

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2023-0027
IN THE MATTER OF**

STEAVEN JONES DEVELOPMENT COMPANY

This Administrative Civil Liability Complaint (Complaint) is issued by the Assistant Executive Officer of the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) to Steaven Jones Development Company (Discharger) pursuant to California Water Code (Water Code) section 13350, which authorizes the imposition of administrative civil liability, Water Code section 13323, which authorizes the Executive Officer to issue this Complaint, and Water Code Division 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case, the Assistant Executive Officer.

This Complaint alleges seven violations based on evidence that Discharger failed to implement the requirements of State Water Resources Control Board (State Water Board) Order No. 2009-0009-DWQ, as amended by Order Nos. 2010-0014-DWQ and 2012-0006-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit or CGP).

The Assistant Executive Officer of the Los Angeles Water Board alleges the following:

BACKGROUND

1. The Site discharges into storm drains connected to the municipal separate storm sewer system that discharges into Marina Del Rey and into the Pacific Ocean.
2. The Water Quality Control Plan for the Los Angeles Basin (Basin Plan) designates the following beneficial uses for the Marina Del Rey Harbor: ¹
 - a. Water Contact Recreation (REC-1)
 - b. Non-Contact Water Recreation (REC-2)
 - c. Navigation (NAV)
 - d. Commercial and Sport Fishing (COMM)
 - e. Marine Habitat (MAR)

¹ The Dominguez Channel Estuary also lists Navigation as a potential beneficial use.

- f. Wildlife Habitat (WILD)
 - g. Shellfish Harvesting (SHELL)
3. On July 3, 2017, the City of Los Angeles Department of Building and Safety issued the Discharger a grading permit for the construction site at 4061-4065 South Glencoe Avenue in Marina del Rey (Site). The Discharger began land disturbance activities on or around July 6, 2017 without first filing a Report of Waste Discharge and obtaining the requisite coverage under the Construction General Permit.
 4. The City of Los Angeles inspected the Site on July 6, 2017 during active excavation activities. The Discharger should have enrolled under the CGP prior to the commencement of land disturbance activities.
 5. On March 19, 2019, Los Angeles Water Board staff observed active construction within the block between Glencoe Avenue and Del Rey Avenue in Marina del Rey, California that was not permitted under the CGP.
 6. On April 9, 2019, Los Angeles Water Board staff conducted a non-filer inspection of the Site and determined the Site had a total disturbed area of approximately 1.5 acres and required enrollment under the Construction General Permit. Los Angeles Water Board staff also observed active construction activities throughout the Site. On April 19, 2019, the Los Angeles Water Board issued a Notice of Violation (NOV) to the Discharger for failure to obtain coverage under the CGP.
 7. On May 29, 2019, the Discharger filed a Notice of Intent (NOI) to comply with the terms of the CGP via the Storm Water Multiple Application & Report Tracking System (SMARTS). On May 31, 2019, the State Water Board returned the application because the Discharger submitted payment prior to submitting the Legally Responsible Person's eAuthorization form, as required. Los Angeles Water Board staff emailed and called the Discharger reminding it of the requirement to complete CGP enrollment per the NOV and about the returned application status.
 8. On June 3, 2019, the Discharger resubmitted the NOI application. The State Water Board processed the Discharger's NOI on June 4, 2019 and assigned the Site WDID 4 19C387092. The Discharger conducted construction activities for almost two years prior to properly enrolling under the CGP.
 9. Los Angeles Water Board staff did not pursue violations in this Complaint for the Discharger's failure to enroll under the CGP in a timely manner and prior to commencing excavation activities. Additionally, Los Angeles Water Board staff did not include violations observed prior to the Discharger's enrollment in the CGP in this Complaint.

10. On July 16, 2019, Regional Water Board staff inspected the Site and noted several violations to the CGP including several Best Management Practice (BMP) and Stormwater Pollution Prevention Plan (SWPPP) violations.
11. On August 15, 2019, the Regional Water Board issued an NOV to the Discharger to address the violations observed at the Site. Response was required by September 16, 2019. The Discharger did not submit a written response to the NOV until November 14, 2019.
12. On August 21, 2019, the Discharger submitted a Notice of Termination (NOT) for its project completion. On January 10, 2020, Regional Water Board conducted an NOT inspection and verified that the five-story mixed-use building project was complete, and the Site was stabilized. The NOT was approved on February 10, 2020.
13. The Prosecution Team had multiple settlement meetings with the Discharger during, including on October 25, 2021 and January 14, 2022. In late 2022, the matter was transferred to a different Office of Enforcement attorney given previous counsel's workload. At that time, settlement discussions recommenced but were not able to resolve the matter.
14. The Discharger currently manages the INclave project in addition to several other projects in Los Angeles County. The INclave project is a mixed-use development with a 2,160 square foot café, 65,000 square foot state-of-the-art creative office space, 49 apartment units, and 282 parking spaces.

LEGAL AND REGULATORY CONSIDERATIONS

15. The CGP was issued pursuant to Clean Water Act section 402 and implementing regulations adopted by the US EPA and chapter 5.5, division 7 of the Water Code (commencing with section 13370), including Water Code section 13376. The Construction General Permit serves as an NPDES permit for discharges of stormwater runoff from the Site.

ALLEGED VIOLATIONS

16. **Violation 1:** The Prosecution Team alleges that the Discharger violated Construction General Permit Attachment C, Section E.1 by failing to stabilize construction entrances and exits to sufficiently control erosion and sediment discharges from the Site on July 16, 2019.
17. **Violation 2:** The Prosecution Team alleges that the Discharger violated Construction General Permit Attachment C, Section E.1 by failing to implement effective perimeter controls to sufficiently control erosion and sediment discharges from the Site on July 16, 2019.

18. **Violation 3:** The Prosecution Team alleges that the Discharger violated Construction General Permit Attachment C, Section C.3 by failing to clean streets to prevent unauthorized non-stormwater discharges from reaching surface waters or MS4 drainage systems on July 16, 2019.
19. **Violation 4:** The Prosecution Team alleges that the Discharger violated Construction General Permit Attachment C, Section B.2 by failing to implement and maintain good housekeeping measures for waste management on July 16, 2019.
20. **Violation 5:** The Prosecution Team alleges that the Discharger violated Construction General Permit Section XIV.C by failing to make a Storm Water Pollution Prevention Plan (SWPPP) available on-site upon request during an inspection on July 16, 2019.
21. **Violation 6:** The Prosecution Team alleges that the Discharger violated Construction General Permit Attachment C Section G by failing to perform weekly inspections and observations by a Qualified SWPPP Practitioner (QSP) or person trained by the QSP to identify and record Best Management Practices that need maintenance to operate effectively, that have failed, or that could fail to operate as intended. This violation is alleged from June 4, 2019, through August 21, 2019.
22. **Violation 7:** The Prosecution Team alleges that the Discharger violated Construction General Permit Section VII.B.3 by failing to designate a QSP for the construction project to implement BMPs and perform weekly inspections. This violation is alleged from June 4, 2019, through August 21, 2019.
23. The Prosecution Team is bringing this ACLC based on violations personally observed by Regional Board staff and memorialized in an NOV. The recommended penalty addresses CGP violations that were observed on site. While a violation for failure to timely enroll for permit coverage would significantly add to the recommended penalty, the Prosecution Team exercised its discretion in determining appropriate violations and penalty amount to deter this type of conduct and encourage permit coverage in the future.

