

STATE OF CALIFORNIA  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

EXECUTIVE OFFICER SUMMARY REPORT  
MEETING DATE: November 9, 2016

ITEM: **10**

SUBJECT: **Proposed Updates to 2010 Water Quality Enforcement Policy and Overview of the Penalty Methodology** — Information Item

CHRONOLOGY: November 2009 – State Board amends Water Quality Enforcement Policy  
December 2011 – Overview of Enforcement Policy’s Penalty Methodology by Executive Officer to the Board

DISCUSSION: David Boyers, Assistant Chief Counsel at the State Board’s Office of Enforcement, will update the Board and the public on proposed revisions to the Water Quality Enforcement Policy (Enforcement Policy). He will also discuss the Enforcement Policy’s prescribed methodology for calculating the amount of penalties to assess in administrative civil liability (ACL) actions.

**Enforcement Policy Amendments**

The Porter-Cologne Water Quality Control Act grants the State and Regional Water Boards the authority to implement and enforce water quality laws, regulations, policies, and plans to protect waters of the State. The State Board issued an Enforcement Policy, which became effective in February 2002, to define an enforcement process that protects and enhances the quality of waters of the State and addresses water quality problems in a firm, fair, efficient, effective, and consistent manner. The State Board amended this policy in November 2009 (effective as of May 2010). Changes to the policy made in 2009 included a case prioritization process and a methodology for calculating ACLs (penalty methodology).

The Office of Enforcement has proposed new updates to the 2010 Enforcement Policy to make case prioritization more efficient and consistent statewide and to bring more transparency to the Water Boards’ enforcement process and its use of the penalty methodology. Proposed changes also include non-substantive technical revisions and updated enforcement goals based on recent legislation. For example, the Water Boards’ mission to preserve, enhance, and restore the quality of California’s water resources is expanded to include the protection of drinking water and public health. The changes also address environmental justice. These proposed changes to the Enforcement Policy are pending. The State Board expects to consider them at a hearing in December 2016 or in early 2017.

**Penalty Methodology**

At ACL hearings, the Water Board must consider how its prosecution staff have applied penalty factors and derived the penalties proposed in ACL actions. The

Board may decide to impose, modify, or reject the proposed penalties after hearing testimony. The penalties proposed by prosecution staff or modified by the Board must be based on the factors set forth in the penalty methodology. The Board's advisory staff and counsel assist in this process. David Boyers will provide a refresher on use of the penalty methodology and note changes being proposed to some of the penalty factors. Appendix A provides illustrations of the basic framework of the penalty methodology for reference.

