

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

In the matter of:)	
)	
CITY OF ST. HELENA)	Order No. R2-2015-00xx
)	
Administrative Civil Liability)	Settlement Agreement and
for Unauthorized Discharge to)	Stipulation for
Groundwater)	Entry of Order; Order

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (“Stipulation”) is entered into by and between the Regional Water Quality Control Board Prosecution Staff (“Prosecution Staff”) and the City of St. Helena (“Settling Respondent”) (collectively “Parties”) and is presented to the San Francisco Bay Regional Water Quality Control Board (“Regional Water Board”) for adoption as an Order, by settlement, pursuant to Government Code section 11415.60. This Stipulation fully and finally resolves the violation alleged herein by the imposition of administrative civil liability against the Settling Respondent in the amount of \$290,177.

Section II: Recitals

1. The Settling Respondent owns, operates, and maintains a wastewater treatment and reclamation plant (“Plant”) and its sewage collection system in the City of St. Helena that serves a population of approximately 6,400 residents. The Settling Respondent’s Plant provides secondary-level treatment for domestic and commercial wastewater. The Plant has an average dry weather capacity of 0.5 million gallons per day (mgd) and can treat up to 2.8 mgd during wet weather. The Settling Respondent’s Plant is a hybrid biomechanical system that uses a deep basin facultative pond with in-pond methane fermentation and a shallow basin photosynthetic oxygenation pond in series. The most relevant process related to this matter involves the wastewater that is pumped to the primary pond influent control structure and into two facultative ponds, Ponds 1A and 1B. Wastewater enters Ponds 1A and 1B via submerged inlet ports on the bottom of each pond. Influent solids settle and are reduced by methane-fermenting anaerobic bacteria at the two pond bottoms.

2. The Plant is subject to the requirements set forth in the Federal Water Pollution Control Act (“Clean Water Act”) (33 U.S.C. § 1311 et seq.). The Plant is currently authorized to discharge under Waste Discharge Requirements for disposal to land (Order No. R2-87-0090), National Pollutant Discharge Elimination System (NPDES) Permit Nos. CA0038016 (Order No. R2-2010-0105) and CA0038849 (Order No. R2-2012-0096), and the Statewide General Permit No. CAS000001, Waste Discharge

Requirements for Discharges of Storm Water Associated with Industrial Activities
Excluding Construction Activities (Order No. 97-03-DWQ).

3. The Prosecution alleges that: on January 29 through February 7, 2014, there was an unauthorized discharge of approximately 5,035,000 gallons (15.45 acre-feet) of partially treated wastewater to groundwater from the 2-acre size Pond 1A at Settling Respondent's Plant (Alleged Violation); the discharge was a violation of Order R2-2010-0105, Provision VII.A.2, Attachment G at section I.I.1, that the treatment shall not create pollution, contamination, or nuisance; and the unauthorized discharge violated California Water Code section 13350, subdivision (a), and is subject to administrative civil liability pursuant to section 13350, subdivision (e). The Settling Respondent denies liability and additionally maintains that one or more third parties bear responsibility for any violation that may have occurred.

4. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board or its delegate for adoption as an Order pursuant to Government Code section 11415.60. To fully and finally resolve by consent and without further administrative proceedings the alleged violation of the California Water Code, the Parties have agreed to the imposition of \$290,177 against the Settling Respondent. The liability amount is less than the liability amount calculated or asserted by Prosecution Staff using the State Water Resources Control Board Water Quality Enforcement Policy (May 2010) ("Enforcement Policy") as shown in Attachment A. Without admission of any issue of law or fact, the Parties have agreed to compromise on the Settling Respondent's payment of an amount calculated based on using a potential for harm per gallon factor of 0.035, which is an average of the value asserted by the Prosecution Staff and a value the Settling Respondent believes would be more appropriate. The liability amount agreed to by the Parties is also justified considering the risks associated with proceeding to hearing that is consistent with the range of settlement considerations which may result in a reduction in the calculated liability specified in the Enforcement Policy. The Prosecution Staff contend that the full and final resolution of the alleged violation pursuant to this Stipulation is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the alleged violation except as provided in this Stipulation, and that this Stipulation is in the best interest of the public.

Section III: Stipulations

The Parties stipulate to the following:

5. **Administrative Civil Liability:** The Settling Respondent hereby agrees to pay the administrative civil liability totaling \$290,177 as set forth in Paragraph 4 of Section II herein. The Prosecution Staff accepts this payment as the full and final resolution of its claim against the Settling Respondent.