WATER CODE AUTHORITY FOR IMPOSING ADMINISTRATIVE CIVIL LIABILITY

24. Water Code section 13385 states, in relevant part:

(a) A person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376. ...

(4) An order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5, if the activity

subject to the order or prohibition is subject to regulation under this chapter.

(5) A requirement of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the federal Clean Water Act (33 U.S.C. Sec. 1311, 1312, 1316, 1317, 1318, 1341, or 1345), as amended. ...

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

(e) In determining the amount of any liability imposed under this section, the regional water board shall take into account the nature, circumstances, 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 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. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

WATER QUALITY ENFORCEMENT POLICY

25. On April 4, 2017, the State Water Board adopted Resolution No. 2017-0020, which adopted the 2017 Water Quality Enforcement Policy (2017 Enforcement Policy). The 2017 Enforcement Policy was approved by the Office of Administrative Law and became effective on October 5, 2017. The 2017 Enforcement Policy establishes a methodology for assessing administrative civil liability that addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code sections 13327 and 13385, subdivision (e).
26. The violations alleged are subject to liability in accordance with Water Code section 13385. The Prosecution Team has considered the required factors for the

alleged violation using the methodology in the 2017 Enforcement Policy, which is presented in greater detail in Attachment A.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

27. Issuance of this Complaint to enforce Water Code Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15307, 15308 and 15321, subdivision (a)(2).

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

28. The Los Angeles Water Board Prosecution Team proposes an administrative civil liability of **\$470,678** for the alleged violations, as detailed in Attachment A to this Complaint, herein incorporated by reference. This proposed administrative civil liability was derived using the penalty calculation methodology in the Enforcement Policy. The proposed administrative civil liability considers the factors described in Water Code section 13327, such as the Discharger's culpability, history of violations, ability to pay, and other factors as justice may require.
29. Notwithstanding the issuance of this Complaint, the Los Angeles Water Board retains the authority to assess additional administrative civil liability for violations which have not yet been assessed or for violations that may subsequently occur. Please note that the project has been completed and the NOT issued.

MAXIMUM STATUTORY LIABILITY

30. Pursuant to Water Code section 13385, subdivision (c) the statutory maximum administrative civil liability for each violation is \$10,000 per day of violation.
31. Violation 1 describes the Discharger's failure to stabilize construction entrances and exits to sufficiently control erosion and sediment discharges from the Site on July 16, 2019. The statutory maximum penalty for Violation 1 is \$10,000 [\$10,000 per day x 1 day].
32. Violation 2 describes the Discharger's failure to implement effective perimeter controls to sufficiently control erosion and sediment discharges from the Site on July 16, 2019. The statutory maximum penalty for Violation 2 is \$10,000 [\$10,000 per day x 1 day].
33. Violation 3 describes the Discharger's to clean streets to prevent unauthorized non-stormwater discharges from reaching surface waters or MS4 drainage systems on July 16, 2019. The statutory maximum penalty for Violation 3 is \$10,000 [\$10,000 per day x 1 day].

34. Violation 4 describes the Discharger's failure to implement and maintain good housekeeping measures for waste management on July 16, 2019. The statutory maximum penalty for Violation 4 is \$10,000 [\$10,000 per day x 1 day].
35. Violation 5 describes the Discharger's failure to make a Storm Water Pollution Prevention Plan (SWPPP) available on-site upon request during an inspection on July 16, 2019. The statutory maximum penalty for Violation 5 is \$10,000 [\$10,000 per day x 1 day].
36. Violation 6 describes the Discharger's failure to perform weekly inspections and observations by a Qualified SWPPP Practitioner (QSP) or person trained by the QSP from June 4, 2019, through August 21, 2019. The statutory maximum penalty for Violation 6 is \$120,000 [\$10,000 per day x 12 days (one day for each weekly report)].
37. Violation 7 describes the Discharger's failure to designate a QSP from June 4, 2019, through August 21, 2019. The statutory maximum penalty for Violation 7 is \$790,000 [\$10,000 per day x 79 days].
38. The proposed administrative civil liability is \$462,140, which is below the statutory maximum liability of \$960,000 for the violations alleged in the Complaint.

MINIMUM LIABILITY

39. Water Code section 13385, subdivision (e) requires that when pursuing civil liability under section 13385, "[a]t a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation." The 2017 Enforcement Policy further requires the Regional Water Board to recover, at a minimum, the economic benefit plus 10%. The economic benefit for the violations alleged is approximately \$13,634. Attachment A includes a detailed explanation of the basis of this calculation. The minimum liability that may be imposed is the economic benefit plus 10%, which is equal to \$14,997. The proposed administrative civil liability is more than the minimum liability amount.

THE DISCHARER IS HEREBY GIVEN NOTICE THAT:

40. The Assistant Executive Officer of the Los Angeles Water Board proposes an administrative civil liability in the amount of **\$470,678**. The amount of the proposed administrative civil liability is based upon a review of the factors cited in Water Code section 13327 and the Enforcement Policy. The total penalty reflects the seriousness potential impacts to water quality, as well as the regulatory system when projects required to obtain CGP coverage fail to do so, and therefore avoid complying with BMP requirements at the risk of being detected and penalized. The recommended penalty also considers the available evidence, Board staff percipient knowledge of the Site, interactions with the Discharger, and

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Steaven Jones Development Company

consideration of a penalty that will communicate the appropriate enforcement message to this Discharger as well as the regulated community as a whole.

41. A hearing on this matter will be conducted by the Los Angeles Water Board on May 25, 2023.

42. If a hearing is held, it will be governed by Hearing Procedures which will be issued by the Advisory Team. During the hearing, the Los Angeles Water Board will hear testimony and arguments and affirm, reject, or modify the proposed administrative civil liability, or determine whether to refer the matter to the Attorney General for recovery of judicial civil liability.

43. The Assistant Executive Officer reserves the right to amend the proposed amount of administrative civil liability to conform to the evidence presented.

 Digitally signed by
Hugh Marley
Date: 2023.02.27
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Hugh Marley
Assistant Executive Officer

2/27/2023

Date

Attachment A: Penalty Calculation Methodology

Attachment A – Specific Factors Considered
Administrative Civil Liability Complaint No. R4-2023-0027
Steaven Jones Development Company, Inc.
WDID 4 19C387092

Steaven Jones Development Company, Inc. (Discharger) is alleged to have failed to file a Report of Waste Discharge prior to the commencement of construction activities and to have failed to comply with the State Water Resources Control Board Order No. 2009-0009-DWQ, as amended by Order No. 2010-0014-DWQ and 2012-0006-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (General Permit), while conducting land disturbance work on the INclave project located at 4061-4065 Glencoe Avenue in Marina del Rey, California (Site).

The Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) Prosecution Team derived the proposed administrative civil liability for these alleged violations in accordance with the State Water Resources Control Board's (State Water Board) 2017 Water Quality Enforcement Policy (Enforcement Policy). The proposed civil liability takes into account Water Code section 13385, subdivision (e) factors, along with corresponding Enforcement Policy factors for each violation presented below.

On May 29, 2019, the Discharger filed a Notice of Intent (NOI) to comply with the terms of the General Permit to Discharge Stormwater Associated with Construction Activity via the Storm Water Multiple Application & Report Tracking System (SMARTS). On May 31, 2019, the State Water Board returned the application because the Discharger submitted payment prior to submitting the Legally Responsible Person's eAuthorization form, as required.

