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## Santa Ana Regional Water Quality Control Board

January 26, 2023

Javier Juarez  
Califoam Products Incorporated  
10775 Silicon Avenue  
Montclair, California 91763

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

**TRANSMITTAL OF FINAL SIGNED ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R8-2022-0010 FOR CALIFOAM PRODUCTS INC. (WDID 8 36I027767)**

Dear Mr. Juarez:

Attached please find an executed copy of the California Regional Water Quality Control Board, Santa Ana Region's (Santa Ana Water Board's) Administrative Civil Liability Order No. R8-2022-0010 (Order), adopting the settlement agreement and stipulation entered into by the Santa Ana Water Board and Califoam Products, Inc. (Discharger). The Order resolves alleged violations by the Discharger, of *Order No. 2014-0057 DWQ, NPDES Permit No. CAS000001, General Permit for Stormwater Discharges Associated with Industrial Activities* (General Permit). The Order imposes \$170,080 in administrative civil liability.

The settlement agreement was posted for public notice on the Santa Ana Water Board's website from December 19, 2022, through January 18, 2023, and the Santa Ana Water Board received no comments. Pursuant to Water Code section 13223, the Santa Ana Water Board has delegated to its Executive Officer the authority to issue the Order.

The Order requires the Discharger to submit \$170,080 in the form of a check made payable to the "State Water Pollution Cleanup and Abatement Account" no later than 30 days after the Order is issued as required by California Water Code section 13323, subdivision (d). However, the parties have negotiated a payment plan as part of confidential settlement discussions. The Santa Ana Water Board Prosecution Team will not enforce the Water Code's 30-day requirement if payments are made in accordance with the following payment schedule.

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KRISTINE MURRAY, CHAIR | JAYNE JOY, EXECUTIVE OFFICER

3737 Main Street, Suite 500, Riverside, CA 92501-3348 | [www.waterboards.ca.gov/santaana](http://www.waterboards.ca.gov/santaana)

Payment Installment	Payment Amount	Payment Deadline
1	\$56,693.33	February 24, 2023
2	\$56,693.33	June 24, 2023
3	\$56,693.34	October 24, 2023

The check(s) must reference "Order No. R8-2022-0010" and be mailed to the following address:

State Water Board Accounting Office  
ATTN: ACL Payment  
P.O. Box 1888  
Sacramento, CA 95812-1888

In addition, please submit an electronic copy of each check in .pdf format by email to [Michael.Jones@waterboards.ca.gov](mailto:Michael.Jones@waterboards.ca.gov) and [Catherine.Hawe@waterboards.ca.gov](mailto:Catherine.Hawe@waterboards.ca.gov).

The State Water Board Division of Administrative Services Fee Branch [(916) 341-5427 or [Fee\\_Branch@waterboards.ca.gov](mailto:Fee_Branch@waterboards.ca.gov)] will soon mail an invoice for the first payment, but the mailing date is uncertain. Payment is required to be made in accordance with the above schedule regardless of whether or not you receive an invoice.

It is critical that the Discharger's check(s) refer to the Order number as instructed above. You may contact Santa Ana Water Board staff or the Fee Branch directly to confirm that the applicable payment is posted correctly.

The Discharger has the option to make payments to the State Water Pollution Cleanup and Abatement Account by online electronic fund transfer. However, please note that for an electronic transfer of funds, the Discharger must first wait to receive an invoice (as described above), because the invoice number is needed for the transaction. The Discharger may then go to the Fee Branch's website and select "Pay your water quality program invoice online!" or use the following link:  
[https://www.waterboards.ca.gov/make\\_a\\_payment/](https://www.waterboards.ca.gov/make_a_payment/)

### **Consequence of Non-Payment**

If any of the above payment deadlines are not met, the Santa Ana Water Board prosecution team will allow a 15-day period to rectify any non-payment. Following 15 days of non-payment, the Santa Ana Water Board Assistant Executive Officer will seek to enforce the terms of the Order and require immediate payment of the remaining balance.


