

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

In the matter of:	)	
	)	
<b>The Hertz Corporation,</b>	)	<b>Settlement Agreement</b>
<b>Doing Business as Hertz</b>	)	<b>and</b>
<b>Rent-A-Car</b>	)	<b>Stipulation for Entry of Order</b>
	)	
<b>Administrative Civil Liability</b>	)	Order No. R2-2014-1002
<b>Complaint No. R2-2013-1009</b>	)	
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**Section I: INTRODUCTION**

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order ("Stipulated Order") is entered into by and between the San Francisco Bay Regional Water Quality Control Board Prosecution Staff ("Prosecution Staff"), and the Hertz Corporation, doing business as Hertz Rent-A-Car ("Settling Respondent") (collectively "Parties") and is presented to the San Francisco Bay Regional Water Quality Resources Control Board ("Regional Water Board" or "San Francisco Bay Water Board"), or its delegee, for adoption as an order by settlement, pursuant to Government Code section 11415.60. This Stipulated Order resolves the violation alleged herein by imposition of administrative civil liability against the Hertz Corporation in the amount of \$18,800.

**Section II: RECITALS**

1. The Settling Respondent operates a rental car facility located at 8000 Earhart Road, Oakland, CA ("Facility"). The Facility is at the Port of Oakland, Oakland International Airport and includes a rental car fleet, a fueling system, a car wash, and vacuum station, an administrative office, and a minor maintenance facility, primarily used for oil changes.
2. On August 7, 2013, the Assistant Executive Officer of the Regional Water Board issued Administrative Civil Liability Complaint No. R2-2013-1009 ("Complaint") to the Settling Respondent (Attachment A). The Complaint recommended imposing an administrative civil liability totaling \$18,800 for alleged violations of Water Code section 13350(a)(3). The proposed administrative civil liability includes recovery of staff costs of \$9,000.
3. The Complaint alleges that the Settling Respondent violated Water Code section 13350(a)(3) by discharging at least 1,967 gallons of gasoline to soil and groundwater for at least 10 days.
  - a. The gasoline discharge apparently started as soon as on June 26, 2011, when East Bay Municipal Utility District ("EBMUD") alleges to have detected gasoline in its sanitary sewer system, until July 6, 2011, when the Settling Respondent recovered the

available gasoline from the underground sump thereby stopping the source of the discharge to soil and groundwater. Note that while unauthorized discharge potentially continues until the residual gasoline cleanup is complete, the Complaint and this Order does not address this potential residual discharge, if any exists.

- b. The Settling Respondent's estimate of the volume of discharge (1,967 gallons) is based on a fuel inventory record, which suggests that gasoline was not lost from the system until June 28, 2011. The first loss recorded in the inventory records was two days after EBMUD reportedly discovered direct evidence of gasoline discharged into EBMUD's sanitary sewer system. The Prosecution asserts that the Settling Respondent's calculation from inventory records underestimates the actual volume of the gasoline discharge.
  - c. Residual gasoline remains in the subsurface at the Facility and requires further corrective action. Based on the preliminary soil and groundwater investigation results, gasoline-range hydrocarbons are present in soil and groundwater at concentrations of up to 5,600 milligrams per kilogram (mg/kg) and 340,000 microgram per liter ( $\mu\text{g/L}$ ), respectively. Benzene is present in soil and groundwater at concentrations of up to 3.8 mg/kg and 12,000  $\mu\text{g/L}$ , respectively. The drinking water maximum contaminant level for benzene is 5  $\mu\text{g/L}$ .
4. Regional Water Board staff continues to work with the Settling Respondent to investigate and remediate the gasoline discharge alleged in the Complaint:
- a. On June 6, 2012, Regional Water Board staff approved a *Preliminary Site Assessment Workplan*, dated May 23, 2012.
  - b. On December 13, 2012, Regional Water Board required technical reports from the Settling Respondent pursuant to Water Code section 13267. Thus far, the Settling Respondent has submitted a *Technical Report on Waste Discharge* for the Facility, dated January 31, 2013, and a *Preliminary Site Assessment* report, dated March 15, 2013, and a *Supplemental Site Assessment Work Plan*, dated July 27, 2013.
5. To resolve by consent and without further administrative proceedings the alleged violations of the Water Code, set forth in the Complaint, the Parties have agreed to the imposition of \$18,800 against the Settling Respondent, which includes \$9,000 for staff costs. Payment of \$18,800 to the *Waste Discharge Permit Fund* is due no later than 30 days following the San Francisco Bay Water Board executing this Order.
6. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board for adoption as an Order pursuant to Government Code section 11415.60. The Prosecution Staff 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 specific violations alleged in the Complaint except as provided in this Stipulation and that this Stipulation is in the best interest of the public.

