

Attachment A – Specific Factors Considered
Order No. R4-2024-0323 (PROPOSED)
Curio a Collection by Hilton
Landwin DMV, LLC
WDID:4 19C373557

Landwin DMV, LLC (the Discharger) is alleged to have failed to comply with the requirements of the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009-DWQ, as amended by Order 2010-0014-DWQ and 2012-0006-DWQ, NPDES No. CAS000002 (General Permit), while constructing the project known as “Curio a Collection by Hilton,” WDID 4 19C373557, located at 101 West Valley Boulevard, San Gabriel, California 91776 (Site).

Factors required to be considered in determining the amount of administrative civil liability pursuant to Water Code section 13385(e) and the State Water Resources Control Board’s Water Quality Enforcement Policy effective October 5, 2017 (Enforcement Policy) are discussed for each violation below. The Enforcement Policy can be found at https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/04_0417_9_final%20adopted%20policy.pdf.

The Site was enrolled under the General Permit in August 2015 and was listed as a Risk Level 2 site, with completion of the construction project anticipated as December 30, 2016. Stormwater discharges from the Site flow via storm drains to the Alhambra Wash, which flows into the Rio Hondo Channel, a tributary of Reach 2 of the Los Angeles River, which is on the 303(d) list of impaired water bodies as impaired by ammonia, nitrogen, cadmium, copper, lead, and zinc. The beneficial uses of the Los Angeles River include municipal and domestic water supply, industrial service water supply, ground water recharge, contact and non-body contact recreation, and wildlife habitats that provide homes for fish species like the common carp, largemouth bass, tilapia, rainbow trout, river shrimp, chinook salmon, and the Santa Ana Sucker. Other species include insects, bats, swallows, swifts, ducks, and other migrating birds. The beneficial uses of the Rio Hondo Channel and Alhambra Wash similarly include municipal and domestic water supply, ground water recharge, warm freshwater habitat, and wildlife habitat.

On March 11, 2020, the Los Angeles Regional Water Quality Control Board (Regional Water Board) inspected the Site and observed numerous violations of the General Permit, including the following: there was no Qualified SWPPP Practitioner (QSP) conducting or supervising Site inspections, maintenance, repairs, and sampling; and numerous Best Management Practices (BMPs) were missing or inadequate across the Site, including perimeter controls, and good housekeeping measures. On June 18, 2020, the Regional Water Board issued a Notice of Violation (NOV) to the Discharger.

When Regional Water Board staff conducted follow-up inspections on June 25, July 8, and July 15, 2020, there were continuing violations of the General Permit. On July 29, 2020, the Discharger responded by email to the NOV, showing corrections of some violations. The Discharger did not address all of the housekeeping violations in their response, and perimeter controls were inadequately added at the Site. Regional Water Board staff conducted additional inspections on August 3, August 19, October 7, October 15, December 10, December 22, and December 28, 2020, as well as January 13 and January 27, 2021, noting ongoing violations of General Permit requirements. At the December 28, 2020 inspection, staff also observed the discharge of sediment-laden stormwater from the Site.

Violation 1: Unauthorized Discharge of Sediment-Laden Stormwater

The General Permit prohibits all discharges except for storm water and non-storm water discharges specifically authorized by the General Permit or another NPDES permit. (General Permit, III.B.) On December 28, 2020, Regional Water Board staff inspected the Site during a qualifying storm event (QSE) and observed sediment-laden stormwater discharging from the Site into the street. This discharge was not specifically authorized by the General Permit, a waiver, or other waste discharge requirements.¹

Step 1. Potential for Harm for Discharge Violations

Factor 1: Degree of Toxicity of the Discharge

The evaluation of the degree of toxicity considers the physical, chemical, biological, and/or thermal characteristics of the discharge, waste, fill, or material involved in the violation or violations and the risk of damage the discharge could cause to the receptors or beneficial uses. A score between 0 and 4 is assigned based on a determination of the risk and threat of the discharged material.

Sediment-laden stormwater and non-stormwater is opaque to sunlight; a reduction in light transmitted to underwater plants impairs the ability of the underwater plants to produce energy and dissolved oxygen through photosynthesis.² Sediment discharged to surface waters can also clog fish gills and bury fish eggs, and contribute to high turbidity in the water, which also results in reduced sunlight. Sediment can also transport materials

¹ The General Permit requires that all dischargers minimize or prevent pollutants in storm water discharges and authorized non-storm water discharges through the use of controls, structures, and management practices that achieve BAT for toxic and non-conventional pollutants and BCT for conventional pollutants. (General Permit, V.A.2, Narrative Effluent Limitations.) Additional measures to control discharges during construction are required at Risk Level 2 sites. (General Permit, Attachment D.)

