

State of California
California Regional Water Quality Control Board
Santa Ana Region

IN THE MATTER OF:	)
	)
City of Redlands	) Settlement Agreement and Stipulations For
35 Cajon Street, Suite 200	) Adoption of Order No. R8-2015-0031
Redlands, CA 92373	)
Attn: Chris Diggs	)
	)

A. INTRODUCTION:

1. This Settlement Agreement and Stipulation for Entry of Order No. R8-2015-0031 ("Settlement Agreement") is entered into by and between the Division Chief of the Santa Ana Regional Water Quality Control Board Prosecution Staff ("Prosecution Staff) and the City of Redlands (City or Discharger) (the Regional Water Board and the Discharger are collectively referred to as the "Parties") and is presented to the Regional Water Board or its delegee, for adoption as an Order by settlement, pursuant to Government Code 11415.60. This Settlement Agreement accepts the stipulations for settlement of administrative civil liability assessed to the City of Redlands for violations of California Water Code section 13376.

B. PARTIES TO THIS AGREEMENT

1. Regional Water Quality Control Board's (Regional Board).
2. City of Redlands (the City or the Discharger).

(The Regional Board's Prosecution Team and the City are collectively referred to as the "Parties.")

C. RECITALS

1. Whereas the Discharger provides potable water, sewer and reclamation services for the City of Redlands in San Bernardino County. The Discharger can treat up to 9.5 million gallons of domestic sewage each day. The Discharger is required to operate and maintain their sanitary sewer collection system and wastewater treatment facility in compliance with requirements of the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, Water Quality Order No. 2006-003DWQ (hereinafter "SSO Order") and Regional Board Order R8-2006-0008, which amends Regional Board Order No. 98-54 Waste Discharge

Requirements for the City of Redlands' Wastewater Treatment Plant that authorized the collection, treatment, reclamation and/or disposal of sanitary sewage.

2. Whereas, the Federal Clean Water Act (33U.S.C Section 1311) and California Water Code (Water Code) Section 13376 prohibit the discharge of pollutants to waters of the United States, unless authorized by a National Pollutant Discharge Elimination System (NPDES) permit.
3. Whereas, the Complaint alleges that on August 3, 2014 the Discharger violated Water Code section 13376 when it discharged 625,000 gallons of partially treated sewage to Reach 5 of the Santa Ana River a waters of the U.S. without an NPDES Permit.
4. Whereas, Water Code section 13385 authorizes the Regional Board to impose administrative liability of up to \$10,000 per day for each day of violation plus \$10 per gallon after the first one thousand gallons released and not recovered.
5. Whereas, following settlement discussions on June 22, 2015, the Parties agreed to an assessment of a penalty of two hundred fifty-two thousand, six hundred and eighty four dollars (\$252,684) for violations of Water Code section 13376.
6. Whereas, the Prosecution Team and the Discharger agree to settle the proposed administrative civil liability without administrative proceedings or civil litigation, and hereby present this Settlement Agreement to the Regional Board's Executive Officer for adoption as an Order by settlement under Government Code section 11415.60. The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations except as provided in this Settlement Agreement, and that this Settlement Agreement is in the best interest of the public.

D. JURISDICTION

1. The Parties agree that the Santa Ana Regional Water Quality Control Board has subject matter jurisdiction over the violation described in Recital 3 and personal jurisdiction over the Parties to this Settlement Agreement.

E. ADMINISTRATIVE CIVIL LIABILITY BEING SETTLED

This Settlement Agreement settles Administrative Civil Liabilities assessed for the discharge of partially treated sewage without an NPDES Permit, in violation of Water Code section 13376. The details of the violations and the penalty calculations are discussed in Attachment A, which is hereby incorporated by reference.

2. The Discharger agrees to the imposition of an administrative liability in the total amount of two hundred fifty-two thousand, six hundred and eighty four dollars (\$252,684).

F. PROPOSED SETTLEMENT

1. The proposed settlement includes a payment of two hundred fifty-two thousand, six hundred and eighty four dollars (\$252,684) to the Cleanup and Abatement Account. Payment of the \$252,684 administrative civil liability constitutes final and complete payment of all monies due for the violation alleged in this Settlement Agreement.

