ATTACHMENT 1
Order No. R9-2021-0119
Liability Methodology Decisions

The State Water Board's Water Quality Enforcement Policy (Enforcement Policy) establishes a ten-step methodology for determining administrative civil liability (ACL) by addressing all of the factors that are required to be considered under California Water Code (CWC) section 13385(e). Since the violations occurred prior to the State Water Board's most recent amendments to the Enforcement Policy, which became effective on October 5, 2017, the 2010 version of the Enforcement Policy was in effect on the dates of the violation at issue and, therefore, is the applicable policy. See Prosecution Team (PT) Exhibit 175, 2010 Enforcement Policy. Amendments in the 2017 Enforcement Policy (PT Exhibit 176) that are mere clarifications may be used to assist the Water Boards in interpreting the 2010 Enforcement Policy[1].

The ten-step methodology used to calculate the liability for each of the eight violations at the Portola Center South Construction site (Site) is discussed below, as is the basis for assessing each score, and the total ACL of **$9,085,932** against the Dischargers identified in ACL Order No. R9-2021-0119. The individual and total liabilities are summarized in **Table 1**, Total Assessed Liability. The final total liability and scores for each violation are summarized in **Table 2,** Liability Calculator.

Violation No. 1
Unauthorized Discharge of Sediment. (4 days)

STEP 1 - Potential for Harm for Discharge Violations (Violation No. 1)

The Potential for Harm for Discharge Violations is determined by using a three-factor scoring system to quantify: *(1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) the discharge's susceptibility to cleanup or abatement.*

Factor 1: Harm or Potential Harm to Beneficial Uses

A score between 0 and 5 is assigned in accordance with the statutory factors of the nature, circumstances, extent, and gravity of the violation, based on a determination of whether the harm or potential for harm is negligible (0), minor (1), below moderate (2), moderate (3), above moderate (4), or major (5). The Dischargers were assigned a score of **4 (Above Moderate)**. The Enforcement Policy defines a score of **4** as a "*more than moderate threat to beneficial uses (i.e., impacts are observed or likely*

[1] Memorandum from Catherine Hawe, State Water Resources Control Board, to David Boyers, September 12, 2017. The Memo can be found at: https://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/2020/updated_enforcement_policy_memo.pdf.

substantial, temporary restrictions on beneficial uses [e.g., less than 5 days], and human or ecological health concerns)." A score of 4 was assigned because the impacts or likely impacts are substantial, including temporary restrictions on beneficial uses and human or ecological health concerns. Under the Construction General Storm Water Permit, Risk Level 2 sites are required to take additional measures to prevent erosion and to control sediment transport off site because these sites represent an increased risk to water quality. The Dischargers consistently disregarded these requirements when the majority of the Site was exposed and rain was expected, thereby creating a substantial threat of sediment discharges and at least four days of actual sediment discharges. Additionally, Aliso Creek is designated as an impaired water body for Benthic Community Effects, Indicator Bacteria, Malathion, Nitrogen, Phosphorus, Selenium and Toxicity pursuant to Clean Water Act section 303(d). Storm water runoff containing sediment from the Site has the potential to transport other pollutants, such as nutrients (phosphorus and nitrogen), pesticides, metals, and oil and grease, potentially further degrading the already impaired waters of Aliso Creek. It could take several years for sediment impacts to attenuate. Furthermore, the areas receiving storm water runoff from the Site are a protected wildlife corridor, wetlands, and a wildlife park that provide habitat for threatened and sensitive wildlife and plant species.

In terms of analyzing the factors of discharge violations, if factor 2 is "what was discharged?," factor 1 asks "how harmful was the discharge, and why?" As summarized in the preceding chronology, Dischargers made representations to the San Diego Water Board regarding protecting the Site, including that protective measures would be taken as to when construction activities would occur, a phased approach to grading to prevent sediment transport over a substantial area, and potential run-on from uphill residential developments. The City modified the REAP requirement, increasing the burden on Dischargers, and engaged in extensive progressive enforcement when BMPs were not properly selected or installed. Dischargers' statements and the City's actions indicate that the Dischargers knew the significant potential harm that could result if the Site was not protected during a rain event.

Furthermore, the discharge violations indicate that there was significant actual harm. The photographs and videos are reliable evidence that the Site was vulnerable, the predicted rain events did mobilize sediment, and Dischargers' efforts to contain material on site were wholly inadequate, given numerous factors, including the inadequate capacity of retention basins, failure to limit construction activity to portions of the Site that could reasonably be protected prior to a storm event, and construction decisions that left the southern-most slope unprotected during rain events.

For these reasons, a factor of 4 was assigned. Other factors take into account the Dischargers' actions prior to a discharge (culpability) and after the discharges (Factor 3; cleanup and cooperation). This factor focuses on harm, including potential harm. Given the repeated discharges (four during the single rainy reason considered during

the Violation Period), the volumes, the substantial sediment transport, and the beneficial uses of downstream areas, the selection of this factor is appropriate.

Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge

A score between 0 and 4 is assigned based on a determination of whether the discharged material poses a negligible (0), minor (1), moderate (2), above moderate (3), or major (4) risk or threat to potential receptors. "Potential receptors" are those identified considering human, environmental and ecosystem health exposure pathways. The Dischargers were assigned a score of **2 (Moderate Risk)**. The Enforcement Policy defines a score of **2** as "*[d]ischarged material poses a moderate risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material have some level of toxicity or pose a moderate level of concern regarding receptor protection)*." A score of **2** was assigned because the discharged material poses a moderate risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material have some level of toxicity or pose a moderate level of concern regarding receptor protection). The primary storm water pollutant at construction sites is sediment. Sediment discharges can physically and chemically cause harmful effects to beneficial uses because sediment in receiving waters can reduce the sunlight for aquatic plants, clog fish gills, smother aquatic habitat and breeding areas, and transport construction related pollutants such as nutrients, metals, oils, and grease.

Factor 3: Susceptibility to Cleanup and Abatement

A score of 0 is assigned if 50 percent or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned if less than 50 percent of the discharge is susceptible to cleanup or abatement. The Discharger was assigned a score of **1** because the clean-up of sediment-laden stormwater runoff is generally not possible or effective because most sediment will be carried downstream with creek flows. Therefore, less than 50 percent of the unauthorized discharges of sediment and sediment-laden runoff to Aliso Creek was susceptible to cleanup or abatement.

Calculating the Final Potential for Harm

The Final Potential for Harm score is the sum of Factors 1, 2, and 3. Based on the above, a score is **7** (4 + 2 + 1) was calculated.

STEP 2 – Assessment for Discharge Violations (Violation No. 1)

According to CWC section 13385, a Regional Water Board may impose civil liability on a per day basis, a per gallon basis, or both. Where there is a discharge, the Water Boards shall determine an initial liability amount on a per gallon basis using the Potential for Harm score and the extent of Deviation from Requirement of the violation. These factors will be used in Table 1 of the Enforcement Policy to determine a Per Gallon Factor for the discharge. Per day assessments for discharge violations are determined based on the final Potential for Harm score and the extent of the Deviation from Requirement, which are used in Table 2 of the Enforcement Policy to determine the Per Day Factor. The Per Day Factor is multiplied by the Statutory Maximum Liability amount allowed under the CWC (i.e., $10,000 per day).

High Volume Gallon Calculation – 2010 Enforcement Policy

CWC section 13385 allows a liability assessment for both the per gallon assessment and per day of discharge, with the maximum per gallon liability of $10 a gallon after the first 1,000 gallons of each discharge is subtracted. This liability is brought under the 2010 Enforcement Policy, which contained a "high volume" discount. (See PT Exhibit 175, 2010 Enforcement Policy, page 19 of 63.) Recognizing that high-volume discharges of construction stormwater can result in large liabilities, the 2010 Enforcement Policy recommended a maximum of $2 per gallon.[2] This is appropriate given the other circumstances of the discharges (repeated nature of the discharge, significant sediment was mobilized and carried to sensitive areas, and a reduction to $1 per gallon or otherwise would not adequately deter the conduct or the impacts).

Deviation from Requirement

The Deviation from Requirement is based on a determination of whether the intended effectiveness of the requirement "remains generally intact" (Minor), "has been partially compromised" (Moderate), or "rendered ineffective" (Major). The Enforcement Policy defines a Major "Deviation from Requirement" as "[t]he requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions)."

The Deviation from Requirement is **Major** because the Construction Storm Water Permit prohibits all discharges except for storm water and non-storm water discharges specifically authorized by the permit. Only discharges that have been controlled with BMPs that achieve BAT and BCT are authorized. Because the Dischargers did not implement BMPs that achieve BAT and BCT, the requirements of the Construction Storm Water Permit were "rendered ineffective." Major is an appropriate selection because there was a failure to plan for or respond to rain events, despite clear permit requirements, repeated corrective actions demanded by the City, and discharge events indicating that the BMPs were ineffective. For example, the City issued Citation No. 2258 to the Dischargers on January 21, 2016, for violations observed on January 5, 2016, stating that "very limited erosion control BMPs have been implemented on site." (See PT Exhibit 105, Citation 2258.) Additionally, the Citation states that the Dischargers' excavations and berms were built hastily in an "ad hoc manner" prior to storm events as sediment basins without proper engineering design and City approval.[3]

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[2] The 2017 Enforcement Policy modified this discretionary reduction and gave regional boards greater discretion whether to reduce the liability from the maximum $10 per gallon, regardless of volume.

