

EXHIBIT A

Factors Considered in Determining Administrative Civil Liability

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The specific required factors in Water Code section 13385, subdivision (e), are the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, and the degree of toxicity of the discharge and, with respect to the violator, the required factors are the ability to pay, the effect on the violator's ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of the violation, the degree of culpability, economic benefit or saving, if any, resulting from the violation and other matters that justice may require.

On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy. The Enforcement Policy was approved by the Officer of Administrative Law and became effective on May 20, 2010. The entire Enforcement Policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13327. The civil liability is assessed at \$5,200.

The Enforcement Policy sets forth an approach to determine liability using a methodology that considers the following: the potential harm to beneficial uses; the violation's deviation from requirements; and economic benefit from the avoidance or delay of implementing requirements. These factors address the statute-required factors and are used to calculate penalties consistent with both the Water Code and the Enforcement Policy.

Each factor in the Enforcement Policy methodology and its corresponding category, adjustment, and/or amount for the non-discharge violation alleged in Administrative Civil Liability (ACL) Complaint No. R2-2013-1004 (Complaint) is presented below:

Alleged Violation: Failure to implement Best Management Practices (BMPs) according to Water Quality Order No. 97-03-DWQ National Pollutant Discharge Elimination System General Permit No. CAS000001 (Industrial Storm Water General Permit)

Napa Valley Cast Stone, LLC (Napa Valley Cast Stone) failed to implement BMPs in compliance with the Industrial Storm Water General Permit. Regional Water Board staff documented the following types of BMP violations during an inspection of the Facility on January 23, 2013:

- outside storage of industrial materials (cement, aggregate, volcanic aggregate, sand) and chemicals (concrete admixtures) without cover or secondary containment;
- materials spilled on the ground and not cleaned up;
- storm water protection measures placed around drop inlets to storm drains and over material stockpiles not maintained; and
- debris and materials present around the site not consistent with good "housekeeping"

ENFORCEMENT POLICY METHODOLOGY

Steps 1 and 2: Potential for Harm for Discharge Violations and Assessments for Discharge Violations

These steps only apply to cases involving a discharge. This is a non-discharge violation, which starts with Step 3, as described below.

Step 3 - Per Day Assessment for Non-Discharge Violations

For non-discharge violations, the Regional Water Board determines an initial liability amount on a per-day basis by considering the Potential for Harm and the Deviation from Requirement. One day of violation for the day Regional Water Board staff observed the inadequate BMPs at the Facility during the inspection. The Potential for Harm is minor, and the Deviation from Requirement is moderate, resulting in a factor of 0.2 (from Table 3 of the Enforcement Policy).

The Potential for Harm to beneficial uses is minor because Napa Valley Cast Stone has implemented some BMPs to protect storm water. However, additional BMPs are needed. On January 23, 2013, Regional Water Board staff observed inadequate protection of storm water in the following ways: storm water mixing with industrial materials spilled on the ground; storm water with an oily sheen; and storm water contacting stored materials and chemicals which did not have protective cover or secondary containment. With no secondary containment, there is also a higher potential for unauthorized, non-storm water, discharges of the following chemicals from the site: cement, muriatic acid, sypol, Pozzoloth, MBAE 90.

The Deviation from Requirement is moderate because Napa Valley Cast Stone conducts much of the industrial activity work under cover (i.e., protected from rainfall), and it had implemented some BMPs (storm water drain inlet filtration, outdoor covers installed over concrete-related materials) to reduce pollution of runoff. However, the intended effectiveness of the BMPs requirements in the Industrial Storm Water General Permit has been partially compromised. Napa Valley Cast Stone did not adequately store and contain chemicals and concrete-related materials, and Napa Valley Cast Stone did not appropriately maintain BMPs to prevent non-storm water discharges.

The maximum \$10,000 per day statutory requirement is multiplied by the number of days—1 day—to calculate a new starting liability of \$10,000 for the penalty methodology. Considering the specific factors above, the \$10,000 liability is multiplied by a factor of 0.2 to determine an initial liability of \$2,000.

Step 4 - Adjustment Factors

The Enforcement Policy describes 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

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior. For the alleged violation the culpability multiplier is 1.1. The Industrial Storm Water General Permit requires Napa Valley Cast Stone to implement BMPs at its Facility. According to the June 29, 2012, letter, Regional Water Board staff required the Facility to submit evidence that the following improvements were implemented:

- Prevent overflow of process water from the settlement basins. This could include a structural control, such as automated overflow protection systems, or a non-structural control, such as consistent inspections at appropriate intervals.
- Prevent storm water from mixing with the materials stored in open-air bins.
- Implement measures to control the discharge of non-storm water to waters of the United States;
- Maintain an orderly site such as removing debris, maintain the storm water drop inlets, and regularly sweep the Facility's grounds.