6. **Payment and Costs:** Payment of the amount in paragraph 5 shall be made within 30 days from the issuance of the Order incorporating this Stipulation by the Regional

Water Board or its delegate. Payment shall be made out to the "Waste Discharge Permit Fund" and reference the Order number listed on page one of this Stipulation. The original signed check shall be sent to the following address, and notification of payment shall be sent to the Office of Enforcement (email to Vanessa.Young@waterboards.ca.gov) and the Regional Water Board (email to Michael.Chee@waterboards.ca.gov).

State Water Resources Control Board
Division of Administrative Services
Accounting Branch, 18th Floor
Attn: ACL Payment
P.O. Box 1888
Sacramento, CA 95812-1888

7. **Regional Water Board is Not Liable:** Neither the Regional Water Board's members nor the Regional Water Board's staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Settling Respondent, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation, nor shall the Regional Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Settling Respondent, its governing body, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation. The Settling Respondent covenants not to sue or pursue any administrative or civil claim or claims for damages against any State agency or the State of California, or their officers, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order.

8. **Compliance with Applicable Laws:** The Settling Respondent understands that payment of administrative civil liability in accordance with the terms of the Regional Water Board's Order or compliance with the terms of the Regional Water Board's Order is not a substitute for compliance with applicable laws, and that continuing or repeating of violations of the type alleged herein may subject the Settling Respondent to further enforcement, including additional administrative civil liability.

9. **Party Contacts for Communications related to this Stipulation:**

For the Regional Water Board:

Michael Chee
San Francisco Bay Regional Water
Quality Control Board
1515 Clay Street, 14th Floor
Oakland, CA 94612
Michael.Chee@waterboards.ca.gov

For Settling Respondent:

Steven Palmer
Director of Public Works & City
Engineer
City of St. Helena
1480 Main Street
St. Helena, CA 94574
spalmer@cityofsthelema.org
(707) 968-2624

10. **Attorney's Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

11. **Matters Addressed by Stipulation:** Upon adoption by the Regional Water Board or its delegate of this Stipulation as an Order and the Settling Respondent's payment of administrative civil liability in accordance with Paragraph 6 of this Stipulation, this Stipulation and the Order represent a final and binding resolution and settlement of the Alleged Violation.

12. **Public Notice:** This Stipulation will 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 Stipulation and Order to the Regional Water Board, or its delegate, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulation and 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 Stipulation.

13. **Addressing Objections During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board or its delegate and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Regional Water Board's Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

14. **Interpretation:** This Stipulation shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Settling Respondent is represented by counsel in this matter.

15. **Modification:** This Stipulation shall not be modified by any of the Parties 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.

16. **If Order Does Not Take Effect:** In the event that the Regional Water Board's Order does not take effect because it is not presented to or not approved by the Regional Water Board or its delegate, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that, subject to Paragraph 12, 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 violations, 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:

- a. Objections related to prejudice or bias of any of the Regional Water Board's members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board's 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 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.

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

18. **Waiver of Right to Petition or Appeal:** The 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.

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

20. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

21. **Effective Date:** The obligations under Paragraphs 5-6 of this Stipulation are effective and binding on the Parties only upon the entry of an Order by the Regional Water Board or its delegate that incorporates the terms of this Stipulation.

22. **Severability:** The Settling Respondent's obligations under Paragraphs 5-6 above are contingent on the entry and continued effectiveness of an Order of the Regional Water Board in the form attached hereto. Otherwise, this Stipulation is severable; should any provision be found invalid the remainder shall remain in full force and effect.

23. **Counterpart Signatures:** This Stipulation 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.

Settlement Agreement and Stipulation for Entry of Order; Order R2-2015-00XX
City of St. Helena