[3] In addition, Dischargers failed to accurately report to the State Board about their permit compliance. For example, see PT Exhibit 376, which is the annual report required for Risk Level 2 sites, the Dischargers reported no unauthorized discharges and a conclusion that the sampling requirement was "not applicable."

Per Gallon Factor
Using a Potential for Harm factor score of **7** (see Step 1) and Deviation from Requirement of **Major**, the Per Gallon Factor for the unauthorized discharges from the Site to Aliso Creek is **0.310** in Table 1 of the 2010 Enforcement Policy.

Per Day Factor
Using a Potential for Harm factor score of **7** (see Step 1) and Deviation from Requirement of **Major**, the Per Day Factor for the unauthorized discharges from the Site to Aliso Creek is **0.310** in Table 2 of the Enforcement Policy.

Days of Discharge Violations
Sediment-laden stormwater runoff was discharged from the Site into Aliso Creek on four days: September 15, 2015 (457,457 gallons); December 22, 2015 (1,208,066 gallons); January 5, 2016 (3,120,093 gallons); and January 6, 2016 (1,511,822 gallons). None of the discharged sediment or stormwater runoff was recovered.

CWC section 13385 allows discharge violations to be assessed by day and volume. Two volume analyses were provided by Office of Enforcement's Senior Water Resource Control Engineer Bryan Elder. (See ACL Complaint Package Volume Calculation Report and PT Rebuttal Exhibit 5, Estimated Storm Water Discharge From Construction Activities – Portola South.)

STEP 3 – Per Day Assessment of Non-Discharge Violations (Violation No. 1)
Step 3 does not apply to Discharge Violations.

STEP 4 – Adjustment Factors (Violation No. 1)
There are three additional factors that are considered for modification of the amount of the initial liability: The Dischargers' Culpability, the Dischargers' efforts for Cleanup and Cooperation after the violation, and the Dischargers' History of Violations.

Culpability
Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for intentional or negligent behavior. The Dischargers were given a multiplier value of **1.3** for this violation because the Dischargers either intentionally, or due to negligence, did not implement BMPs that achieve BAT and BCT, resulting in unauthorized discharges from the Site despite ample notice that a discharge was likely. The City's Notice of Violations (NOVs) for violations observed on September 15, 2015, and October 7, 2015 identified the lack of BMPs and urged the Dischargers to "[i]mplement all appropriate BMPs." The Dischargers knew of approaching storm events as documented through emails from their QSP and yet still failed to implement sufficient and effective BMPs to prevent significant sediment discharges. (See PT Exhibit 229, Portola South REAPs and Emails.) Despite an actual discharge and numerous subsequent verbal and written orders from the City and the San Diego Water Board, the Dischargers failed to install the erosion and sediment controls required to prevent discharges. A reasonably prudent person would have heeded

these warnings and implemented BMPs to achieve BAT and BCT as required by the Construction Storm Water Permit.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated 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. For the September 15, 2015, violation, the Dischargers were assigned a Cleanup and Cooperation multiplier of **1.1** because they ignored the BMP recommendations to correct BMP deficiencies resulting in an unauthorized discharge during a rain event. For the remaining discharge violations (December 22, 2015, January 5, 2016, and January 6, 2016), the Cleanup and Cooperation multiplier was increased to a score of **1.5** because of the Dischargers' repeated and persistent failure to implement the necessary BMPs despite repeated warnings from the City and the San Diego Water Board.

History of Violations

Where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this. The Dischargers were assigned a History of Violations multiplier of **1.0** for this violation because the Dischargers do not have a history of construction stormwater violations determined by this Board.

STEP 5 – Determination of Total Base Liability Amount (Violation No. 1)

The Total Base Liability Amount (i.e., initial amount of liability) is determined by multiplying the Per Day Assessment by the Days of Violation and then applying the adjustment factors as follows:

Gallons Discharged Assessment

Adjusted Gallons Discharged x Per Gallon Factor x Statutory Max x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Gallon Liability

September 15, 2015, Violation

(457,457 – 1,000) x 0.31 x $2 x 1.3 x 1.1 x 1.0 = **$404,695**

December 22, 2015, Violation

(1,208,066 – 1,000) x 0.31 x $2 x 1.3 x 1.5 x 1.0 = **$1,459,343**

January 5, 2016, Violation

(3,120,093 – 1,000) x 0.31 x $2 x 1.3 x 1.5 x 1.0 = **$3,770,983**

January 6, 2016, Violation

(1,511,822 – 1,000) x 0.31 x $2 x 1.3 x 1.5 x 1.0 = **$1,826,584**

$7,461,605

Days Discharged Assessment

Days of Violation x Per Day Factor x Statutory Max x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability

September 15, 2015, Violation
1 x 0.31 x $10,000 x 1.3 x 1.1 x 1.0 = **$4,433**

December 22, 2015, Violation
1 x 0.31 x $10,000 x 1.3 x 1.5 x 1.0 = **$6,045**

January 5, 2016, Violation
1 x 0.31 x $10,000 x 1.3 x 1.5 x 1.0 = **$6,045**

January 6, 2016, Violation
1 x 0.31 x $10,000 x 1.3 x 1.5 x 1.0 = **$6,045**
$22,568

STEP 6 – Ability to Pay and Ability to Continue in Business (Violation No. 1)
Baldwin & Sons, Inc.; Baldwin & Sons, LLC; Sunranch Capital Partners, LLC; Sunrise Pacific Construction, Inc.; and SRC-PH Investments, LLC; Jose Capati; Shawn M. Baldwin; Randall G. Bone (collectively Dischargers) acknowledge and affirm their collective ability to pay the administrative civil liability assessment in ACL Order No. R9-2021-0119 and did not assert an ability to pay defense in response to the Complaint. The Dischargers further acknowledged the San Diego Water Board does not apportion liability.

STEP 7 – Other Factors as Justice May Require (Violation No. 1)
The Enforcement Policy provides that if the San Diego Water Board finds that the amount determined using the above factors is inappropriate, the liability amount may be adjusted under the provision for "other factors as justice may require," if express findings are made.

Examples of circumstances warranting an adjustment under this step are:

a. The discharger has provided, or Water Board staff has identified, other pertinent information not previously considered that indicates a higher or lower amount is justified.

b. A consideration of issues of environmental justice indicates that the amount would have a disproportionate impact on a particular disadvantaged group.

c. The calculated amount is entirely disproportionate to assessments for similar conduct made in the recent past using the Enforcement Policy.

(Enforcement Policy, page 19.)

The circumstances in this matter do not warrant an adjustment under this step.

The Enforcement Policy also provides under the "Other Factors as Justice May Require" that the cost of investigation and enforcement should be added to the liability amount. From March 2015 to November 2019 the San Diego Water Board invested **932** hours to investigate, develop enforcement documents, and prepare to bring this matter to hearing. Following Enforcement Policy guidance, based on the staff

member's position and overhead, these hours were converted into a staff cost of $**96,594**. This amount was then added at the end of the collective liability assessment. A summary of the staff costs incurred to date is provided in PT Exhibit 174, Staff Cost Summary. The San Diego Water Board finds that it is appropriate to increase the Total Base Liability to include staff costs in the liability. Increasing the Total Base Liability Amount in this manner serves to create an appropriate deterrent against future violations.

STEP 8 – Economic Benefit (Violation No. 1)

Pursuant to CWC section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The Dischargers derived an economic benefit by not properly implementing the erosion and sediment control BMPs to the BAT/BCT standard as required by the Construction Storm Water Permit. At a minimum, the Dischargers should have implemented erosion control and sediment control requirements for a Risk Level 2 site. Using the U.S. EPA BEN Model, the Dischargers enjoyed an economic benefit of **$747,258**. (See Complaint Package, Economic Benefit Calculation Methodology.) While the other violations have minor economic benefit, such benefit would be captured by this minimum recovery.

STEP 9 – Maximum and Minimum Liability Amounts (Violation No. 1)

For all violations, CWC section 13385 sets a maximum liability amount that may be assessed for each violation. For some violations, the statute also requires the assessment of a liability at no less than a specified amount. The maximum and minimum amounts for each violation must be determined for comparison to the amounts being proposed.

Maximum Liability Amount

Pursuant to CWC section 13385 the maximum civil liability that the San Diego Water Board may assess for this violation is (a) ten thousand dollars ($10,000) per day of violation (per violation); and (b) ten dollars ($10) for every gallon discharged, over one thousand (1,000) gallons discharged, that was not cleaned up. In this instance, the San Diego Water Board is assessing civil liability for the discharge of sediment and sediment-laden stormwater runoff to waters of the United States on a per day and per gallon basis. The Maximum Liability Amount that could be assessed for this violation pursuant to CWC section 13385 is **$10,000 per day per discharge** and **$10 per gallon discharged over 1,000 gallons**. Therefore, the maximum liability amount for Violation No. 1 is **$62,974,380** (the sum of $40,000 for four days of discharge and $62,934,380 for the discharge of 6,297,438 gallons of storm water runoff). The maximum liability reflects the $10 gallon set forth in statute, a subtraction of the first 1,000 gallons of each daily discharge, and does not consider adjustment factors.

