discharge violated Discharge Prohibition III.A and Standard Provision I.D of Attachment D of Order R2-2020-0003 (Order) (NPDES Permit CA0038440). Discharge Prohibition III.A prohibits any discharge from the Point Isabel Wet Weather Facility to waters of the United States. Standard Provision I.D of Attachment D requires the Discharger to properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) installed or used by the Discharger to achieve compliance with the conditions of the Order.

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

Settlement Agreement and Stipulated Administrative Civil Liability Attachment A
 East Bay Municipal Utility District

Factor	Selection	Rationale
Degree of Toxicity of the Discharge Violation	3	A score of 3 (above moderate) is appropriate because the discharged material posed an above-moderate risk or a direct threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material exceeded known risk factors or there was a substantial threat to potential receptors). (Enforcement Policy, p. 12.) Specifically, the discharge contained a chlorine residual between 0.2 and 5.4 mg/l, which is far above the U.S. EPA water quality criterion for chlorine of 0.019 mg/l for acute (lethal) effects on aquatic life.
Actual Harm or Potential Harm to Beneficial Uses for the Discharge Violation	1	A score of 1 (minor) is appropriate because there was a low threat of harm to beneficial uses and likely no actual harm. (Enforcement Policy, p. 12.) Specifically, since the discharge occurred during an Atmospheric River Category Level 5, 50-year storm, only minor impacts to beneficial uses would be expected. Significant runoff throughout the region and stormy conditions on October 24, 2021, such as high winds and waves, likely mixed, diluted, and rapidly dissipated the wastewater within San Francisco Bay.
Susceptibility to Cleanup or Abatement	1	A score of 1 is appropriate because the discharge commingled with the receiving waters and was not susceptible to cleanup or abatement. (Enforcement Policy, p. 13.)
Deviation from Requirement	Major	The violation is a major Deviation from Requirement because the discharge was prohibited by Discharge Prohibition III.A of Order R2-2020-0003. Thus, the requirement was rendered ineffective in its essential function. (Enforcement Policy, p. 14.)
Per-Gallon and Per-Day Factors	0.15	This multiplier is based on the total Potential for Harm score of 5 (i.e., the sum of the above factors: 3+1+1) and the major Deviation from Requirement. (Enforcement Policy, Tables 1 and 2.)
Adjustment for High Volume Discharges	\$1.00 per gallon	The Enforcement Policy authorizes a high-volume adjustment of \$1.00 per gallon for discharges in excess of 2 million gallons. (Enforcement Policy, p. 14.) This adjustment is appropriate because the discharge was 3,795,500 gallons.
Initial Liability	\$570,675	The initial liability is the per-gallon factor multiplied by the gallons discharged to surface water (minus 1,000 gallons) multiplied by the adjusted maximum per-gallon liability (\$1.00), plus the per-day factor multiplied by the maximum per-day liability (\$10,000) multiplied by the number of days of discharge: $(0.15 \times 3,794,500 \text{ gallons} \times \$1.00/\text{gal}) + (0.15 \times \$10,000/\text{day} \times 1 \text{ day})$.

Settlement Agreement and Stipulated Administrative Civil Liability Attachment A
 East Bay Municipal Utility District

Factor	Selection	Rationale
Culpability	1.3	A score of 1.3 (above neutral) is appropriate because the Discharger failed to properly operate and maintain its Point Isabel Wet Weather Facility. The Discharger ran out of sodium bisulfite because its dosing at the start of the discharge was much higher than necessary to remove the chlorine residual. A reasonable and prudent discharger would have had Standard Operating Procedures (SOPs) explaining how to properly dose the wastewater with sodium bisulfite.
History of Violations	1.1	A score of 1.1 is appropriate because the Discharger has a history of violations. Within the last five years, the Regional Water Board has sought \$137,000 in stipulated penalties against the Discharger for discharges in violation of a Consent Decree (Case Numbers C09-00186-RS and C09-05684-RS), including sanitary sewer overflows and effluent limitation exceedances.
Cleanup and Cooperation	1.0	A score of 1.0 (neutral) is appropriate. The Discharger responded in a reasonable and timely manner upon discovery that it had run out of sodium bisulfite and cooperated with Regional Water Board staff to properly implement corrective actions.
Total Base Liability	\$816,000 (rounded)	The total base liability is the initial liability times the culpability, history of violations, and cleanup and cooperation factors (\$570,675 x 1.3 x 1.1 x 1.0).
Ability to Pay and Continue in Business	No adjustment	The Discharger has not demonstrated an inability to pay the proposed administrative civil liability.
Economic Benefit	<i>de minimus</i>	The Discharger did not enjoy any significant economic benefit associated with the violation. The proposed final liability greatly exceeds the time value of any delayed costs associated with the preparation of inexpensive SOPs for sodium bisulfite.
Staff Costs	No adjustment	Staff costs are not included in the final proposed liability.
Minimum and Maximum Liabilities	<i>de minimus</i> and \$38 million	According to the Enforcement Policy, the minimum liability is the economic benefit plus ten percent. The maximum liability Water Code section 13385 allows is \$10,000 per day of violation and \$10 per gallon discharged and not cleaned up in excess of 1,000 gallons. Here, the maximum liability is about \$38 million based on 1 day of violation and the approximately 3.8 million gallons discharged. The minimum liability is nominal.
Final Liability	\$816,000	The final liability is the total base liability after adjusting for ability to pay, economic benefit, other factors, and the minimum and maximum liabilities (rounded to the nearest thousand).

