

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R4-2022-0251
IN THE MATTER OF
GARVEY GARDEN PLAZA, LLC et al.
GARVEY GARDEN PLAZA
WDID 4 19C375389**

Failure to Comply with State Water Resources Control Board
Order No. 2009-0009-DWQ

This Administrative Civil Liability Complaint (Complaint) is issued by the Assistant Executive Officer of the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) to Garvey Garden Plaza LLC, Yang Ming Construction Inc., and Jimmy Duong (together, Dischargers) pursuant to California Water Code (Water Code) section 13385, which authorizes the imposition of civil liability, Water Code section 13323, which authorizes the Executive Officer to issue this Complaint, and Water Code Division 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case, the Assistant Executive Officer. This Complaint proposes imposing an administrative civil liability of \$1,989,380.18 based on evidence that the Dischargers failed to implement the requirements of State Water Resources Control Board (State Water Board) Order No. 2009-0009-DWQ, as amended by Order No. 2010-0014-DWQ and 2012-0006-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (General Permit) while conducting construction work on the Garvey Garden Plaza, located at 8408 Garvey Avenue, Rosemead, California (Site).

The Assistant Executive Officer of the Los Angeles Water Board alleges the following:

BACKGROUND

1. On February 9, 2016, Jimmy Duong, as General Manager and on behalf of Garvey Garden Plaza LLC, filed a Notice of Intent (NOI) to comply with the General Permit.
2. The NOI identified the Site as a Risk Level 2 construction site, thus acknowledging that the Dischargers must implement the requirements in Attachment D of the General Permit to achieve Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT). The State Water Board processed the NOI and assigned Waste Discharge Identification (WDID) No. 4 19C375389 to the Site.

3. General Permit section V.A.2. requires the implementation of best management practices (BMPs) using BAT/BCT to reduce pollution from storm water runoff from construction sites.
4. The Site is roughly one mile west of the Rio Hondo Channel, which flows into Reach 2 of the Los Angeles River. The Water Quality Control Plan for the Los Angeles Basin (Basin Plan) designates the following beneficial uses for Reach 2 of the Los Angeles River:
 - a. Municipal and domestic water supply (MUN)
 - b. Industrial service supply (IND)
 - c. Ground water recharge (GWR)
 - d. Warm freshwater habitat
 - e. Body and non-body contact recreation (REC1)
 - f. Wildlife habitat (WILD)
5. Reach 2 of the Los Angeles River is impaired due to ammonia, nitrogen components, cadmium, copper, lead, zinc, and trash.
6. On October 1, 2019, numerous violations of the General Permit were observed at the Site by Los Angeles Water Board staff. Los Angeles Water Board staff conducted a follow-up inspection of the Site on October 10, 2019, and again noted multiple General Permit violations. On January 16, 2020, the Los Angeles Water Board issued a Notice of Violation (NOV) to William Duong, on behalf of Garvey Garden Plaza LLC, and Jimmy Duong. Los Angeles Water Board staff conducted additional inspections of the Site on March 11, June 18, June 25, July 8, July 15, August 3, August 19, October 7, December 22, and December 28, 2020. At each of these inspections, Los Angeles Water Board staff observed violations of the General Permit. The details of these violations are provided in Attachment A. A summary of each of the alleged violations is provided below.

ALLEGED VIOLATIONS

7. **Violation 1:** The Dischargers are alleged to have violated Discharge Prohibition section III.B of the General Permit by discharging 9,283 gallons of sediment-laden storm water from the Site on December 28, 2020 without appropriate perimeter control BMPs as required by the General Permit.
8. **Violation 2:** The Dischargers are alleged to have violated section XIV.C of the General Permit by failing to make the Storm Water Pollution Prevention Plan (SWPPP) available at the Site for two hundred and eighty-eight (288) days, beginning on October 1, 2019 and continuing to, and including, July 14, 2020.

9. **Violation 3:** The Dischargers are alleged to have violated section I subsection F.44, section VII subsection B.2, and Attachment D, sections G and I of the General Permit by failing to ensure that all inspections, maintenance, repairs, and sampling activities at the Site were performed or supervised by a Qualified SWPPP Practitioner (QSP) for two hundred and seventy-two (272) days, beginning on October 1, 2019 and continuing to, and including, June 28, 2020.
10. **Violation 4:** The Dischargers are alleged to have violated section I subsection D.36, and section VIII of the General Permit by failing to register the Site with the correct Risk Assessment and failing to update the construction completion date in the Stormwater Multiple Application and Report Tracking System (SMARTS) database for nine hundred and sixteen (916) days, beginning on October 1, 2019 and continuing to, and including, April 3, 2022, the date construction of the Site was complete.
11. **Violation 5:** The Dischargers are alleged to have violated Attachment D, section E.1 of the General Permit by failing to employ perimeter controls BMPs throughout the Site for twelve (12) days, on October 1 and October 10, 2019, and on March 11, June 18, June 25, July 8, July 15, August 3, August 19, October 7, December 22, and December 28, 2020. On each of these days, Los Angeles Water Board staff observed missing perimeter controls and/or straw wattles that were not trenched and staked in accordance with the CASQA handbook.
12. **Violation 6:** The Dischargers are alleged to have violated Attachment D, section B.2 of the General Permit by failing to clean up concrete spills at the Site and by allowing construction debris to pile up across the Site without appropriate BMPs for nine (9) days, on October 1 and October 10, 2019, and on March 11, June 18, June 25, July 8, July 15, August 3, and August 19, 2020.
13. **Violation 7:** The Dischargers are alleged to have violated Attachment D, section B.2 subsection b of the General Permit by failing to install secondary containment on portable toilets for two (2) days, on October 1 and October 10, 2019.
14. **Violation 8:** The Dischargers are alleged to have violated Attachment D, section E.1 of the General Permit by failing to stabilize the construction entrance and exit for two hundred and eighty-one (281) days, beginning on October 1, 2019 and continuing to, and including, July 7, 2020.
15. **Violation 9:** The Dischargers are alleged to have violated Attachment D, section B.6 of the General Permit by failing to implement good housekeeping to control the air deposition of Site materials, and specifically having work areas with large amounts of uncontained trash. This violation occurred for one (1) day, on October 1, 2019.

LEGAL AND REGULATORY CONSIDERATIONS

16. The General Permit was issued pursuant Clean Water Act section 402 and implementing regulations adopted by the US EPA and chapter 5.5, division 7 of the Water Code (commencing with section 13370), including Water Code section 13376. The General Permit serves as an NPDES permit for discharges of storm water runoff from the Site.

Water Code and Clean Water Act

17. Water Code Section 13385, subdivision (a) states in relevant part:
A person who violates any of the following shall be liable civilly in accordance with this section:
- (1) Section 13375 or 13376.
 - (2) A waste discharge requirement ... issued pursuant to this chapter [chapter 5.5] [...]
 - (5) A requirement of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the federal Clean Water Act (33 U.S.C. Sec. 1311, 1312, 1316, 1317, 1318, 1341, or 1345), as amended.
18. Water Code Section 13385, subdivision (c) states in relevant part:
Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:
- (1) Ten thousand dollars (\$10,000) 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 ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
19. Each of the alleged violations described above gives rise to liability under Water Code section 13385.
20. Pursuant to Water Code Section 13385, subdivision (e), in determining the amount of civil liability [imposed pursuant to Section 13385], the Los Angeles Water Board shall take into consideration “the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require.”

