CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

In the matter of:	)	
	)	
MDI FOREST PRODUCTS, LLC, ALAMEDA COUNTY	)	**SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY ORDER**
	)	
December 11 and 19, 2014, Unauthorized Discharge of Polluted Stormwater to San Francisco Bay; December 14 and 15, 2015, Inadequate Use and Maintenance of Stormwater Best Management Practices	)	**ORDER** R2-2016-1013

Section I: INTRODUCTION

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order) is entered into by and between the California Regional Water Quality Control Board, San Francisco Bay Region, Prosecution Team (Prosecution Team) and the MDI Forest Products, LLC (MDI or Settling Respondent) (collectively Parties), and is presented to the California Regional Water Quality Control Board, San Francisco Bay 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 alleged herein by the imposition of administrative civil liability against MDI in the amount of **$176,000**.

Section II: RECITALS

2. MDI is a wood products export business that specializes in supplying the Far East with hardwood logs and lumber. When the alleged violations occurred, MDI operated two industrial facilities at the Port of Oakland and conducted operations at 1450 Maritime Street (Maritime Facility) and 700 Murmansk Street (Murmansk Facility). MDI has since vacated the Maritime Facility. On May 6, 2014, MDI obtained covered for the Maritime Facility under the General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 97-03-DWQ, NPDES No. CAS000001 (1997 General Permit). On June 9, 2015, MDI filed Notices of Intent for coverage under the General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ, NPDES No. CAS000001 (2014 General Permit) for operations at the Maritime Facility and the Murmansk Facility.

3. On February 17, 2016, the Prosecution Team issued Administrative Civil Liability Complaint No. R2-2016-1001 (Complaint) to MDI for allegedly violating the following: Discharge Prohibitions A.2 of the 1997 General Permit by discharging 406,000 gallons of stormwater polluted by facility activities to the San Francisco Bay from its Maritime

Facility on December 11 and 19, 2014; and Minimum BMPs section X.H.1.d of the 2014 General Permit by failing to both implement and maintain minimum stormwater best management practices at its Murmansk Facility on December 14 and 15, 2015. The Complaint proposed $176,000 in administrative civil liability, including $10,800 in staff costs, as set forth in the Complaint, attached hereto as Attachment A and incorporated by reference.

4. To resolve the alleged violations in Section II, paragraphs 3 by consent and without further administrative proceedings, the Parties have agreed to the imposition of an administrative civil liability of **$176,000** against the Settling Respondent. Payment of **$93,400** to the "State Water Pollution Cleanup and Abatement Account" is due no later than 30 days following the Regional Water Board executing this Order. The remaining **$82,600** in penalties shall be suspended upon completion of a Supplemental Environmental Project (SEP).

5. The Parties have agreed to settle the matter without administrative or civil litigation and to present this Stipulated Order to the Regional Water Board, or its delegate, for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

6. The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the violations except as provided in this Stipulated Order, and that this Stipulated Order is in the public's best interest.

Section III: STIPULATIONS

The Parties incorporate the foregoing Recitals and stipulate to the following:

7. **Administrative Civil Liability:** The Settling Respondent hereby agrees to the imposition of an administrative civil liability totaling **$176,000** to resolve the alleged violations as follows:

a. No later than 30 days after the Regional Water Board, or its delegate, signs this Stipulated Order, the Settling Respondent shall submit a check for **$93,400** made payable to the "State Water Pollution Cleanup and Abatement Account," with a reference to the number for this Order shown on page 1 of this document, and mailed to:

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

The Settling Respondent shall provide a copy of the check via e-mail to the State Water Resources Control Board, Office of Enforcement

(paul.ciccarelli@waterboards.ca.gov) and the Regional Water Board (yan.nusinovich@waterboards.ca.gov).

b. The Settling Respondent agrees that **$82,600** of the administrative liability amount (SEP Amount) shall be paid to the San Francisco Estuary Institute for implementation of a Supplemental Environmental Project (SEP) as follows:

i. The SEP Amount shall be paid solely for use towards Phase 1 of the San Leandro Bay Priority Margin Unit Study (Study). Funding this Study will assemble and collect polychlorinated biphenyl (PCB) related information on water quality in San Leandro Bay, an area on the Bay margin that is a high priority for water quality management. The Study will obtain critical monitoring data and assemble existing data for a conceptual model of PCB dynamics in San Leandro Bay. A complete description of this project is provided in Attachment B, incorporated herein by reference.

ii. Payment shall be made no later than 30 days after the Regional Water Board, or its delegate, signs this Stipulated Order. All payments associated with the SEP shall be sent to the San Francisco Estuary Institute in the form of a single check payable to the "Regional Monitoring Program," with a reference to the number for this Order shown on page 1 of this document, and mailed to: Regional Monitoring Program c/o San Francisco Estuary Institute, 4911 Central Avenue, Richmond, CA 94804. A copy of the check shall be sent to the Office of Enforcement and the Regional Water Board at the e-mail addresses set forth above.

8. **Supplemental Environmental Project:** The Parties agree that the payment of the SEP Amount is a SEP, and that the SEP Amount will be treated as a suspended administrative civil liability for purposes of this Stipulated Order. The Settling Respondent's SEP obligations will be satisfactorily completed upon the San Francisco Estuary Institute's written notification to Regional Water Board staff and Settling Respondent. The written notification shall acknowledge that the Regional Monitoring Program received the SEP Amount from the Settling Respondent and the SEP Amount will be spent on the project described in Section III, paragraph 7(b)(i) in accordance with the terms of this Stipulated Order. The San Francisco Estuary Institute's annual and/or quarterly financial reports to the Regional Water Board shall be considered a final post-project accounting of expenditures.

9. **Publicity Associated with the SEP**: Whenever Settling Respondent 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 to a Regional Water Board enforcement action against the Settling Respondent.

10. **Water Board is not Liable:** Neither the Water Board members nor the Water Board staff, attorneys, or representatives shall be held as parties to or guarantors of any contract entered into by Settling Respondent, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

11. **Compliance with Applicable Laws:** Settling Respondent understands that payment of 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 continuing violations of the type alleged herein may subject it to further enforcement, including additional administrative civil liability.

12. **Party Contacts for Communications related to this Stipulation and Order:**

For the Regional Water Board:

Yan Nusinovich
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, 14th Floor
Oakland, CA 94612
yan.nusinovich@waterboards.ca.gov
(510) 622-2300

For Settling Respondent:

Gary H. Liu
Owner
MDI Forest Products, LLC
1900 Powell Street
Emeryville, CA 94608
gary@mdiforestproducts.com
510-851-5232

13. **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.

14. **Matters Addressed by this Stipulation:** Upon the Regional Water Board's or its delegate's adoption, this Stipulated Order represents a final and binding resolution and settlement of the alleged violation(s) as of the effective date of this Stipulated Order. The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadlines specified in Section III, paragraphs 7 and full satisfaction of the obligations described in Paragraph 8.

15. **Public Notice:** The Settling Respondent understands that this Stipulated Order must be noticed 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 Settling Respondent agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

16. **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.