Minimum Liability Amount

CWC section 13385(e) requires that when pursuing civil liability under section 13385, "*at a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation*." The Enforcement Policy

requires that the adjusted Total Base Liability Amount be at least ten percent (10%) higher than the Economic Benefit. Therefore, the Minimum Liability Amount for this violation is (1.1 x $747,258) = **$821,983**.

STEP 10 – Final Liability Amount (Violation No. 1)
Based on this analysis, the facts in the record, and consistent with the Enforcement Policy, the civil liability for **four days** of discharge of **6,297,438 gallons** of stormwater runoff in violation of the Construction Storm Water Permit is **$7,484,173** ($22,568 plus $7,461,605) plus staff costs. The liability is within the minimum and maximum liability range.

Violation No. 2
Failure to Implement Material Stockpile BMPs. (27 days)

STEP 1 - Potential for Harm for Discharge Violations (Violation No. 2)
Step 1 does not apply to Non-Discharge Violations.

STEP 2 – Assessment for Discharge Violations (Violation No. 2)
Step 2 does not apply to Non-Discharge Violations.

STEP 3 – Per Day Assessment of Non-Discharge Violations (Violation No. 2)
While non-discharge violations may not directly or immediately impact beneficial uses, they harm or undermine the regulatory program. Per day assessments of non-discharge violations are determined based on the Potential for Harm and the extent of Deviation from Requirement, which are used in Table 3 of the Enforcement Policy to determine the Per Day Factor. The Per Day Factor is multiplied by the Statutory Maximum Liability amount allowed under the CWC (i.e., $10,000 per day).

Potential for Harm
The Potential for Harm is based on a determination of whether the circumstances of the violation indicate "a minor potential for harm" (Minor), "a substantial potential for harm" (Moderate), or "a very high potential for harm" (Major). The Potential for Harm here is characterized as **Moderate**. The Enforcement Policy defines Moderate Potential for Harm as "[t]he characteristics of the violation present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm." The Potential for Harm is **Moderate** because the failure to implement adequate stockpile management BMPs poses a substantial potential for harm if there is wind, or stormwater or non-stormwater runoff that flows through and transports sediment from the Site to receiving waters. Sediment in receiving waters can reduce the sunlight for aquatic plants, clog fish gills, smother aquatic habitat and breeding areas, and transport construction-related pollutants such as nutrients, metals, oils, and grease.

Deviation from Requirement

The Deviation from Requirement is based on a determination of whether the intended effectiveness of the requirement "remains generally intact" (Minor), "has been partially compromised" (Moderate), or "rendered ineffective" (Major). **Major** was selected because the Dischargers rarely covered the material stockpiles, and most had no protection, thus rendering the requirement ineffective. The Dischargers' efforts did not improve over time, or with a forecasted storm event, or with repeated progressive enforcement from the City. The Construction Storm Water Permit requirements were repeatedly ignored, and a selection of major is appropriate.

Per Day Factor

Using Enforcement Policy Table 3 - Per Day Factor, the range of liability factors for a Potential for Harm determination of **Moderate** and Deviation from Requirement determination of **Major**, is 0.4 and 0.7. The middle of the range **0.55** was used for the Per Day Factor for the failure to implement the stockpile management requirements.

Days of Non-Discharge Violation

According to the supporting evidence included with the Technical Analysis, the Dischargers were in violation of the stockpile management requirements of or B.1.b. in Attachment D to the Construction Storm Water Permit for **27 days**:[4] August 20, 2015; September 15, 2015; September 17, 2015; October 7, 2015; November 5, 2015; December 8, 2015; December 18, 2015; December 22, 2015; December 23, 2015; January 5, 2016; January 8, 2016; January 19, 2016; January 20, 2016; January 22, 2016; January 25, 2016; February 4, 2016; March 3, 2016; March 11, 2016; March 14, 2016; March 21, 2016; March 24, 2016; March 25, 2016; March 26, 2016; March 28, 2016; March 29, 2016; March 30, 2016; and March 31, 2016.

STEP 4 – Adjustment Factors (Violation No. 2)

There are three additional factors that are considered for modification of the amount of the initial liability: The Dischargers' Culpability, the Dischargers' efforts for Cleanup and Cooperation after the violation, and the Dischargers' History of Violations.

Culpability

An adjustment for the initial liability based on the Dischargers' Culpability should result in a multiplier between 0.5 to 1.5, with a lower multiplier for accidental or non-negligent violations, and a higher multiplier for intentional or negligent violations. The test is what a reasonable and prudent person would have done or not done under similar circumstances. The Discharger is assigned a Culpability multiplier of **1.3** for this violation because the Dischargers either intentionally or due to negligence did not adequately implement the stockpile management requirements.

[4] The ACL Complaint and Technical Analysis alleged 28 days of violation; however, prior to the hearing the Prosecution Team removed the violation allegation for January 12, 2016, upon Dischargers' request to re-examine the photograph supporting the allegation.

The City's NOVs for violations observed on September 15, 2015, and October 7, 2015, identified the lack of BMPs and urged the Dischargers to "[i]mplement all appropriate BMPs." The October 7, 2015, NOV specifically noted a lack of BMPs on stockpiles. Despite a discharge and numerous subsequent verbal and written orders from the City and the San Diego Water Board, the Dischargers failed to address material stockpiles. There was no reason BMPs could not reasonably have been implemented to be in compliance with the Construction Storm Water Permit. A reasonably prudent person would have heeded these warnings and implemented BMPs to achieve BAT and BCT as required by the Construction Storm Water Permit.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated 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. For the August, September and October 2015 violations, the Dischargers were assigned a Cleanup and Cooperation multiplier of **1.1** because the Dischargers in many cases ignored the BMP recommendations resulting in unauthorized discharges during subsequent rain events. For the remaining violations, the Cleanup and Cooperation multiplier was increased to a score of **1.5** because of the Dischargers' persistent failure to implement the necessary BMPs despite repeated warnings from the City and the San Diego Water Board.

History of Violations

Where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this. The Dischargers were assigned a History of Violations multiplier of **1.0** for this violation because the Dischargers do not have a history of construction stormwater violations determined by this Board.

STEP 5 – Determination of Total Base Liability Amount (Violation No. 2)

Total Base Liability Amount (i.e., initial amount of liability) is determined by multiplying the Per Day Assessment by the Days of Violation and then applying the adjustment factors as follows:

Days of Violation x Per Day Factor x Statutory Max x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability

August, September and October 2015 Violations

4 x 0.55 x $10,000 x 1.3 x 1.1 x 1.0 = **$31,460**

November 2015 through March 2016 Violations

23 x 0.55 x $10,000 x 1.3 x 1.5 x 1.0 = $246,675 (Exceeds **$230,000** maximum.)

STEP 6 – Ability to Pay and Ability to Continue in Business (Violation No. 2)

The Dischargers acknowledge and affirm their collective ability to pay the administrative civil liability assessment in ACL Order No. R9-2021-0119 and did not assert an ability to pay defense in response to the Complaint. The Dischargers further acknowledged the San Diego Water Board does not apportion liability.

STEP 7 – Other Factors as Justice May Require (Violation No. 2)
The circumstances in this matter do not warrant an adjustment under this step.

STEP 8 – Economic Benefit (Violation No. 2)
See Violation No. 1 Step 8.

STEP 9 – Maximum and Minimum Liability Amounts (Violation No. 2)
The maximum and minimum amounts for each violation must be determined for comparison to the amounts being proposed.

Maximum Liability Amount
The Maximum Liability Amount that could be assessed for this violation pursuant to CWC section 13385 is **$10,000 per day**. Therefore, the maximum liability amount for 27 days of violation is **$270,000**. The cleanup and cooperation factor is higher for violations occurring after October 2015, given the City's repeated notifications to Dischargers of this violation and the failure to implement corrective actions. The liability recommended for the August through October 2015 violations is $31,460. The total base liability for November 2015 through March 2016 violations exceeds the statutory daily maximum of $10,000 per day of violation, and so is therefore reduced to $230,000 for these 23 days of violation.[5]
Minimum Liability Amount
See Violation No. 1 Step 8.

STEP 10 – Final Liability Amount (Violation No. 2)
Based on this analysis, the facts in the record, and consistent with the Enforcement Policy, the final liability amount for 27 days of violation of the Construction Storm Water Permit is **$261,460** ($31,460 + $230,000), plus staff costs. The liability is within the minimum and maximum liability range. The liability for this category is appropriate given the disregard for the Construction Storm Water Permit requirements, lack of response to repeated warnings and violations, and the potential for harm given the use of large stockpiles that were left unprotected and subject to runoff.

Violation No. 3
Failure to Implement Vehicle Fluid Leak BMPs. (14 days)

STEP 1 - Potential for Harm for Discharge Violations (Violation No. 3)
Step 1 does not apply to Non-Discharge Violations.

[5] This occurs with several categories of violations. The maximum liability per day cannot be exceeded by grouping the violations together. Therefore, when it is appropriate to modify a conduct factor, such as cleanup and cooperation, the daily maximum was reached. For those violations, the daily maximum liability is recommended, and has been appropriately reduced in the liability calculations.