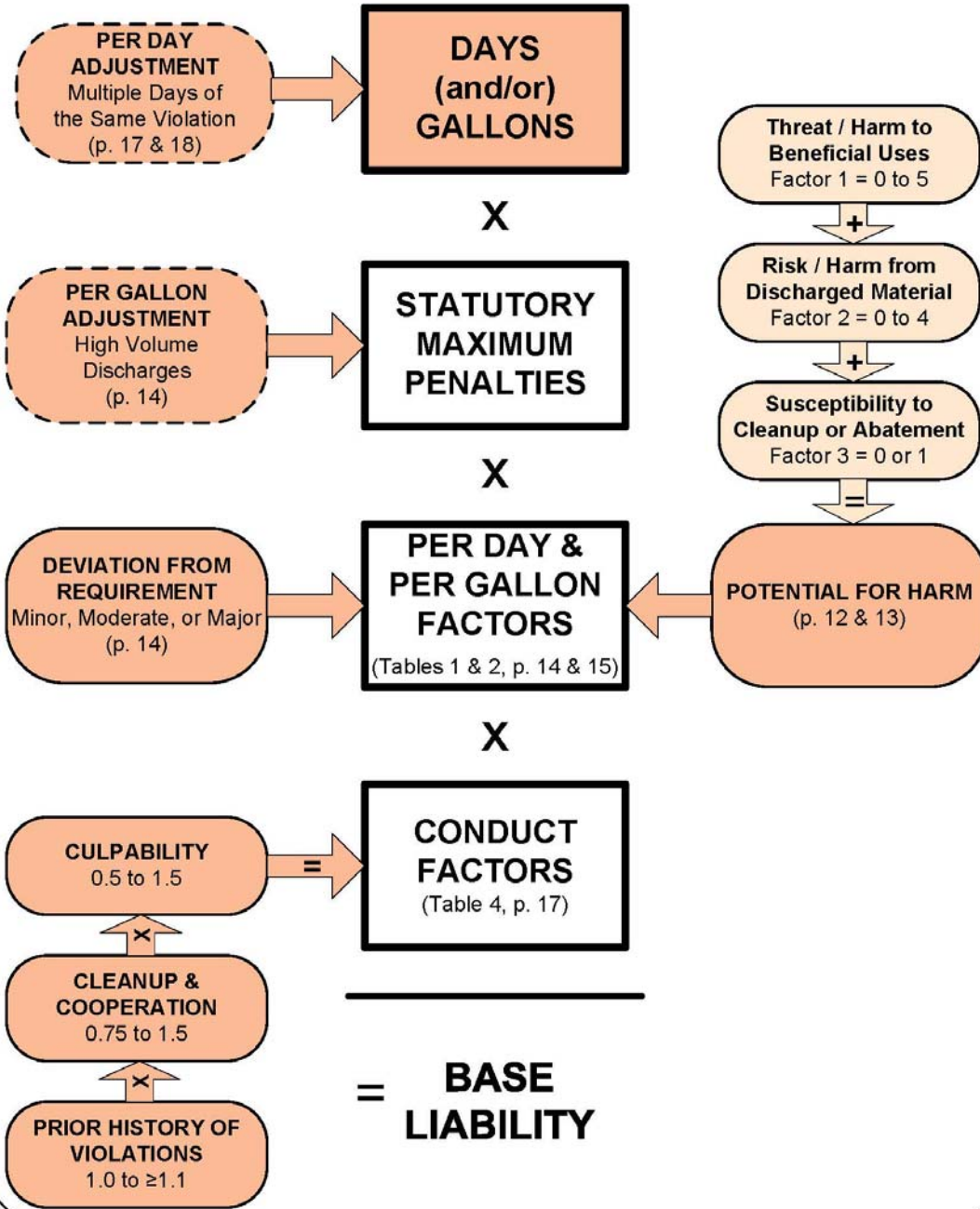
RECOMMEN-  
DATION:

No action is necessary; this is an information item.