17. **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.

18. **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.

19. **If the 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 Resources Control Board (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 liabilities for the underlying alleged violation(s), unless the Parties agree otherwise. 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 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 Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violation alleged herein 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.

20. **Waiver of Hearing:** Settling Respondent has been informed of the rights Water Code section 13323, subdivision (b) provides, and hereby waives its right to a hearing before the Regional Water Board prior to the Order's adoption.

21. **Waiver of Right to Petition or Appeal:** Settling Respondent 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. This explicit waiver of rights includes potential future decisions by the Regional Water Board or its delegate directly

related to this Stipulated Order, including, but not limited to time extensions, SEP completion, and other terms contained in this Stipulated Order.

22. **Covenant Not to Sue:** Settling Respondent 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 Stipulated Order.

23. **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 Settling Respondent 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 Settling Respondent of its obligation to obtain any final written approval this Stipulated Order requires.

24. **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.

25. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations 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.

26. **Severability:** This Stipulated Order is severable; should any provision be found invalid, the remainder shall remain in full force and effect.

27. **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.

28. **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.

IT IS SO STIPULATED.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION, PROSECUTION TEAM**

Date: June 15, 2016 By: _____
Thomas Mumley
Assistant Executive Officer

Approved as to form: By: _____
Paul Ciccarelli, Attorney
State Water Resources Control Board
Office of Enforcement

MDI FOREST PRODUCTS, LLC

Date: June, 14, 2016

By: 

Gary H. Liu
Owner

ORDER OF THE REGIONAL WATER BOARD

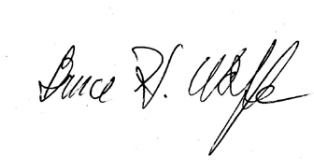
29. This Order incorporates the foregoing Sections I through III by this reference as if set forth fully herein.

30. In accepting this Stipulated Order, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13327 or 13385, subdivision (e), and has applied the Penalty Calculation Methodology set forth in the State Water Resource Control Board's Enforcement Policy, which is incorporated herein by this reference. The Regional Water Board's consideration of these factors and application of the Penalty Calculation Methodology is based upon information obtained by the Prosecution Team in investigating the allegations set forth in the Stipulation, or otherwise provided to the Regional Water Board. In addition to these considerations, this Order recovers staff costs incurred by the Regional Water Board for this matter.

31. 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, § 21000 et seq.) in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations. Additionally, 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 in the environment.

32. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if MDI 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, San Francisco Bay Region.



Digitally signed by Bruce H. Wolfe
DN: cn=Bruce H. Wolfe, o=SWRCB, ou=Region 2, email=bwolfe@waterboards.ca.gov, c=US
Date: 2016.07.21 16:11:08 -07'00'

Bruce H. Wolfe
Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region

Date

ATTACHMENT A

ADMINISTRATIVE CIVIL LIABILITY
COMPLAINT R2-2016-1001

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

COMPLAINT R2-2016-1001
ADMINISTRATIVE CIVIL LIABILITY IN THE MATTER OF

MDI FOREST PRODUCTS, LLC
DISCHARGE OF POLLUTED STORMWATER TO SAN FRANCISCO BAY
1450 MARITIME STREET, OAKLAND, ALAMEDA COUNTY
WDID 2 01I024845
AND
INADEQUATE STORMWATER BEST MANAGEMENT PRACTICES
700 MURMANSK STREET, OAKLAND, ALAMEDA COUNTY
WDID 2 01I025537

This Administrative Civil Liability Complaint (Complaint) alleges that MDI Forest Products, LLC (Discharger or MDI) violated provisions of the General Permits for Storm Water Discharges Associated with Industrial Activities, Order Nos. 97-03-DWQ (1997 General Permit) and 2014-0057-DWQ (2014 General Permit), NPDES No. CAS000001 (collectively, General Permits). [1] The Discharger allegedly violated (1) Discharge Prohibitions A.2 of the 1997 General Permit by discharging 406,000 gallons of stormwater polluted by facility activities to the San Francisco Bay (Bay) at its Maritime Street facility on December 11 and 19, 2014; and (2) Minimum BMPs section X.H.1.d of the 2014 General Permit by failing to both implement and maintain minimum stormwater best management practices (BMPs) at its Murmansk Street facility on December 14 and 15, 2015. The California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board) is authorized to impose administrative civil liabilities pursuant to California Water Code (Water Code) sections 13323 and 13385(c) for the alleged violations. The proposed liability is $176,000.

The Assistant Executive Officer of the Regional Water Board hereby gives notice that:

1. The Discharger is alleged to have violated provisions of law for which the Regional Water Board may impose administrative civil liability. This Complaint presents the factual basis for the alleged violation, legal and statutory authorities (including citations to applicable Water Code sections), and case-specific factors used to propose a $176,000 liability for the alleged violation.

2. Unless waived, the Regional Water Board will hold a hearing on this matter on May 11, 2016, in the Elihu M. Harris Building, First Floor Auditorium, 1515 Clay Street, Oakland, 94612. At the hearing, the Regional Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the Attorney General for judicial civil liability. The Discharger or its representative(s) will have an opportunity to be heard and to contest the allegations in this

[1] The 2014 General Permit, effective on July 1, 2015, replaced the 1997 General Permit . According to section I.A.6 of the 2014 General Permit, "State Water Board Order 97-03-DWQ is rescinded as of the effective date of this General Permit (July 1, 2015) except for Order 97-03-DWQ's requirement that annual reports be submitted by July 1, 2015 and except for enforcement purposes."

Complaint and the imposition of civil liability by the Regional Water Board. The Discharger will be mailed an agenda approximately ten days before the hearing date. A meeting agenda will also be available at: http://www.waterboards.ca.gov/sanfranciscobay/board_info/agenda.shtml. The Discharger must submit all comments and written evidence concerning this Complaint to the Regional Water Board not later than 5 p.m. on March 18, 2016, so that such comments may be considered. Any written evidence submitted to the Regional Water Board after this date and time will not be accepted or responded to in writing.

3. The Discharger can waive its right to a hearing to contest the allegations contained in this Complaint by signing and submitting the enclosed waiver and paying the civil liability in full or by taking other actions as described in the waiver form. If this matter proceeds to hearing, the Regional Water Board's Prosecution Team (Prosecution Team) reserves the right to seek an increase in the civil liability amount to recover the costs of enforcement incurred subsequent to the issuance of this Complaint through the hearing.

FACTUAL BASIS FOR THE ALLEGED VIOLATIONS

1. MDI is a wood products export business that specializes in supplying the Far East with hardwood logs and lumber. California Secretary of State records list Messrs. Dulun and Gary H. Liu as principals of MDI. Gary H. Liu is named as the owner, chief executive officer, and/or contact person in the Notices of Intent and Stormwater Pollution Prevention Plans (SWPPPs) for MDI's Port of Oakland facilities.

2. MDI operates two industrial facilities at the Port of Oakland. MDI has conducted operations at 1450 Maritime Street (Maritime Facility) since 2011 until about October 2015 when operations moved to 700 Murmansk Street (Murmansk Facility). MDI is in the process of vacating the Maritime Facility.

