SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD

In the Matter of: Augustine Metals, Inc. 2021 West Placentia, Colton	ORDER R8-2024-0037 (Proposed) SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY ORDER; ORDER (PROPOSED)

I. Introduction

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order or Order) is entered into by and between the Executive Officer of the California Regional Water Quality Control Board, Santa Ana Region (Santa Ana Water Board)[1], on behalf of the Santa Ana Water Board Prosecution Team (Prosecution Team), and Augustine Metals, Inc. (Discharger) (collectively known as the Parties) and is presented to the Santa Ana Water Board, or its delegee, for adoption as an order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.

II. Background

2. The Discharger operates a scrap metal facility located at 2021 West Placentia Lane in the City of Colton (Facility).

3. The Facility is enrolled in the *Sector Specific General Permit for Storm Water Runoff Associated with Industrial Activities from Scrap Metal Recycling Facilities Within the Santa Ana Region*, Order R8-2018-0069, National Pollutant Discharge Elimination System (NPDES) Permit No. CAG618001 (Scrap Metal Permit or Permit). The Facility has been regulated by the Permit, or its predecessor, since it submitted a Notice of Intent (NOI) to enroll in the Permit on May 31, 2012.

4. Discharges leaving the Facility drain towards the Springbrook Channel, which is tributary to the Santa Ana River, Reach 4.

5. Dischargers who are enrolled in the Scrap Metal Permit may select one of two compliance options. The Discharger selected Compliance Option 1, a Numeric Action Level (NAL) Three-Phased Approach. Dischargers trigger exceedances of NALs when any of the following occur: (1) a single sampling event exceeds the NAL by at least two times the specified limit; or, (2) the annual average of any of

[1] On August 1, 2025, Eric Lindberg was promoted from Assistant Executive Officer to Executive Officer. Because Mr. Lindberg served on the Prosecution Team for this matter prior to the promotion, he remained on the Prosecution Team and continues to serve as lead prosecutor in this matter and will not participate in the decision whether to accept or reject this settlement.

the constituents exceeds the NAL; or, (3) if any pH value is outside the specified NAL range for pH (6.5 to 8.5).

6. Under the Scrap Metal Permit, within 30 days of a NAL exceedance determination, a discharger must submit a Phase II Corrective Action Plan (Phase II CAP) to the Santa Ana Water Board. Upon approval, the discharger must implement the Phase II CAP within 90 days.

7. On December 13, 2012, the Discharger collected and analyzed stormwater to comply with the Scrap Metal Permit. The Santa Ana Water Board staff contends these sampling results identified exceedances of the NALs for oil-grease and turbidity by at least two times the applicable limits, thusly triggering the requirement for a Phase II CAP. Therefore, Santa Ana Water Board staff alleges that a Phase II CAP should have been submitted to the Santa Ana Water Board by January 23, 2013.

8. On September 24, 2014, the Santa Ana Water Board sent a Notice of Violation (NOV) to the Discharger for failure to submit a Phase II CAP within one month of an exceedance determination per Section III.E.1.c.ii.3 of the Scrap Metal Permit. A second NOV was sent on July 1, 2015, for the same alleged violation.

9. On July 6, 2015, the Discharger submitted a Phase II CAP to the Santa Ana Water Board. However, this Phase II CAP was rejected by the Santa Ana Water Board based on the Santa Ana Water Board staff's contention that the submittal failed to meet all of the requirements of the Scrap Metal Permit. The Santa Ana Water Board letter requested a revised, Permit-compliant Phase II CAP identifying proposed treatment or control measures to prevent contaminated stormwater from entering the infiltration pond and a description of the expected stormwater discharge quality from the Facility upon Phase II CAP implementation.

10. On November 12, 2015 and December 1, 2015, respectively, the Discharger submitted two revised Phase II CAPs.

11. The December 1, 2015 Phase II CAP included the following control measures: removal/relocation of all piles of stored scrap metal materials to existing paved surfaces; the expansion of the existing centrally located concrete pad to approximately 60' x 60' and to be graded towards a containment pit with a sump pump; and the installation of berms to eliminate stormwater runoff onto unpaved surfaces. The Phase II CAP also proposed deploying wattles and metal media socks at the southwest driveway prior to rain events to prevent offsite discharges, training for sample collection, and daily inspections/housekeeping activities.

12. On December 15, 2015, the Santa Ana Water Board approved the Discharger's December 1, 2015 Phase II CAP. Per the Santa Ana Water Board's letter, full implementation of the approved Phase II CAP was to be completed by December 30, 2016.

13. The Discharger made limited progress in implementing the approved Phase II CAP. However, as of August 24, 2021, the Discharger had not fully implemented substantial portions of the approved Phase II CAP.

14. As more fully described in Attachment A, herein incorporated by reference, the Prosecution Team alleges that the Discharger violated the Scrap Metal Permit by failing to fully implement the approved Phase II Corrective Action Plan as required by Section III.E.1.c.2.d.

15. Water Code section 13385, subdivision (a), provides that a person may be held civilly liable for certain violations of the federal Clean Water Act. Water Code section 13385, subdivision (c), goes on to provide that the Santa Ana Water Board is authorized to impose administrative civil liability in an amount not to exceed $10,000 for each day of such violation plus $10 per gallon discharged, over 1,000 gallons, but not cleaned up. The violation described above is subject to enforcement via Water Code section 13385.

