

**ATTACHMENT A TO STIPULATED ORDER R6T-2024-0003  
ALLEGED VIOLATIONS AND FACTORS IN DETERMINING  
ADMINISTRATIVE CIVIL LIABILITY**

**TOWN OF TRUCKEE AND TEICHERT CONSTRUCTION  
COLDSTREAM ROUNDABOUT  
NEVADA COUNTY**

This document provides details to support a discretionary monetary liability in response to The Town of Truckee and Teichert Construction's alleged violations of the *NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ, as amended by 2010-0014-DWQ* (Construction General Permit or Permit) at the Coldstream Roundabout (Site) construction project. The Site is at the intersection of Coldstream Road, Donner Pass Road, and eastbound Interstate 80, in Truckee, Nevada County. Within this document, the Town of Truckee and Teichert Construction are either referred to jointly as "Dischargers" or individually as "Town" or "Teichert".

The Lahontan Regional Water Quality Control Board (Lahontan Water Board) Prosecution Team has derived the proposed administrative civil liability by applying the State Water Resources Control Board's (State Water Board) 2017 Water Quality Enforcement Policy<sup>1</sup> (Enforcement Policy).

**Application of the Enforcement Policy**

The Enforcement Policy establishes a methodology for assessing administrative civil liability to address the factors required by California Water Code section 13385, subdivision (e), including "...the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its 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 that justice may require." This document applies the methodology associated with the Enforcement Policy's steps, as discussed in detail below.

**Construction Project and Responsible Parties**

On June 29, 2021, the Town submitted a Notice of Intent (NOI) for the Coldstream Roundabout. As required by the Construction General Permit, the NOI included a Storm Water Pollution Prevention Plan (SWPPP) which described the project as the

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<sup>1</sup>[WATER QUALITY ENFORCEMENT POLICY \(ca.gov\)](https://www.waterboards.ca.gov/water_quality/policies/enforcement_policies/)

replacement of an existing four-way stop-controlled intersection with a roundabout. The project was scheduled to be completed within the 2021 construction season; however, it extended through the 2022 construction season. On July 24, 2023, Lahontan Water Board staff accepted the Notice of Termination for the Coldstream Roundabout construction project.

The Lahontan Water Board Prosecution Team has determined that the Town and Teichert are jointly liable for alleged violations of the Construction General Permit at the Site. The Town is the Legally Responsible Party (LRP) and hired Teichert as the contractor to complete the project. Case law makes operators liable under the Clean Water Act if they have responsibility for, or control over, the activities that caused violations. Teichert, as the operator, had responsibility for, and control over, the activities that caused the alleged violations. For example, the Section 100.1 of the SWPPP states “The SWPPP was developed by the Contractor [i.e., Teichert] and submitted for review and acceptance to the RE [Resident Engineer, i.e., Michael Vaughn of the Town] ...The Contractor is responsible for and liable at all times for compliance with applicable requirements of the [Construction General Permit] ...”

Teichert hired Tully Consulting Group (Tully) to prepare the SWPPP. Teichert submitted the SWPPP to the Town for approval, and the Town signed off on the SWPPP. Therefore, both parties were aware of the contents of the SWPPP and its requirements. Teichert also hired Tully to act as the Qualified Stormwater Practitioner (QSP) and complete the QSP-related tasks required by the Construction General Permit, including reporting violations to Teichert. The Prosecution Team alleges herein that Teichert should have been more diligent in reviewing its QSP's reports and addressing storm water management actions at the Site. During the two construction seasons, Teichert's work was inspected by the Town. The Town should have been familiar with the Construction General Permit and upon observing violations, should have ordered its contractor to comply with the Permit. In summary, both the Town and Teichert are responsible for the violations of the Construction General Permit alleged herein.

A number of legal theories can support naming an appropriate party as a “discharger” beyond the LRP. Based on interactions with both the Town and Teichert, the Prosecution Team asserts that it is appropriate to name both parties and have them respond jointly or independently. Liability would be joint and several, and the regional boards do not apportion liability. When examining discharger-specific factors, sometimes the shortcomings of Teichert and Town were similar and should be judged similarly. For other alleged violations, there was specific conduct that impacted the Enforcement Policy factor ultimately selected. In these cases, the more egregious conduct was noted and utilized as a basis for the penalty factor.

## Summary of Alleged Violations

This administrative civil liability addresses alleged violations of the Construction General Permit that occurred from the start of construction in early July 2021 through submittal of the Notice of Termination on November 29, 2022.

Table 1, below, summarizes the seven alleged violations that are the subject of this liability assessment and the Enforcement Policy factors that were used to determine a recommended penalty. The remainder of this document contains a full description of each alleged violation, a complete assessment of the factors used to determine the base liability for each alleged violation, and a discussion of the additional five factors used to determine the final proposed liability.

This recommended penalty assessment represents a significant penalty across a broad range of basic Construction General Permit requirements. The Prosecution Team is proceeding against both Teichert and the Town due to disregard for some regulatory requirements while undertaking a significant construction project. Repeated violations can represent a lack of planning or inexperience, which we do not consider to be the case here. As we have outlined in this document, the Prosecution Team is not pursuing every potential violation at this time, but we do want to stress the types of violations noted herein and the inadequate response by the Dischargers. Pursuing monetary enforcement remains discretionary for the regional board, and enforcement resources are limited. However, given the persistent nature of the alleged violations during the construction project, the failure to quickly and completely resolve alleged violations when specifically identified, and the lack of weekly inspections during certain portions of the winter, which are designed to be a “first line” defense mechanism to protect against environmental harm, a penalty was necessary in this instance.

**Table 1: Summary of Alleged Violations**

<b>Alleged Violations</b>	<b>Potential for Harm and Deviation from Requirements</b>	<b>Days of Violation</b>	<b>Culpability</b>	<b>History of Violation</b>	<b>C/C<sup>2</sup></b>	<b>Base Liability</b>
1.Failure to maintain a physical copy of the SWPPP on-site. <i>CGP Section XVI states that SWPPP shall be available on site. Dischargers did not have SWPPP on-site from at least August 9-16, 2021 and July 14-18, 2022.</i>	Harm=moderate Dev=-minor  Per Day Factor (PDF)= 0.25	12 days	1.3	1.0	1.2	\$46,800

<sup>2</sup> Cleanup and Cooperation

Table 1: Summary of Alleged Violations

Alleged Violations	Potential for Harm and Deviation from Requirements	Days of Violation	Culpability	History of Violation	C/C <sup>2</sup>	Base Liability
2. Failure to perform weekly inspections. <i>CGP Attach D, Section G.2 requires weekly inspections. Dischargers did not inspect weekly for 24 weeks,</i>	Harm=moderate Dev=moderate  PDF=0.35	24 days	1.3	1.0	1.3	\$141,960
3. Failure to implement BMPs related to good housekeeping for construction materials ( <i>CGP Attach D, Section B.1</i> ). <i>Dischargers had 27 alleged violations found during 19 inspections (33% of inspections found this type of alleged violation). Solid waste/trash/asphalt concrete waste not cleaned up, material not in secondary containment, piles of asphalt concrete not properly stored, stockpiles without BMPs.</i>	Harm=moderate Dev =moderate  PDF=0.35	19 days	1.3	1.0	1.2	\$103,740
4. Failure to implement BMPs related to good housekeeping for waste management ( <i>CGP Attach D, Section B.2</i> ). <i>Dischargers had 24 alleged violations found during 21 inspections). Portable toilet needed secondary containment, spill response plan and spill kit not on-site.</i>	Harm=moderate Dev =moderate  PDF=0.35	21 days	1.3	1.0	1.2	\$114,660
5. Failure to implement BMPs related to good housekeeping for vehicle storage and maintenance ( <i>CGP Attach D, Section B.3</i> ). <i>Dischargers had 14 alleged violations found during 13 inspections (22% of inspections found this type of alleged violation). Oil/grease/fuel drips and leaks, paving equipment needed BMPs.</i>	Harm=moderate Dev = minor  PDF=0.25	13 days	1.3	1.0	1.1	\$46,475

Table 1: Summary of Alleged Violations						
Alleged Violations	Potential for Harm and Deviation from Requirements	Days of Violation	Culpability	History of Violation	C/C <sup>2</sup>	Base Liability
6. Failure to implement BMPs related to erosion control (CGP Attach D, Section D). Dischargers had 9 alleged violations found during 9 inspections (16% of inspections had this type of alleged violation). BMPs damaged by storms, missing BMPs, BMPs needing maintenance.	Harm=moderate Dev = minor  PDF=0.25	9 days	1.3	1.0	1.1	\$32,175
7. Failure to implement BMPs related to sediment control (CGP Attach D, Section E). Dischargers had 48 alleged violations found during 20 inspections (34% of inspections found this type of alleged violation). Fiber rolls not properly installed or need maintenance, silt fence needed maintenance, damaged BMPs, entrance/exits not stabilized, missing BMPs around storm drains, sediment in ditch leading to storm drain, sediment on road.	Harm=moderate Dev =moderate  PDF=0.35	20 days	1.3	1.0	1.3	\$118,300
Combined Base Liability of all violations:	\$604,110					
Ability to Pay and Continue in Business:	The Town and Teichert have the ability to pay and remain in business.					
Other Factors as Justice May Require:	Reduce penalty by 10% for litigation risk (subtract \$60,411), and then add staff costs of \$16,002 to the Combined Base Liability.					
Economic Benefit:	\$73,984					
Statutory Maximum Liability:	\$1,180,000					
Statutory Minimum Liability plus 10%:	\$81,382					
Final Proposed Liability:	\$559,701					

**ALLEGED VIOLATION 1:  
Failure to Maintain a SWPPP At Construction Site**

The Construction General Permit requires that a discharger prepare, implement, and maintain on-site a SWPPP that (a) is designed to control all pollutants and their sources and (b) contains BMPs designed to reduce or eliminate pollutants in storm water discharges. The SWPPP must be physically available at the construction site during working hours.

Lahontan Water Board staff's inspection on August 9, 2021 found that the SWPPP was not on-site. This alleged violation continued for seven days, through August 16, 2021 when the Dischargers' QSP submitted a response to the Water Board's inspection report documenting that the SWPPP had been placed on-site. Lahontan Water Board staff inspected the site again on July 14, 2022, during the second year of construction, and found that the SWPPP was not physically on-site. This alleged violation continued for at least four days, through July 18, 2022, when the Dischargers' project manager "personally attested" that the SWPPP had been placed on-site.

The failure to have a physical copy of a SWPPP on-site is a violation of Section XIV.C of the Construction General Permit, as follows:

Section XIV.C states in part, "*The discharger shall make the SWPPP available at the construction site during working hours while construction is occurring and shall be made available upon request by a State or Municipal inspector...*"

**Step 1. Potential for Harm for Discharge Violations**

This step is not applicable because this alleged violation is a non-discharge violation.