Dischargers' Liability

21. The General Permit states that the "Legally Responsible Person" is, typically, the project proponent, and qualifies as a Legally Responsible Person any person that possesses a real property interest in the land. (General Permit, Appendix 5, p. 5.) The General Permit defines "Discharger" as the Legally Responsible Person or entity subject to the General Permit. (Id. at 4.)
22. Garvey Garden Plaza LLC is a California limited liability corporation that is liable for each of the violations alleged herein. Garvey Garden Plaza LLC is the Legally Responsible Person as identified in the NOI filed to obtain coverage under the General Permit. At all times relevant to this action, it has also been the owner of the subject property.
23. Yang Ming Construction Inc. (Yang Ming) is liable for each of the violations alleged herein as an operator of the Site. A site operator may be directly liable for its own actions where it manages, directs, or conducts operations specifically related to pollution or decisions about compliance with environmental regulations. (*U.S. v. Bestfoods* (*Bestfoods*) (1998) 524 U.S. 51, 66-67.) The Clean Water Act "imposes liability both on the party who actually performed the work and on the party with responsibility for or control over performance of the work. [Citation.] Further, the [Clean Water Act] imposes strict liability. The 'no discharge' prohibition of Section 301 was 'written without regard to intentionality making the person responsible for the discharge of any pollutant strictly liable.'" (*U.S. v. Lambert* (S.D.W. Va. 1996) 915 F.Supp. 797, 802; see also *United States v. Sweeney* (E.D. Cal. 2020) 483 F.Supp.3d 871, 910 [citation omitted].) The Clean Water Act's imposition of liability on "any person" is "broad enough to cover permittees and non-permittees alike." (*U.S. v. Cooper* (9th Cir. 1999) 173 F.3d 1192, 1201.)
24. Yang Ming is a California corporation that, at all times relevant to this action, managed, directed, and conducted operations related to storm water management and compliance with General Permit requirements. Yang Ming was the General Contractor for the Site. As General Contractor, Yang Ming furnished labor and materials for the Site, submitted permit applications for the Site, and secured and managed subcontractors for the Site, including subcontractors responsible for General Permit compliance and storm water management at the Site. Among other things, Yang Ming contracted with a QSP for its services at the Site, and invoices for QSP services were issued to and paid by Yang Ming. Further, Yang Ming officers and employees communicated with the Los Angeles Water Board regarding General Permit compliance and controlled storm water operations at the Site.
25. Jimmy Duong (Mr. Duong) is liable for each of the violations alleged herein based on the responsible corporate officer doctrine. That doctrine holds that a corporate

officer may be liable for the violations of the corporation if the following three conditions exist: (1) the individual must be in a position of responsibility which allows the person of responsibility to influence corporate policies or activities; (2) there must be a nexus between the individual's position and the violation in question such that the individual could have influenced the corporate actions which constituted the violations; and (3) the individual's actions or inactions facilitated the violations. *People v. Roscoe* (2008) 169 Cal.App.4th 829, 839; *U.S. v. Iverson* (9th Cir. 1998) 162 F.3d 1015, 1024 [applying doctrine to federal Clean Water Act]; see *In re. Original Sixteen to One Mine, Inc. State Water Board Order No. WQO 2003-0006*, pp. 6-7; *In re: Mr. Kelly Engineer/All Star Gas, State Water Board Order No. WQO 2002-0001*, p. 5.

26. Mr. Duong was in a position of responsibility that allowed him to influence corporate policies and activities. Mr. Duong is the Chief Executive Officer (CEO) and a director of Yang Ming Construction Inc., the General Contractor for the Site. Mr. Duong had the ability to hire, and did hire, entities and/or individuals tasked with storm water management and compliance with General Permit requirements. Mr. Duong had the ability to control activities at the Site and did, in fact, exercise control and oversight of storm water activities. Specifically, on several occasions, Mr. Duong purchased or rented materials to be used as BMPs at the Site. In addition, in June and/or July 2020, Mr. Duong contracted with a QSP for the Site. Mr. Duong communicated regularly with the QSP and paid invoices from the QSP. Mr. Duong served as the contact person for Los Angeles Water Board staff and spoke with Los Angeles Water Board inspectors and Site superintendents about violations of the General Permit identified by Los Angeles Water Board inspectors. In his role as CEO of Yang Ming Construction Inc., Mr. Duong had the responsibility to ensure that the work conducted at the Site adhered to applicable laws, including the General Permit. Mr. Duong could have timely purchased BMPs, as well as timely hired storm water professionals to ensure compliance with the General Permit but failed to do so. Accordingly, Jimmy Duong is liable for the violations cited herein.

Water Quality Enforcement Policy

27. On April 4, 2017, the State Water Board adopted Resolution No. 2017-0020, which adopted the 2017 Water Quality Enforcement Policy (2017 Enforcement Policy). The 2017 Enforcement Policy was approved by the Office of Administrative Law and became effective on October 5, 2017. The 2017 Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing an administrative civil liability as outlined in Water Code section 13385, subdivision (e) and Water Code section 13323.

28. The Prosecution Team developed the proposed administrative civil liability based on the 2017 Enforcement Policy.

California Environmental Quality Act

29. Issuance of this Complaint to enforce Water Code Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, §21000 et seq), in accordance with California Code of Regulations, title 14, section 15321, subdivision (a)(2).

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

30. The Prosecution Team proposes an administrative civil liability of \$1,986,071.70 for Violations 1 through 9, as detailed in Attachment A to this Complaint. This proposed administrative civil liability was derived using the penalty methodology in the 2017 Enforcement Policy. The proposed administrative civil liability takes into account the factors described in Water Code section 13385, subdivision (e), such as the Dischargers' culpability, history of violations, ability to pay, and other factors as justice may require.
31. Notwithstanding the issuance of this Complaint, the Los Angeles Water Board retains the authority to assess additional administrative civil liability for violations which have not yet been assessed or for violations that may subsequently occur.

MAXIMUM STATUTORY LIABILITY

32. Pursuant to Water Code section 13385, subdivision (c), the statutory maximum administrative civil liability for each violation in Violations 1 through 9 is \$10,000 per day of violation, plus \$10 for each gallon discharged and not cleaned up in excess of 1,000 gallons.
33. Violation 1 describes the discharge of 9,283 gallons of sediment-laden storm water from the Site on December 28, 2020. The volume discharged and not cleaned up in excess of 1,000 gallons is 8,283 gallons. The statutory maximum liability for Violation 1 is \$92,830 [$\$10 \times 8,283$ gallons] + [(10,000/day) x 1 day]
34. Violation 2 describes the Dischargers' failure to make the SWPPP available at the Site for two hundred and eighty-eight (288) days, beginning on October 1, 2019 and continuing to, and including, July 14, 2020. The statutory maximum liability for Violation 2 is \$2,880,000 [(\$10,000/day) x 288 days].
35. Violation 3 describes the Dischargers' failure to ensure inspections, maintenance, repairs, and sampling were performed or supervised by a QSP for two hundred and seventy-two (272) days, beginning on October 1, 2019 and continuing to, and

including, June 28, 2020. The statutory maximum liability for Violation 3 is \$2,720,000 [(\$10,000/day) x 272 days].

36. Violation 4 describes the Dischargers' failure to register the Site with the correct Risk Assessment and update the construction end date on SMARTS for nine hundred and sixteen (916) days, beginning on October 1, 2019 and continuing to, and including April 3, 2022. The statutory maximum liability for Violation 4 is \$9,160,000 [(\$10,000/day) x 916 days].
37. Violation 5 describes the Dischargers' failure to implement perimeter controls along the Site for twelve (12) days, on October 1 and October 10, 2019, and on March 11, June 18, June 25, July 8, July 15, August 3, August 19, October 7, December 22, and December 28, 2020. The statutory maximum liability for Violation 5 is \$120,000 [(\$10,000/day) x 12 days].
38. Violation 6 describes the Dischargers' failure to implement good housekeeping measures for concrete and construction debris for nine (9) days, on October 1 and October 10, 2019, and on March 11, June 18, June 25, July 8, July 15, August 3, and August 19, 2020. The statutory maximum liability for Violation 6 is \$90,000 [(\$10,000/day x 9 days]
39. Violation 7 describes the Dischargers' failure to install secondary containment on portable toilets for two (2) days, on October 1 and October 10, 2019. The statutory maximum liability for Violation 7 is \$20,000 [(\$10,000/day) x 2 days].
40. Violation 8 describes the Dischargers' failure to implement a stabilized construction exit and entrance for two hundred and eighty-one (281) days, beginning on October 1, 2019 and continuing to, and including, July 7, 2020. The statutory maximum liability for Violation 7 is \$2,810,000 [(\$10,000/day) x 281 days].
41. Violation 9 describes the Dischargers' failure to implement good housekeeping measures to control the air deposition of Site materials by failing to contain trash. This violation occurred for one (1) day, October 1, 2019. The statutory maximum liability for Violation 9 is \$10,000 [(\$10,000/day) x 1 day].
42. The proposed administrative civil liability considers the statutory maximum liability for each violation.