On June 3, 2019, the Discharger resubmitted the NOI application. General Permit Section II.B.5 states that a discharger is only considered covered by the General Permit upon receipt of a WDID. The State Water Board processed the Discharger's NOI on June 4, 2019, and assigned the Site WDID 4 19C387092.

On July 16, 2019, Los Angeles Water Board staff inspected the Site and noted several violations to the General Permit including both Best Management Practice (BMP) and Stormwater Pollution Prevention Plan (SWPPP) violations.

On August 15, 2019, the Los Angeles Water Board issued a Notice of Violation (NOV) to the Discharger to address the violations observed at the facility. The Discharger responded to the NOV on November 14, 2019.

On August 21, 2019, The Discharger submitted a Notice of Termination (NOT) for their project completion. On January 10, 2020, Los Angeles Water Board conducted an NOT inspection and verified that the project was complete, and the Site was stabilized. The NOT was approved on February 10, 2020.

Construction on the Site commenced in 2017 and CGP coverage was not obtained until 2019. Rather than allege a violation based on failure to obtain permit coverage, the Prosecution Team is alleging a series of permit violations based on staff observations during a routine inspection. The Discharger should have had coverage for more than two years prior to when it actually submitted the NOI. The violations alleged in the ACLC and described herein occurred during a brief window near the end of construction during the summer months. Despite these relatively favorable conditions (construction during dry months, fewer staging requirements given the phase of construction, etc.) the Discharger did not maintain the Site in compliance with CGP directives. The Prosecution Team exercised its discretion not to seek a penalty for the failure to timely obtain permit coverage, but instead pursue penalties for observed violations.

Violation 1: Failure to stabilize a construction entrance and exit to sufficiently control erosion and sediment discharges from the Site

Attachment C, Section E.1 of the General Permit requires dischargers to stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site. Attachment C, Section B.1.e of the General Permit requires Risk Level 1 dischargers to implement BMPs to prevent the off-site tracking of loose construction and landscape materials.

During the July 16, 2019, Los Angeles Water Board inspection, the construction entrance and exit at the northeast side of the Site was not stabilized. The absence of BMPs caused sediment track-out onto Glencoe Avenue and the public sidewalk.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to this violation.

Step 2. Assessment for Discharge Violations

This factor does not apply to this violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: Moderate

Violation 1 is characterized as a Moderate Potential for Harm. The Enforcement Policy defines Moderate Potential for Harm as “[t]he characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.”

During the July 16, 2019, Los Angeles Water Board inspection, Los Angeles Water Board staff observed that the Discharger failed to stabilize construction entrances and exits to prevent sediment track-out from the Site.

Such BMP deficiencies could have led to discharges of sediment to surface waters.

As mentioned in the ACLC, the Site indirectly drains to the Marina del Rey Harbor. Existing beneficial uses of the Marina del Rey Harbor include navigation, commercial and sport fishing, wildlife habitat, and shellfish harvesting. Sediment discharges can cloud the receiving water, thereby reducing the amount of sunlight reaching aquatic plants, clog fish gills, smother aquatic habitat and spawning areas. High concentrations of sediment accumulation along coastal areas can affect suitable habitat for shellfish harvesting by partially or completely burying some shellfish colonies and can interfere with shellfish filter-feeding. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can cause toxicity to aquatic organisms and biotoxin accumulation in shellfish. Such bioaccumulation causes shellfish to be unsuitable for human consumption and thereby affecting the beneficial use. Excess sediment in water poses a moderate level of concern to ecosystem health exposure pathways because of the likelihood that the discharged material would harm aquatic life. Therefore, the Potential for Harm for this violation is characterized as Moderate.

Deviation from Requirement: Major

Violation 1 is characterized as a Major Deviation from Requirement. The Enforcement Policy defines a Major Deviation from Requirement as “[t]he requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).” The Discharger failed to stabilize the construction entrance and exit and to install off-site tracking controls of sediment, as necessary to prevent potential discharge of construction materials to stormwater and harming beneficial uses of Marina del Rey Harbor.

During the July 16, 2019, Los Angeles Water Board inspection, sediment control BMPs were not installed to stabilize the construction entrance at the northeastern side of the Site. Furthermore, BMPs were not in place to prevent track-out of loose sediment from the western side of Site. The failure to install BMPs resulted in sediment track-out and accumulation onto Glencoe Avenue. The Discharger disregarded the purpose of the requirement to sufficiently control potential sediment discharges from the Site that could harm beneficial uses of receiving waters. Therefore, the Deviation from Requirement is characterized as Major.

Per Day Factor: 0.55

In accordance with Table 3 of the Enforcement Policy, the per day factor for Violation 1 is 0.55.

Initial Liability Amount: \$5,500

The Initial Liability Amount is the (per day factor) x (number of days of violation) x (per day statutory maximum liability).

For Violation 1, the per day factor is 0.55, days of violation is 1, and the per day statutory maximum liability is \$10,000 under Water Code section 13385, subdivision (c).

Initial Liability Amount = 0.55 x 1 day x \$10,000/day = \$5,500

Step 4. Adjustment Factors

Culpability: 1.3

A multiplier of 1.3 is assigned for this violation because the Discharger knew of the requirement as evidenced by the SWPPP that was submitted and certified on SMARTS on April 25, 2019. The SWPPP referenced the requirements of Attachment C, Section E.1 to stabilize all construction entrances and exits to sufficiently control erosion and provided BMPs to fulfill the requirement. The SWPPP, Section 3.2.2 Sediment Control referenced the implementation of CASQA BMP Stabilized Construction/Exit TC-1 to comply with such requirement. SWPPP, Table 3.1 BMP Implementation Schedule stated that construction entrance/exit stabilization would be implemented as needed at the Site.

On April 9, 2019, Los Angeles Water Board staff conducted a non-filer inspection and observed inadequate installation of BMPs at the construction entrance and exit to prevent off-site sediment track-out. Rumble plates were filled with sediment and rendered ineffective. Sediment was observed tracked and accumulated onto the street. Los Angeles Water Board staff informed the Site's Project Manager of the BMP deficiency. Therefore, the Discharger was informed of the BMP deficiency at the Site prior to enrolling under the General Permit.

During the July 16, 2019, Los Angeles Water Board inspection, Los Angeles Water Board staff observed the absence of BMPs at the construction entrance and tracking controls. At the conclusion of the inspection, Los Angeles Water Board staff discussed with the Site's Project Manager the lack of BMPs causing sediment track-out was a concern. The Discharger knew of the requirement and was informed of deficiencies, but it failed to have the necessary oversight and accountability measures in place to ensure the necessary BMPs were in place, as is expected of a reasonably prudent person who applies for coverage under the General Permit.

History of Violations: 1.0

Since the Discharger does not have a history of violations, a neutral

multiplier of 1.0 is assigned for this violation.

Cleanup and Cooperation: 1.3

A multiplier of 1.3 is assigned for this violation. On August 15, 2019, the Los Angeles Water Board issued a NOV informing the Discharger that failure to stabilize construction entrances and exits and subsequently causing sediment track-out was a violation. The NOV required the implementation of BMPs to prevent off-site tracking of loose sediment and to maintain appropriate BMPs at all construction entrances and exits. The Discharger failed to respond to the NOV by the September 16, 2019, deadline. On October 22, 2019, Los Angeles Water Board staff emailed and called the Discharger to inquire about an NOV response that was past due. The Discharger stated a response would be provided promptly. However, on November 14, 2019, Los Angeles Water Board staff reminded the Discharger, via email, of the past due NOV response. The Discharger then emailed a response that stated sediment track-out was cleaned and procedures were implemented to prevent future track-out. The Discharger did not specify which procedures and did not provide photographic evidence, identifying measures taken to comply with the NOV. Thus, a 1.3 level of cooperation and cleanup is appropriate for this violation.

