

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

In the matter of:)	
)	
META (FORMERLY KNOWN AS FACEBOOK); SAN MATEO COUNTY)	SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY ORDER
)	
Violations of NPDES Permit CAG912002, Order R2-2017-0048, as amended by Order R2-2018-0050.)	PROPOSED ORDER
)	
)	
)	

Section I: INTRODUCTION

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 Meta, formerly known as Facebook, (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 California Water Code (Water Code) section 13323 and Government Code section 11415.60. This Stipulated Order resolves the violations alleged herein by the imposition of administrative civil liability against the Settling Respondent in the amount of **\$509,800**.

Section II: RECITALS

The Discharger is subject to administrative civil liabilities for the insufficiently treated discharge and late and incomplete report pursuant to Water Code section 13385, subdivisions (a)(1) and (a)(5). In accordance with the penalty calculation methodology set forth in the Enforcement Policy, the administrative civil liability for the two violations is **\$509,800**.

1. The Settling Respondent Meta (formerly known as Facebook) (Discharger) is enrolled under National Pollutant Discharge Elimination System (NPDES) Permit CAG912002 (Permit), Order R2-2017-0048, as amended by Order R2-2018-0050. The Permit is also known as the NPDES Fuels and VOCs permit.

2. Meta dewatered along the South San Francisco Bay to construct footings for a pedestrian bridge over Highway 84 that connects the bay trail to its Menlo Park campus. Meta obtained coverage under the Permit due to residual groundwater contamination below the site unrelated to Meta's activities.
3. Consistent with actions described in more detail in Attachment A, there was a dewatering discharge of partially-treated groundwater that was not tested as required under the Permit. Further, required reports were not submitted timely. There was a treatment system onsite, but Meta did not run startup phase monitoring to judge how well it was working or what was in the influent and effluent at the site.
4. Prior to the discharge violation alleged, Meta discharged to land at the site for approximately 2 months, then discharged to a slough connected to the Bay for a total of 8 days of dewatering at the site, from January 6 through January 13, 2021. During these 8 days of dewatering, approximately 391,000 gallons of insufficiently treated groundwater were discharged to Ravenswood Slough, which is tidally connected to South San Francisco Bay. The discharge violated Permit section IV.A.
5. On April 13, 2022, the Discharger submitted a late and incomplete Start-up Phase Self-Monitoring Report. The late and incomplete submittal violated Monitoring and Reporting Program provisions VIII.A and IX.B.2.a in Attachment E of the Permit.
6. The Prosecution Team identified the alleged Permit violations, and commenced settlement discussions with Meta and its representatives, including legal counsel and people responsible for compliance with environmental regulations. During those discussions, Meta was able to supplement information about its actions prior to the alleged violations and in response to the violations and enforcement action by the Regional Water Board.
7. To resolve the two violations described in Attachment A by consent and without further administrative proceedings, the Parties agree to the imposition of an administrative civil liability of **\$509,800** against the Settling Respondent. The Prosecution Team calculated the proposed liability using Steps 1 through 10 of the State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy) (October 2017) as shown in Attachment A, which is incorporated herein by reference.
8. The Parties have engaged in settlement negotiations and agree to settle this 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 Water Code section 13323 and Government Code section 11415.60.

9. The Prosecution Team contends 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 these violations, except as provided in this Stipulated Order; and that this Stipulated Order is in the public's best interest. Attachment A reflects agreed-upon factors which the Prosecution Team feels are appropriate and which are acceptable to the Settling Respondent; they reflect settlement considerations and are not identical to the factors that may be alleged if this matter were to proceed to an adversarial hearing. Therefore, such factors may not be applicable in other situations.

Section III: STIPULATIONS

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

1. **Administrative Civil Liability:** The Settling Respondent hereby agrees to the imposition of an administrative civil liability of **\$509,800** to resolve the alleged violations set forth in Section II as follows:

- a. No later than 30 days after the Regional Water Board or its delegate signs this Stipulated Order, the Settling Respondent shall mail a check for **\$257,500** made payable to "State Water Pollution Cleanup and Abatement Account," referencing the Order number on page one of this Stipulated Order, to:

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

The Settling Respondent shall email a copy of the check to the State Water Resources Control Board, Office of Enforcement (to Julie Macedo at Julie.macedo@waterboards.ca.gov), and to the Regional Water Board (to Brian Thompson at brian.thompson@waterboards.ca.gov).

