

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2022-0340
IN THE MATTER OF**

**ROBERT FRENCH
WAHIB MIKHAIL
FORMER BUY RITE GASOLINE FACILITY**

This Administrative Civil Liability Complaint (Complaint) is issued by the Assistant Executive Officer of the California Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board) to Robert French and Wahib Mikhail (collectively, Responsible Parties). This Complaint is issued pursuant to California Health and Safety Code section 25299(d), which authorizes the imposition of administrative civil liability; Water Code section 13323, which authorizes the Executive Officer to issue this Complaint; and Water Code Division 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case, the Assistant Executive Officer.

This Complaint is based on evidence that Robert French, as the owner of property where an unauthorized release of hazardous substances from underground storage tanks (USTs) occurred at the former Buy Rite Gasoline facility located at 251 West Manchester Avenue in Los Angeles, California (Site), and Wahib Mikhail, as the operator of the USTs, failed to comply with the requirements in the Health and Safety Code section 25296.10 directive issued by the Los Angeles Water Board on February 11, 2020.

The Assistant Executive Officer alleges the following:

BACKGROUND

1. On March 4, 1999, an unauthorized release from leaking USTs was reported to the Los Angeles City Fire Department and the Los Angeles Water Board, following the excavation of three single-walled USTs from the Site in December 1998.¹ Approximately 500 tons of fuel-contaminated soils were removed and disposed of off-site. Shortly thereafter, three new USTs, dispensers, and product lines were installed.² The Site continues to be an active gas station today and is operated as Buy Rite Arco.
2. The Site is located in a mixed-use neighborhood, surrounded by commercial, retail, and residential properties.
3. Robert French is the current owner of the Site, and has owned the Site since at least 1999.

¹ Unauthorized Release (Leak)/Contamination Site Report, filed by Ronald Halpern of Daly Environmental Services for Buy Rite Gasoline (Mar. 4, 1999).

² Daly Environmental Services for Wahib Mikhail, *Underground Storage Tank Closure Report*, p. 6 (Mar. 4, 1999).

4. Wahib Mikhail was the operator of the USTs at the former Buy Rite Gasoline facility at the time of the unauthorized release. Additionally, Wahib Mikhail is the current owner and operator of the new USTs installed at the Site.
5. In May 2003, the State Water Resources Control Board (State Water Board) approved Wahib Mikhail's application to the UST Cleanup Fund, which reimburses petroleum UST owners and operators for expenses associated with the cleanup of leaking USTs.
6. From approximately May 2003 to May 2018, the Responsible Parties worked with their consultants to investigate the extent of soil and groundwater contamination caused by the leaking USTs and to conduct remediation at the Site. Remedial actions included the removal of contaminated groundwater, light non-aqueous phase liquids (or free product), and vapor phase total petroleum hydrocarbons as gasoline (TPH-g).³
7. Since 2006, fifteen groundwater monitoring wells were installed and monitored regularly. The last groundwater monitoring report submitted in June 2018 indicates that water quality objectives have not been achieved. The 2018 report showed free product in both on-site and off-site groundwater monitoring wells at a thickness ranging from 0.06 to 1.25 inches. Groundwater sampled from a well located 10 feet east of the former UST excavation area showed maximum concentrations of TPH-g up to 6,630,000 micrograms per liter ($\mu\text{g/L}$), total petroleum hydrocarbons as diesel (TPH-d) up to 357,000 $\mu\text{g/L}$, benzene up to 4,960 $\mu\text{g/L}$, and methyl butyl tertiary ether (MTBE) up to 848 $\mu\text{g/L}$.
8. Although the 2018 groundwater monitoring report showed elevated levels of petroleum contaminants, Wahib Mikhail, through its consultant Alta EM, Inc., submitted a request for case closure to the Los Angeles Water Board on June 4, 2018.
9. The Los Angeles Water Board and the State Water Board's Expedited Claim Account Program ("ECAP") jointly reviewed the case closure request in accordance with the State Water Board's Low Threat UST Case Closure Policy (Low Threat Closure Policy). Both agencies determined that the extent of the remaining contamination warranted additional corrective action because the Site did not meet the groundwater criteria in the Low Threat Closure Policy, which requires the groundwater plume to be stable or decreasing. Additionally, the agencies determined that free product had not been removed to the extent practicable.
10. On September 21, 2018, the State Water Board received the last UST Cleanup Fund reimbursement request from Wahib Mikhail. With payment of this last request, Wahib Mikhail's UST Cleanup Fund claim reached the maximum claim amount of \$1,495,000. Since then, no additional work has been done at the Site.

³ State Water Board, Review Summary Report for Buy Rite Gasoline Claim No. 16877 (Jan. 24, 2020).