16. The amount of administrative civil liability imposed pursuant to this Stipulated Order comports with the State Water Board's Water Quality Enforcement Policy as set forth in Attachment A.

17. The Parties have engaged in confidential settlement negotiations and agree to fully settle the violation alleged in this Stipulated Order without administrative or civil litigation and by presenting this Stipulation to the Santa Ana Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.

18. To resolve the violation by consent and without further administrative or civil proceedings, the Parties have agreed to settle an administrative civil liability against the Discharger in the amount of two hundred thousand dollars ($200,000). The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violation alleged herein, and that this Stipulated Order is in the best interest of the public.

III. Stipulations

The Parties stipulate to the following:

19. **Jurisdiction:** The Parties agree that the Santa Ana Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulation.

20. **The Administrative Civil Liability Complaint:** On March 18, 2024, the Santa Ana Water Board issued Administrative Civil Liability Complaint No. R8-2024-0037

(Complaint R8-2024-0037) against the Discharger and against Mr. Daniel Lynn Augustine, an individual.

21. **Dismissal With Prejudice of Daniel Lynn Augustine:** As of the Effective Date, any and all claims, violations, or causes of action of whatever kind or nature involving Facility operations, compliance with the Scrap Metal Permit, compliance with the Water Code and/or all violations which have been alleged or which could have been alleged in Complaint R8-2024-0037, against Mr. Daniel Lynn Augustine as of the Effective Date, are hereby dismissed with prejudice by the Santa Ana Water Board and are forever barred.

22. **Administrative Civil Liability:** The Discharger hereby agrees to pay **two hundred thousand dollars ($200,000)** to resolve the Covered Matters as defined in this Stipulated Order, as follows:

    a. No later than 30 days after the Santa Ana Water Board, or its delegee, signs this Order, the Discharger shall make a settlement payment totaling $200,000.

    b. The payment check shall be made payable to the "State Water Pollution Cleanup and Abatement Account," reference the Order number (R8-2024-0037), and be mailed to:

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

        The Discharger shall provide copies of the check via email to the State Water Board, Office of Enforcement (**Catherine.Hawe@waterboards.ca.gov**) and the Santa Ana Water Board (**Michelle.Beckwith@waterboards.ca.gov**).

    c. The Parties agree that of the two-hundred thousand dollar ($200,000) payment described above, fifty-five thousand dollars ($55,000) shall account for cleanup and enforcement staff costs, including those outlined in Complaint R8-2024-0037, incurred by the Santa Ana Water Board prior to March 31, 2025.

23. **Conceptual and Final Revised Phase II CAP Submittals:** On November 1, 2024 the Discharger submitted a Revised Conceptual Phase II CAP (Revised Conceptual Phase II CAP) to the Santa Ana Water Board, which CAP was modified by the Discharger's Response to Comments provided to the Santa Ana Water Board staff on March 12, 2025 (collectively, Revised Conceptual Phase II CAP). The Discharger has agreed to commence implementation of the Revised Conceptual Phase II CAP, in accordance with comments provided by the Santa

Ana Water Board staff, by no later than 30 days after the Effective Date of this Stipulated Order. Within a reasonable period of time after completion of the implementation of the Revised Conceptual Phase II CAP, the Discharger shall submit a "Final Revised Phase II CAP" to the Santa Ana Water Board for its approval based on the results of the Revised Conceptual Phase II CAP, as necessary to comply with the Scrap Metal Permit.

24. **Site Cleanup Program:** The Discharger shall enter into a voluntary cleanup agreement (VCA) with the Santa Ana Water Board to govern all necessary and appropriate site mitigation to address existing contamination at the Facility. The terms of the VCA and Water Code section 13365 shall govern all work after March 31, 2025, through the issuance of a no further action letter or its equivalent for the Facility.

    The Santa Ana Water Board will oversee and review all site investigation and removal activities including remedial action workplans, and shall act with reasonable diligence and work cooperatively and in good faith with the Discharger to review and, if warranted, approve the Discharger's submittals under the VCA. All Santa Ana Water Board oversight costs billed under the VCA, shall be billed, invoiced and collected in compliance with all requirements of Water Code 13365.

25. **Party Contacts for Communications Related to Stipulated Order:**

    For the Santa Ana Water Board:
    Michelle Beckwith
    Michelle.Beckwith@waterboards.ca.gov

    For the Discharger:
    Daniel Augustine
    augustinemetals@gmail.com

26. **Attorneys' Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

27. **Public Notice:** The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Santa Ana Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Santa Ana Water Board, or its delegee, for adoption, the Executive Officer or his authorized delegated staff may unilaterally declare this Stipulated Order void and decide not to present it to the Santa Ana Water Board, or its delegee. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

28. **Procedure:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Order, will be adequate. In the event procedural objections are raised prior to this Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

29. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Santa Ana Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Team or Santa Ana Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions, or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. The Santa Ana Water Board reserves all rights to take additional enforcement actions, including, without limitation, the issuance of administrative civil liability complaints or orders for violations other than those addressed by this Order.

30. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Santa Ana Water Board or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.

31. **Interpretation:** This Stipulated Order shall not be construed against the party preparing it but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.

32. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Order. All modifications must be made in writing and approved by the Santa Ana Water Board or its delegee.

33. **Integration:** This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.

34. **If Order Does Not Take Effect:** The Discharger's obligations under this Stipulated Order are contingent upon the entry of the Order of the Santa Ana Water Board as proposed. In the event that this Stipulated Order does not take effect because it is not approved by the Santa Ana Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that the Prosecution Team may proceed to a contested evidentiary hearing before the Santa Ana Water Board to determine whether to assess an administrative civil liability for the underlying alleged violations, or may continue to pursue settlement.

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 any subsequent administrative or judicial proceeding or hearing and will be fully protected by California Evidence Code sections 1152 and 1154; California Government Code section 11415.60; Rule 408, Federal Rules of Evidence; and any other applicable privilege under federal and/or state law. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:

a. Objections related to prejudice or bias of any of the Santa Ana Water Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that the Santa Ana Water Board members or their advisors were exposed to some of the material facts and the Parties settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter; or

b. Laches or delay or other equitable defenses solely related to the time period between public notice of this Order and any subsequent contested evidentiary hearing in this matter.

35. **Covered Matters:** This Stipulated Order represents a binding and final resolution of all administrative civil liability associated with violations alleged or which could have been alleged in Complaint R8-2024-0037, and any other violations or alleged violations of the Water Code or the Scrap Metal Permit, known or unknown, past or present, involving the Facility and occurring or allegedly occurring on or before the Effective Date ("Covered Matters"). Except that this Stipulated Order does not resolve any liability or restrict the Santa Ana Water Board's enforcement authority with regards to any violations which may be identified when reviewing monitoring data or annual reports submitted pursuant to the Scrap Metal Permit which have not been uploaded to SMARTS prior to the Effective Date.

36. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and, if the Stipulated Order is adopted by the Santa Ana Water Board, hereby waives its right to a hearing before the Santa Ana Water Board prior to the Stipulated Order's adoption. However, should the settlement not be adopted, and should the matter proceed to the Santa Ana Water Board or State Water Board for hearing, the Discharger does not waive the right to a hearing before an order is imposed.

37. **Waiver of Right to Petition:** Except in the instance where the settlement is not adopted by the Santa Ana Water Board, the Discharger hereby waives the right to petition the Santa Ana Water Board's adoption of the Stipulated Order as written, for review by the State Water Board, and further waives the right, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

38. **No Admission of Liability:** Nothing in this Stipulated Order, nor any payment thereunder, shall constitute evidence of or an admission of any liability on part of the Discharger or Mr. Daniel Lynn Augustine, except that as to the Discharger, the Stipulated Order will be considered as a past violation per the Enforcement Policy in any subsequent enforcement actions against the Discharger.

39. **Covenant Not to Sue By Discharger:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulation and Order.

40. **Covenant Not To Sue by Santa Ana Water Board:** The Santa Ana Water Board hereby covenants not to sue or pursue any administrative or civil claim(s) against the Discharger or any of its officers, directors, shareholders, employees, representatives, agents, or attorneys, arising out of or relating to any Covered Matter, except for circumstances where the Discharger does not fully comply with the terms of this Order.

41. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that they are authorized to execute this Order on behalf of and to bind the entity on whose behalf the Order is executed.

42. **Necessity for Written Approvals:** All approvals and decisions of the Santa Ana Water Board under the terms of this Stipulated Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Santa Ana Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Stipulated Order.

43. **No Third Party Beneficiaries:** Except as expressly provided herein, this Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and other than as expressly provided herein, no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.

44. **Severability:** This Stipulated Order is severable; should any provision be found invalid, the remainder shall remain in full force and effect.

45. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Santa Ana Water Board, or its delegee, enters the Order incorporating the terms of this Stipulated Order (Effective Date).

46. **Counterpart Signatures:** This 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.

IT IS SO STIPULATED.

California Regional Water Quality Control Board, Santa Ana Region Prosecution Team

By: _____ _____
Eric T. Lindberg, PG, CHG — Date
Executive Officer

Augustine Metals, Inc.

By: Daniel Lynn Augustine — 9-19-2025
Daniel Lynn Augustine — Date
President

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.

IT IS SO STIPULATED.

California Regional Water Quality Control Board, Santa Ana Region Prosecution Team

By: _____ 10/16/25
Eric T. Lindberg, PG, CHG — Date
Executive Officer

Augustine Metals, Inc.

By: _____ _____
Daniel Lynn Augustine — Date
President

HAVING CONSIDERED THE PARTIES STIPULATIONS, THE SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD FINDS THAT:

1. The foregoing Stipulation is fully incorporated herein and made part of this Order.

2. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations.

3. 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 Order.

Pursuant to Water Code section 13323 and Government Code section 11415.60**, IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, Santa Ana Region.

_____ _____

Executive Officer Date
Santa Ana Regional Water Quality Control Board

Attachment A: Specific Factors Considered for Administrative Civil Liability
Complaint No. R8-2024-0037 Augustine Metals, Inc.

ATTACHMENT A
Specific Factors Considered for
Administrative Civil Liability Complaint No. R8-2024-0037
Augustine Metals, Inc.

