

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

ADMINISTRATIVE CIVIL LIABILITY ORDER R8-2019-0010

IN THE MATTER OF

**K&G READY MIX, INC.
ORANGE COUNTY**

The Santa Ana Regional Water Quality Control Board (Regional Board or Santa Ana Water Board) having held a public hearing on February 8, 2019, and having considered all the evidence, public comments, and stipulations by the designated parties, hereby adopt this Administrative Civil Liability Order (Order) pursuant to Water Code section 13323 based on the following findings:

- 1.a K&G Ready Mix, Inc. (hereafter Discharger) operates a ready-mix concrete facility located at 8241 Monroe Avenue, Stanton CA, County of Orange (Facility).a
- 2.a Facilities that discharge storm water associated with ready-mix concrete activities are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ, National Pollutant Discharge Elimination System (NPDES) Permit No. CAS000001 (General Permit), which was adopted by the State Water Resources Control Board (State Water Board) on April 1, 2014 pursuant to section 402 of the federal Clean Water Act (Clean Water Act).a
- 3.a On January 23, 2013, Mr. Kobe Pham, on behalf of the Discharger, filed a Notice of Intent (NOI) to comply with the General Permit. Section X.H.1. of the General Permit requires the Discharger to implement and maintain a minimum Best Management Practices (BMPs) to reduce and prevent pollutants in industrial storm water discharges.a
- 4.a On November 13, 2017, Regional Board staff conducted an inspection of the Facility and observed the following BMP violations: Vehicle batteries, a diesel above ground storage tank, 55-gal drums containing acid cleaner, a waste oil, and various containers of unknown substances, were observed without secondary containment or spill prevention; concrete material tracking was occurring off-site onto Monroe Avenue; an unlined waste concrete pit was observed in the rear of the facility; a large hydrocarbon spill was observed in the western portion of the facility; large amounts of spilled concrete powder dye was observed in the rear of the facility; scrap metal,a

industrial equipment, and vehicle maintenance equipment were stored outdoors, all without BMP implementation; and; evidence of unauthorized non-storm water discharges from a concrete pump along Monroe Avenue was observed. Regional Board staff also established the following based on a review of the Storm Water Pollution Prevention Plan (SWPPP) documents: The SWPPP uploaded to SMARTS on October 3, 2016 differed from the SWPPP available on site. The SWPPP on site was reviewed and was missing a site map and current employee training records. Regional Board staff discussed all of these violations with the Discharger at the site inspection.

5. On November 14, 2017, Regional Board staff issued a Notice of Violation (NOV) to the Discharger for the violations observed during the November 13, 2017 site inspection. While the Discharger addressed some of the violations in response to the NOV, it failed to fully come into compliance. The response did not address the scrap metal, industrial equipment, and vehicle maintenance equipment being stored outside without BMP implementation. Furthermore, the facility's site map and employee training program had not been provided, as required by the NOV.
6. On December 20, 2017, Regional Board staff conducted a second inspection and verified that the violations from the first NOV had not been fully addressed. Regional Board staff again observed concrete material tracking occurring off-site, the unlined waste concrete pit in the rear of the facility and spilled concrete powder dye in the rear of the facility. Additionally, although the site map was available, current employee training records were not. Regional Board staff observed scrap metal, industrial equipment, and vehicle maintenance equipment stored outdoors, without BMP implementation. The Discharger was notified of these observations verbally by Regional Board staff during the inspection.
7. On January 9, 2018, Regional Board staff issued a second NOV to the Discharger citing the ongoing violations observed at the December 20, 2017 inspection. The NOV required the Discharger to respond by January 19, 2018. Regional Board staff did not receive a response from the Discharger.
8. On January 30, 2018, Regional Board staff conducted a third site inspection. During the inspection, Regional Board staff determined that the Discharger had addressed several of the violations but was still out of compliance with regard to the concrete material tracking and the vehicle maintenance activities being conducted outdoors without BMP implementation. Regional Board staff requested the Discharger to submit information demonstrating BMP implementation by February 2, 2018.