Step 5. Total Base Liability

$\$5,500$ (Initial Liability Amount) \times 1.3 (Culpability) \times 1.0 (History of Violations) \times 1.3 (Cleanup and Cooperation) = $\$9,295$

Violation 2: Failure to implement effective perimeter sediment controls

Attachment C, Section E.1 of the General Permit requires Risk Level 1 dischargers to establish and maintain effective perimeter controls to sufficiently control erosion and sediment discharges from the Site.

During the July 16, 2019, Los Angeles Water Board inspection, perimeter sediment controls were observed to be inadequate or missing at the eastern area of the Site. Inadequate perimeter sediment controls included broken gravel bags that were scattered behind a chain linked fence with wind screen.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to this violation.

Step 2. Assessment for Discharge Violations

This factor does not apply to this violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: Moderate

Violation 2 is characterized as a Moderate Potential for Harm. The Enforcement Policy defines Moderate Potential for Harm as “[t]he characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.”

During the July 16, 2019, Los Angeles Water Board inspection, Los Angeles Water Board staff observed missing and ineffective perimeter sediment control BMPs throughout the eastern perimeter of the Site. Failure to install perimeter sediment controls could have resulted in sediment discharge onto nearby streets that have the potential to comingle with stormwater during precipitation events and reach surface waters.

As mentioned above, stormwater at the Site drains indirectly to the Marina del Rey Harbor. Existing beneficial uses of the Marina del Rey Harbor include navigation, commercial and sport fishing, wildlife habitat, and shellfish harvesting. Sediment discharges can cloud the receiving water, thereby reducing the amount of sunlight reaching aquatic plants, clog fish gills, smother aquatic habitat and spawning areas. High concentrations of sediment accumulation along coastal areas can affect suitable habitat for shellfish harvesting by partially or completely burying some shellfish colonies and can interfere with shellfish filter-feeding. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can cause toxicity to aquatic organisms and biotoxin accumulation in shellfish. Such bioaccumulation causes shellfish to be unsuitable for human consumption and thereby affecting the beneficial use. Excess sediment in water poses a moderate level of concern to ecosystem health exposure pathways because of the likelihood that the discharged material would harm aquatic life. Therefore, the Potential for Harm for this violation is characterized as Moderate.

Deviation from Requirement: Moderate

Violation 2 is characterized as a Moderate Deviation from Requirement. The Enforcement Policy defines a Moderate Deviation from Requirement as “[t]he intended effectiveness of the requirement was partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement was only partially achieved).”

The Discharger failed to implement effective perimeter sediment controls at the Site necessary to prevent potential discharges of construction materials. During the July 16, 2019, Los Angeles Water Board inspection, perimeter

control BMPs were inadequately installed at the eastern perimeter of the Site. Perimeter controls were properly implemented at the Site, but the Discharger removed Perimeter controls in the eastern perimeter to start work on the sidewalk. The Discharger failed to maintain effective perimeter controls at the Site as required of a Risk Level 1 Site by the General Permit. Therefore, the Deviation from Requirement for these violations is characterized as Moderate.

Per Day Factor: 0.35

In accordance with Table 3 of the Enforcement Policy, the per day factor for Violation 2 is 0.35.

Initial Liability Amount: \$3,500

The Initial Liability Amount is the (per day factor) x (number of days of violation) x (per day statutory maximum liability).

For Violation 2, the per day factor is 0.35, days of violation is 1, and the per day statutory maximum liability is \$10,000 under Water Code section 13385, subdivision (c).

$$\text{Initial ACL Amount} = 0.35 \times 1 \text{ day} \times \$10,000/\text{day} = \$3,500$$

Step 4. Adjustment Factors

Culpability: 1.3

A multiplier of 1.3 is assigned for this violation because the Discharger knew of the requirement as evidenced by the SWPPP that was submitted and certified on SMARTS on April 25, 2019. The SWPPP referenced the requirements of Attachment C, Section E.1 to establish and maintain effective perimeter sediment controls and provided BMPs to fulfill the requirement. The SWPPP, Section 3.2.2 Sediment Control referenced the implementation of CASQA BMPs Stabilized Fiber Rolls SE-5 and Silt Fence SE-1, which are typical BMPs useful to comply with such requirement. SWPPP, Table 3.1 BMP Implementation Schedule stated that silt fences and fiber rolls would be implemented for the entirety of the project. However, such BMPs were not observed during Los Angeles Water Board inspections.

On April 9, 2019, Los Angeles Water Board staff conducted a non-filer inspection and observed inadequate installation of perimeter sediment control BMPs at the Site. Los Angeles Water Board staff informed the Site's Project Manager of the concern to install effective perimeter sediment controls to prevent track-out of construction materials to public streets. Therefore, the Discharger was informed of the BMP deficiency at the Site prior to enrolling under the General Permit.

At the conclusion of July 16, 2019, inspection, Los Angeles Water Board staff discussed the inspection findings and Site concerns with the Superintendent. The Site's Superintendent stated that perimeter sediment controls were intentionally removed to begin construction work on the sidewalk of the Site during the July 16, 2019, Los Angeles Water Board inspection. Los Angeles Water Board staff informed the Superintendent that removal of BMPs to conduct work on the sidewalk still required, at minimum, a phase out plan for the installation of BMPs to address any potential sediment discharges leaving the Site. Per the General Permit, the Discharger was required to have a plan to replace sediment controls at the end of each day that construction work was conducted on the sidewalk. A reasonable and prudent person would have complied with the General Permit requirements and implemented appropriate BMPs throughout the Site to prevent the violation from occurring.

History of Violations: 1.0

Since the Discharger does not have a history of violations, a neutral multiplier of 1.0 is assigned for this violation.

Cleanup and Cooperation: 1.3

A multiplier of 1.3 is assigned for this violation. On August 15, 2019, the Los Angeles Water Board issued a NOV informing the Discharger that failure to implement adequate perimeter sediment controls at the Site was a violation. The NOV required the application of appropriate perimeter sediment controls throughout the project site. The Discharger failed to respond to the NOV by the September 16, 2019, deadline. On October 22, 2019, Los Angeles Water Board staff emailed and called the Discharger to inquire about an NOV response that was past due. The Discharger stated via email on October 22, 2019, that a response would be provided promptly. However, no response was received and on November 14, 2019, Los Angeles Water Board staff reminded the Discharger, via email, of the past due NOV response. On November 14, 2019, the Discharger emailed a response that stated additional perimeter sediment controls were installed then removed following completion of landscaping at the Site. The Discharger did not specify which controls were implemented and did not provide photographic evidence, identifying measures taken to comply with the NOV. Thus, a score of 1.3 for cooperation and cleanup is appropriate.

Step 5. Total Base Liability

$\$3,500$ (Initial Liability Amount) x 1.3 (Culpability) x 1.0 (History of Violations) x 1.3 (Cleanup and Cooperation) = $\$5,915$

Violation 3: Failure to clean streets to prevent unauthorized non-storm water discharges

Attachment C, Section C.3 of the General Permit requires Risk Level 1 dischargers to clean streets in such a manner as to prevent unauthorized non-storm water discharges from reaching surface water or MS4 drainage systems.