3. MDI's facilities receive, store, prepare, and transfer wood logs for export. These industrial activities are conducted outdoors and not protected by the cover of a warehouse. As part of its operations, MDI strips the bark off of logs. The debarking and general moving of logs result in piles of bark wastes at its facilities. Debarking activity at the Murmansk Facility stopped on December 18, 2015. The production of raw wood logs fits under the classification of a logging operation (SIC 2411), which requires coverage under the General Permit.

4. MDI obtained coverage under the 1997 General Permit on May 6, 2014, although it started operation at the Maritime Facility in 2011. Below is MDI's history related to obtaining coverage under the1997 General Permit and developing a stormwater pollution prevention plan (SWPPP) as required by the General Permit:

    a. On March 24, 2014, Regional Water Board staff sent MDI a Notice of Noncompliance requiring MDI to both file a notice of intent (NOI) for coverage under the 1997 General Permit and submit a SWPPP by April 24, 2014.

    b. On May 6, 2014, MDI submitted the NOI, 14 days after the date required by the notice of noncompliance.

c. On September 2, 2014, Regional Water Board staff issued MDI a notice of violation (NOV) for failing to submit a SWPPP for the Maritime Facility by April 24, 2014.

d. On September 3, 2014, MDI submitted a SWPPP for the Maritime Facility to the Regional Water Board, 134 days after the date required by the notice of noncompliance.

e. On October 1, 2014, Regional Water Board staff sent a report describing the findings from its September 26, 2014, inspection, and required BMP improvements to the SWPPP for the Maritime Facility such as a rock egress and drop inlet protection.

f. On October 9, 2014, MDI submitted a new SWPPP for the Maritime Facility to the Regional Water Board. Regional Water Board staff responded the same day with a letter stating that the SWPPP was adequate for compliance and may be implemented.

5. Regional Water Board staff inspected the Maritime Facility during a rain event[2,3] on December 11, 2014, and observed the discharge of turbid stormwater resulting from inadequate implementation of the SWPPP. Regional Water Board staff notified MDI in a December 17, 2014, email of this and other violation findings and informed MDI that the violations had been referred to the Prosecution Team for a possible administrative civil liability penalty.

6. Regional Water Board and Prosecution Team staff revisited the Maritime Facility during a rain event[4] on December 19, 2014, and again observed the discharge of turbid stormwater from inadequate implementation of the SWPPP. This included failure to adequately protect storm drains and drop inlets from runoff that contained dirt, wood, and bark from MDI's operations, and failure to cleanup those materials that had accumulated onsite prior to rain in accordance with the SWPPP. The stormwater discharge was laden with sediment and wood debris and appeared reddish-brown in color. Regional Water Board staff discussed violations with MDI staff onsite and sent an email on December 22, 2014, requesting a response to the violations.

7. The Prosecution Team estimates that MDI discharged approximately 406,000 gallons of polluted stormwater from its Maritime Facility on December 11 and 19, 2014, in violation of the 1997 General Permit. This estimate is based on direct measurements of runoff flow during the December 19, 2014, inspection.[5]

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[2] For purposes of this Complaint, a "rain event" refers to precipitation with rainfall intensity over 0.1 inches per hour. This definition is consistent with 40 CFR 122.21; for more information see https://www.law.cornell.edu/cfr/text/40/122.21.

[3] On December 11, 2014, there was 17 hours with 3.6 inches of rain recorded at the Oakland South Station. "California Data Exchange Center - Query Tools." California Data Exchange Center. Accessed January 26, 2016. http://cdec.water.ca.gov/cgi-progs/queryCSV. Station ID: OSO. Sensor Number: 2.

[4] On December 19, 2014, there was 4 hours with 0.4 inches of rain at the Oakland South Station. "California Data Exchange Center - Query Tools." California Data Exchange Center. Accessed January 26, 2016. http://cdec.water.ca.gov/cgi-progs/queryCSV. Station ID: OSO. Sensor Number: 2.

[5] Staff measured stormwater discharges at three storm drains between approximately 3 p.m. and 4:30 p.m. on December 19, 2014, using a bucket and stopwatch. The average of the three flow measurements (24.8 gallons per minute) was multiplied by the duration of the December 11 and 19, 2014 storm events (17 and 4 hours, respectively) and the number of storm drains on site (13) to estimate the volume of discharge (406,000 gallons, to the lowest

8. The discharge of 406,000 gallons of polluted stormwater from the Maritime Facility on December 11 and 19, 2014, had the potential to impact beneficial uses of the Lower Bay.

    a. The San Francisco Bay Regional Water Quality Control Plan (Basin Plan) lists the following beneficial uses for the Lower Bay: industrial service supply, commercial and sport fishing, shellfish harvesting, estuarine habitat, fish migration, preservation of rare and endangered species, fish spawning, wildlife habitat, water contact recreation, noncontact water recreation, and navigation (Table 2-1).

    b. The Basin Plan's water quality objective for sediment requires that sediment discharge rates not alter surface water in such a manner as to cause nuisance or adversely affect beneficial uses. MDI's operations increased sediment loads to the Bay. Sediment loading can negatively impact estuarine habitat and fish spawning and migration.

    c. Basin Plan Prohibition 7 prohibits the discharge of bark, sawdust, or other solid waste to surface waters primarily to protect recreational uses that include boating and navigation and also to protect industrial service supply as floating debris can impair industrial cooling and other pump diversions.

9. On January 15, 2015, Regional Water Board staff sent an NOV with the reports of its December 11 and 19, 2014, inspections. This NOV required MDI to eliminate discharges of turbid stormwater from the Maritime Facility and to address the inadequate implementation of SWPPP violations alleged. The notice also required the submittal of weekly reports to the Regional Water Board detailing how violations were corrected.

10. In February 2015, MDI submitted a new SWPPP for the Maritime Facility to the Regional Water Board. On March 25, 2015, Regional Water Board staff issued an NOV for this new SWPPP because the BMPs and the monitoring plan did not adequately comply with the 1997 General Permit.

11. On June 9, 2015, MDI filed an NOI for coverage under the 2014 General Permit for operations at the Maritime Facility and the Murmansk Facility.[6] According to a December 18, 2015, letter from one of MDI's two environmental consultants, Vestra Resources, Inc., the Murmansk Facility became active on October 15, 2015. The letter also stated that MDI planned to remove the debarker and waste bark piles from the Maritime Facility by December 31, 2015, and "efforts to vacate" the Maritime Facility "have been ongoing."[7] It explained that MDI decided to move because the Murmansk Facility has less "dirt" and less stormwater "run-on" than the Maritime Facility.

1,000 gallons). The average flow rate is considered representative of the December 19 event based on the precipitation curve, and the total volume is conservative because the rain event on December 11 was significantly larger in duration and intensity.

[6] The NOI for the Murmansk Facility included a new SWPPP that only applied to the Murmansk Facility. The Maritime Facility NOI and all the editions of the Maritime Facility SWPPP did not include the Murmansk Facility.