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
San Francisco Bay Region

By: _____
Dyan C. Whyte, Lead Prosecutor
Assistant Executive Officer

Date: October 1, 2015

City of St. Helena

By: Alan Galbraith
Alan Galbraith
Mayor

Date: September 25, 2015

Order of the Regional Water Board

1. This Order incorporates the foregoing Stipulation, including its reference to Attachment A.
2. In accepting the foregoing Stipulation, the Regional Water Board or its delegate has considered, where applicable, each of the factors prescribed in Water Code section 13327. The Regional Water Board's or its delegate's consideration of these factors is based upon information obtained by Regional Water Board staff in investigating the allegations in the Stipulation or otherwise provided to the Regional Water Board.
3. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.) ("CEQA"), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.
4. This Order is severable; should any provision be found invalid the remainder shall be in full force and effect.
5. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if Settling Respondent fails to perform any of its obligations under the Order.
6. Fulfillment of Settling Respondent's obligations under this Order constitutes full and final satisfaction of any and all liability of the Settling Respondent for the Alleged Violation in accordance with the terms of the Order, and the effect of the Order is to release Settling Respondent from any future liability or assertions of liability with respect to the Alleged Violation in the Stipulation.
7. Nothing in the Stipulation shall preclude the Settling Respondent from asserting that it is entitled to recovery from one or more third parties associated with matters alleged in the Stipulation, or that are the subject of Attachment A, or be construed as a determination of the responsibility or lack of responsibility of any such third parties.
8. The Regional Water Board has, by its Order R2-2008-0055, delegated authority to the Executive Officer to adopt this 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.

Bruce H. Wolfe
Executive Officer

Date

ATTACHMENT A

**Specific Factors Considered to Determine Administrative Civil Liability
for
City of St. Helena
Wastewater Treatment and Reclamation Plant
Discharge from Pond 1A to Groundwater
Napa County**

Pursuant to Water Code section 13327, the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board), is required to consider the following factors in determining the amount of civil liability: the nature, circumstances, extent, and gravity of the violations; whether the discharges are susceptible to cleanup or abatement; the degree of toxicity of the discharges; and with respect to the violator, the ability to pay; the effect on the ability to continue in business; voluntary cleanup efforts; prior history of violations; the degree of culpability; economic benefit or savings, if any, resulting from the violations; and other matters that justice may require.

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 in Water Code section 13327. Each factor in the Enforcement Policy and its corresponding category, adjustment, or amount for the alleged violations is presented below.

Violation: Unauthorized Discharge of 5,035,000 Gallons of Partially Treated Wastewater from Pond 1A to Groundwater

On January 29 through February 7, 2014, approximately 5,035,000 gallons (or 15.45 acre-foot) of partially treated wastewater was discharged to groundwater from a 2-acre Pond 1A at the City's Wastewater Treatment and Reclamation Plant (Plant). The discharge occurred as the City of St. Helena ("City") refilled Pond 1A following draining and sludge removal activities which compromised the pond's clay liner.

Step 1 – Potential for Harm for Discharge Violations

The "potential harm" factor considers the harm to beneficial uses that resulted, or may result, from exposure to the pollutants in the discharge, while evaluating the nature, circumstances, extent, and gravity of the violation. A three-factor scoring system is used for each violation (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

A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm to beneficial uses is negligible (0) to major (5).

For this violation, the potential harm to beneficial uses is **moderate** (i.e., a score of **3**). The Enforcement Policy, at page 12, provides that harm is moderate where there is a "impacts are

observed or reasonably expected and impacts to beneficial uses are moderate and likely to attenuate without appreciable acute or chronic effects.”

The *San Francisco Bay Basin Water Quality Control Plan* (Basin Plan) designates groundwater in this basin (Napa-Sonoma Valley, Napa Valley Basin 2-2.01) as having the following existing beneficial uses: Municipal and Domestic Supply (MUN), Industrial Process Supply (PROC), Industrial Service Water Supply (IND), and Agricultural Water Supply (AGR). The discharge reached groundwater, where it contaminated the Plant’s onsite water well (GRD-001) and another well at a residence located immediately adjacent to the Plant (Teo Well, 83 Chaix Lane). The wells contained elevated levels of indicator bacteria (total and fecal coliform bacteria). The City reported that a tenant at the 83 Chaix Lane property complained that the water flowing into his washing machine “smelled like sewer.” Due to the contamination, the City’s Plant employees discontinued use of the well which was being used for non-potable uses such as equipment washing and toilet flushing. A nearby well located approximately one-third of a mile west of Pond 1A (515 Chaix Lane) was unaffected.

Although there was some impact to groundwater that occurred for a period of at least 5 days, the impacts to beneficial uses are moderate and likely to attenuate without appreciable acute or chronic effects. This is because the geographic extent of the harm was limited to an area containing 2 wells: one neighboring residential and the City’s own well. Additionally, bacteria, one of the main pollutants in wastewater, have relatively short lifespans. In a World Bank report on water supply and sanitation, the typical survival time of coliform is cited as less than 60 days and usually more than 30 days in freshwater and wastewater¹ at temperatures ranging from 68°F and 86°F. Since the groundwater temperatures in the Napa Valley region are about 62°F², coliform bacteria likely persisted longer than 60 days but less than a few months. In the specific circumstances here, the Regional Water Board staff concludes that a finding that harm or potential harm was moderate is appropriate.