- b. The Settling Respondent has agreed to fund a SEP (supplemental environmental project), as outlined in Attachment B hereto. The SEP was recommended by the Assistant Executive Officer of the Regional Water Board, and all requirements of the SEP Policy, effective May 3, 2018, apply to this SEP. The value of the SEP is **\$252,300**.

The value of the SEP will be considered a suspended liability until payment has been made to SFEI and it communicates receipt of the funds to the Regional Water Board. The SEP payment shall be made to the SEP administrator, whose contact information is:

San Francisco Estuary Institute (c/o/ Sarah Lowe)
4911 Central Avenue
Richmond, CA 94804
sarahl@sfei.org
(510) 746-7384

2. **Compliance with Applicable Laws:** The Settling Respondent understands that payment of administrative civil liability and completion of the SEP 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.

3. **Party Contacts for Communications related to this Stipulated Order:**

For the Regional Water Board:

Brian Thompson
San Francisco Bay Regional Water
Quality Control Board
1515 Clay Street, 14th Floor
Oakland, CA 94612
Brian.thompson@waterboards.ca.gov
(510) 622-2437

Counsel:
Julie Macedo
State Water Resources Control Board
801 K Street, Suite 2300
Sacramento, CA 95814
Julie.macedo@waterboards.ca.gov
(916) 323-6847

For the Settling Respondent:

Meta Austin
Attn: Tim Leahy, Director, Global
Environmental, Health and Safety
Services
607 W 3rd St.
Austin TX 78703
timleahy@meta.com
Counsel contact info – in house:
Demi Fisher
Associate General Counsel, Meta
5857 E Gateway Dr
Boise, ID 83716
demi@meta.com

Counsel:
Gary J. Smith
Beveridge & Diamond PC
456 Montgomery, Street, Suite
1800
San Francisco, CA 94104
GSmith@bdlaw.com
(415) 262-4045

4. **Attorney Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorney fees and costs incurred pursuant to this Stipulated Order.
5. **Matters Addressed by this Stipulated Order:** 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 violations described in Attachment A, 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 deadline specified in Section III, paragraph 1.
6. **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.
7. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for public review of this Stipulated Order and the Regional Water Board's or its delegate's adoption of this Stipulated Order is lawful and adequate. The Parties understand that the Regional Water Board or its delegate has the authority to require a public hearing on this Stipulated Order. If procedural objections are raised and the Regional Water Board or its delegate requires a public hearing prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust this Stipulated Order as necessary or advisable under the circumstances.
8. **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.
9. **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.
10. **If the Stipulated Order Does Not Take Effect:** If the Stipulated Order does not take effect because the Regional Water Board or its delegate does not approve it, or because 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 liability 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, or in any other administrative or judicial proceeding. The Parties agree to waive any and all objections based on settlement communications in this matter, including but not limited to objections related to prejudice or bias of any of the Regional Water Board members or their advisors, or 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 Stipulated Order and, therefore, may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged herein in this matter. The Parties also agree to waive any and all objections based on laches, delay, or other equitable defenses related to the period for administrative or judicial review to the extent such period has been extended by these settlement proceedings.

11. **Waiver of Hearing:** The Settling Respondent has been informed of the rights Water Code section 13323, subdivision (b), provides and, if the settlement is adopted by the Regional Water Board or its delegate, hereby waives its right to a hearing before the Regional Water Board prior to the Stipulated Order's adoption. However, if the settlement is not adopted, or if the matter proceeds to the Regional Water Board or State Water Board for a hearing, the Settling Respondent does not waive its right to a hearing before an order is imposed.
12. **Waiver of Right to Petition or Appeal:** Except in the instance where the Stipulated Order is not adopted by the Regional Water Board or its delegate, the Settling Respondent hereby waives its right to petition the Regional Water Board's or its delegate's adoption of the Stipulated 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 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. Any such future decisions may be challenged themselves, but they will not provide grounds for reopening the Stipulated Order.
13. **Covenant Not to Sue:** The Settling Respondent covenants not to sue or pursue any administrative or civil claims against the State of California, any State agency, or its officers, Board members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order.
14. **No Admission of Liability/No Waiver of Defenses:** In settling this matter, the Settling Respondent does not admit to any of the allegations stated herein

or admit to any violations of the Water Code, or any other federal, State, or local law or ordinance, but recognizes that this Stipulated Order, if entered, may be used as evidence of a prior "history of violations" consistent with Water Code sections 13327 and 13385, subdivision (e).

15. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board or its delegate 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.
16. **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.
17. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any right or obligation on any third party, and no third party shall have any right of action under this Stipulated Order for any cause whatsoever.
18. **Severability:** This Stipulated Order is severable; if any provision is be found to be invalid, the remainder shall remain in full force and effect.
19. **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.
20. **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.

21.

IT IS SO STIPULATED.

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

Date: April 25, 2023

Original Signature on file
By: _____
Thomas Mumley,
Assistant Executive Officer

Meta (formerly known as Facebook)

Date: April 18, 2023

Original Signature on file
By: _____
Tim Leahy
Director, Global Environmental, Health and
Safety Services

ORDER OF THE REGIONAL WATER BOARD

1. This Order incorporates the foregoing Sections I through III by this reference as if set forth fully herein.
2. In accepting this Stipulated Order, the Regional Water Board or its delegate has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e), and has applied the State Water Resource Control Board's Enforcement Policy, which is incorporated herein by reference. The consideration of these factors and application of the Enforcement Policy are based on information the Prosecution Team obtained in investigating the allegations set forth in the Stipulated Order 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 or its delegate 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.
4. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Settling Respondent fails to perform any of its obligations under this Stipulated 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.

Eileen White
Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region

Date

ATTACHMENT A

Factors in Determining Administrative Civil Liability

META (FORMERLY KNOWN AS FACEBOOK) 391,000 GALLON DISCHARGE OF INSUFFICIENTLY TREATED GROUNDWATER AND LATE AND INCOMPLETE START-UP REPORT FACEBOOK BAYFRONT, MENLO PARK, SAN MATEO COUNTY

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 the alleged violation is presented below. The Enforcement Policy should be used as a companion document in conjunction with this administrative civil liability assessment since the penalty methodology and definition of terms are not replicated herein. The Enforcement Policy is at:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf.

ALLEGED VIOLATIONS

Meta (formerly known as Facebook) (Discharger) is enrolled under National Pollutant Discharge Elimination System (NPDES) Permit CAG912002 (Permit), Order R2-2017-0048, as amended by Order R2-2018-0050.

On January 6 through 13, 2021, the Discharger discharged approximately 391,000 gallons of insufficiently treated groundwater to Ravenswood Slough, which is tidally connected to South San Francisco Bay. The discharge violated Permit section IV.A.

On April 13, 2022, the Discharger submitted a late and incomplete Start-up Phase Self-Monitoring Report. The late and incomplete submittal violated Monitoring and Reporting Program provisions VIII.A and IX.B.2.a in Attachment E of the Permit.

The Discharger is subject to administrative civil liabilities for the insufficiently treated discharge and late and incomplete report pursuant to Water Code section 13385, subdivisions (a)(1) and (a)(5). In accordance with the penalty calculation methodology set forth in the Enforcement Policy, the administrative civil liability for the two violations is **\$509,800**.