11. On February 11, 2020, the Los Angeles Water Board issued a closure denial letter and Health and Safety Code section 25296.10 directive to the Responsible Parties, requiring additional corrective action to address the remaining contamination. Specifically, the directive requires the Responsible Parties to submit a revised remedial action plan (RAP) and submit semi-annual groundwater monitoring reports. The status of each is described below:
 - a. The RAP was due on March 11, 2020. The RAP was to include an evaluation of at least three remedial actions and propose the most cost effective and efficient option to address the persistent presence of free product in groundwater monitoring wells and elevated levels of total petroleum hydrocarbons including TPH-g, TPH-d, benzene, and MTBE. To date, the Responsible Parties have not submitted the RAP. As such, there is no plan to address the remaining contaminants at the Site.
 - b. Semi-annual groundwater monitoring reports are due by July 15th and January 15th of each year and are to include the sampling results from the groundwater monitoring wells located on and off-site. The first report was due on July 15, 2020 and covers the January 2020 through June 2020 reporting period. However, the Responsible Parties did not submit this report, nor did they submit the subsequent semi-annual groundwater monitoring reports due on January 15, 2021, July 15, 2021, January 15, 2022, and July 15, 2022.
12. The Los Angeles Water Board relies on the submission of workplans, like the RAP, to address remaining contamination and to bring the Site to closure. Similarly, the board relies on monitoring reports to determine the extent of existing contamination and ensure that it has not spread farther in groundwater, to drinking water wells, or to the surrounding community.
13. On May 4, 2020, the Los Angeles Water Board issued a Notice of Violation (NOV) to the Responsible Parties based on their failure to submit revised RAP, or any groundwater monitoring reports by the due dates.
14. On June 15, 2020, Robert French responded to the NOV, claiming the Site was already as clean as possible and that the State Water Board verbally agreed to close the case in exchange for a deed restriction on the Site.
15. On September 2, 2021, the State Water Board's Office of Enforcement notified the Responsible Parties that continued failure to submit the required reports would result in the imposition of an administrative civil liability. In response, in a letter dated October 12, 2021, Robert French reiterated his claim that the Site was already clean and that he had a "deal" with the State Water Board.
16. On October 28, 2021, the Office of Enforcement responded to Robert French in writing, explaining that the Los Angeles Water Board and State Water Board collectively agreed that additional corrective action was necessary to address the

remaining contamination at the Site. Neither Robert French nor Wahib Mikhail have responded to the Los Angeles Water Board or the Office of Enforcement since that time.

17. To date, the Responsible Parties have not implemented the corrective action required in Los Angeles Water Board's Health and Safety Code directive.

REGULATORY CONSIDERATIONS

18. As described above, the Responsible Parties have failed to submit a revised RAP, to conduct semi-annual groundwater monitoring, and to submit semi-annual groundwater monitoring reports as required by the Los Angeles Water Board's Health and Safety Code section 25296.10 directive.

19. Health and Safety Code section 25296.10, subdivision (c)(1) states:

When a local agency, the board, or a regional board requires an owner, operator, or other responsible party to undertake corrective action, including preliminary site assessment and investigation, pursuant to an oral or written order, directive, notification, or approval issued pursuant to this section, or pursuant to a cleanup and abatement order or other oral or written directive issued pursuant to Division 7 (commencing with Section 13000) of the Water Code, the owner, operator, or other responsible party shall prepare a work plan that details the corrective action the owner, operator, or other responsible party shall take to comply with the requirements of subdivisions (a) and (b) and the corrective action regulations adopted pursuant to Section 25299.3.

20. This Complaint alleges the Responsible Parties violated Health and Safety Code section 25296.10 directive and seeks the imposition of administrative civil liability in accordance with Health and Safety Code section 25299, subdivision (d)(1).

21. Health and Safety Code section 25299, subdivision (d)(1) states:

A person who violates a corrective action requirement established by, or issued pursuant to, Section 25296.10 is liable for a civil penalty of not more than ten thousand dollars (\$10,000) for each underground storage tank for each day of violation.

22. Pursuant to Health and Safety Code section 25299, subdivision (d)(2), the Los Angeles Water Board may impose an administrative civil liability for violations of corrective action requirements in accordance with Water Code sections 13323 to 13328.

23. Pursuant to Water Code section 13327, in determining the amount of civil liability, the Los Angeles Water Board shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the

discharge, and, with respect to the violator, the ability to pay, the effect on the ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.

24. Issuance of this Complaint to enforce Division 20, Chapter 6.7 of the Health and Safety Code is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15307, 15308, 15321, subdivision (a)(2), and all applicable law.

ALLEGED VIOLATIONS

25. Violation 1: The Prosecution Team alleges the Responsible Parties violated the Health and Safety Code section 25296.10 directive by failing to submit a revised RAP by March 11, 2020.
26. Violation 2: The Prosecution Team alleges the Responsible Parties violated the Health and Safety Code section 25296.10 directive by failing to submit semi-annual groundwater monitoring reports. The first report was due by July 15, 2020.

MAXIMUM CIVIL LIABILITY

27. As outlined in this Complaint, the Responsible Parties failed to submit a revised RAP. As of December 27, 2022 (the date this Complaint is issued), the revised RAP is 1,021 days late. Additionally, the Responsible Parties failed to submit semi-annual groundwater monitoring reports. As of December 27, 2022, the groundwater monitoring reports are cumulatively 895 days late. Together, the total days of violation is 1,916 days.
28. Pursuant to Health and Safety Code section 25299, subdivision (d)(1), the maximum civil liability against any person who violates a corrective action requirement established by, or issued pursuant to, section 25296.10 of the Health and Safety Code is ten thousand dollars (\$10,000) per day of violation. The statutory maximum civil liability for each alleged violation is detailed below:
- a. Violation 1 = \$10,000/day x 1,021 days = \$10,210,000.
 - b. Violation 2 = \$10,000/day x 895 days = \$8,950,000.
29. Therefore, the maximum civil liability for the violations cited in this Complaint is \$19,160,000.