² Stormwater Runoff, Learn the Issues, Chesapeake Bay Program, available at https://www.chesapeakebay.net/issues/stormwater_runoff; https://www.nature.com/scitable/blog/saltwater-science/runoff_how_activities_near_and/.

such as nutrients, metals, and oils, which can be toxic to aquatic organisms. Thus, the discharge of sediment-laden stormwater is detrimental to the aquatic community, reducing biological productivity, degrading habitat quality, and harming wildlife. Sediment in water poses a moderate threat because of the likelihood that the discharged material will harm aquatic life. Therefore, a score of **2** is appropriate.

Factor 2: Harm or Potential for Harm to Beneficial Uses

The evaluation of the actual or potential harm to beneficial uses factor considers the harm to beneficial uses in the affected receiving water body that may result from exposure to the pollutants or contaminants in the discharge, consistent with the statutory factors of the nature, circumstances, extent, and gravity of the violation. The Regional Water Board may consider actual harm or potential harm to human health, in addition to harm to beneficial uses. The harm or potential harm to beneficial uses ranges from 0 and 5 based on a determination of whether the harm or potential for harm is negligible (0), minor (1), below moderate (2), moderate (3), above moderate (4), or major (5).

The Site discharges to the Alhambra Wash, which flows to the Rio Hondo Channel and then to the Los Angeles River. The beneficial uses of the Los Angeles River include municipal and domestic water supply, industrial service water supply, ground water recharge, contact and non-body contact recreation, and wildlife habitat that provides homes for fish species like the common carp, largemouth bass, tilapia, rainbow trout, river shrimp, chinook salmon, and Santa Ana sucker. Other species include insects, bats, swallows, swifts, ducks, and other migrating birds.

A discharge of sediment has potential to deleteriously impact aquatic plants, fish, macroinvertebrates and other aquatic organisms in the short term.³ As discussed above, sediment in water bodies can lead to fish population loss caused by loss of oxygen, toxicity, and degradation of spawning areas and other habitat. Thus, the discharge of sediment had the potential to negatively impact wildlife habitat, and contact and non-body contact recreation beneficial uses. The sediment discharged from the Site poses a moderate threat to beneficial uses supporting aquatic life but is likely to attenuate without appreciable medium or long term acute or chronic illnesses. Therefore, a score of **3** is appropriate.

³ Impact of Sedimentation on Biological Resources: A Sediment Issue White Paper Report prepared for the State of Kansas, Central Plains Center for Bioassessment, Report No. 146 of the Kansas Biological Survey, August 2007, available at: https://biosurvey.ku.edu/sites/biosurvey/files/2023-01/KBSRept146_sediment.pdf.

Factor 3: Susceptibility to Cleanup or Abatement

The susceptibility to cleanup or abatement factor is assessed as either 0 or 1. A score of 0 is assigned if the discharger cleans up 50 percent or more of the discharge within a reasonable amount of time, whereas a score of 1 is appropriate where less than 50 percent of the discharge is susceptible to cleanup or abatement, or if 50 percent or more of the discharge is susceptible to cleanup or abatement but the discharger failed to clean up 50 percent or more of the discharge within a reasonable time. For this violation, because sediment-laden storm water discharged from the Site into the street, where it dispersed, cleanup or abatement was not possible. Therefore, the Prosecution Team assigned a score of 1.

Potential for Harm Score = 2 (Degree of Toxicity) + 3 (Harm or Potential Harm to Beneficial Uses) + 1 (Susceptibility to Cleanup or Abatement) = 6

Step 2. Assessment for Discharge Violations

Per Gallon Assessment for Discharge Violations

When there is a discharge, the Regional Water Board determines the initial liability on a per gallon basis using the Potential for Harm score from Step 1 and the Deviation from Requirement of the violation.

The Deviation from Requirement reflects the extent to which the violation deviates from the specific requirement that was violated. The General Permit prohibits all discharges except storm water and non-storm water discharges specifically authorized by the General Permit or another NPDES permit. Only discharges that have been controlled with BMPs that achieve Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) are authorized. Here, Regional Water Board staff observed sediment-laden water discharging from the Site on December 28, 2020. As observed at nine inspections leading up to the discharge and on the date of the discharge (June 25, July 8, July 15, August 3, August 19, October 10, and October 15, December 10, December 22, and December 28, 2020), the Discharger failed to implement adequate BMPs. Therefore, the General Permit's requirements were rendered ineffective in their essential functions, and a **major** Deviation from Requirement is appropriate.