[7] Coverage for the Maritime Facility remains active until Regional Water Board staff determines that MDI has completely vacated the site and approves MDI's Notice of Termination (NOT) for the Maritime Facility.

12. On December 14, 2015, Regional Water Board staff and Prosecution Team staff inspected the Maritime and Murmansk facilities during a non-rain day to assess the adequacy of MDI's BMPs. This inspection was in follow-up to a site inspection of the Maritime Facility by Regional Water Board staff on November 6, 2015, and then again with Prosecution Team staff on November 9, 2015, to assess MDI's BMP preparation in anticipation of the El Niño weather forecasted. On December 15, 2015, Regional Water Board staff sent an email to MDI with a summary of the facility inspections and associated violations. In part, the email alleged the following BMP violations at the Murmansk Facility:

    a. Failure to implement Material Handling and Waste Management BMP – There was no containment for piles of wood bark waste that could be transported by stormwater. Rock check dams were not constructed along a drainage swale to control organic wood debris in storm runoff.

    b. Failure to maintain Material Handling and Waste Management BMP - Hay bales around the stormwater drop inlet[8] had gaps and damage. The straw wattles around the perimeter of the facility had gaps and damage.

13. The December 14, 2015, violations continued until at least December 15, 2015. On December 18, 2015, MDI submitted a report showing that it had completed substantial BMP improvements in response to the December 15, 2015, email. A January 28, 2016, letter from MDI's environmental consultant, Vestra Resources, Inc., further states, "MDI immediately initiated corrective action following your email dated December 15, 2015, in which you summarized your findings from your site visits." For the Murmansk Facility, MDI completed the following:

    a. Installed straw wattles at the base of bark-on logs that were stored on site.

    b. Replaced broken sandbags and straw wattles along the facility's perimeter.

    c. Replaced hay bales and straw wattles surrounding the facility's drop inlet.

    d. Installed rock and wattle check dams along the drainage swale as outlined in the SWPPP.

    e. Made commitments to properly inspect the facility to identify BMPs necessary to eliminate pollutant(s) from discharge.

14. On January 22, 2016, Regional Water Board staff sent a letter to MDI stating that with regards to the Murmansk Facility, corrective action had been implemented and the violations had been adequately addressed in a manner consistent with the 2014 General Permit as of December 31, 2015.[9]

[8] The Murmansk Facility has only one drop inlet.
[9] The January 22, 2016, letter also stated that the Maritime Facility remained out of compliance.

APPLICABLE REQUIREMENTS

15. Discharge Prohibitions A.2 of the 1997 General Permit states that, "Storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance."

16. SWPPP Elements section X.A of the 2014 General Permit states, "Dischargers shall develop and implement a site-specific SWPPP for each industrial facility covered by this General Permit that shall contain [Minimum BMPs and applicable Advanced BMPs]."

17. SWPPP Performance Standards section X.C of the 2014 General Permit requires the Discharger to ensure the SWPPP is prepared to, among other things, identify and describe the Minimum BMPs and any Advanced BMPs to reduce or prevent pollutants in industrial storm water discharges. BMPs shall be selected to achieve compliance with the 2014 General Permit.

18. The General Permit requires the Discharger to select a schedule to implement BMPs and to maintain internal procedures to ensure that the BMPs are implemented according to that schedule. (*See* 2014 General Permit Fact Sheet, page 38.)

19. Minimum BMPs section X.H.1 of the 2014 General Permit states in part as follows:

    The discharger shall, to the extent feasible, implement and maintain all of the following minimum BMPs to reduce or prevent pollutants in industrial stormwater discharges.
    ...
    d. Material Handling and Waste Management
    ...
    ii. Contain all stored non-solid industrial materials or wastes (e.g., particulates, powders, shredded paper, etc.) that can be transported or dispersed by the wind or contact with storm water.

20. MDI prepared a SWPPP for the Murmansk Facility on October 28, 2015. Section 5.1 of the SWPPP discusses "Minimum-Required BMPs" for the facility, which include the following:

    - Organic material is scraped daily and placed in piles. Wattles are placed and maintained around piles of organic material during the winter season (Section 5.1.1).
    - Organic piles will be kept as small as possible and wattled to prohibit run-on and runoff during storm events. If needed, piles will be covered (Section 5.1.5).
    - Drain rock check dams are used as needed (Section 5.1.5). Table 5-1 states that rock check dams will be used to slow stormwater flow and remove organic material along K-rails on the west and south sides of the facility, and Figure 5 shows the construction of rock check dams every 40 feet along the south and west perimeter barrier to slow flow.

ALLEGED VIOLATIONS

21. MDI violated Discharge Prohibitions A.2 of the 1997 General Permit by discharging 406,000 gallons of stormwater polluted by site activities to the Bay at the Maritime Facility on December 11 and 19, 2014, causing or threatening to cause pollution, contamination, nuisance, and harm to beneficial uses.

22. MDI separately violated Minimum BMPs in section X.H.1.d.ii of the 2014 General Permit (Material Handling and Waste Management) on December 14 and 15, 2015, first by failing to implement minimum BMPs and then also by failing to maintain other minimum BMPs required to prevent or minimize stormwater pollution at the Murmansk Facility.

    a. MDI failed to implement BMPs to contain the piles of wood bark waste that could be transported by contact with stormwater. MDI also failed to implement a rock check dams as described in its SWPPP to remove organic wood debris from storm runoff from the facility

    b. MDI failed to maintain by fixing the gaps and damage to the hay bales around the stormwater drop inlet and straw wattles around the facility perimeter to prevent transport of wood bark waste offsite with stormwater.

LEGAL AUTHORITY

23. Water Code section 13323 authorizes the Regional Water Board to issue a complaint to any person on whom administrative civil liability may be imposed under the Water Code. The Discharger violated Discharge Prohibitions A.2 of the 1997 General Permit and Minimum BMPs section X.H.1 of the 2014 General Permit, and is therefore civilly liable pursuant to Water Code section 13385(a)(2). This sub-section states that a person who violates a waste discharge requirement, such as the General Permits, is civilly liable. Administrative civil liability may be imposed under Water Code section 13385(c).

24. There are no statutes of limitation that apply to administrative proceedings. The statutes of limitation that refer to "actions" and "special proceedings" in the Code of Civil Procedure apply to judicial proceedings, not administrative proceedings. (See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Proc. 5th (2008) Actions, § 430, p. 546.)

25. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code section 21000 et seq., in accordance with California Code of Regulations, Title 14, section 15321.

26. Notwithstanding the issuance of this Complaint, the Regional Water Board and/or the State Water Board shall retain the authority to assess additional penalties against the Discharger for other violations of the General Permits, Waste Discharge Requirements,

or Basin Plan for which a liability has not yet been assessed or a violation(s) that may subsequently occur.

STATUTORY LIABILITY

27. Under Water Code section 13385(c), the Regional Water Board may impose administrative civil liability for the Discharger's violation in an amount not to exceed:

    a. Ten thousand dollars ($10,000) for each day in which the violation occurs; and

    b. Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars ($10) multiplied by the number of gallons discharged but not cleaned up exceeds 1,000 gallons.