MINIMUM LIABILITY

43. Water Code section 13385, subdivision (e) requires that when pursuing civil liability under section 13385, "[a]t a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation." The 2017 Enforcement Policy further requires the Los Angeles Water

Board to recover, at a minimum, the economic benefit plus 10%. The economic benefit for the violations alleged is approximately \$4,280. The minimum liability that may be imposed is the economic benefit plus 10%, which is equal to \$4,708. The proposed administrative civil liability is above the minimum liability amount.

THE DISCHARGERS ARE HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Los Angeles Water Board proposes an administrative civil liability in the amount of \$1,989,380.18. The amount of the proposed administrative civil liability is based upon a review of the factors cited in Water Code sections 13385, subdivision (e), as well as the 2017 Enforcement Policy.
2. A hearing on this matter will be conducted by the Los Angeles Water Board at a hearing scheduled on December 7, 2022, unless the Dischargers do any of the following by the September 26, 2022 deadline to submit the Waiver Form, as described in the Hearing Procedures.
 - a. The Dischargers waive the right to a hearing by completing the attached Waiver Form (checking the box next to Option 1) and returning it to the Los Angeles Water Board, along with payment for the proposed administrative civil liability of \$1,989,380.18; or
 - b. The Los Angeles Water Board agrees to postpone any necessary hearing after the Dischargers request to engage in settlement discussions by checking the box next to Option 2 on the attached Waiver Form and returning it to the Los Angeles Water Board; or
 - c. The Los Angeles Water Board agrees to postpone any necessary hearing after the Dischargers request a delay by checking the box next to Option 3 on the attached Waiver Form and returning it to the Los Angeles Water Board along with a letter describing the items to be discussed.
3. If a hearing is held, it will be governed by Hearing Procedures that will be issued by the Advisory Team. During the hearing, the Los Angeles Water Board will hear testimony and arguments and affirm, reject, or modify the proposed administrative civil liability, or determine whether to refer the matter to the Attorney General for recovery of judicial civil liability.

4. The Assistant Executive Officer reserves the right to amend the proposed amount of administrative civil liability to conform to the evidence presented.

9/9/2022

Hugh Marley
Assistant Executive Officer

Date

Attachment A: Penalty Calculation Methodology
Waiver Form
Attachment B: Economic Benefit Analysis

Attachment A – Specific Factors Considered
Administrative Civil Liability Complaint No. R4-2022-0251
Garvey Garden Plaza LLC
Yang Ming Construction Inc.
Jimmy Duong
WDID: 4 19C375389

Garvey Garden Plaza LLC, Yang Ming Construction Inc., and Mr. Jimmy Duong (collectively, the Dischargers) are 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 or Permit), while conducting construction work on the Garvey Garden Plaza, WDID 4 19C375389, located at 8408 Garvey Avenue, Rosemead, California 91770 (Site).

Factors required to be considered in determining the amount of administrative civil liability pursuant to Water Code section 13385, subdivision (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/2017/0404_17_9_final%20adopted%20policy.pdf.

The Site was enrolled under the General Permit in February 2016 and listed in the Storm Water Pollution Prevention Plan (SWPPP) as a Risk Level 2 site that anticipated completion of the construction project on December 1, 2017. Discharge from the Site flows to the Rio Hondo Channel, which flows into Reach 2 of the Los Angeles River; Reach 2 of the Los Angeles River is impaired due to ammonia, nitrogen components, cadmium, copper, lead, zinc and trash. The beneficial uses of the Los Angeles River include municipal and domestic water supply, industrial service supply, ground water recharge, warm freshwater habitat, contact and non-body contact recreation, and wildlife habitats that provide homes for fish species including the common carp, largemouth bass, tilapia, rainbow trout, and fathead minnow, as well as insects, bats, swallows, swifts, ducks, and other migrating birds.

On October 1, 2019, the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) inspected the Site and observed numerous violations of the General Permit, including the following: the SWPPP was not on Site; there was no Qualified SWPPP Practitioner (QSP) conducting or supervising Site inspections, maintenance, repairs, and sampling; the Stormwater Multiple Application and Report Tracking System (SMARTS)

database contained the incorrect Risk Level and construction completion date for the Site; and numerous Best Management Practices (BMPs) were missing across the Site. A follow-up inspection on October 10, 2019 revealed that the Dischargers had not corrected most of these violations. On January 16, 2020, the Los Angeles Water Board issued a Notice of Violation (NOV) to Jimmy Duong and Garvey Garden Plaza LLC. On February 25, 2020, the Dischargers responded to the NOV by only partially correcting the violations. Los Angeles Water Board staff conducted additional inspections on March 11, June 18, June 25, July 8, July 15, August 3, August 19, and October 7, 2020, and observed continued violations of numerous Permit requirements. In October 2020, the Los Angeles Water Board and Dischargers agreed to enter into confidential settlement communications. At subsequent inspections on December 22, and December 28, 2020, Los Angeles Water Board staff inspected the Site and observed missing or inadequate perimeter control BMPs. On December 28, 2020, Los Angeles Water Board staff observed the discharge of sediment-laden water from the Site. On January 27, 2022, Los Angeles Water Board staff conducted a Notice of Termination (NOT) inspection to verify whether the Site has completed construction and found that the NOT did not meet the conditions for approval. On April 4, 2022, construction was completed, and on July 21, 2022, the Notice of Termination (NOT) was processed.

Violation 1: Unauthorized Discharge of Sediment-Laden Storm Water from the Site

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, Los Angeles Water Board staff inspected the Site during a qualifying storm event (QSE) and observed sediment-laden storm water discharging from the southwest corner of the Site onto Delta Avenue. Los Angeles Water Board staff also observed sediment-laden storm water being pumped out of a sump and onto the driveway, which then flowed to Delta Avenue. (Exhibit 1.) 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

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.)

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

Sediment-laden storm water and non-storm water 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 such as nutrients, metals, and oils, which can be toxic to aquatic organisms. Thus, the discharge of sediment-laden storm water 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 Los Angeles 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 to 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).

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/.

The Site discharges 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 supply, ground water recharge, warm freshwater habitat, contact and non-body contact recreation, and wildlife habitat that provides homes for fish species including the common carp, largemouth bass, tilapia, rainbow trout, and fathead minnow, as well as 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 from the Site 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.

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 onto Delta Avenue 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

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://www.researchgate.net/profile/Donald-Huggins/publication/268064214_Impact_of_Sedimentation_on_Biological_Resources_A_Sediment_Issue_White_Paper_Report_prepared_for_the_State_of_Kansas_of_the_Kansas_Biological_Survey/links/5481c97c0cf2792435d88ae6/Impact-of-Sedimentation-on-Biological-Resources-A-Sediment-Issue-White-Paper-Report-prepared-for-the-State-of-Kansas-of-the-Kansas-Biological-Survey.pdf

Step 2. Assessment for Discharge Violations

Per Gallon Assessment for Discharge Violations

When there is a discharge, the Los Angeles 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 Enforcement Policy (p.16) defines a major Deviation from Requirement as follows: “The requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).”

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, Los Angeles Water Board staff observed sediment-laden water discharging from the Site on December 28, 2020. At the October 1 and 10, 2019 and the March 11 and June 18, 2020 inspections, the Site was observed without adequate perimeter controls. In subsequent inspections on June 25, July 8, July 15, August 3, August 19, October 7, December 22, and December 28, 2020, perimeter controls were missing or were improperly installed; straw wattles were not installed according to the CASQA handbook, as the Dischargers failed to trench and stake them in to effectively prevent sediment from leaving the Site. This resulted in the discharge of sediment-laden water off the Site. 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.

