

LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD

In the Matter of:
Aera Energy LLC

ORDER R4-2022-0028 (Proposed)
SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY
ORDER; ORDER (PROPOSED)

I. Introduction

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

II. Recitals

2. On May 24, 2019, the Discharger reported a release to the California Office of Emergency Services Hazardous Material Spill Report Control #19-3353 (Cal-OES Report). On May 28, 2019, the Regional Water Board received Cal-OES Report, which documented a May 24, 2019 release of approximately 30 barrels of crude oil and 20 barrels of produced water from a leak caused by a failed wellhead on an idle well onto a hillside and into a dry catch basin, in the City of Ventura (Site).
3. On May 29, 2019, Regional Water Board staff, Barbara Guia, Maryam Taidy, and Adam Taing and on June 5, 2019, Barbara Guia conducted inspections at the Site to determine the status of the discharge and cleanup activities taken. Regional Water Board staff observed crude oil stains in a culvert, channel, on the ground surface and within the creek flow. A crude oil sheen and oil-covered mud were observed in the stream which flowed into a bermed area.
4. The discharge of crude oil and produced water from idle well VLW032 (API No. 04111-04947) was deposited on a well pad and adjacent slopes of the Site. The discharge then traveled on the ground in two pathways. The first pathway was through a v-ditch culvert into the East Fork Hall Canyon Creek; the second was along an access road into a series of culvert pipes that converge with the v-ditch culvert. The discharge continued through the v-ditch culvert until contained by a bermed area approximately 2,000 feet downstream.

5. On July 10, 2020, Regional Board Assistant Executive Officer Hugh Marley issued a Notice of Violation (NOV) for this discharge.
6. After issuing the NOV, Regional Water Board staff sought information from the California Department of Fish and Wildlife Office of Spill Prevention and Response (OSPR). On April 6, 2021 OSPR reported a total amount of 4,731 gallons of solid and liquid oil recovered from the Site during cleanup. Based on findings of the inspections and information received from the Discharger and OSPR, Regional Water Board staff determined that the Discharger experienced a failed wellhead on an idle well that caused the release of crude oil and produced water into East Fork Hall Canyon Creek.
7. This revised amount reported by OSPR (as compared to the Discharger's self-reported amount the day of the release) was utilized in the penalty methodology, articulated in detail in Attachment A. The Discharger's efforts to recover the material and address the release are reflected in the "susceptibility to cleanup and abatement" and "cleanup and cooperation," scores. East Fork Hall Canyon Creek (Hydrological Unit Code # 180701010203) is located within the Ventura Coastal watershed and is a tributary of Hall Canyon Creek, which discharges to the Pacific Ocean. Its existing, potential, and intermittent beneficial uses are designated in the *Los Angeles Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties* and include navigation; commercial and sport fishing; warm freshwater habitat; marine habitat; wildlife habitat; water contact recreation; and non-contact water recreation.
8. Water Code section 13350, subdivision (a) states that "A person who ... (3) causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other actions or provisions of this division, shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e)." The unauthorized discharge of 4,731 gallons of crude oil and produced water to waters of the state and the United States is a violation subject to administrative civil liabilities pursuant to Water Code section 13350. The Prosecution Team contends the actions discussed herein are a violation of this statute and the East Fork Hall Canyon Creek constitutes a water of the state.
9. The Parties have engaged in confidential settlement negotiations and agree to fully settle the violations alleged in this Stipulated Order without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.
10. Pursuant to the State Water Resource Control Board's (State Board) 2017 Water Quality Enforcement Policy section VI.B. (Settlement Considerations), the Prosecution Team agreed during settlement negotiations to reduce the administrative civil liability amount contained in the penalty methodology included

as Attachment A to this Stipulated Order, hereby incorporated by reference, in consideration of hearing and/or litigation risks.

11. To resolve the violations by consent and without further administrative or civil proceedings, the Parties have agreed to the imposition of an administrative civil liability against the Discharger in the amount of forty-seven thousand, three hundred ten dollars (\$47,310). The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged herein, and that this Stipulated Order is in the best interest of the public.