PROPOSED CIVIL LIABILITY

28. **Maximum Liability:** The maximum administrative civil liability is $4,110,000. This is based on the maximum allowed by Water Code section 13385: (1) $10,000 for each day in which the violation occurs; and (2) $10 for each gallon exceeding 1,000 gallons that is discharged and not recovered.

29. **Minimum Liability:** Pursuant to Water Code section 13385(e), at a minimum, liability shall be assessed at a level that recovers the economic benefit or savings, if any, derived from the violation. The State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy) requires that the minimum liability amount imposed not to be below a Discharger's economic benefit plus ten percent. The Discharger realized cost savings of approximately $15,500. Applying the methodology as set forth in Exhibit A, the minimum liability in this matter is $17,100.

30. **Proposed Liability:** The Assistant Executive Officer of the Regional Water Board proposes that administrative civil liability be imposed in the amount of $**176,000**, of which $10,800 is for the recovery of staff costs incurred thus far. Exhibit A (incorporated herein by this reference) presents a discussion of the factors considered and the values assessed to calculate the proposed liability in accordance with the Enforcement Policy and Water Code section 13327. The proposed liability is more than the minimum liability and less than the maximum liability allowed for the alleged violation.

for Lila Tang

Digitally signed by Lila Tang
Date: 2016.02.17 16:24:56 -08'00'

Thomas Mumley
Assistant Executive Officer

Date

Attachment:

Exhibit A: Factors Considered in Determining Administrative Civil Liability

EXHIBIT A

Alleged Violations and Factors in Determining Administrative Civil Liability

MDI Forest Products, LLC

Violation 1: **Discharge of Turbid Stormwater to San Francisco Bay**
1450 Maritime Street, Port of Oakland, Alameda
WDID No: 2 01I024845

Violations 2 and 3: **Inadequate Stormwater Best Management Practices**
700 Murmansk Street, Port of Oakland, Alameda
WDID No.: 2 01I025537

The State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy) establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors required by Water Code sections 13327 and 13385, subdivision (e). Each factor in the Enforcement Policy and its corresponding category, adjustment, and amount for each of the violations is presented below.

ALLEGED VIOLATIONS

Violation 1: Discharge of Turbid Stormwater to San Francisco Bay
MDI Forest Products, LLC (MDI) violated Discharge Prohibitions A.2 of the General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 97-03-DWQ, NPDES No. CAS000001 (1997 General Permit) by discharging 406,000 gallons of stormwater[1] polluted by site activities at 1450 Maritime Street (Maritime Facility) to San Francisco Bay (Bay), causing or threatening to cause pollution, contamination, or nuisance. Stormwater laden with sediment and wood debris and tainted a reddish-brown color (presumably from wood tannins) discharged to the Bay during a 17-hour rain event on December 11, 2014, and a 4-hour rain event on December 19, 2014.

Violations 2 and 3: Inadequate Stormwater Best Management Practices
MDI violated Minimum BMPs in section X.H.1.d (Material Handling and Waste Management) of the General Permit for Stormwater Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ, NPDES No. CAS000001 (2014 General Permit) by failing to first implement and then failing to maintain the minimum best management practices (BMPs) required by the 2014 General Permit at 700 Murmansk Street (Murmansk Facility) on December 14 and 15, 2015.

[1]Attachment 4 of the 1997 General Permit defines stormwater as "stormwater runoff, snowmelt runoff, and stormwater surface runoff and drainage."

ADMINISTRATIVE CIVIL LIABILITY
CALCULATION STEPS

STEP 1 – POTENTIAL FOR HARM FOR DISCHARGE VIOLATION (ONLY APPLICABLE FOR VIOLATION 1)

The "potential harm" factor considers the harm to beneficial uses that resulted or that may result from exposure to the pollutant(s) in the discharge, while evaluating the nature, circumstances, extent, and gravity of the violation(s). A three-factor scoring system is used for each violation or group of violations: (1) the harm or potential harm to beneficial uses; (2) the degree of toxicity of the discharge, and (3) whether the discharge is susceptible to cleanup or abatement.

Factor 1: Harm or Potential Harm to Beneficial Uses

The Enforcement Policy specifies that a score between 0 and 5 be assigned based on a determination of whether direct or indirect harm, or potential for harm, from a violation is negligible (0) to major (5).

The potential harm to beneficial uses for the discharge is **minor** (**1**). The Enforcement Policy assigns "minor" when the violation results in a "low threat to beneficial uses (i.e., no observed impacts [to beneficial uses] but potential impacts to beneficial uses with no appreciable harm)." The sediment-laden and wood-impacted stormwater that discharged to the Bay had the potential to cause harm to the beneficial uses of the Bay. The San Francisco Bay Basin Water Quality Control Plan (Basin Plan) lists beneficial uses of the Bay as: industrial service supply (IND), industrial process supply (PROC), commercial and sport fishing (COMM), shellfish harvesting (SHELL), estuarine habitat (EST), fish migration (MIGR), preservation of rare and endangered species (RARE), fish spawning (SPWN), wildlife habitat (WILD), water contact recreation (REC1), noncontact water recreation (REC2), and navigation (NAV). Beneficial uses of the Bay potentially affected by the discharge are IND, PROC, COMM, SHELL, EST, MIGR, RARE, SPWN, WILD, REC1, and REC2.

The stormwater discharged from MDI's site to the Bay was a reddish-brown color. Sediment contributed to the brown coloring of the stormwater, from dirt and debris entrained by runoff. The large quantity of logs, wood debris, and bark from site operations contributed to the reddish coloring of the stormwater, likely due to the leaching of tannins in the wood. Sediment and tannins are pollutants that threaten beneficial uses, as discussed under Factor 2 of Step 1, but the overall threat to aforementioned beneficial uses of the Bay is considered low because of the Bay's assimilative capacity and the resilience of Bay ecosystems to wood and sediment in stormwater. San Francisco Bay Regional Water Quality Control Board (Regional Water Board) staff did not observe adverse impacts during site inspections on December 11 and 19, 2014 (collectively, "December 2014 inspections"), however, the absence of any observations of fish, invertebrate, or aquatic habitat injury (as explained below) during the inspections does not mean that such adverse impacts failed to occur, nor does the lack of such observations diminish the potential for such harm. Such adverse impacts could

have occurred before, during, or after the Prosecution Team staff's December 2014 inspections, but at a level that could not be or was not measured, quantified, or observed.

Factor 2: The Physical, Chemical, Biological or Thermal Characteristics for the Discharge

The Enforcement Policy specifies that a score between 0 and 4 be assigned based on a determination of the risk or threat of the discharged material to potential receptors. It defines "potential receptors" as those identified considering human, environmental and ecosystem health exposure pathways.

The risk or threat of the discharge is **moderate** (**2**). The Enforcement Policy assigns "moderate" when "[d]ischarged material poses a moderate risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material have some level of toxicity or pose a moderate level of concern regarding receptor protection)."

