



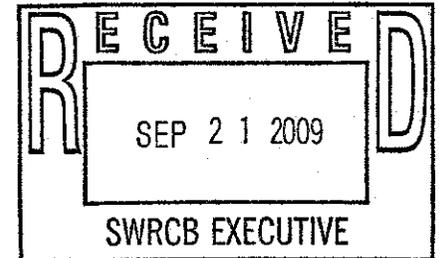
## COUNTY SANITATION DISTRICTS OF LOS ANGELES COUNTY

1955 Workman Mill Road, Whittier, CA 90601-1400  
Mailing Address: P.O. Box 4998, Whittier, CA 90607-4998  
Telephone: (562) 699-7411, FAX: (562) 699-5422  
www.lacsd.org

STEPHEN R. MAGUIN  
Chief Engineer and General Manager

September 21, 2009  
File No. 31-370-40.4A

Charles R. Hoppin, Chair and Members  
State Water Resources Control Board  
1001 I Street, 16th Floor  
Sacramento, CA 95814



Dear Chairman Hoppin and Members of the Board:

### Comments on Draft Water Quality Enforcement Policy

The Sanitation Districts of Los Angeles County (Sanitation Districts) are pleased to have the opportunity to provide comments to the State Water Resources Control Board (State Water Board) on the draft revisions to the Water Quality Enforcement Policy (Draft Policy) dated July 14, 2009. By way of background, the Sanitation Districts are a confederation of 24 individual special districts serving the wastewater and solid waste management needs of over 5 million people in 78 cities and unincorporated areas of Los Angeles County. The Sanitation Districts own and operate 11 wastewater treatment facilities with a combined capacity of approximately 625 million gallons per day (MGD). Of these facilities, 9 are located in the Los Angeles region and 2 are located in the Lahontan region.

In general, the Sanitation Districts agree with the overall intent and scope of the new version of the Draft Policy, including the development of a more transparent process for selecting enforcement priorities, assessing penalties, and balancing inter-regional consistency with the flexibility needed to reflect individual circumstances. The Sanitation Districts also support the stated goals of the Draft Policy: protecting and enhancing the quality of the waters of the State; creating an enforcement system that addresses water quality problems in the most efficient, effective, and consistent manner; establishing a process for ranking enforcement priorities based primarily on the impact to beneficial uses or culpability of the discharger; and establishing a fair and consistent approach to the administrative civil liability assessment process.

However, the Sanitation Districts are concerned that, as currently written, the Draft Policy will in many cases lead to significantly higher fines that are primarily punitive in nature, as opposed to "compliance inducing." This will in turn result in fewer settlements of administrative civil liability, which generally will lead to more appeals and litigation. Additionally, new language was added to the July 2009 version of the Draft Policy, which states that the State Water Board will defer to decisions made by the Regional Water Boards in calculating liability amounts. The Sanitation Districts believe this language is unnecessary and should be deleted from the Draft Policy. We also believe that public agencies such as Publicly Owned Treatment Works (POTWs) deserve special consideration in this policy, particularly in the assessment of economic benefit, since they do not derive any potential profit from or benefits of non-compliance that a private entity might.

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Detailed comments on the most recent changes to the Draft Policy are provided below. In addition, the Sanitation Districts have submitted several comment letters on previous versions of the Draft Policy. While we appreciate the changes made by the State Water Board on issues addressed by several of our previous comments, some issues we have commented on have not yet been addressed. Detailed comments on one particular issue of ongoing concern, economic benefit provisions, are included below even though this area was unchanged in the most recent Draft Policy. Where our other previous comments are still pertinent, we have restated them in Attachment A, as requested by State Water Board staff.

#### **Usage of Statutory Maximum As Recommended Penalty for non-NPDES Effluent Violations**

Section VI of the Draft Policy in general promotes the imposition of the statutory maximum as an appropriate penalty for all water quality violations. Exceptions to use of the statutory maximum have been placed in the Draft Policy for NPDES limit effluent violations, recycled water releases, sewage spills, municipal stormwater discharges, and stormwater from construction sites. However, the Draft Policy still does not contain an exception for non-NPDES effluent limit discharge violations. The Sanitation Districts operate two wastewater treatment facilities, the Lancaster and Palmdale Water Reclamation Plants (WRPs), that do not discharge to waters of the United States and thus are not subject to NPDES permit requirements. Instead, these two facilities discharge to waters of the state and are regulated by non-NPDES Waste Discharge Requirements (WDRs) only. Under the water code, discharges under non-NPDES WDRs are subject to either the maximum per gallon penalty of \$10 per gallon, or the maximum daily penalty of \$5,000 per day. The Draft Policy calls for the maximum per gallon penalties allowed under statute to be used as the starting point for determining liability. In the case of non-NPDES WDR discharges for POTWs, this would lead to potentially exorbitant penalties, many orders of magnitude higher than penalties traditionally have been and far higher than would be warranted based on most reasonably foreseeable circumstances. In order to demonstrate this concern, the Sanitation Districts created several hypothetical examples (based on reasonable assumptions) and calculated what the total base liability amount would be, prior to final adjustments by State Water Board staff, based on recovery of economic benefit (if any) and application of discretionary factors. For example, an exceedance of *one* monthly average limitation in a non-NPDES WDR for a facility discharging 15 MGD would garner an adjusted base liability amount of over *\$256 million*. (See Attachment B for calculations for the 3 hypothetical examples.) This is an inappropriate starting point, as it is excessively punitive, and would create serious financial consequences to the community served by the discharger. Given that non-NPDES WDRs for POTWs contain numerous stringent monthly average limits that could each result in exceedances, we believe this methodology is inappropriate and we request that this issue be addressed before the Draft Policy is adopted.