**Step 2. Assessment for Discharge Violations**

This step is not applicable because this alleged violation is a non-discharge violation.

**Step 3. Per Day Assessment for Non-Discharge Violations**

The "per day" factor is calculated for each non-discharge violation considering (a) the potential for harm and (b) the extent of deviation from the applicable requirements.

**Potential for Harm: Moderate**

The Enforcement Policy requires a determination of whether the characteristics of the alleged violation resulted in a minor, moderate, or major potential for harm or threat to beneficial uses.

Storm water from the site flows to Donner Creek, a tributary of the Truckee River. The beneficial uses of Donner Creek, as described in the Water Quality Control Plan for the Lahontan Region (Basin Plan),<sup>3</sup> are municipal and domestic supply; agricultural supply; groundwater recharge; water contact recreation; noncontact water recreation; commercial and sportfishing; cold freshwater habitat; wildlife habitat; rare, threatened, or endangered species; migration of aquatic organisms; and spawning, reproduction, and development.

The beneficial uses of the Truckee River as described in the Water Quality Control Plan for the Lahontan Region, are: municipal and domestic supply; agricultural supply;

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<sup>3</sup> [Chapter 2 Present and Potential Beneficial Uses \(ca.gov\)](#)

industrial supply; groundwater recharge; freshwater replenishment; hydropower generation; water contact recreation; noncontact water recreation; commercial and sportfishing; cold freshwater habitat; wildlife habitat; rare, threatened, or endangered species; migration of aquatic organisms; and spawning, reproduction, and development.

The construction site is immediately adjacent to Donner Creek. The Dischargers' failure to physically maintain a SWPPP at the construction site resulted in the potential for water quality impacts. Although the Dischargers prepared a SWPPP, it was not physically on-site<sup>4</sup> and therefore not available in hard copy for construction personnel to refer to and apply the BMPs described therein. The failure to implement this requirement has "substantially impaired the Water Boards' ability to perform their statutory and regulatory functions, present[s] a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm." The Enforcement Policy states that most non-discharge violations should be considered to present a moderate potential for harm. Based on the above, a value of moderate is warranted.

Deviation from Requirement: *Minor*

The Enforcement Policy requires determination of whether the alleged violation represents a minor, moderate, or major deviation from the applicable requirements. According to the Enforcement Policy, a minor deviation from requirement is appropriate when "the intended effectiveness of the requirement remained generally intact (e.g., while the requirement was not met, its intended effect was not material compromised)." A minor factor is appropriate because the Dischargers had an electronic version of the SWPPP even though a hard copy was not onsite.

Per Day Factor: 0.25

Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.25 is assigned.

**Step 4. Adjustment Factors**

The Enforcement Policy states that three additional factors must be considered for potential modification of the liability amount: (a) the Dischargers' degree of culpability, (b) the Dischargers' prior history of violations, and (c) the Dischargers' voluntary efforts to clean up or cooperate with regulatory authorities after the violation. The Prosecution Team has reviewed the conduct of both Teichert and the Town in consideration of an appropriate penalty.

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<sup>4</sup> The Dischargers state that it was available electronically.

Culpability: 1.3

The Enforcement Policy states that higher liabilities should result from intentional or negligent violations as opposed to accidental violations.

A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier for intentional misconduct or gross negligence.

The Dischargers are fully responsible for failing to have a SWPPP at the construction site. The Construction General Permit requires that a SWPPP be present, as does the Dischargers' own SWPPP, which states "*The SWPPP shall be readily available on site for the duration of the project*<sup>5</sup>." The SWPPP also includes a copy of the Construction Stormwater Permit as an appendix. In submitting an NOI, the Town obligated itself to comply with the requirements of the CGP. Its obligations cannot be fulfilled by hiring or delegating to Teichert.

Lahontan Water Board staff inspected the site during the 2021 construction season, on August 9, 2021, and found that the SWPPP was not physically available on-site. The SWPPP was placed on-site seven days later. Construction ceased for the winter in late November 2021 and did not resume until May 18, 2022. Lahontan Water Board staff inspected the site on July 14, 2022, and found that once again the SWPPP was not physically available on-site.

Lahontan Water Board staff provided approximately two weeks advance notice of the inspection planned for July 14, 2022. The Dischargers should have used this time to ensure that they were complying with all aspects of the Construction General Permit, including maintaining the SWPPP at the site. However, as stated in the Lahontan Water Board's July 21, 2022 inspection report,

*"I asked Teichert staff (Ryan Payne) to show me the physical copy of the SWPPP document and related required documents. Teichert staff (Ryan Payne) stated that Teichert did not have physical copies of the SWPPP and related and required documents but could print out a copy...at his office. Teichert staff (Ryan Payne) also stated that there was no current plan in place to maintain a physical copy of the SWPPP...on-site..."*

Teichert was the party who was in control of on-site activities, although both Dischargers received notices of inspection reports and communications from Water Board staff. The Dischargers' lack of maintaining a SWPPP at the construction site, especially during the 2022 construction season, was not a case of accidental forgetfulness. Keeping a SWPPP on-site and available to construction personnel is a

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<sup>5</sup> Section 200 of the SWPPP for Coldstream Roundabout Project, dated June 15, 2021 and prepared by Tully Consulting Group.



standard requirement of the Construction General Permit and in fact, the Dischargers' own SWPPP re-states this requirement.

Although the Dischargers could argue that they should be assigned a Culpability factor of just over 1.0 for the failure to have a SWPPP on-site during the 2021 construction season, it is not possible to make the same argument for the 2022 construction season. The Dischargers received an August 9, 2021 Staff Enforcement Letter for, among other alleged violations, the failure to have a SWPPP on-site during 2021, were explicitly told by Lahontan Water Board staff that a SWPPP was required on-site and were provided with approximately two weeks advance notice of the July 14, 2022 inspection. The Dischargers exhibited an apparent disregard for the Construction General Permit by failing to have the SWPPP on-site for multiple days during the 2022 construction season. An average culpability factor, considering both the 2021 and 2022 alleged violations, of 1.3 is appropriate. This factor is applicable to either Discharger and considers the knowledge of the continuing alleged violation and the ability to resolve it.

History of Violation: 1.0

When there is a history of repeat violations, the Enforcement Policy requires a minimum multiplier of 1.1, with higher values as appropriate. The Dischargers do not have a history of adjudicated violations; therefore, a multiplier of 1.0 is appropriate.

Cleanup and Cooperation: 1.2

This factor reflects the extent to which a discharger voluntarily cooperates in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation.

Lahontan Water Board staff inspected the site on August 9, 2021 and found that the SWPPP was not on-site, even though the Dischargers' own SWPPP states that it shall be kept at the job site. Staff reminded Teichert – both during the inspection, and in an email later that same day- that the Construction General Permit requires the SWPPP to be available on-site. A reasonable and prudent discharger would have placed a copy of the SWPPP at the construction site immediately. However, the Dischargers continued to violate the Construction General Permit for seven days, through August 16, 2021 when the QSP documented that the SWPPP had been placed on-site.

Lahontan Water Board staff inspected the site again on July 14, 2022, during the second year of construction, and found that the SWPPP was not physically on-site. The Prosecution Team consider this second failure to have a SWPPP on-site to be a blatant disregard of the Construction General Permit, given that (a) the SWPPP contains text that clearly states that it shall be available at the site, (b) Teichert had previously been notified of the same alleged violation in 2021, (c) Lahontan Water Board staff provided approximately two weeks advance notice prior to the inspection, and (d) the alleged

violation continued for at least four days, through July 18, 2022, when the Dischargers' project manager (Ryan Payne) "personally attested" that the SWPPP had been placed on-site.

Given the lack of cooperation in complying with the Construction General Permit's requirement to maintain the SWPPP on-site, a cleanup and cooperation factor of 1.2 is appropriate.

Days of Violation: 12 days

Lahontan Water Board staff inspected the site on August 9, 2021 and determined that a SWPPP was not present. This alleged violation continued for seven days, through August 16, 2021. Lahontan Water Board staff inspected the site again on July 14, 2022 and found that the SWPPP was not on-site. This alleged violation continued for four days, through July 18, 2022. In total, there were 21 days of alleged violation. The Enforcement Policy does not allow days of violation to be compressed for violations that are 30 days or less.

**Step 5. Total Base Liability and Statutory Maximum Liability Amount**

The Total Base Liability is determined by multiplying the following: the Per Day Factor, the number of days, the statutory maximum of \$10,000 per day, the degree of culpability factor, the history of violations factor, and the cleanup and cooperation factor.

The statutory maximum liability is determined by multiplying the number of days by the statutory maximum (\$10,000/day, as described in Water Code section 13385).

**Total Base Liability: Alleged Violation 1**

$$0.25 \times 12 \text{ days} \times \$10,000/\text{day} \times 1.3 \times 1.0 \times 1.2 = \$46,800$$

**Statutory Maximum: Alleged Violation 1**

$$12 \text{ days} \times \$10,000/\text{day} = \$120,000$$

**ALLEGED VIOLATION 2:**

**Failure to Perform Weekly Inspections**

The Construction General Permit requires that a discharger perform weekly inspections at construction sites. These inspections are to be performed or supervised by a QSP representing the discharger.

This Complaint alleges that the Dischargers failed to perform weekly inspections for the week of November 1, 2021 (one inspection), from the week of November 29, 2021 through the week of January 31, 2022 (ten inspections), from the week of February 21,

2022 through the week of May 2, 2022 (ten inspections), and from the week of November 7 through the week of November 21, 2022 (three inspections). In total, the Dischargers failed to complete 24 (twenty-four) weekly inspections.

Although the Dischargers did not complete weekly inspections on three occasions, this Complaint does not assess a penalty for the following reasons: (a) the weeks of July 19 and 26, 2021: although BMPs had been installed, construction had not yet begun and (b) the week of October 25, 2021: a storm caused Highway 80 to be closed on October 24-25, 2021.

The failure to complete weekly inspections is a violation of Attachment D, Section G of the Construction General Permit.

Attachment D, Section G.2 states "*Risk Level 2 dischargers shall perform weekly inspections...*"

### **Step 1. Potential for Harm for Discharge Violations**

This step is not applicable because this alleged violation is a non-discharge violation.

### **Step 2. Assessment for Discharge Violations**

This step is not applicable because this alleged violation is a non-discharge violation.

### **Step 3. Per Day Assessment for Non-Discharge Violations**

#### Potential for Harm: *Moderate*

The failure to conduct weekly inspections for most of the winter of 2021, as well as the Fall of 2022, resulted in the potential for significant water quality impacts. Regular inspections by a QSP ensures that all necessary BMPs are in place and in working order, thereby limiting the potential for pollutant discharge from the site. However, the Lahontan Water Board's inspection on February 7, 2022 found that the BMPs were damaged and/or disintegrating and not functioning as intended. If weekly inspections had been conducted throughout the winter of 2021-2022 as required, then it is reasonable to assume that the BMPs would have been maintained or replaced as needed, and that the site conditions would be protective of water quality. A potential for harm of at least moderate is warranted.