III. Stipulations

The Parties stipulate to the following:

12. **Jurisdiction:** The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulation.
13. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability in the amount of forty-seven thousand, three hundred ten dollars (\$47,310) to the Regional Water Board to resolve the violations specifically alleged in this Stipulated Order. No later than 30 days after the Regional Water Board, or its delegee, signs this Order, the Discharger shall submit a check for forty-seven thousand, three hundred ten dollars (\$47,310) made payable to the "Waste Discharge Permit Fund," reference the Order number on page one of this Order, and mail it to:

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

The Discharger shall provide a copy of the check via email to the State Water Resources Control Board, Office of Enforcement (Julie.Macedo@waterboards.ca.gov) and the Regional Water Board (Barbara.Guia@waterboards.ca.gov).

14. **Compliance with Applicable Laws and Regulatory Changes:** The Discharger understands that payment of an administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that additional violations of the type alleged may subject it to further enforcement, including additional administrative civil liabilities. Nothing in this Stipulated Order shall excuse the Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

15. Party Contacts for Communications Related to Stipulated Order:

For the Regional Water Board:

Barbara Guia
Water Resources Control Engineer
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013
(213) 620-6361
Barbara.Guia@waterboards.ca.gov

For the Discharger:

Erin Larner
Manager of Operations - Ventura
Aera Energy LLC
3051 North Ventura Ave
Ventura, CA 93001

Discharger Counsel:

William W. Carter
Musick, Peeler & Garrett LLP
One Wilshire Building
624 South Grand Avenue, Suite 2000
Los Angeles, California 90017-3383
(213) 629-7863
w.carter@musickpeeler.com

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

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

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

as necessary or advisable under the circumstances.

19. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Regional Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Team or Regional Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions, or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. The Regional Water Board reserves all rights to take additional enforcement actions, including without limitation, the issuance of administrative civil liability complaints or orders for violations other than those addressed by this Order.
20. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Regional Water Board or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
21. **Interpretation:** This Stipulated Order shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
22. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Order. All modifications must be made in writing and approved by the Regional Water Board or its delegee.
23. **Integration:** This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.
24. **If Order Does Not Take Effect:** The Discharger's obligations under this Stipulated Order are contingent upon the entry of the Order of the Regional Water Board as proposed. In the event that this Stipulated Order does not take effect because it is not approved by the Regional Water Board, or its delegee, or is vacated in whole or in part by the State Board or a court, the Parties acknowledge that the Prosecution Team may proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess an administrative civil liability for the underlying alleged violations, or may continue to pursue settlement. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in any subsequent administrative or judicial proceeding or hearing and will be fully protected by California Evidence Code sections 1152 and 1154; California Government Code section 11415.60; Rule 408, Federal

Rules of Evidence; and any other applicable privilege under federal and/or state law. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter; or
- b. Laches or delay or other equitable defenses based on the time period that the Order or decision by settlement may be subject to administrative or judicial review.

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

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

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

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

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

30. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligation on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
31. **No Admission of Liability:** In settling this matter, the Discharger does not admit to any of the allegations stated herein, or that it has been or is in violation of the Water Code, or any other federal, State, or local law or ordinance, with the understanding that in the event of any future enforcement actions by the Regional Water Board, the State Water Board, or any other Regional Water Quality Control Board, this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327 and/or section 13385, subdivision (e).
32. **Mutual Release and Discharge of Claims:** In consideration for the promises, conditions, and covenants contained herein, each of the parties, for itself on behalf of its heirs, executors, administrators, successors and assigns, hereby irrevocably and unconditionally releases and discharges the other party and its respective agents, officers, directors, shareholders, employees, attorneys, subsidiaries, predecessors, successors and assigns, from any and all claims, liabilities, obligations, promises, causes of actions, actions, suits, costs, expenses, fees (including but not limited to attorneys' fees), damages or demands, of whatsoever kind or character, whether civil, criminal, or administrative, arising from or relating to the violations alleged herein. Each of the Parties understands, acknowledges and agrees that this Stipulated Order may be pleaded and introduced as evidence as a full and complete defense to any claim, demand, action, or cause of action brought by any Party against the other Party related to the subject matter of this Stipulated Order.
33. **Admissibility:** The Parties understand and agree that the Stipulated Order shall not be admissible by any person, entity, organization, or government agency at any legal proceeding or hearing (including trial or arbitration) for any purpose other than enforcement of the terms of the Stipulated Order by a Party to the Stipulated Order or future enforcement actions as described in paragraph 32 above.
34. **Severability:** This Stipulated Order is severable; should any provision be found invalid, the remainder shall remain in full force and effect.
35. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board, or its delegee, enters the Order incorporating the terms of this Stipulated Order.
36. **Counterpart Signatures:** This Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or