Based on information provided by the Dischargers’ consultant SLR International Corporation, approximately 9,283 gallons of sediment-laden storm water discharged off the Site, resulting in the discharge of sediment into the storm drain which leads to the Rio Hondo Channel and ultimately to 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 = 0.28 (Per Gallon Factor) x 8,283 (spill volume – 1,000 gallons) x \$10 per gallon = \$23,192

Per Day Assessment for Discharge Violations

When there is a discharge, the Los Angeles 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 from Requirement 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 moderate 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

\$23,192 (Per Gallon Assessment) + \$2,800 (Per Day Assessment) = \$25,992.40

Step 3. Per Day Assessment for Non-Discharge Violations

This factor does not apply to this violation.

Step 4. Adjustment Factors

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 applies to intentional or negligent behavior. Los Angeles Water Board staff observed missing or inadequately installed perimeter controls at inspections on October 1 and October 1, 2019, and March 11, June 18, June 25, July 8, July 15, August 3, August 19, October

7, December 22, and December 28, 2020. Despite repeated inspections and notifications of these deficiencies, the Dischargers failed to install adequate perimeter control BMPs, resulting in the December 28 discharge. The Dischargers also intentionally pumped sediment-laden storm water from an underground sump onto the street. Therefore, a multiplier of 1.4 was assessed.

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 Dischargers have no prior history of violations, a multiplier of 1.0 has been assigned.

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. Although Los Angeles Water Board staff informed the Dischargers of missing or inadequate perimeter control BMPs at numerous inspections and told them adequate perimeter controls were needed to prevent the discharge of sediment during a rain event, the Dischargers failed to install effective BMPs prior to the December 28 QSE. Therefore, a multiplier of 1.3 was assessed.

Step 5. Total Base Liability

Violation 1

\$25,992.40 (Initial Liability Amount) x 1.4 (Degree of Culpability) x 1 (History of Violation) x 1.3 (Cleanup and Cooperation) = \$47,306.16. The statutory maximum penalty is \$92,830.

Violation 2: Failure to Have a SWPPP Available at the Site

The Dischargers violated General Permit section XIV.C by failing to have a SWPPP available at the Site.

Section XIV.C of the General Permit requires the discharger to make the SWPPP available at the construction site during working hours while construction is occurring and to make it available upon request by a state or municipal inspector.

On October 1, 2019, Los Angeles Water Board staff inspected the Site. The Dischargers failed to make the SWPPP available upon request of the Los Angeles Water Board inspector. At a follow-up inspection on October 10, 2019, Dischargers were still unable to provide a SWPPP upon request. On January 16, 2020, the Los Angeles Water Board issued an NOV, notifying the Dischargers they were not in compliance with the General Permit requirement to have a SWPPP on Site. The Dischargers remained out of compliance with the General Permit requirement at follow-up inspections on March 11, June 18, June 25, and July 8, 2020. Los Angeles Water Board staff discussed General Permit compliance with Mr. Sammis, the Site's Construction Superintendent, on March 11, June 12, and June 18, 2020. Mr. Sammis stated, among other things, that the consultant who prepared the SWPPP no longer worked at the Site, that Mr. Duong had failed to hire a consultant to help address violations of the General Permit, and that he was working with Mr. Duong to address the violations. The Dischargers had a SWPPP on Site at the July 15, 2020 inspection. Therefore, this violation is assessed from October 1, 2019, through July 14, 2020, totaling 288 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

Potential for Harm: Minor

The Enforcement Policy (p.16) defines minor Potential for Harm as follows: "The characteristics of the violation have little or no potential to impair the Water Boards' ability to perform their statutory and regulatory functions, present only a minor threat to beneficial uses, and/or the circumstances of the violation indicate a minor potential for harm."

The SWPPP is a document that identifies pollutants and their sources on site, including sources of sediment associated with construction, construction site erosion, and all other activities associated with construction. The SWPPP also identifies the BMPs, and activities put in place to control and contain these potential pollutants, information on discharges from storm water and construction activity, and ways to either eliminate, control, or treat these discharges.

Because the Dischargers had prepared and submitted a SWPPP on SMARTS, the lack of a SWPPP on Site had a low potential to impair water

bodies in the area or impair the Los Angeles Water Board's ability to perform its regulatory function. Therefore, the Potential for Harm for this violation is characterized as minor.

Deviation from Requirement: Major

The General Permit requires a SWPPP on site during work hours. Yet, the Dischargers did not have a SWPPP on Site from October 1, 2019, through July 8, 2020, and only came into compliance with this Permit requirement on July 15. Therefore, the Deviation from Requirement for this violation is characterized as major.

Per Day Factor

Table 3 of the Enforcement Policy (p.16) is used to determine a "per day" factor for non-discharge violations based on scoring for Potential for Harm and Deviation from Requirement.

For a minor Potential for Harm and major Deviation from Requirement, the per day factor ranges from 0.3-0.4. For Violation 2, the mid-range per day factor of 0.35 has been selected.

Multiple Day Violations:

The Enforcement Policy (p.18) states that for violations that last longer than 30 days, the daily assessment can be less than the calculated daily assessment, provided it is no less than the per day economic benefit, if any, resulting from the violation. For these cases, the Water Boards must make express findings that the violation: a) is not causing daily detrimental impacts to the environment and is not causing daily detrimental impacts to the regulatory program; b) results in no discrete economic benefit from the illegal conduct that can be measured on a daily basis; or c) occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation. If one of the above findings is made, an alternate approach to penalty calculation for multiple day violations may be used. In these cases, the liability shall not be less than an amount that is calculated based on an assessment of the initial Total Base Liability Amount for the first 30 days of the violation, plus an assessment for each 5-day period of violation, until the 60th day, plus an assessment for each 30 days of violation thereafter.

The Water Boards are within their discretion to collapse days at any level deemed appropriate between the maximum suggested number of collapsed days and the actual number of days of violation. Failure to have a SWPPP on Site is not causing daily detrimental impacts to the environment and is not

causing daily detrimental impacts to the regulatory program. Therefore, this 288-day violation (October 1, 2019-July 14, 2020) is assessed for 44 days.

Initial Liability Amount

0.35 (Per Day Factor) x 44 (days of violation) x \$10,000 (Statutory Maximum Liability) = \$154,000.

Step 4. Adjustment Factors

Degree of Culpability:

Although the General Permit clearly requires a SWPPP be available at a site, the Dischargers did not maintain a SWPPP at the Site. This noncompliance is evidence, at best, of a negligent deviation from the standard of care. Therefore, a multiplier of 1.3 was assessed.

History of Violations:

Since the Dischargers have no prior history of violations, a neutral multiplier of 1.0 has been assigned.

Cleanup and Cooperation:

The cleanup and cooperation multiplier ranges from 0.75 to 1.5. The Dischargers were notified a SWPPP must be on Site during each of the 6 inspections that occurred on October 1, 2019, October 10, 2019, March 11, 2020, June 18, 2020, June 25, 2020, and July 8, 2020. The Dischargers were also sent an NOV on January 16, 2020, informing them a SWPPP was missing on Site. Because the Dischargers were notified of the violation on numerous occasions but did not come into compliance with this requirement until July 15, 2020, a multiplier of 1.4 was assessed.

Step 5. Total Base Liability for Violation 2

\$154,000 (Initial Liability Amount) x 1.3 (Degree of Culpability) x 1 (History of Violation) x 1.4 (Cleanup and Cooperation) = \$280,280. The Statutory Maximum Penalty is \$2,880,000.

Violation 3: Failure to Ensure That Inspections, Maintenance, Repairs, and Sampling Were Performed or Supervised by a QSP

The Dischargers violated General Permit section I subsection F.44, section VII subsection B.2 and Attachment D, sections G and I by failing to ensure that all inspections,

maintenance, repairs, and sampling activities at the Site were performed or supervised by a QSP.

Section I subsection F.44 of the General Permit requires dischargers to assign the position of QSP to a person who has received the proper training.

Section VII subsection B.2 in the General Permit states that the name of the currently designated QSP should be included in the most updated version of the SWPPP.

Attachment D, sections G and I of the General Permit highlight the inspection, monitoring, and reporting processes required by the Permit. These requirements include weekly inspections by a QSP or trained personnel and a developed site-specific Construction Site Monitoring Program.