Table 1 of the Enforcement Policy (p. 14) is used to determine a "Per Gallon Factor" using the Potential for Harm score and the Deviation from Requirement. Using a Potential for Harm score of 6 and a Deviation from Requirement of major, the "Per Gallon Factor" is **0.28**. This Per Gallon

Factor is then multiplied by the volume of the discharge and the per gallon assessment of liability, as described below.

Regional Water Board staff estimated that on December 28, 2020, approximately 39,458 gallons of sediment-laden stormwater discharged off the Site, resulting in the discharge of sediment into the impaired Los Angeles River Reach 2. Water Code section 13385(c) provides that the civil liability “may be imposed...in an amount not to exceed the sum of both of the following: (1) \$10,000 per day for each day in which the violation occurs. (2) 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 \$10 multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.”

Per Gallon Assessment = .28 (Per Gallon Factor) x 38,458 (spill volume – 1,000 gallons) x \$10 per gallon = \$107,682

Per Day Assessment for Discharge Violations

When there is a discharge, the Regional Water Board must determine the Initial Liability Amount on a per day basis using the Potential for Harm score from Step 1 and the Deviation from Requirement score. As discussed above, here the deviation is **major**.

Table 2 of the Enforcement Policy (p. 15) is used to determine a “Per Day Factor” based on Step 1 (Potential for Harm) and the Deviation from Requirement. Using a Potential for Harm score of 6 and a major Deviation from Requirement, the Per Day Factor is **0.28**. This Per Day Factor value is then multiplied by the statutory maximum per day of violation (\$10,000).

Per Day Assessment = .28 (Per Day Factor) x 1 day x \$10,000 per day of violation = \$2,800

Initial Liability Amount

\$107,682 (Per Gallon Assessment) + \$2,800 (Per Day Assessment) = \$110,482

Step 3. Per Day Assessment for Non-Discharge Violations

This factor does not apply to this violation.

Step 4. Adjustment Factors

- a) Degree of Culpability: For culpability, the Enforcement Policy prescribes an adjustment using a multiplier between 0.75 to 1.5. A lower multiplier applies to accidental incidents and a higher multiplier applied to intentional or negligent behavior. Regional Water Board staff observed a dirt area on the northwest corner of the Site without source control BMPs, deficient or missing perimeter control BMPs, and sediment outside of the project boundary at inspections on June 25, July 8, July 15, August 3, August 19, October 10, October 15, December 10, and December 22, 2020, and informed the Discharger of these deficiencies at each of these inspections. Despite repeated inspections and notifications, the Discharger failed to install adequate BMPs, resulting in the December 28 discharge. The Discharger's conduct demonstrates gross negligence in failing to exercise due care. Therefore, a multiplier of 1.4 was assessed.
- b) History of Violations: The Enforcement Policy states that if a discharger has a prior history of violations within the last five years, the Water Boards should use a multiplier of 1.1. Where a discharger has a history of similar or numerous dissimilar violations, the Water Boards should consider adopting a multiplier above 1.1. Since the Discharger has no prior history of violations, a multiplier of 1.0 has been assigned.
- c) Cleanup and Cooperation: This factor reflects the extent to which a discharger voluntarily cooperates 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. Despite the Regional Water Board's efforts to let the Discharger know that adequate perimeter controls were needed to prevent the discharge of sediment during a rain event, the Discharger did not correct these BMPs prior to the December 28 QSE. The Discharger did, however, install appropriate perimeter controls in place before the next QSE that occurred on January 26, 2021. Therefore, a multiplier of 1.3 was assessed.

Step 5. Total Base Liability

\$110,482 (Initial Liability Amount) x 1.4 (Degree of Culpability) x 1 (History of Violation) x 1.3 (Cleanup and Cooperation) = \$201,077. The statutory maximum penalty is \$394,580.

Violation 2: Failure to Ensure That Inspections, Maintenance, Repairs, and Sampling Were Performed or Supervised by a QSP

The Discharger violated General Permit section I.F.44 and Attachment D, section G by failing to ensure that all inspections, maintenance, repairs, and sampling activities at the Site were performed or supervised by a QSP.

Section I.F.44 requires dischargers to assign the position of QSP to a person who has received the proper training. Section G of Attachment D requires that Risk Level 2 dischargers ensure that all inspections, maintenance, repairs, and sampling activities at the project location are performed or supervised by a Qualified SWPPP Practitioner (QSP) representing the discharger.

On March 11, 2020, Regional Water Board staff inspected the Site and found there was no QSP at the Site. On June 18, 2020, the Regional Water Board issued an NOV, notifying the Discharger that it was not in compliance with the General Permit. The Discharger remained out of compliance with the General Permit requirement at a follow-up inspection on June 25, 2020. At the next inspection on July 8, 2020, the Discharger submitted evidence it had retained Calland Engineering as the QSP on June 30, 2020.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to this violation.