Stipulated ACLO R4-2022-0028
Aera Energy LLC

electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

Stipulated ACLO R4-2022-0028
Aera Energy LLC

IT IS SO STIPULATED.

California Regional Water Quality Control Board, Los Angeles Region Prosecution
Team

By: **Hugh
Marley**  Digitally signed by
Hugh Marley
Date: 2022.06.30
09:17:21 -07'00'

Hugh Marley
Assistant Executive Officer

6/30/2022

Date

Aera Energy LLC

By:  _____
Whitney J. Grande
Vice President, EH&S

6/28/2022
Date

HAVING CONSIDERED THE PARTIES STIPULATIONS, THE LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD FINDS THAT:

1. The foregoing Stipulation is fully incorporated herein and made part of this Order.
2. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations.
3. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this Order.

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

Renee Purdy
Executive Officer
Los Angeles Regional Water Quality Control Board

Date

Attachment A: Specific Factors Considered

**Attachment A – Specific Factors Considered
Settlement Agreement and Stipulated for Entry of
Administrative Civil Liability Order No. R4-2022-0028
Aera Energy LLC
VLW032 Well Release
City of Ventura, Ventura County**

Aera Energy LLC (Discharger) experienced a wellhead failure that resulted in the release of approximately 4,731 gallons of a mixture of crude oil and produced water from an idle well into the East Fork Hall Canyon Creek within the Ventura Oil Field (hereinafter referred to as “the Site”). The Site is located in the foothills north of the City of Ventura within Hall Canyon and slopes towards the southeast. East Fork Hall Canyon Creek, an earthen-bottom stream, is located immediately adjacent to the Site along the southern boundary; it leads to a concrete sub-surface storm water culvert that discharges into the Pacific Ocean approximately four miles downstream. East Fork Hall Canyon Creek is a water of the State and a water of the United States.

On May 24, 2019, the Discharger reported the release to the California Office of Emergency Services Hazardous Material Spill Report Control #19-3353 (Cal-OES Report). On May 28, 2019, Los Angeles Regional Water Quality Control Board (Regional Water Board) staff received notice of a release of approximately 30 barrels of crude oil and 20 barrels of produced water from an idle well onto a hillside and into a dry catch basin in the City of Ventura. On May 29, 2019 in response to the OES Report, Regional Water Board staff conducted a Site inspection. On June 5, 2019, Regional Water Board staff conducted a follow up inspection. Documents subsequently provided by the California Department of Fish and Wildlife Office of Spill Prevention and Response (OSPR) on April 6, 2021 reported a total amount of 4,731 gallons of solid and liquid oil recovered from the Site during cleanup. Based on findings of the inspections and information received from the Discharger and OSPR, Regional Water Board staff determined that the failure of the Discharger's wellhead resulted in the release of crude oil and produced water into East Fork Hall Canyon Creek.

Factors required to be considered in determining the amount of civil liability pursuant to California Water Code section 13327 and the State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy) are discussed for the violation below.

Violation 1: Unauthorized discharge of approximately 4,731 gallons of a mixture of crude oil and produced water to waters of the State and United States.

