

Attachment A
Penalty Methodology for
Administrative Civil Liability Complaint No. R1-2025-0006
Factors Considered in Developing Recommended Civil Liability
In the Matter of Yesenia and Raul Carrillo

This technical analysis provides a summary of factual and analytical evidence that support the findings in Administrative Civil Liability Complaint No. R1-2025-0006 (Complaint) and the recommended assessment of administrative civil liability in the amount of \$55,335. The Complaint alleges that Yesenia and Raul Carrillo (the Dischargers), failed to implement Required Action No. 1 of the North Coast Regional Water Quality Control Board's (North Coast Water Board's) Cleanup and Abatement and Investigative Order No. R1-2024-0034 (Cleanup and Abatement Order) at the Property located in Mendocino County at Assessor's Parcel Numbers (APNs) 032-294-03-00 and 032-180-45-00.

SUMMARY OF VIOLATION

The Complaint alleges that the Dischargers violated Water Code section 13267 by failing to submit a proposed Cleanup, Restoration, and Monitoring Plan (CRMP) for approval by September 15, 2024, as required under Required Action 1 in the Cleanup and Abatement Order. Water Code section 13268, subdivision (b), provides that the North Coast Water Board may impose civil liability administratively in response to violations of section 13267 in an amount of up to one thousand dollars (\$1,000) per day of violation. As of February 10, 2025, the CRMP is 148 days late, and the Dischargers are subject to liability of up to \$148,000 pursuant to Water Code section 13268, subdivision (b). **As described below, the Prosecution Team¹ recommends administrative civil liability in the amount of fifty-five thousand three hundred and thirty-five dollars (\$55,335) for this violation.**

¹ To maintain impartiality of the North Coast Water Board, during potential enforcement hearings as a standard practice in progressive enforcement cases, staff organizes a group of staff that works on case development (the Prosecution Team), which consists of the Assistant Executive Officer as the lead prosecutor together with staff that has inspected the site and reviewed associated enforcement documents. Another group of staff that has not been involved in the enforcement case can help advise the Regional Water Board (the Advisory Team).

PENALTY METHODOLOGY

The State Water Resources Control Board’s *Water Quality Enforcement Policy*² (“Enforcement Policy”) establishes a methodology for determining administrative civil liability by addressing the factors that must be considered under Water Code section 13327 and/or 13385, subdivision (e), depending on the violations. As the violation alleged in the Complaint is enforceable under Water Code section 13268, the proposed liability must take into consideration the factors specified in Water Code section 13327, specifically:

“the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on 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.”

Each factor of the Enforcement Policy’s ten-step approach is discussed below, along with the basis for assessing the corresponding scores and proposed administrative civil liability amount.

The violation alleged here involves failure to comply with the Water Code section 13267 reporting directive. This is a “non-discharge violation” for purposes of the Enforcement Policy penalty methodology.

Step 1. Actual Harm or Potential for Harm for Discharge Violations

Enforcement Policy Step 1 is only applicable to discharge violations, which are not alleged in the Complaint.

Step 2. Per Gallon and Per Day Assessments for Discharge

Enforcement Policy Step 2 is only applicable to discharge violations, which are not alleged in the Complaint.

Step 3. Per Day Assessment for Non-Discharge Violations

The Enforcement Policy provides that “[t]he Water Boards shall calculate an initial liability factor for each non-discharge violation, considering Potential for Harm and the extent of deviation from applicable requirements. These violations include, but are not

² [The Enforcement Policy](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf) can be found at: (https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf). The Office of Administrative Law approved revisions to the Enforcement Policy in November, 2024. Because the violations alleged in the Complaint occurred prior to that approval, the 2017 Enforcement Policy governs the penalty calculation here.

limited to, failure to conduct routine monitoring and reporting, failure to provide required information, and the failure to prepare and implement required plans. While all non-discharge violations harm or undermine the Water Boards' regulatory programs and compromise the Water Boards' ability to perform their statutory and regulatory functions, some non-discharge violations have the potential to directly or indirectly impact beneficial uses and should result in more serious consequences."

