

Attachment A to Administrative Civil Liability Complaint No. R9-2024-0090: Liability Methodology

A. Enforcement Policy Background

The State Water Resources Control Board (State Water Board) adopted updates to the [Water Quality Enforcement Policy](#)¹ (Enforcement Policy) in 2017 with the goal to protect and enhance the quality of the waters of the State by defining an enforcement process that addresses water quality problems in the most fair, efficient, effective, and consistent manner. According to the Enforcement Policy, enforcement is a critical component in creating the deterrence needed to encourage the regulated community to anticipate, identify, and correct violations. Formal enforcement should always result when a non-compliant member of the regulated public begins to realize a competitive economic advantage over compliant members of the regulated public. Formal enforcement should be used as a tool to maintain a level playing field for those who comply with their regulatory obligations by setting appropriate civil liabilities for those who do not.

California Water Code (Water Code) section 13385, subdivision (e), requires the San Diego Regional Water Quality Control Board (San Diego Water Board) to consider several factors in determining administrative civil liability, including the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. The Enforcement Policy incorporates these factors in a methodology for determining administrative civil liability in instances of noncompliance. This document describes the methodology and factors determined by the San Diego Water Board's Prosecution Team (Prosecution Team) for each of the alleged violations presented below.

B. Site Location

Olivia Liu (the Discharger) owns the approximately 38-acre parcel (Site) located at 3001 Chimney Rock Road, Ranchita, California 92066 (33.22164, -116.50130), San Diego County Assessor Parcel Number 197-100-02-00. An ephemeral stream, a water of the State, crosses the Site from the east-northeast through the southwestern parcel

¹ A copy of the 2017 Enforcement Policy is available at: https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_fi nal%20adopted%20policy.pdf

boundary (National Hydrography Dataset, 2019). The stream is a tributary to Buena Vista Creek.

The Site is located within the San Luis Rey Hydrologic Unit, Warner Valley Hydrologic Area, Warner Hydrologic Subarea (CalWater Hydrologic Unit Basin Number [HU] 903.31) – Buena Vista Creek. As designated in the *Water Quality Control Plan for the San Diego Basin* (Basin Plan), Buena Vista Creek supports many beneficial uses, namely municipal and domestic supply (MUN), agricultural supply (AGR), industrial process supply (PROC), freshwater replenishment (FRSH), hydropower generation (POW), contact water recreation (REC-1), non-contact water recreation (REC-2), warm freshwater habitat (WARM), cold freshwater habitat (COLD), and wildlife habitat (WILD). Beneficial uses of any specifically identified water body generally apply to all of its tributaries. The designated beneficial uses of the underlying ground waters for the Warner Hydrologic Subarea (HSA 3.31) include municipal and domestic supply (MUN), agricultural supply (AGR), industrial process supply (PROC), and freshwater replenishment (FRSH).

C. Case Background

Between November 4, 2019, and May 19, 2021, the South Coast Regional Cannabis Program (Cannabis Program), working on behalf of the San Diego Water Board, inspected the Site four times as part of criminal search warrants served by the San Diego County Sheriff's Department. Cannabis Program staff issued a Notice of Violation (NOV) to the Discharger on February 26, 2021. The February 26, 2021 NOV included an Inspection Memo from a prior inspection on November 4, 2019, and an Inspection Report from a prior inspection on December 10, 2020, as attachments. The February 26, 2021 NOV informed the Discharger of the unauthorized discharges and threats of discharge observed during inspections at the Site. The Discharger was issued another Inspection Report and NOV on June 15, 2021, based on observations from an inspection on May 19, 2021.

The Discharger was issued a draft Cleanup and Abatement Order and Water Code section 13267 Investigative Order No. R9-2021-0165 (Cleanup Order) on July 6, 2021, and to a second address on July 23, 2021, for review and comment. The Discharger did not provide any comments in response. The Discharger was then issued a Cleanup Order on August 16, 2021, which directed the Discharger to comply with the required actions contained therein. Among the required actions is the directive to submit a proposed Restoration and Monitoring Plan (RMP) within 60 days of the effective date of the Cleanup Order, pursuant to Water Code section 13267. The Cleanup Order was signed and received by "O. Yutang" on August 19, 2021. The Cleanup Order included all of the previous Inspection Memos, Inspection Reports, and NOVs as attachments.

The Discharger submitted responses to the Cleanup Order via email and filed a petition to the State Water Board on September 10, 2021, September 14, 2021, and September 16, 2021. On September 22, 2021, Cannabis Program staff informed the Discharger that because a request to stay the deadlines was not filed with the petition, the

Discharger was still responsible for complying with the deadlines in the Cleanup Order. San Diego Water Board staff never received notice that an action on the petition was taken by the State Water Board. It is the Prosecution Team's understanding that the petition was dismissed by operation of law after the 90-day statutory period expired without action by the State Water Board. The Discharger submitted a proposed RMP to Cannabis Program staff on October 14, 2021, for review. The proposed RMP included a confirmation of delivery and receipt from Ramona Disposal Service, indicating that two 40-yard containers had been delivered to the Site on September 23, 2021. Cannabis Program staff responded with a letter to the Discharger via certified mail and email on December 3, 2021, informing the Discharger that the proposed RMP was not approved as it did not sufficiently address all requirements of the RMP outlined in the Order. The letter contained staff comments and directed the Discharger to submit an RMP for approval that sufficiently addressed all the requirements of the RMP outlined in the Order. Despite the opportunity to submit an RMP that could be approved and subsequently implemented, the Discharger failed to do so and remains in violation of the requirement to provide an acceptable RMP by October 15, 2021, as directed by the Cleanup Order.