9. On February 2, 2018, the Discharger submitted the overdue employee training records, but failed to come into compliance with regard to the rest of the requested information.
10. On October 12, 2018, City of Stanton staff inspected the Facility following a complaint. City of Stanton staff observed vehicle fluid leaks and stockpiles, which were not adequately bermed and inconsistent with the facility's SWPPP, in violation of Section X.H.1. of the General Permit.
11. Regional Board records indicate that as of the date of this order, the Discharger has not come into compliance by implementing BMPs to address the vehicle maintenance activities being conducted outdoors or the actions necessary to prevent concrete material tracking off-site onto Monroe Avenue.
12. On November 9, 2018, the Assistant Executive Officer, lead prosecutor for the Prosecution Team, issued Administrative Civil Liability Complaint No. R8-2018-0055 to the Discharger recommending that the Regional Board assess a penalty in the amount of \$38,565 pursuant to Water Code sections 13323 and 13385 for violations of the General Permit.

VIOLATION

13. The Discharger violated Section X.H.1 of the General Permit by failing to implement minimum BMPs for a period of at least four days. Specifically, the Discharger violated Section X.H.1.a.ii, Section X.H.1.a.iii; and Section X.H.1.a.v.

REGULATORY CONSIDERATIONS

14. The Regional Board's authority to regulate waste discharges that could affect the quality of the waters of the state, which includes both surface water and groundwater, is found in the Porter-Cologne Water Quality Control Act (California Water Code Division 7).
15. Water Code section 13385(a) provides that any person who violates a waste discharge requirement issued pursuant to Chapter 5.4 of the Porter-Cologne Water Quality Control Act, or who violates a requirement of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act is subject to civil liability in accordance with section 13385.

16. Water Code section 13385(c) establishes that administrative civil liability may be imposed by a regional board in an amount not to exceed \$10,000 for each day in which a violation occurs.
17. Pursuant to Water Code section 13385(e), in determining the amount of penalty, the Regional Board shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, and, with respect to the violator, the ability to pay, any prior violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require. Water Code section 13385(e) also establishes that, at a minimum, liability must be assessed at a level that recovers the economic benefits derived from the acts that constitute the violation.
18. Pursuant to Water Code section 13327, in determining the amount of civil liability, the Regional Board shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
19. The State Water Board adopted Resolution 2017-0020, thereby amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy, which became effective on October 5, 2017, establishes a methodology for assessing administrative civil liability that address factors that are required to be considered when imposing a civil liability as outlined in Water Code sections 13385 and 13327. The administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment A.
20. **Maximum and Minimum Penalties** As described above, the statutory maximum penalty pursuant to Water Code section 13385 is \$10,000 per day of violation. The Discharger violated the General Permit for, at least, the four days on which Regional Board staff observed violations during site inspections. Thus, the maximum penalty is \$40,000. The Enforcement Policy recommends that the minimum liability imposed be at least ten percent higher than the economic benefit of non-compliance so that liabilities are not construed as the cost of doing business and so that the assessed liability provides a meaningful deterrent to future violations. Thus, the minimum liability is \$28,317, which is the economic benefit associated with the violation plus ten percent.

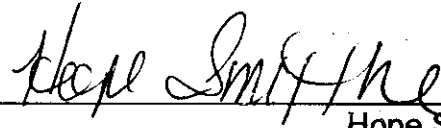
21. Notwithstanding the issuance of this Order, the Santa Ana Water Board retains the authority to assess additional penalties for violations of the Water Code that may subsequently occur.
22. This Order is effective and final upon issuance by the Regional Board. Payment must be received by the Regional Board no later than thirty (30) days from the date on which this Order is issued.
23. In the event that the Discharger fails to comply with the requirements of this Order, the Regional Board or its delegee is authorized to refer this matter to the Attorney General's Office for enforcement.
24. Issuance of this Order is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321, subdivision (a)(2).
25. Any person aggrieved by this action of the Santa Ana Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date that this Order becomes final, except that if the thirtieth day following the date that this Order becomes final falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

IT IS HEREBY ORDERED THAT:

1. The Discharger shall be assessed an administrative civil liability in the amount of thirty-six thousand four hundred and eighty-five dollars (\$36,485).
2. The Discharger shall submit a check payable to the "Cleanup and Abatement Account" in the amount of \$36,485 to the State Water Resources Control Board, Accounting Office, P.O. Box 100, Sacramento CA 95812-0100 no later than 30 days after the date of this order.