**Section III: STIPULATIONS**

The Parties stipulate to the following:

7. **Administrative Civil Liability:** The Settling Respondent hereby agrees to the imposition of an administrative civil liability totaling \$18,800. Within thirty (30) days of the effective date of this Order, the Settling Respondent agrees to remit, by check, EIGHTEEN THOUSAND AND EIGHT HUNDRED DOLLARS (\$18,800), payable to the *Waste Discharge Permit Fund*, and shall indicate on the check the number of this Order. The Settling Respondent shall send the original signed check to James M. Ralph, Office of Enforcement, 1001 I. Street, P.O. Box 100, Sacramento, CA 95812, with a copy sent to Brian Thompson, Regional Water Quality Control Board, San Francisco Bay Region, 1515 Clay St., Suite 1400, Oakland, CA 94612.

8. **Compliance with Applicable Laws:** The Settling Respondent understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject it to further enforcement, including additional administrative civil liability.

9. **Party Contacts for Communications related to Stipulated Order:**

**For the Regional Water Board:**

Brian Thompson  
Regional Water Quality Control Board  
San Francisco Bay Region  
1515 Clay St., Suite 1400  
Oakland, CA 94612

**For the Settling Respondent:**

Neale R. Bedrock, Assistant General Counsel  
Timothy B. Egan, Senior Program Manager – Environmental Compliance and Remediation  
225 Brae Blvd  
Park Ridge, NJ 07656

With a copy to:

Robert Soran, Esq.  
Downey Brand  
621 Capitol Mall, 18<sup>th</sup> Floor  
Sacramento, CA 95814

**10. Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

**11. Matters Addressed by Stipulation:** Upon the San Francisco Bay Water Board's adoption of this Stipulated Order, this Order represents a final and binding resolution and settlement of the violations alleged in the Complaint, and all claims, violations or causes of action that could have been asserted against the Settling Respondent as of the effective date of this Stipulated Order based on the specific facts alleged in the Complaint or this Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability, in accordance with Paragraph 7.

**12. Settling Respondent's Denial of Liability:** In settling this matter, the Settling Respondent does not admit to any of the findings of the Complaint, or that it has been or is in violation of the Water Code, or any other federal, state, or local law or ordinance, provided, the Settling Respondent agrees that in the event of any future enforcement actions by the Regional Water Board, this Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327.

**13. Public Notice:** The Settling Respondent understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the San Francisco Bay Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the San Francisco Bay Water Board, or its delegee, for adoption, the Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the San Francisco Bay Water Board, or its delegee. The Settling Respondent agrees that they may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.

**14. Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the San Francisco Bay Water Board's adoption of the settlement by the Parties and review by the public, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are raised prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

**15. No Waiver of Right to Enforce:** The failure of the Prosecution Staff or San Francisco Bay Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Staff or San Francisco Bay Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.

**16. Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Settling Respondent is represented by counsel in this matter.

**17. Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the San Francisco Bay Water Board.

**18. If Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the San Francisco Bay Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the San Francisco Bay Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive the following objections based on settlement communications in this matter:

- a. Objections related to prejudice or bias of any of the San Francisco Bay Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the San Francisco Bay Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

**19. Waiver of Hearing:** The Settling Respondent has been informed of the rights provided by Water Code section 13323(b), and hereby waives its right to a hearing before the San Francisco Bay Water Board prior to the adoption of the Stipulated Order. However, should the Stipulated Order not take effect Settling Respondent does not waive its right to a hearing on the Complaint.

**20. Waiver of Right to Petition:** The Settling Respondent hereby waives its rights to petition the San Francisco Bay Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waives its rights, if any, to appeal the Stipulated Order to a California Superior Court and/or any California appellate level court.

**21. Covenant Not to Sue:** The Settling Respondent covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to this Stipulated Order.

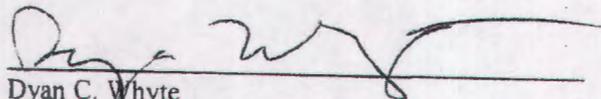
**22. Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Order shall be communicated to the Settling Respondent in writing. No oral advice, guidance, suggestions or comments by employees or officials of the Regional Water Board regarding submissions or notices shall be construed to relieve the Settling Respondent of its obligation to obtain any final written approval required by this Order.