MINIMUM CIVIL LIABILITY

30. Pursuant to the State Water Board's 2017 Water Quality Enforcement Policy (Enforcement Policy), the minimum civil liability should be at least 10 percent higher

than the economic benefit so that liabilities are not construed as the cost of doing business and the assessed liability provides a meaningful deterrent to future violations. The minimum liability that may be imposed is the economic benefit (\$34,540) plus 10% (\$3,454), which equals \$37,994.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

31. The Prosecution Team proposes an administrative civil liability of \$1,222,934 for the alleged violations of Health and Safety Code section 25926.10, as detailed in Attachment A to this Complaint. This proposed administrative civil liability was derived using the penalty methodology in the Enforcement Policy. The proposed administrative civil liability takes into account the factors cited in Water Code section 13327, such as the Responsible Parties' culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
32. The proposed administrative civil liability is below the statutory maximum civil liability under the Health and Safety Code section 25299, and above the minimum civil liability provided for in the Enforcement Policy.
33. Notwithstanding the issuance of this Complaint, the Los Angeles Water Board retains the authority to assess additional civil liabilities for violations which have not yet been assessed or for violations that may subsequently occur.

THE RESPONSIBLE PARTIES ARE HEREBY GIVEN NOTICE THAT:

34. The Assistant Executive Officer of the Los Angeles Water Board proposes an administrative civil liability in the amount of \$1,222,934. The amount of the proposed administrative civil liability is based upon a review of the factors cited in Water Code section 13327 as well as the Enforcement Policy.
35. A hearing on this matter will be conducted by the Los Angeles Water Board at a hearing scheduled on **March 22, 2023**, unless the Responsible Parties do any of the following:
 - a. Responsible Parties waive the right to a hearing by completing the attached Waiver Form (checking the box next to Option 1) and returning it to the Los Angeles Water Board, along with payment for the proposed administrative civil liability of \$1,222,934; or
 - b. The Los Angeles Water Board agrees to postpone any necessary hearing after the Responsible Parties request to engage in settlement discussions by checking the box next to Option 2 on the attached Waiver Form and returning it to the Los Angeles Water Board Advisory Team contact as described in the Cover Letter to this Complaint; or

- c. The Los Angeles Water Board agrees to postpone any necessary hearing after the Responsible Parties request a delay by checking the box next to Option 3 on the attached Waiver Form and returning it to the Los Angeles Water Board Advisory Team contact as described in the Cover Letter to this Complaint, along with a letter describing the items to be discussed.

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

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

 Digitally signed
by Hugh Marley
Date: 2022.12.27
09:14:21 -08'00'

12/27/2022

Hugh Marley
Assistant Executive Officer

Date

Attachments:

- Attachment A: Penalty Calculation Methodology
- Attachment B: Economic Benefit Calculation
- Waiver Form

Attachment A

Factors Considered and Penalty Calculation Methodology for Administrative Civil Liability Complaint No. R4-2022-0340

**Robert French and
Wahib Mikhail
Former Buy Rite Gasoline Facility
251 West Manchester Avenue, Los Angeles, California
Case No. 900030216**

On February 11, 2020, the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) issued a Health and Safety Code section 25296.10 directive to Robert French and Wahib Mikhail concerning the former Buy Rite Gasoline facility located at 251 West Manchester Avenue in Los Angeles, California (Site). The Los Angeles Water Board's directive requires Robert French, the property owner, and Wahib Mikhail, the operator (collectively, Responsible Parties), to address the unauthorized release of hazardous substances from underground storage tanks (USTs) at the Site. Although the leaking USTs and the surrounding contaminated soils have been removed from the Site, additional corrective action is required to address the remaining groundwater contamination, including free product (or light non-aqueous phase liquids)¹ and total petroleum hydrocarbons. Specifically, the directive required Robert French and Wahib Mikhail to submit a revised remedial action plan (RAP) to address the remaining contamination and to resume semi-annual groundwater monitoring. To date, the Responsible Parties have not submitted the required reports, thereby allowing the remaining contamination to persist in the environment.

Pursuant to Health and Safety Code section 25299, subdivision (d), a person who violates a corrective action requirement established by Health and Safety Code section 25296.10 is liable for a civil penalty of not more than \$10,000 for each UST for each day of violation. The civil penalty may be administratively imposed by the Los Angeles Water Board in accordance with sections 13323 to 13328 of the California Water Code (Water Code). For the purposes of this enforcement action, the proposed penalty is based on one unauthorized release from the USTs at the Site.

The State Water Resources Control Board's (State Water Board) 2017 Water Quality Enforcement Policy (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under Water Code section 13327. Each factor is discussed in detail for each alleged violation below. The 2017 Enforcement Policy can be found at https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf.

¹ The State Water Board's Low-Threat UST Closure Policy, Technical Justification for Groundwater Media-Specific Criteria, notes that free product can be a significant source of dissolved constituents to groundwater.

VIOLATION 1: Failure to Submit a Revised RAP

Pursuant to the Los Angeles Water Board's Health and Safety Code section 25296.10 directive, the Responsible Parties are required to submit a revised RAP by March 11, 2020. Specifically, the directive requires the Responsible Parties to submit a revised RAP evaluating at least three remedial technologies and proposing the most efficient and cost-effective option to cleanup free product in on-site and off-site groundwater monitoring wells and address elevated concentrations of total petroleum hydrocarbons in groundwater at the Site. Here, total petroleum hydrocarbons include total petroleum hydrocarbons as gasoline (TPH-g), total petroleum hydrocarbons as diesel (TPH-d), benzene, and methyl butyl tertiary ether (MTBE).