The discharge consisted of turbid stormwater polluted by sediment and organic material from wood operations at the Maritime Facility. High turbidity reduces the respiratory capacity and feeding efficiency of fish, and reduces light penetration into the water column decreasing primary productivity. Excessive sediment deposition can infill aquatic habitats, damage aquatic biota, and smother non-motile life forms. The breakdown of organic compounds by oxidation can result in a reduction in the concentration of oxygen in the water column. Reduced dissolved oxygen can be a cause of chronic and acute toxicity to aquatic species, including invertebrates and fish. Wood also contains tannins. Tannins, composed of organic compounds, when leached into stormwater can remain in a suspended state for months and have the potential to lower the pH of stormwater runoff. Some tannins also have antimicrobial properties that may be toxic to aquatic life.

Samples of stormwater runoff collected by the discharger on December 11, 2014, show that although pH was within acceptable levels (measured as low as 6.8, which is within the Basin Plan water quality objective of 6.5 to 8.5), other constituents and parameters exceeded U.S. EPA benchmarks (shown parenthetically). Chemical oxygen demand was up to 1,300 mg/L (120 mg/L), specific conductance was up to 550 mg/L (200 mg/L), oil and grease was up to 95 mg/L (15 mg/L), zinc was up to 1.0 mg/L (0.117 mg/L), and total suspended solids were up to 12,000 mg/L (100 mg/L).

Factor 3: Susceptibility to Cleanup or Abatement

The Enforcement Policy specifies that if 50 percent or more of the discharge is susceptible to cleanup or abatement, then a score of 0 is assigned. A score of 1 is assigned if less than 50 percent of the discharge is susceptible to cleanup or abatement. This factor is evaluated regardless of whether the discharge was actually cleaned up or abated.

The discharge was not susceptible to cleanup or abatement and is assigned a score of **1**. The discharged material flowed into and commingled with ambient receiving waters. There was no opportunity for abating the effects of the discharge of 406,000 gallons of polluted stormwater to the Bay.

STEP 2 – ASSESSMENTS FOR DISCHARGE VIOLATIONS (ONLY APPLICABLE FOR VIOLATION 1)

The Enforcement Policy specifies that 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. The Deviation from Requirement reflects the extent to which a violation deviates from the specific requirement that was violated.

The sum of the three factors from Step 1 is **4**.The **Deviation from Requirement** is **major**. This was determined based on the following:

The Enforcement Policy defines a "major" Deviation from Requirement as one where "the requirement has been rendered ineffective." Discharge Prohibitions A.2 of the 1997 General Permit states that stormwater discharges shall not cause or threaten to cause pollution, contamination, or nuisance. The discharge of polluted stormwater directly violated this 1997 General Permit discharge prohibition, rendering the requirement ineffective.

The resulting per-gallon and per-day multiplier factor is **0.025** from the matrix in Tables 1 and 2 of the Enforcement Policy, based on the Potential for Harm score and extent of Deviation from Requirement described above. The Prosecution Team used both per-gallon and per-day factors as allowed by statute.

Initial Liability Amount for Violation 1

There was no adjustment of the maximum $10/gallon for a high volume discharge of stormwater, because reducing the maximum amount would result in an inappropriately small penalty. The initial liability amount calculated on a per-gallon and per-day basis is as follows:

Per Gallon Liability: (406,000 gallons – 1,000 gallons) x (0.025) x ($10/gallons) = $101,300

Per Day Liability: $10,000/day x (0.025) x (2 days) = $500

Initial Liability = $101,800

STEP 3 – PER DAY ASSESSMENT FOR NON-DISCHARGE VIOLATIONS (ONLY APPLICABLE FOR VIOLATIONS 2 AND 3)

The Enforcement Policy specifies that for non-discharge violations, an initial liability is determined from the maximum per day liability multiplied by the number of days in violation and a per day factor using a matrix that ranges from 0.1 to 1 corresponding to an appropriate Potential for Harm and Deviation from Requirement. The Potential for Harm reflects the characteristics and/or the circumstances of the violation and its threat to beneficial uses. Deviation from Requirement reflects the extent to which a violation deviates from the specific requirement that was violated.

Potential for Harm

The Potential for Harm is **minor**. The Enforcement Policy assigns "minor" when "the characteristics of the violation present a minor threat to beneficial uses, and/or the circumstances of the violation indicate a minor potential for harm."

The 2014 General Permit requires BMPs to minimize or prevent pollutants associated with industrial activity in stormwater discharges and authorized non-stormwater discharges. MDI failed to install and maintain minimum BMPs at the facility to adequately control discharges of bark, wood, and sediment in stormwater from reaching the Bay during rain events. All Minimum BMP violations had the same potential for harm, since they all failed to adequately control discharges of bark, wood, and sediment in stormwater from reaching the Bay during rain events.

The Potential for Harm to beneficial uses is minor for the same reason as described for Violation 1. In summary, the failure of adequate BMPs in the wet season would result in discharge during a storm[2] with a minor threat to beneficial uses because of the assimilative capacity of the Bay for wood debris and sediment.

Deviation from Requirement

The Deviation from Requirement is **moderate**. The Enforcement Policy assigns "moderate" when "the intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved)."

The Deviation from Requirement is moderate because MDI implemented some minimum BMPs required in the 2014 General Permit but substantially not others, thus warranting a per day factor on the high end of moderate.

As described in the complaint, Prosecution Team staff observed some deficient and missing BMPs:

[2] On December 13, 2015, the day before the BMP violations alleged by the Prosecution Team, a 2-hour, 0.6 inch rain event occurred.

- No containment of piles of wood and bark waste and debris.
- No rock check dams in the drainage swale to slow runoff flow and remove wood debris.
- Gaps and broken hay bales and straw wattles around drop inlet and facility perimeter.

Prosecution Team staff did observe some adequate Good Housekeeping, Material Handling and Waste Management, and Erosion and Sediment Controls BMPs:

- Rock check dam around the drop inlet to prevent large debris from entering.

Therefore, on balance a per day factor on the high end of moderate is warranted.

The resulting per day factor is **0.30** based on the above Potential Harm and Deviation from Requirement from the matrix in Table 3 of the Enforcement Policy.

Initial Liability Amount for Violations 2 and 3

Initial Liability: $10,000/day x (0.30) x (2 days) x (2 BMPs violations) = $12,000

STEP 4 – ADJUSTMENTS TO INITIAL LIABILITY (APPLICABLE FOR ALLEGED VIOLATIONS)

The Enforcement Policy specifies that three additional factors should 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

The Enforcement Policy specifies that higher liabilities should result from intentional or negligent violations as opposed to accidental violations. It specifies use of a multiplier between 0.5 and 1.5, with a higher multiplier for intentional or negligent behavior.

Violation 1: The culpability multiplier is increased at **1.2**. Polluted storm runoff occurred because MDI did not implement and/or improperly implemented the BMPs described in its approved SWPPP for the Maritime Facility, despite being informed of BMP requirements and receiving multiple notices from Regional Water Board staff.