Settlement Agreement and Stipulated Order  
The Hertz Corporation

23. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
24. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the San Francisco Bay Water Board, or its delegee, enters the Order.
25. **Severability:** This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.
26. **Counterpart Signatures:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

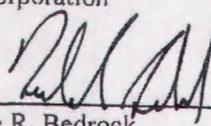
**IT IS SO STIPULATED.**

California Regional Water Quality Control Board Prosecution Staff  
San Francisco Bay Region

By:   
Dyan C. Whyte  
Assistant Executive Officer

Date: 10/23/2013

The Hertz Corporation

By:   
Neale R. Bedrock  
Assistant General Counsel

Date: 11/25/13

**ORDER OF THE SAN FRANCISCO BAY WATER BOARD**

27. This Order incorporates the foregoing Stipulation.

28. In adopting this Stipulated Order, the San Francisco Bay Water Board or its delegee has considered, where applicable, each of the factors prescribed in Water Code section 13327. The consideration of these factors is based upon information and comments obtained by the San Francisco Bay Water Board's staff in investigating the allegations in the Complaint or otherwise provided to the San Francisco Bay Water Board or its delegee by the Parties and members of the public. In addition to these factors, this settlement recovers the costs incurred by the staff of the San Francisco Bay Water Board for this matter.

29. This is an action to enforce the laws and regulations administered by San Francisco Bay Water Board. The method of compliance with this enforcement action consists entirely of payment of an administrative penalty. As such, the San Francisco Bay Water Board finds that issuance of this Order is not considered subject to the provisions of the California Environmental Quality Act as it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not considered a "project" (Public Resources Code 21065, 21080(a); 15060(c)(2),(3); 150378(a), Title 14, of the California Code of Regulations). In addition, the San Francisco Bay Water Board finds that issuance of this Order is also exempt from the provisions of CEQA in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations as an enforcement action by a regulatory agency and there are no exceptions that would preclude the use of this exemption.

30. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the San Francisco Bay Water Board.

**IT IS HEREBY ORDERED**, pursuant to Water Code section 13323 and Government Code section 11415.60, by the California Regional Water Quality Control Board, San Francisco Bay Region.

\_\_\_\_\_  
Bruce H. Wolfe  
Executive Officer  
California Regional Water Quality Control Board  
San Francisco Bay Region

Date: \_\_\_\_\_

**ATTACHMENT A**  
Administrative Civil Liability  
Complaint No. R2-2013-1009

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

**COMPLAINT NO. R2-2013-1009  
ADMINISTRATIVE CIVIL LIABILITY  
IN THE MATTER OF**

**THE HERTZ CORPORATION  
DOING BUSINESS AS HERTZ RENT-A-CAR  
8000 EARHART ROAD  
OAKLAND, CA 94621**

This complaint to assess an administrative civil liability (Complaint) pursuant to California Water Code (Water Code) section 13350 (a)(3) and (e) is issued to The Hertz Corporation (hereinafter "Discharger") for a discharge of at least 1,967 gallons of gasoline from its refueling facility in Oakland. An \$18,800 liability is proposed for the alleged Water Code violation.

**THE ASSISTANT EXECUTIVE OFFICER OF THE REGIONAL WATER BOARD  
FINDS THE FOLLOWING:**

1. The Discharger operates a rental car facility at 8000 Earhart Road, Oakland (hereinafter Facility), at the Port of Oakland (Port), Oakland International Airport. The Discharger constructed the Facility in 2003. The Facility includes a rental car fleet, a fueling system, a car wash and vacuum station, an administrative office, and a minor maintenance facility, primarily used for oil changes.
2. The fueling system at the Facility consists of a 12,000-gallon, above-ground storage tank (AST) containing gasoline and underground connections to fuel dispensers (see the attached site map prepared by AMEC). The Discharger completed construction of five of its originally planned six fuel dispensers. The underground product connections between the AST and the five active dispensers consist of a pressurized pipeline, shear valve, containment sump, and leak detection sensors. The sixth dispenser was never finished, but the underground product connections were installed, including a pressurized pipeline, shear valve, and containment sump. The product line to the unfinished dispenser terminates shortly after the share valve. The pipeline was not capped, and no leak detection sensor was installed to the unfinished sixth dispenser.
3. There is an in-ground oil-water separator at the Facility associated with the car-washing operation. Most of the water used in the car wash is recycled and reused, but some of the surplus rinse is collected and discharged through the oil-water separator to East Bay Municipal Utility District's (EBMUD's) sanitary sewer collection system.
4. On June 26, 2011, EBMUD staff detected a "strong" gasoline odor at a sanitary sewer lift station (designated Pump Station G), located about a half mile southeast of the Facility near the intersection of Earhart Road and Swann Way. EBMUD inspected sewer manholes in the vicinity of the Pump Station to identify the source of the gasoline and collected water samples from Pump Station G, which contained gasoline constituents

(benzene, toluene, ethyl benzene, and xylenes) at elevated concentrations. Benzene was detected at up to 5.9 milligrams per liter (mg/L), which exceeds the time weighted average or hazardous exposure limit for benzene of 0.5 mg/L.