On May 4, 2020, the Los Angeles Water Board issued a Notice of Violation (May 2020 NOV) to the Responsible Parties for failing to submit a revised RAP. The revised RAP remains outstanding as of the issuance of this Complaint.

Step 1: Potential for Harm for Discharge Violations. The Prosecution Team is not alleging a discharge violation; therefore, it is not necessary to evaluate this factor.

Step 2: Assessment for Discharge Violations. The Prosecution Team is not alleging a discharge violation; therefore, it is not necessary to evaluate this factor.

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 the deviation from the applicable requirements.

a. Potential for Harm: Moderate

The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm. An assignment of a "Moderate" potential for harm is appropriate when the characteristics of the violation have substantially impaired the Water Board's ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.

Here, the Responsible Parties' failure to submit a revised RAP presents a substantial threat to beneficial uses. The Site is located within the Coastal Plain of the Los Angeles Groundwater Basin (also known as the Central Basin). Beneficial uses designated for the Central Basin include municipal and domestic water supply, agricultural water supply, industrial process water supply, and industrial service water supply. Although the leaking USTs have been removed, hazardous substances from the former USTs continue to persist in groundwater and pose a substantial threat to these beneficial

uses. Among these hazardous substances, benzene is of particular concern because it is a known human carcinogen.²

The most recent technical reports indicate petroleum contaminants from the former USTs remain on the Site. The last semi-annual groundwater monitoring report, prepared by Alta E.M., Inc. on behalf of Wahib Mikhail, was submitted to Los Angeles Water Board staff in June 2018. The 2018 report showed free product in both on-site and off-site groundwater monitoring wells at a thickness ranging from 0.06 to 1.25 inches. Additionally, groundwater sampled from well AEM9, located 10 feet east of the former UST excavation area, detected maximum concentrations of TPH-g up to 6,630,000 micrograms per liter ($\mu\text{g/L}$), TPH-d up to 357,000 $\mu\text{g/L}$, benzene up to 4,960 $\mu\text{g/L}$, and MTBE up to 848 $\mu\text{g/L}$. The 2017 semi-annual groundwater monitoring samples from the same well detected elevated concentrations of TPH-g up to 566,000 $\mu\text{g/L}$, TPH-d up to 1,450,000 $\mu\text{g/L}$, benzene up to 19,500 $\mu\text{g/L}$, and MTBE up to 279 $\mu\text{g/L}$. The continued presence of free product and rebounding levels of petroleum hydrocarbons between the 2017 and 2018 groundwater monitoring cycles indicates that a significant amount of petroleum contamination still exists in the subsurface.

The continued presence of these hazardous substances requires further remediation; however, cleanup has been delayed and contaminants continue to persist in the environment because the Responsible Parties failed to submit the revised RAP. Moreover, the Responsible Parties' failure to submit a revised RAP prevents the Los Angeles Water Board from evaluating the effectiveness of the RAP in protecting human health, safety, and the environment from the hazardous substances described above. As such, this violation substantially impairs the board's ability to perform its statutory and regulatory functions and delays remediation. For these reasons, this violation is characterized as having a "Moderate" potential for harm.

b. Deviation from Requirement: Major

The Enforcement Policy requires a determination of whether the violation represents a minor, moderate, or major deviation from the applicable requirements. A major deviation from requirement is appropriate when the applicable requirement was rendered ineffective in essential function. A major factor is appropriate in this case because, as of the date of this Complaint the Responsible Parties have not submitted a revised RAP, therefore rendering the applicable requirement ineffective.

Using Table 3 in the Enforcement Policy, the Per Day Factor of 0.55 is assigned. This value is to be multiplied by the days of violation and the maximum per day penalty of \$10,000 under Health and Safety Code section 25299.

² Agency for Toxic Substances and Disease Registry, Total Petroleum Hydrocarbons (TPH) Fact Sheet (Aug. 1999), available at <https://www.atsdr.cdc.gov/toxfaqs/tfacts123.pdf>.

c. Days of Violation and Initial Liability Amount

There are 1,021 days between March 11, 2020 (due date of the RAP) and December 27, 2022 (the date this Complaint was issued).

The Enforcement Policy provides that, for violations lasting more than 30 days, the Los Angeles Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per day basis is no less than the per-day economic benefit, if any, resulting from the violations. In order to adjust the per-day basis, the Los Angeles Water Board must make express findings that the violation: (a) is not causing daily detrimental impacts to the environment or the regulatory program; or (b) results in no economic benefit from the illegal conduct that can be measured on a daily basis; or (c) occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation. If one of these findings is made, an alternate approach to penalty calculation for multiple day violations may be used (also known as “collapsing days”).

Under the Enforcement Policy, failure to submit a corrective action plan and other similar violations that delay remedial action are not the type of violation where collapsing days of violation is ordinarily used. Here, the failure to submit the revised RAP delays remediation at the Site, so the Los Angeles Water Board would not ordinarily collapse days of violation. However, without collapsing the days of violation, the resultant potential penalty for this violation is disproportionately high as compared to the remaining contamination. Given the large potential penalty if all 1,021 days of violation are counted, the Prosecution Team recommends compressing the days of violation and finds that the failure to submit the revised RAP does not result in an economic benefit that can be measured on a daily basis.