#### Deviation from Requirement: *Moderate*

The Construction General Permit expressly requires that a discharger perform weekly inspections. The Dischargers only completed 55 of the required 79 weekly inspections (69%). This failure to implement the Construction General Permit's inspection-related requirements partially compromised the intended effectiveness of the requirement. The deviation from requirement is characterized as moderate.

Per Day Factor: 0.35

Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.35 is assigned.

**Step 4. Adjustment Factors**Culpability: 1.3

The Construction General Permit clearly states that weekly inspections must be conducted. The Dischargers' SWPPP includes Section 700, "Construction Site Monitoring Program" which contains numerous references to the need for weekly inspections and documentation of those inspections. In addition, the SWPPP includes a copy of the Construction Stormwater Permit as an appendix.

Neither the Construction General Permit nor the SWPPP state that inspections may be suspended during the winter. On the contrary, the Construction General Permit acknowledges that there is a greater potential for water quality impacts during rain events – which most often occur during the winter- and requires pre-storm, during storm, and post-storm inspections<sup>6</sup>.

During the February 16, 2022 inspection, Lahontan Water Board staff reminded the Dischargers verbally, and in the written inspection report, that weekly inspections were mandatory. However, despite these reminders, the Dischargers chose not to resume inspections until construction began again in mid-May 2022.

With respect to the failure to inspect in the Fall of 2022, the Dischargers stated in an October 26, 2022 email that they would continue weekly inspections until Lahontan Water Board staff inspected the site. However, the Dischargers chose to discontinue inspections after November 1, 2022. Water Board staff did not authorize the Dischargers to cease weekly inspections until the Notice of Termination was accepted for review on November 30, 2022.

The Dischargers are fully culpable for the failure to conduct weekly inspections. The Dischargers performed the required inspections from the beginning of construction in May 2021 through the late Fall of 2021. This demonstrates that the Dischargers understood the requirement to inspect on a weekly basis. The Dischargers intentionally chose not to comply with the Construction General Permit and therefore a multiplier value of 1.3 is appropriate. This factor is applicable to either Discharger and considers the knowledge of the continuing alleged violation and the ability to resolve it.

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<sup>6</sup> It is noted that for purposes of settlement, the Prosecution Team is not alleging violations for failure to conduct these three types of storm inspections but asserts that they were not completed.

History of Violation: 1.0

The Dischargers do not have a history of adjudicated violations.

Cleanup and Cooperation: 1.3

The Dischargers chose to cease the weekly inspections beginning with the week of November 29, 2021. On February 2, 2022, Lahontan Water Board staff drove by the site and found that erosion and sediment control BMPs had been “hammered” by storms and no longer protected the site. If the Dischargers had conducted the required inspections, they would have known that the BMPs needed maintenance and could have taken appropriate actions to protect water quality.

Lahontan Water Board staff met with Dischargers at the construction site on February 16, 2022. As documented in the inspection report, staff *“also provided direction on the Statewide CGP compliance regarding inspection and maintenance requirements to Teichert and Town of Truckee staff. It is the project implementor’s responsibility to inspect and maintain project BMPs to ensure that threats to water quality are mitigated.”* However, despite Lahontan Water Board staff’s express direction that the Dischargers comply with the Construction General Permit and complete weekly inspections, the Dischargers failed to do so until May 10, 2022, when construction resumed. A reasonable and prudent Discharger would have heeded Lahontan Water Board staff’s reminder and complied with the Construction General Permit’s requirement to conduct weekly monitoring.

In addition, the Dischargers failed to conduct the required weekly monitoring for three weeks, from November 7, 2022 to November 17, 2022. This is despite the October 26, 2022 email from Teichert to Lahontan Water Board staff which states *“Following our conversation yesterday, we are planning to continue inspections in compliance with the CGP until you have had an opportunity to inspect the permanent erosion control implementation.”* Although the Dischargers asserted that weekly inspections would continue, they did not. The Dischargers exhibited significantly less than expected cooperation in returning to compliance, and therefore a multiplier of 1.3 is appropriate.

Days of Violation: 24 days

The Dischargers failed to perform weekly inspections for the week of November 1, 2021 (one inspection), from the week of November 29, 2021 through the week of January 31, 2022 (10 inspections), from the week of February 21, 2022 through the week of May 2, 2022 (10 inspections), and from the week of November 7 through the week of November 21, 2022 (three inspections). In total, the Dischargers failed to complete 24 weekly inspections, which equates to 24 days of alleged violation. The Enforcement Policy does not allow days of violation to be compressed for violations of 30 days or less.

**Step 5. Total Base Liability and Statutory Maximum Liability Amount**

The total base liability and statutory maximum liability are determined as described in Alleged Violation 1.

<p><b>Total Base Liability: Alleged Violation 2</b>  <math>0.35 \times 24 \text{ days} \times \\$10,000/\text{day} \times 1.3 \times 1.0 \times 1.3 = \\$141,960</math></p> <p><b>Statutory Maximum: Alleged Violation 2</b>  <math>24 \text{ days} \times \\$10,000/\text{day} = \\$240,000</math></p>
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**ALLEGED VIOLATION 3:  
 Failure to Implement BMPs for Construction Materials**

The Construction General Permit requires that a discharger implement good housekeeping BMPs for construction materials that could impact or threaten to impact water quality. These BMPs are designed to reduce or eliminate the addition of pollutants to storm water runoff from a construction site through analysis of pollutant sources, implementation of proper handling/disposal practices, employee education, and other similar activities.

The Dischargers failed to implement good housekeeping BMPs for construction materials on at least 27 instances over 19 days, as observed during inspections conducted by Lahontan Water Board staff and the QSP between July 8, 2021 and November 30, 2022. During this period, 33% of the weekly inspections found alleged good housekeeping BMP violations for construction materials.

The failure to implement good housekeeping BMPs for construction materials is a violation of Attachment D, Section B.1 of the Construction General Permit, which states, in part, *“Risk Level 2 dischargers shall implement good site management (i.e., “housekeeping”) measures for construction materials that could potentially be a threat to water quality if discharged. At a minimum, Risk Level 2 dischargers shall implement the following good housekeeping measures:*

- b. Cover and berm loose stockpiled construction materials that are not actively being used...*
- c. Store chemicals in watertight containers (with appropriate secondary containment to prevent spillage or leakage) or in a storage shed (completely enclosed).*
- d. Minimize the exposure of construction materials to precipitation...*

- e. *Implement BMPs to prevent the off-site tracking of loose construction and landscape materials.*”

The following alleged violations related to good housekeeping BMPs for construction materials were observed:

- (1) The QSP’s inspection reports for 15 inspections (September 9, 2021, September 16, 2021, September 23, 2021, October 8, 2021, October 12, 2021, October 19, 2021, June 14, 2022, June 22, 2022, June 29, 2022, July 6, 2022, July 14, 2022, July 18, 2022, August 1, 2022, August 5, 2022, and August 9, 2022), state that asphalt concrete, concrete washout, solid waste, and/or trash were strewn about the site, and that these materials must be properly disposed of.
- (2) The QSP and/or Lahontan Water Board staff’s inspection reports for three inspections (July 6, 2022, July 14, 2022, and July 18, 2022) found that the Dischargers had allowed concrete fragments to spill into a temporary stormwater conveyance which discharges directly to Donner Creek. The inspection report photos show that this same waste remained at the same location for each inspection and was not cleaned up until the July 25, 2022 inspection.
- (3) During the inspection on October 11, 2022, the QSP observed a pile of asphalt concrete waste in the road gutter near a drop inlet.
- (4) The QSP and/or Lahontan Water Board staff’s inspection reports for six inspections (May 10, 2022, June 22, 2022, June 29, 2022, July 14, 2022, July 18, 2022, September 12, 2022) state that stockpiles must be covered and/or fiber rolls must be installed around the perimeter of the stockpiles.
- (5) During the inspection on June 7, 2022, the QSP took a picture of a black liquid in two open-topped buckets and wrote “place hazardous liquids in secondary containment”.
- (6) During the inspection on October 8, 2021, the QSP noted that piles of asphaltic concrete were not covered or properly stored.

**Step 1. Potential for Harm for Discharge Violations**

This step is not applicable because this alleged violation is a non-discharge violation.

**Step 2. Assessment for Discharge Violations**

This step is not applicable because this alleged violation is a non-discharge violation.

### **Step 3. Per Day Assessment for Non-Discharge Violations**

#### Potential for Harm: *Moderate*

The Construction General Permit requires that a discharger properly manage construction materials to protect water quality. However, the Dischargers failed to timely clean up the solid waste and trash from work areas; failed to timely pick up piles of asphalt concrete or, in the alternative, failed to properly cover the piles; failed to pick up concrete fragments that had spilled into a stormwater conveyance that discharges directly to Donner Creek; failed to appropriately cover and protect stockpiles of soil and construction material; and failed to appropriately store a liquid that its QSP characterized as “hazardous”. The Dischargers’ failure to properly store or manage the above construction materials resulted in the potential for these materials to be transported off-site in storm water, which would negatively impact receiving waters and their beneficial uses.

According to the U.S. Environmental Protection Agency, solid waste and trash create a wide range of problems when they enter surface waters<sup>7</sup>. Aquatic trash affects water quality, endangers plants and animals, and pollutes outdoor spaces. Though all types of aquatic trash can have potentially harmful impacts, plastic waste is particularly concerning because of its tendency to persist in the environment and its widespread production and use.

The U.S. Environmental Protection Agency considers sediment to be the most common pollutant in surface waters<sup>8</sup>. Storm water polluted with sediment degrades beneficial uses as follows: (a) sediment clouds the water, preventing animals from seeing food, (b) cloudy, murky water prevents natural vegetation from growing, (c) sediment in stream beds disrupts the food chain by destroying habitat where the smallest aquatic organisms live, resulting in significant declines in fish populations; (d) sediment can clog fish gills, resulting in lowered growth rates, lowered resistance to disease, and altered egg and larvae development; sediment increases the cost of treating drinking water and can cause taste and odor problems; (f) nutrients released by sediment can stimulate blue-green algae production, resulting in illness to swimmers, pets, and wildlife; and (g) sediment deposits in rivers can alter the flow of water and reduce water depth, making navigation difficult and leading to flooding. A moderate potential for harm is appropriate in this case.

#### Deviation from Requirement: *Moderate*

The Construction General Permit requires that a discharger implement good housekeeping practices for construction materials that impact or threaten to impact

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<sup>7</sup> [Learn About Aquatic Trash | US EPA](#)

<sup>8</sup> [What is Sediment Pollution? Brochure \(epa.gov\)](#)



water quality. Although the Dischargers implemented some good housekeeping practices for construction materials, the Dischargers failed to consistently implement other standard good housekeeping practices. Of the 58 weekly inspections that were conducted, 19 inspections, or 33%, found alleged construction material violations. The Dischargers' failure to implement appropriate good housekeeping practices for construction partially compromised the intended effectiveness of the Construction General Permit's requirements related to construction materials. A moderate deviation from requirement is appropriate.