On October 1, 2019, Los Angeles Water Board staff inspected the Site and found the Dischargers failed to ensure all inspections, maintenance, repairs, and sampling activities were performed or supervised by a QSP representing the Dischargers. On October 9, Los Angeles Water Board staff contacted Mr. Duong, who stated the QSD, who was also designated in the SWPPP as the QSP, was fired at the beginning of the project. He further stated he was unaware inspections were required by a QSP, and he would try to find a new QSD and QSP for the project. Yet, the Dischargers remained out of compliance with these Permit requirements during follow-up inspections on October 10, 2019, and March 11, June 18, and June 25, 2020. The January 16, 2020 NOV further notified the Dischargers they were in violation of these General Permit requirements. On August 11, 2020, the Dischargers informed Los Angeles Water Board staff that they had contracted a QSP on June 29, 2020. This violation has been assessed from October 1, 2019, through June 28, 2020, totaling 272 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

Potential for Harm: Moderate

The Enforcement Policy (p.16) defines moderate Potential for Harm as follows: "The characteristics of the violation have substantially impaired the Water Boards' ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of

the violation indicate a substantial potential for harm. Most non-discharge violations should be considered to present a moderate potential for harm.”

Failure to ensure inspections, monitoring, and reporting are conducted by a QSP creates a substantial potential for harm, because regular inspections conducted by a QSP or by someone trained by a QSP ensure all necessary BMPs are in place and in working order, limiting the pollutant discharge from the Site. Therefore, the Potential for Harm for this violation is characterized as moderate.

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 Dischargers failed to designate a QSP for at least nine months, and failed to comply with inspection, monitoring, and reporting obligations to be completed by a QSP or trained personnel. Therefore, the Deviation from Requirement for this violation is characterized as major.

Per Day Factor

For a moderate Potential for Harm and major Deviation from Requirement the per-day factor ranges from 0.4-0.7. For Violation 3, the mid-range per day factor of 0.55 has been assessed.

Multiple Day Violations:

Failure to have a QSP to perform inspection, maintenance, repairs, and sampling duties does not cause daily detrimental impacts to the environment and does not cause daily detrimental impacts to the regulatory program. Therefore, the Los Angeles Water Board is within its discretion to collapse days at any level deemed appropriate between the maximum suggested number of collapsed days and the actual number of days of violations. This 272-day violation (October 1, 2019-June 28, 2020) is assessed for 43 days.

Initial Liability Amount

0.55 (Per Day Factor) \times 43 (days of violation) \times $\$10,000$ (Statutory Maximum Liability) = $\$236,500$.

Step 4. Adjustment Factors

Degree of Culpability:

Although the General Permit mandates a QSP be designated for a site and conduct monitoring, inspections, and reporting, the Dischargers did not hire a new QSP after the first QSP stopped working at the Site. The Dischargers' failure to designate a QSP to carry out inspections, monitoring, and reporting was, at least, a negligent deviation from the standard of care. Thus, a multiplier of 1.3 was assessed.

History of Violations:

Since the Dischargers have no prior history of violations, a multiplier of 1.0 has been assigned.

Cleanup and Cooperation:

The Dischargers were notified they were in violation of the QSP requirements during 5 inspections on October 1, 2019, October 10, 2019, March 11, 2020, June 18, 2020, and June 25, 2020, and in the NOV issued on January 16, 2020. Because the Dischargers did not come into compliance with this requirement until June 29, 2020, a multiplier of 1.3 was assessed.

Step 5. Total Base Liability for Violation 3

$\$236,500$ (Initial Liability Amount) \times 1.3 (Degree of Culpability) \times 1 (History of Violation) \times 1.3 (Cleanup and Cooperation) = $\$399,685$. The Statutory Maximum Penalty is $\$2,720,000$.

Violation 4: Failure to Register the Site with the Correct Risk Assessment and Update the Construction Completion Date

The Dischargers violated General Permit section I subsection D.36, and section VIII by failing to register the Site with the correct Risk Assessment for the project and failing to update the date for construction completion. The construction end date identified in SMARTS is December 1, 2017.

Section I subsection D.36 of the General Permit requires all dischargers to electronically file all Permit Registration Documents (PRDs), changes of information, and other compliance documents required by the General Permit through SMARTS.

Section VIII of the General Permit states a discharger shall calculate the site's sediment risk and receiving water risk during periods of soil exposure (i.e., grading and site stabilization) and use the calculated risk to determine Risk Level.

On October 1, 2019, Los Angeles Water Board staff inspected the Site and noted the Dischargers registered the Site with the incorrect Risk Assessment and failed to update the completion date for the project in SMARTS. The Site is classified as sediment Risk

Level 2 in the SWPPP, but the Dischargers incorrectly registered the Site as Risk Level 1 in SMARTS. Risk Level 2 sites are subject to additional requirements, including requirements to have a Rain Event Action Plan (REAP) and to collect samples of storm water discharge. The Dischargers also failed to update the project completion date in SMARTS when it changed. The Dischargers remained out of compliance during Los Angeles Water Board follow-up inspections on October 10, 2019, and on March 11, June 18, June 25, July 8, July 15, August 3, August 19, October 7, December 22, December 28, 2020. In addition to notifying the Dischargers they had to update their Risk Level and construction end date in SMARTS at each of the listed inspection dates, on January 16, 2020, the Los Angeles Water Board issued the NOV to Dischargers, again notifying the Dischargers of these violations. Because the Dischargers have yet to remedy these violations, the days of violation continue to accrue. The days of violation have been calculated from October 1, 2019, through April 3, 2022, the date construction was completed, for a total of 916 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

Potential for Harm: Moderate

A site's Risk Level determines numerous permitting requirements, including but not limited to pollutant controls, BMPs, and numeric action levels for pollutants required at a site. The Site's incorrect Risk Level in SMARTS may result in the implementation of inadequate BMPs and insufficient control of pollutants from the Site, which poses a substantial threat to water bodies in the vicinity of the Site. Therefore, the Potential for Harm for this violation is characterized as moderate.

Deviation from Requirement: Major

The General Permit requires an up-to-date Risk Assessment and construction completion date in SMARTS. The Dischargers incorrectly identified the Site as Risk Level 1 and failed to update the revised construction end date for the Site in SMARTS. Therefore, a major Deviation from Requirement is appropriate.

Per Day Factor

For a moderate Potential for Harm and major Deviation from Requirement the per-day factor ranges from 0.4-0.7. For Violation 4, the mid-range per day factor of 0.55 has been assessed.

Multiple Day Violations:

Failure to update the Risk Assessment does not result in discrete economic benefit that can be measured daily. Therefore, this 916-day violation (October 1, 2019-April 4, 2022) is assessed for 64 days.

Initial Liability Amount

0.55 (Per Day Factor) x 64 (days of violation) x \$10,000 (Statutory Maximum Liability) = \$352,000.

Step 4. Adjustment Factors

Degree of Culpability:

The SWPPP uploaded onto SMARTS on October 13, 2015, states the Site is Risk Level 2, but the Site is enrolled on SMARTS as a Risk Level 1 site, evidencing the Dischargers were aware of Risk Level registration requirements on SMARTS. The Dischargers initially identified a completion date of December 1, 2017, but failed to update this upon modification of the construction timeline, which demonstrates the Dischargers were also aware construction deadlines should be reported in SMARTS. The failure to submit correct information shows, at the very least, negligence. A multiplier of 1.3 was assessed.

History of Violations:

Since the Dischargers have no prior history of violations, a multiplier of 1.0 has been assigned.

Cleanup and Cooperation:

The Dischargers were notified of violations of these requirements at 12 inspections on October 1 and October 10, 2019, and on March 11, June 18, June 25, July 8, July 15, August 3, August 19, October 7, December 22, and December 28, 2020, two of which occurred after confidential settlement negotiations commenced, and in the January 2020 NOV. Despite these notifications, the Dischargers failed to revise the Site's Risk Level and date of completion. Therefore, a multiplier of 1.4 was assessed.

Step 5. Total Base Liability for Violation 4

\$352,000 (Initial Liability Amount) x 1.3 (Degree of Culpability) x 1 (History of Violation) x 1.4 (Cleanup and Cooperation) = \$640,640. The Statutory Maximum Penalty is \$9,160,000.

Violation 5: Failure to Implement Effective Perimeter Controls

The Dischargers violated Attachment D, section E.1 of the General Permit by failing to employ BMPs for perimeter controls throughout the Site.