Following the Enforcement Policy, for violations lasting more than 30 days, the days are counted as follows: the first 30 days of violation, every fifth day of violation until the 60th day, and every 30 days thereafter. The 1,021 days for Violation 1 are compressed to 68 days by counting days 1-30, 35, 40, 45, 50, 55, 60, 90, 120, 150, 180, 210, 240, 270, 300, 330, 360, 390, 420, 450, 480, 510, 540, 570, 600, 630, 660, 690, 720, 750, 780, 820, 850, 880, 910, 940, 970, and 1,000.

The initial liability amount for Violation 1 is as follows:

$$68 \text{ days} \times \$10,000/\text{day (statutory maximum)} \times 0.55 \text{ (per day factor)} = \$374,000.$$

Step 4: Adjustment Factors

a. Culpability: 1.3

The Enforcement Policy directs that in order to determine the responsible party’s degree of culpability, the first step is to identify any performance standards (or, in their absence,

prevailing industry practices) in the context of the violation. The test for whether a discharger is negligent is what a reasonable and prudent person would have done or not done under similar circumstances. Adjustment should result in a multiplier between 0.75 and 1.5, with a higher multiplier for intentional misconduct or gross negligence and a lower multiplier for simple negligence. A neutral assessment of 1.0 should be used when a responsible party is determined to have acted as a reasonable and prudent person would have. A multiplier of less than 1.0 should only be used when a responsible party demonstrates that it has exceeded the standard of care expected of a reasonably prudent person to prevent the violation.

A multiplier of 1.3 for this violation is appropriate because the Responsible Parties are familiar with the requirements in the Los Angeles Water Board's directive, having previously worked with the board to implement similar corrective actions at the Site.

Since 2006, the Responsible Parties have worked with the Los Angeles Water Board to conduct corrective action at the Site and submit similar reports. For example, the Responsible Parties submitted, and Los Angeles Water Board staff reviewed and approved, a soil and water investigation workplan, well installation and monitoring reports, an interim remedial action workplan, and remedial action progress reports. Additionally, both the Los Angeles Water Board and State Water Board staff have met with the Responsible Parties to discuss the remaining contamination at the Site and the actions needed to certify the Site for closure under the State Water Board's Low-Threat UST Case Closure Policy (Low-Threat Closure Policy). This regular interaction demonstrates the Responsible Parties' familiarity with the Los Angeles Water Board's requirements and ability to implement the actions required in the board's directive.

A reasonable and prudent person would have taken affirmative actions to prepare the revised RAP, especially after being notified of the consequences of noncompliance in the May 2020 NOV and follow up correspondence with the State Water Board's Office of Enforcement. Instead, Robert French responded in an October 12, 2021 letter that he believed additional cleanup at the Site was unnecessary and the Los Angeles Water Board only wanted the Site to be "cleaner." Wahib Mikhail has not responded at all. Both parties' continued non-responsiveness demonstrates their negligence in addressing the remaining contamination.

The Responsible Parties' conduct is negligent because they failed to take reasonable and prudent actions to develop the revised RAP and address the remaining contamination at the Site. Thus, a multiplier of 1.3 for the culpability factor is appropriate.

b. 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 Responsible Parties do not have a history of violations; therefore, a multiplier of 1.0 is appropriate.

c. Cleanup and Cooperation: 1.3

This factor reflects the extent to which a party voluntarily cooperates in returning to compliance and correcting environmental damage. The multiplier for this factor ranges between 0.75 to 1.5, with a lower multiplier being applied where there is a high degree of cleanup and cooperation and a higher multiplier where this is absent.

Despite receiving the May 2020 NOV, multiple outreach attempts by the Los Angeles Water Board, and correspondences from the State Water Board's Office of Enforcement, the Responsible Parties have not cooperated or come into compliance with the board's directive. Instead, Robert French insisted that that he reached an agreement on case closure with the State Water Board and that the Los Angeles Water Board's directive is therefore unnecessary. However, on October 28, 2020, the Office of Enforcement responded to and corrected Robert French's claim, explaining that both the Los Angeles Water Board and State Water Board concluded that additional corrective action was required at the Site. Both agencies determined that the Site was not eligible for closure because multiple criteria in the Low-Threat Closure Policy were not met. The Responsible Parties have not responded to the Office of Enforcement's latest correspondence nor have they communicated an intent to comply with the directive. As such, a multiplier of 1.3 is appropriate for this violation.

Step 5: Determination of Total Base Liability

The Total Base Liability for Violation 1 is calculated below:

$$\text{\$374,000 (Initial Liability)} \times 1.3 \text{ (Culpability)} \times 1.0 \text{ (History of Violations)} \times 1.3 \text{ (Cleanup and Cooperation)} = \text{\$632,060.}$$

**VIOLATION 2:
Failure to Submit Semi-Annual Groundwater Monitoring Reports**

The petroleum plume, which originates at the Site and expands in an east-northeast direction, is monitored by a network of fifteen on-site and off-site groundwater monitoring wells. The Los Angeles Water Board's Health and Safety Code directive requires the Responsible Parties to conduct semi-annual groundwater monitoring and submit semi-annual reports on January 15 and July 15 of every year. These reports are to include the results of semi-annual sampling of all groundwater monitoring wells associated with the Site (except for wells AEM4, AEM5, AEM6, and AEM7) and to summarize the results of any free product removal activities conducted during the reporting period. The first semi-annual report was due on July 15, 2020, but the Responsible Parties failed to submit the required report to the Los Angeles Water Board.