On May 24, 2019, a wellhead failure on idle well VLW032 (API No. 04111-04947) caused the discharge of 4,731 gallons of crude oil and produced water into the East Fork Hall Canyon Creek. The estimated amount of 4,731 gallons of crude oil and produced water is based on the total amount of oil and impacted water, soil, and sediments recovered from the Site during the course of the cleanup. The mixture of crude oil and produced water was deposited on a well pad and adjacent slopes of the Site. The discharge then traveled on the ground in two pathways. The first pathway was through a v-ditch culvert

into the East Fork Hall Canyon Creek; the second was along an access road into a series of culvert pipes that converge with the v-ditch culvert. The discharge continued through the v-ditch culvert until contained by a bermed area approximately 2,000 feet downstream. During the 2019 inspections, Regional Water Board staff observed crude oil stains in a culvert, channel, on the ground surface and within the East Fork Hall Canyon Creek stream flow. Crude oil sheens and oil-covered mud were also observed in East Fork Hall Canyon Creek.

Water Code section 13350, subdivision (a) states that “A person who ... (3) causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other actions or provisions of this division, shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).” The discharge of 4,731 gallons of crude oil and produced water is a violation subject to administrative civil liabilities pursuant to Water Code section 13350.

Below are the steps set forth by the Enforcement Policy for calculating the penalty for this violation.

Step 1. Actual or Potential for Harm for Discharge Violations

a. Factor 1- Degree of Toxicity of the Discharge: Significant (4)

A score between 0 (negligible) and 4 (significant) is assigned based on a determination of the risk and threat of the discharged material. A factor of 4 is assigned to this discharge. The Enforcement Policy defines a factor of 4 as the “[d]ischarged material poses a significant risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material far exceed risk factors and pose a significant threat to potential receptor uses).”

Crude oil and produced water discharges pose a significant risk or threat to potential ecosystem health because crude oil consists of harmful pollutants such as total petroleum hydrocarbons and often contain substances such as benzene, chromium, iron, mercury, nickel, nitrogen, oxygen, sulfur, toluene, and xylene which are toxic to fish and wildlife through ingestion and inhalation. Produced water consists of high concentrations of suspended silica and high salinity with the presence of substances such as dissolved sodium ions, potassium, magnesium, chloride, and sulfate. Produced water may also contain naturally occurring radioactive elements such as radium. Fish and wildlife may experience various toxicological effects that include immune and reproduction system issues as well as disrupted organ function. Furthermore, benzene, toluene, and xylene found in crude oil are carcinogenic compounds that can dissolve or deform cell membranes. Cell membranes contain enzymes and transport proteins to cells. Once damaged active membranes may not have the ability to transport proteins leading to cell death. Benzene in particular has the ability to damage cells, cause cellular mutations and cancer by uncontrolled cell growth leading to wildlife and human deaths.

b. Factor 2- Actual Harm or Potential Harm to Beneficial Uses: Major (5)

A score between 0 (negligible) and 5 (major) based on a determination of whether the actual harm or potential harm to beneficial uses is assigned. The Actual Harm and Potential Harm for this violation is characterized as Major resulting in a score of 5. The Enforcement Policy defines a score of 5 (Major) as a “high harm or threat of harm to beneficial uses (i.e., significant impacts to aquatic life or human health, long term restrictions on beneficial uses (e.g., more than five days), high potential for chronic effects to humans or ecological health).”

East Fork Hall Canyon Creek (Hydrological Unit Code # 180701010203) is located within the Ventura Coastal watershed and is a tributary of Hall Canyon Creek, which discharges to the Pacific Ocean. Its existing, potential, and intermittent beneficial uses are designated in the *Los Angeles Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties* and include navigation; commercial and sport fishing; warm freshwater habitat; marine habitat; wildlife habitat; water contact recreation; and non-contact water recreation.