The Discharger contacted Cannabis Program staff on January 31, 2022, in response to the December 3, 2021 letter. The Discharger's response claimed a qualified professional was not needed and that it was unclear what type of qualified professional was required. The response also expressed the Discharger's belief that several requirements of the Cleanup Order were not necessary based on the Discharger's characterization of the Site. The email did not sufficiently address the requirements of the RMP, or the comments made by Cannabis Program staff in the December 3, 2021 letter.

The Discharger was issued an NOV on April 18, 2022, for failure to submit an acceptable RMP. The NOV provided responses to the comments made by the Discharger in the January 31, 2022 email, outlined the actions needed to comply with the Cleanup Order, and urged the Discharger to contact Cannabis Program staff to discuss any perceived misunderstandings about the Site conditions. On May 13, 2022, the Discharger emailed Cannabis Program staff requesting to schedule a conference call. The call took place on May 26, 2022, during which staff discussed the ongoing violation and the next steps required to comply with the Cleanup Order. Cannabis Program staff sent a follow-up email on May 26, 2022, which provided additional information to assist the Discharger's efforts to locate a qualified professional and a reminder of the deadline to complete implementation of an approved RMP by October 1, 2022. The Discharger responded to the email on that same day, thanking staff for the additional information.

Cannabis Program staff sent a follow-up email on September 6, 2022, to the Discharger, reminding the Discharger of the need to submit an acceptable RMP and requesting an update on the Discharger's progress towards compliance. Staff also provided another reminder of the upcoming October 1, 2022 deadline to complete implementation of the corrective measures in an approved RMP. Staff did not receive a response from the Discharger.

Cannabis Program staff issued another NOV on October 14, 2022, via email and certified mail, to the Discharger for noncompliance with the Cleanup Order for failure to complete implementation of an approved RMP, in addition to the ongoing failure to submit an acceptable proposed RMP. The Discharger responded via email on October 20, 2022. The email described a Site visit conducted by an engineer but did not provide any report or documentation that would address the elements required in an RMP. The email included several photographs as attachments, but the date and location of the photographs was not discernable. The Discharger also included statements as to why the Discharger believes certain aspects of the Cleanup Order are not required.

Cannabis Program staff sent an email on November 3, 2022, explaining that the October 20, 2022 response to the NOV, including the information and photographs submitted, was insufficient to satisfy the requirements of the Cleanup Order. Cannabis Program staff also reiterated that, as the current landowner and landowner during all inspections, the Discharger was appropriately named a responsible party for purposes of submitting the reports and conducting the cleanup required under the Cleanup Order.

After having received no update from the Discharger, the Cannabis Program staff issued the Discharger a notice of intent to proceed with an administrative civil liability complaint on October 13, 2023, for failure to comply with the Cleanup Order, unless the Discharger contacted staff to discuss the steps the Discharger is taking to achieve compliance.

The Discharger responded to the notice of intent on November 10, 2023, claiming that an attempt to find an appropriate engineer was unsuccessful and did not meet the San Diego Water Board's criteria, that there was no waste or excavated areas to bury waste at the Site, and that there was no need to hire a professional engineer or submit an RMP. Additionally, the Discharger provided a signed lease agreement for the Site between the Discharger's father, Yinquan Liu, and a tenant, Jin Lian Zhou. The agreement specified the leasing term as September 28, 2019, to September 30, 2024. The Discharger's response did not demonstrate that the Discharger was taking adequate steps to come into compliance with the Cleanup Order.

Cannabis Program staff acknowledged receipt of the November 10, 2023 response on November 15, 2023, and stated a more detailed response would follow.

Cannabis Program staff provided a more detailed response on December 4, 2023, stating that the comments provided in the Discharger's November 10, 2023 email had been addressed by staff in prior emails, letters, and meetings. Regarding the rental agreement, staff again explained that the Discharger, as the landowner, is responsible for the condition of the property and ensuring that any condition or threatened condition of pollution is remediated and is, therefore, an appropriate responsible party under the Cleanup Order. The response further informed the Discharger of staff's intention to proceed with an administrative civil liability complaint for failure to comply with the requirements of the Cleanup Order.

Discharger responded to the December 4, 2023 email response on December 20, 2023, reiterating the claim that the Discharger should not be held responsible for the Site. The response included an attached letter from the County of San Diego Department of Agriculture, Weights, and Measures, providing proof of registration for industrial hemp cultivation. The registration was issued to USASD INC., at 9087 Las Tunas Drive, Temple City, CA 91780, which is the same address on record for the Discharger. The letter specified that the registration for industrial hemp cultivation was valid from May 27, 2021, through May 26, 2022, which post-dates the four inspections of the Site.

Cannabis Program staff responded via email on December 21, 2023, to acknowledge receipt of the Discharger's email.

D. Violation 1: Failure to Submit a proposed RMP acceptable to the San Diego Water Board by October 15, 2021.

The Prosecution Team alleges that the Discharger violated Required Action A of the Cleanup Order by failing to submit a proposed RMP acceptable to the San Diego Water Board by October 15, 2021. The alleged violation is subject to administrative civil liability under Water Code section 13268.