Violation 1 (Discharge) Liability

PENALTY FACTOR	ASSESSMENT	DISCUSSION
Degree of Toxicity of Discharge	2	<p>Degree of Toxicity: moderate</p> <p>The discharge of insufficiently treated contaminated groundwater posed a moderate risk or threat to potential receptors based on its chemical and physical characteristics. Prior to discharge, the groundwater was pumped to a settling tank, then through sand media filtration, then through bag and cartridge filtration, and finally through granulated activated carbon. Nevertheless, there was some level of toxicity, posing a moderate level of threat to potential receptors. According to the Discharger's Self-Monitoring Report for the period of January 1, 2021, through June 30, 2021, the discharge exceeded the Permit's effluent limits for selenium and nickel. These effluent limitations were derived from water quality standards to protect water quality. The selenium concentration was 460 micrograms per liter (µg/l), which exceeded the average monthly effluent limit of 4.1 µg/l and the daily maximum effluent limit of 8.2 µg/l. The nickel concentration was 61 µg/l, which exceeded the average monthly effluent limit of 22 µg/l and the daily maximum effluent limit of 44 µg/l. Other parameters, including cadmium, copper, zinc, and cyanide, may also have been present above effluent limits, but the results were J-flagged (i.e., reported as estimates).</p>
Actual Harm or Potential Harm to Beneficial Uses	1	<p>Potential for Harm: minor</p> <p>The Basin Plan assigns Ravenswood Slough the following beneficial uses: estuarine habitat (EST); preservation of rare and endangered species (RARE), wildlife habitat (WILD), water contact recreation (REC-1), and noncontact water recreation (REC-2). The discharge likely posed minor harm or potential harm to the aquatic life beneficial uses because, based on the discharge characteristics (see "Degree of Toxicity of Discharge" above) and applicable beneficial uses, there may have been a short-term impact to beneficial uses but likely no appreciable harm.</p>
Susceptibility to Cleanup or Abatement	1	<p>Susceptibility to Cleanup: no</p> <p>The discharge was not susceptible to cleanup because it immediately comingled with the water in Ravenswood Slough.</p>
Per Gallon and Per Day Factor for Discharge Violations	0.08	<p>Deviation from Requirement: major</p> <p>The violations were a major deviation from the Permit's effluent limitations. Effluent analysis results, received after the discharge, indicated that the treatment system used to treat contaminated groundwater prior to discharge was insufficient to be protective of receiving waters. The Discharger should have held effluent onsite until sampling results were available. The Discharger disregarded the regulatory program by discharging insufficiently treated groundwater to Ravenswood Slough without first receiving results of effluent sample analysis.</p>
Adjustment for High Volume Discharges	\$3/day	<p>A per-gallon liability of \$3, rather than the maximum of \$10, is appropriate because the discharge volume was over 100,000 gallons and this assessment would not result in an inappropriately small penalty. Using \$3 per gallon results in a suitable deterrent and bears a reasonable relationship to the gravity of the violation.</p>
Days of Violation	8	<p>According to the Discharger's Self-Monitoring Report for the period of January 1, 2021, through June 30, 2021, the discharge occurred from January 6 through 13, 2021, a period of 8 days.</p>

Meta
Attachment A - Administrative Civil Liability Factors

PENALTY FACTOR	ASSESSMENT	DISCUSSION
Initial Liability	\$100,000	<p>The initial liability is calculated as follows: per-gallon factor multiplied by gallons discharged to surface water (minus 1,000 gallons) multiplied by maximum per-gallon liability (as adjusted above), plus per-day factor multiplied by maximum per-day liability (\$10,000) multiplied by number of days of discharge. Pursuant to the Enforcement Policy, the per-gallon and per-day factors are both 0.08.</p> <p>Initial Liability: $\\$100,000 = (0.08 \times 390,000 \text{ gal} \times \\$3/\text{gal}) + (0.08 \times \\$10,000/\text{day} \times 8 \text{ days})$</p>
Adjustments for Discharger Conduct		
Culpability	1.2	<p>The Discharger failed to exercise the ordinary care that a reasonable person would under similar circumstances. Following treatment, the groundwater was stored in a holding tank prior to discharge to Ravenswood Slough. The groundwater was discharged based on the results of sampling that was done to design the treatment system. A prudent discharger would have ensured that the effluent complied with permit requirements before discharging to Ravenswood Slough.</p>
History of Violations	1.1	<p>The Discharger has a history of Permit violations at another facility it operates, the Facebook Hibiscus facility, which was regulated under the Permit for approximately 5 years from 2016 through 2021. During that time, Permit violations at the Facebook Hibiscus facility included effluent limit exceedances.¹</p>
Cleanup and Cooperation	1.1	<p>The Discharger did not take sufficient actions to evaluate the impacts of the discharge, to timely notify the Regional Water Board about the effluent limit exceedances, or to submit a written report regarding the details of the effluent limit exceedances. The Discharger should have followed the reporting requirements set forth in Monitoring and Reporting Program section IX.D in Attachment E of the Permit once it became aware of the effluent limit exceedances.</p>
Base Liability	\$145,200	<p>Each applicable factor relating to the Discharger's conduct is multiplied by the initial liability (above) to determine the Total Base Liability.</p> <p>Base Liability: $\\$145,200 = \\$100,000 \times 1.2 \times 1.1 \times 1.1$</p>