STEP 2 – Assessment for Discharge Violations (Violation No. 3)
Step 2 does not apply to Non-Discharge Violations.

STEP 3 – Per Day Assessment of Non-Discharge Violations (Violation No. 3)
The "per day" factor is calculated for each non-discharge violation or group of violations considering the 1) potential for harm and 2) the extent of the deviation from the applicable requirements.

Potential for Harm
The Potential for Harm is **Moderate** because the failure to implement adequate vehicle storage and maintenance BMPs poses a substantial potential for harm if there is storm water or non-storm water runoff that flows through and transports oil, grease, or fuel from the Site to receiving waters. Vehicle fluids are often composed of oil and oil byproducts, which are known to contain harmful constituents such as metals and polycyclic aromatic hydrocarbons (PAHs). The vehicle fluids are transported into receiving waters by storm water runoff directly or indirectly when they piggyback on sediment that is transported by storm water runoff. Storm water runoff polluted with vehicle fluids is harmful to the receiving water ecosystem because it is toxic; it smothers plants and wildlife; it bioaccumulates; it reduces species diversity; and it negatively impacts species behavior, growth and reproduction. Polluted sediments are a major source of chronic hydrocarbon pollution. In this case substantial land grading occurred all at once, resulting in a greater than normal amount of exposed sediment and heavy equipment vehicles at the Site. Additionally, the Dischargers conducted onsite maintenance activities that increased the threat of discharges. Onsite maintenance activities are permissible under the Construction Storm Water Permit if appropriate BMPs are employed. That was not the case in this matter.

Deviation from Requirement
The Deviation from Requirement is based on a determination of whether the intended effectiveness of the requirement "remains generally intact" (Minor), "has been partially compromised" (Moderate), or "rendered ineffective" (Major). The deviation from the requirement is **Major** because the Discharger failed to provide drip pans for all vehicles and the drip pans that were in place were damaged and leaked, thus rendering the requirement ineffective.

The Deviation from Requirement is **Major** because although the Dischargers provided drip pans for some of the vehicles, the drip pans were in such bad condition that they leaked or only one drip pan was provided for a piece of equipment when the equipment was so large that it required multiple drip pans. Furthermore, maintenance activities were conducted onsite and evidence of vehicle fluid discharges during these maintenance activities was common. Vehicle maintenance was not conducted in accordance with the Site's SWPPP that stated that onsite maintenance would only be conducted on an impermeable surface if it was unfeasible to transport the vehicle or equipment to a service facility. Vehicles and equipment were not relocated to prevent water quality impacts when they were obviously leaking, and sufficient containment

was not utilized. Additionally, the Dischargers failed to address onsite fueling in the SWPPP. For these reasons, the requirement was rendered ineffective.

Per Day Factor
Using Enforcement Policy Table 3 - Per Day Factor, the range of liability factors for a Potential for Harm determination of **Moderate** and Deviation from Requirement determination of **Major**, is 0.4 and 0.7. The middle of the range **0.55** was used for the Per Day Factor for the failure to implement vehicle fluid leak BMPs.

Days of Non-Discharge Violation[6]
According to the supporting evidence included with the Technical Analysis, the Dischargers were in violation of the vehicle storage and maintenance requirements of Sections B.3.a. in Attachment D to the Construction Storm Water Permit for **14 days**: August 20, 2015; August 31, 2015; September 17, 2015; October 7, 2015; October 8, 2015; November 3, 2015; November 23, 2015; November 30, 2015; December 9, 2015; December 10, 2015; January 5, 2016; January 7, 2016; January 19, 2016; and February 8, 2016.

STEP 4 – Adjustment Factors (Violation No. 3)
There are three additional factors that are considered for modification of the amount of the initial liability: The Dischargers' Culpability, the Dischargers' efforts related to Cleanup and Cooperation after the violation, and the Dischargers' History of Violations.

Culpability
Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for intentional or negligent behavior. The Dischargers were assigned a Culpability multiplier of **1.3** for this violation because the Dischargers either intentionally or due to negligence did not adequately implement the vehicle storage and maintenance requirements. The Dischargers indicated knowledge of the requirement by the placement of drip pans, but the number of pans and their condition did not provide adequate water quality protection. Electing to perform maintenance activities without appropriate safeguards rather than at an offsite location without the potential to impact water quality was also considered. The Dischargers ignored the Construction Storm Water Permit's aim to have the permittee consider preventative measures (keep equipment in working order; repair offsite) or BMPs (drip pans placed at all proper locations that contain leaks prior to reaching ground and/or surface water).

[6] The ACL Complaint and Technical Analysis alleged 15 days of violation; however, prior to the hearing the Prosecution Team removed the violation allegation for March 2, 2016, upon determination that the photographs relied upon for this violation were not of the Site.

The Dischargers were also warned several times about vehicle fluid leaks, receiving City citations for leak violations observed on October 7, 2015, and January 5, 2016, as well as being issued a City Cease and Desist Order on February 10, 2016. There was no reason BMPs could not reasonably have been implemented consistent with the Construction Storm Water Permit.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated 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. The Dischargers were assigned a Cleanup and Cooperation multiplier of **1.1** for the violations occurring before the second NOV was issued on October 9, 2015, which specifically stated that there was a "lack of BMPs controlling adequately equipment drips and leaks." The Dischargers were assigned a Cleanup and Cooperation multiplier of **1.5** for the violations occurring after the Dischargers received the second NOV because the Dischargers continued their non-compliance. A reasonably prudent person would have heeded these warnings and implemented BMPs to achieve BAT and BCT as required by the Construction Storm Water Permit. This increase in the cleanup and cooperation factor is distinct from the culpability factor in the sense that the culpability factor analyzes behavior before the violation, and the cleanup and cooperation factor analyzes behavior after the violation. The Dischargers did not take cleanup actions after significant discharges, or install BMPs after numerous citations. It required significant effort from the City and the San Diego Water Board to bring the Site into compliance. This disregard for both the Construction Storm Water Permit's requirements as well as repeated notices from the regulatory agencies should result in the maximum multiplier of this factor.

History of Violations

Where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this. The Dischargers were assigned a History of Violations multiplier of **1.0** for this violation because the Dischargers do not have a history of construction stormwater violations determined by this Board.

STEP 5 – Determination of Total Base Liability Amount (Violation No. 3)

The Total Base Liability Amount (i.e., initial amount of liability) is determined by multiplying the Per Day Assessment by the Days of Violation and then applying the adjustment factors as follows:

Days of Violation x Per Day Factor x Statutory Max x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability

August through October 2015 Violations

5 x 0.55 x $10,000 x 1.3 x 1.1 x 1.0 = **$39,325**

November 2015 through February 2016 Violations

9 x 0.55 x $10,000 x 1.3 x 1.5 x 1.0 = $96,525 (Exceeds **$90,000** maximum.)

STEP 6 – Ability to Pay and Ability to Continue in Business (Violation No. 3)
The Dischargers acknowledge and affirm their collective ability to pay the administrative civil liability assessment in ACL Order No. R9-2021-0119 and did not assert an ability to pay defense in response to the Complaint. The Dischargers further acknowledged the San Diego Water Board does not apportion liability.

STEP 7 – Other Factors as Justice May Require (Violation No. 3)
The circumstances in this matter do not warrant an adjustment under this step.

STEP 8 – Economic Benefit (Violation No. 3)
See Violation No. 1 Step 8.

STEP 9 – Maximum and Minimum Liability Amounts (Violation No. 3)
The maximum and minimum amounts for each violation must be determined for comparison to the amounts being proposed. Pursuant to CWC section 13385 the maximum civil liability that the San Diego Water Board may assess for this violation is ten thousand dollars ($10,000) per day of violation (per violation).

Maximum Liability Amount
The Maximum Liability Amount that could be assessed for this violation pursuant to CWC section 13385 is **$10,000 per day**. Therefore, the maximum liability amount is **$140,000**.

It is appropriate to increase the cleanup and cooperation factor for the violations occurring in November 2015 through February 2016. Because the Enforcement Policy methodology exceeds the statutory maximum for those violations, the statutory daily maximum of $10,000 per day is observed. The liability has been adjusted accordingly in the summary box above, and the Final Liability Amount, below.

Minimum Liability Amount
See Violation No. 1 Step 8.

STEP 10 – Final Liability Amount (Violation No. 3)
Based on this analysis, the facts in the record, and consistent with the Enforcement Policy, the final liability amount for failing to adequately implement vehicle storage and maintenance requirements for **14 days** in violation of the Construction Storm Water Permit is **$129,325** ($39,325 + $90,000), plus staff costs. The liability is within the minimum and maximum liability range, and appropriate given the Dischargers' actions. (See Enforcement Policy Calculation Methodology.) The recommended liability for this category is appropriate given the lack of response to repeated violations, and the potential for harm that can occur when leaks can be mobilized to discharge into surface water. These violations are one of the easiest to avoid, and dischargers can utilize an alternative location for vehicle storage and repair or provide functional drip pans. There was a failure to do either of those things effectively.

Violation No. 4
Failure to Implement Erosion Control BMPs in Inactive Areas. (35 days)

STEP 1 - Potential for Harm for Discharge Violations (Violation No. 4)
Step 1 does not apply to Non-Discharge Violations.

STEP 2 – Assessment for Discharge Violations (Violation No. 4)
Step 2 does not apply to Non-Discharge Violations.