Per Day Factor: 0.35

Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.35 is assigned.

**Step 4. Adjustment Factors**

Culpability: 1.3

The Construction General Permit clearly describes the need to implement good housekeeping practices related to construction materials, as does the Dischargers' own SWPPP. BMPs that would prevent or minimize each of the alleged violations listed above are described in the SWPPP. For example,

Section 500.4, WM-5 Solid Waste Management, states "*This project will involve solid waste generation. The contractor will have appropriate waste containers in the staging area...The contractor shall not allow litter, trash, or debris to accumulate anywhere on the job site...All food-related trash items such as wrappers, cans, bottles, and food scraps must be disposed of in closed containers and removed at least once every day from the entire project site.*"

Section 500.4, WM-8 Concrete Waste Management, states "*The contractor shall use practices to prevent the discharge of asphalt concrete, PCC [Portland cement concrete] and HMA [hot mix asphalt] into storm drain systems and receiving waters.*"

Section 500.4, WM-3 Stockpile Management, states "*Protection of stockpiles is a year-round requirement...The contractor will cover and berm stockpiles when the contractor is not onsite actively using the stockpile.*"

Section 500.4, WM-3 Stockpile Management, states "*Place stockpiles of cold mix asphalt concrete on an impervious surface and cover them with an impermeable material. Protect the stockpile from stormwater run-on and run-off.*"

Section 500.4, WM-1 Material Storage and Delivery, states "*Chemicals shall be stored in original containers and shall be properly labelled. If non-original containers*

*are used, the containers shall be in accordance with MSDS sheets and manufacturer's recommendations."*

In addition, the SWPPP includes a copy of the Construction Stormwater Permit as an appendix. The Dischargers were fully aware of the requirement to implement good housekeeping practices related to construction materials and incorporated relevant BMPs into the SWPPP.

It is noted that the BMPs related to good housekeeping for construction materials are standard, common-sense BMPs that have been a component of the Construction General Permit since its adoption in 2009. The Dischargers received multiple reminders of the need to comply with the Construction General Permit, both from their QSP and from Lahontan Water Board staff. However, the Dischargers remained in alleged violation week after week, which indicates a higher level of culpability. The failure to effectively implement good housekeeping practices related to construction materials for 33% of the weekly inspections implies misconduct and negligence, and therefore a multiplier of 1.3 is appropriate. This factor is applicable to either Discharger and considers the knowledge of the continuing alleged violations and the ability to resolve them.

History of Violation: 1.0

The Dischargers do not have a history of adjudicated violations.

Cleanup and Cooperation: 1.2

The Dischargers' failure to implement good housekeeping practices related to construction materials was first documented in the QSP's September 9, 2021 inspection report. These alleged violations continued intermittently through October 11, 2022. It is the Dischargers' responsibility to review their QSP's weekly inspection reports and, as required by the Construction General Permit (Attachment D, Section G.3), begin addressing all BMP violations within 72 hours of identification, and come into compliance as soon as possible.

The good housekeeping alleged violations were also discussed during the Lahontan Water Board inspection on July 14, 2022. A reasonable and prudent discharger would immediately rectify the alleged violations and ensure future compliance with the Construction General Permit. However, these Dischargers did not do so, and instead allowed certain alleged violations to continue week after week. For example, the Dischargers' QSP noted that solid waste and trash needed to be cleaned up during the September 9, 2021 inspection. Instead of correcting the matter, the Dischargers continued to allow trash to be scattered throughout the site for over a month, through October 19, 2021. Similarly, on July 6, 2022, the QSP noted concrete spillage/fragments in a drainage channel leading to Donner Creek. Instead of picking up

and disposing of the material, the Dischargers allowed it to remain in the drainage channel for 19 more days. These actions speak to the Dischargers' failures to voluntarily return to compliance in a timely manner. A reasonable and prudent discharger would have rectified these types of alleged BMP violations as they were noted and would not have allowed them to occur for 33% of the weekly inspections. The Dischargers' actions are significantly less than what is expected and therefore a factor of 1.2 is appropriate.

Days of Violation: 19 days

The Dischargers failed to implement good housekeeping practices for construction materials on at least 27 instances over 19 days. The Enforcement Policy does not allow the days of violation to be compressed for violations of 30 days or less.

**Step 5. Total Base Liability and Statutory Maximum Liability Amount**

The total base liability and statutory maximum liability are determined as described in Alleged Violation 1.

**Total Base Liability: Alleged Violation 3**

$$0.35 \times 19 \text{ days} \times \$10,000/\text{day} \times 1.3 \times 1.0 \times 1.2 = \$103,740$$

**Statutory Maximum: Alleged Violation 3**

$$19 \text{ days} \times \$10,000/\text{day} = \$190,000$$

**ALLEGED VIOLATION 4:**

**Failure to Implement BMPs for Waste Management**

The Construction General Permit requires that a discharger implement good housekeeping BMPs for waste management. Waste management consists of implementing procedural and structural BMPs for handling, storing, and cleaning up spills, and ensuring proper disposal of wastes to prevent their release into stormwater. Such wastes may include solid waste, hazardous waste, contaminated soil, concrete wash-out, and sanitary-septic.

The Dischargers failed to implement good housekeeping BMPs for waste management on at least 24 instances over 21 days, as observed during inspections conducted by the QSP and Lahontan Water Board staff between July 8, 2021 and November 30, 2022.

The failure to implement good housekeeping BMPs for waste management is a violation of Attachment D, Section B.2 of the Construction General Permit, which states, in part:

*“Risk Level 2 dischargers shall implement good housekeeping measures for waste management materials, which at a minimum, shall consist of the following:*

- b. Ensure containment of sanitation facilities (e.g., portable toilets) to prevent discharges of pollutants to the storm water drainage system or receiving water.*
- h. Develop a spill response and implementation element of the SWPPP prior to commencement of construction activities. The SWPPP shall require that:
  - i. Equipment and materials for cleanup of spills shall be available on site and that spills and leaks shall be cleaned up immediately and disposed of properly; and*
  - ii. Appropriate spill response personnel are assigned and trained.**
- i. Ensure containment of concrete washout areas...so there is no discharge into the underlying soil and onto surrounding areas.”*

The following alleged violations related to waste management were observed:

- (1) The QSP's inspection reports for 13 inspections (May 23, 2022, May 31, 2022, June 7, 2022, June 14, 2022, June 22, 2022, June 29, 2022, July 6, 2022, July 14, 2022, July 18, 2022, July 25, 2022, August 1, 2022, August 5, 2022, and August 9, 2022) state that the portable toilet was missing the required secondary containment.
- (2) On August 9, 2021, Lahontan Water Board staff inspected the site and found that the Dischargers did not have a spill response plan or a spill cleanup kit available at the site, and that the Dischargers did not have on-site personnel trained to respond to spills. This violation continued for seven days, until August 16, 2021, when the QSP documented that the spill plan and kit were on-site. It is unknown when, or if, personnel were trained to respond to spills.
- (3) On July 14, 2022, Lahontan Water Board staff inspected the site and found that once again, the Discharger did not have a spill response plan or a spill cleanup kit available at the site, and that the Dischargers did not have on-site personnel trained to respond to spills. This alleged violation continued for four days, until July 18, 2022 when the Dischargers' project manager "personally attested" that the spill plan and kit were on-site. It is unknown when, or if, personnel were trained in spill response.

### **Step 1. Potential for Harm for Discharge Violations**

This step is not applicable because this alleged violation is a non-discharge violation.

### **Step 2. Assessment for Discharge Violations**

This step is not applicable because this alleged violation is a non-discharge violation.

### **Step 3. Per Day Assessment for Non-Discharge Violations**

#### **Potential for Harm: *Moderate***

The failure to prepare for spills, as well as the failure to clean up spills, has the potential to harm beneficial uses. A discharger should strive to prevent spills of construction materials and wastes; however, spills and leaks will occur even with the best prevention efforts. This is why the Construction General Permit requires that a discharger have a spill response plan, a spill response kit, and on-site trained personnel that are ready to respond quickly and effectively to any inadvertent spills. However, these Dischargers failed to have a spill response plan available on-site, did not have a spill kit on-site, and did not identify to Lahontan Water Board staff that they had personnel trained to respond to spills.

As described in Alleged Violation 5, spills of petroleum products were observed at the site. The lack of a spill response plan and kit had the potential to hinder the clean-up of these spills. Petroleum products contain heavy metals such as zinc, lead, and cadmium, and volatile organic compounds such as benzene, toluene, and xylenes. These compounds are so toxic that just a small amount of petroleum will adversely affect the beneficial uses of a large volume of surface water, ground water, or drinking water.<sup>9</sup>

The Dischargers did not have secondary containment underneath the portable toilets for almost three months. In addition to human waste, portable toilets contain a “blue liquid” deodorizer composed of biocides, dyes, surfactants, and fragrances<sup>10</sup>. If spilled, these components can adversely affect water quality.

When spills and leaks are not cleaned up immediately, there is the potential for these materials to be transported off-site in storm water or non-storm water discharges and then impact beneficial uses and receiving waters. A moderate potential for harm is appropriate.

#### **Deviation from Requirement: *Moderate***

The Construction General Permit requires that a discharger implement good housekeeping practices related to waste management. Although the Discharger implemented some BMPs for waste materials, the Dischargers failed to consistently implement other standard good housekeeping practices. Of the 58 weekly inspections that were conducted, 21 inspections found alleged waste management violations. The Dischargers’ failure to implement appropriate good housekeeping practices for waste management partially compromised the intended effectiveness of the Construction

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<sup>9</sup> [Oil and Water Don't Mix Brochure \(epa.gov\)](http://epa.gov)

<sup>10</sup> [The Blue Liquid in Porta Potties: What Is It? \(pitstopportables.net\)](http://pitstopportables.net)

General Permit's requirements related to waste management. A moderate deviation from requirement is appropriate.

Per Day Factor: 0.35

Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.35 is assigned.

**Step 4. Adjustment Factors**

Culpability: 1.3

The Construction General Permit clearly describes the need to implement good housekeeping practices related to construction waste, as does the Dischargers' own SWPPP. BMPs that would prevent or minimize each of the alleged violations listed above are described in the SWPPP. For example,

*Section 500.4.2, WM-4 Spill Prevention and Control, states "The contractor will have spill kits available on-site in yards. Employees will be trained on emergency response procedures and shall know the location of spill kits. The contractor has an Employee Health and Safety Plan that covers emergency procedures, including spill prevention and cleanup. All employees shall be trained on the contents of this Plan."*

*Section 500.4.2, WM-9 Sanitary and Septic Wastes, states "Sanitary unit facilities shall be provided with secondary containment trays..."*

In addition, the SWPPP includes a copy of the Construction Stormwater Permit as an appendix. The Dischargers were fully aware of the requirement to implement good housekeeping practices related to waste management, including the need prepare for and clean up spills. The Dischargers incorporated relevant BMPs into their SWPPP, yet still failed to implement these practices to protect the site.