Step 2. Assessment for Discharge Violations

This factor does not apply to this violation.

Step 3. Per Day Assessment for Non-Discharge Violations

a) Potential for Harm: Moderate

Failure to ensure inspections, monitoring, repairs, and sampling are conducted or supervised by a QSP creates a substantial potential for harm, because QSPs conduct and supervise inspections that ensure necessary BMPs are in place and in working order, which prevents the discharge of pollutants, such as sediment, from the Site. Therefore, the potential for harm for this violation is characterized as **moderate**.

b) Deviation from Requirement: Major

The General Permit expressly requires that a discharger assign a QSP, include the name of the currently designated QSP in the SWPPP, and have inspections, monitoring, and reporting performed by a QSP or trained personnel. The Discharger failed to designate a QSP for at least four months, and failed to comply with inspection, monitoring, and reporting obligations that

must be completed by a QSP or trained personnel. This rendered the General Permit requirements ineffective in their essential functions. Therefore, the Deviation from Requirement for this violation is characterized as **major**.

c) Per Day Factor

For a moderate potential for harm and major Deviation from Requirement, the Per Day Factor ranges from 0.4-0.7. The mid-range Per Day Factor of 0.55 has been assessed.

d) Initial Liability Amount

0.55 (Per Day Factor) \times 37 (days of violation) \times $\$10,000$ (Statutory Maximum Liability) = $\$203,500$.

Step 4. Adjustment Factors

- a) Degree of Culpability: The General Permit requires that a QSP be designated for a site, and that the QSP perform or supervise monitoring, inspections, and reporting, and sampling. The SWPPP initially designated a QSP, but the Discharger failed to hire a new QSP when needed, evidencing the Discharger's knowledge of its obligation to designate a QSP. The Discharger's failure to hire a QSP until June 30, 2020, and their failure to ensure a QSP carried out inspections, monitoring, and reporting falls below the standard of care that should have been exercised. Thus, a multiplier of 1.3 was assessed.
- b) History of Violations: Since the Discharger has no prior history of violations, a multiplier of 1.0 has been assigned.
- c) Cleanup and Cooperation: The Discharger was notified that it was in violation of the QSP requirements at inspections on March 11 and June 25, 2020, and in the NOV issued on June 18, 2020. Because the Discharger did come into compliance with this requirement by June 30, 2020, a multiplier of 1.2 was assessed.
- d) Multiple Day Violations: Failure to have a QSP to perform or supervise inspection, maintenance, repairs, and sampling does not cause daily detrimental impacts to the environment and does not cause daily detrimental impacts to the regulatory program. Therefore, this 111-day violation (March 11, 2019-June 30, 2020) is assessed for 37 days.

Step 5. Total Base Liability

\$203,500 (Initial Liability Amount) x 1.3 (Degree of Culpability) x 1 (History of Violation) x 1.2 (Cleanup and Cooperation) = \$317,460. The statutory maximum penalty is \$1,110,000.

Violation 3: Failure to Implement Perimeter Controls

The Discharger violated Attachment D, section E.1 of the General Permit by failing to employ perimeter controls BMPs throughout the Site. Attachment D, section E.1 of the General Permit states that Risk Level 2 dischargers shall establish and maintain effective perimeter controls to sufficiently control erosion and sediment discharges from a site.

On March 11, 2020, Regional Water Board staff observed that work areas at the Site lacked perimeter controls. The June 18, 2020 NOV issued to the Discharger notified it that there were ineffective perimeter controls at the Site, in violation of the General Permit. During follow-up inspections on June 25, July 8, and July 15, 2020, Regional Water Board staff continued to observe missing and ineffective perimeter controls at the Site. On July 17, 2020, the Discharger responded to the NOV with pictures showing that it placed gravel bags around the perimeter of the Site. During subsequent inspections on August 3, August 19, October 7, October 15, December 10, December 22, December 28, 2020, and January 13, 2021, Regional Water Board staff observed that the perimeter controls were continuously missing along West Valley Boulevard and that perimeter controls had been inadequately installed in other areas of the Site, which was evidenced by sediment observed outside the Site boundary at each of the inspections. On December 28, 2020, Regional Water Board staff observed sediment-laden stormwater being discharged from the Site during a storm as a direct result of inadequate perimeter controls. On January 27, 2021, the Site was observed with adequate perimeter controls.

On March 23 and April 20, 2021, staff from the City of San Gabriel's (City) NPDES Stormwater and Runoff Pollution Control Program inspected the Site and observed missing perimeter control BMPs along West Valley Boulevard and Del Mar Avenue.

