

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION**

In the matter of:

**Town of Samoa Wastewater
Treatment Plant**

**Attn: Dan Johnson
Samoa Pacific Group, LLC**

**Greg Orsini
Troy Nicolini
Dale Unea
Peninsula Community Services
District**

WDID No. 1B83135OHUM

Order R1-2024-0013

**SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY
ORDER**

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order) is entered into by and between the Regional Water Quality Control Board, North Coast Region, Prosecution Team (Prosecution Team) and Samoa Pacific Group LLC and Peninsula Community Services District (collectively hereinafter, Discharger) and is presented to the Regional Water Quality Control Board, North Coast Region (Regional Water Board), or its delegate, for adoption as an Order by settlement pursuant to Government Code section 11415.60. This Stipulated Order resolves the violations reported by the Discharger from December 30, 2020, to December 30, 2022, by the imposition of administrative civil liability against the Discharger in the amount of \$123,000.

Section II: Recitals

1. The Discharger owns and operates a Wastewater Treatment Plant (Facility), located at 3 North Bay View Road, Town of Samoa, Humboldt County, California. From April 16, 2020, to the effective date of this Stipulated Order, the Discharger is or was subject to the following requirements issued by the Regional Water Board:

Regulatory Measure	Order Number	Effective Dates
NPDES Permit	R1-2020-0005 (2020 Order)	4/16/2020 – Present

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2. During the effective dates listed above, Waste Discharge Requirements (WDRs) Order No. R1-2020-0005 (National Pollutant Discharge Elimination System [NPDES] Permit No. CA1000001) established, among other things, final effluent limitations for the discharges from the Discharger's permitted discharge location, Discharge Point 001. Additionally, Order No. R1-2020-0005 established the Monitoring and Reporting Program, Attachment E, Section X, Table E-4 of Order No. R1-2020-0005 contains, in part, the following monitoring periods and reporting schedule with which the Dischargers are required to maintain compliance:

Sampling Frequency	Monitoring Period Begins On...	Monitoring Period	SMR Due Date
Weekly	Sunday following permit effective date or on permit effective date if on a Sunday	Sunday through Saturday	First day of second calendar month following the end of each quarter (February 1, May 1, August 1, November 1)
Monthly	First day of calendar month following permit effective date or on permit effective date if that date is first day of the month	First day of calendar month through last day of calendar month	First day of second calendar month following the end of each quarter (February 1, May 1, August 1, November 1)
Once per permit term	Permit effective date	All	March 1 following the year that monitoring is completed (with annual report) and at least 180 days prior to permit expiration
Twice per permit term	Permit effective date	All	March 1 following the year that monitoring is completed (with annual report) and at least 180 days prior to permit expiration
Table Note: 1. Quarterly monitoring periods are as follows: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.			

3. Section IV.A.1.b of the 2020 Order contains, in part, the following effluent limitations expressed as percent removal for Total Suspended Solids (TSS) and Biochemical Oxygen Demand 5-day @ 20 Deg. C (BOD5), with which the Dischargers are required to maintain compliance at Discharge Point 001:

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The average monthly percent removal of BOD5 and TSS shall not be less than 85 percent. Percent removal shall be determined from the monthly average value of influent wastewater concentration in comparison to the monthly average value of effluent concentration for the same constituent over the same time period, as measured at Monitoring Locations INF-001 and EFF-001, respectively.

4. On May 8, 2023, the Assistant Executive Officer of the Regional Water Board issued Administrative Civil Liability Complaint No. R1-2023-0032 (Complaint) to the Discharger, seeking to impose \$123,000 in mandatory minimum penalties (MMPs) under Water Code section 13385, subdivisions (h) and (i), for violations of the above-referenced TSS effluent limitation on three (3) occasions and BOD5 effluent limitation on one (1) occasion as identified in Exhibit A, one (1) of which is not exempt from Mandatory Minimum Penalties (MMPs). Additionally, the Dischargers failed to file six (6) discharge monitoring reports within 30 days of the deadline for submitting the reports as specified in the 2020 Order and identified in Exhibit A. Each of the six (6) late reports were submitted from 49 to 414 days late, which subjects the Dischargers to a MMP of \$3,000 per each complete period of 30 days pursuant to Water Code section 13385.1, subdivision (a)(1). Exhibit A is attached, hereto, and is incorporated herein by this reference.
5. Pursuant to Water Code section 13385(h), the Regional Water Board shall assess a \$3,000 MMP for each serious violation. A “serious violation” means any waste discharge that violates the effluent limitations contained in the applicable WDRs for a Group II pollutant by 20 percent or more or for a Group I pollutant by 40 percent or more. Additionally, a “serious violation” means a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations.
6. Pursuant to Water Code section 13385(i), the Regional Water Board shall assess a \$3,000 MMP for each violation whenever a discharger does any of the following four or more times in period of six consecutive months (except that the requirement to assess the MMP shall not be applicable to the first three violations):
 - a. Violates a WDR effluent limitation.
 - b. Fails to file a report pursuant to Water Code section 13260.
 - c. Files an incomplete report pursuant to Water Code section 13260.
 - d. Violates a toxicity effluent limitation contained in the applicable WDRs where the WDRs do not contain pollutant-specific effluent limitations for toxic pollutants.