Administrative Civil Liability Order
No. R8-2019-0010 (K&G Ready Mix)

I, **Hope Smythe**, do hereby certify that the foregoing is a full, true, correct copy of an Order issued by the California Regional Water Quality Control Board, Santa Ana Region, and that such action occurred on February 8, 2019.



Hope Smythe
Executive Officer

Attachment A: Penalty Calculation Methodology

ATTACHMENT A

Technical Analysis for Administrative Civil Liability Complaint No. R8-2018-0055 K&G Ready Mix, Inc.

This document provides details to support the proposed Administrative Civil Liability Complaint (Complaint) against K&G Ready Mix, Inc. (Discharger) in response to alleged violations for failing to comply with the State Water Resources Control Board (State Water Board) General Permit for Stormwater Discharges Associated with Industrial Activities Order No. 2014-0057-DWQ, NPDES Permit No. CAS000001 (General Permit).

The State Water Board's Water Quality Enforcement Policy (2017) (Enforcement Policy) establishes a methodology for assessing administrative civil liability by addressing the factors that are required to be considered under California Water Code section 13385(e). Each factor of the nine-step approach is discussed below, as is the basis of assessing the corresponding score according to the Enforcement Policy.

The Discharger is alleged to have failed to comply with Section X.H.1 of the General Permit for industrial activities at the facility located at 8241 Monroe Ave, in Stanton, California (WDID 8 30I0024030). The alleged violation and the proposed penalty are presented here.

Violation: FAILURE TO IMPLEMENT MINIMUM BEST MANAGEMENT PRACTICES

Step 1 and Step 2 – Potential Harm and Assessments for Discharge Violations

These steps are not applicable to the violation because this is a non-discharge violation.

Step 3 – Per Day Factor for Non-Discharge Violations

Step 3 of the Enforcement Policy's penalty calculation methodology directs the Regional Water Quality Control Board, Santa Ana Region (Regional Board) to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the extent of deviation from the applicable requirements.

Potential for Harm: Moderate

The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm and/or threat to beneficial uses. The Discharger's failure to implement the minimum BMPs harms the regulatory program. The storm water regulatory program is not prescriptive and relies on permittees to implement BMPs that are tailored to the specific site characteristics and conditions. By failing to implement minimum BMPs, the Discharger undermined the effectiveness of the program.

In addition to undermining the regulatory program, this violation has the potential to directly impact beneficial uses. The Santa Ana Regional Basin Plan establishes the applicable beneficial uses. The Discharger's storm water runoff discharges into the Bolsa Chica Channel, which is hydrologically connected to the Anaheim Bay- Seal Beach National Wildlife Refuge and Sunset Bay-Huntington Harbor. The beneficial uses applicable to the Anaheim Bay-Seal Beach National Wildlife Refuge and Sunset Bay-Huntington Harbor are Navigation, Water Contact and Non-Contact Water Recreation, Commercial and Sportfishing, Wildlife and Marine Habitat, Biological

Habitats of Special Significance, Spawning, Reproduction and Development, Estuarine Habitat, and Rare, Threatened, or Endangered Species. In addition, the Bolsa Chica Channel is identified as a 303(d) listed impaired water body and has been impaired for pH since 2010.

The Discharger failed to implement minimum Best Management Practices (BMPs) in violation of the General Permit. Specifically, the Discharger is alleged to have violated Section X.H.1.a.ii and Section X.H.1.a.iii of the General Permit by tracking concrete material off-site, which constitutes a failure to minimize or prevent material tracking and a failure to minimize dust generated from industrial materials or activities. The Discharger is also alleged to have violated Section X.H.1.a.v of the General Permit by conducting vehicle maintenance equipment activities, without BMP implementation, which constitutes a failure to cover all stored industrial materials that can be readily mobilized by contact with storm water. By not implementing minimum BMPs, the Discharger failed to reduce or prevent industrial pollutants, such as total suspended solids, oil and grease, and iron, from readily mobilizing in storm water.