If the Discharger fails to submit immediate payment of the remaining balance, the Santa Ana Water Board Assistant Executive Officer will initiate proceedings in the Superior

Court of California to obtain a judgment to collect the outstanding civil liability, as authorized by Water Code section 13328. Any judgment so entered has the same force and effect as, and is subject to all the provisions of law related to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered (Water Code section 13328). Alternatively, the Santa Ana Water Board Assistant Executive Officer may refer the matter to the California Attorney General's Office to obtain payment in compliance with the terms of the Order or take other appropriate action authorized by law.

If you have any questions, please contact Michael Jones at (951) 321-4578 or [Michael.Jones@waterboards.ca.gov](mailto:Michael.Jones@waterboards.ca.gov) or staff counsel Catherine Hawe at (916) 322-3538 or [Catherine.Hawe@waterboards.ca.gov](mailto:Catherine.Hawe@waterboards.ca.gov).

Sincerely,

**Ann E.  
Sturdivant**

 Digitally signed by Ann  
E. Sturdivant  
Date: 2023.01.26  
08:38:16 -08'00'

Ann E. Sturdivant  
Assistant Executive Officer

Enclosure: Administrative Civil Liability Order No. R8-2022-0010

cc: **Califoam Products, Inc.**

Javier Juarez, [sales@califoamproducts.com](mailto:sales@califoamproducts.com)  
Alejandro Parra, [alexparra201@yahoo.com](mailto:alexparra201@yahoo.com)

**State Water Board**

Catherine Hawe, [Catherine.Hawe@waterboards.ca.gov](mailto:Catherine.Hawe@waterboards.ca.gov)  
Fee Branch, [Fee\\_Branch@waterboards.ca.gov](mailto:Fee_Branch@waterboards.ca.gov)

**Santa Ana Water Board Prosecution Team**

Ann Sturdivant, [Ann.Sturdivant@waterboards.ca.gov](mailto:Ann.Sturdivant@waterboards.ca.gov)  
Nick Amini, [Nick.Amini@waterboards.ca.gov](mailto:Nick.Amini@waterboards.ca.gov)  
Adam Fischer, [Adam.Fischer@waterboards.ca.gov](mailto:Adam.Fischer@waterboards.ca.gov)  
Michael Jones, [Michael.Jones@Waterboards.ca.gov](mailto:Michael.Jones@Waterboards.ca.gov)  
Chuck Griffin, [Chuck.Griffin@waterboards.ca.gov](mailto:Chuck.Griffin@waterboards.ca.gov)



**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION**

In the Matter of:

**CALIFOAM PRODUCTS, INC.,  
SAN BERNARDINO COUNTY**

ORDER R8-2022-0010 (Proposed)

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

**I. Introduction**

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order or Order) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, Santa Ana Region (Santa Ana Water Board), on behalf of the Santa Ana Water Board Prosecution Team (Prosecution Team), and Califoam Products, Inc. (individually, the Discharger) (collectively, the Parties) and is presented to the Santa Ana Water Board, or its delegate, for adoption as an order by settlement, pursuant to California Water Code (Water Code) section 13323 and Government Code section 11415.60. This Stipulated Order resolves all the violations alleged herein by imposing administrative civil liability against the Discharger in the amount of \$170,080.

**II. Background**

2. The Discharger operates an industrial business located at 10775 Silicon Avenue, Montclair CA (Facility), subject to *Order No. 2014-0057 DWQ, NPDES Permit No. CAS000001, General Permit for Stormwater Discharges Associated with Industrial Activities* (General Permit).
3. General Permit section XVI.A. requires dischargers to certify and submit an Annual Report no later than July 15 following each report year. The Annual Report in the General Permit is required pursuant to Water Code section 13383.
4. General Permit section XI.A.1. requires dischargers to perform observations of each drainage area at their industrial facility. General Permit sections XI.A.3. and XXI.H. require dischargers to maintain records of all visual observations and to provide copies of those records upon request. These inspection and recordkeeping requirements are required pursuant to Water Code section 13383.
5. Pursuant to Water Code section 13385 subdivision (a), any person who violates Water Code section 13383, or any requirements of a waste discharge requirement, is subject to administrative civil liability pursuant to Water Code section 13385 subdivision (c), in an amount not to exceed the sum of both of the

following: (1) ten thousand dollars (\$10,000) for each day in which the violation occurs; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) per gallon discharged but not cleaned up.