The characteristics of the violation present a major threat to beneficial uses. Crude oil consists of total petroleum hydrocarbons and often contains substances such as benzene, chromium, iron, mercury, nickel, nitrogen, oxygen, sulfur, toluene, and xylene; produced water consists of high concentrations of suspended silica, dissolved sodium ions, potassium, magnesium, chloride, sulfate, and may also contain naturally occurring radium. These pollutants, when discharged, can degrade water quality and impact beneficial uses of the receiving water. In addition, crude oil remnants attach to rocks and soil that may later be discharged downstream to receiving waters. Effects of crude oil in receiving waters may include the killing of land mammals and aquatic wildlife as crude oil may smother some fish species and coat the feathers and fur of mammals, reducing their ability to maintain body temperatures. High concentrations of aromatic hydrocarbons, alkylphenols and metals found in produced water may accumulate in sediments, possibly harming bottom living biological communities. Nitrate, phosphate, and ammonia found in produced water may also stimulate microbial growth in receiving waters. Humans are also susceptible to exposure through skin contact and inhalation of liquid oil and fumes. Exposure to crude oil has a high potential for chronic effects to human health because it may irritate eyes and the respiratory system and cause dizziness, rapid heart rate and headaches. Skin contact with crude oil may also cause burning and redness.

Furthermore, the June 28, 2019 memorandum on the *VLW-32 Incident Summary- CDFW 1610 Notification No. 1600-2019-0144-R5* (Incident Summary) submitted by Padre Associates, Inc. to Aera Energy LLC states an oiled California quail was observed by OSPR staff at the Site on May 24, 2019. OSPR’s May 30, 2019 *Field OPS Wildlife Summary* indicates multiple wildlife were impacted, including: a whiptail lizard collected and washed on May 25, 2019 but subsequently died; a Harvest mouse collected on May 26, 2019 was washed and released; a Towhee bird was found deceased on May 28, 2019; and a Western fence lizard collected on May 29, 2019 was washed and released.

c. Factor 3- Susceptibility to Cleanup or Abatement: 0

A score of **0** is appropriate where 50 percent or more of the discharge is susceptible to cleanup or abatement. Although the Discharger reported an approximate 50 barrels (2,100 gallons) of crude oil and produced was discharged into the adjacent East Fork Hall Canyon Creek, OSPR reported 4,731 gallons of recovered oil at the Site. Therefore, a score of 0 is assigned for this violation because more than 50 percent of the discharge was cleaned up.

d. Final Score – “Potential for Harm”: 9

The scores of the three factors are added to provide a Potential for Harm score for each violation. In this case, a final score of 9 was calculated. The total score of 9 is then used in Step 2 below.

Step 2. Assessment for Discharge Violations

The Enforcement Policy specifies when there is a discharge, an initial liability amount based on a per-gallon and/or a per-day basis is determined using the sum of the Potential for Harm scores from Step 1 and a determination of Deviation from Requirement. Water Code section 13350, subdivision (e) allows the Regional Water Board to impose an administrative civil liability on either a per-day basis or a per-gallon basis, but not both. The Prosecution Team elects to assess an administrative civil liability on a per-gallon basis because a per-day basis would result in an inappropriately low administrative civil liability given the nature and volume of the discharge.

a. Deviation from Requirement: Major

The Deviation from Requirement reflects the extent to which a violation deviates from the specific requirement that was violated. In this case, the violation is characterized as a Major Deviation from the Requirement. The Enforcement policy defines a Major Deviation from the Requirement as “[t]he requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).”

The Discharger discharged approximately 4,731 gallons of crude oil and produced water into the adjacent East Fork Hall Canyon Creek when the wellhead on an idle well failed. The discharge of crude oil and produced water into the East Fork Hall Canyon Creek rendered the requirement not to discharge petroleum products to waters of the state without a permit entirely ineffective in its essential function. Therefore, the violation was characterized as a Major deviation from the requirement.

b. Per-Gallon Assessment

Where there is a discharge, the Regional Water Board shall determine an initial liability

amount on a per-gallon basis using the Potential for Harm score from Step 1 and the extent of deviation from requirements. With a Potential for Harm score of 9 from Step 1 and a Major deviation from requirement, Table 1 of the Enforcement Policy prescribes 0.8 as the per gallon factor for the discharge.

