

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

In the Matter of:

**ADMINISTRATIVE CIVIL LIABILITY
COMPLAINT NO.
R4-2022-0340
FORMER BUY RITE GASOLINE
FACILITY**

ORDER NO. R4-2024-0386

**SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY
ORDER; ORDER**

I. Introduction

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order or Order) is entered into by and between the Acting Assistant Executive Officer of the California Regional Water Quality Control Board, Los Angeles Region (Regional Water Board), on behalf of the Regional Water Board Prosecution Team (Prosecution Team), and Robert French and Wahib Mikhail, (collectively, the Parties) and is presented to the Regional Water Board, or its delegee, for adoption as an order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.

II. Recitals

2. On December 26, 2022, the Assistant Executive Officer of the Regional Water Board issued Administrative Civil Liability Complaint No. R4-2022-0340 (Complaint) to Robert French and Wahib Mikhail (collectively, Settling Respondents) proposing \$1,222,934 in administrative civil liabilities. The Assistant Executive Officer alleged that Settling Respondents violated the Regional Water Board's February 11, 2020 Health and Safety Code section 25296.10 directive (H&SC Directive) by failing to conduct corrective action in response to an unauthorized release of hazardous substances from an underground storage tank (UST) located at 251 West Manchester Avenue in Los Angeles, California (Site). The Complaint is attached as Attachment A and the alleged violations are incorporated herein by reference.
3. Settling Respondents waived their right to a hearing on the allegations in the Complaint within 90 days.
4. The Parties have engaged in settlement negotiations and agree to fully settle the violations alleged in the Complaint without administrative or civil litigation and by presenting this Stipulated Order to the Regional Water Board for adoption as an Order by settlement pursuant to Water Code sections 13323 and Government Code section 11415.60.

5. For purposes of settlement, the Prosecution Team agreed to reduce the administrative civil liability amount from the amount proposed in the Complaint. Recent observations indicate that existing groundwater monitoring wells at the Site have dried in the 5 years since the Regional Water Board issued its H&SC Directive to Settling Respondents. As such, new wells will be installed to determine current groundwater conditions and the effects of prior remediation efforts. The liability amount in this Stipulated Order is reduced from the amount proposed in the Complaint based on a consideration of the Settling Respondents' agreement to install new groundwater monitoring wells to a depth that reaches groundwater as described in Paragraph 9 below so that current Site conditions can be assessed. Groundwater data collected from the new wells will be used to determine if the Site meets the closure criteria in the State Water Resources Control Board's Low Threat UST Case Closure Policy (Low Threat Closure Policy). Additionally, the Prosecution Team considered the risks of litigation inherent in proceeding to a contested evidentiary hearing in reducing the proposed administrative civil liability.
6. The Parties have agreed to the imposition of an administrative civil liability against the Settling Respondents in the amount of forty-three thousand two hundred eighty-three dollars (\$43,283), which exceeds the economic benefit amount and includes staff costs related to the investigation and enforcement of the alleged violations.
7. The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and that no further action is warranted concerning the specific violations alleged in the Complaint, except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

III. Stipulations

The Parties stipulate to the following:

8. **Jurisdiction:** The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.
9. **New Wells:** Settling Respondents agree to install three (3) new groundwater monitoring wells at the Site to assess groundwater conditions (Figure 1) according to the specifications detailed in Attachment B. Each well will be drilled to a depth of approximately 125 feet below ground surface or until groundwater is reached. Settling Respondents shall prepare a report documenting well installation, including: a scaled map showing well locations, boring logs, field observations/measurements, soil and groundwater sample collection methods, soil and groundwater analytical results, description of well development activities, and surveying data. Settling Respondents shall complete installation of the new wells and submit the report documenting well installation and sampling results to the Regional Water Board within 90 calendar days

of execution of this Order. Requests for an extension of this timeline shall be made in writing to the party contacts identified in Paragraph 20 below, explaining the reason for the delay at least 14 calendar days prior to the deadline.

10. **Groundwater Monitoring:** Settling Respondents agree to conduct at least three (3) semi-annual groundwater monitoring events in the new wells and existing wells AEM1, AEM2, AEM3, AEM6, AEM9, AEM10, AEM11, AEM12, AEM14 and AEM15.¹ Settling Respondents will submit semi-annual groundwater monitoring reports to the Regional Water Board by January 15th (for the July 1st through December 31st monitoring period) and July 15th (for the January 1st through June 30th monitoring period) of each year.² Based on the available data, the Regional Water Board may require Settling Respondents to conduct additional semi-annual groundwater monitoring as necessary to determine if the Site meets the closure criteria in the Low Threat Closure Policy.
11. **Land Use Restriction:** In accordance with the Low Threat Closure Policy, the Regional Water Board may require a land use restriction as a condition of closure. Settling Respondents agree to prepare a land use restriction for the Site and for the adjoining commercial/retail property to the east (165-189 West Manchester Avenue), where the release has spread, if required by the Regional Water Board. Settling Respondents will seek input from the Regional Water Board when preparing the land use restriction. The land use restriction shall be recorded with the Los Angeles County Assessor's Office within 60 calendar days of the Regional Water Board's determination that a land use restriction is necessary as a condition of closure under the Low Threat Closure Policy.
12. **Corrective Action:** If groundwater data collected from the new wells show that the Site does not meet the closure criteria in the Low Threat Closure Policy, Settling Respondents shall meet with the Regional Water Board to discuss the impediments to case closure. Settling Respondent may be required to conduct corrective action to remediate the remaining contamination, including, but not limited to, preparing a Remedial Action Work Plan (RAP) and implementing the RAP as described in the Regional Water Board's H&SC Directive, and any other corrective action as required by the Regional Water Board. Should corrective action be required, Settling Respondents shall submit a work plan for corrective action to the Regional Water Board within 60 calendar days of the Regional Water Board's determination that

¹ Wells AEM11 and AEM12 are located off-site on the adjoining eastern property, also owned by Mr. French.

² In a November 14, 2017 letter from the Regional Water Board to Mr. Mikhail, the Regional Water Board determined that monitoring wells AEM4, AEM5, AEM7, and AEM8 no longer need to be monitored in future groundwater monitoring events.

additional corrective action is necessary based on groundwater data collected from the new and existing wells.

13. **Case Closure:** If the groundwater data collected from the new wells indicate that the Site meets the closure criteria in the Low Threat Closure Policy, the Regional Water Board will issue a uniform closure letter pursuant to Health and Safety Code section 25296.10, subdivision (g). If the Regional Water Board denies case closure pursuant to the Low Threat Closure Policy, Settling Respondents may petition the State Water Board for review in accordance with Health and Safety Code section 25296.40.
14. **Administrative Civil Liability:** The Settling Respondents agree to the imposition, jointly and severally, of forty-three thousand two hundred eighty-three dollars (\$43,283) in administrative civil liability to resolve the violations specifically alleged in the Complaint. No later than 30 calendar days after the Regional Water Board issues this Order, Settling Respondents shall submit a check for forty-three thousand two hundred eighty-three dollars (\$43,283) made to the “State Water Pollution Cleanup and Abatement Account” and mail it to:

State Water Resources Control Board Accounting Office
Division of Administrative Services, Accounting Branch
Attn: ACL PAYMENT
1001 I Street, 18th Floor
Sacramento, California 95814

The check shall reference the order number assigned to this Stipulated Order, and a copy of the check shall be sent via email at the time payment is made to Russ Colby (russ.colby@waterboards.ca.gov) and Susan Ma (susan.ma@waterboards.ca.gov).