Augustine Metals, Inc. (Discharger) is alleged to have violated the *Sector-Specific General Permit for Storm Water Runoff Associated with Industrial Activities from Scrap Metal Recycling Facilities within the Santa Ana Region*, Order No. R8-2018-0069, National Pollutant Discharge Elimination System (NPDES) Permit No. CAG618001 (Scrap Metal Permit or Permit) at its facility located at 2021 West Placentia Lane in the City of Colton (Facility), WDID: 8 36MR000032.

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

BACKGROUND

The Discharger submitted a Notice of Intent (NOI) to enroll in the Permit on May 31, 2012, and has been subject to the terms of the Permit since that date.

The Scrap Metal Permit serves as an NPDES permit pursuant to Section 402(p) of the federal Clean Water Act (Clean Water Act). (Permit, Section VII.A.) "Any Permit noncompliance constitutes a violation of the [Clean Water Act] and the [California Water Code] and is grounds for enforcement action and/or removal from Permit coverage." (Section VIII.A.1.) Any failure to take appropriate corrective actions as specified in the Permit is also a violation of the Permit. (Section VIII.A.2.)

The Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) issued an Administrative Civil Liability Complaint No. R8-2024-0037 on March 18, 2024 (Complaint). The Complaint alleges the Discharger violated Scrap Metal Permit Section III.E.1.c.2.d by failing to implement an approved Phase II Corrective Action Plan (CAP); as well as Scrap Metal Permit Section III.E.1.c.3 by failing to develop and implement a Permit compliant Phase III CAP. The Santa Ana Water Board Prosecution Team subsequently entered into settlement negotiations with the Discharger. In light of evidence identified during that process, this settlement agreement only includes the first violation alleged in the Complaint.

Violation #1: **The Discharger failed to implement the approved Phase II Corrective Action Plan as required by Scrap Metal Permit Section III.E.1.c.2.d.**

The Scrap Metal Permit offers two options for compliance. Both compliance options require the development and implementation of a facility-specific Stormwater Pollution Prevention Plan (SWPPP), which identifies facility-specific control measures including good housekeeping practices, Best Management Practices (BMPs), and mitigative measures, all to control or abate the discharge of pollutants to protect water quality objectives and beneficial uses of receiving waters, including groundwater.

Compliance Option 1 (Phased Approach with Numeric Action Levels [NALs]), chosen by the Discharger via the Stormwater Multiple Application and Report Tracking System (SMARTS), requires the Discharger to submit a facility specific SWPPP and implement preventative and mitigative measures. Each permittee who selects Compliance Option 1 begins in Phase I and is required to implement and maintain minimum control measures listed in Scrap Metal Permit Section III.E.1.c.1. This includes developing and implementing a monitoring program to collect and analyze stormwater samples from each discharge location during qualifying storm events. Permittees move from Phase I to Phase II if any of the following occur:

(1) A single sampling event exceeds the NAL by at least two times the specified limit; or,
(2) The annual average of any of the constituents exceeds the NAL; or,
(3) If any pH value is outside the specified NAL range for pH (6.5 to 8.5).

An exceedance of a NAL is not considered a violation of the Permit; however, within 30 days of a Phase I NAL exceedance, Permit Section III.E.1.c.2.c requires permittees to submit a Phase II CAP for Santa Ana Water Board staff approval. Upon Santa Ana Water Board approval, a Phase II CAP must be implemented within 90 days.

Compliance Option 2 is a non-phased approach. All SWPPPs shall be developed to maintain compliance with the Numeric Effluent Limitations (NELs) specified in Section III.E.2 of the Scrap Metal Permit. For permittees who selected Compliance Option 2, any exceedance of a NEL is considered a violation of the Scrap Metal Permit.

In order to comply with the Scrap Metal Permit, the Discharger developed a SWPPP and submitted it to the Santa Ana Water Board. In following their Facility-specific SWPPP, the Discharger collected and analyzed samples from self-identified stormwater discharge locations. According to lab report data uploaded to SMARTS by the Discharger, a single sampling event exceeded the NAL by at least two times the specified level for both oil/grease and turbidity on December 13, 2012. This data was reported by the Clinical Laboratory of San Bernardino, Inc., on December 24, 2012. This sampling event is alleged by Santa Ana Water Board staff to have triggered the Scrap Metal Permit's requirement to submit a Phase II CAP within 30 days. Therefore, Santa Ana Water Board staff contended a Phase II CAP should have been submitted to the Santa Ana Water Board by January 23, 2013. The Discharger had previously contended to Santa Ana Water Board staff that the sample location was not from a discharge from the Facility that had left the Facility property, and the Discharger continues to maintain this position.

The Discharger also submitted a 2012/2013 Annual Report for General Permit for Storm Water Discharges Associated with Industrial Activities (Industrial General Permit), which was received by the Santa Ana Water Board on June 25, 2013. This report not only identified the December 13, 2012 sampling event, in which there were NAL exceedances, but also a storm event on January 24, 2013, which again exceeded the NAL by at least two times the specified level. Per the process outlined in the Scrap Metal Permit, the Discharger certified the annual report, but contends the sample location was not from a discharge from the Facility that had left the Facility property.