5. On June 30, 2011, EBMUD determined that the source of the gasoline discharge was the oil-water separator at the Facility. EBMUD alleged that the Port was in violation of its Wastewater Discharge Permit and Ordinance No. 311, and it issued the Port a Notice of Violation on July 5, 2011, requiring the Port's tenant to immediately comply with the terms and conditions of the permit and the ordinance.
6. On July 2, 2011, TEC Environmental, on behalf of the Discharger, discovered a leak from the shear valve in the sump for the unfinished sixth fuel dispenser. TEC Environmental stopped the leak, capped the pipeline, and installed a leak detection sensor in the sump, and assisted the Discharger with spill response.
7. On July 5, 2011, the Discharger reported the unauthorized release of gasoline to the Regional Water Board. The Discharger estimated that a total of 1,967 gallons of gasoline was discharged to soil, groundwater, and the sanitary sewer system based on its daily fuel inventory records for the AST. The Discharger recorded losses of 552, 483, 468, and 464 gallons of gasoline on June 28, 29 and 30, and on July 1, 2011, respectively. The spilled gasoline apparently filled the underground sump and discharged to soil and groundwater at the Facility. Underground utilities provided a preferential pathway and the gasoline migrated to and along a sanitary sewer line (i.e., sewer lateral) connecting the onsite oil-water separator to EBMUD's sanitary sewer collection system. Gasoline entered this sewer lateral which was not sealed.
8. By July 6, 2011, the Discharger recovered all the gasoline from the underground containment sump of the unfinished sixth dispenser, thereby stopping the source of the discharge to soil and groundwater. This also had the effect of substantively stopping the discharge of gasoline to the sewer lateral.
9. On July 17, 2012, TEC Environmental excavated around the product and utility lines and around the onsite sewer lateral to investigate the extent of gasoline migration in the subsurface and recovered approximately 2,500 gallons of liquid during its spill response. The liquid was a mixture of free product (gasoline) and standing water from within the excavated trenches. TEC Environmental also repaired the oil-water separator and sealed the sewer lateral.
10. On September 14, 2011, EBMUD imposed an administrative civil liability in the amount of \$25,025 against the Port and Hertz for discharging gasoline to its sanitary sewer system for 10 days.
11. Additional corrective action is required to address the gasoline discharge to soil and shallow groundwater, and Regional Water Board staff continues to work with the Discharger to investigate and remediate the gasoline discharge.

- a. On June 6, 2012, Regional Water Board staff approved a *Preliminary Site Assessment Workplan*, dated May 23, 2012.
  - b. On December 13, 2012, Regional Water Board required technical reports from the Discharger pursuant to Water Code section 13267. Thus far, the Discharger has submitted a *Technical Report on Waste Discharge* for the Facility, dated January 31, 2013, and a *Preliminary Site Assessment* report, dated March 15, 2013.
12. On March 8, 2013, Regional Water Board prosecution staff visited the Facility to further evaluate the gasoline discharge and potential for impacts to surface water through storm drain systems. As a follow-up to the inspection, Regional Water Board staff requested an identification of the potential stormwater drain inlets impacted by the gasoline discharge and an explanation for how the Discharger determined the duration and volume of the unauthorized discharge. The Discharger submitted the additional information on March 15, 2013. Based on the additional information, prosecution staff concluded that the discharge was confined to soil and groundwater and that surface water was not impacted.

## ALLEGATIONS

13. The Discharger discharged at least 1,967 gallons of gasoline to soil and groundwater for at least 10 days.
- a. The gasoline discharge started as soon as on June 26, 2011, when EBMUD detected gasoline in its sanitary sewer system until July 6, 2011, when the Discharger recovered the available gasoline from the underground sump thereby stopping the source of the discharge to soil and groundwater. Note that while unauthorized discharge continues until the residual gasoline cleanup is complete, this Complaint does not address this residual discharge.
  - b. The Discharger's estimate of the volume of discharge (1,967 gallons) is based on a fuel inventory record, which suggests that gasoline was not lost from the system until June 28, 2011. The first loss recorded in the inventory records is two days after direct evidence of gasoline discharged into EBMUD's sanitary sewer system. The prosecution asserts that the Discharger's calculation from inventory records underestimates the actual volume of the gasoline discharge.
14. Residual gasoline remains in the subsurface at the Facility and requires further corrective action. Based on the preliminary soil and groundwater investigation results, gasoline-range hydrocarbons are present in soil and groundwater at concentrations of up to 5,600 milligrams per kilogram (mg/kg) and 340,000 microgram per liter ( $\mu\text{g/L}$ ), respectively. Benzene is present in soil and groundwater at concentrations of up to 3.8 mg/kg and 12,000  $\mu\text{g/L}$ , respectively. The drinking water maximum contaminant level for benzene is 5  $\mu\text{g/L}$ .