G. LEGAL AUTHORITY

1. Water Code section 13385 subdivision (c) authorizes the Regional Board to impose an administrative civil liability of:
 - a. A maximum of ten thousand dollars (\$10,000) for each day in which the violation occurs.
 - b. Where there is a discharge, any portion of which is not susceptible to clean up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
 - c. State Water Board adopted Resolution No. 2009-0083 amended the Water Quality Enforcement Policy (Enforcement Policy) and became effective May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability that address factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13385, subdivision, and section 13327 that is less than the maximum civil liability allowed in section 13385 subdivision (c).

H. VIOLATIONS BEING SETTLED

1. This Settlement Agreement only resolves the violation listed in Recital 3 and described in Attachment A.

I. TERMS AND CONDITIONS

1. The Discharger hereby agrees to the imposition of an Administrative Civil Liability totaling two hundred fifty-two thousand, six hundred and eighty four dollars (\$252,684) as set forth in Paragraph E.2, above. Within thirty (30) days of adoption of Order No. R8-2015-0031 (Order), the Discharger shall remit, by check, two

hundred fifty-two thousand, six hundred and eighty four dollars (\$252,684) payable to the *State Water Resources Control Board* to the following address ("Order No. R8-2015-0031" shall be indicated on the check):

State Water Resources Control Board
Division of Administrative Services, Accounting
Attn: ACL Payment
PO Box 1888
Sacramento, CA 95812-1888

A copy of the check shall also be mailed to the following address:

Chuck Griffin
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348

2. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Board prior to the adoption of the Order.
3. **Denial of Liability:** Neither this Settlement Agreement (including all Attachments), nor any payment made pursuant to the Order, shall constitute evidence of, or be construed as, a finding, adjudication, or acknowledgement of any fact, law, or liability, nor shall it be construed as an admission of violation of any law, rule, or regulation, by the Discharger. However, this Order and/or any actions of payment pursuant to the Order may constitute evidence in actions seeking compliance with this Order. This Order may be used as evidence of a prior enforcement action in future unrelated enforcement actions by the Regional Board against the Discharger.
4. **Release and Covenant not to Sue the Discharger:** Upon the full payment of the two hundred fifty-two thousand, six hundred and eighty four dollars (\$252,684) as required in Paragraph I.1 above, the Regional Board shall and does release, discharge, and covenant not to sue the Discharger, including its officers, elected board members, agents, directors, employees, subcontractors, attorneys, representatives, predecessors-in-interest, and successors and assigns for any and all claims or cause of action, including for civil penalties or administrative oversight costs, of every kind and nature whatsoever, in law and equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which arise out of or are related to this action.
5. **Public Notice:** The Parties agree that the Settlement Agreement, as signed by the Parties, will be noticed for a 30-day public comment period prior to being presented to the Regional Board, or its delegee, for adoption in the Order. In the event objections are raised during the public review and comment period, the Regional Board, or its delegee, may, under certain circumstances, require a public hearing regarding the Settlement Agreement. In that event, the Parties agree to meet and confer concerning any such objections, and may mutually agree to revise or adjust

the proposed Settlement Agreement. Except in such an event, the Discharger agrees that it will not rescind or otherwise withdraw its approval of this Settlement Agreement prior to its adoption in the Order.