6. The Prosecution Team asserts the Discharger violated General Permit, a waste discharge requirement, sections XVI.A., XI.A.1., XI.A.3, and XXI.H. The alleged violations are described in more detail in Attachment A, which is herein incorporated by reference. Pursuant to Water Code section 13385, subdivision (c), the alleged violations are subject to a liability of up to \$10,000 per day of violation.
7. Pursuant to Water Code section 13385, subdivision (e), in determining the amount of civil liability, the regional board shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on the ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
8. The *State Water Board's Water Quality Enforcement Policy* (Enforcement Policy) was adopted on April 4, 2017. The Enforcement Policy's effective date is October 5, 2017. The use of the Enforcement Policy's penalty methodology addresses the factors required to be considered when imposing administrative civil liability. The details of these violations, including the factors required to be considered by Water Code sections 13385 and 13327, are set forth in full in the accompanying Attachment A, which is incorporated herein by reference.
9. The Parties have engaged in settlement negotiations and have agreed to the imposition of an Administrative Civil Liability (ACL) of **one hundred seventy thousand and eighty dollars (\$170,080)** in liability against the Discharger pursuant to Water Code section 13385 and Government Code section 11415.60.
10. Based on the information in the record, the Prosecution Team has determined that the above resolution of the alleged violations is fair and reasonable, and fulfills the enforcement objectives of Water Code sections 13000 et seq., and the Enforcement Policy, and satisfies the objectives and requirements of the federal Clean Water Act as implemented by the foregoing, and that no further action is warranted concerning the alleged violations except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

### III. Stipulations

The Parties incorporate the following Recitals and stipulate to the following:



11. **Jurisdiction:** The Parties agree that the Santa Ana Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulated Order.
12. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability (ACL) in the amount of **one hundred seventy-five thousand and eighty dollars (\$170,080)** to resolve the violations specifically alleged in Attachment A to this Order.
13. **Santa Ana Water Board is Not Liable:** Neither the Santa Ana Water Board members nor the Santa Ana Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from negligent or intentional acts or omissions by the Discharger or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Santa Ana Water Board, its members, or its staff be held as parties to, or guarantors of, any contract entered into by the Discharger or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order.
14. **Compliance with Applicable Laws:** The Discharger 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 herein may subject it to further enforcement, including additional administrative civil liability. Nothing in this Stipulated Order shall excuse the Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding regulations.
15. Party contacts for communications related to this Stipulated Order:

**For the Santa Ana Water Board:**

Adam Fischer  
Santa Ana Regional Water Quality Control Board  
3737 Main Street, Suite 500  
Riverside, CA 92501  
Phone: 951-320-6363  
E-mail: [Adam.Fischer@waterboards.ca.gov](mailto:Adam.Fischer@waterboards.ca.gov)

**For the Discharger:**

Javier Juarez  
Califoam Products, Inc.  
10755 Silicon Avenue  
Montclair, CA 91763  
Phone: 909-364-1600

E-mail: [sales@califoamproducts.com](mailto:sales@califoamproducts.com)