The Prosecution Team has evidence to support the finding that this violation was ongoing from at least March 11, 2020, to January 13, 2021, or 309 days. However, in the exercise of discretion, and for purposes of settlement, the Prosecution Team is only alleging days when Regional Water Board staff directly observed the violation during a site inspection. From at least March 11, 2020, to January 13, 2021, Regional Water Board observed this violation during 12 separate inspections and alleges 12 days of violation.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to this violation.

Step 2. Assessment for Discharge Violations

This factor does not apply to this violation.

Step 3. Per Day Assessment for Non-Discharge Violations

a) Potential for Harm: Moderate

As described above, the Site discharges to the Alhambra Wash, which ultimately flows into Reach 2 of the Los Angeles River. The existing beneficial uses of Reach 2 of the Los Angeles River include municipal and domestic water supply, industrial service water supply, groundwater recharge, and wildlife habitats that provide homes for fish species, including but not limited to the common carp, largemouth bass, tilapia, rainbow trout, river shrimp, chinook salmon, and Santa Ana sucker.

Failure to implement perimeter control BMPs presents a substantial threat to beneficial uses of the Los Angeles River. A lack of effective perimeter controls can result in the discharge of pollutants, and here did in fact result in the discharge of sediment into the storm drains and eventually the Los Angeles River. Sediment can clog fish gills, bury fish eggs, fill the channel, and contribute to high turbidity in the water, which results in low sunlight. All of these factors are detrimental to habitat for aquatic life. Therefore, the Potential for Harm for this violation is characterized as **moderate**.

b) Deviation from Requirement: Major

The Discharger failed to maintain effective perimeter controls, as evidenced by sediment observed outside the Site boundaries and the discharge of sediment-laden water on December 28, 2020. Therefore, the effectiveness of this requirement was rendered ineffective in its essential functions. Therefore, the Deviation from Requirement was characterized as **major**.

c) Per Day Factor

For a moderate potential for harm and major Deviation from Requirement, the Per Day Factor range is 0.4-0.7. The mid-range Per Day Factor of 0.55 has been selected.

d) Initial Liability Amount

$0.55 \text{ (Per Day Factor)} \times 12 \text{ (days of violation)} \times \$10,000 \text{ (Statutory Maximum Liability)} = \$66,000.$

Step 4. Adjustment Factors

- a) Degree of Culpability: Although the General Permit clearly sets forth that perimeter controls must be established and maintained, the Discharger repeatedly failed to install perimeter controls along the Site boundaries, including West Valley Boulevard. The Discharger's failure to maintain effective perimeter controls evidence grossly negligent conduct that failed to meet the standard of care required by the General Permit. Therefore, a multiplier of 1.4 was assessed.
- b) History of Violations: Since the Discharger has no prior history of violations, a multiplier of 1.0 has been assigned.
- c) Cleanup and Cooperation: Regional Water Board staff notified the Discharger of the need to install perimeter controls on March 11, June 25, July 8, and July 15, 2020, and in the NOV dated June 18, 2020. Although the Discharger installed some perimeter controls on July 17, 2020, Regional Water Board staff observed that these perimeter controls were inadequately maintained, and therefore ineffective, at inspections on August 3, August 19, October 7, October 15, December 10, December 22, and December 28, 2020, and on January 13, 2021. While the Discharger had adequate perimeter controls at the January 27, 2021 inspection, a City inspector again observed missing perimeter controls on March 23 and April 20, 2021. Therefore, a multiplier of 1.4 was assessed.

Step 5. Total Base Liability

\$66,000 (Initial Liability Amount) x 1.4 (Degree of Culpability) x 1 (History of Violation) x 1.4 (Cleanup and Cooperation) = \$129,360. The statutory maximum penalty is \$120,000.

Because the Total Base Liability Amount is greater than the statutory maximum penalty, this violation is assessed as \$120,000.

Violation 4: Failure to Implement Good Housekeeping Measures for Concrete Spills

The Discharger violated Attachment D, sections B.1 and B.2 of the General Permit by failing to properly contain chemicals, failing to clean up both dried and wet concrete spills, and allowing construction debris to pile up on the Site without appropriate BMPs to prevent the discharge of pollutants to the ground.

Sections B.2.g and B.2.h of Attachment D require that Risk Level 2 dischargers implement good housekeeping measures for waste management, including, but not limited to (g) implementing procedures that effectively address hazardous and non-hazardous spills, and (h) developing a spill response and implementation element of the SWPPP prior to

commencement of construction activities. Section B.2.h.i states that equipment and materials for cleanup of spills shall be available on site and that spills and leaks shall be cleaned up immediately and disposed of properly. Section B.2.i states that Risk Level 2 dischargers shall ensure the containment of concrete washout areas and other washout areas that may contain additional pollutants so there is no discharge into the underlying soil and onto the surrounding areas.