Regional Water Board staff made these recommendations to help the Facility come into compliance with the Industrial Storm Water General Permit. Regional Water Board staff conducted a follow-up inspection on January 23, 2013, to check on compliance status. During this inspection Regional Water Board staff observed persistent violations with the Industrial Storm Water General Permit. Regional Water Board staff observed storm water mixing with industrial materials and observed BMPs that were not installed or maintained.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. The cooperation factor is 1 because according to a telephone conversation between Regional Water Board staff and a representative of Napa Valley Cast Stone following the January 23, 2013, inspection, the representative did commit to updating and maintaining BMPs at the Facility.

Prior History of Violations

This factor is used to increase the liability when there is a history of repeat violations, using a minimum multiplier of 1.1.

The history multiplier is 1. There is no increase in the penalty for prior history of violations because the Regional Water Board has not previously taken enforcement action against Napa Valley Cast Stone prior to this Complaint.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 3.

Total Base Liability Amount

\$2,000 (initial liability) x 1.1 (Culpability Multiplier) x 1 (Cleanup and Cooperation Multiplier) x 1 (History of Violations Multiplier) = Total Base Liability

Total Base Liability = **\$2,200**

Step 6: Ability to Pay and Ability to Continue in Business

The Enforcement Policy provides that if the Regional Water Board has 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.

Current evidence suggests that Napa Valley Cast Stone can pay the proposed liability set forth in this Complaint without causing undue financial hardship. This was not the case in 2012 when we considered a penalty, but agreed not to pursue the penalty based on evidence of financial hardship from Napa Valley Cast Stone (2008-2010 personal and business federal income tax returns) and an agreement with Napa Valley Cast Stone that it would comply with the Industrial General Storm Water Permit annual reporting and BMP requirements (Exhibit D of this Complaint). At this time, Napa Valley Cast Stone has not demonstrated compliance with the Industrial General Storm water and, according to Manta.com online business records, Napa Valley Cast Stone has an annual revenue of \$15,300,000 and 100 employees. Therefore, the Regional Water Board staff did not adjust the proposed liability.

Step 7: Other Factors as Justice May Require

The proposed penalty is increased by \$3,000 to account for staff costs. Regional Water Board staff members have spent approximately 20 hours prosecuting this matter thus far. Based on an average cost to the State of \$150 per hour, the total staff cost is estimated to be \$3,000. The Assistant Executive Officer intends to seek additional liability for staff costs incurred in bringing the matter to settlement or hearing.

Total Base Liability Amount + Staff Costs:

\$2,200 (Total Base Liability) + \$3,000 (staff costs) = **\$5,200**

Step 8: Economic Benefit

The Enforcement Policy directs the Regional Water Board to determine any economic benefit associated with the violation. The total economic benefit incurred for non-compliance with the General Industrial Storm Water Permit between September 22, 2011, and July 10, 2013, is estimated to be \$4,300 for delayed and avoided costs.

- **Delayed Costs** - It is estimated that Napa Valley Cast Stone delayed the investment of \$7,700 at its Facility for neglecting to provide secondary containment, as considered by the General Industrial Storm Water Permit (section 8.b.iv). This is based on the delayed economic benefit for a one-time expenditure of approximately \$7,650 in capital costs for secondary containment, plus approximately \$50 in labor cost to install the BMPs. According to the U.S. Environmental Protection Agency BEN model¹, Napa Valley Cast Stone obtained \$1,300 in economic benefit for delaying the installation of secondary containment at the Facility between September 22, 2011, and July 10, 2013.
- **Avoided Costs** - It is estimated that Napa Valley Cast Stone avoided labor costs associated with maintaining BMPs over the same period of time. The labor cost to inspect and maintain or replace BMPs at the Facility is estimated based on a \$10 per hour labor rate and an average of one hour of work required each business week (five working days). According to the U.S. Environmental Protection Agency BEN model, the economic benefit gained by the avoided labor costs is \$3,000.

Step 9: Maximum and Minimum Liability Amounts

The maximum liability that may be imposed under Water Code section 13385, subdivision (c)(1) is \$10,000. This is based on the maximum liability of \$10,000 per day for one day of violation, on January 23, 2013 (the day that Regional Water Board staff inspected the Facility).

Total Maximum Liability = \$10,000

Pursuant to Water Code section 13385, subdivision (e), the Regional Water Board shall recover, at a minimum, the economic benefits, if any, derived from the acts that constitute the violation. Further, the Enforcement Policy states that the Total Base Liability shall be at least 10 percent higher than the Economic Benefit Amount so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations. Napa Valley Cast Stone's estimated economic benefit plus 10 percent is \$4,700, and this amount is lower than the adjusted Total Base Liability of \$5,200.

Step 10: Final Liability Amount

The final liability proposed for the late report is **\$5,200** based on consideration of the factors above.

¹ http://cfpub.epa.gov/crem/knowledge_base/crem_report.cfm?deid=74997