On the days of discharge, there were large piles of bark, wood debris, and soil throughout the site. Silt fencing was not installed at all the locations described in the SWPPP, and it was not anchored into the ground where it was installed. Straw wattles and sandbags were not installed at all the locations described in the SWPPP, and straw wattles and sandbags that were installed were out of place and not effective at controlling or filtering stormwater flowing off the site. A rocky egress was installed but the amount of wood

bark waste and associated debris that mixed with and covered the rocks, rendered the rocky egress ineffective. BMPs were installed ineffectively at all storm drain inlets at the site and turbid stormwater was flowing into all storm drain inlets at the site.

Additionally, prior to the December 11 and 19, 2014, discharges, Regional Water Board staff inspected the MDI facility and worked with MDI staff during September and October 2014 to help ensure that the SWPPP for the site was sufficient to comply with 1997 General Permit requirements. Despite Regional Water Board staff's efforts to work with MDI to develop an adequate SWPPP, MDI failed to properly implement the approved SWPPP. The SWPPP lists the removal of bark as an existing BMP. During the December 2014 inspections, Regional Water Board and Prosecution Team staff documented the substantial amount of wood debris and bark throughout the MDI site. Regional Water Board staff provided sufficient information and assistance to MDI staff for MDI to understand that failure to implement the SWPPP would result in the discharge of polluted stormwater.

Violations 2 and 3:
The culpability multiplier is increased at **1.3** for both minimum BMP violations because MDI showed a willful indifference to complying with 2014 General Permit minimum BMP requirements. MDI stated it moved to the Murmansk Facility to be away from the drainage problems at the Maritime Facility. It also stated in its October 28, 2015, SWPPP that debarking activities would not occur at the Murmansk Facility. But MDI continued with its debarking operations and continued to inadequately implement and maintain BMPs despite clear requirements in the 2014 General Permit, and Regional Water Board staff feedback since 2014 on BMP improvements that were necessary (see description in Violation 1).

During the December 14, 2015, inspection, Prosecution Team staff noted that some BMPs were lacking and some of the existing BMPs lacked maintenance. There were gaps in straw wattles along the perimeter, deteriorating straw hay bales installed at the storm drain inlet, and piles of wood bark waste with no straw wattles or cover. Some of these BMP deficiencies were noted by one of MDI's environmental consultants, Frog Environmental, during pre-storm inspections documented for the November 24 and December 3, 2015, rain events. Frog Environmental recommended BMP improvements to preclude turbidity from entering storm drains.

In response to the December 14, 2015, inspection, MDI stated in a December 18, 2015, letter from Vestra Resources, Inc., that, "MDI had not intended to receive bark-on logs at the Murmansk Facility; however…there were insufficient debarking facilities [elsewhere so we debarked]." This is not a satisfactory response. Throughout 2014 and into 2015, Regional Water Board staff made clear the BMP improvements necessary to prevent pollution of storm runoff by debarking waste materials because debarking operations significantly increases the amount of bark and wood debris that accumulates onsite. Yet MDI failed to implement the minimum management controls necessary.

Cleanup and Cooperation

The Enforcement Policy provides for an adjustment to reflect the extent to which a violator voluntarily cooperated in returning to compliance and correcting environmental damage. The adjustment is a multiplier between 0.75 and 1.5, with a higher multiplier where there is a lack of cooperation.

Violation 1: The cleanup and cooperation multiplier is increased at **1.2**. MDI has been generally timely in its response to Regional Water Board staff. MDI's responses to notices of violations at the Maritime Facility are generally timely, and MDI complied with the requirement to submit weekly reports to the Regional Water Board about the status of the Maritime Facility's BMPs from January 19 to August 3, 2015. While MDI has been responsive in attempting to return to compliance, it has not cooperated in achieving compliance. The history of communications about the Maritime Facility outlined in the findings of the Complaint show that MDI will ultimately respond to fix an identified problem, but it will not maintain BMPs and implement SWPPPs to manage the facility.

Regional Water Board staff issued a letter on January 22, 2016, which noted that the Maritime Facility was still in violation of the 2014 General Permit (the Maritime Facility received coverage under the 2014 General Permit instead of the 1997 General Permit on June 9, 2015). MDI is still attempting to resolve violations at the Maritime Facility and terminate 2014 General Permit coverage for this facility. For example, according to a January 28, 2016 letter from Vestra Resources, Inc., "MDI acknowledges that [the] perimeter BMPs needed to be replaced," and, "MDI acknowledges that the BMPs along Maritime Street were damaged during site cleanup and closure activities."

Violations 2 and 3: The cleanup and cooperation multiplier for both BMP violations is increased at **1.2**. MDI had the same issues at the Murmansk Facility, including uncovered bark stockpiles and poor perimeter control, as at the Maritime Facility. MDI did not voluntarily comply and clean up the Murmansk Facility until after the December 14, 2015, inspection from the Regional Water Board. The Regional Water Board gave verbal warning of the violations at the site during the inspection, and then followed up with an emailed Notice of Violation on December 15, 2015. After these multiple warnings, MDI began to cooperate and made some significant improvements as described in its December 18, 2015, letter to bring the site back into compliance.

History of Violations

The Enforcement Policy provides that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used.

The history multiplier for the violations is **1** because the Regional Water Board has not previously taken action against MDI.

STEP 5 – DETERMINATION OF TOTAL BASE LIABILITY (APPLICABLE FOR ALLEGED VIOLATIONS)

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.

Violation 1:
Total Base Liability = $101,800 (Initial Liability) x 1.2 (Culpability Multiplier) x 1.2 (Cleanup and Cooperation Multiplier) x 1 (History of Violations Multiplier)
Total Base Liability = $146,500

Violations 2, 3, and 4:
Total Base Liability = $12,000 (Initial Liability) x 1.3 (Culpability Multiplier) x 1.2 (Cleanup and Cooperation Multiplier) x 1 (History of Violations Multiplier)
Total Base Liability = $18,700

STEP 6 – ABILITY TO PAY AND TO CONTINUE IN BUSINESS (APPLICABLE FOR ALLEGED VIOLATIONS)

The Enforcement Policy provides that if there is sufficient financial information to assess the violator's ability to pay the Total Base Liability or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability amount may be adjusted downward if warranted.

In this case, Regional Water Board Prosecution Team has sufficient information to conclude that MDI has the ability to pay the proposed liability. MDI exports timber to Far East lumber mills. According to online business records (Manta.com), MDI has annual revenue of approximately $1 to 2.5 million. Prosecution Team does not have evidence suggesting that MDI would be unable to pay the proposed liability or that payment of the proposed liability would cause undue financial hardship.

STEP 7 – OTHER FACTORS AS JUSTICE MAY REQUIRE (APPLICABLE FOR ALLEGED VIOLATIONS)

The Enforcement Policy provides that if the Regional 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." The Enforcement Policy includes the costs of investigation and enforcement as "other factors as justice may require," that should be added to the liability amount.