STEP 3 – Per Day Assessment of Non-Discharge Violations (Violation No. 4)

The "per day" factor is calculated for each non-discharge violation or group of violations considering the 1) potential for harm and 2) the extent of the deviation from the applicable requirements.

Potential for Harm
The Potential for Harm is based on a determination of whether the circumstances of the violation indicate "a minor potential for harm" (Minor), "a substantial potential for harm" (Moderate), or "a very high potential for harm" (Major). The Potential for Harm is **Moderate** because the failure to implement the erosion control BMP requirements for a Risk Level 2 site in inactive areas, finished slopes, open space, utility backfill, and completed lots poses a substantial potential for harm because there is a higher risk of erosion which leads to additional sediment in storm water runoff to receiving waters. Sediment in receiving waters can reduce the sunlight for aquatic plants, clog fish gills, smother aquatic habitat and breeding areas, and transport construction related pollutants such as nutrients, metals, oils, and grease. Additionally, given the large area disturbed, there was a greater threat.

Deviation from Requirement
The Deviation from Requirement is based on a determination of whether the intended effectiveness of the requirement "remains generally intact" (Minor), "has been partially compromised" (Moderate), or "rendered ineffective" (Major). The Deviation from Requirement is **Major** because San Diego Water Board and City inspectors consistently found inactive areas without erosion control BMPs, which renders the Construction Storm Water Permit requirements ineffective.

Per Day Factor
Using Enforcement Policy Table 3 - Per Day Factor, the range of liability factors for a Potential for Harm determination of **Moderate** and Deviation from Requirement determination of **Major**, is 0.4 and 0.7. The middle of the range **0.55** was used for the Per Day Factor for the failure to implement erosion control BMPs on inactive areas.

Days of Non-Discharge Violation
According to the supporting evidence included with the Technical Analysis, the Dischargers were in violation of the erosion control requirements of Section D.2. in Attachment D to the Construction Storm Water Permit for a period of **35 days**:

September 17, 2015; October 1, 2015; October 6, 2015; October 7, 2015; October 9, 2015; October 12, 2015; October 13, 2015; October 19, 2015; October 20, 2015; October 23, 2015; October 26, 2015; November 12, 2015; November 19, 2015; December 1, 2015; December 7, 2015; December 8, 2015; December 21, 2015; December 23, 2015; December 29, 2015; January 4, 2016; January 7, 2016, January 8, 2016; January 12, 2016, January 13, 2016, January 14, 2016; January 19, 2016, January 20 , 2016; January 21, 2016, January 22, 2016; January 26, 2016; January 27, 2016; January 29, 2016; February 17, 2016; March 14, 2016; and March 21, 2016.

STEP 4 – Adjustment Factors (Violation No. 4)

There are three additional factors that are considered for modification of the amount of the initial liability: The Dischargers' Culpability, the Dischargers' efforts for Cleanup and Cooperation after the violation, and the Dischargers' History of Violations.

Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for intentional or negligent behavior. The Dischargers were assigned a Culpability multiplier of **1.3** for this violation because the Dischargers either intentionally or due to negligence did not adequately implement the erosion control requirements for inactive areas of the Site. There was no reason BMPs could not reasonably have been implemented to be in compliance with the Construction Storm Water Permit prior to sediment discharges based on permit directives and anticipated rain forecasts. Furthermore, the Dischargers received multiple written NOVs after the initial sediment discharge, which ultimately resulted in additional discharges when the Dischargers failed to address Site BMP deficiencies.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated 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. The Dischargers were assigned a Cleanup and Cooperation multiplier of **1.1** for the violations occurring before the second NOV was issued on October 9, 2015. Both NOVs specifically warned the Dischargers of the lack of erosion control BMPs on the Site. The Dischargers were assigned a Cleanup and Cooperation multiplier of **1.5** for the violations occurring after the Dischargers received the second NOV because the Dischargers continued their noncompliance. A reasonably prudent person would have heeded these warnings and implemented BMPs to achieve BAT and BCT as required by the Construction Storm Water Permit. The increase in this factor is appropriate because of the Dischargers' failure to take necessary post-violation cleanup actions.

History of Violations

Where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this. The Dischargers were assigned a History of Violations multiplier of **1.0** for this violation because the Dischargers do not have a history of construction stormwater violations determined by this Board.

STEP 5 – Determination of Total Base Liability Amount (Violation No. 4)
The Total Base Liability Amount (i.e., initial amount of liability) is determined by multiplying the Per Day Assessment by the Days of Violation and then applying the adjustment factors as follows:

Days of Violation x Per Day Factor x Statutory Max x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability

September 17, 2015 through October 9, 2015 Violations
5 x 0.55 x $10,000 x 1.3 x 1.1 x 1.0 = **$39,325**

October 10, 2015 through March 21, 2016 Violations
30 x 0.55 x $10,000 x 1.3 x 1.5 x 1.0 = $321,750 (Exceeds **$300,000** maximum.)

STEP 6 – Ability to Pay and Ability to Continue in Business (Violation No. 4)
The Dischargers acknowledge and affirm their collective ability to pay the administrative civil liability assessment in ACL Order No. R9-2021-0119 and did not assert an ability to pay defense in response to the Complaint. The Dischargers further acknowledged the San Diego Water Board does not apportion liability.

STEP 7 – Other Factors as Justice May Require (Violation No. 4)
The circumstances in this matter do not warrant an adjustment under this step.

STEP 8 – Economic Benefit (Violation No. 4)
See Violation No. 1 Step 8.

STEP 9 – Maximum and Minimum Liability Amounts (Violation No. 4)
The maximum and minimum amounts for each violation must be determined for comparison to the amounts being proposed.

Maximum Liability Amount
The Maximum Liability Amount that could be assessed for this violation pursuant to CWC section 13385 is **$10,000 per day**. Therefore, the Maximum Liability Amount that could be assessed for this violation is **$350,000**. The cleanup and cooperation factor was increased after five violations in September and October 2015. The total base liability for the 30 latter violations commencing with the October 10, 2015, violation exceeds the statutory daily maximum of $10,000 per day and is therefore reduced to $300,000.

Minimum Liability Amount
See Violation No. 1 Step 8.

STEP 10 – Final Liability Amount (Violation No. 4)
Based on this analysis, the facts in the record, and consistent with the Enforcement Policy, the final liability amount for failing to adequately implement erosion control requirements for inactive areas for **35 days** in violation of the Construction Storm Water Permit is **$339,325** ($39,325 + $300,000), plus staff costs. The liability is within

the minimum and maximum liability range and is appropriate given the failure to implement any iterative improvement over the course of several months.

The liability for this category is appropriate given the disregard for the Construction Storm Water Permit requirements, lack of response to repeated violations, and the potential for harm. The installation of BMPs prior to rain events was non-existent or ineffective. This category of violations contributed to significant discharge events.

Violation No. 5
Failure to Implement Erosion Control BMPs in Active Areas. (12 days)

STEP 1 - Potential for Harm for Discharge Violations (Violation No. 5)
Step 1 does not apply to Non-Discharge Violations.

STEP 2 – Assessment for Discharge Violations (Violation No. 5)
Step 2 does not apply to Non-Discharge Violations.

STEP 3 – Per Day Assessment of Non-Discharge Violations (Violation No. 5)
The "per day" factor is calculated for each non-discharge violation or group of violations considering the 1) potential for harm and 2) the extent of the deviation from the applicable requirements.

Potential for Harm
The Potential for Harm is based on a determination of whether the circumstances of the violation indicate "a minor potential for harm" (Minor), "a substantial potential for harm" (Moderate), or "a very high potential for harm" (Major). The Potential for Harm is **Moderate** because the failure to implement the erosion and sediment control requirements for a Risk Level 2 site in active areas poses a substantial potential for harm because there is a higher risk of erosion which leads to additional sediment in storm water runoff to receiving waters. Sediment in receiving waters can reduce the sunlight for aquatic plants, clog fish gills, smother aquatic habitat and breeding areas, and transport construction related pollutants such as nutrients, metals, oils, and grease.

Deviation from Requirement
The Potential for Harm is based on a determination of whether the circumstances of the violation indicate "a minor potential for harm" (Minor), "a substantial potential for harm" (Moderate), or "a very high potential for harm" (Major). The Deviation from Requirement is **Major** because there was no evidence that the Dischargers had adequately implemented or were prepared to implement erosion control BMPs for active areas, thus rendering the requirement ineffective.

Per Day Factor
Using Enforcement Policy Table 3 - Per Day Factor, the range of liability factors for a Potential for Harm determination of **Moderate** and Deviation from Requirement determination of **Major**, is 0.4 and 0.7. The middle of the range **0.55** was used for the Per Day Factor for the failure to implement erosion control BMPs on active areas.

Days of Non-Discharge Violation
According to the supporting evidence included with the Technical Analysis, the Dischargers were in violation of the Risk Level 2 erosion control requirements of Section E.3. in Attachment D to the Construction Storm Water Permit for **12 days:** September 14, 2015; September 15, 2015; October 6, 2015; October 12, 2015; October 19, 2015, October 26, 2015; December 10, 2015; December 22, 2015; January 7, 2016; February 8, 2016; February 17, 2016; and March 14, 2016.