ATTACHMENT B

Study Description for Supplemental Environmental Project (SEP) Fund for the San Francisco Bay Regional Monitoring Program

Basic Information

Study Name: San Francisco Bay Sediment Transport and Fate Modeling

Study Budget, Total: \$408,000

SFEI Contacts:

- Technical: Dave Senn, daves@sfei.org, (510) 999-1105;
Jay Davis, jay@sfei.org, (530) 304-2308
- Financial: Jennifer Hunt, jennifer@sfei.org, (510) 746-7347

Study Description

This project will produce a foundational quantitative model of sediment transport and fate in San Francisco Bay that can be used to address management questions for polychlorinated biphenyls (PCBs), nutrients, and sediment.

Quantitative modeling of sediment transport and fate in San Francisco Bay is urgently needed for several aspects of water quality management:

- Sediment movement is the primary transport pathway for particle-associated contaminants, such as PCBs. A sediment transport and fate model is needed to support the review and possible revision of the San Francisco Bay PCBs TMDL that is expected to occur in 2028. Management questions for PCBs are centered around reductions in PCBs loads from urban stormwater discharges needed to resolve PCBs-related impairment in the San Francisco Bay margins.
- The ability to model suspended sediment concentrations is essential to understanding and forecasting the impacts of nutrients and nutrient management alternatives that are being evaluated under the Nutrient Management Strategy. The influence of suspended sediment concentrations on light availability in the water column is a key factor controlling phytoplankton growth and potential harmful algal blooms.
- Understanding sediment movement in San Francisco Bay is critical to projecting the rates of passive sediment supply to wetland restoration projects that are being implemented and planned to restore habitat and provide protection from sea level rise.

The study will have four major elements:

1. Compilation of existing information on (a) sediment loadings and boundary

Settlement Agreement and Stipulated Administrative Civil Liability Attachment B East Bay Municipal Utility District

- conditions and (b) sediment properties and parameters in San Francisco Bay;
2. Diagnostic analysis of sediment transport and fate model development;
 3. Application of the model to answer management questions for PCBs, nutrients, and sediment supply; and
 4. Coordination among the scientists working on the multiple facets of this effort and the stakeholders (including Regional Water Board staff) providing guidance via San Francisco Bay Regional Monitoring Program and Nutrient Management Strategy workgroups.

Compliance with SEP Criteria

This study complies with the following SEP criteria:

- It supports development and implementation of a monitoring program and/or study of surface water quality or quantity and/or the beneficial uses of the water.
- Its nexus to the violations is that it is located within the same Water Board region in which the violations occurred.

This study goes above and beyond applicable the obligations of dischargers because of the following:

- This project is a study (or studies) and associated product (or projects) above and beyond what is required in permits or orders issued by the Regional Water Board or what can be accomplished with dischargers' required monetary contributions to the Regional Monitoring Program for Water Quality in San Francisco Bay.

Study Milestones and Performance Measures

The deliverables and due dates for this project will include:

1. Model documentation (part 1): presenting and describing the compilation of existing information on (a) sediment loadings and boundary conditions and (b) sediment properties and parameters (October 2023).
2. Model documentation (part 2): describing model development and diagnostic analysis (October 2024).
3. Technical report presenting the results of applying the model to answer management questions for PCBs, nutrients, and sediment (October 2025).

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

Settlement Agreement and Stipulated Administrative Civil Liability Attachment B
East Bay Municipal Utility District

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 the Discharger for the SEP and the notice will state SFEI's agreement to use the funds received as described herein.

Publicity

Pursuant to the 2015 MOU, SFEI will indicate on its San Francisco Bay 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 actions.