Section B.1.c of Attachment D requires that dischargers implement good site management measures for construction materials that could potentially be a threat to water quality if discharged, including but not limited to storing chemicals in watertight containers (with appropriate secondary containment to prevent any spillage or leakage) or in a storage shed (completely enclosed).

On March 11, 2020, Regional Water Board staff inspected the Site and observed both wet and dried concrete spills. The June 18, 2020 NOV informed the Discharger of the violation and the requirement to clean and dispose of all wet and dried stucco and concrete for the remainder of the project. During follow-up inspections on June 25, July 8, July 15, August 3, August 19, October 7, October 15, December 10, December 22, and December 28, 2020, and January 13, 2021, Regional Water Board staff observed additional concrete spills around the Site. During the inspection on January 27, 2021, Regional Water Board staff observed that concrete spills had been cleaned around the Site. This violation was observed on 12 days: March 11, June 25, July 8, July 15, August 3, August 19, October 7, October 15, December 10, December 22, December 28, 2020, and January 13, 2021. Therefore, this violation is assessed for 12 days.

On March 23 and April 20, 2021, a City inspector visited the Site and observed concrete and other waste on a sidewalk. The City's inspector also noted an inadequately contained drum of hazardous material at the April 20 inspection.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to this violation.

Step 2. Assessment for Discharge Violations

This factor does not apply to this violation.

Step 3. Per Day Assessment for Non-Discharge Violations

a) Potential for Harm: Moderate

Failure to implement good housekeeping measures could result in the discharge of pollutants from the Site into the Alhambra Wash and the Rio Hondo Channel, which flows into Reach 2 of the Los Angeles River. Concrete

spills and construction debris are pollutant sources, and when not properly contained and cleaned up, could be discharged from the Site and pollute the Los Angeles River. This poses a threat to beneficial uses such as wildlife habitat and contact and non-body contact recreation. Therefore, the potential for harm for this violation is characterized as **moderate**.

b) Deviation from Requirement: Major

The General Permit requires dischargers to implement good housekeeping measures to clean up concrete spills immediately and contain and protect debris piles from wind and rain. However, Regional Water Board staff observed concrete spills and construction debris at 12 inspections. Therefore, the Deviation from Requirement was characterized as **major**.

c) Per Day Factor

For moderate potential for harm and major Deviation from Requirement, the Per Day Factor ranges from 0.4-0.7. The mid-range Per Day Factor of 0.55 has been selected.

d) Initial Liability Amount

$0.55 \text{ (Per Day Factor)} \times 12 \text{ (days of violation)} \times \$10,000 \text{ (Statutory Maximum Liability)} = \$66,000.$

Step 4. Adjustment Factors

a) Degree of Culpability: The Discharger did not implement good housekeeping measures on the Site, such as a bermed area, and failed to clean up spills and dispose of construction debris. Despite efforts to clean up some spills, there were concrete spills observed at 12 inspections, demonstrating, at best, negligence. Therefore, a multiplier of 1.3 was assessed.

b) History of Violations: Since the Discharger has no prior history of violations, a multiplier of 1.0 has been assigned.

c) Cleanup and Cooperation: The Discharger was notified of the requirement to implement good housekeeping measures for concrete spills and debris during the initial inspection on March 11, 2020, the June 18, 2020 NOV, and follow-up inspections on June 25, July 8, July 15, August 3, August 19, October 7, October 15, December 10, December 22, December 28, 2020, and January 13, 2021. Regional Water Board staff also observed new concrete spills at each of these ten follow-up inspections. In addition, on March 23 and April 20, 2021, a City inspector saw concrete and other waste on the sidewalk, as well as an

improperly contained drum of hazardous material at the Site. Therefore, a multiplier of 1.4 was assessed.

Step 5. Total Base Liability

\$66,000 (Initial Liability Amount) x 1.3 (Degree of Culpability) x 1 (History of Violation) x 1.4 (Cleanup and Cooperation) = \$120,120. The statutory maximum penalty is \$120,000.

Because the Total Base Liability Amount is greater than the statutory maximum penalty, this violation is assessed as \$120,000.

Violation 5: Failure to Implement Good Housekeeping Measures for Trash and Debris.

The Discharger violated Attachment D, section B.6 of the General Permit by failing to implement good housekeeping to control the air deposition of Site materials.

Section B.6 states that Risk Level 2 dischargers shall implement good housekeeping measures on the construction site to control the air deposition of site materials and from site operations. Such particulates can include, but are not limited to, sediment, nutrients, trash, metals, bacteria, oil and grease, and organics.