Ten-Step Penalty Calculation Methodology

Step 1. Actual Harm or Potential for Harm for Discharge Violations

This step is not applicable.

Step 2. Assessment for Discharge Violations

This step is not applicable.

Step 3. Per Day Assessment for Non-Discharge Violations

The "per day" factor is calculated for each non-discharge violation considering two factors: the potential for harm and the extent of deviation from the applicable requirements.

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 or threat to beneficial uses. A "moderate" potential for harm is appropriate when the characteristics of the violation have substantially impaired the San Diego Water Board's ability to perform their statutory or regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most non-discharge violations should be considered to present a moderate potential for harm.

The circumstances of this violation presented a substantial threat to beneficial uses. The failure to submit an appropriate RMP has delayed the cleanup and abatement of waste as required by the Cleanup Order, which included unauthorized discharges of cannabis cultivation related waste to the unnamed ephemeral stream and alteration and

diversion of the unnamed ephemeral stream that crosses through the Site and is tributary to Buena Vista Creek. Additionally, failing to submit an appropriate RMP has substantially impaired the San Diego Water Board's ability to perform its regulatory functions under the Cleanup Order. Based on the circumstances of the violation, a score of **moderate** is appropriate for this factor.

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 requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).

The Prosecution Team assigned a score of **major** for this factor because the requirement to submit an appropriate RMP with the necessary elements for approval was never satisfied. The Discharger failed to consult with a registered professional engineer or geologist to produce an appropriate RMP, as discussed on multiple occasions and directed in the Cleanup Order. The Cleanup Order details the benefit to be obtained from submittal of an acceptable RMP for approval. The RMP is necessary to assess impacts to waters of the state resulting from the unauthorized grading and land disturbance activities and to determine appropriate restoration and abatement work to correct those impacts. Further, by requiring approval of the plan, the San Diego Water Board or its delegated officer has the opportunity to review the scope of the proposed restoration and corrective actions to confirm the proposed work will adequately remediate site conditions and prevent unauthorized discharges from further impacting beneficial uses. By failing to develop a plan in accordance with the requirements of the Cleanup Order, the RMP has been rendered ineffective in its essential functions. Therefore, a major deviation from the requirement is appropriate.

Per Day Factor for Non-Discharge Violations = 0.55

Table 3 of the Enforcement Policy prescribes a per day factor ranging from 0.4 to 0.7 for non-discharge violations with a moderate potential for harm and a major deviation from requirement. The Prosecution Team used **0.55**, which is the midpoint of the range.

Days of Violation = 944 (10/15/2021 - 5/16/2024)

The Discharger failed to provide an appropriate RMP for approval by San Diego Water Board staff by October 15, 2021, and remains in violation of this requirement. As of May 16, 2024, the Discharger has violated Required Action A of the Cleanup Order for 944 days.

Alternate Approach to Calculate Liability for Multiple Day Violations (Collapsing Days):

For violations that are assessed a civil liability on a per day basis and last more than 30 days, the Enforcement Policy provides that the daily assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if any, resulting from the violation. In such instances, the San Diego Water Board must make one of three findings. Finding (b) may be used to support an alternate approach to penalty calculation where the violation results in no discrete economic benefit from the illegal conduct that can be measured on a daily basis. Although the

Enforcement Policy states that failure to timely submit a site conceptual model or corrective action plan under a cleanup and abatement order is not the type of violation for which the findings required by this section can ordinarily be made, the Enforcement Policy further states that finding (b) may be made, at the discretion of the San Diego Water Board, in cases where the sole economic benefit measurable on a daily basis in “the time value of money.” (Enf. Policy, pp. 18-19.) The Prosecution Team proposes use of the alternate approach to penalty calculation under finding (b). Because the Discharger is still required to submit an acceptable RMP under the Cleanup Order, the economic benefit gained from the violation is the time value of that money. Under the alternate approach to penalty calculation, the Enforcement Policy states that the liability shall not be less than an amount that is calculated based on an assessment of the initial Total Base Liability Amount for the first 30 days of violation, plus an assessment for each 5-day period of violation, until the 60th day, plus an assessment for each 30 days of violation thereafter. This calculation for collapsing days sets the maximum permitted approach for reducing the number of days of violation. Utilizing the maximum collapsed days, the Prosecution Team has calculated the Initial Liability Amount based on **65 days** of violation.

Initial Liability Amount = \$35,750

The initial liability amount for the violation calculated on a per-day basis is:

$[\$1,000 \text{ (per day statutory maximum)} \times 0.55 \text{ (factor)} \times 65 \text{ (days of violation)}] = \mathbf{\$35,750}$

Step 4. Adjustment Factors

The San Diego Water Board must consider three additional factors for potential modification of the administrative civil liability amount: the Discharger’s degree of culpability, the Discharger’s prior violation history, and the Discharger’s voluntary efforts to clean up or cooperate with regulatory authorities after the violation.

Degree of Culpability = 1.4

This factor assesses the Discharger’s degree of culpability prior to the violation. Higher penalties should result from intentional or negligent violations as opposed to accidental violations. The test for whether a discharger is negligent is what a reasonable and prudent person would have done or not done under similar circumstances. The Enforcement Policy allows a multiplier between 0.75 and 1.5 to be used, with a higher multiplier for intentional or negligent behavior, and a lower multiplier for accidental or non-negligent behavior.