The Regional Water Board applies the above gallon factor to the maximum per gallon amounts allowed under statute for the violation in calculating the initial liability. Water Code section 13350, subdivision (e)(2) allows for imposition of an administrative civil liability on a per gallon basis not to exceed \$10 for each gallon discharged. In this case, 4,731 gallons of crude oil and produced water was discharged to the adjacent East Fork Hall Canyon Creek. Therefore, the 4,731 gallons discharged to the Site were assessed using a per gallon basis amount of \$10.00.

Per Gallon Assessment = \$10.00 (statutory maximum) X 0.8 (per gallon factor) X 4,731 gallons = \$37,848

Step 3. Per Day Assessment for Non-Discharge Violations

Not applicable (discharge violation alleged).

Step 4. Adjustment Factors

Additional factors are considered and can modify the amount of initial liability: Culpability, Cleanup and Cooperation and History of Violations.

a. Culpability: 1.1

The culpability multiplier ranges between 0.75 and 1.5, with a lower multiplier for accidental incidents, and a higher multiplier for intentional or negligent behavior.

A multiplier of 1.1 is assigned for this violation because of the unauthorized release of 4,731 gallons of crude oil and produced water from a failed wellhead on an idle well into the adjacent East Fork Hall Canyon Creek. The Discharger's Root Cause Failure Analysis (RCFA) stated that the unauthorized release occurred due to pressure found in the idle well. The well had been idled since 1985. A non-standard API wellhead had been installed by Getty Oil, the previous well owner. An inspection was conducted by the Discharger on May 7, 2019 at the well, but pressure was not recorded due to "not having a gauge installed and there is no requirement to record". During the incident at issue, the wellhead clamp stud/bolt assembly failed, and the well kill string was not long enough to overcome the hydraulic force (only about 300 feet of tubing was in the well, whereas modern best practice is to have more than 6,000 feet in a well of this depth).

The crude oil and produced water flowed down a road and into a drainage inlet. From there, it traveled downstream and entered the East Fork Hall Canyon Creek. The discharge continued down the East Fork Hall Canyon Creek and stopped at a bermed

area installed as a result of the spill. The bermed area was referred to as Catch Basin 008A and was found just prior to a stormwater inlet. The flow of crude oil and produced water traveled a total of approximately 2,000 feet downstream from the wellhead.

During the May 29, 2019 and June 5, 2019 inspections, Regional Water Board staff observed large amounts of crude oil stains in a culvert, channel, on the ground surface and within the creek flow. Crude oil sheens and oil-covered mud were observed in the creek which flowed into a bermed area.

According to the California Geologic Energy Management Division (CalGEM), the Discharger has filed and been in compliance with the terms of the Idle Well Management Plan (IWMP) since 2018, meeting requirements of Public Resources Code section 3206. The Discharger has not proposed to plug and abandon well VLW032 as part of its 2020 Idle well Testing Waiver Plan or its 2021 IWMP. After the incident, the Discharger installed a new conventional API wellhead to replace the failed modified Hosmer style wellhead to secure Well VLW032. The Discharger also installed upgraded well pressure gauges and updated its standard operating procedures for idle well management activities. On September 18, 2019, CalGEM conducted a casing pressure test and a cleanout tag of well VLW032. CalGEM concluded the pressure test passed and the well to have mechanical integrity. However, independently of well VLW032, CalGEM found that the Idle Well Testing Compliance Workplan (CWP) was incomplete due to discrepancies between the inventory of idle wells that the Discharger contends idle as of April 1, 2019 to that of CalGEM's records.