16. **Attorneys' Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel relating to the matters forth herein.
17. **Public Notice:** The Discharger understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Santa Ana Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Santa Ana Water Board or its delegate for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Santa Ana Water Board or its delegate. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
18. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for public review of this Stipulated Order and the Santa Ana Water Board's or its delegate's adoption of this Stipulated Order is lawful and adequate. The Parties understand that the Santa Ana Water Board or its delegate has the authority to require a public hearing on this Stipulated Order. If procedural objections are raised or the Santa Ana Water Board requires a public hearing prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections and may agree to revise or adjust the procedure and/or this Stipulated Order as necessary or advisable under the circumstances.
19. **No Waiver of Right to Enforce:** The failure of the Santa Ana 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 this Stipulated Order. The failure of the Santa Ana Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. If the Discharger fails to comply with this Stipulated Order, the Santa Ana Water Board or its delegate may refer the matter to the State Attorney General to enforce the terms of this Stipulated Order.
20. **Effect of the Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order precludes the Santa Ana Water Board or any State agency, department, board, or local agency from exercising its authority under any law, statute, or regulation.
21. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.
22. **Modification:** The Parties shall not modify this Stipulated Order by oral representation made before or after its execution. All modifications must be in



writing, signed by all Parties, and approved by the Santa Ana Water Board or its delegate.

**23. If the Stipulated Order Does Not Take Effect:** If the Stipulated Order does not take effect because the Santa Ana Water Board or its delegate does not approve it, or because the State Water Resources Control Board or a court vacates it in whole or in part, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Santa Ana 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, or in any other administrative or judicial proceeding. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to the following:

- a. Objections related to prejudice or bias of any of the Santa Ana Water Board members or their advisors or any other objections that are premised in whole or in part on the fact that the Santa Ana Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulated Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged herein 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.

**24. Waiver of Hearing:** The Discharger has been informed of the rights provided in Water Code section 13323, subdivision (b), and if the settlement is adopted by the Santa Ana Water Board or its delegate, hereby waives its right to a hearing before the Santa Ana Water Board prior to the Order's adoption. However, if the settlement is not adopted and if the matter proceeds to the Santa Ana Water Board or State Water Resources Control Board for hearing, the Discharger does not waive its right to a hearing before an order is imposed.

**25. Waiver of Right to Petition or Appeal:** Except in the instance where the settlement is not adopted by the Santa Ana Water Board or its delegate, the Discharger hereby waives its right to petition the Santa Ana Water Board's adoption of the Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California superior court and/or any California appellate-level court.

**26. Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claims against the State of California, any State agency, or its officers, Board Members, employees, representatives, agents, or attorneys



arising out of or relating to any matter expressly addressed by this Stipulated Order or the SEP, except that this covenant is not intended to, and does not, limit the Discharger's rights to sue over other Santa Ana Water Board orders (e.g., permits, cease and desist orders, etc.) or limit the Discharger's rights to defend against any additional enforcement or other actions taken by the Santa Ana Water Board or its employees, representatives, agents, or attorneys, and shall not release any claims or complaints against any State agency, or the State of California or its officers, Santa Ana Water Board members, employees, representatives, agents, or attorneys to the extent such covenant would be prohibited by California Business and Professions Code section 6090.5 or by any other statute, rule, regulation, or legal principle of similar effect.

27. **Necessity for Written Approvals:** All approvals and decisions of the Santa Ana Water Board under the terms of this Stipulated Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments from Santa Ana Water Board employees or officials regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval this Stipulated Order requires.
28. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of, and to bind, the entity on whose behalf he or she executes the Stipulated Order.
29. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations on any third party, and no third party shall have any right of action under this Stipulated Order for any cause whatsoever.
30. **Severability:** This Stipulated Order is severable; if any provision is found to be invalid, the remainder shall remain in full force and effect.
31. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.
32. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Santa Ana Water Board or its delegate enters the Order incorporating the terms of this Stipulated Order.

**IT IS SO STIPULATED.**



Califoam Products, Inc.  
Order No. R8-2022-0010

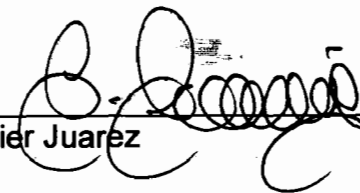
California Regional Water Quality Control Board Prosecution Team  
Santa Ana Region

Ann E.  Digitally signed by  
Ann E. Sturdivant  
Date: 2022.12.16  
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By: Ann E. Sturdivant  
Assistant Executive Officer

12/16/2022  
Date

Califoam Products, Inc.