15. **Covered Matters:** Upon adoption by the Regional Water Board, or its delegee, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged or that could have been alleged in relation to the conduct and facts described in Attachment A. The provisions of this paragraph are expressly conditioned on Settling Respondents satisfying the actions and payment obligation set forth in Paragraphs 9 through 14 above.
16. **Future Enforcement if Settling Respondents Fail to Perform:** In the event Settling Respondents fail to satisfy the actions described in Paragraphs 9 through 14, the Prosecution Team reserves its right to pursue further enforcement, including assessing penalties based on the violations detailed in Attachment A. Settling Respondents agree to waive laches and any other defenses related to the passage of time in a future enforcement action triggered by the Settling Respondents failure to perform the actions described above. The \$43,283 in administrative civil liability will not be returned to Settling Respondents nor will it be credited in such a future enforcement action. In the event of Settling Respondents’ failure to satisfy all

obligations, Settling Respondents' compliance with any terms of this Stipulated Order may be taken into consideration in a future enforcement action.

17. Evidence of Prior Enforcement: Settling Respondents agree that in the event of any future enforcement action by the Regional Water Board, the State Water Board or any other Regional Water Quality Control Board, this Stipulated Order may be used as evidence of a prior enforcement action against them, consistent with Water Code section 13327.

18. Compliance with Applicable Laws and Regulatory Changes: Settling Respondents understand that payment of an administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with this Stipulated Order is not a substitute for compliance with applicable laws, and that additional violations of the type alleged may subject it to further enforcement, including additional administrative civil liabilities. Nothing in this Stipulated Order shall excuse the Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legal binding legislation and/or regulations.

19. Public Notice: Settling Respondents understand that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Regional Water Board. Settling Respondents agree that they may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.

20. Procedure: The Parties agree that the procedure contemplated for the Regional Water Board's adoption of the Order, and public review of this Stipulated Order is lawful and adequate. The Parties understand that the Regional Water Board has the authority to require a public hearing to consider adoption of this Stipulated Order. In the event procedural objections are raised or the Regional Water Board requires a public hearing prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections and may agree to revise or adjust the procedure and/or this Stipulated Order as necessary or advisable under the circumstances.

21. Party Contacts for Communications Related to Stipulated Order:

For the Regional Water Board:

Ching Yin To
Senior Water Resource Control Engineer
ching-yin.to@waterboards.ca.gov

Susan Ma
Senior Staff Counsel
susan.ma@waterboards.ca.gov

For the Settling Respondents:

Jennifer F. Novak
Megan S. Meadows
Law Office of Jennifer F. Novak
novak@jfnovaklaw.com
megan@jfnovaklaw.com

22. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
23. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.
24. **Modification:** The Parties shall not modify this Stipulated Order by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board.
25. **If the Stipulated Order Does Not Take Effect:** In the event that the Stipulated Order does not take effect because the Regional Water Board does not approve it, or the State Water Resources Control Board (State Water Board) or a court vacates it in whole or in part, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violation(s), unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to the following:
- a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulated Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the alleged violations; or
 - b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

26. **Waiver of Hearing:** Settling Respondents have been informed of the rights Water Code section 13323, subdivision (b) provides, and hereby waive their right to a hearing before the Regional Water Board prior to the Stipulated Order's adoption.
27. **Waiver of Right to Petition or Appeal:** Settling Respondents hereby waive their right to petition the Regional Water Board's adoption of the Stipulated Order for review by the State Water Board, and further waives their rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
28. **Covenant Not to Sue:** Settling Respondents covenant not to sue or pursue any administrative or civil claim(s) against any State agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by the Complaint or this Stipulated Order.
29. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or the Regional Water Board to enforce any provision of this Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Team or Regional Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Order. No oral advice, guidance, suggestions, or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order.
30. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Stipulated Order shall be communicated to the Settling Respondents in writing. No oral advice, guidance, suggestions, or comments from Regional Water Board employees or officials regarding submissions or notices shall be construed to relieve the Settling Respondents of their obligation to obtain any final written approval this Stipulated Order requires.
31. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Stipulated Order.
32. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
33. **Severability:** This Stipulated Order is severable; should any provision be found invalid, the remainder shall remain in full force and effect.

34. Counterpart Signatures; Facsimile and Electronic Signature: This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

35. Effective Date: This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board enters the Order incorporating the terms of this Stipulation.

IT IS SO STIPULATED.

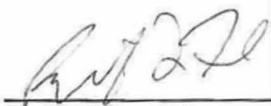
By:  Digitally signed by Russ Colby
Date: 2025.01.21 15:18:00
-08'00'
Water Boards

Russ Colby
Acting Assistant Executive Officer
Regional Water Board Prosecution Team

1/21/25

Date

Settlement Agreement and Stipulation for Entry of Administrative Civil Liability
Order No. R4-2024-0386
Buy Rite Gasoline

By: 
Robert French
Owner

1-6-25
Date

By: 
Wahib Mikhail
Operator

1-16-2025
Date

HAVING CONSIDERED THE PARTIES' STIPULATIONS, THE LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD FINDS THAT:

1. The foregoing Stipulation is fully incorporated herein and made part of this Order.
2. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations.
3. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Settling Respondents fail to perform any of their obligations under this Order.

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, Los Angeles Region.

By:

Susana Arredondo
Executive Officer
Los Angeles Regional Water Quality Control Board

Date

Attachment A: Administrative Civil Liability Complaint R4-2022-0340

Attachment B: Technical Specifications for Well Installation

Attachment A

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO.
R4-2022-0340

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2022-0340
IN THE MATTER OF**

**ROBERT FRENCH
WAHIB MIKHAIL
FORMER BUY RITE GASOLINE FACILITY**

This Administrative Civil Liability Complaint (Complaint) is issued by the Assistant Executive Officer of the California Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board) to Robert French and Wahib Mikhail (collectively, Responsible Parties). This Complaint is issued pursuant to California Health and Safety Code section 25299(d), which authorizes the imposition of administrative 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 is based on evidence that Robert French, as the owner of property where an unauthorized release of hazardous substances from underground storage tanks (USTs) occurred at the former Buy Rite Gasoline facility located at 251 West Manchester Avenue in Los Angeles, California (Site), and Wahib Mikhail, as the operator of the USTs, failed to comply with the requirements in the Health and Safety Code section 25296.10 directive issued by the Los Angeles Water Board on February 11, 2020.

The Assistant Executive Officer alleges the following:

BACKGROUND

1. On March 4, 1999, an unauthorized release from leaking USTs was reported to the Los Angeles City Fire Department and the Los Angeles Water Board, following the excavation of three single-walled USTs from the Site in December 1998.¹ Approximately 500 tons of fuel-contaminated soils were removed and disposed of off-site. Shortly thereafter, three new USTs, dispensers, and product lines were installed.² The Site continues to be an active gas station today and is operated as Buy Rite Arco.
2. The Site is located in a mixed-use neighborhood, surrounded by commercial, retail, and residential properties.
3. Robert French is the current owner of the Site, and has owned the Site since at least 1999.