Attachment D, section E.1 of the General Permit states Risk Level 2 dischargers shall establish and maintain effective perimeter controls to sufficiently control erosion and sediment discharges from a site.

On October 1, 2019, Los Angeles Water Board staff observed work areas at the Site were lacking perimeter controls. There was a chain link fence with a privacy screen around the perimeter of the Site, but without BMPs such as appropriately trenched and staked straw wattles, sediment could flow out of the Site with storm water discharges. At a follow-up inspection on October 10, 2019, the Site still lacked perimeter controls. On January 16, 2020, the Los Angeles Water Board issued the NOV to the Dischargers, informing them of the missing perimeter controls. On February 25, 2020, the Dischargers responded to the NOV with photo-evidence indicating straw wattles were installed around the perimeter of the Site. However, in follow-up inspections on March 11 and June 18, 2020, Los Angeles Water Board staff noted the straw wattles were inadequately installed, because there were gaps in coverage and holes in the material. During inspections on June 25, July 8, July 15, August 3, August 19, October 7, December 22, and December 28, 2020, Los Angeles Water Board staff observed missing perimeter controls and/or straw wattles that were not properly trenched and staked in accordance with the CASQA handbook. This violation was observed on 12 different days: October 1 and October 10, 2019, and March 11, June 18, June 25, July 8, July 15, August 3, August 19, October 7, December 22, and December 28, 2020. Therefore, this violation is assessed for 12 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

Potential for Harm: Moderate

The Site is located within the Rio Hondo Watershed. The Site discharges to the Rio Hondo Channel, which 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 supply, groundwater recharge, and wildlife habitats that provide homes for fish species like the common carp, largemouth bass, tilapia, rainbow trout, and fathead minnow, as well as insects, bats, swallows, swifts, ducks, and other migrating birds.

Failure to implement perimeter control BMPs, which limit the pollutants discharged from the Site, has the potential to discharge pollutants to and negatively impact the Rio Hondo Channel and the Los Angeles River. Furthermore, sediment discharged to the Los Angeles River can clog fish gills, bury fish eggs, fill the channel, and contribute to high turbidity in the water, which results in low sunlight. All these factors are detrimental to habitat for aquatic life. Therefore, the Potential for Harm for this violation is characterized as moderate.

Deviation from Requirement: Moderate

The Dischargers did not maintain effective perimeter controls but did take steps to install straw wattles after receipt of the NOV on January 16, 2020. Therefore, the Deviation from Requirement was characterized as moderate.

Per Day Factor

For a moderate Potential for Harm and moderate Deviation from Requirement, the per-day factor range is 0.3-0.4. For Violation 5, the mid-range per day factor of 0.35 has been selected.

Initial Liability Amount

$0.35 \text{ (Per Day Factor)} \times 12 \text{ (days of violation)} \times \$10,000 \text{ (Statutory Maximum Liability)} = \$42,000.$

Step 4. Adjustment Factors

Degree of Culpability:

The Dischargers should have been aware of the perimeter control requirements set forth in the General Permit. The Dischargers' failure to maintain effective perimeter controls falls below the standard of care required for coverage under the General Permit. Therefore, a multiplier of 1.3 was assessed.

History of Violations:

Since the Dischargers have no prior history of violations, a multiplier of 1.0 has been assigned.

Cleanup and Cooperation:

Los Angeles Water Board staff notified the Dischargers of the need to install perimeter controls at 12 inspections beginning on October 1 2019, and in the NOV dated January 16, 2020. Despite these notifications, the Dischargers failed to install perimeter controls or improperly installed perimeter controls. Therefore, a multiplier of 1.4 was assessed.

Step 5. Total Base Liability for Violation 5

\$42,000 (Initial Liability Amount) x 1.3 (Degree of Culpability) x 1 (History of Violation) x 1.4 (Cleanup and Cooperation) = \$76,440. The Statutory Maximum Penalty is \$120,000.

Violation 6: Failure to Implement Good Housekeeping Measures for Concrete and Construction Debris

The Dischargers violated Attachment D, section B.2 of the General Permit by 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.

Attachment D, section B.2 subsection f of the General Permit states Risk Level 2 dischargers shall implement good housekeeping measures for waste management, including, but not limited to contain and securely protect stockpiled waste material from wind and rain at all times. Attachment D section B.2 subsection h.i states equipment and materials for cleanup of spills shall be available on site and spills and leaks shall be cleaned up immediately and disposed of properly. Section B.2 subsection i of the General Permit states dischargers should ensure the containment of concrete washout areas and other washout areas that may contain additional pollutants so there is no discharge to the underlying soil and onto the surrounding areas.

On October 1, 2019, Los Angeles Water Board staff inspected the Site and observed work areas containing both dried and wet concrete spills as well as debris, including rebar, concrete, and other construction materials. Debris and insufficient BMPs continued to be observed at the Site during the October 10, 2019 inspection. On January 16, 2020, the Los Angeles Water Board issued an NOV to the Dischargers, informing them of observations regarding concrete spills and debris with inappropriate BMPs throughout the Site. On February 25, 2020, the Dischargers responded to the NOV via email with photo-evidence that the concrete spills and debris were cleaned up. On March 11, 2020, Los Angeles Water Board staff observed additional concrete spills around the Site. During an inspection on June 18, 2020, the Los Angeles Water Board inspector observed additional

concrete spills and debris piles including wood and metal construction materials, rebar, and paint without proper containment BMPs. During an inspection on June 25, 2020, the Los Angeles Water Board inspector observed a concrete washout area without containment, leading to concrete and stucco waste on the ground. During the inspection on July 8, 2020, Los Angeles Water Board staff noted the Dischargers had installed containment for a washout area, but a concrete spill could still be seen on the ground. On July 8, 2020, Los Angeles Water Board staff observed construction debris, such as pipes, rebar and plastic waste material, at the Site. On July 15, 2020, Los Angeles Water Board staff observed an inadequately constructed concrete washout leaking concrete waste. On August 3 and 19, 2020, Los Angeles Water Board staff observed wet and dry concrete and stucco spills around the Site. Los Angeles Water Board staff observed this violation on October 1, 2019, October 10, 2019, March 11, 2020, June 18, 2020, June 25, 2020, July 8, 2020, and July 15, August 3, and August 19, 2020. Therefore, this violation is assessed for 9 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

Potential for Harm: Moderate

Failure to exercise good housekeeping could result in the discharge of pollutants from the Site into the Rio Hondo Channel, which can contribute to the impairment of Reach 2 of the Los Angeles River. This poses a threat to existing and potential beneficial uses. Concrete spills and construction debris are pollutant sources, and when not properly contained and cleaned up, have the potential to be discharged from the Site and pollute the Los Angeles River. Therefore, the Potential for Harm for this violation is characterized as moderate.

Deviation from Requirement: Major

The General Permit requires dischargers to implement good housekeeping measures to clean up concrete spills immediately, and to contain and protect debris piles from wind and rain. However, Los Angeles Water Board staff observed concrete spills at eight inspections and observed debris without proper BMPs at four inspections. Therefore, the Deviation from Requirement was characterized as major.

Per Day Factor

For moderate Potential for Harm and major Deviation from Requirement, the per-day factor ranges from 0.4-0.7. For Violation 6, the mid-range per-day factor of 0.55 has been selected.

Initial Liability Amount

0.55 (Per Day Factor) x 9 (days of violation) x \$10,000 (Statutory Maximum Liability) = \$49,500.

Step 4. Adjustment Factors

Degree of Culpability:

The Dischargers did not implement good housekeeping measures on the Site after enrolling in the General Permit, failing to contain and clean up spills and dispose of construction debris. Despite efforts shown to clean up some spills and debris, there were concrete spills and/or debris observed at nine inspections, demonstrating negligence on the part of the Dischargers. A multiplier of 1.3 was assessed.

History of Violations:

Since the Dischargers have no prior history of violations, a multiplier of 1.0 has been assigned.