By:   
Javier Juarez

11-30-2022  
Date



**ORDER OF THE SANTA ANA WATER BOARD:**

1. This Order is issued pursuant to Water Code section 13323 and Government Code section 11415.60 and incorporates the foregoing Sections I through III and Attachment A, by this reference as if set forth fully herein.
2. This is an action to enforce the laws and regulations administered by the Santa Ana Water Board. The Santa Ana Water Board finds that issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321, subdivision (a)(2), title 14, of the California Code of Regulations.
3. The Executive Officer of the Santa Ana Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the City fails to perform any of its obligations under this Order.

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

 Digitally signed by Jayne Joy  
Date: 2023.01.26 11:46:46 -08'00'  
Water Board

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Jayne Joy  
Executive Officer  
Santa Ana Water Board

**Attachment A: Alleged Mandatory Minimum Penalty Violations**



## Attachment A

### Technical Analysis for Administrative Civil Liability Order R8-2022-0010 Califoam Products, Inc., San Bernardino County

This document provides the penalty calculation methodology for the Administrative Civil Liability Order R8-2022-0010, which alleges violations of *Order No. 2014-0057-DWQ, NPDES Permit No. CAS000001, General Permit for Storm Water Discharges Associated with Industrial Activities* (General Permit) against Califoam Products, Inc. (Discharger). The alleged violations occurred while the Discharger was covered under the General Permit for its industrial facility located at 10775 Silicon Avenue in the City of Montclair (Facility). The Discharger obtained coverage under the General Permit on June 18, 2018.

The State Water Board's Water Quality Enforcement Policy (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code (Water Code) section 13385(e). Each factor of the ten-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at:

[https://waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2017/040417\\_9\\_final%20adopted%20policy.pdf](https://waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf)

#### **Violation 1: The Discharger failed to submit the 2020-2021 Annual Report on July 15, 2021, as required by the General Permit.**

General Permit section XVI.A. requires dischargers to certify and submit, via the online database Stormwater Multiple Applications and Report Tracking System (SMARTS), an Annual Report no later than July 15th following each reporting year using the standardized format and checklists in SMARTS. For the 2020-2021 reporting year, the Discharger should have submitted its Annual Report by July 15, 2021. The Discharger submitted the 2020-2021 Annual Report on March 18, 2022. The Annual Report was 245 days late. Water Code section 13385(c) authorizes the Santa Ana Water Board to assess a penalty of up to \$10,000 for each day of violation.

#### **Multiple Day Violations**

The total days of violation is 245 days.

The Enforcement Policy allows for an alternate approach to calculating penalties to be used for violations that last more than thirty (30) days. Where appropriate, this alternative approach shall result in a liability that is not be less than an amount that is calculated based on an assessment of the first 30 days of the 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.

Here, the Discharger's failure to submit its Annual Report did not cause daily detrimental impacts to the environment and did not cause daily detrimental impacts to the regulatory



program. Failure to submit the Annual Report does not impact the environmental because the Discharger is still required to implement all Best Management Practices (BMPs) and the impact to the regulatory program is minor and does not occur on a daily basis.

Based on the application of the multiple day reduction, the total number of days of violation for Violation 1 is  $(30 + (30/5) + (245-60)/30) = 30+6+6=42$ .

### **Step 1 Actual Harm or Potential for Harm for Discharge Violations**

Step 1 of the Enforcement Policy directs the Santa Ana Water Board to calculate a potential for harm score for discharge violations. As no violations alleged herein are discharge violations, Step 1 is inapplicable to this case.

### **Step 2 – Per Gallon and Per Day Assessments for Discharge Violations**

Step 2 of the Enforcement Policy directs the Santa Ana Water Board to assess discharge violations based on a per gallon and/or per day factor. As no violations alleged herein are discharge violations, Step 2 is inapplicable to this case.

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

Step 3 of the Enforcement Policy directs the Santa Ana Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and Deviation from Requirement using Table 3 in the Enforcement Policy.