Santa Ana Water Board staff issued a Notice of Violation (NOV) dated September 24, 2014, to the Discharger, for failure to submit a Phase II CAP within one month of an exceedance

determination per Section III.E.1.c.ii.3 of the Scrap Metal Permit. A second NOV was issued on July 1, 2015, for the same alleged violation. The denial letter requested a revised CAP to propose treatment or control measures to prevent contaminated stormwater from entering the infiltration pond; and, to provide the expected discharge quality once the CAP is implemented. The Discharger submitted a Phase II CAP (dated December 15, 2014) on July 6, 2015, which was later rejected by Santa Ana Water Board staff in a letter dated October 14, 2015. The Santa Ana Water Board letter requested a revised, Permit-compliant Phase II CAP identifying proposed treatment or control measures to prevent contaminated stormwater from entering the infiltration pond and a description of the expected stormwater discharge quality from the Facility upon Phase II CAP implementation.

In response, the Discharger sent a letter to Santa Ana Water Board staff which described its proposed actions to minimize industrial operations on bare ground, and stated the Discharger's consultant would develop the revised Phase II CAP to be implemented onsite, and requested a 2-year implementation timeline.

Subsequently, the Discharger submitted a revised Phase II CAP on November 12, 2015 (dated September 12, 2015) and a second revised Phase II CAP on December 1, 2015 (dated December 1, 2015). The December 1, 2015, Phase II CAP included the following control measures: removal/relocation of all piles of stored scrap metal materials to existing paved surfaces; the expansion of the existing centrally located concrete pad to approximately 60' x 60' and to be graded towards a containment pit with a sump pump; and the installation of berms to eliminate stormwater runoff onto unpaved surfaces. The Phase II CAP also proposed the deployment of wattles and metal media socks at the southwest driveway prior to rain events to prevent offsite discharges, training for sample collection, and daily inspections/housekeeping activities. The Phase II CAP dated December 1, 2015, was approved by the Santa Ana Water Board in correspondence dated December 15, 2015. The Santa Ana Water Board's approval of the Phase II CAP specified that full implementation of the Phase II CAP was to be completed by December 30, 2016.

However, during a Santa Ana Water Board staff inspection on August 24, 2021, staff observed the Discharger had not fully implemented the approved Phase II CAP, in violation of Permit Section III.E.1.c.2.d. The Discharger also continued to submit stormwater sampling results reflecting NAL exceedances for pH, in samples taken on December 16, 2016 and January 9, 2018; and for copper, in samples taken on December 16, 2016, December 4, 2019, December 26, 2019, January 29, 2021, December 14, 2021, November 15, 2023, February 1, 2024, and February 6, 2024. The Discharger contends that none of these sample locations were off of the Facility.

A person who violates a waste discharge requirement for compliance with the provisions of the Clean Water Act shall be civilly liable. (Wat. Code, § 13385, subd. (a)(2).) Pursuant to Water Code section 13385, subdivision (c)(1), the Santa Ana Water Board may impose administrative civil liability for non-discharge violations on a daily basis. Pursuant to Water Code section 13385, subdivision (c), the violation of the Scrap Metal Permit identified above is subject to penalties not to exceed ten thousand dollars ($10,000) per day, per violation.

ENFORCEMENT POLICY – PENALTY CALCULATION

Step 1 and Step 2 – Harm or Potential Harm to Beneficial Uses 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 Santa Ana Water Board to calculate a per day factor for non-discharge violations by considering the potential for harm and deviation from requirement.

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. A "moderate" potential for harm applies where "the characteristics of the violation have substantially impaired the Water Boards' ability to perform their statutory and/or regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most non-discharge violations should be considered to present a moderate potential for harm."

The evaluation of the actual harm or the potential harm to beneficial uses considers the harm to beneficial uses in the affected receiving water body that may result from exposure to the pollutants or contaminants in the discharge, consistent with the statutory factors of the nature, circumstances, extent, and gravity of the violation. The evaluation may also consider actual harm or potential harm to human health, in addition to harm to beneficial uses. The Facility discharges to Springbrook Channel, which is tributary to the Santa Ana River, Reach 4. The Santa Ana Water Board Basin Plan designates beneficial uses applicable to Santa Ana River, Reach 4, waters as: Groundwater Recharge (GWR), Water Contact and Non-Contact Water Recreation (REC1 and REC2, respectively), Warm Freshwater Habitat (WARM), Wildlife Habitat (WILD), Rare, Threatened, or Endangered Species (RARE), and Spawning, Reproduction, and Development (SPWN). Beneficial uses are the uses of water necessary for the survival or well-being of man, plants, and wildlife. These uses of water serve to promote tangible and intangible economic, social, and environmental goals.

Failure to implement the Phase II CAP results in an ongoing threat to beneficial uses and water quality in the Santa Ana region because the Facility discharges industrial pollutants without adequate BMPs in place. Constituents associated with industrial activities from scrap metal facilities include pH, suspended solids, dissolved solids, oil and grease, zinc, lead, aluminum, copper, iron, chemical oxygen demand (COD), and cadmium.