¹ Unauthorized Release (Leak)/Contamination Site Report, filed by Ronald Halpern of Daly Environmental Services for Buy Rite Gasoline (Mar. 4, 1999).

² Daly Environmental Services for Wahib Mikhail, *Underground Storage Tank Closure Report*, p. 6 (Mar. 4, 1999).

4. Wahib Mikhail was the operator of the USTs at the former Buy Rite Gasoline facility at the time of the unauthorized release. Additionally, Wahib Mikhail is the current owner and operator of the new USTs installed at the Site.
5. In May 2003, the State Water Resources Control Board (State Water Board) approved Wahib Mikhail's application to the UST Cleanup Fund, which reimburses petroleum UST owners and operators for expenses associated with the cleanup of leaking USTs.
6. From approximately May 2003 to May 2018, the Responsible Parties worked with their consultants to investigate the extent of soil and groundwater contamination caused by the leaking USTs and to conduct remediation at the Site. Remedial actions included the removal of contaminated groundwater, light non-aqueous phase liquids (or free product), and vapor phase total petroleum hydrocarbons as gasoline (TPH-g).³
7. Since 2006, fifteen groundwater monitoring wells were installed and monitored regularly. The last groundwater monitoring report submitted in June 2018 indicates that water quality objectives have not been achieved. The 2018 report showed free product in both on-site and off-site groundwater monitoring wells at a thickness ranging from 0.06 to 1.25 inches. Groundwater sampled from a well located 10 feet east of the former UST excavation area showed maximum concentrations of TPH-g up to 6,630,000 micrograms per liter ($\mu\text{g/L}$), total petroleum hydrocarbons as diesel (TPH-d) up to 357,000 $\mu\text{g/L}$, benzene up to 4,960 $\mu\text{g/L}$, and methyl butyl tertiary ether (MTBE) up to 848 $\mu\text{g/L}$.
8. Although the 2018 groundwater monitoring report showed elevated levels of petroleum contaminants, Wahib Mikhail, through its consultant Alta EM, Inc., submitted a request for case closure to the Los Angeles Water Board on June 4, 2018.
9. The Los Angeles Water Board and the State Water Board's Expedited Claim Account Program ("ECAP") jointly reviewed the case closure request in accordance with the State Water Board's Low Threat UST Case Closure Policy (Low Threat Closure Policy). Both agencies determined that the extent of the remaining contamination warranted additional corrective action because the Site did not meet the groundwater criteria in the Low Threat Closure Policy, which requires the groundwater plume to be stable or decreasing. Additionally, the agencies determined that free product had not been removed to the extent practicable.
10. On September 21, 2018, the State Water Board received the last UST Cleanup Fund reimbursement request from Wahib Mikhail. With payment of this last request, Wahib Mikhail's UST Cleanup Fund claim reached the maximum claim amount of \$1,495,000. Since then, no additional work has been done at the Site.

³ State Water Board, Review Summary Report for Buy Rite Gasoline Claim No. 16877 (Jan. 24, 2020).

11. On February 11, 2020, the Los Angeles Water Board issued a closure denial letter and Health and Safety Code section 25296.10 directive to the Responsible Parties, requiring additional corrective action to address the remaining contamination. Specifically, the directive requires the Responsible Parties to submit a revised remedial action plan (RAP) and submit semi-annual groundwater monitoring reports. The status of each is described below:
 - a. The RAP was due on March 11, 2020. The RAP was to include an evaluation of at least three remedial actions and propose the most cost effective and efficient option to address the persistent presence of free product in groundwater monitoring wells and elevated levels of total petroleum hydrocarbons including TPH-g, TPH-d, benzene, and MTBE. To date, the Responsible Parties have not submitted the RAP. As such, there is no plan to address the remaining contaminants at the Site.
 - b. Semi-annual groundwater monitoring reports are due by July 15th and January 15th of each year and are to include the sampling results from the groundwater monitoring wells located on and off-site. The first report was due on July 15, 2020 and covers the January 2020 through June 2020 reporting period. However, the Responsible Parties did not submit this report, nor did they submit the subsequent semi-annual groundwater monitoring reports due on January 15, 2021, July 15, 2021, January 15, 2022, and July 15, 2022.
12. The Los Angeles Water Board relies on the submission of workplans, like the RAP, to address remaining contamination and to bring the Site to closure. Similarly, the board relies on monitoring reports to determine the extent of existing contamination and ensure that it has not spread farther in groundwater, to drinking water wells, or to the surrounding community.
13. On May 4, 2020, the Los Angeles Water Board issued a Notice of Violation (NOV) to the Responsible Parties based on their failure to submit revised RAP, or any groundwater monitoring reports by the due dates.
14. On June 15, 2020, Robert French responded to the NOV, claiming the Site was already as clean as possible and that the State Water Board verbally agreed to close the case in exchange for a deed restriction on the Site.
15. On September 2, 2021, the State Water Board's Office of Enforcement notified the Responsible Parties that continued failure to submit the required reports would result in the imposition of an administrative civil liability. In response, in a letter dated October 12, 2021, Robert French reiterated his claim that the Site was already clean and that he had a "deal" with the State Water Board.
16. On October 28, 2021, the Office of Enforcement responded to Robert French in writing, explaining that the Los Angeles Water Board and State Water Board collectively agreed that additional corrective action was necessary to address the

remaining contamination at the Site. Neither Robert French nor Wahib Mikhail have responded to the Los Angeles Water Board or the Office of Enforcement since that time.

17. To date, the Responsible Parties have not implemented the corrective action required in Los Angeles Water Board's Health and Safety Code directive.

REGULATORY CONSIDERATIONS

18. As described above, the Responsible Parties have failed to submit a revised RAP, to conduct semi-annual groundwater monitoring, and to submit semi-annual groundwater monitoring reports as required by the Los Angeles Water Board's Health and Safety Code section 25296.10 directive.

19. Health and Safety Code section 25296.10, subdivision (c)(1) states:

When a local agency, the board, or a regional board requires an owner, operator, or other responsible party to undertake corrective action, including preliminary site assessment and investigation, pursuant to an oral or written order, directive, notification, or approval issued pursuant to this section, or pursuant to a cleanup and abatement order or other oral or written directive issued pursuant to Division 7 (commencing with Section 13000) of the Water Code, the owner, operator, or other responsible party shall prepare a work plan that details the corrective action the owner, operator, or other responsible party shall take to comply with the requirements of subdivisions (a) and (b) and the corrective action regulations adopted pursuant to Section 25299.3.

20. This Complaint alleges the Responsible Parties violated Health and Safety Code section 25296.10 directive and seeks the imposition of administrative civil liability in accordance with Health and Safety Code section 25299, subdivision (d)(1).

21. Health and Safety Code section 25299, subdivision (d)(1) states:

A person who violates a corrective action requirement established by, or issued pursuant to, Section 25296.10 is liable for a civil penalty of not more than ten thousand dollars (\$10,000) for each underground storage tank for each day of violation.