STEP 4 – Adjustment Factors (Violation No. 5)
There are three additional factors that are considered for modification of the amount of the initial liability: The Dischargers' Culpability, the Dischargers' efforts for Cleanup and Cooperation after the violation, and the Dischargers' History of Violations.

Culpability
Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for intentional or negligent behavior. The Dischargers were assigned a Culpability multiplier of **1.3** for this violation because the Dischargers either intentionally or negligently did not adequately implement the erosion control requirements for inactive areas of the Site. There was no reason BMPs could not reasonably have been implemented to be in compliance with the Construction Storm Water Permit. The Dischargers received two NOVs after a significant sediment discharge and continued to operate the Site in violation of the Construction Storm Water Permit. The Dischargers disregarded additional NOVs from the City and the San Diego Water Board which resulted in three more discharges. A reasonably prudent person would have heeded these warnings and implemented BMPs to achieve BAT and BCT as required by the Construction Storm Water Permit.

Cleanup and Cooperation
This factor reflects the extent to which a discharger voluntarily cooperated 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. The Dischargers were assigned a Cleanup and Cooperation multiplier of **1.1** for the violations occurring before the second NOV was issued on October 9, 2015. Both NOVs specifically warned the Dischargers of the lack of erosion control BMPs on the Site. The Dischargers were assigned a Cleanup and Cooperation multiplier of **1.5** for the violations occurring after the Dischargers received the second NOV because the Dischargers continued their noncompliance.

History of Violations
The Dischargers were assigned a History of Violations multiplier of **1.0** for this violation because the Dischargers do not have a history of construction storm water violations determined by this Board.

STEP 5 – Determination of Total Base Liability Amount (Violation No. 5)
Total Base Liability Amount (i.e., initial amount of liability) is determined by multiplying the Per Day Assessment by the Days of Violation and then applying the adjustment factors as follows:

Days of Violation x Per Day Factor x Statutory Max x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability

September 2015 Violations
2 x 0.55 x $10,000 x 1.3 x 1.1 x 1.0 = **$15,730**

December 2015 through March 2016 Violations
10 x 0.55 x $10,000 x 1.3 x 1.5 x 1.0 = $107,250 (Exceeds **$100,000** maximum.)

STEP 6 – Ability to Pay and Ability to Continue in Business (Violation No. 5)
The Dischargers acknowledge and affirm their collective ability to pay the administrative civil liability assessment in ACL Order No. R9-2021-0119 and did not assert an ability to pay defense in response to the Complaint. The Dischargers further acknowledged the San Diego Water Board does not apportion liability.

STEP 7 – Other Factors as Justice May Require (Violation No. 5)
The circumstances in this matter do not warrant an adjustment under this step.

STEP 8 – Economic Benefit (Violation No. 5)
See Violation No. 1 Step 8.

STEP 9 – Maximum and Minimum Liability Amounts (Violation No. 5)
The maximum and minimum amounts for each violation must be determined for comparison to the amounts being proposed.

Maximum Liability Amount
The Maximum Liability Amount that could be assessed for this violation pursuant to CWC section 13385 is **$10,000 per day**. Therefore, the Maximum Liability Amount that could be assessed for this violation is **$120,000**.

The cleanup and cooperation factor for the later violations, those which occurred December 2015 through March 2016 violations, were adjusted because of the repeated notices to correct and the Dischargers' failure to do so. Because the use of the Enforcement Policy methodology results in a number higher than the statutory maximum of $10,000 per day of violation, the liability for those violations has been reduced to $100,000.

Minimum Liability Amount
See Violation No. 1 Step 8.

STEP 10 – Final Liability Amount (Violation No. 5)
Based on this analysis, the facts in the record, and consistent with the Enforcement Policy, the civil liability for failing to adequately implement additional Risk Level 2 erosion control requirements for **12 days** in violation of the Construction Storm Water Permit is **$115,730** ($15,730 + $100,000), plus staff costs. The proposed liability is within the minimum and maximum liability range and is appropriate given the repeated notices and failure to implement any iterative improvements, leading to discharges that these BMPs are specifically designed to prevent or reduce.

Violation No. 6
Failure to Apply Linear Sediment Controls. (53 days)

STEP 1 - Potential for Harm for Discharge Violations (Violation No. 6)
Step 1 does not apply to Non-Discharge Violations.

STEP 2 – Assessment for Discharge Violations (Violation No. 6)
Step 2 does not apply to Non-Discharge Violations.

STEP 3 – Per Day Assessment of Non-Discharge Violations (Violation No. 6)
The "per day" factor is calculated for each non-discharge violation or group of violations considering the 1) potential for harm and 2) the extent of the deviation from the applicable requirements.

Potential for Harm
The Potential for Harm is based on a determination of whether the circumstances of the violation indicate "a minor potential for harm" (Minor), "a substantial potential for harm" (Moderate), or "a very high potential for harm" (Major). The Potential for Harm is **Moderate** because the failure to implement the linear sediment control requirements for a Risk Level 2 site poses a substantial potential for harm because there is a higher risk of discharges of additional sediment from exposed slopes to receiving waters. Sediment in receiving waters can reduce the sunlight for aquatic plants, clog fish gills, smother aquatic habitat and breeding areas, and transport construction related pollutants such as nutrients, metals, oils, and grease.

Deviation from Requirement
The Deviation from Requirement is based on a determination of whether the intended effectiveness of the requirement "remains generally intact" (Minor), "has been partially compromised" (Moderate), or "rendered ineffective" (Major). The Deviation from Requirement is **Major** because a substantial number of slopes did not have linear sediment control BMPs. The Board considered and rejected evidence that the Dischargers made attempts to respond to the City's repeated requests for improved BMPs. If BMPs were properly installed but overwhelmed by a storm event, that might not be considered a violation. However, at this Site, there was no adaptive

management despite repeated progressive enforcement from the City. The Dischargers' response to the Construction Storm Water Permit requirements was inadequate.

Per Day Factor

Using Enforcement Policy Table 3 - Per Day Factor, the range of liability factors for a Potential for Harm determination of **Moderate** and Deviation from Requirement determination of **Major**, is 0.4 and 0.7. The middle of the range **0.55** was used for the Per Day Factor for the failure to implement the additional Risk Level 2 linear sediment control requirements.

Days of Non-Discharge Violation

According to the supporting evidence included with the Technical Analysis, the Dischargers were in violation of the Risk Level 2 linear sediment control requirements of Section E.4. in Attachment D to the Construction Storm Water Permit for **53 days**: September 16, 2015, September 17, 2015, October 1, 2015; October 9, 2015; October 13, 2015; October 20, 2015; October 23, 2015; November 12, 2015; November 19, 2015; November 24, 2015; December 1, 2015; December 7, 2015; December 8, 2015; December 9, 2015; December 10, 2015, December 16, 2015, December 18, 2015; December 21, 2015; December 22, 2015; December 23, 2015; December 29, 2015; January 4, 2016; January 5, 2016; January 6, 2016; January 7, 2016; January 8, 2016; January 11, 2016; January 12, 2016; January 13, 2016; January 14, 2016, January 15, 2016; January 19, 2016; January 20, 2016, January 21, 2016; January 22, 2016, January 23, 2016; January 25, 2016; January 26, 2016, January 27, 2016; January 29, 2016; January 30, 2016; February 1, 2016; February 2, 2016; February 3, 2016; February 4, 2016; February 8, 2016; February 17, 2016; February 26, 2016; March 4, 2016; March 7, 2016; March 10, 2016; March 11, 2016; and March 14, 2016.

STEP 4 – Adjustment Factors (Violation No. 6)

There are three additional factors that are considered for modification of the amount of the initial liability: The Dischargers' Culpability, the Dischargers' efforts for Cleanup and Cooperation after the violation, and the Dischargers' History of Violations.

Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for intentional or negligent behavior. The Dischargers were assigned a Culpability multiplier of **1.3** for this violation because the Dischargers either intentionally or due to negligence did not adequately implement the additional Risk Level 2 linear sediment control requirements for exposed slopes on the Site. The City issued progressive enforcement actions against the Discharger; specifically, four NOVs, two Stop Work Orders and a Cease and Desist Order for failure to implement required linear sediment control BMPs. A reasonably prudent person would have heeded numerous warnings and implemented BMPs to achieve BAT and BCT as required by the Construction Storm Water Permit.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated 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. The Dischargers were assigned a Cleanup and Cooperation multiplier of **1.1** for the violations occurring before the second NOV was issued on October 9, 2015. Both NOVs specifically warned the Dischargers of the lack BMPs on the Site. The Dischargers were assigned a Cleanup and Cooperation multiplier of **1.5** for the violations occurring after the Dischargers received the second NOV because the Dischargers continued their noncompliance.

History of Violations

The Dischargers were assigned a History of Violations multiplier of **1.0** for this violation because the Dischargers do not have a history of construction storm water violations determined by this Board.

STEP 5 – Determination of Total Base Liability Amount (Violation No. 6)

The Total Base Liability Amount (i.e., initial amount of liability) is determined by multiplying the Per Day Assessment by the Days of Violation and then applying the adjustment factors as follows:

Days of Violation x Per Day Factor x Statutory Max x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability

September 16, 2015 through October 9, 2015 Violations
4 x 0.55 x $10,000 x 1.3 x 1.1 x 1.0 = **$31,460**

October 10, 2015 through March 14, 2016 Violations
49 x 0.55 x $10,000 x 1.3 x 1.5 x 1.0 = $525,525 (Exceeds **$490,000** maximum.)