6. **Procedure:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Settlement Agreement, will be adequate. In the event procedural objections are raised prior to the effective date of the Order, the Parties agree to meet and confer concerning any such objections, and may mutually agree to revise or adjust the procedure as necessary or advisable under the circumstances. However, agreement to such revisions or adjustments shall not require Discharger to pay any amount in excess of that set forth in this Settlement Agreement.
7. **Order not Adopted/Vacated:** In the event that this Order does not take effect because it is not adopted by the Regional Board's Executive Officer, or is vacated in whole or in part by the State Board or a court, the Discharger acknowledges that the Prosecution Team may proceed to a contested evidentiary hearing before the Regional Board to determine whether to assess administrative civil liability for the underlying alleged violations, or may continue to pursue settlement. In the event of the Order being vacated by the State Board or a court, unless waived by the Discharger in writing, the Regional Board shall refund to the Discharger, within thirty (30) days of the effective date of such vacation, the sum of two hundred fifty-two thousand, six hundred and eighty four dollars (\$252,684), provided that the Discharger had paid the amount as per this Settlement Agreement. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions, including this Settlement Agreement and all Attachments, will not be admissible as evidence in any subsequent administrative or judicial proceeding or hearing. The Parties also agree to waive the following objections related to their efforts to settle this matter:
 - a. Objections related to prejudice or bias of any of the Regional Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that the Regional Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter, except that Discharger may object to members of the Prosecution Team serving as advisors to the Regional Board in any such subsequent administrative or judicial proceeding or hearing; or
 - b. Laches or delay or other equitable defenses based on the time period that the order or decision by settlement may be subject to administrative or judicial review.
8. **Appeals:** Upon adoption of this Order, the Discharger waives their right to appeal this Order to the State Board, a California Superior Court and/or any California appellate level court. Nothing in this Settlement Agreement, however, shall be construed to prevent the Discharger from participating as parties or interveners in any appeal of this Order brought by a third party before any California court of law or the State Board.

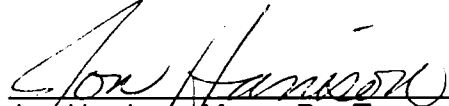
9. **Effect of Stipulated Order:** Except as expressly provided in this Settlement Agreement, nothing in the Order is intended nor shall it be construed to preclude the Prosecution Team or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
10. **Water Boards not Liable:** Neither the Regional Board members nor the Regional Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from the negligent or intentional acts or omissions by the Discharger or their respective directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Settlement Agreement.
11. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Regional Board to enforce any provision of this Settlement Agreement shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Agreement. The failure of the Prosecution Team or Regional Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Agreement. No oral advice, guidance, suggestions or comments by employees or officials of any Party regarding matters covered under this Agreement shall be construed to relieve any Party regarding matters covered in this Agreement. This Agreement relates only to the subjective matter hereof, including administrative civil liability for the violations listed in the Complaint. The Regional Board reserves all rights to take additional enforcement actions, including without limitation the issuance of administrative civil liability complaints or orders for violations other than those addressed by this Settlement Agreement.
12. **Regulatory Changes:** Nothing in this Settlement Agreement shall excuse Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.
13. **Third Party Claims.** Nothing in this Settlement Agreement shall be deemed to create any rights in favor of, or to inure to the benefit of, any third party or parties, or to waive or release any defense or limitation against third party claims.
14. **Authority to Enter Stipulated Order:** Each person executing this Settlement Agreement in a representative capacity represents and warrants that he or she is authorized to execute this Settlement Agreement on behalf of and to bind the entity on whose behalf he or she executes the Settlement Agreement.
15. **Integration:** This Settlement Agreement constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Settlement Agreement.
16. **Modification:** Neither this Settlement Agreement nor the proposed Order shall be modified by any of the Parties by oral representation whether made before or after the execution of this Order. All modifications must be made in writing and approved by Discharger and the Regional Board or its Executive Officer.

17. **Interpretation:** This Settlement Agreement shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
18. **Third Party Claims:** Nothing in this Order shall be deemed to create any rights in favor of, or to inure to the benefit of, any third party or parties, or to waive or release any defense or limitation against third party claims.
19. **Extensions:** The Executive Officer may extend any of the due dates in this Settlement Agreement upon the joint request of the Parties. Such extensions must be in writing.
20. **Effective Date:** The effective date of the Order shall be the date on which it is adopted by the Executive Officer.
22. **Disputes:** In the event of a dispute, the Discharger, as appropriate, shall file a "Notice of Dispute" with the Executive Officer or the Executive Officer's Designee within ten (10) days of discovery of the problem. The Regional Board and Discharger shall then attempt to negotiate a resolution of such claim and, if appropriate, process an amendment to implement the terms of any such resolution. If the Regional Board and the Discharger are unable to resolve the dispute, the decision of the Executive Officer or the Executive Officer Designee shall be final, unless appealed to a court of competent jurisdiction.
23. **Counterpart Signatures:** This Settlement Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.
24. **Incorporated Attachments:** Attachment A, is incorporated by reference and is made fully a part of this Settlement Agreement as though set forth herein.