22. Pursuant to Health and Safety Code section 25299, subdivision (d)(2), the Los Angeles Water Board may impose an administrative civil liability for violations of corrective action requirements in accordance with Water Code sections 13323 to 13328.

23. Pursuant to Water Code section 13327, in determining the amount of civil liability, 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 the 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 as justice may require.

24. Issuance of this Complaint to enforce Division 20, Chapter 6.7 of the Health and Safety Code 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, sections 15307, 15308, 15321, subdivision (a)(2), and all applicable law.

ALLEGED VIOLATIONS

25. Violation 1: The Prosecution Team alleges the Responsible Parties violated the Health and Safety Code section 25296.10 directive by failing to submit a revised RAP by March 11, 2020.
26. Violation 2: The Prosecution Team alleges the Responsible Parties violated the Health and Safety Code section 25296.10 directive by failing to submit semi-annual groundwater monitoring reports. The first report was due by July 15, 2020.

MAXIMUM CIVIL LIABILITY

27. As outlined in this Complaint, the Responsible Parties failed to submit a revised RAP. As of December 27, 2022 (the date this Complaint is issued), the revised RAP is 1,021 days late. Additionally, the Responsible Parties failed to submit semi-annual groundwater monitoring reports. As of December 27, 2022, the groundwater monitoring reports are cumulatively 895 days late. Together, the total days of violation is 1,916 days.
28. Pursuant to Health and Safety Code section 25299, subdivision (d)(1), the maximum civil liability against any person who violates a corrective action requirement established by, or issued pursuant to, section 25296.10 of the Health and Safety Code is ten thousand dollars (\$10,000) per day of violation. The statutory maximum civil liability for each alleged violation is detailed below:
- a. Violation 1 = \$10,000/day x 1,021 days = \$10,210,000.
 - b. Violation 2 = \$10,000/day x 895 days = \$8,950,000.
29. Therefore, the maximum civil liability for the violations cited in this Complaint is \$19,160,000.

MINIMUM CIVIL LIABILITY

30. Pursuant to the State Water Board's 2017 Water Quality Enforcement Policy (Enforcement Policy), the minimum civil liability should be at least 10 percent higher

than the economic benefit so that liabilities are not construed as the cost of doing business and the assessed liability provides a meaningful deterrent to future violations. The minimum liability that may be imposed is the economic benefit (\$34,540) plus 10% (\$3,454), which equals \$37,994.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

31. The Prosecution Team proposes an administrative civil liability of \$1,222,934 for the alleged violations of Health and Safety Code section 25926.10, as detailed in Attachment A to this Complaint. This proposed administrative civil liability was derived using the penalty methodology in the Enforcement Policy. The proposed administrative civil liability takes into account the factors cited in Water Code section 13327, such as the Responsible Parties' culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
32. The proposed administrative civil liability is below the statutory maximum civil liability under the Health and Safety Code section 25299, and above the minimum civil liability provided for in the Enforcement Policy.
33. Notwithstanding the issuance of this Complaint, the Los Angeles Water Board retains the authority to assess additional civil liabilities for violations which have not yet been assessed or for violations that may subsequently occur.

THE RESPONSIBLE PARTIES ARE HEREBY GIVEN NOTICE THAT:

34. The Assistant Executive Officer of the Los Angeles Water Board proposes an administrative civil liability in the amount of \$1,222,934. The amount of the proposed administrative civil liability is based upon a review of the factors cited in Water Code section 13327 as well as the Enforcement Policy.
35. A hearing on this matter will be conducted by the Los Angeles Water Board at a hearing scheduled on **March 22, 2023**, unless the Responsible Parties do any of the following:
 - a. Responsible Parties 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 \$1,222,934; or
 - b. The Los Angeles Water Board agrees to postpone any necessary hearing after the Responsible Parties 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 Advisory Team contact as described in the Cover Letter to this Complaint; or

- c. The Los Angeles Water Board agrees to postpone any necessary hearing after the Responsible Parties 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 Advisory Team contact as described in the Cover Letter to this Complaint, along with a letter describing the items to be discussed.

36. If a hearing is held, it will be governed by Hearing Procedures which 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.

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

 Digitally signed
by Hugh Marley
Date: 2022.12.27
09:14:21 -08'00'

12/27/2022

Hugh Marley
Assistant Executive Officer

Date

Attachments:

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

Attachment A

Factors Considered and Penalty Calculation Methodology for Administrative Civil Liability Complaint No. R4-2022-0340

**Robert French and
Wahib Mikhail
Former Buy Rite Gasoline Facility
251 West Manchester Avenue, Los Angeles, California
Case No. 900030216**

On February 11, 2020, the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) issued a Health and Safety Code section 25296.10 directive to Robert French and Wahib Mikhail concerning the former Buy Rite Gasoline facility located at 251 West Manchester Avenue in Los Angeles, California (Site). The Los Angeles Water Board's directive requires Robert French, the property owner, and Wahib Mikhail, the operator (collectively, Responsible Parties), to address the unauthorized release of hazardous substances from underground storage tanks (USTs) at the Site. Although the leaking USTs and the surrounding contaminated soils have been removed from the Site, additional corrective action is required to address the remaining groundwater contamination, including free product (or light non-aqueous phase liquids)¹ and total petroleum hydrocarbons. Specifically, the directive required Robert French and Wahib Mikhail to submit a revised remedial action plan (RAP) to address the remaining contamination and to resume semi-annual groundwater monitoring. To date, the Responsible Parties have not submitted the required reports, thereby allowing the remaining contamination to persist in the environment.

Pursuant to Health and Safety Code section 25299, subdivision (d), a person who violates a corrective action requirement established by Health and Safety Code section 25296.10 is liable for a civil penalty of not more than \$10,000 for each UST for each day of violation. The civil penalty may be administratively imposed by the Los Angeles Water Board in accordance with sections 13323 to 13328 of the California Water Code (Water Code). For the purposes of this enforcement action, the proposed penalty is based on one unauthorized release from the USTs at the Site.

The State Water Resources Control Board's (State Water Board) 2017 Water Quality Enforcement Policy (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under Water Code section 13327. Each factor is discussed in detail for each alleged violation below. The 2017 Enforcement Policy can be found at https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf.

¹ The State Water Board's Low-Threat UST Closure Policy, Technical Justification for Groundwater Media-Specific Criteria, notes that free product can be a significant source of dissolved constituents to groundwater.

VIOLATION 1: Failure to Submit a Revised RAP

Pursuant to the Los Angeles Water Board's Health and Safety Code section 25296.10 directive, the Responsible Parties are required to submit a revised RAP by March 11, 2020. Specifically, the directive requires the Responsible Parties to submit a revised RAP evaluating at least three remedial technologies and proposing the most efficient and cost-effective option to cleanup free product in on-site and off-site groundwater monitoring wells and address elevated concentrations of total petroleum hydrocarbons in groundwater at the Site. Here, total petroleum hydrocarbons include total petroleum hydrocarbons as gasoline (TPH-g), total petroleum hydrocarbons as diesel (TPH-d), benzene, and methyl butyl tertiary ether (MTBE).