On June 25, 2020, Regional Water Board staff inspected the Site and observed poor housekeeping measures for trash and debris. The Discharger was notified of the violation and told that it needed to follow the General Permit requirements to keep the Site clean. During follow-up inspections on July 8, July 15, August 3, August 19, October 7, October 15, December 10, December 22, and December 28, 2020, and January 13, 2021, Regional Water Board staff observed additional poor housekeeping violations at the Site, including an oily bucket and an oil drum without appropriate containment BMPs. This violation was observed on 11 days: June 25, July 8, July 15, August 3, August 19, October 7, October 15, December 10, December 22, and December 28, 2020, and January 13, 2021. Therefore, this violation was assessed for 11 days.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to this violation.

Step 2. Assessment for Discharge Violations

This factor does not apply to this violation.

Step 3. Per Day Assessment for Non-Discharge Violations

a) Potential for Harm: Major

The Site's discharge flows to the Alhambra Wash, which flows into the Rio Hondo Channel and then the Los Angeles River, which is on the Clean Water Act Section 303 (d) list of impaired water bodies for impairment by oil, trash, bacteria, ammonia, nutrients, and metals. The Discharger's lack of good housekeeping measures to control the air deposition of trash poses a high risk of harm to water bodies, because trash from the Site can easily blow into the Alhambra Wash and ultimately reach the Los Angeles River. Trash can also affect the beneficial uses of the Los Angeles River by causing harm to wildlife habitats, transporting chemical pollutants, threatening aquatic life, and interfering with human use. The potential for harm for this violation is characterized as **major**.

b) Deviation from Requirement: Major

The General Permit requires the Discharger to implement housekeeping practices and BMPs to control trash on Site. The Discharger did not have controls or containment in place for trash and debris, resulting in the accumulation and migration of trash and debris on Site. Therefore, the Deviation from Requirement is characterized as **major**.

c) Per Day Factor

For a major Potential for Harm and major Deviation from Requirement the per-day factor ranges from 0.7-1.0. For Violation 10, the mid-range Per Day Factor of 0.85 has been assessed.

d) Initial Liability Amount

$0.85 \text{ (Per Day Factor)} \times 11 \text{ (days of violation)} \times \$10,000 \text{ (Statutory Maximum Liability)} = \$93,500.$

Step 4. Adjustment Factors

a) Degree of Culpability: The Site lacked housekeeping measures to contain trash and debris that had built up around the Site. Therefore, the trash and debris buildup were likely the result of passive negligence and a multiplier of 1.2 was assessed.

b) History of Violations: Since the Discharger has no prior history of violations, a multiplier of 1.0 has been assigned.

c) Cleanup and Cooperation: The Discharger cleaned the trash at the Site after the October 15, 2020 inspection. However, the oily bucket and debris piles were observed at ten subsequent inspections. Therefore, a multiplier of 1.4 was assessed.

Step 5. Total Base Liability

\$93,500 (Initial Liability Amount) x 1.2 (Degree of Culpability) x 1.4 (Cleanup and Cooperation) x 1 (History of Violation) = \$157,080. The statutory maximum penalty is \$110,000.

Because the Total Base Liability Amount is greater than the statutory maximum penalty, this violation is assessed at \$110,000.

Table 1: Total Base Liability for all Violations				
Violation	Violation Description	Proposed Liability	Maximum Liability	No. of Days
1	Unauthorized Discharge of Sediment in Stormwater	\$201,077	\$394,580	1
2	Failure to Ensure that Inspections/ Maintenance/ Repairs/ Sampling were done by a Qualified SWPPP Practitioner	\$317,460	\$1,110,000	111
3	Failure to Implement Perimeter Controls	\$120,000	\$120,000	12
4	Failure to Implement Good Housekeeping Measures for Concrete Spills	\$120,000	\$120,000	12
5	Failure to Implement Good Housekeeping Measures for Trash, Debris, and an Oily Bucket Without BMPs	\$110,000	\$110,000	11
Total		\$868,537	\$1,854,580	147

Step 6. Ability to Pay

A violator's ability to pay an administrative civil liability is determined by its revenues and assets. The Total Base Liability Amount may be adjusted to address ability to pay or to continue in business if the Regional Water Board has sufficient financial information necessary to assess the violator's ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on the violator's ability to continue in business.

As set forth in Section I, paragraph 4 of Proposed Stipulated Order No. R4-2024-0323 (Stipulated Order), the Prosecution Team's financial expert has determined that the Discharger is unable to pay the liability proposed in this Attachment, or any substantial amount beyond what is proposed in the Stipulated Order. A copy of the Prosecution Team's expert report is available upon request.

Step 7. Economic Benefit

Pursuant to Water Code section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute a violation. Information on the violations provided by the Regional Water Board staff identified avoided and delayed expenses that have benefited the Discharger. The alleged violations of the General Permit are identified above.