### STATUTORY LIABILITY

15. An administrative civil liability may be imposed pursuant to Water Code section 13323. This Complaint provides the act, or failure to act, that constitutes a violation of law, the provision of law authorizing administrative civil liability, and the proposed administrative civil liability.
16. Pursuant to Water Code section 13350 (a)(3), any person who causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the State, except in accordance with waste discharge requirements or other actions or provisions of this division, shall be civilly liable Pursuant to Water Code section 13350 (e)(1) administrative civil liability may be imposed in an amount not to exceed five thousand dollars (\$5,000) for each day that the violation occurs.

### MAXIMUM ADMINISTRATIVE CIVIL LIABILITY

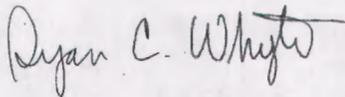
17. Maximum Liability: Pursuant to Water Code section 13350 (e)(1), the total maximum potential liability for the identified violation is \$50,000. As stated above, the Discharger discharged at least 1,967 gallons of gasoline to soil and groundwater for over ten days from June 26 to July 6, 2011, before the Discharger stopped the source of discharge by recovering all available gasoline from the under sump. The maximum civil liability the Regional Water Board may impose is five thousand dollars (\$5,000) for each day the violation occurs or on a per gallon basis that may not exceed ten dollars (\$10) for each gallon of waste discharged, but not both. Thus, the corresponding maximum potential for the violation is \$50,000, and it is calculated based on the days of violation.

### YOU ARE HEREBY GIVEN NOTICE THAT:

18. This Complaint is issued pursuant to Water Code sections 13323 and 13350 (e)(1).
19. The Assistant Executive Officer of the Regional Water Board proposes that administrative civil liability be imposed in the amount of \$18,800, of which \$9,000 is for the recovery of staff costs incurred thus far. This proposed penalty is consistent with the State Water Board Water Quality Enforcement Policy, as described in Exhibit A.
20. A Regional Water Board hearing on this matter is scheduled on **November 13, 2013**, in accordance with the Notice of Pending Enforcement Action and the Hearing Procedure for Administrative Civil Liability prepared for this Complaint.
21. The Discharger may waive its right to the scheduled hearing and pay the recommended administrative civil liability.
22. If a hearing on this matter is held, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented,

including, but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal, and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing. At the hearing, the Regional Water Board will consider whether to affirm, reject, or modify (i.e., increase the proposed civil liability above the mandatory minimum) the proposed civil liability, or whether to refer the matter to the Attorney General for assessment of judicial civil liability.

23. There are no statutes of limitation that apply to administrative proceedings. The statutes of limitation that refer to "actions" and "special proceedings" and are contained in the Code of Civil Procedure apply to judicial proceedings, not administrative proceeding. (See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, Section 405(2), p. 510.)
24. Notwithstanding the issuance of this Complaint, the Regional Water Board and/or the State Water Board shall retain the authority to assess additional penalties for further unauthorized discharge for which penalties have not yet been assessed or for violations that may subsequently occur.
25. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code section 21000 et seq., in accordance with California Code of Regulations, Title 14, section 15321.
26. Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.



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Dyan C. Whyte  
Assistant Executive Officer

August 7, 2013

Date

Exhibit A –Factors Considered to Determine Administrative Civil Liability

Facility Map

## EXHIBIT A

### Factors Considered in Determining Administrative Civil Liability

The Assistant Executive Officer assessed administrative civil liability based on the violations alleged in Complaint No. R2-2013-1009, requirements of Water Code section 13385(e), and the penalty calculation methodology described in the Water Quality Enforcement Policy (Enforcement Policy), effective May 20, 2010.

- **Water Code section 13385(e)**

This statute requires consideration of the following factors for administrative civil liability assessments: the nature, circumstances, extent, and gravity of the violation or violations; susceptibility of the discharge to cleanup or abatement; degree of toxicity of the discharge; ability of the violator to pay and the effect on the violator's 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.