A reasonable and prudent response would have made a more considerable effort to comply with the requirement to submit an acceptable RMP by the deadline contained in the Cleanup Order. The Discharger was aware and reminded of the requirement to submit an RMP with the assistance of a qualified professional. Cannabis Program staff provided the Discharger a copy of the draft Cleanup Order and its transmittal letter, which informed the Discharger of the opportunity to comment on the corrective actions and deadlines proposed in the draft order. After staff received no comments, the Discharger was subsequently informed that the Cleanup Order had been issued and the required actions contained therein were enforceable. Furthermore, Cannabis Program

staff reminded the Discharger on September 22, 2021, that the deadlines in the Cleanup Order remained in effect during the Discharger's petition, which did not include a request to stay the deadlines of the order. Despite knowledge of the requirement to submit a proposed RMP by October 15, 2021, that satisfied the elements outlined in the Cleanup Order, the Discharger's submittal on October 14, 2021, had significant deficiencies. Accordingly, a **score of 1.4 for this factor** is appropriate due to the Discharger's degree of negligence.

History of Violations = 1.0

The Enforcement Policy provides that, where the discharger has no prior history of violations, this factor should be a neutral 1.0. The Prosecution Team has assessed a **score of 1.0 for this factor** as the Discharger has no prior history of violations with the State Water Board or the San Diego Water Board.

Cleanup and Cooperation = 1.5

The cleanup and cooperation factor addresses a violator's voluntary efforts to clean up and/or to cooperate with regulatory authorities after the violation. Adjustment should result in a multiplier between 0.75 to 1.5, using the lower multiplier for exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where there is not. A reasonable and prudent response to a discharge violation or timely response to a Water Board order should receive a neutral adjustment.

The Discharger submitted what was characterized as an RMP on October 14, 2021; however, the submittal was inadequate and lacked the necessary information to sufficiently address the requirements of the Cleanup Order. The submittal on October 14, 2021, included a receipt demonstrating that Ramona Disposal Services delivered containers to the Site, but there was no documentation of waste collected or removed from the Site. The submittal also included photographs that did not include georeferencing or a date and time stamp and did not satisfy the RMP elements outlined in the Cleanup Order. On December 3, 2021, Cannabis Program staff informed the Discharger that the proposed RMP was not approved and directed the Discharger to submit an RMP that appropriately addressed the requirements outlined in the Cleanup Order. On January 31, 2022, Cannabis Program staff received an email from the Discharger in response to the December 3, 2021, communication but, again, the Discharger's response did not address the required elements of the RMP. Cannabis Program staff also spoke with the Discharger via a conference call on May 26, 2022, to discuss the requirements of the Cleanup Order. Cannabis Program staff emailed the Discharger later that day, which reiterated the requirement that the Discharger use a qualified professional to assist in preparing the RMP. When the Discharger subsequently missed another deadline in the Cleanup Order, Cannabis Program staff issued an NOV on October 14, 2022. The email transmitting the NOV again informed the Discharger that submittal of an acceptable RMP is necessary to resolve the ongoing violation. The Discharger responded via email on October 20, 2022; however, the response did not address the outstanding requirements of the RMP. Given the Discharger's continued failure to submit an acceptable RMP for review and approval, staff issued a notice to the Discharger on October 13, 2023, that expressed staff's intent to recommend formal enforcement unless the Discharger contacted staff to discuss the

steps being taken to comply with the Cleanup Order. The Discharger responded on November 10, 2023, repeating many of their prior claims with no indication that they were working with a qualified professional to prepare an RMP to resolve the violation. On December 4, 2023, Cannabis Program staff provided a response via email stating that the comments provided in the Discharger's November 10, 2023, email had been addressed by staff in prior emails, letters, and meetings. Regarding the rental agreement, staff again explained that the Discharger, as the landowner, is responsible for the condition of the property and ensuring that any condition or threatened condition of pollution is remediated and is, therefore, an appropriate responsible party under the Cleanup Order. On December 20, 2023, the Discharger responded reiterating the claim that the Discharger should not be held responsible for the Site. The response included an attached letter from the County of San Diego Department of Agriculture, Weights, and Measures, providing proof of registration for industrial hemp cultivation. The registration was issued to USASD INC., at 9087 Las Tunas Drive, Temple City, CA 91780, which is the same address on record for the Discharger. The letter specified that the registration for industrial hemp cultivation was valid from May 27, 2021, through May 26, 2022, which post-dates the four inspections of the Site. Although the Discharger has provided responses to staff's communications, the Discharger continues to challenge their obligations under the Cleanup Order and has failed to submit an RMP to resolve the ongoing violation. Accordingly, the Prosecution Team has assigned a **score of 1.5 for this factor**.

Step 5. Determination of Total Base Liability Amount

The Total Base Liability Amount is determined by multiplying the initial liability by the Adjustment Factors in Step 4:

Total Base Liability Amount = [\$35,750 (initial liability amount) x 1.4 (degree of culpability) x 1.0 (history of violations) x 1.5 (cleanup and cooperation)] = **\$75,075**

Steps 6 through 10 will be discussed in Section F, following the Determination of Total Base Liability for Violation 2.