¹ ACL Settlement Orders R2-2017-1030 and R2-2021-1016

Violation 2 (Non-discharge) Liability

PENALTY FACTOR	ASSESS-MENT	DISCUSSION
Per Day Factor for Non-Discharge Violations	0.55	<p>Potential for Harm: moderate The Discharger failed to prepare and submit a complete Start-up Phase Self-Monitoring Report as required by Monitoring and Reporting provision VI.B of the Permit and described in section IX.B.2.a of Attachment E of the Permit. In fact, the Discharger failed to properly evaluate the influent, effluent, and treatment system as part of start-up phase monitoring as required by Permit provision VI.B and described by section VIII.A in Attachment E. The Discharger should have completed start-up phase monitoring to understand the potential impacts of the discharge and to protect Ravenswood Slough. By not submitting the required report, the Discharger's actions impaired the Regional Water Board's ability to perform its statutory and regulatory functions.</p> <p>Deviation from Requirements: major The Start-up Phase Self-Monitoring Report was due May 15, 2021, 45 days after the end of the quarter in which Meta discharged to Ravenswood Slough. The Start-up Phase Self-Monitoring Report was not submitted until April 13, 2022, which was 333 days late. Failing to submit the report on time was a major deviation from the Permit's requirement. Moreover, when finally submitted, the report prepared by Meta's consultant was missing the following elements: an exhaustive evaluation of Permit violations that took place during the start-up phase and planned corrective actions for each; results of sample analyses and observations; laboratory reports with analytical results; and an operations and maintenance manual for the treatment system that lists facility and regulatory personnel and describes all equipment, recommended operational strategies, process control monitoring, and maintenance activities. By failing to complete start-up phase monitoring during the initial dewatering phase that took place from October through December 2020, and then again when the Discharger restarted the treatment system in January 2021, the Discharger disregarded Monitoring and Reporting Program section VIII.A of the Permit. The Start-up Phase Self-Monitoring Report should have included influent and effluent data for days 1 and 5 of treatment system operation, which would have indicated potential effluent limit exceedances and inadequacy of treatment system before effluent was discharged to Ravenswood Slough. The Discharger should have also followed start-up procedures and held effluent onsite until it obtained start-up phase sampling results.</p>
Adjustment for Multiple Day Violations	Decrease to 45 days	From the day after the due date for the Start-up Phase Self-Monitoring Report (May 16, 2021) to the day the Discharger submitted the Report (April 13, 2022), there were 333 days of violation. For violations lasting more than 30 days, the Enforcement Policy allows the daily assessment to be reduced, provided that it is no less than the economic benefit, if any, resulting from the violation. In this case, a reduction is warranted because the continuing violation resulted in no discrete economic benefit from the illegal conduct that can be measured on a daily basis. For this reason, the days of violation is adjusted down to 45 days.

Meta
Attachment A - Administrative Civil Liability Factors

PENALTY FACTOR	ASSESSMENT	DISCUSSION
Initial Liability	\$247,500	<p>The initial liability is calculated as follows: per-day factor, multiplied by the maximum per-day liability (\$10,000), multiplied by the adjusted number of days of violation.</p> <p>Initial Liability: \$247,500 = (0.55 x \$10,000/day x 45 days)</p>
Adjustments for Discharger Conduct		
Culpability	1.2	<p>The Discharger failed to exercise the ordinary care that a reasonable person would under similar circumstances. The Permit clearly states the requirements for a start-up phase self-monitoring report, and by signing the Notice of Intent the Discharger acknowledged its commitment to meet this Permit requirement. Start-up phase sample analysis did not take place at the start of dewatering in October 2020 or at any point thereafter. Influent and effluent samples were collected January 8, 2021, but the results were not received until after the dewatering discharge was complete.</p>
History of Violations	1.1	<p>The Discharger has a history of Permit violations at another facility it operates, the Facebook Hibiscus facility, which was regulated under the Permit for approximately 5 years from 2016 through 2021. During that time, Permit violations at the Facebook Hibiscus facility included effluent limit exceedances.²</p>
Cleanup and Cooperation	1.1	<p>The Discharger delayed submitting the report 163 days after Regional Water Board staff notified the Discharger of the deficiency on November 1, 2021.</p>
Base Liability	\$359,400 (rounded)	<p>Each applicable factor relating to the Discharger's conduct is multiplied by the initial liability (above) to determine the Total Base Liability.</p> <p>Base Liability: \$359,370 = \$247,500 x 1.2 x 1.1 x 1.1</p>

² ACL Settlement Orders R2-2017-1030 and R2-2021-1016

Other Factors and Final Liability (Violations 1 and 2)