To determine the initial liability factor for each violation, the Water Boards use the matrix set forth in Table 3 of the Enforcement Policy to determine a per-day assessment factor for each violation. The matrix considers the potential for harm resulting from the violation, and the deviation from the applicable requirement. Each of these can be "Minor," "Moderate," or "Major."

Potential for Harm:

The Potential for Harm categories are as follows:

- *Minor – The characteristics of the violation have little or no potential to impair the Water Boards' ability to perform their statutory and regulatory functions, present only a minor threat to beneficial uses, and/or the circumstances of the violation indicate a minor potential for harm.*
- *Moderate – The characteristics of the violation have substantially impaired the Water Boards' ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most non-discharge violations should be considered to present a moderate potential for harm.*
- *Major – The characteristics of the violation have wholly impaired the Water Boards' ability to perform their statutory or regulatory functions, present a particularly egregious threat to beneficial uses, and/or the circumstances of the violation indicate a very high potential for harm. Non-discharge violations involving failure to comply with directives in cleanup and abatement orders, cease and desist orders, and investigative orders, involving reports relating to impaired water bodies and sensitive habitats, should be considered major. (emphasis added.)*

(Enforcement Policy, page 16)

Violation 1: The CRMP required by the Cleanup and Abatement Order is necessary to: (1) assess impacts to waters of the state resulting from the cannabis cultivation, Dischargers' alteration of the bed and bank of watercourses, and the discharge and threatened discharge of sediment and cannabis cultivation waste; (2) determine the appropriate restoration and abatement work to correct those impacts; and (3) create a plan along with an implementation schedule that will guide the scope of work to clean up and abate the discharges and threat of discharges of waste on the Property. The

CRMP is comparable in scope to the technical documents required of all licensed cannabis cultivators in California enrolling in Order No. WQ 2019-0001-DWQ General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities (Cannabis General Order). By failing to submit a CRMP for approval, the Dischargers wholly impaired the North Coast Water Board's ability to perform its regulatory functions by preventing the Board from authorizing cleanup actions. Additionally, the Dischargers obtained an unfair economic advantage over enrollees in the Cannabis General Order by not obtaining appropriate permits and by not producing the CRMP, which is comparable with reports required of enrollees in the Cannabis General Order.

Additionally, the impacted waterbodies intended to be addressed through the CRMP are impaired and contain sensitive habitats. The federal Clean Water Act section 303, subdivision (d), impaired waterbodies list identifies the Middle Fork Eel River as impaired due to elevated sedimentation/siltation and elevated temperature. In December of 2003, the U.S. Environmental Protection Agency established Total Maximum Daily Loads (TMDLs) for temperature and sediment for the Middle Fork Eel River and its tributaries. The TMDLs indicate that the cold freshwater habitat is the most sensitive of beneficial uses in the watershed. As such, protection of this beneficial use is presumed to protect any of the other beneficial uses that might also be harmed by sedimentation. Since this non-discharge violation involves failure to comply with a directive in the Cleanup and Abatement Order to submit a report that identifies cleanup actions impacting an impaired waterbody, the Potential for Harm for Violation 1 is **Major**.

Deviation from Requirement:

The Deviation from Requirement categories are as follows:

- *Minor – The intended effectiveness of the requirement remained generally intact (e.g., while the requirement was not met, its intended effect was not materially compromised).*
- *Moderate – The intended effectiveness of the requirement was partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement was only partially achieved).*
- *Major – The requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).*

(Enforcement Policy, page 16)

Violation 1: The deviation from the requirement to submit a proposed CRMP by the deadline contained in the Cleanup and Abatement Order is **Major**. North Coast Water Board staff (Staff) transmitted a letter to the Dischargers on September 26, 2024, notifying them of Violation 1, but the Dischargers did not respond. The Dischargers

have made no attempt to submit a proposed CRMP for approval, rendering the requirement ineffective in its essential functions.