Discharges from cement mixing facilities, such as K&G Ready Mix, Inc. typically contain high levels of pH. Low or high concentrations of pH in storm water runoff affects the beneficial uses of the receiving waters. In addition, other constituents in the discharge could affect wildlife and marine habitat, biological habitats of special significance, spawning, estuarine habitat, and rare, threatened, or endangered species. By failing to implement the minimum BMPs required, the Discharger increased the risk of pollutants entering the receiving waters, which constitutes a substantial threat to beneficial uses and a substantial potential for harm. Based on the substantial potential for harm due to the impairment of the regulatory program and the threat to beneficial uses, the potential for this violation is moderate.

Deviation from Requirement: Moderate

The General Permit requires the Discharger to implement and maintain minimum BMPs to reduce or prevent pollutants in industrial storm water discharges. The Discharger failed to develop, implement, and maintain minimum BMPs as required by Section X.H.1. of the General Permit.

Concrete material tracking off-site constitutes a failure to minimize or prevent material tracking and a failure to minimize dust generated from industrial materials or activities. These are violations of failing to implement minimum BMPs, as outlined in Section X.H.1.a.ii and Section X.H.1.a.iii of the General Permit, respectively. Conducting vehicle maintenance equipment activities throughout the facility violates the General Permit's requirement to cover all stored industrial materials that can be readily mobilized by contact with storm water. This is a violation of Section X.H.1.a.v of the General Permit.

In this case, the intended effect of the requirement to implement minimum BMPs is to reduce or prevent the discharge of pollutants. By failing to implement the minimum BMPs, the requirements in Section X.H.1. of the General Permit were not met and the intended effectiveness of the requirement was, at best, only partially achieved. The appropriate score for this factor is moderate.

Per Day Factor: 0.40

Using the matrix in Table 3 of the Enforcement Policy and applying a Potential for Harm of moderate and Extent of Deviation of moderate, results in a Per Day Factor range of 0.3 to 0.4. A 0.4 is selected due to the Potential for Harm associated with the likelihood that the violation

was ongoing throughout the inspection dates, and the likelihood that discharge violations occurred throughout that time.

Days of Violation: 4 days

The Discharger was first inspected on November 13, 2017 and a NOV was subsequently issued. A second inspection was performed on December 20, 2017 and a second NOV was issued. On January 30, 2018, Regional Board staff conducted a third inspection to determine compliance with the General Permit and status of the outstanding items identified in the second NOV. On October 12, 2018, City of Stanton staff inspected the facility following a complaint. The corresponding City of Stanton Investigation Report and photographs taken at the inspection show that BMP violations associated with Section X.H.1. of the General Permit were occurring. Four (4) days of violations were observed over the course of the inspections. At the very least, there are four days of violation.

Initial Liability Amount

The initial liability amounts for the violation calculated on a per-day basis are as follows:

$$4 \text{ days} \times \$10,000 \times 0.40$$

Total Initial Liability = \$16,000

Step 4 – Adjustment Factors

Three additional factors to be considered for modification of the amount of initial liability are the violators' culpability, efforts to clean up or cooperate with regulatory authority, and the violators' compliance history.

Culpability: 1.3

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.75 and 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. A neutral assessment of 1.0 should be used when a discharger is determined to have acted as a reasonable and prudent person would have.

The Discharger has been on notice of the General Permit requirements at least since it submitted the Notice of Intent to enroll under the General Permit on January 23, 2013. Regional Board staff discussed the General Permit requirements, particularly those regarding BMPs, with the Discharger in-person at the three facility inspections. In addition to those oral notices, Regional Board staff provided the Discharger with written notice of the Section X.H.I General Permit requirements in the NOVs dated November 14, 2017 and January 9, 2018, and emails dated December 12, 2017, January 31, 2018, February 15, 2018, and February 27, 2018.

The Discharger failed to act as a reasonable and prudent permittee under the General Permit. A reasonable and prudent permittee would have implemented the minimum BMPs as required in

Section X.H.1. of the General Permit. The Discharger had both constructive and actual notice of these requirements following the multiple inspections, NOVs, and emails. The Discharger disregard of the General Permit requirements was negligent. The culpability factor is 1.3.