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7. The Discharger's self-monitoring reports from December 30, 2020, to December 30, 2022, document four (4) violations of effluent limitations set forth in WDR Order No. R1-2020-0005. Of the four (4) effluent limitation violations, three (3) violations are not subject to MMPs, and one (1) violation is subject to MMPs pursuant to Water Code section 13385(h) and (i) as set forth in Exhibit A.
8. This Stipulated Order resolves one (1) effluent limitation violation and six (6) late-reporting violations between 49 and 414 days late. All of which are subject to MMPs pursuant to Water Code section 13385(h) and (i) as identified in Exhibit A, incorporated herein by reference. The total proposed administrative civil liability amount is **\$123,000**.
9. Pursuant to Water Code section 13385, subdivision (I)(1), in lieu of assessing penalties pursuant to subdivision (h) or (i), the Regional Water Board, with the concurrence of the Discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project (SEP) in accordance with the enforcement policy of the State Water Resources Control Board (State Water Board). If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be expended on a SEP may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).
 - a. Water Code section 13385, subdivision (I)(2), provides: "For the purposes of this section, a 'supplemental environmental project' means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under this section."
10. To resolve the alleged violations set forth in Exhibit A, by consent and without further administrative proceedings, the Parties have agreed to the imposition of an administrative civil liability amount of \$123,000 against the Discharger. The Discharger may apply up to \$69,000 (SEP Amount) of this amount to implement the SEP, and such amount shall be permanently suspended upon timely completion of the SEP required herein.
11. The Parties have engaged in confidential settlement negotiations and agree to settle the matter without administrative or civil litigation by presenting this Stipulated Order 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.
12. The Prosecution Team has determined that resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the alleged violations except as provided in this Stipulated Order, and that this Stipulated Order is in the public's best interest.

Section III: Stipulations

The foregoing Recitals are adopted by the Parties, and they stipulate to the following:

13. **Administrative Civil Liability:** The Discharger hereby agrees that of the \$123,000 in ACL, the Discharger shall expend \$69,000 (SEP Amount) to implement the SEP. Upon the Regional Water Board's review and approval of the information submitted pursuant to paragraph 15, the Discharger's obligation to pay the SEP Amount shall be permanently suspended. The remaining balance of the ACL amount, which is \$54,000, is due and payable pursuant to this paragraph and shall be submitted by check made payable to the "State Water Pollution Cleanup and Abatement Account," no later than 30 days following adoption of this Order. The check shall reference the Order number (R1-2024-0013), and be mailed to:

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

The Discharger shall provide a copy of the check for any payment made via e-mail to the State Water Board, Office of Enforcement (Asa.Standfeldt@waterboards.ca.gov) and the Regional Water Board (Jordan.Filak@waterboards.ca.gov).

14. **SEP Description:** The Discharger has proposed a SEP consisting of the installation of a backup power generator for the sewer lift station at an 80-unit affordable housing complex located in the Town of Samoa, an economically disadvantaged community. The SEP supports the State Water Board's core value of the human right to water by safeguarding the continuity of wastewater services, preventing water contamination, reducing health risks, and ensuring equitable access to these services, all of which are essential components of clean and safe water provision. The complete SEP description, project milestones, budget, and reporting schedule are contained in Exhibit B, which is incorporated herein by reference.
15. **Representations and Agreements Regarding the SEP:**
- a. As a material condition for the Regional Water Board's acceptance of this Stipulated Order, the Discharger represents that the SEP Amount will be used to implement the SEP, as set forth in Exhibit B. The Discharger understands that its promise to implement the SEP, in its entirety and in accordance with the implementation schedules and budgets set forth in Exhibit B, represents a material condition of this settlement of liability between the Discharger and the Regional Water Board.