Per Day Factors:

Violation 1: Utilizing a Potential for Harm score of **Major** and Deviation from Requirement score of **Major**, Staff selected a Per Day Factor of 0.85 for Violation 1, consistent with Table 3 on page 16 of Enforcement Policy.

Initial Liability Amounts:

The initial liability amount for Violation 1 is **calculated on a per-day basis as follows:**

Violation 1: Per-Day Liability (148 (days) x 0.85 (per day factor) x \$1,000 (statutory maximum per day liability)) = **\$125,800**

Step 4. Adjustment Factors

Under this step, the initial liability amount is adjusted by factors addressing multiple-day violations and the violator's conduct.

Multiple-Day Violations

The Enforcement Policy advises that “for violations that are assessed a civil liability on a per day basis and do not constitute a single operational upset, the initial liability amount should be assessed for each day up to thirty (30) days. For violations that last more than thirty (30) days, the daily penalty assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if any, resulting from the violation. For these cases, the North Coast Water Board must make express findings that the violation:

- a. Is not causing daily detrimental impacts to the environment and is not causing daily detrimental impacts to the regulatory program;
- b. Results in no discrete 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 the above findings is made, an alternate approach to penalty calculation for multiple day violations may be used. In these cases, the liability shall not be less than an amount that is calculated based on an assessment of the initial Total Base Liability Amount for the first 30 days of the violation, plus an assessment for each 5-day period of violation until the 60th day, plus an assessment for each 30 days of violation thereafter. Staff determined that neither Violation 1 nor Violation 2 resulted in discrete economic benefit that can be measured on a daily basis. Therefore, applying the alternative approach to penalty calculation, Staff recommends collapsing the number of days for which administrative civil liability shall be assessed as follows:

Violation 1: Full collapsing of days from 148 days to 38 days. Therefore, the adjusted Initial Liability Amount for Violation 1 becomes **\$32,300** (38 (days) x 0.85 (per day factor) x \$1,000 (statutory maximum per day liability)).

Violator's Conduct:

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's compliance history.

Culpability:

This factor assesses a discharger's degree of culpability prior to the violation. The Enforcement Policy provides that "[h]igher liabilities should result from intentional or negligent violations" as opposed to accidental violations. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier for intentional misconduct or gross negligence, a lower multiplier for more simple negligence, and a neutral assessment of 1.0 where a discharger is determined to have acted as a reasonable and prudent person would have.

Violation 1: At the time of the inspection, the Dischargers were conducting unlicensed commercial cannabis cultivation on the Property. Commercial cannabis cultivators are required to maintain their property, where cultivation is occurring, consistent with the Cannabis Cultivation Policy and the Water Code. Due to observed discharges and threats of discharge on the Property, the North Coast Water Board issued the Cleanup and Abatement Order to ensure the Property was adequately remediated. Upon issuance of the Cleanup and Abatement Order, a reasonable and prudent person would have made efforts to comply with the requirement to submit a proposed CRMP for approval and communicate these efforts to the North Coast Water Board. The Dischargers' conduct fell below that of a reasonable and prudent person. The Dischargers have failed to respond to Staff's September 16, 2024 email or their September 26, 2024 Notice of Violation which was delivered via email and by FedEx mail to the Dischargers' home following the July 23, 2024 issuance of the Cleanup and Abatement Order. These actions constitute an intentional violation of Required Action 1; thus, a value of **1.25** is appropriate for this violation.

History of Violations:

The Enforcement Policy advises that "[w]here the discharger has no prior history of violations, this factor should be neutral, or 1.0. Where the discharger has prior violations within the last five years, the Water Boards should use a multiplier of 1.1. Where the discharger has a history of similar or numerous dissimilar violations, the Water Boards should consider adopting a multiplier above 1.1."