- **Enforcement Policy**

The State Water Resources Control Board Enforcement Policy addresses factors required by statute (above), and it provides a statewide methodology for calculating administrative civil liabilities. The methodology considers duration of the violation and volume of discharge (if applicable), and it allows for quantitative assessments of the following: (1) potential for harm to beneficial uses; (2) physical, chemical, biological or thermal characteristics of the discharged material; (3) susceptibility of the discharge to cleanup; (4) deviation from regulatory requirements; (5) culpability; (6) cleanup and cooperation; (7) history of violations; (8) ability to pay; (9) economic benefit; and (10) other factors as justice may require.

The prosecution's discussion of how the liability factors were considered in the assessment of the alleged violation is provided below. The Enforcement Policy should be used as a companion document in conjunction with this administrative civil liability assessment since the penalty calculation methodology and definition of terms that are in the policy are not replicated herein. A copy of the Enforcement Policy can be found at: [http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final111709.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf)

### **Violation: Discharge of At Least 1,967 Gallons of Gasoline to Soil and Groundwater**

The Discharger is responsible for a discharge of at least 1,967 gallons of gasoline, from at least June 26 until July 6, 2011, at its Facility. The discharge occurred because of a shear-valve failure on an unused pipeline which was not capped. Gasoline leaked into an underground sump and discharged from there into soil and groundwater. For the purposes of this Complaint, liability is assessed only up until July 6, 2011, when the Discharger removed most of the free product from

groundwater. (Residual gasoline remains in the soil and groundwater at the Facility, and this Complaint does not address that discharge.)

### **Step 1 – Potential for Harm for Discharge Violations**

The “potential harm” factor considers the harm to beneficial uses that resulted or that may result from exposure to the pollutants in the discharge, while evaluating the nature, circumstances, extent, and gravity of the violation(s). A three-factor scoring system is used for each violation or group of violations: (1) the harm or potential harm to beneficial uses; (2) the degree of toxicity of the discharge, and (3) whether the discharge is susceptible to cleanup or abatement.

#### Factor 1: Harm or Potential Harm to Beneficial Uses

A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm to beneficial uses is negligible (0) to major (5).

The potential harm to beneficial uses is minor (i.e., a score of 1). There was no evidence that gasoline discharged to surface water, such as through a storm drain system. A portion of the discharge traveled through the sanitary sewer system to EBMUD’s treatment plant, resulting in no significant impact to waters of the State. The Discharger recovered approximately 2,500 gallons of liquid, a mixture of free product (gasoline) and water, from excavations at its Facility. Because of this response, the potential for impacts to soil and shallow groundwater was reduced.

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

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

The risk or threat of the discharge is major (i.e., a score of 4). The discharged was pure gasoline and gasoline constituents include benzene, ethyl benzene, toluene, and xylenes, which are regulated compounds with known risk factors, and benzene is identified as a carcinogenic compound.

#### Factor 3: Susceptibility to Cleanup or Abatement

A score of 0 is assigned for this factor 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. This factor is evaluated regardless of whether the discharge was actually cleaned up or abated.

Greater than 50 percent of the discharge is susceptible to cleanup or abatement (i.e., factor of 0). The Discharger took action within days of becoming aware of the leak to removing more than 50 percent that was discharged through excavating soil, and removing the free product and standing groundwater in the excavation.

The final score for potential for harm is the sum of the above factors. In this case the potential for harm is 5.

### **Step 2 – Assessments for Discharge Violations**

When there is a discharge, the Regional Water Board determines an initial liability amount on a per-gallon and/or a per-day basis using the sum of the Potential for Harm scores from Step 1 (score of 5) and a determination of the degree to which the Discharger deviated from what was required (Deviation from Requirement).

The Deviation from Requirement is considered major. The requirement is for no unauthorized discharges, and the Enforcement Policy defines a major Deviation from Requirement as one where “the requirement has been rendered ineffective.”

Per Water Code section 13350 (e), State and Regional Water Boards may impose civil liability administratively either on a daily basis or on a per gallon basis, but not both. Prosecution staff calculated the amount of the initial liability using a per-day factor of 0.15, based on a Potential for Harm score of 5 and a “Major” Deviation from Requirement.

#### **Initial Liability Amount**

Per Day Liability:  $\$5,000/\text{day} \times (0.15) \times (10 \text{ days}) = \$7,500$

Total Initial Liability = \$7,500

### **Step 3 – Per Day Assessment for Non-Discharge Violations**

The violation was a discharge violation. Step 3 applies to non-discharge violations.