- b. The Discharger agrees to: (1) spend the SEP Amount as described in this Stipulated Order; (2) provide certified, written reports to the Regional Water Board consistent with the terms of this Stipulated Order detailing SEP implementation; and (3) submit a final completion report for the SEP by October 31, 2024,
 - c. The final completion report will include a certification by a responsible official, signed under penalty of perjury, that the Discharger followed all applicable environmental laws and regulations in implementing the SEP, including the California Environmental Quality Act (CEQA), Porter-Cologne Act, and federal Clean Water Act.
 - d. The Discharger agrees that the Regional Water Board has the right to require a third-party audit, to be paid for by the Discharger, of the funds expended to implement the SEP, and that the Discharger bears ultimate responsibility for meeting all deadlines specified in this Stipulated Order.
16. **SEP Oversight Costs:** Regional Water Board staff will oversee implementation of the SEP. The Discharger is responsible for any reasonably charged costs for such oversight, which are not included in the SEP Amount. The Regional Water Board's oversight tasks will include, without limitation, reviewing and evaluating progress reports, reviewing final completion reports, and communicating with the Discharger as necessary.
17. **Publicity Associated with the SEP:** Should the Discharger or its agents or subcontractors publicize one or more elements of the SEP, they shall state in a **prominent manner** that the project is undertaken as part of a settlement of a Regional Water Board enforcement action against the Discharger.
18. **Progress Reports and Inspection Authority:** The Discharger agrees to submit progress reports in implementing the SEP to the Regional Water Board as described in Exhibit B. The Discharger agrees that Regional Water Board staff has permission to observe and inspect the SEP at any time during normal business hours without notice.
19. **Regional Water Board Acceptance of Completed SEP:** Upon the Discharger's satisfaction of its obligations under this Stipulated Order, completion of the SEP, and any audits, the Executive Officer will issue a "Satisfaction of Order." The Satisfaction of Order shall terminate any further obligations of the Discharger under this Stipulated Order and permanently suspend the remaining penalty amount.
20. **Time Extension for the SEP:** The Executive Officer (or her/his designee) may extend the deadlines contained in this Stipulated Order if the Discharger demonstrates delays from unforeseeable contingencies, provided that the

Discharger continues to undertake all appropriate measures to meet its deadlines. Once discovered that a deadline extension is needed, the Discharger shall make any deadline extension request in writing at least 30 days prior to the applicable deadline if feasible. Under no circumstances may the completion of the SEP extend past five (5) years from the effective date of this Stipulated Order. Any approval of extension by the Executive Officer must be in writing. Under no circumstances may the completion of the SEP extend past five (5) years from the effective date of this Stipulated Order. Any approval of extension by the Executive Officer (or her/his designee) must be in writing.

21. **Failure to Expend All Suspended Funds or Complete the Approved SEP:** If the SEP is not fully implemented by October 31, 2024 (SEP Completion Date) and no extension is granted by the Executive Officer (or her/his designee) within the 5-year statutory period, if the Discharger is unable to demonstrate to the reasonable satisfaction of the Executive Officer that the entire SEP amount was spent on the completed SEP by the SEP Completion Date, or if there has been a material failure to satisfy a project milestone, Regional Water Board staff shall issue a "Notice of Violation" to the Discharger. As a consequence, the Discharger shall be liable to pay the entire SEP Amount, less any amount that has been permanently suspended or excused based on the timely and successful completion of any interim project milestone that has an identifiable and stand-alone environmental benefit. Unless the Regional Water Board or its delegate determines otherwise, the Discharger shall not be entitled to any credit, offset, or reimbursement from the Regional Water Board for expenditures made on the SEP prior to the Notice of Violation's issuance date. The amount of the suspended liability owed shall be determined via a written, stipulated agreement between the Parties or, if the Parties cannot reach an agreement on the amount owed, via a "Motion for Payment of Suspended Liability" before the Regional Water Board or its delegate. Within 30 days of the Regional Water Board's or its delegate's determination of the suspended liability assessed, the Discharger shall pay the amount owed to the "State Water Pollution Cleanup and Abatement Account." Within 30 days of the Regional Water Board's or its delegate's determination of the suspended liability amount assessed for the Discharger to pay, the Discharger shall submit payment consistent with the payment method described in Section III, paragraph 13. Payment of the assessed amount shall satisfy the Discharger's obligation to implement the SEP.
22. **Regional Water Board is not Liable:** Neither the Regional Water Board members nor the Regional Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from negligent or intentional acts or omissions by the Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Regional Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Discharger, its directors,

officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

23. Party Contacts for Communications related to Stipulation/Order:

For the Regional Water Board:

Jordan Filak
Environmental Scientist
North Coast Regional Water Quality
Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403
Jordan.Filak@waterboards.ca.gov
(707) 576-6743

For the Discharger:

Troy Nicolini
President, Board of Directors
Peninsula CSD
Town of Samoa WWTP
3 North Bay View Road
Town of Samoa, CA 95564
Troy.nicolini@gmail.com
(707) 496-5959

24. Compliance with Applicable Laws: The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged herein may subject it to further enforcement, including additional administrative civil liability.

25. Matters Addressed by Stipulation: Upon adoption by the Regional Water Board or its delegate, this Stipulated Order represents a final and binding resolution and settlement of the alleged violations as of the effective date of this Stipulated Order. The provisions of this paragraph are expressly conditioned on the completion of the SEP as specified herein.

26. 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 Stipulated Order.