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

A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material.

For this violation, the risk or threat of the discharge is **moderate** (i.e., a score of **2**). The Enforcement Policy, at page 13, provides that the risk or threat is moderate where “discharged 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 was partially treated wastewater with levels of total and fecal coliform that pose a moderate risk or threat to potential human receptors. Partially treated undisinfected wastewater contains bacteria that can cause a variety of diseases or illnesses through physical contact or if

¹ (R.G. Feachem, 1983)

² U.S. EPA map of average temperature of shallow groundwater at http://www.epa.gov/Athens/learn2model/part-two/onsite-ex/jne_henrys_map.html

ingested. Partially treated wastewater would also have higher levels of pollutants that can degrade groundwater quality than fully treated wastewater.

Factor 3: Susceptibility to Cleanup or Abatement

A score of 0 is assigned for this factor if 50 percent or more of the discharge is susceptible to cleanup or abatement. 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.

For this violation, the discharge was **susceptible** to cleanup or abatement (i.e., score of **0**). The discharge to groundwater comingled with the groundwater yet, the discharge of partially treated wastewater to the subsurface was susceptible to cleanup through extraction activities as evidenced by the continuous pumping of this area to remove a portion of the discharged water. (see *City of St. Helena Wastewater Treatment and Reclamation Plant Groundwater Investigation Memorandum* dated January 14, 2015). Therefore, a score of zero (0) is appropriate where at least 50 percent of the discharge is susceptible to cleanup or abatement.

Step 2 – Assessments for Discharge Violations

When there is a discharge, the Regional Water Board determines an initial liability amount on a per-gallon or a per-day basis under Water Code section 13350 using the sum of the Potential for Harm scores from Step 1 and a determination of degree of Deviation from Requirement to calculate the per-gallon factor using Table 1 of the Enforcement Policy.

The discharge was to groundwater not to surface water, so it is appropriate to seek penalties under Water Code section 13350, which allows either per-gallon penalties or per-day penalties, but not both. For this violation, the Regional Water Board Prosecution Staff used per-gallon factors because using only per-day liabilities would result in an inappropriately low penalty given the discharge was a significant volume of partially treated wastewater and the discharge harmed beneficial uses.

For this violation, the sum of the three factors from Step 1 is 5, and the extent of Deviation for the violation is **minor**. The Deviation from Requirement reflects the extent to which the violation deviates from the specific requirement that was violated. Here, the requirement deviated from general permit specifications that “Neither the treatment nor the discharge of pollutants shall create pollution, contamination, or nuisance as defined by California Water Code Section 13050.” (Water Board Order R2-2010-0105, Attachment G – Regional Standard Provisions, and Monitoring and Reporting Requirements, Section I., I., I., at page G-6). A minor deviation is appropriate where even though the requirement was not met the intended effectiveness of the requirement remains generally intact. While the City caused pollution and contamination, the standard requirement remained generally intact. The City planned to re-fill Pond 1A and place it back into service when the discharge occurred. The City inadvertently discharged partially treated wastewater to the subsurface. The City has never had an inadvertent discharge of this nature before. The City removed the biosolids from Pond 1A to retain the integrity of the pond for continued future use, which is consistent with retaining the integrity of

the requirement to not create a condition of pollution, contamination, or nuisance. The City initially attributed the high percolation rates when refilling the pond to the clay liner and levee absorbing more water than anticipated due to drought and the long period of dormancy. (Comprehensive Report – Pond 1A Biosolids Removal, Oct. 20, 2014, pages 6-8.) The City reported taking similar precautions for the re-filling of Pond 1A as it had taken in the past when refilling its other treatment ponds, though they have never had a biosolids removal project on this scale before. Additionally, the City began treatment of the wastewater before the discharge event occurred. The water introduced to Pond 1A was a mixture of 3.4MG of aerated water and 1.6MG of partially digested sludge. Therefore, the intended effectiveness of the requirement to not cause pollution, contamination, or nuisance remained intact where the City had planned to fully treat the wastewater, including utilizing Pond 1A for initial treatment.