During the July 16, 2019, Los Angeles Water Board inspection, staff observed off-site tracking and accumulation of sediment onto Glencoe Avenue, east of the Site. At the time of the inspection, the Discharger was not sweeping or vacuuming the sediment that had been tracked past the perimeter.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to this violation.

Step 2. Assessment for Discharge Violations

This factor does not apply to this violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: Moderate

Violation 3 is characterized as a Moderate Potential for Harm. The Enforcement Policy defines Moderate Potential for Harm “[t]he characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.”

During the July 16, 2019, Los Angeles Water Board inspection, Los Angeles Water Board staff observed sediment track-out off-site onto a public street; such track-out could have led to sediment discharge in stormwater.

As mentioned above, stormwater at the Site drains indirectly to the Marina del Rey Harbor. Existing beneficial uses of the Marina del Rey Harbor include navigation, commercial and sport fishing, wildlife habitat, and shellfish harvesting. Sediment discharges can cloud the receiving water, thereby reducing the amount of sunlight reaching aquatic plants, clog fish gills, smother aquatic habitat and spawning areas. High concentrations of sediment accumulation along coastal areas can affect suitable habitat for shellfish harvesting by partially or completely burying some shellfish colonies and can interfere with shellfish filter-feeding. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can cause toxicity to aquatic organisms and biotoxin accumulation in shellfish. Such bioaccumulation causes shellfish to be unsuitable for human consumption and thereby affecting the beneficial use. Excess sediment in water poses a moderate level of concern to ecosystem health exposure pathways because of the likelihood that the discharged material would harm aquatic life. Therefore, the Potential for Harm for Violation 3 is characterized

as Moderate.

Deviation from Requirement: Major

Violation 3 is characterized as a Major Deviation from Requirement. The Enforcement Policy defines a Major Deviation from Requirement as “[t]he requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).” The Discharger failed to clean Glencoe Avenue in such a manner as to prevent unauthorized non-storm water discharges to Marina del Rey Harbor.

During the July 16, 2019, Los Angeles Water Board inspection, sediment control BMPs were not installed at the eastern perimeter of the Site. As a result, sediment was tracked off-site. At the time of the inspection, Los Angeles Water Board staff did not observe measures in place to clean the streets. The Discharger disregarded the requirement and its essential function of preventing potential discharges from the Site that could harm beneficial uses of receiving waters. Therefore, the Deviation from Requirement for these violations is characterized as Major.

Per Day Factor: 0.55

In accordance with Table 3 of the Enforcement Policy, the per day factor for Violation 3 is 0.55.

Initial Liability Amount: \$5,500

The Initial Liability Amount is the (per day factor) x (number of days of violation) x (per day statutory maximum liability).

For Violation 3, the per day factor is 0.55, days of violation is 1, and the per day statutory maximum liability is \$10,000 under Water Code section 13385, subdivision (c).

$$\text{Initial Liability Amount} = 0.55 \times 1 \text{ day} \times \$10,000/\text{day} = \$5,500$$

Step 4. Adjustment Factors

Culpability: 1.3

A multiplier of 1.3 is assigned for this violation because the Discharger knew of the requirement as evidenced by the SWPPP that was submitted and certified on SMARTS on April 25, 2019. The SWPPP referenced the requirements of Attachment C, Section C.3 to clean streets in a manner that prevents discharge to surface water or MS4s and provided BMPs to fulfill the requirement. The SWPPP, Section 3.2.2 Sediment Control referenced the implementation of CASQA BMP Street Sweeping SE-7 which is a typical

BMP useful to comply with such requirement. SWPPP, Table 3.1 BMP Implementation Schedule stated that street sweeping would be implemented for the entirety of the project. Los Angeles Water Board staff observed no evidence of street sweeping occurring at the Site during the July 16, 2019, inspection.

On April 9, 2019, Los Angeles Water Board staff conducted a non-filer inspection and observed sediment track-out onto Glencoe Avenue. Los Angeles Water Board staff observed accumulated sediment without perimeter sediment controls. Los Angeles Water Board staff informed the Superintendent of the track-out concerns. The Discharger was therefore aware of requirement to address track-out.

During the July 16, 2019, Los Angeles Water Board inspection, Los Angeles Water Board staff observed sediment tracked onto Glencoe Avenue. BMPs were not in place to have prevented track-out and the Discharger was not actively cleaning impacted streets. Los Angeles Water Board staff informed the Project Manager of the concern to clean sediment track-out. The Discharger knew of the requirement as evidenced by its SWPPP and Los Angeles Water Board staff notification, but it failed to have the necessary oversight and accountability measures in place to ensure the necessary BMPs were in place, as is expected of a reasonably prudent person who applies for coverage under the General Permit.

History of Violations: 1.0

Since the Discharger does not have a history of violations, a neutral multiplier of 1.0 is assigned for this violation.

Cleanup and Cooperation: 1.3

A multiplier of 1.3 is assigned for this violation. On August 15, 2019, the Los Angeles Water Board issued a NOV informing the Discharger of sediment track-out observed past the Site's construction entrance and exit. The Discharger failed to respond to the NOV by the September 16, 2019 deadline. On October 22, 2019, Los Angeles Water Board staff emailed and called the Discharger to inquire about an NOV response that was past due. The Discharger stated via email on October 22, 2019, that response would be provided promptly. However, on November 14, 2019 Los Angeles Water Board staff reminded the Discharger, via email, of the past due NOV response. On November 14, 2019, the Discharger emailed a response that stated track-out was clean and preventative procedures were implemented. The Discharger did not specify which procedures were implemented and did not provide photographic evidence, identifying measures taken to comply with the NOV. Thus, a 1.3 level of cooperation and cleanup is appropriate.

Step 5. Total Base Liability

\$5,500 (Initial Liability Amount) x 1.3 (Culpability) x 1.0 (History of Violations)
x 1.3 (Cleanup and Cooperation) = \$9,295

Violation 4: Failure to implement good site management measures

Attachment C, Section B.2 of the General Permit requires Risk Level 1 dischargers to implement good housekeeping measures for waste management.

During the July 16, 2019, Los Angeles Water Board inspection, trash, dried/wet stucco, and concrete waste materials were observed throughout the project site without proper BMPs in place.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to this violation.

Step 2. Assessment for Discharge Violations

This factor does not apply to this violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: Moderate

Violation 4 is characterized as a Moderate Potential for Harm. The Enforcement Policy defines Moderate Potential for Harm as “[t]he characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.”

During the July 16, 2019, Los Angeles Water Board inspection, Los Angeles Water Board staff observed poor housekeeping practices of waste management throughout the Site, necessary to prevent mobilization of wastes by rain or wind.

As mentioned above, stormwater at the Site drains indirectly to the Marina del Rey Harbor. Existing beneficial uses of the Marina del Rey Harbor include navigation, commercial and sport fishing, wildlife habitat, and shellfish harvesting. Discharges of trash, settleables and floatables, in receiving waters can contribute to sediment contamination and impede the growth of aquatic vegetation, decreasing spawning areas and habitats for fish and other living organisms. Wildlife and shellfish can be harmed by ingesting or becoming entangled in floating trash. Trash in receiving waters is not aesthetically pleasing and deters recreational uses. Trash accumulation in water poses a moderate level of concern to ecosystem

health exposure pathways because of the likelihood that the discharged material would harm aquatic life. Therefore, the Potential for Harm for these violations is characterized as Moderate.