### **Step 4 – Adjustments to Determine Initial Liability for Violation**

There are three additional factors to be considered as potential adjustments to the amount of initial liability: the violator’s culpability, efforts to clean up or cooperate with regulatory authority, and the violator’s compliance history.

#### **Culpability**

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is used, with a higher multipliers applied to increasingly negligent behavior.

For this violation, the multiplier for culpability is 1.3. The discharge could have been prevented had the Discharger taken preventive measures, including but not limited to, the following:

- (a) Install a leak detection sensor in the sump.

- (b) Cap the open end of the shear-valve in the sump; the prosecution asserts that capping pipelines that will temporarily not be used is a standard practice in plumbing systems.

The Discharger did not notice the gasoline loss from its system for over four days, until it was alerted by EBMUD.

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 used, with a higher multiplier when there is a lack of cooperation.

For this violation, the cleanup and cooperation factor multiplier is 1. Once the Discharger became aware of the discharge, it took responsibility to investigate and cleanup the discharge. The Discharger has been cooperative and, to date, is complying with corrective action requirements. The Discharger fixed the leaking shear valve and installed a leak detection sensor in the containment sump for the unused, underground dispenser. The Discharger also sealed the unsealed or poorly sealed sewer lateral.

History of Violations

This factor is used to increase the liability when there is a history of repeat violations using a minimum multiplier of 1.1.

There is no previous history of violations for the Discharger at this Facility. .

**Step 5 – Determination of Total Base Liability Amount**

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.

**Total Base Liability Amount**

$\begin{aligned} & \$7,500 \text{ (Initial Liability)} \times 1.3 \text{ (Culpability Multiplier)} \times 1 \text{ (Cleanup and Cooperation} \\ & \text{Multiplier)} \times 1 \text{ (History of Violations Multiplier)} = \text{Total Base Liability} \\ & \text{Total Base Liability} = \$9,750 \end{aligned}$
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**OTHER FACTORS APPLIED TO THE VIOLATION**

**Step 6 – Ability to Pay and to Continue in Business**

The Enforcement Policy provides that if the 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 to continue in business, then the Total Base Liability amount may be adjusted downward if warranted.

The Discharger has the ability to pay the proposed liability. It owns and operates equipment and car rental businesses nationwide. In its press release in the fourth quarter of 2012, the Discharger forecasted revenue for 2013 in the range of \$10.850 to \$10.950 billion. The prosecution asserts that the Discharger is able to pay the proposed liability and that payment of the proposed liability would not cause undue financial hardship.

#### **Step 7 – Other Factors as Justice May Require**

The time incurred by members of prosecution staff to prepare this analysis and supporting information is 60 hours. Based on an average cost to the State of \$150 per hour, the total staff cost is estimated to be \$9,000. The Assistant Executive Officer reserves the right to seek additional liability for staff costs incurred to resolve this matter through settlement or a hearing. Although the final amount for such costs cannot be determined until completion of the matter, such costs could be quite substantial.

#### **Step 8 – Economic Benefit**

The Enforcement Policy directs the Regional Water Board to determine any economic benefit associated with the violations and to recover the economic benefit gained plus 10 percent in the liability assessment.

The economic benefit associated with the violation is well below the assessed liability. Nonetheless, the Discharger realized some economic savings by not taking preventative measures, like the ones discussed above, to prevent the discharge. The cost associated with the preventative measures, such as installing a leak detection sensor, is estimated to be less than \$1,000.

#### **Step 9 – Maximum and Minimum Liability Amounts**

##### **a) *Minimum Liability Amount***

The Enforcement Policy requires that the minimum liability amount imposed not to be below a Discharger's economic benefit plus 10 percent (i.e., \$1,100). The proposed liability is above this amount.