High Volume Discharges

The Enforcement Policy allows for a reduction in the per gallon factor from \$10/gallon to \$2/gallon where the volume of sewage spills can be very large and the resultant penalty is not inappropriately low. This discharge of partially treated wastewater through a pond liner and into groundwater is a sewage spill of partially treated wastewater. The discharge was somewhat localized and had not reached surface waters. In addition, reducing the per gallon factor to \$2/gallon does not result in an inappropriately small penalty. Therefore, a reduction in the per gallon factor is appropriate considering the severity of the violation and characteristics of the discharge.

Below is the initial liability amount applying a per-gallon multiplier factor using Table 1 based on a Potential for Harm score of 5 and a “Minor” Deviation from Requirement.

Initial Liability Amount

The initial liability for the violation is calculated on a per-gallon and per-day basis as follows:

Per Gallon Liability: $(5,035,000 \text{ gallons}) \times (0.06) \times (\$2/\text{gallon}) = \$604,200$

Per Day Liability: Not applicable

Total Initial Liability = \$604,200

Step 3 – Per Day Assessment for Non-Discharge Violations

This assessment is for a discharge violation. Step 3 applies only to non-discharge violations.

Step 4 – Adjustments to Determine Initial Liability for Violation

There are three additional factors to be considered for modification of the amount of the initial liability: the violator’s culpability, efforts to cleanup the discharge 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 used, with a higher multiplier for negligent behavior.

For the violation, the culpability multiplier is 1.1. This multiplier is warranted because the discharge continued for about 8 days (i.e., from January 29 through February 7) and it appears that the City may have had an opportunity to reduce the extent of the leak by taking action to pump out some of the wastewater from Pond 1A based on observed lowering water levels.

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 used, with a higher multiplier when there is a lack of cooperation.

For the violation, the cleanup and cooperation factor multiplier is **0.75**. Once the City was made aware of the impacts to the two water wells, it acted to provide replacement water and treatment, which goes above and beyond average action that entails boiling water prior to use. The City immediately relocated the residents of the affected well. Within two days of becoming aware of the discharge, the City worked to abate the water quality impacts to the two domestic wells by flushing the wells with bleach, thereby temporarily bringing total and fecal coliform levels to zero. A factor of 0.75 is appropriate where the City demonstrated a high degree of cleanup and cooperation.

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. The City has not had a discharge similar to this one which discharged to groundwater. Therefore a 1.0 is appropriate.

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 2.

Total Base Liability Amount

$\$604,200$ (Initial Liability) \times 1.1 (Culpability Multiplier) \times 0.75 (Cleanup and Cooperation Multiplier) \times 1.0 (History of Violations Multiplier) = Total Base Liability

Total Base Liability = **\$498,465**

Step 6 – Ability to Pay and 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 adjusted Total Base Liability, or to assess the effect of the Total Base Liability on the violator's to continue in business, then the Total Base Liability amount may be adjusted downward if warranted.

Based on review of the latest Comprehensive Annual Financial Report for calendar year 2014, the City has the available unrestricted funds in the Enterprise and General Funds combined to pay the Total Base Liability Amount (\$498,465).

Step 7 – Other Factors as Justice May Require

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," but only with express findings in justification. No adjustments under this step have been considered.

Step 8 – Economic Benefit

The Enforcement Policy directs the Water Board to determine any economic benefit associated with the violations and to recover the economic benefit gained plus 10 percent in the liability assessment.

The City contracted with Brelje & Race Consulting Engineers to prepare a Project Manual and Material Information documents that included bid documents, proposed agreement, general conditions, special conditions, technical conditions, project drawing, exhibits with laboratory data, and other exhibits in preparation for removing the biosolids from Pond 1A. The City did not receive an economic benefit from later discovering an existing contract with Upper Valley Disposal Service and Wetland Construction (sub-contractor) who ultimately performed the biosolids removal. (Comprehensive Report – Pond 1A Biosolids Removal, Oct. 20, 2014, page 6.) Therefore, Regional Water Board Prosecution Staff finds that any avoided cost is de minimus.

Step 9 – Maximum and Minimum Liability Amounts

a) *Minimum Liability Amount*

The Enforcement Policy requires that the minimum liability amount imposed not to be below a discharger's economic benefit plus 10 percent. Since there is no significant economic benefit, the proposed liability satisfies this condition.

b) *Maximum Liability Amount*

The maximum administrative civil liability amount is the maximum amount allowed by Water Code Section 13350 is \$10 for each gallon discharged. The maximum liability for this violation is **\$50,350,000**.

Step 10 – Final Liability Amount

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided amounts are within the statutory minimum and maximum amounts. Using the penalty methodology as described above, the total final liability amount proposed is \$498,465.