E. Violation 2: Failure to Complete Implementation of an Approved RMP by October 1, 2022.

The Prosecution Team alleges that the Discharger violated Required Action C of the Cleanup Order by failing to complete implementation of an approved RMP no later than October 1, 2022, pursuant to Water Code section 13304. The violation of this requirement is subject to administrative civil liability pursuant to Water Code section 13350.

Ten-Step Penalty Calculation Methodology

Step 1. Actual Harm or Potential for Harm for Discharge Violations

This step is not applicable.

Step 2. Assessment for Discharge Violations

This step is not applicable.

Step 3. Per Day Assessment for Non-Discharge Violations

The “per day” factor is calculated for each non-discharge violation considering two factors: the potential for harm and the extent of deviation from the applicable requirements.

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 or threat to beneficial uses. A "moderate" potential for harm is appropriate when the characteristics of the violation have substantially impaired the San Diego Water Board’s ability to perform their statutory or regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most non-discharge violations should be considered to present a moderate potential for harm.

The circumstances of this violation presented a substantial threat to beneficial uses. By failing to complete implementation of an approved RMP, as required by the Cleanup Order, the Discharger has failed to remediate the discharges and threats of discharge of waste, allowing the threat to beneficial uses of the unnamed ephemeral stream that crosses through the Site to persist. Additionally, by failing to complete implementation of an approved RMP, the Discharger has substantially impaired the San Diego Water Board’s ability to perform its statutory and regulatory functions under the Cleanup Order. Based on the circumstances of the violation, a score of **moderate** is appropriate for this factor.

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 requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).

The Prosecution Team assigned a value of **major** for this factor because the requirement to complete implementation of an approved RMP has not been satisfied. The Discharger failed to submit an acceptable RMP to the San Diego Regional Board or its delegated officer for approval such that any work performed by the Discharger was not conducted pursuant to an approved plan. Furthermore, the Discharger has not provided evidence that the restoration and mitigation measures expected to be contained in an acceptable RMP have otherwise been completed as required under the Cleanup Order. The RMP was intended to clean up the discharges of waste to waters of the state that were observed during inspections of the Site, restore the impacted stream channel and riparian zone, and prevent future discharges at the Site. By failing to

complete implementation of these measures, the Discharger has rendered this requirement ineffective in its essential functions. The Site has not been cleaned up and restored as intended. Therefore, a major deviation from requirement is appropriate.

Per Day Factor for Non-Discharge Violations = 0.55

Table 3 of the Enforcement Policy prescribes a per day factor ranging from 0.4 to 0.7 for non-discharge violations with a moderate potential for harm and major deviation from requirement. The Prosecution Team used **0.55**, which is the midpoint of the range.

Days of Violation = 593 (10/1/2022 - 5/16/2024)

The Discharger failed to implement the restoration and mitigation measures expected to be contained in an approved RMP by October 1, 2022, and remains in violation of this requirement. As of May 16, 2024, the Discharger has violated Required Action C of the Cleanup Order for **593 days**.

Alternate Approach to Calculate Liability for Multiple Day Violations (Collapsing Days):

As Discussed under Violation 1, the San Diego Water Board has discretion to utilize the alternate approach to calculate liability for this violation if one of the three findings specific in the Enforcement Policy is made. The Prosecution Team proposes use of the alternate approach to penalty calculation under finding (b). Because the Discharger is still required to implement the restoration and mitigation measures to be contained in an approved RMP under the Cleanup Order, the economic benefit gained from the violation is the time value of that money. Utilizing the maximum collapsed days, the Prosecution Team has calculated the Initial Liability Amount based on **53 days** of violation.

Initial Liability Amount = \$145,750

The initial liability amount for the violation calculated on a per-day basis is:

$[\$5,000 \text{ (per day statutory maximum)} \times 0.55 \text{ (factor)} \times 53 \text{ (days of violation)}] = \mathbf{\$145,750}$

Step 4. Adjustment Factors

The San Diego Water Board must consider three additional factors for potential modification of the administrative civil liability amount: the Dischargers' degree of culpability, the Dischargers' prior violation history, and the Dischargers' voluntary efforts to clean up and cooperate with regulatory authorities after the violation.

Degree of Culpability = 1.4

As previously noted, this factor looks at the Discharger's conduct prior to the violation and can be assigned a multiplier between 0.75 and 1.5, with a higher multiplier for intentional or negligent behavior, and a lower multiplier for accidental or non-negligent behavior. The test is what a reasonable and prudent person would have done or not done under similar circumstances.

A reasonable and prudent person would have ensured that all required restoration and mitigation measures were completed by October 1, 2022, pursuant to an approved plan. The Discharger failed to act as a reasonable and prudent person in this case. The Discharger was informed through the issuance of the Cleanup Order on August 16, 2021, that all required actions contained in the order were in effect and enforceable.