On May 4, 2020, the Los Angeles Water Board issued a Notice of Violation (May 2020 NOV) to the Responsible Parties for failing to submit a revised RAP. The revised RAP remains outstanding as of the issuance of this Complaint.

Step 1: Potential for Harm for Discharge Violations. The Prosecution Team is not alleging a discharge violation; therefore, it is not necessary to evaluate this factor.

Step 2: Assessment for Discharge Violations. The Prosecution Team is not alleging a discharge violation; therefore, it is not necessary to evaluate this factor.

Step 3: Per Day Assessment for Non-Discharge Violations. The "per day" factor is calculated for each non-discharge violation considering (a) the potential for harm and (b) the extent of the deviation from the applicable requirements.

a. Potential for Harm: Moderate

The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm. An assignment of a "Moderate" potential for harm is appropriate when the characteristics of the violation have substantially impaired the Water Board's 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.

Here, the Responsible Parties' failure to submit a revised RAP presents a substantial threat to beneficial uses. The Site is located within the Coastal Plain of the Los Angeles Groundwater Basin (also known as the Central Basin). Beneficial uses designated for the Central Basin include municipal and domestic water supply, agricultural water supply, industrial process water supply, and industrial service water supply. Although the leaking USTs have been removed, hazardous substances from the former USTs continue to persist in groundwater and pose a substantial threat to these beneficial

uses. Among these hazardous substances, benzene is of particular concern because it is a known human carcinogen.²

The most recent technical reports indicate petroleum contaminants from the former USTs remain on the Site. The last semi-annual groundwater monitoring report, prepared by Alta E.M., Inc. on behalf of Wahib Mikhail, was submitted to Los Angeles Water Board staff in June 2018. The 2018 report showed free product in both on-site and off-site groundwater monitoring wells at a thickness ranging from 0.06 to 1.25 inches. Additionally, groundwater sampled from well AEM9, located 10 feet east of the former UST excavation area, detected maximum concentrations of TPH-g up to 6,630,000 micrograms per liter ($\mu\text{g/L}$), TPH-d up to 357,000 $\mu\text{g/L}$, benzene up to 4,960 $\mu\text{g/L}$, and MTBE up to 848 $\mu\text{g/L}$. The 2017 semi-annual groundwater monitoring samples from the same well detected elevated concentrations of TPH-g up to 566,000 $\mu\text{g/L}$, TPH-d up to 1,450,000 $\mu\text{g/L}$, benzene up to 19,500 $\mu\text{g/L}$, and MTBE up to 279 $\mu\text{g/L}$. The continued presence of free product and rebounding levels of petroleum hydrocarbons between the 2017 and 2018 groundwater monitoring cycles indicates that a significant amount of petroleum contamination still exists in the subsurface.

The continued presence of these hazardous substances requires further remediation; however, cleanup has been delayed and contaminants continue to persist in the environment because the Responsible Parties failed to submit the revised RAP. Moreover, the Responsible Parties' failure to submit a revised RAP prevents the Los Angeles Water Board from evaluating the effectiveness of the RAP in protecting human health, safety, and the environment from the hazardous substances described above. As such, this violation substantially impairs the board's ability to perform its statutory and regulatory functions and delays remediation. For these reasons, this violation is characterized as having a "Moderate" potential for harm.

b. Deviation from Requirement: Major

The Enforcement Policy requires a determination of whether the violation represents a minor, moderate, or major deviation from the applicable requirements. A major deviation from requirement is appropriate when the applicable requirement was rendered ineffective in essential function. A major factor is appropriate in this case because, as of the date of this Complaint the Responsible Parties have not submitted a revised RAP, therefore rendering the applicable requirement ineffective.

Using Table 3 in the Enforcement Policy, the Per Day Factor of 0.55 is assigned. This value is to be multiplied by the days of violation and the maximum per day penalty of \$10,000 under Health and Safety Code section 25299.

² Agency for Toxic Substances and Disease Registry, Total Petroleum Hydrocarbons (TPH) Fact Sheet (Aug. 1999), available at <https://www.atsdr.cdc.gov/toxfaqs/tfacts123.pdf>.

c. Days of Violation and Initial Liability Amount

There are 1,021 days between March 11, 2020 (due date of the RAP) and December 27, 2022 (the date this Complaint was issued).

The Enforcement Policy provides that, for violations lasting more than 30 days, the Los Angeles Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per day basis is no less than the per-day economic benefit, if any, resulting from the violations. In order to adjust the per-day basis, the Los Angeles Water Board must make express findings that the violation: (a) is not causing daily detrimental impacts to the environment or the regulatory program; or (b) results in no 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 these findings is made, an alternate approach to penalty calculation for multiple day violations may be used (also known as “collapsing days”).

Under the Enforcement Policy, failure to submit a corrective action plan and other similar violations that delay remedial action are not the type of violation where collapsing days of violation is ordinarily used. Here, the failure to submit the revised RAP delays remediation at the Site, so the Los Angeles Water Board would not ordinarily collapse days of violation. However, without collapsing the days of violation, the resultant potential penalty for this violation is disproportionately high as compared to the remaining contamination. Given the large potential penalty if all 1,021 days of violation are counted, the Prosecution Team recommends compressing the days of violation and finds that the failure to submit the revised RAP does not result in an economic benefit that can be measured on a daily basis.

Following the Enforcement Policy, for violations lasting more than 30 days, the days are counted as follows: the first 30 days of violation, every fifth day of violation until the 60th day, and every 30 days thereafter. The 1,021 days for Violation 1 are compressed to 68 days by counting days 1-30, 35, 40, 45, 50, 55, 60, 90, 120, 150, 180, 210, 240, 270, 300, 330, 360, 390, 420, 450, 480, 510, 540, 570, 600, 630, 660, 690, 720, 750, 780, 820, 850, 880, 910, 940, 970, and 1,000.

The initial liability amount for Violation 1 is as follows:

$$68 \text{ days} \times \$10,000/\text{day (statutory maximum)} \times 0.55 \text{ (per day factor)} = \$374,000.$$

Step 4: Adjustment Factors

a. Culpability: 1.3

The Enforcement Policy directs that in order to determine the responsible party’s degree of culpability, the first step is to identify any performance standards (or, in their absence,

prevailing industry practices) in the context of the violation. The test for whether a discharger is negligent is what a reasonable and prudent person would have done or not done under similar circumstances. Adjustment should result in a multiplier between 0.75 and 1.5, with a higher multiplier for intentional misconduct or gross negligence and a lower multiplier for simple negligence. A neutral assessment of 1.0 should be used when a responsible party is determined to have acted as a reasonable and prudent person would have. A multiplier of less than 1.0 should only be used when a responsible party demonstrates that it has exceeded the standard of care expected of a reasonably prudent person to prevent the violation.

A multiplier of 1.3 for this violation is appropriate because the Responsible Parties are familiar with the requirements in the Los Angeles Water Board's directive, having previously worked with the board to implement similar corrective actions at the Site.