Cleanup and Cooperation:

The Dischargers were notified of the requirement to implement good housekeeping measures for concrete spills and debris during the inspections on October 1 and October 10, 2019. Although the Dischargers cleaned up some concrete spills and debris on Site after receipt of the NOV, Los Angeles Water Board staff observed additional concrete spills on March 11, June 18, June 25, July 8, and July 15, August 3, and August 19, 2020, and on June 18 and July 8, 2020 observed debris piles without proper BMPs in place. Therefore, a multiplier of 1.3 was assessed.

Step 5. Total Base Liability for Violation 6

\$49,500 (Initial Liability Amount) x 1.3 (Degree of Culpability) x 1 (History of Violation) x 1.3 (Cleanup and Cooperation) = \$83,655. The Statutory Maximum Penalty is \$90,000.

Violation 7: Lack of Secondary Containment on Portable Toilets

The Dischargers violated Attachment D, section B.2 subsection b of the General Permit by failing to put secondary containment on the portable toilets.

Attachment D, section B.2 of the General Permit states Risk Level 2 dischargers shall implement good housekeeping measures for waste management, including, but not limited to ensure the containment of any sanitation facilities (e.g., portable toilets) to prevent discharges of pollutants to the storm water drainage system or receiving water.

On October 1, 2019, Los Angeles Water Board staff inspected the Site and observed three portable toilets without secondary containment. On October 10, 2019, the Los Angeles Water Board inspector continued to observe portable toilets still lacked secondary containment. The Los Angeles Water Board issued the NOV on January 16, 2020, notifying the Dischargers that portable toilets were missing secondary containment in violation of the General Permit. Los Angeles Water Board staff observed secondary containment on the portable toilets at the next inspection on March 11, 2020. Since this violation was observed on October 1 and October 10, 2019, this violation is assessed for 2 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

Potential for Harm: Moderate

Without secondary containment, wastewater from the portable toilets could be discharged onto the ground and then migrate in runoff from the Site during rain events, discharging to the Rio Hondo Channel and ultimately Reach 2 of the Los Angeles River. Therefore, the Potential for Harm for this violation is characterized as moderate.

Deviation from Requirement: Major

The General Permit requires secondary containment be put on all portable toilets to catch any runoff from the use and servicing of the portable toilets. The Dischargers violated this requirement on two separate occasions, October 1, and October 10, 2019. Therefore, a major Deviation from Requirement is appropriate.

Per Day Factor

For a moderate Potential for Harm and major Deviation from Requirement, the per-day factor range is 0.4-0.7. For Violation 7, the mid-range per-day factor of 0.55 has been assessed.

Initial Liability Amount

0.55 (Per Day Factor) x 2 (days of violation) x \$10,000 (Statutory Maximum Liability) = \$11,000.

Step 4. Adjustment Factors

Degree of Culpability:

The Dischargers negligently failed to install secondary containment on their portable toilets, as clearly required by the General Permit. Therefore, a multiplier of 1.3 was assessed.

History of Violations:

Since the Dischargers have no prior history of violations, a multiplier of 1.0 has been assigned.

Cleanup and Cooperation:

On October 1 and October 10, 2019, as well as the NOV dated January 16, 2020, Los Angeles Water Board staff notified the Dischargers that secondary containment around portable toilets was missing. On March 11, 2020, Los Angeles Water Board staff observed the Dischargers had properly installed secondary containment on the 3 portable toilets. Therefore, a multiplier of 1.2 was assessed.

Step 5. Total Base Liability for Violation 7

\$11,000 (Initial Liability Amount) x 1.3 (Degree of Culpability) x 1 (History of Violation) x 1.2 (Cleanup and Cooperation) = \$17,160. The Statutory Maximum Penalty is \$20,000.

Violation 8: Failure to Implement Stabilized Construction Entrance and Exit

The Dischargers violated Attachment D, section E.1 of the General Permit by failing to stabilize construction entrances/exits.

Attachment D, section E.1 of the General Permit states Risk Level 2 dischargers shall stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.

On October 1 and October 10, 2019, Los Angeles Water Board staff inspected the Site and observed that the entrance and exit area of the Site was not stabilized. The NOV issued on January 16, 2020 informed the Dischargers that the Site's construction entrance and exit area did not comply with the General Permit. Continued noncompliance with the stabilization requirement was noted during Los Angeles Water Board inspections on March 11, June 18 and June 25, 2020. On July 8, 2020, Los Angeles Water Board inspectors observed that the Site had a stabilized construction entrance and exit. This violation was observed from October 1, 2019 through July 7, 2020, for a total of 281 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

Potential for Harm: Moderate

Failure to implement stabilized construction entrances and exits to limit the pollutants discharged from the Site can negatively impact water bodies. Without stabilized entrance and exit BMPs, sediment from a site was tracked from the Site into the street, where it flows into storm drains and makes its way into the Los Angeles River. Sediment that gets discharged to the Los Angeles River can then clog fish gills, bury fish eggs, fill the channel, and contribute to high turbidity in the water, which results in low sunlight and can damage aquatic life habitat. Therefore, the Potential for Harm for this violation is characterized as moderate.

Deviation from Requirement: Major

Although the General Permit requires a discharger implement a stabilized construction entrance and exit to prevent the discharge of pollutants, the Dischargers failed to stabilize the construction entrance and exit in any way. Therefore, major Deviation from Requirement is appropriate.

Per Day Factor

For moderate Potential for Harm and major Deviation from Requirement, the per-day factor ranges from 0.4-0.7. For Violation 8, the mid-range per-day factor of 0.55 has been assessed.

Multiple Day Violations:

Failure to have stabilized entrance and exit BMPs does not result in discrete economic benefit that can be measured on a daily basis. Therefore, this 281-day violation (October 1, 2019-July 7, 2020) is assessed for 44 days.

Initial Liability Amount

0.55 (Per Day Factor) x 44 (days of violation) x \$10,000 (Statutory Maximum Liability) = \$242,000.

Step 4. Adjustment Factors

Degree of Culpability:

The General Permit expressly requires that dischargers stabilize all construction entrances and exits. Prior to issuance of the NOV, Los Angeles Water Board staff did not observe any stabilization at the Site's construction exit or entrance. The Discharger's noncompliance with this General Permit requirement is negligent, at best. Therefore, a multiplier of 1.3 was assessed.

History of Violations:

Since the Dischargers have no prior history of violations, a multiplier of 1.0 has been assigned.

Cleanup and Cooperation:

This violation was observed at Site inspections on October 1, 2019, October 10, 2019, March 11, 2020, June 18, 2020, and June 25, 2020. The Dischargers were also notified of the violation in the NOV dated January 16, 2020. It was only until July 8, 2020, 9 months after the initial inspection, that Los Angeles Water Board inspectors observed stabilizing BMPs at the Site entrance and exit. Therefore, a multiplier of 1.3 was assessed.

Step 5. Total Base Liability for Violation 8

\$242,000 (Initial Liability Amount) x 1.3 (Degree of Culpability) x 1 (History of Violation) x 1.3 (Cleanup and Cooperation) = \$408,980. The Statutory Maximum Penalty is \$2,810,000.

Violation 9: Failure to Implement Good Housekeeping Measures for Trash

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

Attachment D, section B.6 of the General Permit states 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 October 1, 2019, Los Angeles Water Board staff inspected the Site and observed that work areas had large amounts of uncontained trash. On October 10, 2019, Los Angeles Water Board staff noted trash had been cleaned up and trash bins put on Site. Therefore, this violation is assessed for 1 day.

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

Potential for Harm: Major

The Enforcement Policy defines Major Potential for Harm as follows: “The characteristics of the violation have wholly impaired the Water Boards’ ability to perform their statutory or regulatory functions, present a particularly egregious threat to beneficial uses, and/or the circumstances of the violation indicate a very high potential for harm. Non-discharge violations involving failure to comply with directives in cleanup and abatement orders, cease and desist orders, and investigative orders, involving reports relating to impaired water bodies and sensitive habitats, should be considered major.”

The Site is about one mile west of the Rio Hondo Channel, which flows into the Los Angeles River. The Los Angeles River is on the Clean Water Act Section 303 (d) list of impaired water bodies for impairment by trash, ammonia, nutrients, and metals. The Dischargers’ 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 Rio Hondo Channel and ultimately 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.