STEP 6 – Ability to Pay and Ability to Continue in Business (Violation No. 6)

The Dischargers acknowledge and affirm their collective ability to pay the administrative civil liability assessment in ACL Order No. R9-2021-0119 and did not assert an ability to pay defense in response to the Complaint. The Dischargers further acknowledged the San Diego Water Board does not apportion liability.

STEP 7 – Other Factors as Justice May Require (Violation No. 6)

The circumstances in this matter do not warrant an adjustment under this step.

STEP 8 – Economic Benefit (Violation No. 6)

See Violation No. 1 Step 8.

STEP 9 – Maximum and Minimum Liability Amounts (Violation No. 6)

The maximum and minimum amounts for each violation must be determined for comparison to the amounts being proposed.

Maximum Liability Amount
The Maximum Liability Amount that could be assessed for this violation pursuant to CWC section 13385 is **$10,000 per day**. Therefore, the Maximum Liability Amount that could be assessed for 53 days of violation is **$530,000**.

As noted in several categories of violations, the Dischargers' cleanup and cooperation factor was increased for later violations, given the repeated citations from the City and failure to respond with BMPs or corrections. When the Enforcement Policy methodology generated a total base liability that exceeds the statutory daily maximum of $10,000 per day of violation, it was reduced. This applies in this category for the violations after October 9, 2015, and results in a recommended maximum liability of $490,000 for these 49 days of violation.

Minimum Liability Amount
See Violation No. 1 Step 8.

STEP 10 – Final Liability Amount (Violation No. 6)
Based on this analysis, the facts in the record, and consistent with the Enforcement Policy, the liability amount for failing to adequately implement additional Risk Level 2 linear sediment control requirements for exposed slopes for **53 days** in violation of the Construction Storm Water Permit is **$521,460** ($31,460 + $490,000), plus staff costs. The liability is within the minimum and maximum liability range. The liability for this category is appropriate given the disregard for the Construction Storm Water Permit requirements, lack of response to repeated violations, and the potential for harm given the mass grading that left so much of the Site exposed and subject to runoff.

Violation No. 7
Failure to Properly Store Chemicals. (9 days)

STEP 1 - Potential for Harm for Discharge Violations (Violation No. 7)
Step 1 does not apply to Non-Discharge Violations.

STEP 2 – Assessment for Discharge Violations (Violation No. 7)
Step 2 does not apply to Non-Discharge Violations.

STEP 3 – Per Day Assessment of Non-Discharge Violations (Violation No. 7)
The "per day" factor is calculated for each non-discharge violation or group of violations considering the 1) potential for harm and 2) the extent of the deviation from the applicable requirements.

Potential for Harm
The Potential for Harm is based on a determination of whether the circumstances of the violation indicate "a minor potential for harm" (Minor), "a substantial potential for harm" (Moderate), or "a very high potential for harm" (Major). The Potential for Harm is **Major.** The Enforcement Policy defines Major Potential for Harm as "[t]he characteristics of the violation present a particularly egregious threat to beneficial

uses, and/or the circumstances of the violation indicate a very high potential for harm." The failure to have secondary containment of chemicals poses an egregious threat to beneficial uses because there is a very high potential for harm if these materials (lubricants and coolants) were discharged to the receiving waters as well as the size of the containers (55-gallon drums).

Deviation from Requirement

The Deviation from Requirement is based on a determination of whether the intended effectiveness of the requirement "remains generally intact" (Minor), "has been partially compromised" (Moderate), or "rendered ineffective" (Major). The Deviation from Requirement is **Major** because there was no secondary containment for the chemicals and those that were in watertight containers often were not sealed and open to the environment, thus rendering the requirement ineffective.

Per Day Factor

Using Enforcement Policy Table 3 - Per Day Factor, the range of liability factors for a Potential for Harm determination of **Major** and Deviation from Requirement determination of **Major**, is 0.7 and 1. The middle of the range **0.85** was used for the Per Day Factor for the failure to properly store chemicals.

Days of Non-Discharge Violation[7]

According to the supporting evidence included with this Technical Analysis, the Dischargers were in violation of the requirement to provide secondary containment for stored chemicals and fuels, Section B.1.c. in Attachment D to the Construction Storm Water Permit for **9 days**: August 20, 2015; October 7, 2015; November 3, 2015; November 23, 2015; November 30, 2015; December 10, 2015; January 19, 2016; March 14, 2016; and March 21, 2016.

STEP 4 – Adjustment Factors (Violation No. 7)

There are three additional factors that are considered for modification of the amount of the initial liability: The Dischargers' Culpability, the Dischargers' efforts for Cleanup and Cooperation after the violation, and the Dischargers' History of Violations.

Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for intentional or negligent behavior. The Dischargers were assigned a Culpability multiplier of **1.3** for this violation because the Dischargers either intentionally or due to negligence did not provide secondary containment for the chemicals and fuels after having been notified by the City of the violation in the October 9, 2016, NOV. An additional citation was issued by the City on January 21,

[7] The ACL Complaint and Technical Analysis alleged 10 days of violation; however, prior to the hearing the Prosecution Team removed the violation allegation for March 2, 2016, upon determination that the photographs relied upon for this violation were not of the Site.

2016, for improper chemical storage on January 5, 2016, as well as a City Cease and Desist Order on February 10, 2016 (PT Exhibit 131). There was no reason secondary containment could not reasonably have been implemented to be in compliance with the Construction Storm Water Permit. A reasonably prudent person would have heeded these warnings and implemented BMPs to achieve BAT and BCT as required by the Construction Storm Water Permit.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated 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. The Dischargers were assigned a Cleanup and Cooperation multiplier of **1.1** for the violations occurring before the second NOV was issued on October 9, 2015. The October 9, 2015, NOV specifically informed the Dischargers that it was improperly storing the hazardous waste on the Site. The Dischargers were assigned a Cleanup and Cooperation multiplier of **1.5** for the violations occurring after the Dischargers received a citation because the Dischargers continued their noncompliance.

History of Violations

The Dischargers were assigned a History of Violations multiplier of **1.0** for this violation because the Dischargers do not have a history of construction storm water violations determined by this Board.

STEP 5 – Determination of Total Base Liability Amount (Violation No. 7)

Total Base Liability Amount (i.e., initial amount of liability) is determined by multiplying the Per Day Assessment by the Days of Violation and then applying the adjustment factors as follows:

Days of Violation x Per Day Factor x Statutory Max x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability

August 20, 2015 and October 7, 2015 Violations

2 x 0.85 x $10,000 x 1.3 x 1.1 x 1.0 = $24,310 (Exceeds **$20,000** maximum.)

November 2015 through March 2016 Violations

7 x 0.85 x $10,000 x 1.3 x 1.5 x 1.0 = $122,600 (Exceeds **$70,000** maximum.)

STEP 6 – Ability to Pay and Ability to Continue in Business (Violation No. 7)

The Dischargers acknowledge and affirm their collective ability to pay the administrative civil liability assessment in ACL Order No. R9-2021-0119 and did not assert an ability to pay defense in response to the Complaint. The Dischargers further acknowledged the San Diego Water Board does not apportion liability.

STEP 7 – Other Factors as Justice May Require (Violation No. 7)

The circumstances in this matter do not warrant an adjustment under this step.

STEP 8 – Economic Benefit (Violation No. 7)
See Violation No. 1 Step 8.

STEP 9 – Maximum and Minimum Liability Amounts (Violation No. 7)
The maximum and minimum amounts for each violation must be determined for comparison to the amounts being proposed.

Maximum Liability Amount
The Maximum Liability Amount that could be assessed for this violation pursuant to CWC section 13385 is **$10,000 per day**. Therefore, the Maximum Liability Amount that could be assessed for this violation is **$90,000**.

The cleanup and cooperation factor was adjusted after notice had been expressly given, in this case, after the first two days. However, unlike in other cases, even the two initial violations resulted in the Enforcement Policy methodology producing a number over the statutory daily maximum of $10,000 per day of violation. Therefore, for all 9 days of violation, the daily maximum of $10,000 has been used.

Minimum Liability Amount
See Violation No. 1 Step 8.

STEP 10 – Final Liability Amount (Violation No. 7)
Based on this analysis, the facts in the record, and consistent with the Enforcement Policy, the final liability amount for failing to provide watertight containers and secondary containment for chemicals and fuels for **9 days** in violation of the Construction Storm Water Permit is **$90,000** ($20,000 + $70,000). The liability is within the minimum and maximum liability range. The liability is appropriate since, like vehicle fluid leaks, this category of violations is easy and inexpensive to prevent. Compliance requires basic good housekeeping practices. However, repeated violations demonstrate a failure to keep the Site in acceptable condition and instruct employees how to store and dispose of potentially harmful chemicals. What may appear to be a minor category is reflective of the lack of attention to detail and failure to prioritize environmental quality, leading to more significant violations and eventual environmental impacts.

Violation No. 8
Failure to Prevent Discharge of Concrete Waste to the Ground. (5 days)

STEP 1 - Potential for Harm for Discharge Violations (Violation No. 8)
Step 1 does not apply to Non-Discharge Violations.