With respect to the lack of secondary containment under the portable toilets during most of the 2022 construction season, the Dischargers knew this was a requirement of the Construction General Permit, as evidenced by the fact that there was secondary containment under the toilets during the 2021 construction season (e.g., see the QSP's September 16, 2021 inspection report photos, one of which is a picture of a portable toilet with the text "portable restroom is in secondary containment."). The Dischargers are fully culpable for the failure to have secondary containment under the portable toilets for 80 days during the 2022 construction season.

It is noted that the BMPs related to waste management are standard, common-sense BMPs that have been a component of the Construction General Permit since its adoption in 2009. The Dischargers received multiple reminders of the need to comply with the Construction General Permit, both from their QSP and from Lahontan Water

Board staff. However, the Dischargers remained in alleged violation week after week, indicating intentional failure to comply, which therefore results in a higher level of culpability. The failure to effectively implement good housekeeping practices related to waste management also demonstrates misconduct and negligence on the Dischargers' part. A multiplier of at least 1.3 is appropriate. This factor is applicable to either Discharger and considers the knowledge of the continuing alleged violations and the ability to resolve them.

History of Violation: 1.0

The Dischargers do not have a history of adjudicated violations.

Cleanup and Cooperation: 1.2

The Dischargers' failure to implement good housekeeping practices related to waste management was first documented in the Lahontan Water Board's August 9, 2021 inspection report. These alleged violations continued intermittently through August 15, 2022. It is the Dischargers' responsibility to review their QSP's weekly inspection reports and, as required by the Construction General Permit (Attachment D, Section G.3), begin addressing all BMP violations within 72 hours of identification, and come into compliance as soon as possible.

A reasonable and prudent discharger would immediately rectify the violations and ensure future compliance with the Construction General Permit. However, these Dischargers did not do so, and instead allowed certain alleged violations to continue week after week. For example, the Dischargers' QSP first noted that the portable toilets required secondary containment during the May 23, 2022 inspection. Instead of correcting the matter, the Dischargers continued to ignore the alleged violation for 84 days. It was not until the August 15, 2022 inspection that the lack of secondary containment under the portable toilets was no longer flagged as a violation. It is noted that the Dischargers had secondary containment under their portable toilets during the 2021 construction season, showing that they understood the requirement and how to comply. However, the Dischargers' continuing disregard for the portable toilet alleged violations during the 2022 construction season, and the Dischargers' failure to voluntarily return to compliance within a reasonable timeframe, results in a higher Cleanup and Cooperation factor.

Similarly, the Dischargers were reminded by Lahontan Water Board staff during the inspection on August 9, 2021 that they must have a spill response plan and spill response kit on-site, and that on-site personnel must be trained to respond to spills. Despite the fact that the spill response plan had already been prepared (as a component of the Dischargers' SWPPP dated June 15, 2021), and despite the fact that spill response kits are a standard item at construction sites, it still took the Dischargers seven days before a copy of the spill response plan and a spill response kit were placed

on-site. This is significantly more time than what would be expected of a reasonable and prudent discharger and lends credence to a higher Cleanup and Cooperation factor.

After having been reminded by Lahontan Water Board staff during the 2021 construction season that a spill response plan and spill response kit were required on-site, and that on-site personnel must be trained to respond to spills, Lahontan Water Board staff found that the Dischargers did not have these items at the construction site when Lahontan Water Board staff inspected in 2022. As documented in staff's July 14, 2022 inspection report:

*"Despite me providing approximately two weeks advance notice, Teichert staff were unprepared for my inspection...I asked Teichert staff (Ryan Payne) to show me the spill response plan. Ryan stated that he did not have a copy of the spill response plan but could print out a physical copy at his office. Teichert staff (Ryan Payne) also stated that there was no current plan in place to maintain a physical copy...of the spill response plan onsite but that corrective action could be implemented quickly. I stated that making a physical copy of the spill response plan available at the construction site as part of the SWPPP is a Statewide CGP requirement..."*

*I asked Teichert staff (Ryan Payne) to show me the location of the spill response kit(s). Teichert staff (Ryan Payne) stated that he could not identify the location of a spill response kit on the project. Teichert staff (Ryan Payne) also stated that there was no current plan in place to identify and maintain a spill response kit onsite but that corrective actions could be implemented quickly. I stated that having the equipment and materials for cleanup of spills is a Statewide CGP requirement..."*

*I asked Teichert staff (Ryan Payne) to identify project personnel assigned and trained in spill response. Teichert staff (Ryan Payne) stated that he could not identify project personnel assigned and trained in spill response. Teichert staff (Ryan Payne) also stated that there was no current plan in place to identify site personnel with appropriate spill response training but that corrective action could be implemented quickly. I stated that assigning and training site personnel in spill response is a Statewide CGP requirement..."*

Despite that fact that the QSP documented that a spill response plan and spill response kit were on-site for the latter half of the 2021 construction season, it still took the Dischargers four days to place these items on-site after the July 14, 2022 inspection. A discharger should not have to be reminded for a second time about the need to have a spill response plan, personnel trained in spill response, and spill kit on-site and would not have taken so long to rectify the matter. This lack of cooperation in returning to compliance justifies a higher Cleanup and Cooperation factor.



The above actions speak to the Dischargers' failures to voluntarily return to compliance in a timely manner. A reasonable and prudent discharger would have rectified these types of alleged BMP violations as they were noted. The Dischargers' actions are significantly less than what is expected and therefore a factor of 1.2 is appropriate.

Days of Violation: 21 days

The Dischargers failed to implement good housekeeping BMPs for waste materials on at least 24 instances over 21 days. The Enforcement Policy does not allow the days of violation to be compressed for violations of 30 days or less.

**Step 5. Total Base Liability and Statutory Maximum Liability Amount**

The total base liability and statutory maximum liability are determined as described in Alleged Violation 1.

<p><b>Total Base Liability: Alleged Violation 4</b></p> <p><math>0.35 \times 21 \text{ days} \times \\$10,000/\text{day} \times 1.3 \times 1.0 \times 1.2 = \\$114,660</math></p> <p><b>Statutory Maximum: Alleged Violation 4</b></p> <p><math>21 \text{ days} \times \\$10,000/\text{day} = \\$210,000</math></p>
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**ALLEGED VIOLATION 5:  
Failure to Implement BMPs for Vehicle Storage, Fueling, and  
Maintenance**

The Construction General Permit requires that a discharger implement good housekeeping BMPs for vehicle storage, fueling, and maintenance, and if a spill or leak occurs, requires that a discharger immediately clean it up and appropriately dispose of the cleaning material.

The Dischargers failed to implement good housekeeping BMPs for vehicle storage, fueling, and maintenance for at least 14 instances over 13 days, as observed during inspections conducted by Lahontan Water Board staff and the QSP between July 8, 2021 and November 30, 2022. During this period, 22% of the weekly inspections found alleged BMP violations for vehicle storage, fueling, and maintenance.

The failure to implement good housekeeping BMPs for vehicle storage, fueling, and maintenance is a violation of Attachment D, Section B.3 of the Construction General Permit. Attachment D, Section B.3 states, in part, *"Risk Level 2 dischargers shall implement good housekeeping for vehicle storage and maintenance, which at a minimum, shall consist of the following:*

- a. *Prevent oil, grease, or fuel to leak in to [sic] the ground, storm drains or surface waters.*
- b. *Place all equipment or vehicles, which are to be fueled, maintained and stored in a designated area fitted with appropriate BMPs.*
- c. *Clean leaks immediately...*”

The following alleged violations related to vehicle storage, fueling, and maintenance were observed:

- (1) The QSP’s inspection reports for seven inspections (August 1, 2022, August 5, 2022, August 9, 2022, August 15, 2022, October 6, 2022, October 11, 2022, and October 20, 2022) stated that there was oil, grease, or fuel drips and leaks onsite.
- (2) The QSP and/or Lahontan Water Board staff’s inspection reports for seven inspections (June 14, 2022, June 22, 2022, June 29, 2022, July 14, 2022, September 12, 2022, September 22, 2022, and October 6, 2022) stated that paving equipment must be placed on top of plastic and/or stored in an area fitted with appropriate BMPs.

### **Step 1. Potential for Harm for Discharge Violations**

This step is not applicable because this alleged violation is a non-discharge violation.

### **Step 2. Assessment for Discharge Violations**

This step is not applicable because this alleged violation is a non-discharge violation.

### **Step 3. Per Day Assessment for Non-Discharge Violations**

#### **Potential for Harm: *Moderate***

The failure to implement adequate vehicle storage and maintenance good housekeeping BMPs poses a substantial potential for harm. Vehicle fluids contain petroleum and oil byproducts, which contain toxic constituents such as metals and volatile organic compounds. When not cleaned up, vehicle fluid spills can be either directly transported into receiving waters by storm water runoff or indirectly transported when they attach to sediment that is mobilized by storm water runoff. Storm water runoff polluted with vehicle fluids is harmful to beneficial uses in the receiving water ecosystem because, among other items, it is toxic, it smothers plants and wildlife, and it bioaccumulates<sup>11</sup>. A moderate potential for harm is appropriate.

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<sup>11</sup> [Oil and Water Don't Mix Brochure \(epa.gov\)](https://www.epa.gov/oia/oil-and-water-dont-mix-brochure)

Deviation from Requirement: *Minor*

The Construction General Permit requires that a discharger implement good housekeeping BMPs related to vehicle storage, fueling, and maintenance. Although the Dischargers did not consistently implement these BMPs, most of the inspections found that these BMPs were in place. A minor deviation from requirement is appropriate.

Per Day Factor: 0.25

Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.25 is assigned.

**Step 4. Adjustment Factors**Culpability: 1.3

The Construction General Permit clearly describes the need to implement good housekeeping practices related to vehicle storage, fueling, and maintenance, as does the Dischargers' own SWPPP. BMPs that would prevent or minimize each of the alleged violations listed above are described in the SWPPP. For example,

Section 500.4.2, WM-4 Spill Prevention and Control, states in part "*The contractor shall implement spill and leak prevention procedures for chemicals and hazardous substances...As soon as it is safe, the contractor shall contain and clean up spills of petroleum materials...*"

Section NAS-9/NS-10 Vehicle and Equipment Fueling and Maintenance, states in part "*If [vehicle fueling and maintenance] must be done on site, BMPs must be utilized to prevent discharges of fuel and vehicle fluids...If leaks cannot be repaired immediately, the contractor shall remove the vehicle or equipment from the job site.*"

Attachment BB, Water Pollution Control Drawings, includes a figure of the "Contractor's Staging Areas" with a note "*Park paving equipment on plastic when not in use after work hours. Refer to BMP NS-2 for paving, sawcutting, and grinding operations.*"

In addition, the SWPPP includes a copy of the Construction Stormwater Permit as an appendix. The Dischargers were fully aware of the requirement to implement good housekeeping practices related to vehicle storage, fueling, and maintenance and incorporated relevant BMPs into their SWPPP, yet still failed to incorporate the actions needed to protect the site.