### **Potential for Harm**

The Discharger's failure to submit the 2020-2021 Annual Report by the General Permit's deadline has a minor Potential for Harm because it does not significantly impact beneficial uses. The Annual Report provides important information to the Santa Ana Water Board about the Discharger's facility, but even without submitting the Annual Report, the Discharger is still required to comply with all of the provisions of the General Permit. While a discharger's failure to submit an Annual Report does impair the Santa Ana Water Board's ability to regulate industrial dischargers, the overall impact on the regulatory program is minor since the Facility is enrolled in the Industrial General Permit. Ultimately, this Discharger did submit its Annual Report, albeit 245 days, after the due date.

### **Deviation from Requirement**

A moderate Deviation from Requirement is appropriate because the General Permit requires submittal of an Annual Report each year for all facilities enrolled with Notice of Intent coverage. The Discharger's late submittal of its Annual Report partially compromised the intended effectiveness of the Industrial General Permit's reporting requirement. Santa Ana Water Board staff were able to review the Discharger's Annual Report, but it was significantly after the required deadline.

Using a minor Potential for Harm and a moderate Deviation from Requirement, the per day factor for this violation is 0.2.

Multiplying the Per Day Factor (0.2) by the days of violation (42) by the statutory maximum (\$10,000) yields an initial amount of **\$84,000**.

#### **Step 4 – Adjustment Factors**

The Enforcement Policy then requires a consideration of the discharger's conduct, specifically, the discharger's culpability, degree of cleanup and cooperation, and compliance history.

#### **Culpability**

For culpability, the Enforcement Policy prescribes an adjustment using a multiplier between 0.75 to 1.5. The lower multiplier applies to accidental incidents and the higher multiplier for intentional or negligent behavior.

Here, the Discharger has been negligent in its failure to submit its Annual Report. The Discharger has been consistently late in submitting its Annual Report for every year it has been enrolled in the General Permit (reporting years 2020-2021, 2019-2020, and 2018-2019). Each time, Water Boards staff engaged in outreach to remind the Discharger of the General Permit's requirement to submit its Annual Report prior to and after the applicable deadline. Santa Ana Water Board staff issued Notices of Noncompliance (NNCs) to the Discharger outlining the General Permit's requirements for submitting an Annual Report and indicating that the Annual Report was past due. The NNCs sent on August 8, 2019, August 17, 2020, September 17, 2020, August 17, 2021, and September 21, 2021, were received by the Discharger as confirmed by USPS certified mail receipts. In addition, Javier Juarez (Mr. Juarez hereafter), the Chief Executive Office of Califoam Products, Inc., indicated on December 7, 2021, that he was aware of the past due Annual Report and what he needed to do to complete it. Therefore, the Discharger knew what was required to submit a timely Annual Report as required by the General Permit.

A Culpability score of 1.4 is assigned.

#### **History of Violations**

The Discharger has no history of adjudicated violations Therefore, a factor of 1.0 is assigned.

#### **Cleanup and Cooperation**

This factor reflects the extent to which a discharger voluntarily cooperates in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation.

The Discharger was uncooperative with the Santa Ana Water Board's staff, who attempted to assist the Discharger in correcting the condition of noncompliance. Despite having received two NNCs specifically related to the 2020-2021 Annual Report, dated August 17, 2021, and September 21, 2021, the Discharger did not submit its Annual Report until March 18, 2022 significantly after the timelines provided in the NNCs. In addition to the NNCs, Santa Ana Water Board staff contacted the Discharger by email on July 29, 2021, explaining that a mandatory minimum penalty between \$1,000 dollars to \$5,000 dollars total may be assessed for failure to submit the required Annual Report. The email provided links to help guides for submitting Annual and Ad Hoc Reports and provided contact information that the Discharger could have contacted with any questions. The Discharger eventually submitted the Annual Report on March 18, 2022, which is an unreasonably long time to correct this condition of noncompliance. A factor of 1.3 is assigned for Cleanup and Cooperation.

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

The Total Base Liability Amount for Violation 1 is determined by multiplying the Initial Liability Amount determined in Step 3 by the Step 4 adjustment factors.