After failing to submit an acceptable RMP for approval by October 15, 2021, the Discharger was again informed in an April 15, 2022 NOV that failure to submit an acceptable RMP was required and that the deadline to complete implementation is October 1, 2022, and that failure to satisfy that requirement could subject the Discharger to administrative civil liability. Cannabis Program staff held a phone call with the Discharger on May 26, 2022, urging the Discharger to contact a qualified professional, given that the RMP deadline had already past and reminding the Discharger of the implementation deadline on October 1, 2022. Despite staff's attempts to encourage the Discharger to comply with the Cleanup Order, the Discharger did not attempt to address the deficiencies in the October 14, 2021, proposed RMP and failed to provide evidence that the restoration and mitigation measures required to be contained in an acceptable RMP had been implemented at the Site by October 1, 2022. Although the Discharger stated, in the submittal of the October 14, 2021, proposed RMP and a January 31, 2022 email, that some corrective actions have been implemented, these submittals are insufficient to demonstrate that the restoration and mitigation measures, required to be contained and implemented through an approved RMP, have been completed. The October 14, 2021, submittal included a receipt demonstrating that Ramona Disposal Services had delivered containers to the Site, but there was no documentation of waste collected or removed from the Site. The submittal also included photographs that did not include georeferencing or a date and time stamp and did not display that all required restoration and mitigation measures were completed by the deadline on October 1, 2022. Therefore, a **score of 1.4 for this factor** is appropriate.

History of Violations = 1.0

The Prosecution Team has assessed a neutral **score of 1.0 for this factor** because the Discharger has no prior history of violations.

Cleanup and Cooperation = 1.5

This factor addresses a violator's voluntary efforts to cleanup and/or to cooperate with regulatory authorities after the violation. Adjustment should result in a multiplier between 0.75 to 1.5, using the lower multiplier for exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where there is not. A timely response to a Water Board order should receive a neutral adjustment.

The Discharger did not respond to the Cleanup Order in a timely manner in this instance, as would be expected of a reasonable and prudent person. Cannabis Program staff issued an NOV for noncompliance with this requirement of the Cleanup Order on October 14, 2022. The Discharger responded to the NOV on October 20, 2022, with an update on steps taken to try to comply with the Cleanup Order's requirements. The Discharger described a site visit conducted by an engineer and provided photographs of the site but did not provide any report or sufficient documentation to demonstrate that the restoration and mitigation measures required to be contained in an RMP had been completed. Cannabis Program staff responded on November 3, 2022, explaining that the response to the NOV was insufficient to satisfy the requirements of the Cleanup Order and, again, urged the Discharger to submit an acceptable RMP for approval, endorsed by a qualified professional so that implementation of the restoration and

mitigation measures can be completed consistent with the requirements of the Cleanup Order. Given the Discharger's continued failure to comply with the Cleanup Order, staff issued a notice to the Discharger on October 13, 2023, that expressed staff's intent to recommend formal enforcement unless the Discharger contacted staff to discuss the steps being taken to comply with the Cleanup Order. The Discharger responded on November 10, 2023, but the response did not identify sufficient steps that the Discharger was taking to resolve the violations of the order. To date, the Discharger has not completed implementation of the restoration and mitigations measures required to be contained in an approved RMP under the Cleanup Order. Accordingly, a **score of 1.5 for this factor** is appropriate.

Step 5. Determination of Total Base Liability Amount

The Total Base Liability Amount is determined by multiplying the initial liability by the Adjustment Factors in Step 4:

Total Base Liability Amount = [\$145,750 (initial liability amount) x 1.4 (degree of culpability) x 1.0 (history of violations) x 1.5 (cleanup and cooperation)] = **\$306,075**.

Steps 6-10 are discussed in Section F, below.

Factors Associated With All Violations

Step 6. Ability to Pay and Ability to Continue in Business

The Enforcement Policy states that the Total Base Liability Amount may be adjusted to address ability to pay or to continue in business if the San Diego Water Board has sufficient financial information necessary to assess a violator's ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on a violator's ability to continue in business. A violator's ability to pay an administrative civil liability is determined by its revenues and assets. Although it is often in the public interest for a discharger to continue in business, the Enforcement Policy provides that the San Diego Water Board is not required to ensure that civil liabilities are set at a level that allows a violator to continue in business. Rather, the Water Code only requires that the San Diego Water Board consider this factor when imposing civil liability.

The Discharger owns the Site, which has an assessed value of \$325,863. Property transaction records indicate that the Discharger purchased the Site on August 12, 2019. The Discharger also owns an additional property in Los Angeles County, 1415 Elwood Street, Pomona, and the total assessed value of the property based on County Tax Assessor records is \$260,530. Property transaction records indicate that the Discharger purchased this property on May 14, 2010. The Discharger also appears to be associated with several businesses. Based on filings with the California Secretary of State, the Discharger is the managing member of two active limited liability companies (LLCs): Olivia's Secret LLC and Jade House of Rolls LLC. The Discharger is also identified as a director and secretary of MPUSA, Inc., based on the 2023 statement of information filed with the California Secretary of State, and identified as the chief executive officer, chief financial officer, and secretary of US Beauty & Health, Inc., based on the 2024 Statement of Information. The Prosecution Team does not have any

information regarding the Discharger's earnings in relation to those businesses; however, based on the information available, including the assessed property values in excess of the Total Base Liability, the Prosecution Team asserts that the Discharger has an ability to pay the proposed liability. Staff proposes no adjustment to the Total Base Liability Amount.

The Enforcement Policy further provides that, where staff makes an initial showing that a discharger has an ability to pay, the burden of proof on this factor shifts to the Discharger to produce sufficient evidence that the Discharger lacks an ability to pay.

Step 7. Economic Benefit

The Enforcement Policy provides that the Economic Benefit Amount shall be estimated for every violation. The economic benefit is any savings or monetary gains from noncompliance. There are two types of costs that should be considered: delayed costs and avoided costs. Delayed costs include expenditures that should have been made sooner but that the discharger implemented too late to avoid the violation and/or that the discharger is still obligated to perform. Avoided costs include expenditures that the discharger should have incurred to avoid the incident of noncompliance but that are no longer required.