##### **b) *Maximum Liability Amount***

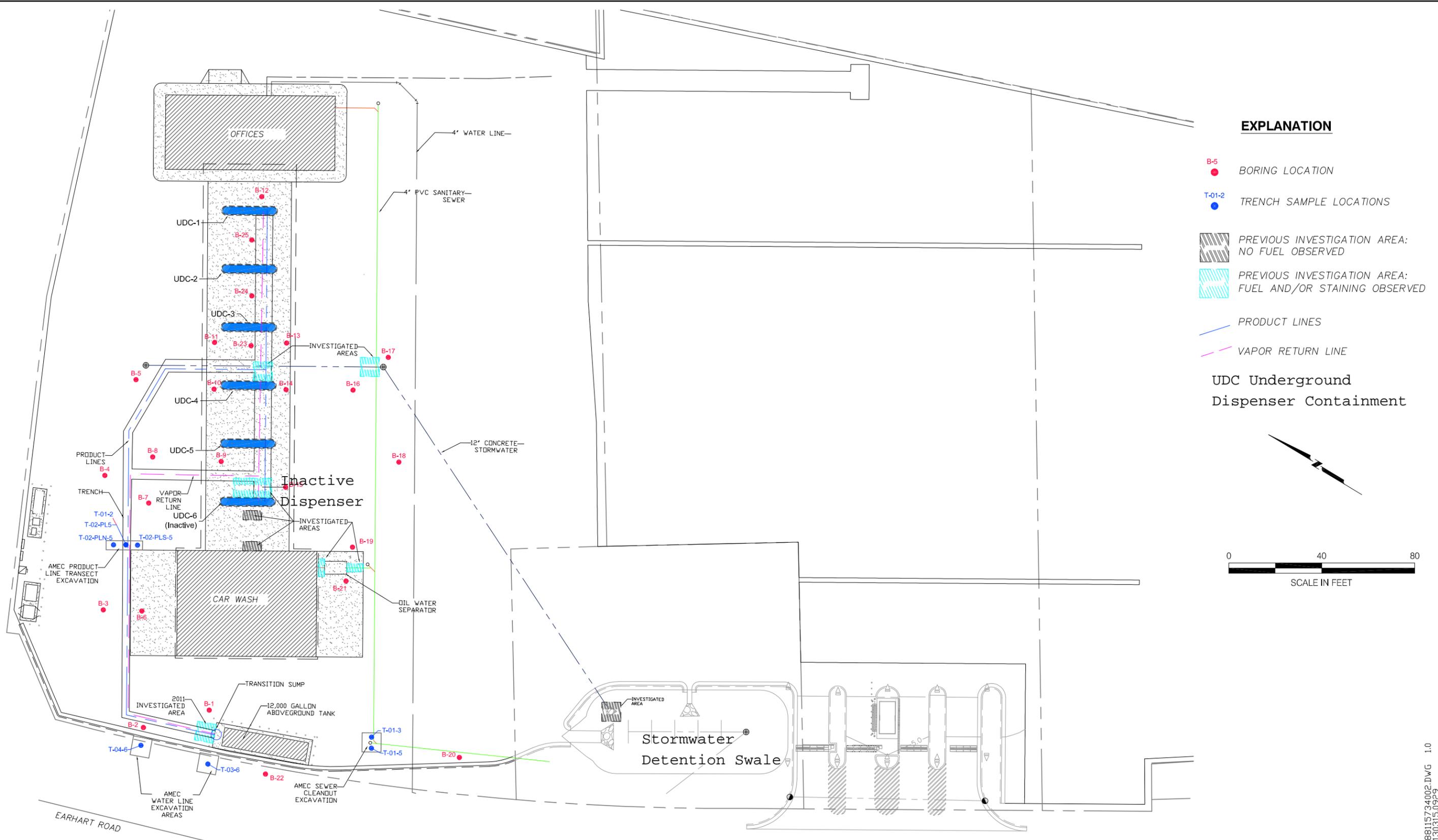
The maximum administrative civil liability amount is the maximum amount allowed by Water Code section 13350 (e)(1). The maximum liability, calculated using \$5,000 for each of the 10 days in which the violation occurred, is \$50,000.

#### **Step 10 – Final Liability Amount**

Exhibit A

Administrative Civil Liability Complaint No. R2-2013-1009

The final liability proposed for the unauthorized discharge of gasoline to soil and groundwater, from June 26 to July 6, 2011, is **\$18,800** (rounded to the nearest hundred). This proposed liability is based on the prosecution's consideration of penalty factors, as discussed above. It consists of a Total Base Liability of \$9,750 plus \$9,000 for the recovery of staff costs. It is within the calculated maximum and minimum liabilities for the alleged violation.



**EXPLANATION**

- B-5 BORING LOCATION
- T-01-2 TRENCH SAMPLE LOCATIONS
- PREVIOUS INVESTIGATION AREA: NO FUEL OBSERVED
- PREVIOUS INVESTIGATION AREA: FUEL AND/OR STAINING OBSERVED
- PRODUCT LINES
- VAPOR RETURN LINE

UDC Underground  
Dispenser Containment



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**Site Map and Boring/Trench Locations**  
Hertz Northfield QTA Facility  
Oakland, California

FIGURE

**2**

DRAWN TJH	JOB NUMBER 4088115734 04	CHECKED	CHK'D DATE 3/2013	APPROVED	APPR'D DATE
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