$\$84,000 \times 1.4 \times 1.0 \times 1.3 = \mathbf{\$152,880}$ .

Steps 6 through 10 are applied to the combined Total Base Liability Amount for all violations and will be discussed after the Total Base Liability Amount has been determined for the remaining violations.

### **Violation 2: On December 7, 2021; January 27, 2022; and April 25, 2022, the Discharger failed to have adequate records and paper copies of required documents including visual observations at its Facility.**

General Permit Section XI.A.1. requires the Discharger to perform observations of each drainage area at the Facility. XI.A.3. requires the Discharger to maintain records of all visual observations. Section XXI.H. requires the Discharger to provide copies of those records to the Water Boards staff upon request.

On April 25, 2022, Jonathan Juarez stated that he did not have any visual inspection records. The Discharger has violated Section XI.A.3. of the General Permit by failing to maintain records of all visual observations at the facility and Section XXI.H. by failing to provide those records upon request on December 7, 2021, and April 25, 2022. Because these violations are closely related, they have been combined into a single violation for purposes of assessing liability.

Records of Visual Observations were not available during site inspections conducted by the Santa Ana Water Board on December 7, 2021, January 27, 2022, and April 25, 2022. On January 27, 2022, Mr. Juarez indicated that he does not document his visual inspections. Califoam Products Inc. has violated Section XI.A.3. of the General Permit by

failing to maintain records of all visual observations and Section XXI.H by failing to provide those records upon request.

A Notice of Violation was issued on February 9, 2022, documenting these violations and instructing the Discharger to correct the conditions of noncompliance no later than March 9, 2022.

Based on the above, the Discharger was in violation of Section XI.A.3 of the General Permit for three days while the Santa Ana Water Board inspected, or attempted to inspect, the Facility and the records were not available.

### **Multiple Day Violations**

This violation was less than 30 days.

### **Step 1 Actual Harm or Potential for Harm for Discharge Violations**

Step 1 of the Enforcement Policy directs the Santa Ana Water Board to calculate a potential for harm score for discharge violations. As no violations alleged herein are discharge violations, Step 1 is inapplicable to this case.

### **Step 2 – Per Gallon and Per Day Assessments for Discharge Violations**

Step 2 of the Enforcement Policy directs the Santa Ana Water Board to assess discharge violations based on a per gallon and/or per day factor. As no violations alleged herein are discharge violations, Step 2 is inapplicable to this case.

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

Step 3 of the Enforcement Policy directs the Santa Ana Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and Deviation from Requirement using Table 3 in the Enforcement Policy.

### **Deviation from Requirements**

The Deviation from Requirement is major. The Discharger's failure to have any of these records available on site renders the General Permit's provisions ineffective in their essential functions. Having the visual observation records available on site ensures that the Discharger and its employees are taking adequate steps to monitor and prevent the discharge of industrial pollutants to Waters of the United States.

### **Potential for Harm**

The failure to maintain records of visual observations presents a low threat to beneficial uses, and a minor Potential for Harm. Even without these paper records, the Discharger is required to comply with the provisions of the General Permit which require



implementation of BMPs. Failure to have the records available on site does impact the Santa Ana Water Board's ability to regulate the facility.

A Potential for Harm score of low and a Deviation from Requirement score of moderate results in a Per Day Factor of "0.2" using Table 3 of the Enforcement Policy. Multiplying the Per Day Factor (0.2) by the days of violation 2 by the statutory maximum (\$10,000) yields an initial amount of **\$6,000 dollars**

#### **Step 4 – Adjustment Factors -**

##### **Culpability**

A reasonable and prudent discharger is familiar with the requirements of the General Permit and appropriately trains staff to ensure compliance with various requirements. However, the Discharger did not comply with appropriate observation and recordkeeping requirements. A culpability score of 1.2 is applied to reflect the deviation from the due standard of care.

##### **History of Violations**

The Discharger has no history of adjudicated violations of visual monitoring record keeping requirements. Therefore, a factor of 1.0 is applied.