Since 2006, the Responsible Parties have worked with the Los Angeles Water Board to conduct corrective action at the Site and submit similar reports. For example, the Responsible Parties submitted, and Los Angeles Water Board staff reviewed and approved, a soil and water investigation workplan, well installation and monitoring reports, an interim remedial action workplan, and remedial action progress reports. Additionally, both the Los Angeles Water Board and State Water Board staff have met with the Responsible Parties to discuss the remaining contamination at the Site and the actions needed to certify the Site for closure under the State Water Board's Low-Threat UST Case Closure Policy (Low-Threat Closure Policy). This regular interaction demonstrates the Responsible Parties' familiarity with the Los Angeles Water Board's requirements and ability to implement the actions required in the board's directive.

A reasonable and prudent person would have taken affirmative actions to prepare the revised RAP, especially after being notified of the consequences of noncompliance in the May 2020 NOV and follow up correspondence with the State Water Board's Office of Enforcement. Instead, Robert French responded in an October 12, 2021 letter that he believed additional cleanup at the Site was unnecessary and the Los Angeles Water Board only wanted the Site to be "cleaner." Wahib Mikhail has not responded at all. Both parties' continued non-responsiveness demonstrates their negligence in addressing the remaining contamination.

The Responsible Parties' conduct is negligent because they failed to take reasonable and prudent actions to develop the revised RAP and address the remaining contamination at the Site. Thus, a multiplier of 1.3 for the culpability factor is appropriate.

b. History of Violation: 1.0

When there is a history of repeat violations, the Enforcement Policy requires a minimum multiplier of 1.1, with higher values as appropriate. The Responsible Parties do not have a history of violations; therefore, a multiplier of 1.0 is appropriate.

c. Cleanup and Cooperation: 1.3

This factor reflects the extent to which a party voluntarily cooperates in returning to compliance and correcting environmental damage. The multiplier for this factor ranges between 0.75 to 1.5, with a lower multiplier being applied where there is a high degree of cleanup and cooperation and a higher multiplier where this is absent.

Despite receiving the May 2020 NOV, multiple outreach attempts by the Los Angeles Water Board, and correspondences from the State Water Board's Office of Enforcement, the Responsible Parties have not cooperated or come into compliance with the board's directive. Instead, Robert French insisted that that he reached an agreement on case closure with the State Water Board and that the Los Angeles Water Board's directive is therefore unnecessary. However, on October 28, 2020, the Office of Enforcement responded to and corrected Robert French's claim, explaining that both the Los Angeles Water Board and State Water Board concluded that additional corrective action was required at the Site. Both agencies determined that the Site was not eligible for closure because multiple criteria in the Low-Threat Closure Policy were not met. The Responsible Parties have not responded to the Office of Enforcement's latest correspondence nor have they communicated an intent to comply with the directive. As such, a multiplier of 1.3 is appropriate for this violation.

Step 5: Determination of Total Base Liability

The Total Base Liability for Violation 1 is calculated below:

$$\begin{aligned} & \$374,000 \text{ (Initial Liability)} \times 1.3 \text{ (Culpability)} \times 1.0 \text{ (History of Violations)} \times 1.3 \\ & \text{(Cleanup and Cooperation)} = \mathbf{\$632,060.} \end{aligned}$$

**VIOLATION 2:
Failure to Submit Semi-Annual Groundwater Monitoring Reports**

The petroleum plume, which originates at the Site and expands in an east-northeast direction, is monitored by a network of fifteen on-site and off-site groundwater monitoring wells. The Los Angeles Water Board's Health and Safety Code directive requires the Responsible Parties to conduct semi-annual groundwater monitoring and submit semi-annual reports on January 15 and July 15 of every year. These reports are to include the results of semi-annual sampling of all groundwater monitoring wells associated with the Site (except for wells AEM4, AEM5, AEM6, and AEM7) and to summarize the results of any free product removal activities conducted during the reporting period. The first semi-annual report was due on July 15, 2020, but the Responsible Parties failed to submit the required report to the Los Angeles Water Board.

To date, the Responsible Parties have not submitted any of the semi-annual groundwater monitoring reports required in the directive. These missing groundwater monitoring reports are treated as one ongoing violation for the purposes of enforcement because the reports run concurrently and require the same substantive reporting from all groundwater monitoring wells.

Step 1: Potential for Harm for Discharge Violations. The Prosecution Team is not alleging a discharge violation; therefore, it is not necessary to evaluate this factor.

Step 2: Assessment for Discharge Violations. The Prosecution Team is not alleging a discharge violation; therefore, it is not necessary to evaluate this factor.

Step 3: Per Day Assessment for Non-Discharge Violations. The “per day” factor is calculated for each non-discharge violation considering (a) the potential for harm and (b) the extent of the deviation from the applicable requirements.

a. Potential for Harm: Moderate

This violation is characterized as having a “Moderate” potential for harm because the failure to conduct semi-annual groundwater monitoring compromises the Los Angeles Water Board’s ability to perform its statutory and regulatory functions and it presents a substantial threat to beneficial uses. The discussion of the beneficial uses for Violation 1 applies to this violation as well.

The last groundwater monitoring report, submitted in June 2018, covered sampling conducted during the first half of 2018. This report showed the continued presence of TPH-g, TPH-d, benzene, and MTBE in groundwater underlying the Site and adjacent properties. Furthermore, the groundwater specific criteria in the Low-Threat Closure Policy requires the plume to be stable or decreasing in areal extent for a minimum of 5 years. However, the contaminant concentrations reported in the June 2018 groundwater sampling report does not indicate that the plume is stable or decreasing. Since then, no new groundwater data has been collected, resulting in an over 4-year gap in data collection. Without the groundwater monitoring reports, the Los Angeles Water Board cannot monitor the effectiveness of remedial actions that have already taken place; determine whether beneficial uses are being protected; or confirm whether the plume is stable, decreasing, or spreading to adjacent areas.

For these reasons, this violation is characterized as having a “Moderate” potential for harm.

b. Deviation from Requirement: Major

A major factor is appropriate here because the Responsible Parties have not submitted any of the required groundwater monitoring reports, therefore rendering the applicable requirement ineffective.

Using Table 3 in the Enforcement Policy, the Per Day Factor of 0.55 is assigned.

c. Days of Violation and Initial Liability Amount

The Responsible Parties failed to submit the groundwater monitoring reports, which was first due on July 15, 2020, and every semi-annual report thereafter, for a total of 895 days of violation at the time this complaint was issued on December 27, 2022.

The Enforcement Policy provides that, for violations lasting more than 30 days, the Los Angeles Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per-day economic benefit, if any, resulting from the violation. For this violation, the Prosecution Team finds that the failure to submit the monitoring reports does not result in an economic benefit that can be measured on a daily basis. Therefore, the Prosecution Team recommends compressing the days of violation. Applying the method described for multiple day violations in Violation 1 above, the 895 days for Violation 2 are compressed to 63 days of violation.

The initial liability amount for Violation 2 is as follows:

$$63 \text{ days} \times \$10,000/\text{day (statutory maximum)} \times 0.55 \text{ (per day factor)} = \$346,500$$

Step 4: Adjustment Factors

a. Culpability: 1.3

The discussion of Culpability for Violation 1 applies to this violation also. Due to the repeated outreach by Los Angeles Water Board staff and the clear dates set forth in the directive, the Responsible Parties knew the First Semi-Annual Groundwater Monitoring Report was due on July 15, 2020. Moreover, the Responsible Parties submitted regular groundwater monitoring reports from April 2007 (date of the first report) to June 2018, but unilaterally decided to stop groundwater monitoring once they reached the maximum limit on their UST Cleanup Fund claim. In other words, the Responsible Parties would no longer be reimbursed from the fund for future work at the Site.