Deviation from Requirement: Major

Violation 4 is characterized as a Major Deviation from Requirement. The Enforcement Policy defines a Major Deviation from Requirement as “[t]he requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).” The Discharger failed to install good housekeeping measures to prevent potential mobilization of loose construction wastes throughout the Site during the Los Angeles Water Board’s July 16, 2019, inspection.

The Discharger disregarded the requirement and rendered it ineffective in its essential function of preventing these materials from being discharged offsite and potentially reaching surface waters. Therefore, the Deviation from Requirement for this violation is characterized as Major.

Per Day Factor: 0.55

In accordance with Table 3 of the Enforcement Policy, the per day factor for Violation 4 is 0.55.

Initial Liability Amount: \$5,500

The Initial Liability Amount is the (per day factor) x (number of days of violation) x (per day statutory maximum liability).

For Violation 4, the per day factor is 0.55, days of violation is 1, and the per day statutory maximum liability is \$10,000 under Water Code section 13385, subdivision (c).

$$\text{Initial Liability Amount} = 0.55 \times 1 \text{ day} \times \$10,000/\text{day} = \$5,500$$

Step 4. Adjustment Factors

Culpability: 1.2

A multiplier of 1.2 is assigned for this violation because the Discharger knew of the requirement as evidenced by the SWPPP that was submitted and certified on SMARTS on April 25, 2019. The SWPPP referenced the requirements of Attachment C, Section B.2 to implement good site management measures for waste management and provided BMPs to fulfill the requirement. The SWPPP, Section 3.3.2 Materials Management and Waste Management referenced the implementation of CASQA BMPs Solid Waste Management WM-05, Concrete Waste Management WE-08, and Stockpile Management WM-03 to comply with the requirement.

On April 9, 2019, Los Angeles Water Board staff conducted a non-filer inspection and observed wet and dried stucco on surface soils without BMPs to contain the construction materials. Los Angeles Water Board staff informed the Superintendent of the housekeeping concerns. The Discharger was therefore aware of the requirement.

During the July 16, 2019, Los Angeles Water Board inspection, stockpiled cardboard and plastic wastes, trash, and dried stucco and concrete waste were observed throughout the Site. The Discharger was aware of the requirements because the Superintendent stated that a new roll-off trash bin had not arrived at the Site, which caused the accumulation of trash on the ground. A reasonable and prudent person would have complied with the General Permit requirements and implemented more BMPs throughout the Site to prevent the violation from occurring.

History of Violations: 1.0

Since the Discharger does not have a history of violations, a neutral multiplier of 1.0 is assigned for this violation.

Cleanup and Cooperation: 1.2

A multiplier of 1.2 is assigned for this violation. On August 15, 2019, the Los Angeles Water Board issued a NOV informing the Discharger that failure to implement good housekeeping measures was a violation. The Discharger failed to respond to the NOV by the September 16, 2019, deadline. On October 22, 2019, Los Angeles Water Board staff emailed and called the Discharger to inquire about an NOV response that was past due. The Discharger stated via email on October 22, 2019, that a response would be provided promptly. However, on November 14, 2019, Los Angeles Water Board staff reminded the Discharger, via email, of the past due NOV response. On November 19, 2019, the Discharger emailed a response that stated the Site was cleaned following the inspection date and that an additional trash bin was acquired for the Site. The Discharger did not specify which housekeeping measures were implemented and did not provide photographic evidence, identifying measures taken to comply with the NOV. Thus, a 1.2 level of cooperation and cleanup is appropriate.

Step 5. Total Base Liability

$\$5,500$ (Initial Liability Amount) \times 1.2 (Culpability) \times 1.0 (History of Violations) \times 1.2 (Cleanup and Cooperation) = $\$7,920$

Violation 5: Failure to maintain a SWPPP on-site

General Permit Section XIV.C requires the discharger to make the SWPPP available at the construction site during working hours while construction is occurring and to be

available upon request by a State or Municipal inspector.

During the July 16, 2019, Los Angeles Water Board inspection, the Discharger failed to have an on-site SWPPP and was unable to provide it to Los Angeles Water Board upon request.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to this violation.

Step 2. Assessment for Discharge Violations

This factor does not apply to this violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: Moderate

Violation 5 is characterized as a Moderate Potential for Harm. The Enforcement Policy defines Moderate Potential for Harm as “[t]he characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.”

During a July 16, 2019, Los Angeles Water Board inspection, the Discharger did not have the SWPPP available onsite and was not able to provide it to Los Angeles Water Board staff upon request. This failure impairs the Discharger’s ability to review sediment and erosion control plans as they evolve during construction to prevent stormwater contamination, control sedimentation and erosion, and comply with General Permit requirements. However, the SWPPP did exist and was available online through SMARTS. Therefore, the Potential for Harm for this violation is characterized as Moderate.

Deviation from Requirement: Major

Violation 5 is characterized as a Major Deviation from Requirement. The Enforcement Policy defines a Major Deviation from Requirement as “[t]he requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).” The Discharger failed to maintain a copy of the SWPPP on-site during active construction activities, which is required by the General Permit. Therefore, the Deviation from Requirement for this violation is characterized as Major.

Per Day Factor: 0.55

In accordance with Table 3 of the Enforcement Policy, the per day factor for Violation 5 is 0.55.

Initial Liability Amount: \$5,500

The Initial Liability Amount is the (per day factor) x (number of days of violation) x (per day statutory maximum liability).

For Violation 5, the per day factor is 0.55, days of violation is 1, and the per day statutory maximum liability is \$10,000 under Water Code section 13385, subdivision (c).

Initial Liability Amount = $0.55 \times 1 \text{ day} \times \$10,000/\text{day} = \$5,500$

Step 4. Adjustment Factors

Culpability: 1.3

A multiplier of 1.3 was assigned for this violation because the General Permit requires the Discharger to make the SWPPP available at the construction site during working hours and while construction is occurring. The Discharger developed and submitted a SWPPP via SMARTS on April 25, 2019, therefore, the Discharger should have had a copy or an iteration of the SWPPP on-site. Although the General Permit clearly requires that a SWPPP be available on Site, the Dischargers did not maintain a SWPPP at the Site. A reasonable and prudent person would have complied with the General Permit requirement to maintain a copy of the SWPPP on-site. This noncompliance evidences, at best, a negligent deviation from the standard of care. Therefore, a multiplier of 1.3 was assessed.

History of Violations: 1.0

Since the Discharger does not have a history of violations, a neutral multiplier of 1.0 is assigned for this violation.

Cleanup and Cooperation: 1.3

A multiplier of 1.3 was assigned for this violation. The Discharger was informed of the violation during the July 16, 2019, Los Angeles Water Board inspection. On August 15, 2019, the Los Angeles Water Board issued a NOV informing the Discharger of the violation. The Discharger failed to respond to the NOV by the September 16, 2019, deadline and Los Angeles Water Board staff requested a response on October 22, 2019, and November 14, 2019 via email. On November 14, 2019, the Discharger responded to the NOV and stated that the SWPPP was now on-site.

Step 5. Step 5. Total Base Liability

\$5,500 (Initial Liability Amount) x 1.3 (Culpability) x 1.0 (History of Violations)
x 1.3 (Cleanup and Cooperation) = \$9,295

Violation 6: Failure to perform weekly inspections

General Permit Attachment C, Section G requires Risk Level 1 dischargers to perform weekly inspections and observations to identify and record BMPs that need maintenance to operate effectively, that have failed, or that could fail to operate as intended. Inspectors shall be the QSP or be trained by the QSP and inspections must be recorded on checklists that remain on-site.