It is noted that the BMPs related to vehicle storage, fueling, and maintenance are standard, common-sense BMPs that have been a component of the Construction General Permit since its adoption in 2009. The Dischargers received multiple reminders

of the need to comply with the Construction General Permit, both from their QSP and from Lahontan Water Board staff. However, the Dischargers remained in alleged violation week after week, which indicates a higher level of culpability. The failure to effectively implement good housekeeping practices related to construction materials for 22% of the weekly inspections implies misconduct and negligence, and therefore a multiplier of 1.3 is appropriate.

History of Violation: 1.0

The Dischargers do not have a history of adjudicated violations.

Cleanup and Cooperation: 1.1

The Dischargers' failure to implement good housekeeping practices related to vehicle storage, fueling, and maintenance was first documented in the QSP's June 14, 2022 inspection report. These alleged violations continued intermittently through October 20, 2022. It is the Dischargers' responsibility to review the QSP's weekly inspection reports and, as required by the Construction General Permit (Attachment D, Section G.3), begin addressing all BMP violations within 72 hours of identification, and come into compliance as soon as possible.

The good housekeeping alleged violations were also discussed during the Lahontan Water Board inspection on July 14, 2022. A reasonable and prudent discharger would immediately rectify the alleged violations and ensure future compliance with the Construction General Permit. However, these Dischargers did not do so, and instead allowed certain alleged violations to continue week after week.

For example, Lahontan Water Board staff's July 14, 2022 inspection report states *"I observed Teichert's storage of soil compaction and asphalt paving equipment in staging areas without adequate housekeeping (e.g., no drip pans and/or plastic sheeting) and/or sediment control/erosion control BMPs (e.g., perimeter sediment controls/fiber rolls)...Teichert staff (Ryan Payne) stated that the equipment was parked there recently (perhaps overnight?) and could not provide an explanation as to why no BMPs were deployed."*

Even though this alleged violation was specifically brought to Teichert's attention, the alleged violation was documented during three subsequent weekly inspections. Similarly, the QSP observed multiple leaks and spills, and repeatedly reminded the Dischargers to clean them up. A reasonable discharger would take all reasonable steps to prevent spills and leaks, and if they occurred, clean them up immediately.

These actions speak to the Dischargers' failures to voluntarily return to compliance in a timely manner. Dischargers are expected to rectify these types of alleged BMP violations as they are noted and should not allow them to occur for 22% of the weekly inspections. The Dischargers' actions are less than what is expected and therefore a

factor of 1.1 is appropriate. This factor is applicable to either Discharger and considers the knowledge of the continuing violation and the ability to resolve it.

Days of Violation: 13 days

The Dischargers failed to implement good housekeeping BMPs for vehicle storage, fueling, and maintenance for at least 14 instances over 13 days. The Enforcement Policy does not allow the days of violation to be compressed for violations of 30 days or less.

**Step 5. Total Base Liability and Statutory Maximum Liability Amount**

The total base liability and statutory maximum liability are determined as described in Alleged Violation 1.

<p><b>Total Base Liability: Alleged Violation 5</b></p> <p><math>0.25 \times 13 \text{ days} \times \\$10,000/\text{day} \times 1.3 \times 1.0 \times 1.1 = \\$46,475</math></p> <p><b>Statutory Maximum: Alleged Violation 5</b></p> <p><math>13 \text{ days} \times \\$10,000/\text{day} = \\$130,000</math></p>
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**ALLEGED VIOLATION 6: Failure to Control Erosion**

The Construction General Permit requires that a discharger implement actions to control erosion. Erosion control, also referred to as soil stabilization, is designed to prevent soil particles from detaching and becoming transported in stormwater runoff. Erosion control measures protect the soil surface by covering and/or binding soil particles and include disturbing as little of the land as possible, preserving existing vegetation where feasible, re-vegetating disturbed areas as soon as possible after disturbance, and temporary soil stabilization measures such as hydroseed, soil stabilizers, binders, fiber, geotextile mats, and hydraulic, straw, or wood mulch.

The Dischargers failed to install and maintain erosion control measures on at least nine instances over nine days, as observed during weekly inspections conducted by Lahontan Water Board staff and the QSP between July 8, 2021 and November 30, 2022. During this period, 16% of the weekly inspections found alleged erosion control violations.

The failure to install and maintain erosion control measures is a violation of Attachment D, Section D of the Construction General Permit, which states, in part,

*“2. Risk Level 2 dischargers shall provide effective soil cover for inactive areas<sup>1</sup> and all finished slopes, open space, utility backfill, and completed lots....”*

*[Inactive areas of construction are areas of construction activity that have been disturbed and are not scheduled to be re-disturbed for at least 14 days.]”*

The following alleged violations related to the lack of erosion control were observed:

- (1) The QSP and/or Lahontan Water Board staff's inspection reports for one inspection (February 7, 2022) stated that erosion control BMPs had been damaged by winter storms and needed maintenance and/or replacement.
- (2) The QSP's inspection reports for eight inspections (October 5, 2021, October 8, 2021, October 12, 2021, May 23, 2022, June 7, 2022, September 12, 2022, September 19, 2022, and September 20, 2022) stated that erosion control BMPs for slopes either needed to be installed or needed maintenance.

### **Step 1. Potential for Harm for Discharge Violations**

This step is not applicable because this alleged violation is a non-discharge violation.

### **Step 2. Assessment for Discharge Violations**

This step is not applicable because this alleged violation is a non-discharge violation.

### **Step 3. Per Day Assessment for Non-Discharge Violations**

#### Potential for Harm: *Moderate*

The Construction General Permit requires that a discharger implement actions to control erosion. Erosion control measures are necessary to prevent soil particles from detaching during rain or wind events and being transported to surface waters via stormwater runoff. The Dischargers' failure to implement erosion control BMPs poses a substantial potential for harm to beneficial uses if storm water or non-storm water flows through the site and transports sediment to receiving waters. Storm water runoff polluted with sediment is harmful to beneficial uses of the receiving water ecosystem because, among other items, it can contain material that is toxic to aquatic organisms, it can smother plants and wildlife, bury fish eggs, clog fish gills, and can contribute to high turbidity in the water, which results in low sunlight and can damage aquatic life habitat (see expanded discussion regarding sediment impacts for Alleged Violation 3). A moderate potential for harm is appropriate.

#### Deviation from Requirement: *Minor*

The Construction General Permit requires that a discharger install and maintain erosion control measures. Although the Dischargers did not consistently implement erosion control BMPs, most of the inspections found that these BMPs were in place. A minor deviation from requirements is appropriate.

Per Day Factor: 0.25

Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.25 is assigned.

**Step 4. Adjustment Factors**Culpability: 1.3

The Construction General Permit clearly describes the need to implement erosion control BMPs, as does the Dischargers' own SWPPP. BMPs that would prevent or minimize the alleged violations listed above are described in the SWPPP. For example,

Section 500.3, BMP Selection for Erosion and Sediment Control, states "*An effective combination of erosion (soil stabilization) and sediment control BMPs shall be implemented and maintained during the project...*"

Section 500.3.2, SS-7 Temporary Cover, states "*Temporary cover shall be used to cover DSA's [disturbed soil areas] prior to rain events or if left inactive for over 14 days... Temporary cover for slope areas should include geotextile material...*"

Section 700.1.4, Visual Monitoring Follow-Up and Tracking Procedures, states in part, "*For deficiencies identified during visual monitoring (site inspections), the required repairs or maintenance of BMPs shall begin and be completed as soon as possible...(but cannot be authorized longer than required by the CGP: implemented within 72 hours of identification and completed as soon as possible thereafter.)...*"

In addition, the SWPPP includes a copy of the Construction Stormwater Permit as an appendix. The Dischargers were fully aware of the requirement to implement erosion control BMPs and incorporated relevant BMPs into their SWPPP, yet at times still failed to implement these practices to protect the site.

It is noted that erosion control BMP installation and maintenance is a standard, common-sense practice that has been a component of the Construction General Permit since its adoption in 2009. The Dischargers received multiple reminders of the need to comply with the Construction General Permit, both from the QSP and from Lahontan Water Board staff. However, the Dischargers remained in alleged violation week after week, which indicates a higher level of culpability. The failure to effectively implement good housekeeping practices related to erosion control for 16% of the weekly inspections demonstrates misconduct and negligence on the Dischargers' part, and therefore a multiplier of at least 1.3 is appropriate. This factor is applicable to either Discharger and considers the knowledge of the continuing alleged violations and the ability to resolve them.

History of Violation: 1.0

The Dischargers do not have a history of adjudicated violations.

Cleanup and Cooperation: 1.1

The Dischargers' failure to install and maintain BMPs related to sediment control was first documented in the QSP's October 5, 2021 inspection report. These alleged violations continued intermittently through September 20, 2022. It is the Dischargers' responsibility to review their QSP's weekly inspection reports and, as required by the Construction General Permit (Attachment D, Section G.3), begin addressing all BMP violations within 72 hours of identification, and come into compliance as soon as possible.

A reasonable and prudent discharger would immediately rectify the alleged violations and ensure future compliance with the Construction General Permit. However, these Dischargers did not do so, and instead allowed certain alleged violations to continue week after week. For example, there were three extended periods (October 2021, May 2022, and September 2022) when the QSP's inspection reports found that slopes either needed BMPs or the BMPs on the slopes needed maintenance. In October 2021, it took the Dischargers two weeks to come into compliance. In May 2022, it took the Dischargers three weeks to come into compliance. And in September 2022, it took the Dischargers one and a half weeks to come into compliance. These timelines are longer than what is expected of a reasonable discharger to take iterative steps to acknowledge deficiencies and install BMPs to the site as directed.

The above example speaks to the Dischargers' failure to voluntarily return to compliance in a timely manner. It is expected that a discharger would address these types of alleged BMP violations as they are noted and not allow them to occur for 16% of the weekly inspections. The Dischargers' actions are less than what is expected and therefore a factor of 1.1 is appropriate.

Days of Violation: 9 days

The Dischargers failed to install and maintain sufficient erosion measures for at least 9 instances over 9 days. The Enforcement Policy does not allow the days of violation to be compressed for violations of 30 days or less.

**Step 5. Total Base Liability and Statutory Maximum Liability Amount**

The total base liability and statutory maximum liability are determined as described in Alleged Violation 1.