History of Violations: 1.0

Where a discharger has no prior history of violations, this factor should be neutral, or 1.0. The Discharger does not have a history of violations that have been formally adjudicated. Therefore, a factor of 1.0 is applied.

Cleanup and Cooperation: 1.3

This factor ranges from 0.75 to 1.5 and reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A reasonable and prudent response to a discharge violation or timely response to a Water Board order should receive a neutral adjustment (1.0) as it is assumed a reasonable amount of cooperation is the warranted baseline. Here, Regional Board staff made multiple efforts to bring the Discharger into compliance using progressive enforcement. As described herein, despite multiple site-visits, written communications, and phone-calls, the Discharger failed to come into compliance.

On November 13, 2017, Regional Board staff first inspected the Discharger's facility and observed BMP violations. Regional Board staff discussed those violations with the Discharger and issued a NOV on November 14, 2017. The Discharger requested and was granted an extension to respond. On December 5, 2017, the Discharger responded by email, and provided photographs of the removed 55-gallon drums containing acid cleaner, waste oil, and unknown substances. Photographs pertaining to the cleanup of the large hydrocarbon spill, concrete material tracking off-site, concrete powder dye, and discharge from a concrete pump were provided as well. The Discharger's response also included a plan to minimize concrete tracking onto Monroe Avenue by cleaning the entrance and exit of the facility twice a day and documenting these activities on a "Tracking Cleaning Report." The Discharger also stated that it was in the process of creating a lined area to fully contain daily water residue to address the unlined waste pit. However, the Discharger did not address all the violations. The response did not address the scrap metal, industrial equipment, and vehicle maintenance equipment being stored outside without BMP implementation. Furthermore, despite the Discharger's claim to the contrary, the facility's site map and employee training program had not been provided, as required by the NOV.

From December 5 through December 12, Regional Board staff and the Discharger corresponded by email regarding the BMP violations. A second inspection was performed on December 20, 2017 and Regional Board staff determined that the violations from the first NOV had not been fully addressed. Specifically, Regional Board staff again observed concrete material tracking occurring off-site, the unlined waste concrete pit in the rear of the facility and spilled concrete powder dye in the rear of the facility. Additionally, although the site map was available, current employee training records were not. Regional Board staff also observed scrap metal, industrial equipment, and vehicle maintenance equipment stored outdoors, without BMP implementation. The Discharger was notified of these observations verbally by Regional Board staff during the inspection. On January 9, 2018, a second NOV was issued.

Regional Board staff did not receive correspondence from the Discharger regarding the ongoing violations cited in the second NOV. Thus, Regional Board staff conducted a third inspection on

January 30, 2018. During the inspection, Regional Board staff determined that the Discharger had addressed several of the violations but was still out of compliance with regard to the concrete material tracking and the vehicle maintenance activities being conducted outdoors without BMP implementation. Regional Board staff requested that the Discharger submit information demonstrating BMP implementation by February 2, 2018. Regional Board staff contacted the Discharger via email on January 31, 2018 to provide a reminder of the upcoming February 2, 2018 deadline. The Discharger did submit the overdue employee training records by email on February 2, but failed to come into compliance with regard to the rest of the requested information. The Discharger corresponded again with the Regional Board staff on February 8, 2018 asserting that it had submitted items in compliance with the NOV's that had, in fact, not been received by Regional Board staff.

On October 12, 2018, City of Stanton staff inspected the facility following a complaint. City of Stanton staff observed vehicle fluid leaks and stockpiles, which were not adequately bermed and inconsistent with the facility's SWPPP, in violation of Section X.H.1. of the General Permit.

To date, none of the correspondence received by Regional Board staff addresses the concerns regarding vehicle maintenance activities being conducted outdoors without BMP implementation and addressing the concrete material tracking off-site onto Monroe Avenue.

The Discharger failed to comply with the General Permit requirements even after repeated attempts by Regional Water Board staff to bring it into compliance via site visits, NOV's, and emails. The cleanup and cooperation factor is 1.3 due to the lack of cooperation in coming into compliance.