Following enrollment under the General Permit on June 4, 2019, the Discharger failed to conduct weekly inspections by a Qualified Industrial SWPPP Practitioner (QSP) or by a staff under the direction of a QSP. The Prosecution Team is using the date of enrollment as the start date for the violation. During the Los Angeles Water Board's July 16, 2019, inspection, Site inspection records were not available for on-site review and Site staff were unaware of the requirement to conduct weekly inspections. Additionally, on August 15, 2019, the Regional Board issued an NOV requesting the submittal of weekly inspection reports. The Discharger did not provide records of weekly inspections. The Discharger later submitted a Notice of Termination that reported the completion of the project, using a 70% Final Cover Method, on August 21, 2019. The Prosecution Team is using the date the project was reportedly complete as the end date for the violation. A total of 12 weekly inspections were required to be completed from June 4, 2019, to August 21, 2019.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to this violation.

Step 2. Assessment for Discharge Violations

This factor does not apply to this violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: Moderate

Violation 6 is characterized as a Moderate Potential for Harm. The Enforcement Policy defines Moderate Potential for Harm as “[t]he characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.”

This failure impairs the Discharger’s ability to assess the effectiveness of BMP management and implementation during construction to prevent

stormwater contamination, control sedimentation and erosion, and comply with General Permit requirements. Therefore, the Potential for Harm for this violation is characterized as Moderate.

Deviation from Requirement: Major

Violation 6 is characterized as a Major Deviation from Requirement. The Enforcement Policy defines a Major Deviation from Requirement as “[t]he requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).” The Discharger failed to perform weekly inspections, which is required by the General Permit. Therefore, the Deviation from Requirement for this violation is characterized as Major.

Per Day Factor: 0.55

In accordance with Table 3 of the Enforcement Policy, the per day factor for Violation 6 is 0.55.

Initial Liability Amount: \$66,000

The Initial Liability Amount is the (per day factor) x (number of days of violation) x (per day statutory maximum liability).

For Violation 6, the per day factor is 0.55, days of violation is 12 and the per day statutory maximum liability is \$10,000 under Water Code section 13385, subdivision (c).

Initial Liability Amount = 0.55 x 12 days x \$10,000/day = \$66,000

Step 4. Adjustment Factors

Culpability: 1.3

A multiplier of 1.3 is assigned for this violation because the Discharger knew of the requirement as evidenced by the SWPPP that was submitted and certified on SMARTS on April 25, 2019. The SWPPP, Section 7 Construction Site Monitoring Program listed the referenced the requirements of Attachment C, Section G. Additionally, SWPPP, Appendix I included a copy of a BMP Inspection Report form that included columns for weekly, pre-storm, and post-storm documentation.

The General Permit requires weekly inspections to be recorded. All inspection records must be available on-site. During the July 16, 2019, Los Angeles Water Board inspection, the Site’s Superintendent and Senior Project Engineer informed Los Angeles Water Board staff that they were unaware that weekly inspections were required and were unaware of any inspection report records for the Site. Therefore, records were unavailable

because weekly inspections were not conducted at the Site. A reasonably prudent person who applies for coverage under the General Permit would have had necessary oversight and accountability measures in place to ensure that all workers involved in construction activities adhere to the requirements of the General Permit. Therefore, a multiplier of 1.3 was assessed.

History of Violations: 1.0

Since the Discharger does not have a history of violations, a neutral multiplier of 1.0 is assigned for this violation.

Cleanup and Cooperation: 1.3

A multiplier of 1.3 is assigned for this violation. On August 15, 2019, the Los Angeles Water Board issued a NOV to the Discharger. The Discharger failed to respond to the NOV by the September 16, 2019, deadline; on October 22, 2019 and November 14, 2019 Los Angeles Water Board staff emailed requests for the Discharger to respond to the NOV. On November 14, 2019, the Discharger responded to the Los Angeles Water Board's NOV and stated that inspection reports were incorporated into the on-site SWPPP. However, the Discharger did not provide copies of completed inspection reports.

Step 5. Total Base Liability

$\$66,000$ (Initial Liability Amount) \times 1.3 (Culpability) \times 1.0 (History of Violations) \times 1.3 (Cleanup and Cooperation) = $\$111,540$

Violation 7: Failure to ensure a Qualified SWPPP Practitioner (QSP) was designated for the construction project to implement BMPs and perform weekly inspections

Section VII.B.3. of the General Permit requires that dischargers shall ensure that all BMPs required by this General Permit are implemented by a QSP. A QSP is a person responsible for non-storm water and storm water visual observations, sampling and analysis. Attachment C, Section G.1 of the General Permit also requires that Risk Level 1 dischargers shall ensure that all inspection, maintenance repair and sampling activities at the project location shall be performed or supervised by a Qualified SWPPP Practitioner (QSP) representing the discharger. The QSP may delegate any or all of these activities to an employee trained to do the task(s) appropriately but shall ensure adequate deployment.

On June 4, 2019, the construction site enrolled under the General Permit and later filed a Notice of Termination via SMARTS, which stated the date of project completion was August 21, 2019. Throughout active General Permit enrollment the project did not have a QSP to ensure BMP implementation and to conduct weekly inspections at the site.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to this violation.

Step 2. Assessment for Discharge Violations

This factor does not apply to this violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: Moderate

Violation 7 is characterized as a Moderate Potential for Harm. The Enforcement Policy defines Minor Potential for Harm as “[t]he characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.”

The failure to have a properly trained person conducting inspections presents a substantial threat to beneficial uses because the Discharger did not have trained staff to identify BMPs that need maintenance, had failed, or could fail to operate as intended. Therefore, the Potential for Harm for this violation is characterized as Moderate.

Deviation from Requirement: Major

Violation 7 is characterized as a Major Deviation from Requirement. The Enforcement Policy defines a Major Deviation from Requirement as “[t]he requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).” The Discharger failed to ensure that a properly trained person, either a QSP or a person trained by a QSP, performed or supervised the inspections and non-stormwater and stormwater monitoring as required by the General Permit, rendering the requirement ineffective in its essential functions. Therefore, the Deviation from Requirement for this violation is characterized as Major.

Per Day Factor: 0.55

In accordance with Table 3 of the Enforcement Policy, the per day factor for Violation 7 is 0.55.

Multiple Day Violations: 36 days

As described above, the start date of the violation is June 4, 2019, with an end date of August 21, 2019. Thus, the violation occurred for 79 days. For violations that are assessed a civil liability on a per day basis and do not constitute a single operational upset, the initial liability amount is assessed

for each day up to thirty (30) days. For violations that last more than thirty days, the daily assessment can be less than the daily assessment as long as the violation: Is not causing daily detrimental impacts to the environment and is not causing detrimental impacts to the regulatory program; Results in no discrete economic benefit from the illegal conduct that can be measured on a daily basis; or, Occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation.

The Water Boards are within their discretion to decline to collapse days, or to collapse days at any level deemed appropriate between the maximum suggested number of collapsed days and the actual number of days of violation. In cases where days of violation are collapsed, the liability shall not be less than an amount that is calculated based on an assessment of the initial Total Base Liability Amount for the first 30 days of the violation, plus an assessment for each 5-day period of violation, until the 60th day, plus an assessment for each 30 days of violation thereafter. Here, the violation resulted in no discrete economic benefit that can be measured on a daily basis. Therefore, the Prosecution Team has collapsed the number of days of violation from 79 to 36.