Deviation from Requirement: Major

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

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 9, the per day factor of 0.85 has been assessed.

Initial Liability Amount

0.85 (Per Day Factor) x 1 (days of violation) x \$10,000 (Statutory Maximum Liability) = \$8,500.

Step 4. Adjustment Factors

Degree of Culpability:

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

History of Violations:

Since the Dischargers have no prior history of violations, a multiplier of 1.0 has been assigned.

Cleanup and Cooperation:

The Dischargers removed trash and put a large trash bin on Site after the first inspection on October 1, 2020. Therefore, a multiplier of 1.1 was assessed.

Step 5. Total Base Liability for Violation 9

\$8,500 (Initial Liability Amount) x 1.2 (Degree of Culpability) x 1 (History of Violation) x 1.1 (Cleanup and Cooperation) = \$11,200. The Statutory Maximum Penalty is \$10,000.

Because the Total Base Liability Amount for Violation 9 is higher than the statutory maximum penalty, this violation is assessed for \$10,000 dollars.

Table 1: Total Base Liability for all Violations

Violation	Violation Description	Proposed Liability	Maximum Liability	No. of Days
1	Unauthorized discharge of sediment-laden storm water from the Site	\$47,306.17	\$92,830	1
2	Failure to have a Storm Water Pollution Prevention Plan (SWPPP) available at the project site.	\$280,280	\$2,880,000	288
3	Failure to Ensure that Inspections/ Maintenance/ Repairs/ Sampling was done by a Qualified SWPPP Practitioner	\$399,685	\$2,720,000	272
4	Failure to Update Risk Assessment	\$640,640	\$9,160,000	916
5	Failure to Implement Perimeter Controls	\$76,440	\$120,000	12
6	Failure to Implement Good Housekeeping Measures	\$83,655	\$90,000	9

7	Lack of Secondary Containment on Portable Toilets	\$17,160	\$20,000	2
8	Failure to Implement Stabilized Construction Entrance/Exit	\$408,980	\$2,810,000	281
9	Failure to Implement Good Housekeeping Measures	\$10,000	\$10,000	1
Total		\$1,964,146.17	\$17,902,830	1,783

Step 6. Ability to Pay

Based on publicly available information from the Los Angeles County Assessor (County Assessor), the Dischargers have the ability to pay the proposed liability without affecting their ability to stay in business. Garvey Garden Plaza LLC owns the subject property, which according to 2022 County Assessor records is valued at over \$11.4 million. Further, Jimmy Duong is the co-owner of property identified as assessor's parcel number 5853-019-007, located in Pasadena, which according to 2022 County Assessor records had an assessed value of \$765,329. The combined value of these properties exceeds the proposed liability in this action.

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. The violations described by the Los Angeles Water Board and the NOV identified avoided and delayed expenses that have benefited the Dischargers. The violations are as follows:

1. Unauthorized discharge of sediment-laden storm water from the Site
2. Failure to have a SWPPP available at the Site
3. Failure to ensure that inspections, maintenance, repairs, and sampling were performed or supervised by a QSP
4. Failure to register the Site with the correct risk assessment and update the construction completion date
5. Failure to implement effective perimeter controls
6. Failure to implement good housekeeping measures for concrete and construction debris
7. Lack of secondary containment on portable toilets
8. Failure to implement and stabilize construction entrance and exits
9. Failure to implement good housekeeping measures for trash

For Violation 1, it is assumed that proper BMPs would have prevented the discharge and is incorporated into the subsequent violations. Violation 2 has a negligible economic benefit since the cost of keeping the SWPPP at the Site is simply the delayed cost of printing and/or means of access (e.g., computer) and is excluded from the analysis. For Violation 4, it should be noted the Site is Risk Level 2 and is defined as such in the SWPPP; therefore, the violation is associated with updating the risk level and completion date in SMARTS and is considered negligible. Additionally, Violations 6, 7, and 9 are difficult to quantify as there is evidence that concrete, debris, and trash were eventually cleaned up, and that secondary containment for the portable toilets was eventually

implemented. Therefore, the compliance actions for these violations are delayed and any resulting economic benefit is negligible and excluded from the analysis.

For Violation 3, the SWPPP requires the Dischargers 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-storm water discharges. On October 1, 2019, the Los Angeles Water Board inspected the Site and found the Dischargers failed to have a QSP perform inspections. The Dischargers remained out of compliance at follow-up inspections and notified the Los Angeles Water Board they had contracted a QSP on June 29, 2020. Although the Discharger ultimately obtained a QSP, the weekly and quarterly inspections during the time between October 1, 2019, and June 29, 2020 are considered avoided with no compliance date as the inspections can no longer be completed during the time period. The analysis does not include potential qualifying rain events during the period of non-compliance due to the complexity of defining such events and the extent to which the QSP would be required to respond, assess Site compliance, monitor, and report. Each QSP inspection is assumed to take two hours. From this, it is concluded there were 38 avoided weekly inspections and 2 missed quarterly inspections, resulting in an avoided cost of \$5,550.

For Violation 5, the General Permit requires that the Dischargers implement perimeter control BMPs. The SWPPP identified that sandbag barriers would be used as perimeter control. During the October 1 and October 10, 2019 inspections, Los Angeles Water Board staff observed the Site lacked perimeter controls. On February 25, 2020, the Dischargers responded to the January 16, 2020 NOV with photographic evidence showing fiber rolls were installed as perimeter controls in lieu of sandbags, at a significantly reduced expense to the Dischargers. This analysis assumes fiber roll implementation was a permissible substitute as a perimeter control to Los Angeles Water Board staff at the time of the inspection. A follow-up inspection on March 11, 2020 revealed the fiber rolls were inadequately installed with gaps in coverage and holes in the material. Subsequent inspections from June 25, 2020 to December 28, 2020 revealed the fiber rolls continued to have gaps and were not properly trenched and staked. It is assumed that to address the gaps and holes, maintenance was required at least once during the period between June 25, 2020 and December 28, 2020, and this cost is assumed to be 10% of implementation cost. The perimeter of the Site is estimated to be 940 feet based on measurements from Google Earth. The economic benefit is the delayed cost of implementing the fiber rolls for perimeter control, resulting in a delayed cost of \$2,171.40, and the avoided cost of maintenance, calculated to be \$217.14.

For Violation 8, the General Permit requires Risk Level 2 sites to establish and maintain stabilized construction entrances and exits to sufficiently control erosion and sediment discharges from the Site. Multiple inspections indicated the Dischargers did not have a stabilized construction entrance/exit. During the July 8, 2020 inspection, Los Angeles

Water Board staff observed the Dischargers had implemented a stabilized construction entrance/exit. Based on inspection photos, it is assumed the Site had one entrance/exit. The economic benefit is the delayed cost of implementing the stabilized entrance/exit, resulting in a delayed cost of \$2,400. The costs associated with maintaining and/or replacing the stabilized construction entrance/exit were not incorporated in the analysis.

The total economic benefit of non-compliance was calculated using the BEN financial model, Version 2021.0.0, developed and maintained by USEPA, which performs the analysis by determining the time value of money and tax deductibility of compliance costs. For computational purposes, the penalty payment date was established as December 7, 2022. Based on specific assumptions within the model, the total economic benefit of non-compliance was determined to be approximately \$4,280.

The full breakdown for individual costs associated with each economic benefit component is attached as **Appendix A**.

Estimated Economic Benefit: \$4,280

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 Los Angeles Water Board accrued \$25,234.01 in staff costs associated with the investigation and preparation of this Complaint.

It is appropriate to increase the Total Base Liability Amount for the nine violations by \$25,234.01. 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 sufficient general and specific deterrent against further violations.

Step 9. Maximum and Minimum Liability Amounts

Minimum Liability Amount: Economic benefit plus 10% or \$4,708

Maximum Liability Amount: \$17,902,830

Step 10. Final Liability Amount

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts were within the statutory minimum and

maximum amounts. The final liability amount was calculated by adding the Total Base Liability for the violations with the staff costs accrued by the Los Angeles Water Board associated with the investigation, preparation, and enforcement of the violations. Therefore, the proposed final liability amount is \$1,989,380.18.