Additionally, in response to the release and in coordination with CalGEM to prevent future occurrence of incidents due to similar cause, the Discharger immediately shut down injection operations within 500 feet of the idle well to investigate any well pressure of concern, removed all additionally found modified Hosmer well heads and replaced them with conventional API wellheads. However, for the 2019 incident, a reasonable and prudent person who owns and maintains idle crude oil and produced water wells would have additional oversight and accountability measures in place to prevent an unauthorized discharge of crude oil and produced water. While the discharge was likely preventable and therefore not deserving of a score that reduced the initial penalty, a conservative multiplier of 1.1 was selected because of the steps that the Discharger had taken prior to the violation.

b. History of Violations: 1.0

Where the discharger has no prior history of violations, the multiplier for this factor should be neutral, or 1.0. The Permittee has no history of violations known to the Regional Water Board. Therefore, a multiplier of 1.0 was selected.

c. Cleanup and Cooperation: 1.0

This is the extent to which the Discharger voluntarily cooperated in returning to

compliance and correcting environmental damage. The multiplier for this factor ranges between 0.75 to 1.5, with a lower multiplier where there is a high degree of cleanup and cooperation, and a higher multiplier where this is absent.

The Discharger reported the release and took steps to clean up the Site after the May 24, 2019 incident. Initial emergency response efforts were overseen by Unified Command, which included OSPR and the Discharger. During the May 29, 2019 and June 5, 2019 inspections, Regional Water Board staff observed absorbent pads in the stream flow to capture crude oil and excavated soil disposal bins onsite. Regional Water Board staff also observed a catch basin constructed in Division 3 to prevent further discharge downstream. Regional Water Board staff also observed absorbent booms just downstream of the catch basin. During the June 5, 2019 inspection, Regional Water Board staff observed a covered storm drain and absorbent booms east of a storm drain in Division 2. The Discharger provided Unified Command's Procedures for Signing-Off on Completion of Cleanup Operations to the Regional Water Board which states that on June 5, 2019, Unified Command representatives concluded that no further cleanup was required. Although cleanup and restoration efforts took place after the incident, some areas of the site were observed stained with crude oil. In the June 5, 2019 inspection, crude oil stains were observed in a culvert, channel, and on the ground surface throughout the site.

The Discharger's RCFA states 5.4 acres were cleaned up and the discharge was stopped at the inlet of Catch Basin 8A. The initial spill volume reported was 30 barrels of crude oil (1,260 gallons) and 20 barrels (840 gallons) of produced water. Documentation provided on April 6, 2021 by OSPR indicates that a total amount of 4,731 gallons of oil was recovered at the Site. OSPR reported 63 bins of solid waste was collected during the cleanup. OSPR collected 8 solids samples from the bins and analyzed for the presence of total petroleum hydrocarbons. The results were used to calculate the amount of oil found in the solid waste bins. OSPR calculated a total of 2,367 gallons of recovered oil from the solid waste bins. In a June 6, 2019 Field Report, OSPR reported a total of 56.3 barrels (2,365 gallons) of liquid oil recovered from the Site in three portable gauged tanks. OSPR calculated a total amount of 4,731 gallons of solid and liquid oil recovered at the Site.

The Discharger also took other corrective actions at the site following the incident. The Discharger installed a new conventional API wellhead to replace the failed modified Hosmer style wellhead to secure Well VLW032; during the May 29, 2019 and June 5, 2019 inspections, Regional Water Board staff observed the replaced idle well VLW032 wellhead. Six additional wells with modified Hosmer wellhead were also located and replaced. The Discharger's RCFA also states that the ongoing well monitoring and maintenance program was accelerated. The program would inspect idle wells components, address substandard idle well and enhance monthly idle well pressure check inspections and information logging. The RCFA also states that the Discharger will start a program to bleed off idle well pressure that has increased.

The Discharger's June 28, 2019 Incident Summary states disturbed hillsides were hydroseeded with native seed mix, and jute netting and straw wattles were installed to minimize erosion. The Incident Summary also states pooled or flowing oil was bermed and contained at or near the source. Oiled soil was excavated and collected into designated bins. Absorbent booms and pads were placed in the stream to remove oil. The Discharger also provided pictures taken on September 19, 2019 of the completed maintenance performed on the catch basin, as well as timely provided other documents and information requested by Regional Water Board staff, including bills of lading for oil/waste bins, costs for wellhead replacement and related abatement and remediation matters.