Initial Liability Amount: \$198,000

The Initial Liability Amount is the (per day factor) x (number of days of violation) x (per day statutory maximum liability).

For Violation 7, the per day factor is 0.55, days of violation is 36, and the per day statutory maximum liability is \$10,000 under Water Code section 13385, subdivision (c).

$$\text{Initial Liability Amount} = 0.55 \times 36 \text{ days} \times \$10,000/\text{day} = \$198,000$$

Step 4. Adjustment Factors

Culpability: 1.3

A multiplier of 1.3 is assigned for this violation. The General Permit requires that dischargers ensure that a QSP, or a person properly trained by a QSP, perform or supervise their weekly inspections and BMP implementation. A reasonable and prudent person would have either had the QSP on-site to supervise inspections and BMP implementation, had the QSP perform the inspection, or had the QSP train them to conduct inspections. Therefore, a multiplier of 1.3 was assessed.

History of Violations: 1.0

Since the Discharger does not have a history of violations, a neutral multiplier of 1.0 is assigned.

Cleanup and Cooperation: 1.2

A multiplier of 1.2 is assigned for this violation. The Discharger failed to ensure that a QSP conducted inspections and BMP implementation as required by the General Permit during the 79 days of construction activities.

Step 5. Total Base Liability

\$198,000 (Initial Liability Amount) X 1.3 (Culpability) X 1.0 (History of Violation) X 1.2 (Cleanup and Cooperation) = \$308,880

Table 1. Total Base Liability for All Violations

Violation	Violation Description	Proposed Liability	Maximum Liability	No. of Days
1	Failure to stabilize construction entrances and exits to sufficiently control erosion and sediment discharges from the Site	\$9,295	\$10,000	1 day
2	Failure to implement adequate perimeter sediment controls	\$5,915	\$10,000	1 day
3	Failure to clean streets to prevent unauthorized non-storm water discharges	\$9,295	\$10,000	1 day
4	Failure to implement and maintain good housekeeping measures for waste management	\$7,920	\$10,000	1 day
5	Failure to provide a SWPPP on-site	\$9,295	\$10,000	1 day
6	Failure to maintain on-site records of weekly inspection records	\$111,540	\$120,000	12 days
7	Failure to ensure a Qualified SWPPP Practitioner (QSP) was designated for the construction project to implement BMPs and perform non-storm water	\$308,880	\$790,000	79 days

	and storm water visual observations			
TOTAL		\$462,140	\$960,000	96 days

Step 6. Ability to Pay:

The Enforcement Policy requires the Los Angeles Water Board to analyze the Discharger’s ability to pay the Total Base Liability and the effect paying the Total Base Liability may have on the Discharger’s ability to continue in business. The Discharger is a multimillion-dollar commercial real estate development and property management company. The Discharger has been in business for over 50 years and has a tenant retention rate and average occupancy in excess of 95%. The Discharger currently manages the INclave project in addition to several other projects in Los Angeles County. The INclave project is a mixed-use development in the Marina Arts District of Marina Del Rey with a 2,160 square foot café, 65,000 square foot state-of-the-art creative office space, 49 apartment units, and 282 parking spaces. Some apartment units are currently listed for over \$5,000/month in rent. Therefore, the Discharger has the ability to pay the Total Base Liability and continue in business. The Discharger may present financial information for the Prosecution Team and Board’s review if it would like to assert a reduction in the penalty amount based on an inability to pay.

Step 7. Economic Benefit: \$13,634

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) 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 2021.0.0. For this case, BEN was determined to be the appropriate method. 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 economic benefit for this case comprised of costs associated with the following violations. For Violation 1, the failure to stabilize construction entrances and exits to sufficiently control erosion and sediment discharges from the Site, there was an associated cost of \$2,400. For Violation 2, the failure to implement adequate perimeter sediment controls, there was an associated cost of \$487 to adequately control the sediment for the approximately 120 feet of perimeter control needed at the Site. It is assumed that proper BMPs, such as stabilized entrances and exits and adequate perimeter controls, would have prevented Violation 3, and therefore, the economic benefit for Violation 3, the failure to clean streets to prevent unauthorized non-storm water discharges, is included in Violations 1-2. For the failure to implement and maintain good housekeeping measures in Violation 4, the associated cost for containers needed for trash, debris and concrete washout was \$293. The cost associated with Violation 5, the failure to maintain a SWPPP on-site, is negligible. For the failure to ensure that the Site had a QSP to supervise BMP implementation and conduct weekly inspections in Violation

7, there is an associated cost of \$15,945 for 110 missed weekly inspections. The costs for Violation 6, the failure to maintain on-site records of weekly inspection records, are included in Violation 7.

The BEN model was used to determine the economic benefit of the avoided and delayed expenditures described above to be approximately \$13,634.

Step 8. Other Factors As Justice May Require

If the Los Angeles Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for “other factors as justice may require,” but only if express findings are made to justify this adjustment.

Staff Cost: \$8,538

The Enforcement Policy allows for the costs of investigation and enforcement to be considered under other factors as justice may require. To date, the Regional Board has incurred \$8,538 in staff costs associated with the investigation, preparation, and enforcement of the violations. This represents approximately 75 hours of staff time devoted to inspecting the Site, meetings, communications, and drafting the enforcement documents. No attorneys’ fees are included in this calculation. The Prosecution Team finds that it is appropriate to increase the Total Base Liability by \$8,538 in consideration of investigation and enforcement costs incurred in prosecuting this matter. Increasing the Total Base Liability in this manner serves to create a more appropriate deterrent against future violations.

Step 9. Maximum and Minimum Liability Amounts

The Enforcement Policy directs the Los Angeles Water Board to consider maximum and minimum liability amounts set forth in the applicable statutes.

- a. Statutory Maximum: The statutory maximum is \$10,000 per day for each violation pursuant to California Water Code Section 13385. Therefore, the statutory maximum is set as \$960,000.
- b. Statutory Minimum: The Enforcement Policy requires the Los Angeles Water Board to recover, at a minimum, 10% more than the economic benefit. Therefore, the statutory minimum is set at \$14,997.

Step 10. Final Liability Amount: \$470,678

To determine the final liability amount, liabilities for each violation were summed together, provided the amounts were within the statutory minimum and maximum amounts. The total summed amount for liabilities of violations was added to total staff cost accrued by the Los Angeles Water Board. Therefore, the final liability amount is assessed at \$470,678. The total penalty reflects the seriousness of potential impacts to water quality. Despite having CGP coverage for a relatively brief period of time during dry summer

months, there were still inadequacies in preventing erosion, maintaining perimeter considers the available evidence, Board staff's percipient knowledge of the Site, interactions with the Discharger, and consideration of a penalty that will communicate the appropriate enforcement message to this Discharger as well as the regulated community as a whole.

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Steaven Jones Development Company (hereafter Discharger) in connection with Administrative Civil Liability Complaint R4-2023-0027 (hereafter Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing."

(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **\$470,678** by check that references "ACL Complaint R4-2023-0027" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Regional Board by **5:00 p.m. on March 27, 2023** or this matter will be placed on the agenda for a hearing as initially proposed in the Complaint.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Regional Board receive significant new information or comments during this comment period, the Regional Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.) I hereby waive any right the Discharger may have to a hearing before the Regional Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Regional Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Regional Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)