**Total Base Liability: Alleged Violation 6**

$$0.25 \times 9 \text{ days} \times \$10,000/\text{day} \times 1.3 \times 1.0 \times 1.1 = \$32,175$$

**Statutory Maximum: Alleged Violation 6**

$$9 \text{ days} \times \$10,000/\text{day} = \$90,000$$



## **ALLEGED VIOLATION 7: Failure to Control Sediment**

The Construction General Permit requires that a discharger implement actions to control sediment. Sediment controls are designed to intercept and settle out soil particles that have been detached and subsequently transported. These temporary or permanent measures are to complement the site's erosion control measures and can include silt fencing, fiber rolls, sediment basins, storm drain inlet protection, and street sweeping.

The Dischargers failed to install and maintain sufficient sediment control measures on at least 48 instances over 20 days, as observed during inspections conducted by Lahontan Water Board staff and the QSP between July 8, 2021 and November 30, 2022. During this period, 34% of the weekly inspections found alleged sediment control violations.

The failure to install and maintain sediment control measures is a violation of Attachment D, Section E of the Construction General Permit. Attachment D, Section E states, in part, "*Sediment Control*

1. *Risk Level 2 dischargers shall implement and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.*
5. *...Risk Level 2 dischargers shall ensure that construction activity traffic to and from the project is limited to entrances and exits that employ effective controls to prevent offsite tracking of sediment.*
6. *...Risk Level 2 dischargers shall ensure that all storm drain inlets...are maintained and protected from activities that reduce their effectiveness.*
7. *...At a minimum daily (when necessary) and prior to any rain event, the discharger shall remove any sediment or other construction activity-related materials that are deposited on the roads (by vacuuming or sweeping)."*

The following alleged violations related to sediment control were observed:

- (1) The QSP and/or Lahontan Water Board staff's inspection reports for 15 inspections (September 28, 2021, May 18, 2022, May 31, 2022, June 7, 2022, June 14, 2022, June 22, 2022, June 29, 2022, July 6, 2022, July 14, 2022, July 18, 2022, August 1, 2022, August 9, 2022, August 15, 2022, August 22, 2022, and August 29, 2022) found that fiber rolls were not properly placed or staked, needed maintenance, and/or needed to be replaced.
- (2) The QSP and/or Lahontan Water Board staff's inspection reports for 12 inspections (June 14, 2022, June 22, 2022, June 29, 2022, July 6, 2022, July

- 14, 2022, July 18, 2022, August 1, 2022, August 5, 2022, August 9, 2022, August 29, 2022, September 6, 2022, and September 12, 2022) found that silt fences needed maintenance.
- (3) On February 7, 2022, the QSP and/or Lahontan Water Board staff inspected the site and found that winter storms had damaged most of the sediment control BMPs and that damaged silt fencing and other BMPs needed to be replaced.
- (4) On July 14, 2022 and August 22, 2022, the QSP and/or Lahontan Water Board staff inspected the site and found that construction entrances and exits were not stabilized to control sediment discharges.
- (5) The QSP and/or Lahontan Water Board staff's inspection reports for eight inspections (September 28, 2021, February 7, 2022, June 29, 2022, July 14, 2022, August 5, 2022, August 9, 2022, August 15, 2022, and August 29, 2022) found that BMPs had not been installed around storm drain drop inlets.
- (6) Lahontan Water Board staff's inspection on July 14, 2022 found that sediment had accumulated in the flow line of the Coldstream Road curb and gutter.
- (7) The QSP and/or Lahontan Water Board staff's inspection reports for nine inspections (August 26, 2021, May 18, 2022, May 31, 2022, June 14, 2022, June 22, 2022, June 29, 2022, July 14, 2022, July 18, 2022, and August 29, 2022) found that sediment had been tracked onto the roadways and needed to be swept up.

### **Step 1. Potential for Harm for Discharge Violations**

This step is not applicable because this alleged violation is a non-discharge violation.

### **Step 2. Assessment for Discharge Violations**

This step is not applicable because this alleged violation is a non-discharge violation.

### **Step 3. Per Day Assessment for Non-Discharge Violations**

#### Potential for Harm: *Moderate*

The Construction General Permit requires that a discharger control and/or prevent the movement of sediment into surface waters. Sediment control measures are to be designed to complement a site's erosion control measures. The Dischargers' failure to implement appropriate sediment control BMPs poses a substantial potential for harm to beneficial uses if storm water or non-storm water flows through the site and transports

sediment to receiving waters. Storm water runoff polluted with sediment is harmful to beneficial uses of the receiving water ecosystem because, among other items, it can contain material that is toxic to aquatic organisms, it can smother plants and wildlife, bury fish eggs, clog fish gills, and can contribute to high turbidity in the water, which results in low sunlight and can damage aquatic life habitat (see expanded discussion regarding sediment impacts for Alleged Violation 3). A moderate potential for harm is appropriate.

Deviation from Requirement: *Moderate*

The Construction General Permit requires that a discharger implement sediment control measures during active construction. Although the Dischargers installed some sediment control BMPs, some were either installed incorrectly, did not receive the necessary maintenance, or were missing. Of the 58 weekly inspections that were conducted, 20 inspections, or 34%, found alleged sediment control violations. The Dischargers' failure to implement appropriate sediment control BMPs partially compromised the intended effectiveness of the Construction General Permit's requirements related to sediment control. A moderate deviation is appropriate.

Per Day Factor: *0.35*

Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.35 is assigned.

**Step 4. Adjustment Factors**

Culpability: *1.3*

The Construction General Permit clearly describes the need to implement sediment control BMPs, as does the Dischargers' own SWPPP. BMPs that would prevent or minimize each of the alleged violations listed above are described in the SWPPP. For example,

Section 500.3.3, SC5 Temporary Fiber Rolls, states "*Fiber roll shall be properly embedded into the ground and shall be installed level along parallel contours...Fiber roll shall be installed and maintained throughout the course of construction, regardless of season...Fiber rolls shall be repaired and replaced as necessary if damaged. Vehicles and equipment shall be kept off of fiber rolls to prevent damage.*"

Section 500.3.3, SC-1 Temporary Silt Fence, states "...*Maintain silt fence regularly...*"

Section 500.3.4, TC-1 Temporary Construction Entrance, states "*A stabilized construction entrance/exit will be constructed and maintained at construction site entrances and exits...*"

Section 500.3.3, SC-10 Temporary Drain Inlet Protection, states “...*Inlet protection BMPs will be installed at all active inlets effected by construction activities...Inlet protection BMPs shall be maintained as required...Inlet protections shall be installed and maintained at all times during construction... Drainage inlet protections shall be inspected regularly to clean any sediment deposit and maintain damaged protections.*”

Section 500.3.3, SC-7 Street Sweeping, states “*Sweep by hand or mechanical methods, such as vacuuming...Sweep paved roads at construction entrance and exit locations and paved areas within the job site after observing off-site tracking of material...Monitor paved areas and roadways within the project...the Contractor shall inspect paved roads at job site access points for street sweeping daily...*”

Section 700.1.4, Visual Monitoring Follow-Up and Tracking Procedures, states in part, “*For deficiencies identified during visual monitoring (site inspections), the required repairs or maintenance of BMPs shall begin and be completed as soon as possible...(but cannot be authorized longer than required by the CGP: implemented within 72 hours of identification and completed as soon as possible thereafter.)...*”

In addition, the SWPPP includes a copy of the Construction Stormwater Permit as an appendix. The Dischargers were fully aware of the requirement to install and maintain sediment control BMPs and incorporated relevant BMPs into their SWPPP, yet still failed to implement the BMPs as needed to protect the site.

It is noted that the BMPs related to sediment control are standard, common-sense BMPs that have been a component of the Construction General Permit since its adoption in 2009. The Dischargers received multiple reminders of the need to comply with the Construction General Permit, both from the QSP and from Lahontan Water Board staff. However, the Dischargers remained in alleged violation week after week, resulting in a higher level of culpability. The failure to effectively implement good housekeeping practices related to sediment control BMPs for 34% of the weekly inspections also implies misconduct and negligence, and therefore a multiplier of 1.3 is appropriate. This factor is applicable to either Discharger and considers the knowledge of the continuing alleged violations and the ability to resolve them.

#### History of Violation: 1.0

The Dischargers do not have a history of adjudicated violations.

#### Cleanup and Cooperation: 1.3

The Dischargers' failure to install and maintain BMPs related to sediment control was first documented in the QSP's July 8, 2021 inspection report. These alleged violations continued intermittently through October 20, 2022. It is the Dischargers' responsibility to

review their QSP's weekly inspection reports and, as required by the Construction General Permit (Attachment D, Section G.3), begin addressing all BMP violations within 72 hours of identification, and come into compliance as soon as possible.

A reasonable and prudent discharger would immediately rectify the alleged violations and ensure future compliance with the Construction General Permit. However, these Dischargers did not do so, and instead allowed certain alleged violations to continue week after week. For example, the QSP's October 22, 2021 inspection found that silt fences needed maintenance. This same alleged violation was noted in the next four weekly inspections, through November 23, 2021. Because the QSP erroneously stopped conducting inspections after November 23, 2021, it appears that the Dischargers did not address the silt fence alleged violations until after Lahontan Water Board staff's February 7, 2022 email titled "Notice Regarding Deficient BMP Maintenance", which means that the Dischargers allowed this sediment control alleged violation to extend for more than 109 days. This is significantly longer than the time it would take a reasonable discharger to take iterative steps to acknowledge deficiencies and install BMPs at the site as directed by the QSP. It is noted that while the Dischargers had alleged intermittent silt fence violations during the 2021 construction season, the record shows that the alleged violations were usually addressed as they arose. This shows that the Dischargers understood the requirement and how to comply. However, the Dischargers' disregard for the maintaining the silt fences during the fall of 2021 and winter of 2021-2022 indicates a failure to voluntarily return to compliance within a reasonable timeframe, and results in a higher Cleanup and Cooperation factor.

Similarly, the Dischargers consistently failed to cleanup sediment on the roadways within the site. The Dischargers generally complied during the 2021 construction season, as only one of the weekly inspections noted that sediment "track out" needed to be swept up. However, during the 2022 construction season, the Dischargers consistently ignored the requirement to clean up sediment that had been tracked onto a road. The QSP first noted the issue during the May 18, 2022 inspection and continued flagging the alleged violation intermittently through August 29, 2022. The Dischargers' failure to voluntarily comply exhibits a lack of cooperation. A reasonable discharger would comply with its SWPPP, which in this case states that the contractor will inspect paved roads daily to determine the need for sweeping. The same reasonable discharger would then comply with the Construction General Permit and would remove any sediment from roadways on at least a daily basis.

The above examples speak to the Dischargers' failure to voluntarily return to compliance in a timely manner. A reasonable and prudent discharger would have rectified these types of alleged BMP violations as they were noted and would not have allowed them to occur for 34% of the weekly inspections. The Dischargers' actions are significantly less than what is expected and therefore a factor of 1.3 is appropriate.

Days of Violation: 20 days

The Dischargers failed to control sediment for at least 48 instances over 20 days. The Enforcement Policy does not allow the days of violation to be compressed for violations of 30 days or less.