To date, the Responsible Parties have not submitted any of the semi-annual groundwater monitoring reports required in the directive. These missing groundwater monitoring reports are treated as one ongoing violation for the purposes of enforcement because the reports run concurrently and require the same substantive reporting from all groundwater monitoring wells.

Step 1: Potential for Harm for Discharge Violations. The Prosecution Team is not alleging a discharge violation; therefore, it is not necessary to evaluate this factor.

Step 2: Assessment for Discharge Violations. The Prosecution Team is not alleging a discharge violation; therefore, it is not necessary to evaluate this factor.

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 the deviation from the applicable requirements.

a. Potential for Harm: Moderate

This violation is characterized as having a “Moderate” potential for harm because the failure to conduct semi-annual groundwater monitoring compromises the Los Angeles Water Board’s ability to perform its statutory and regulatory functions and it presents a substantial threat to beneficial uses. The discussion of the beneficial uses for Violation 1 applies to this violation as well.

The last groundwater monitoring report, submitted in June 2018, covered sampling conducted during the first half of 2018. This report showed the continued presence of TPH-g, TPH-d, benzene, and MTBE in groundwater underlying the Site and adjacent properties. Furthermore, the groundwater specific criteria in the Low-Threat Closure Policy requires the plume to be stable or decreasing in areal extent for a minimum of 5 years. However, the contaminant concentrations reported in the June 2018 groundwater sampling report does not indicate that the plume is stable or decreasing. Since then, no new groundwater data has been collected, resulting in an over 4-year gap in data collection. Without the groundwater monitoring reports, the Los Angeles Water Board cannot monitor the effectiveness of remedial actions that have already taken place; determine whether beneficial uses are being protected; or confirm whether the plume is stable, decreasing, or spreading to adjacent areas.

For these reasons, this violation is characterized as having a “Moderate” potential for harm.

b. Deviation from Requirement: Major

A major factor is appropriate here because the Responsible Parties have not submitted any of the required groundwater monitoring reports, therefore rendering the applicable requirement ineffective.

Using Table 3 in the Enforcement Policy, the Per Day Factor of 0.55 is assigned.

c. Days of Violation and Initial Liability Amount

The Responsible Parties failed to submit the groundwater monitoring reports, which was first due on July 15, 2020, and every semi-annual report thereafter, for a total of 895 days of violation at the time this complaint was issued on December 27, 2022.

The Enforcement Policy provides that, for violations lasting more than 30 days, the Los Angeles Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per-day economic benefit, if any, resulting from the violation. For this violation, the Prosecution Team finds that the failure to submit the monitoring reports does not result in an economic benefit that can be measured on a daily basis. Therefore, the Prosecution Team recommends compressing the days of violation. Applying the method described for multiple day violations in Violation 1 above, the 895 days for Violation 2 are compressed to 63 days of violation.

The initial liability amount for Violation 2 is as follows:

$$63 \text{ days} \times \$10,000/\text{day} \text{ (statutory maximum)} \times 0.55 \text{ (per day factor)} = \$346,500$$

Step 4: Adjustment Factors

a. Culpability: 1.3

The discussion of Culpability for Violation 1 applies to this violation also. Due to the repeated outreach by Los Angeles Water Board staff and the clear dates set forth in the directive, the Responsible Parties knew the First Semi-Annual Groundwater Monitoring Report was due on July 15, 2020. Moreover, the Responsible Parties submitted regular groundwater monitoring reports from April 2007 (date of the first report) to June 2018, but unilaterally decided to stop groundwater monitoring once they reached the maximum limit on their UST Cleanup Fund claim. In other words, the Responsible Parties would no longer be reimbursed from the fund for future work at the Site.

A reasonable and prudent person, despite reaching the limit on the UST Cleanup Fund, would have taken affirmative actions to resume groundwater monitoring at the Site after receiving the Los Angeles Water Board's directive. Furthermore, a reasonable and prudent person with questions about why continued semi-annual groundwater monitoring is necessary at the Site or questions about funding options would have reached out to the board. However, the Responsible Parties' continued unresponsiveness demonstrates their negligence in ignoring the board's directive. Thus, a multiplier of 1.3 is appropriate for this violation.

b. History of Violation: 1.0

The Responsible Parties do not have a history of violations; therefore, a multiplier of 1.0 is appropriate.

c. Cleanup and Cooperation: 1.3

The discussion of Cleanup and Cooperation for Violation 1 applies to this violation as well. The Responsible Parties have not cooperated with the Los Angeles Water Board and have not demonstrated that they intend to comply with the directive. Thus, a multiplier of 1.3 is appropriate.

Step 5: Determination of Total Base Liability

The Total Base Liability for Violation 2 is calculated below:

$$\begin{aligned} & \$346,500 \text{ (Initial Liability)} \times 1.3 \text{ (Culpability)} \times 1.0 \text{ (History of Violations)} \times 1.3 \\ & \text{(Cleanup and Cooperation)} = \mathbf{\$585,585.} \end{aligned}$$

Step 5 (Combined): Total Base Liability for All Violations

The combined total base liability is the sum of the total base liability for each of the violations discussed above, as follows:

Violation 1: \$632,060
+ Violation 2: \$585,585

= Combined Total Base Liability: \$1,217,645.