For **Violation 1**, the cost of preparing an RMP (i.e., field inspection and report preparation) is comparable to the cost of preparing a combined Site Management Plan, Site Erosion and Sediment Control Plan, and a Disturbed Area Stabilization Plan, as presented in the State Water Resources Control Board, October 2017, Direct Cost Analysis for the Proposed Cannabis Cultivation Policy (2017 Direct Cost Analysis),² which is estimated to cost between \$4,860 and \$14,120. Because the Discharger will still need to submit a sufficient RMP for approval under the Cleanup Order, the costs estimated above are considered delayed. The Discharger gained an economic benefit from delayed expenditures associated with Violation 1 according to the EPA BEN model. Cannabis Program staff identified the midpoint in the estimated range of plan cost, \$9,490, as a one-time non-depreciable expenditure, with \$0 in capital investment and \$0 in annual recurring costs. Staff utilized a noncompliance date of October 15, 2021, the deadline contained in the Cleanup Order, and an estimated compliance date of August 14, 2024, the anticipated hearing date. The resulting economic benefit from delaying the plan expenditures is \$796. Consistent with the Enforcement Policy, the Total Base Liability Amount for Violation 1 must be at least ten percent higher than the economic benefit derived from the violations. Economic benefit plus ten percent is calculated to be \$875.60, which the Total Base Liability Amount for this violation exceeds.

² The 2017 Direct Cost Analysis is available at: https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/20171017_cannabis_cultivation_policy_cost_analysis.pdf

For **Violation 2**, implementation of the corrective actions required to be contained in an approved RMP would require Waste Discharge Requirements from the San Diego Water Board that would require a one-time application fee of \$2,985. Without the Discharger having completed the assessment required to develop the RMP under the Cleanup Order, it is difficult to estimate what the cost will be to complete implementation of the corrective actions; therefore, Staff has not included implementation costs in the economic benefit analysis. Because the Discharger is still required to complete implementation of sufficient restoration and mitigation measures, these costs are considered delayed. Although implementation costs have not been estimated, the Discharger gained an economic benefit from delayed expenditures associated with the WDR application fee for Violation 2 according to the EPA BEN model. Cannabis Program staff identified the permit application cost of \$2,985, with an estimated implementation cost of \$0 as a one-time non-depreciable expenditure, \$0 in capital investment, and \$0 in annual recurring fees. Staff utilized a noncompliance date of October 1, 2022, the deadline contained in the Cleanup Order, and an estimated compliance date of December 1, 2024, based on the lack of an approved RMP and length of time provided in the Cleanup Order to complete implementation following approval of the RMP. The resulting economic benefit from delaying the permit application fees is \$277. Based on this calculation, economic benefit plus ten percent is calculated to be \$304.70, which the Total Base Liability Amount for this violation exceeds.

Step 8. Other Factors as Justice May Require

The Enforcement Policy allows an adjustment to the administrative civil liability, in consideration of the costs of investigating and enforcing the matter. Here, San Diego Water Board staff expended over 158 staff hours and accrued \$28,384 in staff costs associated with the investigation and preparation of Administrative Civil Liability Complaint No. R9-2024-0090 and this Complaint. It is appropriate to increase the Total Base Liability Amount by \$28,384 for the two violations. The increase is in consideration of the costs of investigation and enforcement relative to the Total Base Liability Amount for the two violations, is warranted given the totality of the circumstances, and is intended to serve as a sufficient general and specific deterrent against future violations.

Step 9. Maximum and Minimum Liability Amounts

For all violations, the applicable statute 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 amount of civil liabilities being proposed. For purposes of this step, the maximum liability does not include any reduction in the number of days for multiple day violations.

Violation 1: Pursuant to Water Code section 13268, subdivision (b)(1), civil liability may be administratively imposed by the San Diego Water Board in an amount that shall not exceed \$1,000 for each day in which the violation occurs. The Complaint alleges that this violation occurred for 944 days. Accordingly, the statutory maximum liability amount that can be imposed for this violation is \$944,000. Water Code section 13268 does not impose a minimum liability amount; however, the Enforcement Policy required the San

Diego Water Board to recover, at a minimum, the economic benefit derived from this violation plus ten percent. Therefore, the minimum liability that can be imposed for this violation is \$875.60. The proposed liability of \$75,075 for Violation 1 falls within the minimum and maximum liability amounts.

Violation 2: Pursuant to Water Code section 13350, subdivision (e)(1), civil liability may be administratively imposed by the San Diego Water Board on a daily basis in an amount that shall not exceed \$5,000 for each day that the violation occurs. The Complaint alleges that this violation occurred for 593 days. Accordingly, the statutory maximum liability amount that can be imposed for this violation is \$2,965,000. Water Code section 13350, subdivision (e)(1)(B), further provides that “[w]hen there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.” Accordingly, the statutory minimum liability amount that can be imposed for this violation is \$59,300. The proposed liability of \$306,075 for Violation 2 falls within the statutory minimum and maximum liability amounts.