APPENDIX A: Penalty methodology flow charts

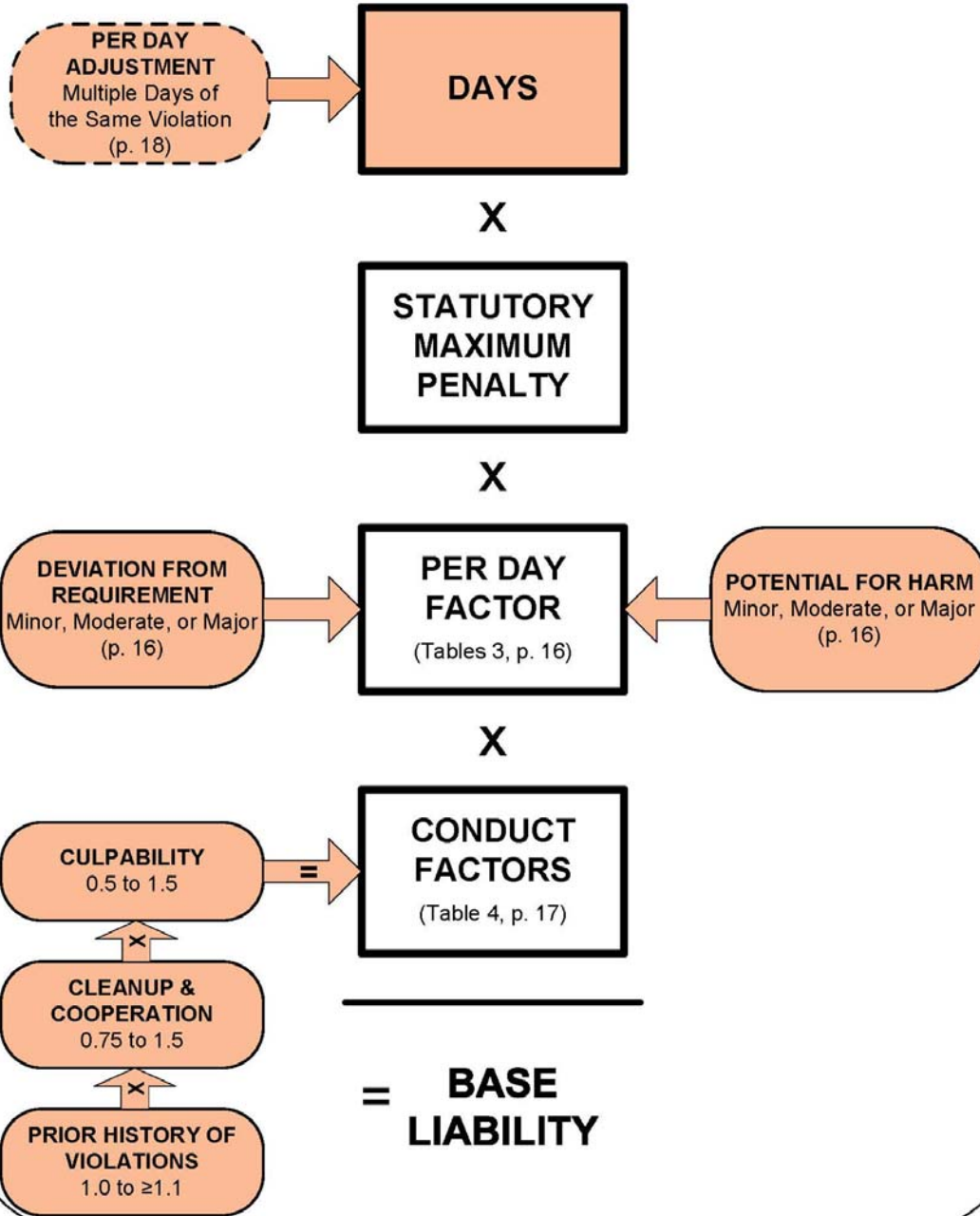
## APPENDIX A

**APPENDIX A**  
**Input Factors for Calculating a Base Liability for Discharge Violations**



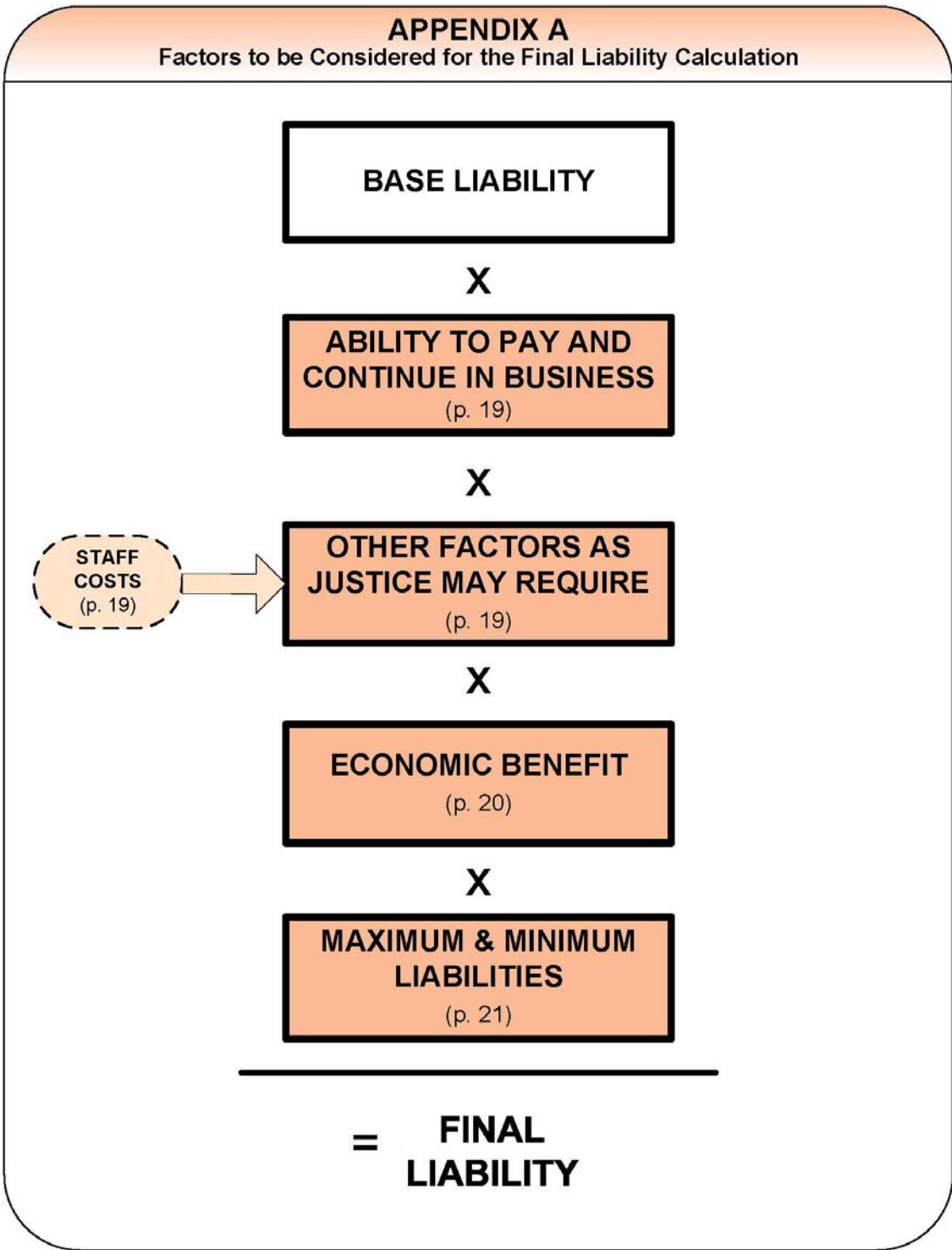
- Thick Border: Calculation step in methodology
- Solid Border: Required factor to be assessed
- Dashed Border: Optional factor to be assessed
- Orange Fill: Penalty factor assessed in the methodology
- Pink Fill: Sub-factor assessment for a penalty factor
- Directional arrow showing inputs to methodology steps
- + , x , = Math symbols indicating type of calculation
- ( ) Reference to location of factor in Enforcement Policy

**APPENDIX A**  
**Input Factors for Calculating a Base Liability for Non-Discharge Violations**



- Thick Border: Calculation step in methodology
  - Solid Border: Required factor to be assessed
  - Dashed Border: Optional factor to be assessed
  - Orange Fill: Penalty factor assessed in the methodology
  - Directional arrow showing inputs to methodology steps
  - ( ) Reference to location of factor in Enforcement Policy
- + , x, = Math symbols indicating type of calculation

**APPENDIX A**  
**Factors to be Considered for the Final Liability Calculation**



- Thick Border: Calculation step in methodology
- Solid Border: Required factor to be assessed
- Dashed Border: Optional factor to be assessed
- Orange Fill: Penalty factor assessed in the methodology
- Pink Fill: Sub-factor assessment for a penalty factor
- Directional arrow showing inputs to methodology steps
- + , x, = Math symbols indicating type of calculation
- ( ) Reference to location of factor in Enforcement Policy