This Dischargers are also named in Cleanup and Abatement Order R1-2024-0033 requiring cleanup of a property that the Dischargers no longer own, however the new owners of that property are complying with Order R1-2024-0033. There are no previous

orders assessing administrative civil liability against the Dischargers for previous violations within the last five years. Accordingly, a neutral factor of **1.0 is selected**.

Cleanup and Cooperation:

This factor assesses voluntary efforts to cleanup and/or to cooperate with regulatory agencies in returning to compliance after the violation. The Enforcement Policy states that the cleanup and cooperation multiplier ranges from 0.75 to 1.5, with a lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where there is not. A reasonable and prudent response to a discharge violation or timely response to a North Coast Water Board order should receive a neutral adjustment as it is assumed a reasonable amount of cooperation is the warranted baseline.

Violation 1: After the issuance of Staff’s response to the Dischargers’ comments on a draft of the Cleanup and Abatement Order, the Dischargers did not sign receipt for certified mailing of the July 23, 2024 final Cleanup and Abatement Order and failed to respond to Staff’s September 16, 2024 email or their September 26, 2024 Notice of Violation Letter with enclosed copy of the Cleanup and Abatement Order, which was delivered via email and by certified mail to the Dischargers’ home ; therefore, a score of **1.25** has been assessed for Violation 1.

Step 5. Determination of Total Base Liability Amount

The Total Base Liability is determined by adding the amounts above for each violation, including any adjustment for multiple day violations. Depending on the statute controlling the liability assessment for a violation, the liability can be assessed as either a per day penalty, a per gallon penalty, or both.

The Total Base Liability amount for Violations 1 is calculated on a per-day basis as follows:

Violation 1: \$32,300 (Initial Liability after collapsing days) x 1.25 (Culpability Factor) x 1.0 (History of Violations Factor) x 1.25 (Cleanup and Cooperation Factor) = **\$50,468**

Total Base Liability Amount: \$50,468

Step 6. Ability to Pay and Continue in Business

The Enforcement Policy provides that “[i]f the Water Boards have sufficient financial information necessary to assess the violator’s ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on the violator’s ability to continue in business, the Total Base Liability Amount may be adjusted to address the ability to pay or to continue in business. The ability of a discharger to pay is determined by its income (revenues minus expenses) and net worth (assets minus liabilities).”

The Dischargers own the Property, with APN 032-180-45-00 and APN 032-294-03-00 having assessed values of \$618,108 and \$73,440, respectively. Property transaction records indicate that APN 032-294-03-00 was purchased in 2020 for cash, which suggests that the Property likely has no mortgage or other financial encumbrances. Staff does not have information about the Dischargers' revenues or liabilities that would further inform their ability to pay. Based on the information available, Staff proposes no adjustment to the Total Base Liability Amount.

Step 7. Economic Benefit

The Enforcement Policy requires that the adjusted Total Base Liability Amount be at least 10 percent higher than any economic benefit realized by the Dischargers.

For **Violation 1**, the cost of preparing a CRMP (i.e., field inspection and report preparation) is comparable to the cost of preparing a combined Site Management Plan, Site Erosion and Sediment Control Plan, and a Disturbed Area Stabilization Plan, as presented in the State Water Resources Control Board, October 2017, Direct Cost Analysis for the Proposed Cannabis Cultivation Policy (2017 Direct Cost Analysis)³, which is estimated to cost between \$4,860 and \$14,120.

Although the Dischargers will still need to submit a proposed CRMP for approval, they have not done so yet, so the costs estimated above are considered delayed. Using the EPA BEN model, staff determined the economic benefit from delayed expenditures associated with Violation 1. Staff identified the midpoint in the estimated range of plan cost of \$9,490 as a one-time non-depreciable expenditure, \$0 in capital investment, and \$0 in annual recurring costs with a noncompliance date of the September 15, 2024, deadline and an estimated compliance date of May 15, 2025, two weeks after the anticipated hearing date. The resulting economic benefit from delaying the plan expenditures is \$292.