STEP 2 – Assessment for Discharge Violations (Violation No. 8)
Step 2 does not apply to Non-Discharge Violations.

STEP 3 – Per Day Assessment of Non-Discharge Violations (Violation No. 8)

The "per day" factor is calculated for each non-discharge violation or group of violations considering the 1) potential for harm and 2) the extent of the deviation from the applicable requirements.

Potential for Harm

The Potential for Harm is based on a determination of whether the circumstances of the violation indicate "a minor potential for harm" (Minor), "a substantial potential for harm" (Moderate), or "a very high potential for harm" (Major). The Potential for Harm is **Moderate** due to the intentional, repeated and extensive concrete waste volume discharged to the ground from the washout area**.** Cementious material is highly toxic to plants and animals because the alkaline material (pH 8.5 - 10), when introduced into receiving waters, increases the water's pH and depletes its oxygen. In this case, there were repeated discharges to the ground that left a trail of cementious debris flowing away from the washout area which presents a substantial potential for harm if storm water or non-storm water runoff were to transport the material into receiving waters.

Deviation from Requirement

The Deviation from Requirement is based on a determination of whether the intended effectiveness of the requirement "remains generally intact" (Minor), "has been partially compromised" (Moderate), or "rendered ineffective" (Major). The Deviation from Requirement is **Major** because the Dischargers repeatedly failed to maintain the concrete washout basins which lead to the discharges and/or intentionally discharged the waste when the basins overflowed thus rendering the requirement ineffective.

Per Day Factor

Using Enforcement Policy Table 3 - Per Day Factor, the range of liability factors for a Potential for Harm determination of **Moderate** and Deviation from Requirement determination of **Major**, is 0.4 and 0.7. The middle of the range **0.55** was used for the Per Day Factor for the failure to prevent the discharge of concrete waste to the ground.

Days of Non-Discharge Violation

According to the supporting evidence included with the Technical Analysis, the Dischargers failed to prevent the discharge of concrete waste to the ground in violation of section B.2.i. in Attachment D to the Construction Storm Water Permit for **five days**: January 5, 2016; February 8, 2016; March 21, 2016; March 30, 2016 and March 31, 2016.

STEP 4 – Adjustment Factors (Violation No. 8)

There are three additional factors that are considered for modification of the amount of the initial liability: The Dischargers' Culpability, the Dischargers' efforts for Cleanup and Cooperation after the violation, and the Dischargers' History of Violations.

Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for intentional or negligent behavior. The Dischargers were assigned a Culpability multiplier of **1.3** for this violation because the Dischargers either intentionally or due to negligence did not train workers in the proper use of the concrete washout facilities, and/or monitor and maintain the concrete washout facilities on the Site. A reasonably prudent person would have properly implemented BMPs to achieve BAT and BCT as required by the Construction Storm Water Permit.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated 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. The Dischargers were assigned a Cleanup and Cooperation multiplier of **1.1** for the violation occurring on January 5, 2016, because the City issued the Dischargers a citation and stop work order for the violation on January 21, 2016. This factor represents the lack of preparation and adherence to Construction Storm Water Permit terms. The Dischargers were assigned a Cleanup and Cooperation multiplier of **1.5** for the four violations occurring in February and March 2016, because they occurred after the Dischargers were put on notice that its concrete washout facilities were not in compliance and yet four additional discharges occurred. The Dischargers failed to address the BMPs, leading to additional violations, that were raised in a stop work order.

History of Violations

The Dischargers were assigned a History of Violations multiplier of **1.0** for this violation because the Dischargers do not have a history of construction storm water violations determined by this Board.

STEP 5 – Determination of Total Base Liability Amount (Violation No. 8)

Total Base Liability Amount (i.e., initial amount of liability) is determined by multiplying the Per Day Assessment by the Days of Violation and then applying the adjustment factors as follows:

Days of Violation x Per Day Factor x Statutory Max x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability

January 5, 2016 Violation

1 x 0.55 x $10,000 x 1.3 x 1.1 x 1.0 = **$7,865**

February 8, 2016 and March 21, 30, and 31, 2016 Violations

4 x 0.55 x $10,000 x 1.3 x 1.5 x 1.0 = $42,900 (Exceeds **$40,000** maximum.)

STEP 6 – Ability to Pay and Ability to Continue in Business (Violation No. 8)

The Dischargers acknowledge and affirm their collective ability to pay the administrative civil liability assessment in ACL Order No. R9-2021-0119 and did not

assert an ability to pay defense in response to the Complaint. The Dischargers further acknowledged the San Diego Water Board does not apportion liability.

STEP 7 – Other Factors as Justice May Require (Violation No. 8)
The circumstances in this matter do not warrant an adjustment under this step.

STEP 8 – Economic Benefit (Violation No. 8)
See Violation No. 1 Step 8.

STEP 9 – Maximum and Minimum Liability Amounts (Violation No. 8)
The maximum and minimum amounts for each violation must be determined for comparison to the amounts being proposed.

Maximum Liability Amount
The Maximum Liability Amount that could be assessed for this violation pursuant to CWC section 13385 is **$10,000 per day**. Therefore, the Maximum Liability Amount that could be assessed for this violation is **$50,000**. For the one day of violation prior to the City's January 2016 stop work order, the liability has been generated by the Enforcement Policy methodology. For the remaining days, the total base liability for the violations exceed the statutory daily maximum of $10,000 per day of violation, and we have accordingly reduced those four days of violation to the daily maximum.

Minimum Liability Amount
See Violation No. 1 Step 8.

STEP 11 – Final Liability Amount (Violation No. 8)
Based on this analysis, the facts in the record, and consistent with the Enforcement Policy, the final liability amount for failing to properly dispose of concrete waste for **5 days** in violation of the Construction Storm Water Permit is **$47,865** ($7,865 + $40,000), plus staff costs. The liability is within the minimum and maximum liability range. (See Enforcement Policy Calculation Methodology.) The liability for this category is appropriate given the disregard for the Construction Storm Water Permit requirements, and the potential for harm that could be caused by these materials.

Total Liability Amount
The total liability amount for the violations in Complaint No. R9-2020-0006 is the Total Base Liability Amount plus staff costs, for a total of **$9,085,932**. A summary of the methodology used to calculate the proposed civil liability is provided in Table 2, Liability Calculator. Below is a tabular summary of the total proposed liability, Table 1.

Table 1
Total Assessed Liability

Viol. No.	Violation	Liability Per Day of Violation	Days of Violation Assessed	Liability Amount	Total Liability Per Violation
1	Discharges of sediment-laden stormwater runoff				
	Gallons Assessment				
	September 15, 2015 (457,457 gallons)	$0.89/gal.[8]	N/A	$404,695	
	December 22, 2015 (1,208,066 gallons)	$1.21/gal.	N/A	$1,459,343	
	January 5, 2016 (3,120,093 gallons)	$1.21/gal.	N/A	$3,770,983	
	January 6, 2016 (1,511,822 gallons)	$1.21/gal.	N/A	$1,826,584	
	Violation 1 Gallons Assessment			**$7,461,605**	
	Days Assessment				
	September 15, 2015	$4,433	1	$4,433	
	December 23, 2015, and January 5 and 6, 2016	$6,045	3	$18,135	
	Violation 1 Days Assessment		**4**	**$22,568**	
	Total Violation 1				**$7,484,173**
2	Failure to protect material stockpiles.				
	August, September and October 2015 violations	$7,865	4	$31,460	
	November 2015 – March 2016 violations	$10,000	23	$230,000	
	Total Violation 2		**27**		**$261,460**
3	Failure to protect against vehicle leaks.				
	August – October 2015 violations	$7,865	5	$39,325	
	November 2015 – March 2016 violations	$10,000	9	$90,000	
	Total Violation 3		**14**		**$129,325**
4	Failure to protect against Erosion in inactive areas.				
	September 17 – October 9, 2015 violations	$7,865	5	$39,325	
	October 10 – March 21, 2016 violations	$10,000	30	$300,000	
	Total Violation 4		**35**		**$339,325**
5	Failure to protect against Erosion in active areas.				
	September 2015 violations	$7,865	2	$15,730	
	December 2015 – March 2016 violations	$10,000	10	$100,000	
	Total Violation 5		**12**		**$115,730**
6	Failure to implement adequate linear sediment controls.				
	September 17 – October 9, 2015 violations	$7,865	4	$31,460	
	October 10 – March 14, 2016 violations	$10,000	49	$490,000	
	Total Violation 6		**53**		**$521,460**
7	Failure to adequately store chemicals.				
	August 20 and October 7, 2015 violations	$10,000	2	$20,000	
	November 2015 – March 2016 violations	$10,000	7	$70,000	
	Total Violation 7		**9**		**$90,000**
8	Failure to prevent concrete discharges to the ground.				
	January 5, 2016	$7,865	1	$7,865	
	February 8, March 21, 30 and 31, 2016 violations	$10,000	4	$40,000	
	Total Violation 8		**5**		**$47,865**
Total Base Liability Amount					**$8,989,338**
Staff Costs to Date					**$96,594**
Total Liability Amount					**$9,085,932**

[8] For discharges of sediment-laden stormwater runoff it is liability per gallon.