The Discharger failed to fully implement the approved Phase II CAP requirements by the specified deadline of December 30, 2016, as observed during a site inspection on August 24, 2021. As documented in the Santa Ana Water Board inspection report from the site visit on August 24, 2021, industrial areas throughout the eastern portion of the Facility were bare earth, consisting of fine-grained soil. Staff applied a magnet to the surface of the soil at various locations and observed that the soil contained ferro-magnetic debris. The Facility also has a gravel infiltration area, and according to the Discharger's SWPPP, stormwater flows south and southwest to the infiltration area. It was also noted that the infiltration area was not well maintained as it had leaves and debris throughout the area, as well as various metal and wood materials being stored nearby. A groundwater well is also located on site towards the southern end of the Facility.

The Discharger submitted a Site Investigation Report, which included on-site soil and groundwater sampling results from October 25 and 31, 2024. The samples were taken to assess the presence and magnitude of contaminants of potential concern and to evaluate whether soil and groundwater beneath the Facility have been impacted by ongoing industrial activities. Soil borings were taken at 15 locations, ranging in depth from six inches to twenty feet. Analytical results from this sampling indicate the presence of lead, copper and zinc in some areas of shallow soil.

The Site Investigation Report showed concentration of metals and PCBs and PAHs in soils that exceeded screening levels, but which were generally identified within the top 1 foot of soil. Soluble metals results were further limited to the top 1 foot of soil, primarily in the central processing area of the Site. The one instance where screening levels were exceeded in a 3-foot sample was in a topographic low area in the center of the Site. Few metals, and only at low levels, were detected in groundwater and were below their maximum contaminant levels (MCLs) for drinking water and no other contaminants of potential concern were detected in groundwater.

The discharge of these pollutants may cause or contribute to exceedances of applicable water quality standards. Pollutants discharged from industrial facilities may adversely affect human health and/or aquatic organisms. Adverse human health effects include gastrointestinal diseases and infections. Adverse physiological responses in aquatic organisms to pollutants include impaired reproduction, growth anomalies, decreased diversity, and mortality. These responses may be the result of different mechanisms, including bioaccumulation of toxins. During bioaccumulation, toxins move up the food chain and may affect both aquatic and non-aquatic organisms, including human health and wildlife. These conditions may impair designated beneficial uses resulting in a condition of pollution, contamination, or nuisance.

Failure to implement the Phase II CAP also creates a burden on the regulatory program, since additional Santa Ana Water Board staff resources are expended to follow up with the Discharger to obtain adequate submittals and track their implementation, or lack thereof. The Potential for Harm is moderate.

Deviation from Requirement: Major

The Enforcement Policy requires a determination of whether the violation resulted in a minor, moderate, or major deviation from requirement. A “major” deviation from requirement is one where “the requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).”

Option 1, the three-phased approach, as selected by the Discharger, requires the phased implementation of control measures to meet the NALs as specified in Table 1a of the Scrap Metal Permit. The Scrap Metal Permit requires all Permittees enrolled in Option 1 to implement and maintain preventative measures that include elimination of exposure (e.g., conducting industrial operations under a roof) and runoff volume reduction measures. The Scrap Metal Permit also lists other preventative measures all facilities shall implement, including to maintain a monthly inventory of materials and chemicals used at the site, identify onsite pollutant sources and associated control measures, pave industrial areas

prone to erosion, maintain effective perimeter controls and stabilize all site entrances/exits, properly dispose of waste materials, percolation or evapotranspiration or use of runoff, inspect and sweep all industrial areas, use BMPs to prevent leaks, label all containers, implement an employee training program, and consolidate industrial area discharges.

However, once the Phase II requirements were triggered, and a Phase II CAP was approved, the Discharger should have timely implemented their approved Phase II CAP. Per the Scrap Metal Permit, a Phase II CAP should identify the sources of pollutants causing the exceedance, proposed control measures, and the expected discharge quality once the Phase II CAP is implemented. The Phase II CAP also focuses on preventative measures, as previously identified. Given the Scrap Metal Permit requirements, the approved Phase II CAP proposed to isolate industrial activities to paved areas by removing all piles of scrap metal materials sitting on unpaved surfaces and/or storing them on paved surfaces, expand an existing concrete pad at the center of facility to 60’ x 60’ which would then be graded towards a containment pit with a sump pump, incorporate berms to eliminate runoff onto unpaved areas, deploy wattles and metal media at the southwest driveway prior to rain events, cover/”containerize” as many materials as feasible, perform daily inspections and housekeeping, sweep upon work completion, inspect imported materials and onsite equipment for fluid residue, monitor for sediment tracking, and train staff on sample collection and perform sampling per the Permit.

Since December 30, 2016, the approved Phase II CAP implementation date, the Discharger has implemented only a portion of its approved Phase II CAP proposals. From 2017 through 2021, the Discharger has kept monthly inspection reports, weather forecasts, sweeping and equipment maintenance logs. These documents were uploaded to the SMARTS database annually. In 2022, the Discharger provided daily cleanup/sweeping logs, in addition to a stormwater training sign in sheet. However, to date, the Discharger has failed to implement the approved Phase II CAP in its entirety, compromising the effectiveness of Section III.E.1.c.2 of the Scrap Metal Permit.

The Deviation from Requirement is major.

Per Day Factor: 0.4

The resulting per day factor is 0.4. This determination is based upon the above-described moderate potential for harm and major deviation from requirement, as provided for in the matrix in Table 3 of the Enforcement Policy.