The following Steps 6 through 10 apply to the Combined Total Base Liability Amount for all violations.

Step 6: Ability to Pay and Continue In Business

The Enforcement Policy provides that if the Los Angeles Water Board has sufficient financial information necessary to assess the responsible party's ability to pay the Total Base Liability or to assess the effect of the Total Base Liability on the responsible party's ability to continue in business, then the Total Base Liability may be adjusted to address the responsible party's ability to pay or to continue in business.

Robert French's funding sources include ownership of multiple properties in Los Angeles County, including the Site, and a real estate management company called R.L. French Properties. Additionally, Robert French receives rental income from the Site, which is leased to Wahib Mikhail, the current owner and operator of the Arco-branded gas station at the Site. Robert French's other properties in Los Angeles County also

appear to be leased to other operating businesses, including an auto repair shop and a truck exchange company. The Prosecution Team has met its burden to provide an initial showing of Robert French's ability to pay the proposed liability amount. The burden now shifts to Robert French to demonstrate his inability to pay the proposed liability.

As mentioned above, Wahib Mikhail is the owner and operator of the Buy Rite Arco gasoline station at the Site and gains regular income from its operation. Wahib Mikhail is also the CEO of BuyRite Gasoline, Inc., an active corporation in California whose primary business includes gasoline service stations. Based on publicly available information from Dun & Bradstreet, BuyRite Gasoline, Inc. generates approximately \$459,263 in sales and employs approximately 9 employees.

In sum, both parties appear to have the ability to pay. As such, for the purposes of this penalty methodology, there is no adjustment to the Combined Total Base Liability.

Step 7: Economic Benefit

Pursuant to the Enforcement Policy, economic benefit is any savings or monetary gain derived from the act or omission that constitutes the violation. The Enforcement Policy provides that the economic benefit of noncompliance should be calculated using the U.S. Environmental Protection Agency's BEN financial model. The BEN model utilizes standard financial cash flow and net present value analysis techniques to calculate the economic benefit a party derives from delaying and/or avoiding compliance with environmental statutes.

Here, the Responsible Parties realized an economic benefit by not expending the resources necessary to prepare the revised RAP and groundwater monitoring reports as required in the Health and Safety Code directive. Using the BEN model, the economic benefit for not completing the RAP and not submitting the monitoring reports is estimated to be \$34,540. (See Attachment B: Economic Benefit Calculation.)

The Enforcement Policy requires the Los Angeles Water Board to recover, at a minimum, 10% more than the economic benefit. The minimum liability that may be imposed is the economic benefit (\$34,540) plus 10% (\$3,454), which equals \$37,994.

Step 8: Other Factors as Justice May Require

The Enforcement Policy states that the costs of investigation and enforcement can be considered under "other factors as justice may require." To date, the Los Angeles Water Board has incurred \$5,289 associated with the investigation and enforcement of the violations alleged herein. This total represents approximately 42 hours of staff time spent on the investigation, preparing the NOV, and preparing enforcement documents, including this analysis. The amount was calculated using each staff person's hourly rate plus benefits and overhead. No attorneys' fees were included in this calculation. The Prosecution Team finds that it is appropriate to increase the Combined Total Base

Attachment A
Administrative Civil Liability Complaint
No. R4-2022-0340
Former Buy Rite Gasoline Facility

Liability amount by \$5,289 in consideration of the staff costs incurred. Increasing the Combined Total Base Liability Amount in this manner also serves as a deterrent against future violations.

Step 9: Maximum and Minimum Liability Amounts

The maximum and minimum liabilities must be determined and compared to the proposed liability.

As explained above and in the Complaint, the statutory maximum per day penalty is \$10,000 under Health and Safety Code section 25299. The total combined days of violation is 1,916 days (without compressing days). Therefore, the maximum liability amount is \$19,160,000.

As explained in Step 7 above, the minimum liability amount is \$37,994.

Step 10: Final Liability Amount: \$1,222,934

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided that the amounts are within the minimum and maximum liability amounts. Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount is the Combined Total Base Liability (\$1,217,645) plus staff costs (\$5,289), which equals \$1,222,934 and is within the minimum and maximum liability amounts.