**Step 5. Total Base Liability and Statutory Maximum Liability Amount**

The total base liability and statutory maximum liability are determined as described in Alleged Violation 1.

<p><b>Total Base Liability: Alleged Violation 7</b>  <math>0.35 \times 20 \text{ days} \times \\$10,000/\text{day} \times 1.3 \times 1.0 \times 1.3 = \\$118,300</math></p> <p><b>Statutory Maximum: Alleged Violation 7</b>  <math>20 \text{ days} \times \\$10,000/\text{day} = \\$200,000</math></p>
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**Combined Total Base Liability for All Violations**

The combined Total Base Liability for Alleged Violations 1 through 7 is determined by adding the base liability amount of each alleged violation and is \$604,110.

**Step 6. Ability to Pay and Continue in Business**

The Water Code and the Enforcement Policy require the Water Boards to consider a discharger's ability to pay when imposing administrative civil liabilities (ACLs). These liabilities should be imposed at levels that do not allow violators to obtain a competitive economic advantage over dischargers that voluntarily incur the costs of regulatory compliance. The Lahontan Water Board is under no obligation to ensure that a discharger has the ability to pay an ACL amount; instead, the Lahontan Water Board must only consider these factors when imposing a civil liability. If staff makes an initial showing that a discharger has sufficient income or net worth to pay the proposed ACL, then the burden of proof on this factor shifts to the discharger to produce sufficient evidence that it lacks an ability to pay.

The Prosecution Team reviewed the Town of Truckee's *Annual Comprehensive Financial Report for the Fiscal Year Ended June 30, 2021*. The Introductory Section includes a Letter of Transmittal which states:

"The ending fund balance (total of the committed, assigned, and unassigned components of the fund balance) in the General Fund at year-end is \$41.5 million, or 132% of General Fund revenues. This includes a cash available balance of \$15.3 million, which is above the guideline set by Council of \$5.0 million and a Council mandated \$12.5 million General Fund contingency (equal to 40% of

budgeted operating revenues). The fiscal year 2022 budget identifies using \$4.3 million of this fund balance on capital expenditures.”<sup>12</sup>

The Prosecution Team has also reviewed publicly available information relative to Teichert Construction. Teichert Construction is a division of Teichert<sup>13</sup>, a construction and materials company operating in California since 1887. Teichert provides residential development, public infrastructure, and site development services, and operates 22 materials plants in California and Nevada, specializing in aggregate, asphaltic concrete, concrete, and recycled products. Teichert also funds the Teichert Foundation which provides grants to “build and preserve a healthy and prosperous region.” According to Zippia (an online recruiting company), Teichert had 1,800 employees and a revenue of \$520 million in 2021<sup>14</sup>.

Based on the currently available information, the Prosecution Team has determined the Dischargers are able to pay the proposed ACL and continue in business.<sup>15</sup>

### **Step 7. Economic Benefit**

Pursuant to California Water Code Section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute a violation. The Enforcement Policy provides that the economic benefit of noncompliance should be calculated using the United States Environmental Protection Agency’s (U.S. EPA) Economic Benefit Model (BEN)<sup>16</sup> program unless it is demonstrated that an alternative method of calculating the economic benefit is more appropriate. The economic benefit was calculated using BEN Version 2022.0.0 (June 2022). 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.

Staff evaluated the types of actions that the Dischargers should have taken to avoid the alleged violations and estimated the cost of these actions. Two types of costs were considered: delayed costs and avoided costs<sup>17</sup>.

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<sup>12</sup> [637877014130870000 \(townoftruckee.com\)](https://www.townoftruckee.com/637877014130870000) This is the most recent CAFR available to the public.

<sup>13</sup> [Teichert](#)

<sup>14</sup> [Teichert Revenue: Annual, Quarterly, and Historic - Zippia](#)

<sup>15</sup> Existing or potential private agreements between Town and Teichert related to indemnity are not relevant to the proposed penalty. As framed, any penalty would be joint and several between the Dischargers.

<sup>16</sup> BEN is available for download at [Penalty and Financial Models | US EPA](#)

<sup>17</sup> Delayed costs include expenditures that should have been made sooner. Avoided costs include expenditures for services that the permittee should have incurred to avoid the incident of noncompliance, such as additional BMP maintenance and QSP inspections.

The estimated economic benefit for this case is based on the Dischargers' failure to adhere to the requirements of the Construction General Permit. The Dischargers' economic benefit is mainly derived from the avoided cost of additional QSP inspections and labor that would have been required to properly implement and maintain BMPs onsite. There are also some marginal benefits obtained by delaying the purchase of materials needed to successfully implement BMPs.

Avoided Costs: The Dischargers received an economic benefit by avoiding the costs of:

- 23 missed QSP inspections;
- Labor associated with daily monitoring of BMPs and ensuring the construction site was free from asphaltic concrete, solid waste, concrete spillage, and trash;
- An additional onsite dumpster to dispose of trash and debris;
- Labor associated with monitoring and maintaining BMPs over winter of 2021; and
- General costs associated with maintaining fiber rolls, silt fencing, and slopes.

Delayed Costs: With the exception of providing secondary containment for hazardous waste, staff determined that the Dischargers received a negative economic benefit<sup>18</sup> for delaying the implementation of the following BMPs:

- Providing secondary containment for a portable toilet;
- Providing a spill kit onsite;
- Providing drip bags for vehicles;
- Providing plastic lining underneath paving equipment; and
- Stabilizing the construction yard entrance and exit.

For computational purposes, the penalty payment date was established as the tentative hearing date, which is July 1, 2023. Changes to this date will affect the total economic benefit. Based on specific assumptions within the model, as well as the assumptions outlined in Appendix A, the total economic benefit of non-compliance was determined to be approximately **\$73,984**.

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<sup>18</sup> A negative economic benefit occurs when inflation outpaces the time-value of money. In other words, a negative economic benefit indicates that it would have been marginally more cost-effective for the Discharger to implement certain BMPs sooner.



**Step 8. Other Factors as Justice May Require**

The Prosecution Team has elected to reduce the liability by 10% (\$60,411) for the uncertainty inherent in an administrative enforcement proceeding and potential litigation.

The Enforcement Policy provides under “other factors as justice may require” that the cost of investigation and enforcement should be added to the liability amount. From August 9, 2021 through March 13, 2023, an Engineering Geologist with the Lahontan Water Board invested 34 hours, and an Environmental Program Manager, Retired Annuitant, with the State Water Board Office of Enforcement invested 89 hours, to investigate, develop enforcement documents, and prepare to bring this matter to hearing. Following the Enforcement Policy guidance, and based on the staff’s position and overhead, these hours were converted into a staff cost of \$16,002. The staff costs do not include the costs accrued by Lahontan Water Board management or by Water Board attorneys. The Prosecution Team finds that it is appropriate to increase the Total Base Liability amount by \$16,002 in consideration of these investigation and enforcement costs. Increasing the final proposed liability amount in this manner serves to create a more appropriate deterrent against future violations.

**Step 9. Maximum and Minimum Liability Amounts**

**Statutory Maximum:** The maximum liability is found in Water Code section 13385(c) and is \$10,000 per day per violation. The combined total maximum liability for all alleged violations is \$1,180,000.

**Statutory Minimum:** Water Code section 13385(e) requires that, at a minimum, the economic benefit derived from the alleged violations be recovered. The Enforcement Policy states that the Water Board should strive to impose civil liabilities that are 10 percent greater than the economic benefit to the violator. The economic benefit derived from the alleged violations addressed in this matter is \$73,984. Adding 10 percent to the statutory minimum brings the minimum liability for these alleged violations to \$81,382.

**Step 10. Final Liability Amount**

The final liability amount consists of the added amounts for each alleged violation, with any allowed adjustments, provided the amount is within the statutory minimum and statutory maximum amounts. Based on the foregoing analysis, and consistent with the Enforcement Policy, the proposed Administrative Civil Liability is **\$559,701**.

Attachment: Economic Benefit Analysis spreadsheet

<b>Economic Benefit Analysis</b>									
<b>Coldstream Roundabout</b>									
Compliance Action	One-Time Non-Depreciable Expenditure				Non-Compliance	Compliance	Penalty Payment	Discount Rate	Benefit of Non-Compliance
	Amount	Basis	Date	Delayed?	Date	Date	Date		
1. Complete missed QSP inspections	\$ 11,279	ECI	1/5/2023	N	11/29/2021	7/1/2023	7/1/2023	2.20%	\$ 11,027.166
2. Maintain BMPs during construction	\$ 7,283	ECI	1/5/2023	N	8/9/2021	7/1/2023	7/1/2023	2.20%	\$ 7,109.963
3. Have an additional dumpster onsite	\$ 13,325	GDP	1/5/2023	N	8/9/2021	7/1/2023	7/1/2023	2.20%	\$ 12,950.699
4. Have additional fiber rolls and tarps	\$ 1,944	CCI	1/5/2023	N	8/9/2021	7/1/2023	7/1/2023	2.20%	\$ 1,877.789
5. Have secondary containment for hazardous waste	\$ 280	GDP	1/5/2023	Y	6/7/2022	6/13/2022	7/1/2023	2.20%	\$ 0.100
6. Have secondary containment for portable toilet	\$ 109	GDP	1/5/2023	Y	5/23/2022	8/14/2022	7/1/2023	2.20%	\$ (0.483)
7. Have a spill-kit onsite	\$ 260	GDP	1/5/2023	Y	8/9/2021	7/24/2022	7/1/2023	2.20%	\$ (8.075)
8. Provide drip bags for vehicles	\$ 33	GDP	1/5/2023	Y	8/1/2022	10/26/2022	7/1/2023	2.20%	\$ (0.848)
9. Provide plastic underneath paving equipment	\$ 370	GDP	1/5/2023	Y	6/14/2022	10/10/2022	7/1/2023	2.20%	\$ (2.483)
10. Maintain BMPs over winter	\$ 1,137	ECI	1/5/2023	N	2/7/2022	2/7/2022	7/1/2023	2.20%	\$ 1,123.585
11. Implement hydroseeding on slopes	\$ 24,000	CCI	7/1/2012	N	10/5/2021	9/21/2022	7/1/2023	2.20%	\$ 33,317.892
12. Build and maintain silt fencing	\$ 4,735	CCI	7/1/2012	N	8/9/2021	2/16/2022	7/1/2023	2.20%	\$ 6,595.186
13. Stabilize construction yard entrance and exit	\$ 2,400	CCI	7/1/2012	Y	7/14/2022	8/28/2022	7/1/2023	2.20%	\$ (6.037)
<b>Income Tax Schedule: Municipality</b>								<b>Total Benefit:</b>	<b>\$ 73,984.5</b>
<b>USEPA BEN Model Version: Version 2022.0.0</b>									
<b>Analyst: Michael Yoakam</b>									
<b>Date/Time of Analysis: 1/05/2023 2:00pm</b>									
<b>Assumptions: See Appendix A</b>									