##### **Cleanup and Cooperation**

This factor reflects the extent to which a discharger voluntarily cooperates in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation.

Mr. Juarez was informed of the undocumented visual inspection record violations on December 7, 2021, January 27, 2022, and April 25, 2022. On January 27, 2022, Mr. Juarez indicated that he does not document his visual inspections. Mr. Juarez was also notified of these violations in a Notice of Violation issued on February 9, 2022. No records of visual inspections have been produced to date. A factor of 1.3 is applied.

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

The Total Base Liability Amount for Violation 2 is determined by multiplying the Initial Liability Amount determined in Step 3 by the Step 4 adjustment factors ( $\$6,000 \times 1.2 \times 1.3 \times 1.0 = \$9,360$ ). This results in a total base liability amount for Violation 2 of **\$9,360**.

Steps 6 through 10 are applied to the combined Total Base Liability Amount for all violations and will be discussed after the Total Base Liability Amount has been determined for the remaining violations.

### **Combined Base Liability Amount for All Violations**

The combined Total Base Liability for Violations 1 and 2 is determined by adding the base liability amount of each violation. The combined Total Base Liability is **\$162,240**.

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

Based on publicly available information, the Discharger has the ability to pay the proposed liability without affecting its ability to stay in business. According to the Dun & Bradstreet business directory, the Discharger has 12 employees, with an annual revenue of \$2.11 million. The business started in 1989 and incorporated in 2004. San Bernardino County Tax Assessor records show that the property's roll value was \$107,000 on January 1, 2021.

### **Step 7 – Economic Benefit**

Estimated Economic Benefit: **\$4,222**

Pursuant to California Water Code section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute a violation. The violations described above identify several avoided expenses that have significantly benefited the Discharger.

Violation 1: The 2020-21 Annual Report was submitted 245 days late on March 18, 2022. This provided economic benefit by delaying the time to complete the Annual Report in SMARTS.

Violation 2: The Discharger avoided costs by not keeping up to date records of visual observations at the Facility. This provided an economic benefit by avoiding the time to record the visual observations made at the Facility in compliance with the General Permit.

It is estimated that the Discharger received an economic benefit of **\$4,222** for the year based on its noncompliance with the General Permit. A cost estimate report, prepared by State Water Board staff and dated July 16, 2012 for compliance with the General Permit breaks down categorical compliance costs in 2012 as follows:

\$4,222 dollars for Annual Report development, (Annual Report prep – 3 hours + visual observations 11 hours + Recordkeeping 1 hour + Sample collection 12 hours = 27 hours \* \$150/hour = \$4050 + 172 analysis = \$4,222) .

### **Step 8 – Other Factors as Justice May Require**

In accordance with Step 8 of the Enforcement Policy, the Total Base Liability Amount may be adjusted under the provision for “other factors as justice may require” if express findings are made. The cost of investigation and enforcement are considered “other factors as

justice may require,” and are taken into account in the TotalBase Liability Amount to further deterrence. The Santa Ana Water Board accrued **\$7,840** in staff costs associated with the investigation and preparation of this Complaint as detailed in the attached spreadsheet.

It is appropriate to increase the Total Base Liability Amount for the three violations by **\$7,840**. This increase is in consideration of the costs of investigation and enforcement relative to the Total Base Liability Amount, is warranted given the totality of the circumstances, and is intended to serve as a sufficient general and specific deterrent against further violations.

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

Minimum Liability Amount: Economic benefit plus 10% or **\$4,644**.

The maximum liability is set by statute. Water Code section 13385 allows the regional boards to impose daily liability in an amount not to exceed \$10,000 per day, per violation.

Maximum Liability Amount for Violation 1: \$2,450,000  
Maximum Liability Amount for Violation 2: \$30,000  
Total Maximum Liability Amount is **\$ 2,480,000**

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

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided that it is within the statutory minimum and maximum amounts. Based on the foregoing analysis, and consistent with the Enforcement Policy, the final proposed Administrative Civil Liability is **\$170,080**.

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