For Violation 1, the CGP prohibits all discharges except for storm water and non-storm water discharged specifically authorized by the CGP or another NPDES permit. For the purpose of this economic benefit analysis, it is assumed that the unauthorized discharge would have been prevented by proper BMPs and is therefore included in the subsequent violations.

For Violation 2, the SWPPP requires that the Discharger have a QSP perform inspections weekly, within 48 hours prior to a rain event, every 24 hours during extended rain events, within 48 hours after a rain event, and quarterly for non-stormwater discharges. The non-compliance date is when construction began on July 15, 2015. For this analysis, a conservative approach is taken, and it is assumed that there were no qualifying rain events, and that inspections were completed once a QSP was retained on June 30, 2020. Therefore, the economic benefit is the avoided cost of performing weekly and quarterly QSP inspections during the period of non-compliance. Each QSP inspection is assumed to take two hours. From this, it is estimated that 258 weekly inspections and 19 quarterly inspections were avoided, resulting in an avoided cost of \$8,243.52 per year, for approximately 5 years.

For Violation 3, the General Permit requires that the Discharger implement perimeter control BMPs. The SWPPP identified that sandbag barriers and fiber rolls would be used

as perimeter control during the entirety of the project. On March 11, 2020, Regional Water Board staff observed that there were inadequate perimeter controls at the Site. The Regional Water Board issued an NOV to the Discharger on June 18, 2020 notifying them that there were ineffective perimeter controls implemented at the Site. On July 17, 2020, the Dischargers responded to the NOV showing that gravel bags were placed around the perimeter of the Site. Subsequent inspection reports show that gravel bags were not adequately installed or maintained, as evidenced by sediment outside of the project boundary. The total length of perimeter control needed is approximately 1,253 feet. The economic benefit is the delayed cost of implementing adequate perimeter controls and the avoided cost of maintaining the perimeter control. The cost to implement the gravel bags along the perimeter of the Site resulted in a delayed cost of \$2,668.89. For perimeter control maintenance, it is assumed that maintenance is 10% of the implementation cost every 6 months, resulting in an avoided cost of \$533.87/year, over the course of approximately 5 years.

For Violation 4, the CGP requires the discharger to implement good housekeeping measures for waste management. Regional Water Board staff observed continuous concrete spills around the construction site starting on March 11, 2020, resulting in a 12-day violation. It is assumed that a 16.5 cubic yard container was needed during the 12 days of violation in order to provide enough capacity for concrete waste. The economic benefit is the avoided cost of having adequate capacity for concrete removal, resulting in an avoided cost of \$1,805.11.

For Violation 5, the CGP requires Risk Level 2 dischargers to implement good site management (i.e., “housekeeping”) measures on the construction site to control the air deposition of site materials and from site operations including sediment, nutrients, trash, metals, bacteria, oil and grease and organics. Regional Water Board staff observed this violation on June 25, 2020, resulting in an 11-day violation. It is assumed that a 16.5 cubic yard container was needed for the 11 days of violation in order to provide enough capacity for trash and debris. The economic benefit is the avoided cost of having adequate capacity for trash and debris removal, resulting in an avoided cost of \$1,654.68.

Based on specific assumptions within the model, the total economic benefit of non-compliance was determined to be approximately \$33,913. The Enforcement Policy states (pg. 21) that the total liability shall be at least 10% higher than the economic benefit, “so that liabilities are not construed as the cost of doing business and the assessed liability provides meaningful deterrent to future violations.” Therefore, the minimum total liability associated with the economic benefit is approximately \$37,304.30.

Step 8. Other Factors as Justice May Require

In accordance with Step 8 of the Enforcement Policy, the Total Base Liability Amount may be adjusted under the provision for “other factors as justice may require” if express

findings are made to justify this. The cost of investigation and enforcement are considered “other factors as justice may require,” and are taken into account in the Total Base Liability Amount to further deterrence. Here, the Regional Board accrued at least \$11,868 in staff costs associated with the investigation and preparation of this penalty methodology. It is therefore appropriate to increase the Total Base Liability Amount for the alleged violations by \$11,868. This increase is in consideration of the costs of investigation and enforcement relative to the Total Base Liability Amount, is warranted given the totality of the circumstances, and is intended to serve as a general and specific deterrent against further violations.

Step 9. Maximum and Minimum Liability Amounts

Minimum Liability Amount: Economic benefit plus 10% or \$37,304.30

Maximum Liability Amount: \$1,854,580

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. Based on the foregoing analysis, and consistent with the Enforcement Policy, the final proposed Administrative Civil Liability is \$880,405 (\$868,537 + \$11,868 staff costs).