27. **Attorney's 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.
28. **Public Notice:** The Discharger understands that this Stipulated Order must be posted for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board, or its delegate, for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Regional Water Board or its delegate. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this Stipulated Order once signed.
29. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Regional Water Board's or its delegate's adoption of the Order, and public review of this Stipulated Order is lawful and adequate. The Parties understand that the Regional Water Board, or its delegate, have the authority to require a public hearing on this Stipulated Order. In the event procedural objections are raised or the Regional Water Board requires a public hearing prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections and may agree to revise or adjust the procedure and/or this Stipulated Order as necessary or advisable under the circumstances.
30. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.
31. **If Order Does Not Take Effect:** In the event that the Order does not take effect because the Regional Water Board or its delegate does not approve it, or the State Water Board or a court vacates it in whole or in part, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liability for the underlying alleged violation(s), unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during settlement discussions are confidential and will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to the following:
- a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that 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 as a consequence of reviewing the Stipulated Order, and

therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged in this matter; or

- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.
32. **Waiver of Hearing:** The Discharger has been informed of the rights Water Code section 13323(b) provides, and hereby waives its right to a hearing before the Regional Water Board prior to the Order's adoption. However, the Discharger may appear at any Regional Water Board hearing where approval of this settlement is discussed. If the settlement is not adopted and the matter proceeds to the Regional Water Board or State Water Board for a hearing, the Discharger does not waive its right to an adjudicatory hearing before any order other than this Stipulated Order is imposed.
33. **Waiver of Right to Petition or Appeal:** The Discharger hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
34. **Covenant Not to Sue:** Upon the effective date of this Stipulated Order, 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 the Complaint, this Stipulated Order or the SEP, except that this covenant is not intended to, and does not, limit the Discharger's right to sue over other Regional Water Board orders, or limit the Discharger's rights to defend against any other action taken by the Regional Water Board or its employees, representatives, agents, or attorneys, and shall not release any claims or complaints against any state agency, or the State of California or its officers, Regional Water Board members, employees, representatives, agents, or attorneys to the extent such covenant would be prohibited by Business and Professions Code section 6090.5 or by any other statute, rule, regulation, or legal principle of similar effect.
35. **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 from Regional Water Board employees or officials regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval this Stipulated Order requires.

36. **Modification:** The Parties shall not modify this Stipulated order by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board or its delegate.
37. **No Admission of Liability/ No Waiver of Defenses:** In settling this matter, the Discharger does not admit to liability, admit to the truth of the findings or allegations made by the Prosecution Team, or admit to any of the findings in this Stipulated Order or Exhibit A, or admit to any violations of the Clean Water Act, the Water Code, any Regional or State Water Board order, or any other federal, state or local laws or ordinances, but recognizes that this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code sections 13327 and 13385(e), and the State Water Board's Water Quality Enforcement Policy, which is available at: [WATER QUALITY ENFORCEMENT POLICY \(ca.gov\)](https://www.water.ca.gov/water-quality-enforcement-policy). By entering into this agreement, Discharger does not waive any defenses or arguments related to any new enforcement action that may be brought by the Regional Water Board, including any brought under its discretionary enforcement authority reserved herein.
38. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Stipulated Order.
39. **Severability:** This Stipulated Order is severable; should any provision be found invalid, the remainder shall remain in full force and effect.
40. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.
41. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board, or its delegate, enters the Order incorporating the terms of this Stipulated Order.

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IT IS SO STIPULATED.

**California Regional Water Quality Control Board,
North Coast Region Prosecution Team**

Date:

By:

**Claudia E. Villacorta, P.E.
Assistant Executive Officer**

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Peninsula Community Services District,

Date: 3/13/2024

By:



Troy Nicolini, Board President Peninsula CSD

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Samoa Pacific Group, LLC,

Date: 03/11/2024

By: 

Dan Johnson, Burger & Johnson Enterprises

ORDER OF THE REGIONAL WATER BOARD

42. This Order incorporates the foregoing Sections I through III by this reference as if set forth fully herein.
43. Issuance of this Order is being taken for the protection of the environment and to enforce the laws and regulations administered by the Regional Water Board and is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code §21000 *et seq.*) in accordance with 14 California Code of Regulations (CCR) section 15321(a)(2). This Order includes a SEP in the North Coast Region. This Order generally accepts the plans proposed for the SEP prior to implementation. Mere submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change to the environment.
44. The Executive Officer is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under the Order.

IT IS HEREBY ORDERED pursuant to Water Code section 13323 and Government Code section 11415.60, on behalf of the California Regional Water Quality Control Board, North Coast Region.

Date:

By:

Valerie Quinto
Executive Officer

Exhibits:

- A. Exhibit A – List of Effluent Limitation Violations Requiring Mandatory Minimum Penalties
- B. Exhibit B – Supplemental Environmental Project Description