A reasonable and prudent person, despite reaching the limit on the UST Cleanup Fund, would have taken affirmative actions to resume groundwater monitoring at the Site after receiving the Los Angeles Water Board's directive. Furthermore, a reasonable and prudent person with questions about why continued semi-annual groundwater monitoring is necessary at the Site or questions about funding options would have reached out to the board. However, the Responsible Parties' continued unresponsiveness demonstrates their negligence in ignoring the board's directive. Thus, a multiplier of 1.3 is appropriate for this violation.

b. History of Violation: 1.0

The Responsible Parties do not have a history of violations; therefore, a multiplier of 1.0 is appropriate.

c. Cleanup and Cooperation: 1.3

The discussion of Cleanup and Cooperation for Violation 1 applies to this violation as well. The Responsible Parties have not cooperated with the Los Angeles Water Board and have not demonstrated that they intend to comply with the directive. Thus, a multiplier of 1.3 is appropriate.

Step 5: Determination of Total Base Liability

The Total Base Liability for Violation 2 is calculated below:

$$\begin{aligned} & \$346,500 \text{ (Initial Liability)} \times 1.3 \text{ (Culpability)} \times 1.0 \text{ (History of Violations)} \times 1.3 \\ & \text{(Cleanup and Cooperation)} = \mathbf{\$585,585}. \end{aligned}$$

Step 5 (Combined): Total Base Liability for All Violations

The combined total base liability is the sum of the total base liability for each of the violations discussed above, as follows:

Violation 1: \$632,060
+ Violation 2: \$585,585

= Combined Total Base Liability: \$1,217,645.

The following Steps 6 through 10 apply to the Combined Total Base Liability Amount for all violations.

Step 6: Ability to Pay and Continue In Business

The Enforcement Policy provides that if the Los Angeles Water Board has sufficient financial information necessary to assess the responsible party's ability to pay the Total Base Liability or to assess the effect of the Total Base Liability on the responsible party's ability to continue in business, then the Total Base Liability may be adjusted to address the responsible party's ability to pay or to continue in business.

Robert French's funding sources include ownership of multiple properties in Los Angeles County, including the Site, and a real estate management company called R.L. French Properties. Additionally, Robert French receives rental income from the Site, which is leased to Wahib Mikhail, the current owner and operator of the Arco-branded gas station at the Site. Robert French's other properties in Los Angeles County also

appear to be leased to other operating businesses, including an auto repair shop and a truck exchange company. The Prosecution Team has met its burden to provide an initial showing of Robert French's ability to pay the proposed liability amount. The burden now shifts to Robert French to demonstrate his inability to pay the proposed liability.

As mentioned above, Wahib Mikhail is the owner and operator of the Buy Rite Arco gasoline station at the Site and gains regular income from its operation. Wahib Mikhail is also the CEO of BuyRite Gasoline, Inc., an active corporation in California whose primary business includes gasoline service stations. Based on publicly available information from Dun & Bradstreet, BuyRite Gasoline, Inc. generates approximately \$459,263 in sales and employs approximately 9 employees.

In sum, both parties appear to have the ability to pay. As such, for the purposes of this penalty methodology, there is no adjustment to the Combined Total Base Liability.

Step 7: Economic Benefit

Pursuant to the Enforcement Policy, economic benefit is any savings or monetary gain derived from the act or omission that constitutes the violation. The Enforcement Policy provides that the economic benefit of noncompliance should be calculated using the U.S. Environmental Protection Agency's BEN financial model. The BEN model utilizes standard financial cash flow and net present value analysis techniques to calculate the economic benefit a party derives from delaying and/or avoiding compliance with environmental statutes.

Here, the Responsible Parties realized an economic benefit by not expending the resources necessary to prepare the revised RAP and groundwater monitoring reports as required in the Health and Safety Code directive. Using the BEN model, the economic benefit for not completing the RAP and not submitting the monitoring reports is estimated to be \$34,540. (See Attachment B: Economic Benefit Calculation.)

The Enforcement Policy requires the Los Angeles Water Board to recover, at a minimum, 10% more than the economic benefit. The minimum liability that may be imposed is the economic benefit (\$34,540) plus 10% (\$3,454), which equals \$37,994.

Step 8: Other Factors as Justice May Require

The Enforcement Policy states that the costs of investigation and enforcement can be considered under "other factors as justice may require." To date, the Los Angeles Water Board has incurred \$5,289 associated with the investigation and enforcement of the violations alleged herein. This total represents approximately 42 hours of staff time spent on the investigation, preparing the NOV, and preparing enforcement documents, including this analysis. The amount was calculated using each staff person's hourly rate plus benefits and overhead. No attorneys' fees were included in this calculation. The Prosecution Team finds that it is appropriate to increase the Combined Total Base

Attachment A
Administrative Civil Liability Complaint
No. R4-2022-0340
Former Buy Rite Gasoline Facility

Liability amount by \$5,289 in consideration of the staff costs incurred. Increasing the Combined Total Base Liability Amount in this manner also serves as a deterrent against future violations.

Step 9: Maximum and Minimum Liability Amounts

The maximum and minimum liabilities must be determined and compared to the proposed liability.

As explained above and in the Complaint, the statutory maximum per day penalty is \$10,000 under Health and Safety Code section 25299. The total combined days of violation is 1,916 days (without compressing days). Therefore, the maximum liability amount is \$19,160,000.

As explained in Step 7 above, the minimum liability amount is \$37,994.

Step 10: Final Liability Amount: \$1,222,934

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided that the amounts are within the minimum and maximum liability amounts. Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount is the Combined Total Base Liability (\$1,217,645) plus staff costs (\$5,289), which equals \$1,222,934 and is within the minimum and maximum liability amounts.