The Discharger has conducted cleanup efforts expected of dischargers in similar situations. Therefore, a multiplier of 1.0 was selected.

Step 5. Total Base Liability: \$41,633

$\$37,848$ (Total Initial Liability) X 1.1 (culpability) X 1.0 (history of violations) X 1.0 (history of violations) = $\$41,633$

Step 6. Ability to Pay

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

In this case, the Prosecution Team has sufficient information to suggest the Discharger has the ability to pay the proposed liability. Aera Energy LLC is a large oil company with millions of dollars in annual revenue. The recommended penalty will not have an effect on Aera Energy LLC's ability to continue in business. Aera Energy LLC has not presented any information regarding its inability to pay.

Step 7. Economic Benefit

The Enforcement Policy states that the economic benefit shall be estimated for each violation. Economic benefit is any savings or monetary gain derived from the act or omission that constitutes the violation. The violation described herein has associated avoided expenses that have benefitted Aera Energy LLC.

Through a review of the RCFA and inspections conducted by Regional Water Board staff, Aera Energy LLC's failure to conduct idle well pressure testing and to install an adequate wellhead for the idle well resulted in cost savings that would not have been discovered had the unauthorized discharge not occurred.

The BEN financial model provided by the United States Environmental Protection Agency

was used to compute the total present value of the economic benefit of noncompliance. For computational purposes, the penalty payment date was established as the date on which this Attachment was drafted on June 30, 2021, prior to entering into discussions with the Discharger. Based on specific assumptions within the model, the total present value of the economic benefit of noncompliance was determined to be approximately \$17,503, based on the costs associated with replacing the failed wellhead on well VLW032. This figure is then used as a baseline for an appropriate penalty in Step 9, below.

Step 8. Other Factors as Justice May Require

a. Staff Cost: \$9,604

The Enforcement Policy states (p.22) that the costs of investigation and enforcement can be considered under other factors as justice may require. To date, the Regional Water Board has incurred \$9,604 in staff costs associated with the investigation and enforcement of the violation. This represents 64.25 hours of staff time expended on the inspections, the inspection reports, and preparing the enforcement documents. 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 it is appropriate to increase the Total Base Liability amount by \$9,604 in consideration of investigation and enforcement costs incurred in prosecuting this matter. Increasing the Total Base Liability amount in this manner serves to create a more appropriate deterrent against future violations.

Step 9. Maximum and Minimum Liability Amounts

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

a. Maximum Liability Amount:

For all violations, the applicable statute sets a maximum liability amount that may be assessed. Where the amount calculated for a particular violation exceeds the statutory maximum, the amount proposed must be reduced to that maximum. Pursuant to Water Code section 13350, subdivision (e)(2), the per-gallon statutory maximum administrative civil liability for the violation is \$10 for each gallon of waste discharged. The statutory maximum for the violation is $(\$10/\text{gallon of violation} \times (4,731 \text{ gallons})) = \$47,310$. The total based liability amount for the violation has been calculated to be \$41,633; with the addition of staff cost (\$9,604), the final liability amount (\$51,237) would exceed the maximum liability amount. Therefore, the liability amount for the violation is adjusted to the statutory maximum of \$47,310.

b. Minimum Liability Amount:

The Enforcement Policy requires the Regional Water Board to recover, at a minimum, 10% more than the economic benefit. The minimum liability that may be imposed is the economic benefit (\$17,503) plus 10%, which is \$19,253. The final liability amount for the violation is \$47,310, which is higher than the minimum liability amount.

Step 10. Final Liability Amount: \$47,310

The Final Liability Amount consists of the amount for the violation with any allowed adjustments, provided the amount is within the statutory minimum and maximum amounts. The Final Liability Amount is \$47,310, which is the statutory maximum for the violation.