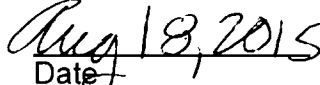
IT IS SO STIPULATED¹:

Hope A. Smythe, Division Chief
For the Santa Ana Regional Water Quality Control Board
Prosecution Team

Date



Jon Harrison, Mayor Pro Tempore
For the City of Redlands

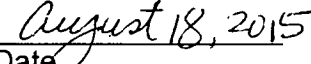


Date

Approved as to Form



Jeanne Donaldson,
Deputy City Clerk



Date

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¹ The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.

PROPOSED ORDER

HAVING CONSIDERED THE PARTIES' STIPULATIONS, AS SET FORTH IN THE ATTACHED SETTLEMENT AGREEMENT, THE SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

1. In adopting this Order, the Santa Ana Regional Water Quality Control Board or its Delegee has assessed a penalty in accordance with CWC section 13385(c) and the Enforcement Policy.

2. The Settlement Agreement resolves an action brought to enforce the laws and regulations administered by the Santa Ana Regional Water Quality Control Board. The Santa Ana Regional Water Quality Control Board, acting through its Executive Officer, finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.

PURSUANT TO SECTION 13385 OF THE CALIFORNIA WATER CODE AND SECTION 11415.60 OF THE CALIFORNIA GOVERNMENT CODE, THE EXECUTIVE OFFICER HEREBY ADOPTS THIS ORDER.

Kurt V. Berchtold
Executive Officer

Date

**ATTACHMENT A
ENFORCEMENT POLICY PENALTY METHODOLOGY
ADMINISTRATIVE CIVIL LIABILITY
SETTLEMENT AGREEMENT ORDER NO. R8-2015-0031**

The following is a discussion of how the penalty calculation methodology in the State Water Resources Control Board Water Quality Enforcement Policy has been applied to each of the violations addressed in Settlement Agreement and Stipulated Order No. R8-2015-0031.

Pursuant to Water Code 13385(e), the proposed liability takes into account such factors as: nature, circumstances, extent and gravity of the violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge and, with respect to the Discharger, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any economic benefit, and other factors as justice may require.

Violation

On August 3, 2014 the Discharger violated Water Code section 13376 when it discharged 625,000 gallons of partially treated sewage to Reach 5 of the Santa Ana River a waters of the U.S. without an NPDES Permit.

Step 1: Potential for Harm for Discharge Violations

Step 1 looks at the nature, circumstances, extent, and gravity of the violation. The score for Step 1 is the sum of the Harm or Potential Harm to Beneficial Uses; Physical, Chemical or Thermal Characteristics of the Discharge; and Susceptibility to Cleanup or Abatement scores.

A. Harm or Potential Harm to Beneficial Uses: 3 (on a scale of 0 to 5)

A score of moderate (moderate) was applied to the discharge violation because it resulted in a moderate threat to beneficial uses. Beneficial uses applicable to the Santa Ana River, Reach 5 are as follows: Water Contact Recreation (REC1): Waters are used for recreational activities involving body contact with water where ingestion of water is reasonably possible; Non-contact Water Recreation (REC2): Waters are used for recreational activities involving proximity to water, but not normally involving body contact with water where ingestion of water would be reasonably possible; Warm Freshwater Habitat (WARM): Waters support warm-water ecosystems that may include, but are not limited to, preservation and enhancement of aquatic habitats, vegetation, fish and wildlife, including invertebrates; Wildlife Habitat (WILD): Waters support wildlife habitats that may include, but are not limited to, the preservation and enhancement of vegetation and prey species used by waterfowl and other wildlife; and Rare, Threatened or Endangered Species (RARE) waters that support habitat necessary for the survival of any plant or animal species designated under state or federal law as rare, threatened or endangered.