Attachment B- Economic Benefit Analysis

Former Buy Rite Gasoline

Compliance Action	Capital Investment		One-Time Non-Depreciable Expenditure		Annual Cost		Non-Compliance Date	Compliance Date	Penalty Payment Date	Discount Rate	Benefit of Non-Compliance				
	Amount	Basis	Date	Delayed?	Amount	Basis						Date			
1 Submit Remedial Action Plan		ECI	1/1/2015	Y	\$ 11,000	ECI	12/2/2022	Y	1/1/2015	1/1/2015	5/11/2020	3/22/2023	4/21/2023	6.70%	\$ 1,072
2 GWM event/report (due 7/15/2020)		ECI	1/1/2015	Y	\$ 8,538	ECI	12/2/2022	N	1/1/2015	1/1/2015	7/15/2020	3/22/2023	4/21/2023	6.70%	\$ 7,008
3 GWM event/report (due 1/15/2021)		ECI	1/1/2015	Y	\$ 8,538	ECI	12/2/2022	N	1/1/2015	1/1/2015	1/15/2021	3/22/2023	4/21/2023	6.70%	\$ 6,833
4 GWM event/report (due 7/15/2021)		ECI	1/1/2015	Y	\$ 8,538	ECI	12/2/2022	N	1/1/2015	1/1/2015	7/15/2021	3/22/2023	4/21/2023	6.70%	\$ 6,685
5 GWM event/report (due 1/15/2022)		ECI	1/1/2015	Y	\$ 8,538	ECI	12/2/2022	N	1/1/2015	1/1/2015	1/15/2022	3/22/2023	4/21/2023	6.70%	\$ 6,539
6 GWM event/report (due 7/15/2022)		ECI	1/1/2015	Y	\$ 8,538	ECI	12/2/2022	N	1/1/2015	1/1/2015	7/15/2022	3/22/2023	4/21/2023	6.70%	\$ 6,403
7		ECI	1/1/2015	Y		ECI	1/1/2015	N	1/1/2015	1/1/2015	1/1/2015	3/22/2023	4/21/2023	7.40%	\$ -
8		ECI	1/1/2015	Y		ECI	1/1/2015	N	1/1/2015	1/1/2015	1/1/2015	3/22/2023	4/21/2023	7.40%	\$ -
9		ECI	1/1/2015	Y		ECI	1/1/2015	N	1/1/2015	1/1/2015	1/1/2015	3/22/2023	4/21/2023	7.40%	\$ -
10		ECI	1/1/2015	Y		ECI	1/1/2015	N	1/1/2015	1/1/2015	1/1/2015	3/22/2023	4/21/2023	7.40%	\$ -
11		ECI	1/1/2015	Y		ECI	1/1/2015	N	1/1/2015	1/1/2015	1/1/2015	3/22/2023	4/21/2023	7.40%	\$ -
12		ECI	1/1/2015	Y		ECI	1/1/2015	N	1/1/2015	1/1/2015	1/1/2015	3/22/2023	4/21/2023	7.40%	\$ -
13		ECI	1/1/2015	Y		ECI	1/1/2015	N	1/1/2015	1/1/2015	1/1/2015	3/22/2023	4/21/2023	7.40%	\$ -
14		ECI	1/1/2015	Y		ECI	1/1/2015	N	1/1/2015	1/1/2015	1/1/2015	3/22/2023	4/21/2023	7.40%	\$ -
15		ECI	1/1/2015	Y		ECI	1/1/2015	N	1/1/2015	1/1/2015	1/1/2015	1/1/2019	1/1/2019	7.50%	\$ -

Income Tax Schedule: Corporation
USEPA BEN Model Version: Version 2021.0.0 (April 2021)
Analyst: Erin Garner
Date/Time of Analysis: 12/20/2022 15:55
Total Benefit: \$ 34,540

Attachment B

TECHNICAL SPECIFICATIONS FOR WELL INSTALLATION

Attachment B: Technical Specifications for Well Installation

1. Existing Well Gauging - Gauge existing wells AEM1, AEM9, and AEM11 (Figure 1) for groundwater and potential light non aqueous phase liquid (LNAPL) product.¹ If substantial groundwater (>1 foot) exists in any of these wells, Settling Respondents shall notify the Los Angeles Regional Water Quality Control Board (Regional Water Board) staff in writing. These wells (AEM1, AEM9, and AEM11) were dry when last gauged in October 2022, May 2023, and December 2023.
2. Proposed Well Locations - Install new wells AEM16, AEM17, and AEM18.² Locations are shown on Figure 1.
3. Drilling Method - Truck-mounted drill rig with approximately 10-inch O.D hollow stem auger. If refusal is encountered or other field conditions prevent auger advancement prior to the target well completion depth, the Settling Respondents shall immediately contact Regional Water Board staff and obtain verbal authorization to deviate from the proposed work scope.
4. Well Construction - Each well to be constructed as follows:
 - Well Diameter/Material: 4-inch, schedule 40 PVC
 - Well Screen Interval: approx. 15-20 feet below groundwater and 10-15 above.
 - Total Depth: Approximately 125 feet below ground surface (bgs)
 - Slot: 0.010" factory slotted
 - Sand: #2/12 Monterey
 - Seal / Annular: 2 feet bentonite chips above sand / 95% cement- 5% bentonite grout
 - Well Box: Flush mount 12-inch well box
5. The construction and development of groundwater monitoring wells must comply with the requirements prescribed in California Well Standards (Bulletin 74-90), published by the California Department of Water Resources and available at: <https://water.ca.gov/Programs/Groundwater-Management/Wells/Well-Standards/Combined-Well-Standards>.
6. Soil Sampling - Soil from all groundwater borings must be sampled and logged at minimum five-foot intervals, or at significant changes in lithology, starting at 90 feet bgs. Soil samples shall also be collected at areas of obvious contamination. All soil samples must be field screened for petroleum hydrocarbons using a Photoionization

¹ Previous groundwater monitoring events, from approximately 2008-2018, showed free product in these wells.

² The new well locations are adjacent to existing wells AEM1, AEM9, and AEM11.

Detector (PID) or a Flame Ionization Detector (FID). The professional in charge shall review each boring log and assume responsibility for accuracy and completeness.

7. Field Observations/Measurements - Collection of visual, olfactory and field Organic Vapor Meter (PID) readings at 90 feet and below during drilling. Logging of soil type in general accordance with USCS system.
8. Laboratory Analysis - Analysis of all collected soil samples as follows:

Analyte	Method	Reporting Limit
○ TPH C ₄ -C ₁₀ (gasoline)	EPA 5035/8015B	0.05 mg/kg
○ TPH C ₁₀ -C ₂₈ (diesel)	EPA 8015B	10 mg/kg
○ Benzene, Toluene, E-benzene, Xylenes	EPA 5035/8260B	0.005-0.01 mg/kg
○ Fuel Oxygenates	EPA 5035/8260B	0.005-0.05 mg/kg
○ Naphthalene	EPA 5035/8260B	0.002 mg/kg
○ Ethanol	EPA 5035/8260B or 8015	0.1 mg/kg

QA/QC in general accordance with Los Angeles Regional Water Board guidelines.

9. Well Development - Wells to be developed by surging, and bailing or pumping.
10. Investigative Waste Disposal - Any extracted groundwater, soil cuttings, or other investigation derived waste must be stored in properly labeled, DOT-approved drums until classified for disposal. Once lab results are received, all containerized waste must be transported under manifest and legally disposed off-site at a facility licensed to accept such materials.
11. New Well Gauging - New wells to be gauged for groundwater and potential LNAPL product approximately one week following development.
12. Survey Wells - Survey elevations and location of new wells using a State of California licensed land surveyor.
13. Well Installation Report – Prepare a well installation report detailing the boring advancement and evaluating soil and groundwater sampling results. The report must include, at a minimum, a scaled map showing well locations, soil boring logs, field observations/measurements, soil sample collection methods, soil analytical results, laboratory reports, description of well development activities, and well survey data.
14. Geotracker - Upload well installation report, soil analytical data, boring logs, and well survey data for new wells to Geotracker.
15. Notification – Settling Respondents shall notify the Regional Water Board, via email, a minimum of 10 calendar days prior to the start of field work, so that staff can arrange to be present to observe field activities. The Regional Water Board points of contact are:

Order No. R4-2024-0386
Attachment B

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Figure 1.