The Prosecution Team, not including legal counsel, incurred $**10,800** in staff costs to investigate these violations and to prepare this analysis and supporting information. These staff costs included $1,999 spent on Violation 1, and $8,800 spent on Violations 2 and 3. The adjusted Total Base Liability for Violation 1 is $148,500 and the adjusted Total Base Liability for Violations 2 and 3 is $27,500. This increase in consideration of investigation and enforcement costs relative to Total Base Liability for the violations is

warranted given the totality of the circumstances and is intended to serve as a sufficient general and specific deterrent against future violations.

The Total Base Liability for both violations after adjusting for staff costs is $**176,000**.

These costs consist of time spent by the Prosecution Team based on the low end of the salary range for each classification. Costs would continue to accrue during any settlement and/or hearing. The Enforcement Policy gives the Regional Water Board discretion to increase the total administrative civil liability in consideration of investigation and enforcement costs incurred in prosecuting this matter. Although the final amount cannot be determined until completion of the matter, staff costs could be quite substantial when additional investigation and analysis is required or if there is a hearing on this matter before the Regional Water Board.

STEP 8 – ECONOMIC BENEFIT (APPLICABLE FOR ALLEGED VIOLATIONS)

The Enforcement Policy requires recovery of the economic benefit gained associated with the violations plus 10 percent. Economic benefit is any savings or monetary gain derived from the act or omission that constitutes the violation.

Violation 1: MDI may have realized an economic benefit estimated at $**15,500** at the Maritime Street site. This amount is based on the deferred costs for implementing adequate BMPs. The 1997 General Permit requires implementation of BMPs sufficient to protect stormwater quality and prevent the discharge of polluted stormwater. Deferred costs include: improvements MDI implemented after the December 19, 2014, inspection such as cleaning wood debris, bark, and loose soil from the site, placing rock at site egress locations and at the debarking operations, improving drain inlet protection, and placing rock and hay bales along the site perimeter. This amount also includes the potential cost of stormwater treatment described in the current SWPPP (i.e., the amount does not include avoided capital costs, which would increase the amount of economic benefit gained). The economic benefit gained by MDI for delaying the implementation of adequate BMPs is significantly less than the proposed liability amount.

Violations 2 and 3: MDI realized **no significant** economic benefit at the Murmansk Street site for the BMP violations. Regional Water Board and Prosecution Team staff inspected the facility on December 14, 2015, and found inadequate BMPs. MDI reported on December 18, 2015, having completed substantial improvements to BMPs. The deferred cost of delaying implementing BMPs was negligible. The economic benefit gained by MDI for delaying the implementation of adequate BMPs is significantly less than the proposed liability amount.

Each adjusted Total Base Liability from Step 7 is unchanged because it is more than ten percent higher than the estimated economic benefit.

STEP 9 – MAXIMUM AND MINIMUM LIABILITY (APPLICABLE FOR ALLEGED VIOLATIONS)

a) ***Minimum Liability***

The Enforcement Policy requires that the minimum liability amount imposed not be below the economic benefit plus ten percent. The minimum administrative civil liability for the violation set forth in this complaint is $**17,100** ($15,500 x 1.1).

b) ***Maximum Liability***

The maximum administrative civil liability is $4,110,000. The maximum for Violation 1 is $**4,070,000**. The maximum administrative civil liability for Violations 2 and 3 is $**40,000**. This is based on the maximum allowed by Water Code section 13385, $10,000 for each day in which the violation occurs; and where there is a discharge, an additional liability not to exceed $10 for each gallon exceeding 1,000 gallons that is discharged and not cleaned up.

The adjusted Total Base Liability of $**148,500**, for Violation 1 is within the maximum. The adjusted Total Base Liability of $**27,500** for Violations 2 and 3 is also within the maximum. Thus, the Total Base Liabilities for all the violations are unchanged. Alternatively, the Regional Water Board may refer such matters to the Office of the Attorney General for prosecution and seek up to $25,000 per day of violation and $25 per gallon discharged in excess of 1,000 gallons pursuant to Water Code section 13385, subdivision (b).

STEP 10 – FINAL LIABILITY (APPLICABLE FOR ALLEGED VIOLATIONS)

The final liability proposed is $**176,000** for the alleged violations, based on consideration of the penalty factors discussed above. It is within the minimum and maximum liabilities.

ATTACHMENT B

SUPPLEMENTAL ENVIRONMENTAL PROJECT DESCRIPTION

Study Description for Supplemental Environmental Project (SEP) Fund for the San Francisco Bay Regional Monitoring Program

This is for use in documenting how a specific San Francisco Bay Regional Monitoring Program study by the San Francisco Estuary Institute (SFEI) complies with the State Water Resources Control Board Policy on Supplemental Environmental Projects (SEP) (http://www.waterboards.ca.gov/water_issues/programs/enforcement/#policy).

Basic Information

Study Name: San Leandro Bay Priority Margin Unit Study, Phase 1

Study Budget, Total: $132,100

SFEI Contact:

- Technical – Jay Davis, jay@sfei.org, cell (510) 304-2308
- Financial – Lawrence Leung, lawrence@sfei.org, (510) 746-7356

Study Description

Provide a concise description of the study, including the goal(s) of the study.
The goal of the study is to assemble and collect polychlorinated biphenyl (PCB) related information on water quality in San Leandro Bay, which has been identified as an area on the Bay margin that is a high priority for water quality management. The study will assemble existing information into a conceptual model of PCB dynamics in San Leandro Bay, and conduct field studies as allowed by the study budget to address critical information needs related to conceptual model development.

Compliance with SEP Criteria

This study complies with the following SEP criteria:

- It is a monitoring program and/or study of surface water quality or quantity and/or the beneficial uses of the water.
- Its nexus to violation(s) is that is located within the same Water Board region in which violation(s) occurred.

This study goes above and beyond applicable obligations dischargers because of the following:

- This project is a study (or studies) and associated product (or projects) above and beyond what is required in permits or orders issued by the Regional Water Board or what can be accomplished with dischargers' required monetary contributions to the Regional Monitoring Program for

Water Quality in San Francisco Bay (RMP).

Study Milestone and Performance Measure

Provide a projected date for when the study results will be available, and describe where or how the results will be made available. Public availability of study results will constitute successful completion of the study.

A final report on the conceptual model will be available by June 2017.
A final data report on the field studies will be available by December 2017.

Study Budget and Reports to Water Board

Pursuant to the October 2015 Supplemental to Memorandum of Understanding (MOU) between SFEI and the Regional Water Board, SFEI is responsible for identifying in each annual work plan and annual budget for the RMP those studies or elements, or a portion of a study or element, that are to be funded by SEP funds. SFEI will keep a copy of accounting records of SEP fund contributions and expenditures separately from regular RMP funds. In its annual and quarterly financial reports to the Regional Water Board, SFEI will separately itemize SEP fund contributions and expenditures by each SEP funder.

SFEI will provide notice to the Regional Water Board within one month after receiving funds from a discharger for the SEP and the notice will state SFEI's agreement to use the funds received as described herein.

Publicity

Pursuant to the 2015 MOU, SFEI will indicate on its Regional Monitoring Program website, and annual and other reports, that funding for the study is the result of settlement of "San Francisco Bay Water Board" enforcement actions.