Days of Violation:

The Discharger should have implemented the approved Phase II CAP by December 30, 2016. During a site inspection on August 24, 2021, Santa Ana Water Board staff documented that the Phase II CAP still had not been fully implemented. As described above, Discharger submitted a proposed Phase II Conceptual CAP on July 2, 2024, which the Santa Ana Water Board staff responded to on August 28, 1024, and which was then revised by the Discharger on November 1, 2024.

This settlement reflects a period of noncompliance between February 16, 2024 to March 16, 2024 of 30 days based on evidence and argument submitted to the Prosecution Team during settlement negotiations. These issues include but are not limited to the equitable

defense of laches, the Discharger's assertion that the sample locations were all located within the Facility property boundaries and evidence of the Discharger's partial compliance with the approved Phase II CAP, and the practical inability of the Discharger being able to comply with the most significant aspect of the approved Phase II CAP.

Initial Liability Amount:

$10,000 [maximum statutory liability per day of violation] X 30 [days of violation] X 0.4 [per day factor])

$10,000 X 30 days X 0.4 = $120,000

Step 4 – Adjustment Factors

There are three additional factors to be considered for modification of the initial liability amount: the Discharger's degree of culpability, the Discharger's prior history of violations, and the Discharger's voluntary efforts to clean up or its cooperation with regulatory authorities after the violation.

Culpability: 1.5

For culpability, the Enforcement Policy allows an adjustment resulting in a multiplier between 0.75 to 1.5, with a higher multiplier for intentional misconduct and gross negligence, and a lower multiplier for simple negligence.

The Discharger's efforts to comply with the approved Phase II CAP were deficient, and a reasonable permittee would have evaluated its ability to implement a Phase II CAP and remain in business prior to submitting the Phase II CAP for approval. Further, upon determining it could not fully implement the approved Phase II CAP and remain in business, the Discharger should have advised the Santa Ana Water Board staff of the same and requested that the approved Phase II CAP be revised.

The Discharger failed to act as a reasonable and prudent permittee under the Scrap Metal Permit. The long-term noncompliance with the Phase II CAP requirements represents a significant failure to comply with the Permit requirements. The culpability factor is 1.5.

History of Violations: 1.0

The Discharger does not have a history of violations that have been formally adjudicated by the Santa Ana Water Board. The history of violations factor is 1.0.

Cleanup and/or Cooperation: 1.3

For cleanup and/or cooperation, the Enforcement Policy allows an adjustment resulting in a multiplier between 0.75 and 1.5, using the lower multiplier where there is an exceptional cleanup and cooperation compared to what can reasonably be expected, and higher multiplier where there is not.

After the implementation deadline of December 30, 2016 of the approved Phase II CAP, the Discharger began to upload to SMARTS numerous incomplete revised CAPs between 2017 and 2022. For example, in a July 6, 2017 document titled Continuation of the Revised

Phase II CAP, it outlines some of the previously approved Phase II CAP proposed control measures, with estimated dates of completion/status as “ongoing”. This document was created nearly 7 months after the proposed measures were supposed to have been fully implemented onsite. Subsequent documents uploaded to SMARTS, without explanation to Santa Ana Water Board staff of the purpose of the submittals, acknowledged pH and copper exceedances, and seemingly proposed alternative BMPs to the ones which had already been approved. However, in spite of the shortcomings, these reports did document some efforts by the Discharger to implement portions of the approved Phase II CAP.

In an unapproved CAP dated March 18, 2021, the Discharger stated it had started the removal of scrap metal piles and debris from areas identified in the approved Phase II CAP. However, in a later separate additional CAP submittal dated May 18, 2022, the Discharger stated that they were still removing materials and that paving areas prone to erosion would take an additional two years.

The Prosecution Team acknowledges that some effort at complying with the Scrap Metal Permit was made. Even if the Discharger modified business practices to reduce pollutant concentrations in the stormwater runoff, they failed to fully implement the approved Phase II CAP or provide sufficient evidence of efforts to implement the requirements or to explain its difficulties with full compliance.

In the context of settlement, the Discharger has advised Santa Ana Water Board staff that compliance with the previously approved Phase II CAP would prevent the Discharger from continuing to operate its scrap metal business. For this reason and consistent with the actions the Discharger represented to the Santa Ana Water Board that it would be undertaking to comply with the Scrap Metal Permit, in July of 2024, the Discharger submitted a proposed Phase II Conceptual CAP, which the Santa Ana Water Board staff responded to on August 28, 2024, and was again revised on November 1, 2024.

On December 31, 2024, Santa Ana Water Board staff provided further comments on the Discharger’s Revised Phase II Conceptual CAP. The Discharger additionally responded to the Santa Ana Water Board staff comments on March 12, 2025. Santa Ana Water Board staff has not responded further to the Discharger’s March 12, 2025 submittal on the Revised Phase II Conceptual CAP, but has advised the Discharger orally that the Discharger is authorized to proceed with the implementation of the Revised Phase II Conceptual CAP, understanding that the results of the Revised Phase II Conceptual CAP will be used in developing the Final Revised Phase II CAP.