Step 5 - Determination of Total Base Liability Amount

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

<u>Total Base Liability Amount</u>
Total Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability
\$16,000 x 1.3 x 1.0 x 1.3
Total Base Liability = \$27,040

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

The Enforcement Policy provides that if there is sufficient financial information to assess the violator's ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on the violator's ability to continue in business, then the Total Base Liability Amount may be adjusted downward if warranted.

Based on a preliminary search of publicly available information, the Discharger has the ability to pay the proposed liability and continue in business. The Discharger is an active for-profit business serving Orange and Los Angeles Counties. Based on the Discharger's own website, it owns 15 mixer trucks.

Step 7 – Economic Benefit

Estimated Economic Benefit: \$25,743

The Enforcement Policy provides that the economic benefit of noncompliance should be calculated using the United States Environmental Protection Agency's (US EPA) Economic Benefit Model (BEN)¹ penalty and financial modeling program unless it is demonstrated that an alternative method of calculating the economic benefit is more appropriate. Economic benefit was calculated using BEN Version 5.8.0. 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 BEN model is the appropriate tool for estimating the economic benefit of failing to implement best management practices for compliance with the General Permit. Based on the chronic nature of the violations, the following compliance actions were identified that should be implemented to prevent a similar scenario in the future:

1. Install a covered maintenance area for outdoor vehicle and equipment maintenance to prevent mobilization of contaminants associated with those activities.
2. Install a trench drain system at each point of entry at the facility to prevent wash water or contaminated storm water from discharging from the property. This action would also prevent vehicle track out of wash water.
3. Implement regular power sweeping operations onsite, at points of entry, and in the public right-of-way to prevent cementitious material track-out.
4. Implement an improved training program covering at a minimum sweeping, outdoor operations and maintenance, and run-off management, in addition to current storm water pollution prevention training.

Although the Discharger has indicated that some of these actions would be implemented, no plans or cost estimates have been received to date. Therefore, staff at the State Board, Office of Enforcement have estimated potential costs associated with each proposed action. The total implementation cost for the four actions listed above was estimated to be \$46,436. Although none of the actions described above have been undertaken, it is assumed that the Discharger intends to remain in business and comply with the conditions of the General Permit, it is assumed that actions #1 and #2 will be implemented by the Discharger and, therefore, are considered delayed. For conservative purposes, it is assumed that these actions would be completed by February 9, 2019. For actions #3 and #4, the Discharger should have implemented these actions following notification of non-compliance by Regional Board staff, and therefore are considered avoided. Details regarding the cost estimates for these actions are included in the attached table.

¹ US EPA Economic Benefit Model, or BEN. At the time this document was prepared, BEN was available for download at <http://www2.epa.gov/enforcement/penalty-and-financial-models>; the Central Valley Water Board's application of the BEN Model to the circumstances here is summarized on the last page of Attachment E.

For the purposes of computing the economic benefit using BEN, the penalty payment date is the day after the tentative date of administrative hearing, February 9, 2019. Based on specific assumptions within the model, the total economic benefit of noncompliance was determined to be approximately \$25,743.

Step 8 – Other Factors as Justice May Require

The Regional Board may exercise its discretion to include some of the costs of investigation and enforcement in a total administrative civil liability. Regional Water Board staff recommends here that staff costs be added to the administrative civil liability for the investigation and enforcement work undertaken by staff prior to the issuance of the administrative civil liability complaint. Staff costs are \$9,445 (90 hours since November 13, 2017) based on the applicable hourly rates.

Step 9 – Maximum and Minimum Liability Amounts

The Enforcement Policy directs the Regional Water Board to consider the maximum and minimum liability amounts for the alleged violation.

Maximum Liability Amount: \$40,000

Minimum Liability Amount: \$28,317

The Enforcement Policy states that the total liability shall be at least 10% higher than the economic benefit, “so that liabilities are not construed as the cost of doing business and that the assessed liability provides meaningful deterrent to future violations.” The minimum liability amount is \$28,317.

Step 10 – Final Proposed Liability Amount

Final Proposed Liability Amount: \$36,485