Step 10. Final Liability Amount

The Final Liability Amount consists of the added amounts for each violation, with any allowed adjustments. The Total Base Liability Amount for Violations 1 and 2 is \$75,075 and \$306,075, respectively. After combining those amounts, and adding staff’s investigation and enforcement costs, the Final Liability Amount is calculated to be \$409,534.

Evidence Relied Upon and Available Via FTP Server

Exhibit No.	ECM Document Handle No.	Item	Date
1	10421841	Property Transaction Record for San Diego County APN 197-100-02-00	05/10/2024

2	9070846	February 26, 2021 Notice of Violation (NOV) with attachments: - November 15, 2019 Inspection Memo for the November 4, 2019 Inspection -January 22, 2021 Inspection Report for December 10, 2020 and July 16, 2020 Inspections -Memorandum regarding staff's review of LE's May 12, 2020 inspection	02/26/2021
3	10418620	Delivery tracking for February 26, 2021 NOV	03/01/2021
4	9142818	June 15, 2021 NOV and Inspection Report for the May 17, 2021 Inspection	06/15/2021
5	9210410, 9236236	July 6, 2021 transmittal letter and Draft Cleanup and Abatement and Water Code Section 13267 Order R9-2021-0165 (Draft Cleanup Order)	07/06/2021
6	10418640, 10418641	Confirmation of delivery for Draft Cleanup Order	07/08/2021, 07/27/2021
7	9236236, 9236237	Cleanup and Abatement and Water Code Section 13267 Order R9-2021-0165 (Cleanup Order) and transmittal letter	08/16/2021
8	9249669	Confirmation of delivery for the Cleanup Order	08/19/2021

9	10418666, 10418667	September 10, 2021 email from the Discharger with an attached response to the Cleanup Order and proposed petition documents	09/10/2021
10	10418672	Petition for Revision of Order R9-2021-0165	09/14/2021
11	10418673	Second submittal of petition documents	09/16/2021
12	10421822	Email from staff to the Discharger, response regarding petition	09/22/2021
13	10418676	Email from State Water Board (Office of Chief Counsel) confirming receipt of petition	10/7/2021
14	9340208, 10420691	October 14, 2021 email from the Discharger with a proposed Restoration and Monitoring Plan (RMP) attached	10/14/2021
15	9463923, 9463924	December 3, 2021 email transmittal and letter from staff regarding deficiencies in the proposed RMP, including attached table with staff's comments on the RMP	12/03/2021
16	10420689	Delivery tracking for December 3, 2021 letter	12/03/2021
17	10420715	January 31, 2022 email from the Discharger to staff in response to December 3, 2021 letter	01/31/2022
18	9463925	April 18, 2022 email with attached NOV (including certified mail receipt) for	04/18/2022

		failure to submit an acceptable RMP	
19	10420856	May 13, 2022 email exchange between the Discharger and staff to schedule a conference call	05/13/2022
20	9581861	May 26, 2022 email from staff providing additional information to the Discharger following the conference call	05/26/2022
21	10421824	May 26, 2022 response from the Discharger to staff	05/26/2022
22	10420857	Record of communication for May 26, 2022 conference call	05/26/2022
23	9582081	September 6, 2022 email from staff reminding the Discharger to submit a revised RMP and of the upcoming deadline to complete implementation	09/06/2022
24	9621903	October 14, 2022 email with NOV attached for failure to comply with the Cleanup Order	10/14/2022
25	10420858	Delivery tracking for October 14, 2022 NOV sent via certified mail	10/20/2022
26	10421055	October 20, 2022 email from the Discharger in response to NOV with photographs attached	10/20/2022
27	10421072	November 3, 2022 email from staff responding to the Discharger and explaining the ongoing violations of the Cleanup Order	11/03/2022

28	10421090	October 13, 2023 email transmitting Notice of Intent to Proceed with an Administrative Civil Liability Complaint	10/13/2023
29	10421110	Delivery tracking for October 13, 2023 notice sent via certified mail	10/18/2023
30	10421121	November 10, 2023 email from the Discharger in response to staff's notice with attached lease agreement	11/10/2023
31	10421124	November 15, 2023 email from staff acknowledging receipt of the Discharger's response	11/15/2023
32	10421930	December 4, 2023 email from staff providing a response to the Discharger's November 10 email and attachment, and informing her of staff's intent to proceed with a complaint	12/04/2023
33	10421937	December 20, 2023 email from the Discharger with attachments	12/20/2023
34	10421940	December 21, 2023 email from staff acknowledging receipt of the Discharger's email	12/21/2023
35	10422043	2023 Tax Assessor Record for San Diego County APN 197-100-02-00	03/28/2024
36	10422045	Property Transaction Record for Los Angeles County APN 8358-032-007	03/28/2024
37	10422050	2023 Tax Assessor Record for Los Angeles County APN 8358-032-007	03/28/2024

38	10424265	2022 California Secretary of State filings for Olivia's Secret LLC	10/05/2022
39	10424272	2023 Statement of Information filed with California Secretary of State filings for Jade House of Rolls LLC	08/23/2023
40	10424275	2023 Statement of Information filed with California Secretary of State for MPUSA, Inc.	08/23/2023
41	10424280	2024 Statement of Information filed with California Secretary of State for US Beauty & Health, Inc.	04/11/2024
42	10439972	Staff costs breakdown	5/21/2024
43	10440409	Declaration of staff costs	5/22/2024
44	10424301	Economic Benefit Analysis	03/21/2024