Possible adverse effects of discharging untreated wastewater on water quality and beneficial uses include the introduction of viruses and pathogens, which affects the recreation beneficial uses (REC1, REC2) because it poses a health risk to humans if ingestion of untreated wastewater occurs. Nutrient discharges affect the aquatic life

beneficial uses (WARM, WILD and RARE) because it can cause a depression of dissolved oxygen or an algae bloom that has the potential for causing harm to aquatic life. The discharged material was observed to impact the beneficial uses by introducing raw un-disinfected sewage directly into the Santa Ana River. Given the input of storm water and increased flows in the Santa Ana River, however, it is unknown whether pollutants commonly associated with untreated wastewater such as excessive nutrient loading, pathogenic bacteria and viruses, or other pathogens had a direct impact on receiving waters during this incident.

B. Physical, Chemical, Biological or Thermal Characteristics of the Discharge: 3
(Scale: 0-4)

The discharge was raw sewage and received no treatment or disinfection. The concentration of the raw sewage was diluted when storm-water comingled with the raw sewage prior to overflowing into the storm outfall that led to the Santa Ana River. The discharged material poses an above moderate risk to potential receptors as raw sewage can carry pathogens which can cause serious illness or death in human receptors.

C. Susceptibility to Cleanup or Abatement: 1 (Scale: 0 or 1)

A score of 1 was given because less than 50% of the discharge is susceptible to cleanup or abatement.

Summing the score given for the above factors, the Potential for Harm score is 7.

Step 2: Assessments for Discharge Violations

The number of days the discharge occurred was one day and the total volume of discharge was 625,000 gallons.

A. Per Gallon Assessments

Deviation from Applicable Requirements is determined to be "moderate." The Enforcement Policy defines a "moderate" Deviation from Requirement as follows:

Moderate-The intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved).

The Waste Discharge Requirements issued to the City of Redlands WWTP do not authorize surface water discharge of wastewater. Regional Board staff determined that the Discharger's intent was to have backup power available and it was the failure of the equipment that caused the spill. The discharge, therefore, is a moderate deviation from the requirements of the Permit.

Per Gallon Factor = 0.20 (Table 1 in the Policy using the Potential for Harm and Deviation from Applicable Requirements)

Maximum amount of liability based on 625,000 gallons discharged = \$6,240,000
((625,000-1000) gallons X \$10/gallon released above 1000 gallons).

The State Water Resources Control Board's Enforcement Policy allows the Regional Board to adjust the per gallon factor amount from the \$10 per gallon under statute to \$2 per gallon for very large volume sewage spills unless where reducing these maximum amounts results in an inappropriately small penalty, such as dry weather discharges or small volume discharges that impact beneficial uses in which case a higher amount up to the maximum per gallon amount may be used.

Based on the allowed reduced per gallon amount of \$2 per gallon, the unadjusted starting penalty amount is \$1,248,000 ((625,000-1000) gallons X \$2/gallon released above 1000 gallons).

Applying the Per Gallon Factor of 0.20, the liability = \$1,248,000 X 0.20 =\$249,600

B. Per Day Assessment

Deviation from Applicable Requirements is determined to be "moderate." The Enforcement Policy defines a "moderate" Deviation from Requirement as follows:

Moderate-The intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved).

Per Gallon Factor = 0.20 (Table 2 in the Policy using the Potential for Harm and Deviation from Applicable Requirements).

Maximum amount of liability based on 1 day of discharge = \$10,000
(1 day X \$10,000/day of release).

Applying the Per Day Factor of 0.20, the liability = \$10,000 X 0.20 =\$2,000

Initial Amount of ACL

Where deemed appropriate, such as for a large scale spill or release, it is intended that Table 2 be used in conjunction with Table 1, so that both per gallon and per day amounts be considered under Water Code sections 13385.

Therefore the combined initial amount of liability = \$249,600 + \$2,000 = \$251,600

Step 4: Adjustment Factors—Violator's Conduct Factors

A. Adjustment for Violator's Culpability

For the violator's culpability factor, the Enforcement Policy provides a factor between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior.