The economic benefit plus ten percent is calculated to be $\$292 + \$29 = \$321$ in this instance, which the Total Base Liability Amount exceeds.

Step 8. Other Factors as Justice May Require

The Enforcement Policy states that “[i]f the Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for ‘other factors as justice may require,’ but only if express findings are made to justify this adjustment.” The North Coast Water Board may exercise its discretion to include some of the costs of investigation and enforcement in the total administrative civil liability.

³ [The 2017 Direct Cost Analysis](https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/20171017_cannabis_cultivation_policy_cost_analysis.pdf) is available at:
(https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/20171017_cannabis_cultivation_policy_cost_analysis.pdf)

Staff Costs

The North Coast Water Board incurred \$12,574 in staff costs associated with this enforcement action. The total staff time needed to investigate the alleged violation and prepare the Complaint was seventy-three (73) hours. Staff labor included the work of an Engineering Geologist, Senior Engineering Geologist, Supervising Environmental Scientist, Supervising Water Resources Control Engineer, and Assistant Executive Officer. Specifically, development of this enforcement action necessitated four (4) hours of labor from an Engineering Geologist and Supervising Environmental Scientist to investigate the violation and issue a notice of violation to the Dischargers for the failure to comply with the Cleanup and Abatement Order; forty-six (46) hours for an Engineering Geologist, Senior Engineering Geologist, Supervising Environmental Scientist, and Supervising Water Resources Control Engineer to prioritize the violation for enforcement and draft the Complaint; and twenty-three (23) hours for a Supervising Water Resources Control Engineer and Assistant Executive Officer to review, edit, and issue this Complaint.

The Prosecution Team proposes to recuperate only the staff costs associated with the labor related to the executive-level review and issuance of the Complaint. This amounts to \$4,867 for the twenty-three (23) hours the North Coast Water Board's Assistant Executive Officer and Supervising Water Resources Control Engineer needed to review, edit, and issue this Complaint. The Prosecution Team's reasoning to seek only the staff costs associated with management level review and issuance of the Complaint is to allow the Dischargers to use the funds, that would otherwise be included in the proposed penalty, to comply with the requirements of the Cleanup and Abatement Order which is still in effect.

Step 9. Maximum and Minimum Liability Amounts

The Enforcement Policy requires the North Coast Water Board to consider the maximum and minimum liability amounts that may be assessed for each violation. For all violations, the applicable statute sets a maximum liability amount. For some violations, the statute also establishes a minimum liability amount. The maximum and minimum liability amounts for each violation must be determined for comparison to the liability amounts proposed.

Pursuant to Water Code section 13268, subdivision (b)(1), civil liability may be administratively imposed by the North Coast Water Board in an amount that shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs. The Complaint alleges this violation occurred for 148 days. Accordingly, the statutory maximum liability amount that can be imposed for this violation is \$148,000. Water Code section 13268 does not impose a minimum liability amount; however, the Enforcement Policy requires the North Coast Water Board to recover, at a minimum, the economic benefit derived from this violation plus ten percent. As previously stated, Staff calculated the economic benefit of Violation 1 to be \$292. Therefore, the minimum

liability that can be imposed is \$292 plus ten percent (\$29) totaling \$321. The proposed liability for Violation 1 falls within the minimum and maximum liability amounts.

Step 10. Final Liability Amount:

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts.

Violation 1: After full collapsing of days from 148 days to 38 days, the liability amount for Violation 1 is calculated as 38 (days) x 0.85 (per day factor) x \$1,000 (statutory maximum per day liability) x 1.25 (Culpability Factor) x 1.0 (History of Violations Factor) x 1.25 (Cleanup and Cooperation Factor) = **\$50,468 + Staff Costs of \$4,867.**

The Final Liability Amount is calculated to be fifty-five thousand three hundred and thirty-five dollars (**\$55,335**).