PENALTY FACTOR	ASSESS-MENT	DISCUSSION
Total Base Liability	\$504,600	The total base liability is the sum of the base liability for violations 1 and 2: Total Base Liability: \$504,600 = \$145,200 + \$359,400
Staff Costs	Increase (\$5,200)	Staff costs incurred is calculated at \$5,200 (rounded) as follows: \$2,869 = 38 hours x \$75.51/hourly burdened rate (Env. Scientist) \$1,652 = 11 hours x \$150.20/hourly burdened rate (Senior Eng. Geologist) \$493 = 3 hours x \$164.21/hourly burdened rate (Env. Program Manager I) \$169 = 1 hour x \$169.25/hourly burdened rate (AEO)
Ability to Pay and Continue in Business	No Adjustment	The Regional Water Board has no evidence that the Discharger would be unable to pay the proposed liability or that the amount of the liability would cause undue financial hardship. The Discharger has not demonstrated an inability to pay the proposed amount.
Economic Benefit	No Adjustment (\$124,000)	The Discharger had an economic benefit from the violations. Violation 1 (\$121,000) – The Discharger avoided costs to hold, haul, and dispose of dewatering effluent. The cost to send this wastewater to the Palo Alto Water Quality Control Plant is estimated to be about \$120,000. The Discharger also avoided about \$1,000 in costs to prepare notifications and reports required after exceeding effluent limitations. Violation 2 (\$3,000) – The Discharger avoided about \$1,000 in costs to hold effluent for 5 days during the start-up phase. It also avoided about \$2,000 in costs to collect, analyze, and report on all required start-up phase samples, including influent and effluent on day 5 of treatment system operation.
Maximum Liability	No Adjustment (\$7,310,000)	The liabilities for each violation are below the statutory maximums. Violation 1 (\$3,980,000) - Water Code section 13385(c) allows up to \$10,000 for each day in which a violation occurs, plus \$10 for each gallon exceeding 1,000 gallons discharged and not cleaned up. The maximum liability reflects the unauthorized discharge of 390,000 gallons of insufficiently treated groundwater over 8 days of violation. Violation 2 (\$3,330,000) - Water Code section 13385 allows up to \$10,000 for each day in which the violation occurs. The maximum liability is based on 333 days of violation.
Minimum Liability	No Adjustment (\$136,400)	The minimum liability that may be assessed to comply with the Enforcement Policy is the economic benefit gained plus ten percent.
Final Liability	\$509,800	The final liability amount is the total base liability adjusted by other factors: Final Liability: \$509,800 = \$504,600 + \$5,200

ATTACHMENT B
San Francisco Bay Regional Monitoring Program
Supplemental Environmental Project

Basic Information

Study Name: *Investigating harmful algal blooms in San Francisco Bay: priority data, model development/application, and synthesis.*

Study Budget: Total: \$252,300

SEP Administrator: Sarah Lowe sarahl@sfei.org (510) 746-7384

Additional SFEI Contacts:

- Technical: David Senn davids@sfei.org (510) 999-1105
- Financial: Jennifer Hunt jhunt@sfei.org (510) 746-7347

Study Description

This study will include a range of activities related to understanding the August 2022 harmful algal bloom (HAB) event. These include: analysis of physical forcing data (sunlight, wind, tides); analysis of water quality datasets from ship-based, mooring, and remote-sensed measurements (nutrients; phytoplankton abundance; dissolved oxygen; suspended sediments) to characterize how conditions varied spatially and temporally over the course of the event; analysis of archived samples collected during or in the lead-up to the event for molecular/DNA related parameters (e.g., sequencing to characterize phytoplankton, grazers, bacteria, viruses); application of numerical models to quantitatively explore coupled transport/transformation hypotheses; and numerical simulations to explore how potential management actions (e.g., nutrient load reductions to San Francisco Bay) could lower the risk of similar events in the future.

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; and
- 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 and associated product that is 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 (SF Bay RMP).

Study Milestone and Performance Measure

Within three years of the Settlement Order, a report of the study findings will be produced.

Study Budget and Reports to Water Board

Pursuant to the October 2015 Supplemental to Memorandum of Understanding between the San Francisco Estuary Institute (SFEI) and the Regional Water Board, SFEI is responsible for identifying in each annual work plan and annual budget for the SF Bay 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 SF Bay 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.