In order to ensure the viability of the Revised Phase II CAP, the Discharger sought concurrence from the Santa Ana Water Board staff prior to its submittal, and undertaking significant pre-cursor work (e.g. a topographical survey) required for the design of the Final Revised Phase II CAP. Additionally, without being able to first implement the Revised Conceptual Phase II CAP prior to designing and implementing the Final Revised Phase II CAP, the Discharger would be unable to determine whether its Revised Phase II CAP’s best management practices (BMPs) would be technically and practically viable, and it did not wish to propose and obtain an approval from Santa Ana Water Board staff on yet another Phase II CAP, without first concluding it would be cost effective and economically viable, as well as being acceptable to the Santa Ana Water Board.

After an April 24, 2024 meeting with the Santa Ana Water Board Prosecution Team, the Discharger submitted a new conceptual Phase II CAP, dated July 2, 2024, to replace the

approved December 1, 2015 Phase II CAP. This conceptual Phase II CAP was revised on November 1, 2024 based on Santa Ana Water Board staff comments submitted on August 29, 2024, and further comments were provided to Santa Ana Water Board staff on March 2, 2025, in response to staff's comments on the Revised Phase II Conceptual CAP provided to the Discharger on December 31, 2024. As of the date of the settlement agreement, Santa Ana Water Board staff has advised the Discharger it may proceed with the implementation of the Revised Phase II Conceptual CAP, to be followed by the submission and implementation of an approved Final Revised Phase II Conceptual CAP.

Therefore, the cleanup and cooperation factor is scored as 1.3.

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 Initial Liability Amount determined in Step 3.

$120,000 [initial liability amount] X 1.5 [culpability] X 1.0 [violation history] X 1.3 [cleanup and cooperation]

$120,000 X 1.5 X 1.0 X 1.3 = $234,000

Step 6 – Economic Benefit

The Enforcement Policy requires the Economic Benefit Amount to be estimated for every violation. The economic benefit is any saving or monetary gain derived from the act or omission that constitutes the violation.

The Enforcement Policy provides that the United States Environmental Protection Agency's Economic Benefit of Noncompliance Model (BEN model) should be used to calculate the economic benefit equal to the present value of the avoided costs plus the "interest" on delayed costs. This calculation reflects the fact that the Discharger has had the use of the money that should have been used to avoid the instance of noncompliance. Using the BEN Model, the Discharger has derived an estimated economic benefit of four thousand three hundred forty-four dollars and thirty-nine cents ($4,344) based on the delayed cost of expanding the concrete pad, construction of a containment area, installation of a sump pump, purchase of socks and booms, and other tasks necessary to implement the Phase II CAP.

Step 7 – Other Factors as Justice May Require

The Santa Ana Water Board has incurred $55,000 in staff costs comprised of investigation and enforcement costs plus oversight costs as it pertains to Investigative Order R8-2023-0021 through March 31, 2025. Santa Ana Water Board Prosecution Team costs and other staff costs are being recovered in this settlement as described in the Stipulated Order. The final total liability is inclusive of staff costs.

In addition, the Prosecution Team notes that the Facility is located in a designated Disadvantaged Community. According to CalEnviroScreen, a tool developed by the California Office of Environmental Health Hazard Assessment for the purposes of identifying impacted communities by taking into consideration pollution exposure and its effects, as well as health and socioeconomic status; the Facility is located in a census tract

with a score of 96 out of 100, making it among the top 25% most disadvantaged communities in California. Therefore, residents in this community bear a disproportionate burden of pollution.

Resolution R8-2024-0029, adopted on March 15, 2024, reaffirmed the Santa Ana Water Board's commitment to uphold the human right to water, protect public health, beneficial uses, and particularly address communities that carry a disproportionate burden from environmental pollution within the Santa Ana River watershed.

Step 8 – Ability to Pay and Ability to Continue in Business

The Enforcement Policy provides that if there is sufficient financial information necessary 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, the Total Base Liability Amount may be adjusted to address the ability to pay or to continue in business. There is no obligation to ensure that a violator has the ability to pay or continue in business, but, rather, are obligated to consider these factors when imposing a civil liability under the Water Code.

The Santa Ana Water Board Prosecution Team has reviewed publicly available information related to Discharger. The Discharger has an ability to pay the total liability.

Step 9 – Maximum and Minimum Liability Amounts

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

Maximum Liability Amount: $300,000

The maximum administrative liability is the maximum allowed by Water Code section 13385, subdivision (c)(1): $10,000 for each day which the violation occurs. The maximum liability amount is $300,000 = $10,000 x 30 days.

Minimum Liability Amount: $4,778

The Santa Ana Water Board is bound by statute to recover, at minimum, the economic benefit to the violator in an action for violations of Water Code section 13385. The Santa Ana Water Board should strive to impose civil liabilities 10 percent greater than the economic benefit to the violator. The Enforcement Policy states that "the adjusted Total Base Liability Amount should be at least 10 percent higher than the Economic Benefit Amount so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations." The minimum liability amount is $4,778 ($4,344 x 1.1).

Step 10 – Final Proposed Liability Amount

Final Proposed Liability Amount: $200,000

The final liability amount consists of the added amounts for each violation with any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts. The final liability proposed is $200,000. The final proposed liability reflects the

inclusion of Santa Ana Water Board staff costs along with a discount from the total liability generated by the Enforcement Policy's methodology in light of settlement considerations and litigation risk. The total reduction provided on this basis is $34,000.