In accordance with Title 22 Reclaimed Water Requirements, the Discharger is required to maintain adequate backup power in the event of a power outage such as what occurred on August 3, 2014. The Discharger failed to comply with this requirement, which falls below the due standard of care. Based upon these circumstances, a culpability factor of 1.1 has been selected.

B. Adjustment for Cleanup and Cooperation

The Policy provides a range between 0.75 and 1.5 for this factor. The Policy explains that a lower multiplier is appropriate for situations where there is a high degree of cleanup and/or cooperation and a higher multiplier is appropriate for situations where cleanup and/or cooperation is minimal or absent.

Once the discharge reached the receiving waters, the discharger was not able to deploy dams or to contain and capture comingled wastewater. However, the Discharger was cooperative with the investigation and post incident analysis. In this case, a Cleanup and Cooperation multiplier of **0.9** is applied to the violation based on actions taken by the Discharger following the spill, which went above and beyond coming back into compliance. Following the incident, in addition to cooperating fully with the Regional Board in its investigation and installing a 1.2 MW back-up generator with quick connections to allow for a redundant back-up power supply, the Discharger elevated the storm drain inlet to prevent future water from leaving the WWTP site and constructed a berm where water entered the WWTP to prevent future storm water from reaching the WWTP site. The score reflects the effort made to determine what led to the failure to get backup power to the plant and the effort to permanently prevent failure of the plant's secondary backup power capability.

C. Adjustment for History of Violations

The Enforcement Policy recommends that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used for this factor. In this case, a multiplier of **1.0** has been selected, as the Discharger does not have a recent history of violations.

Step 5: Determination of Total Base Liability Amount

Total Base Liability Amount is determined by multiplying the initial liability amounts for each violation calculated from Step 3 by the adjustment factors discussed in Step 4:

$$(\text{Initial Base Liability}) \times (\text{Culpability}) \times (\text{Cleanup/Cooperation}) \times (\text{History}) = \text{Total Base Liability}$$

$$(\$251,600) \times (1.1) \times (0.9) \times (1.0) = \$249,084$$

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

The Enforcement Policy provides that if a regional water board has sufficient financial information to assess the violator's ability to pay the Total Base Liability, or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability amount may be adjusted.

The Prosecution Team contends that the Discharger has the ability to pay based on the Discharger's revenue and budget.

Based on the above, the Prosecution Team believes that the Discharger has the ability to pay the proposed penalty and continue in business. Therefore, Prosecution Team has concluded that the Total Base Liability Amount should not be adjusted.

Step 7: Other Factors as Justice May Require

The costs of the investigation and enforcement are "other factors as justice may require," and should be added to the liability amount. Staff costs are based on 24 hours of staff time multiplied by a per hour rate of \$150/hour = $24 \times \$150 = \$3,600$.

Step 8: Economic Benefit

The Discharger realized an economic benefit from not performing tasks, which may have prevented the violation. Specifically, simulation of a plant outage, the development of written procedures related to generator operation, the installation of quick connectors, and employee training should have occurred several years prior to the violation's occurrence. Based on the US Environmental Protection Agency's BEN Model, the Discharger gained approximately \$324 in delayed costs. The economic benefit associated with the violation is \$324.

The Enforcement Policy requires that the adjusted Total Base Liability Amount be at least 10 percent higher than the economic benefit amount, or \$357.

Step 9: Maximum, Minimum and Proposed Liability

The maximum liability is \$6,250,000 (1 day X \$10,000 + 624,000 gallons X \$10). The minimum liability is \$357 (10% higher than the economic benefit or savings). The Enforcement Policy stipulates that the proposed liability should be at least 10% higher than the economic savings. In this case, the proposed liability exceeds the economic savings by more than 10%. The proposed liability of \$252,684 (\$249,084 penalty + \$3,600 staff costs) falls between the minimum and maximum amounts.

Final Liability Amount

The proposed final liability is two hundred and fifty-two thousand six hundred and eighty-four dollars (**\$252,684**).