Attachment B- Economic Benefit Analysis

Former Buy Rite Gasoline

Compliance Action	Capital Investment		One-Time Non-Depreciable Expenditure		Annual Cost		Non-Compliance Date	Compliance Date	Penalty Payment Date	Discount Rate	Benefit of Non-Compliance				
	Amount	Basis	Date	Delayed?	Amount	Basis						Date			
1 Submit Remedial Action Plan		ECI	1/1/2015	Y	\$ 11,000	ECI	12/2/2022	Y	1/1/2015	1/1/2015	5/11/2020	3/22/2023	4/21/2023	6.70%	\$ 1,072
2 GWM event/report (due 7/15/2020)		ECI	1/1/2015	Y	\$ 8,538	ECI	12/2/2022	N	1/1/2015	1/1/2015	7/15/2020	3/22/2023	4/21/2023	6.70%	\$ 7,008
3 GWM event/report (due 1/15/2021)		ECI	1/1/2015	Y	\$ 8,538	ECI	12/2/2022	N	1/1/2015	1/1/2015	1/15/2021	3/22/2023	4/21/2023	6.70%	\$ 6,833
4 GWM event/report (due 7/15/2021)		ECI	1/1/2015	Y	\$ 8,538	ECI	12/2/2022	N	1/1/2015	1/1/2015	7/15/2021	3/22/2023	4/21/2023	6.70%	\$ 6,685
5 GWM event/report (due 1/15/2022)		ECI	1/1/2015	Y	\$ 8,538	ECI	12/2/2022	N	1/1/2015	1/1/2015	1/15/2022	3/22/2023	4/21/2023	6.70%	\$ 6,539
6 GWM event/report (due 7/15/2022)		ECI	1/1/2015	Y	\$ 8,538	ECI	12/2/2022	N	1/1/2015	1/1/2015	7/15/2022	3/22/2023	4/21/2023	6.70%	\$ 6,403
7		ECI	1/1/2015	Y		ECI	1/1/2015	N	1/1/2015	1/1/2015	1/1/2015	3/22/2023	4/21/2023	7.40%	\$ -
8		ECI	1/1/2015	Y		ECI	1/1/2015	N	1/1/2015	1/1/2015	1/1/2015	3/22/2023	4/21/2023	7.40%	\$ -
9		ECI	1/1/2015	Y		ECI	1/1/2015	N	1/1/2015	1/1/2015	1/1/2015	3/22/2023	4/21/2023	7.40%	\$ -
10		ECI	1/1/2015	Y		ECI	1/1/2015	N	1/1/2015	1/1/2015	1/1/2015	3/22/2023	4/21/2023	7.40%	\$ -
11		ECI	1/1/2015	Y		ECI	1/1/2015	N	1/1/2015	1/1/2015	1/1/2015	3/22/2023	4/21/2023	7.40%	\$ -
12		ECI	1/1/2015	Y		ECI	1/1/2015	N	1/1/2015	1/1/2015	1/1/2015	3/22/2023	4/21/2023	7.40%	\$ -
13		ECI	1/1/2015	Y		ECI	1/1/2015	N	1/1/2015	1/1/2015	1/1/2015	3/22/2023	4/21/2023	7.40%	\$ -
14		ECI	1/1/2015	Y		ECI	1/1/2015	N	1/1/2015	1/1/2015	1/1/2015	3/22/2023	4/21/2023	7.40%	\$ -
15		ECI	1/1/2015	Y		ECI	1/1/2015	N	1/1/2015	1/1/2015	1/1/2015	1/1/2019	1/1/2019	7.50%	\$ -

Income Tax Schedule: Corporation
USEPA BEN Model Version: Version 2021.0.0 (April 2021)
Analyst: Erin Garner
Date/Time of Analysis: 12/20/2022 15:55

Total Benefit: \$ 34,540

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR DISCRETIONARY LIABILITY
COMPLAINT NO. R4-2022-0340**

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

I am duly authorized to represent Robert French and Wahib Mikhail (collectively, Responsible Parties) in connection with Administrative Civil Liability Complaint No. R4-2022-0340 (Complaint).

I am informed that California Water Code section 13323, subdivision (b), states that, “a hearing before the regional board shall be conducted within 90 days after the party has been served with the complaint. The person(s) who have been issued a complaint may waive the right to a hearing.”

(OPTION 1: Check here if the Responsible Parties waive the hearing requirement and will pay the liability in full.)

- a. I hereby waive any right the Responsible Parties may have to a hearing before the Los Angeles Water Board regarding the Complaint.
- b. I certify that the Responsible Parties will remit payment for the proposed civil liability in the full amount proposed in the Complaint by submitting a check that references the Complaint number for the full amount indicated, made payable to the “*State Water Pollution Cleanup and Abatement Account*” for Administrative Civil Liability Complaint No. R4-2022-0340. Payment must be received by the Los Angeles Water Board in the full amount before the Los Angeles Water Board Prosecution Team will post the matter for public notice as described below.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Los Angeles Water Board receive significant new information or comments from any source (excluding the Los Angeles Water Board’s Prosecution Team) during this comment period, the Los Angeles Water Board’s Assistant Executive Officer may withdraw the settlement, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Los Angeles Water Board (or the Los Angeles Water Board’s Executive Officer, if so delegated), and that the Los Angeles Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Responsible Parties having waived the right to contest the allegations in the Complaint and the imposition of administrative civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Responsible Parties to further enforcement, including additional civil liability.

(OPTION 2: Check here if the Responsible Parties waive the 90-day hearing requirement in order to engage in settlement discussions.) I hereby waive any right the Responsible Parties may have to a hearing before the Los Angeles Water Board within 90 days after service of the Complaint, but I reserve the ability to request a hearing in the future. I certify that the Responsible Parties will promptly engage the Los Angeles Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Responsible Parties request that the Los Angeles Water Board delay the hearing

so that the Responsible Parties and the Los Angeles Water Board Prosecution Team can discuss settlement. It remains within the discretion of the Los Angeles Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

(**OPTION 3: Check here if the Responsible Parties waive the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.**) I hereby waive any right the Responsible Parties may have to a hearing before the Los Angeles Water Board within 90 days after service of the Complaint. By checking this box, the Responsible Parties request that the Los Angeles Water Board delay the hearing and/or hearing deadlines so that the Responsible Parties may have additional time to prepare for the hearing. It remains within the discretion of the Los Angeles Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)