Because the potential per gallon penalty amounts could be unreasonably high for what may be relatively minor violations (in terms of number, type, magnitude or duration), we recommend that the Draft Policy be amended to specify that liability for non-NPDES WDR effluent violations be calculated on a per day basis as the starting point, rather than a per gallon basis. Use of the maximum per day liability of \$5,000 as a starting point for penalty calculation will result in calculated liabilities that are much more commensurate with the severity of most violations.

***Requested change: On page 16 of the July 14, 2009 Draft Policy, at end of the paragraph immediately preceding Step 3, add the following: "Where the Water Code allows only a per gallon amount or a per day amount, for effluent limitation violations of non-NPDES waste discharge requirements, the per day amount should be calculated and used to determine the initial amount of the ACL penalty for the discharge violations. The initial amount should be adjusted upward or downward where the facts and circumstances of the violation warrant a higher or lower liability."***

### State Water Board Deferring to Regional Water Board for Calculated Penalties

New language was added to Section VI of the Draft Policy stating that the State Water Board will "defer" to the Regional Water Boards' calculations of administrative liability amounts. The proposed language is very troubling, in that the State Water Board would be inappropriately constraining the scope of its review afforded under Water Code Section 13320. The statute provides that the State Water Board "may consider any relevant evidence which in the judgment of the State Water Board should be considered to effectuate and implement" legislative policies and may find that the Regional Water Board's action was "inappropriate or improper." The State Water Board does not act as a strictly appellate body, limited to ruling on the legal correctness of a challenged Regional Water Board action under a highly deferential standard. Rather, the State Water Board has broad authority to review, modify, and remand Regional Water Board quasi-adjudicatory actions on both legal and policy grounds. We are not aware of any other area of review—adoption of permits and waste discharge requirements, for example—where the State Water Board has self-imposed such a significant constraint on its authority.

The State Water Board's stated goal of "consistent" enforcement will not be well-served if the Board relinquishes its discretion, via the Enforcement Policy, to review administrative civil liability assessments. Civil liability amounts for similar violations could vary significantly by region, and even within a single region, yet these decisions would be afforded a presumption of correctness. Moreover, such abstention is unnecessary, given that State Water Board review is discretionary and not automatic. The State Water Board is free to consider and assess the strengths of individual petitions on their merits, and can decline to hear those that do not raise issues worthy of review. There is no need to establish a blanket approach of deference to the Regional Water Boards' calculations when significant rights and obligations are at issue.

**Requested change: On page 11 of the July 14, 2009 Draft Policy, delete the following: "In reviewing a petition challenging the use of this methodology by a Regional Water Board, the State Water Board will defer to the decisions made by the Regional Water Boards in calculating the liability amount unless it is demonstrated that the Regional Water Board made a clear factual mistake or error of law, or that it abused its discretion."**

### Proposed Economic Benefit Provisions

Step 8 of the Monetary Assessments in ACL Actions of the Draft Policy states the "adjusted Total Base Liability Amount shall be at least 10 percent higher than the Economic Benefit Amount." Determination of economic benefit is an important element in the determination of ACL amounts, but due to the considerable uncertainty inherent in its calculation, particularly in the case of economic benefit realized by a public agency, the Sanitation Districts request that the State Water Board modify the Draft Policy to allow flexibility in its use.

Additionally, the Sanitation Districts recommend that the BEN model not be used to set a minimum penalty level (through calculation of economic benefits) for public agencies for the following reasons: 1) the calculation of any economic benefit value is subject to substantial variability; 2) in many cases, the permittee actually incurs a *negative* economic benefit when the construction of facilities needed for compliance are commenced at a later date (i.e. the costs are higher); 3) the premise of economic benefit rests on the potentially erroneous assumption that a permittee did not exercise "due care" and failed to take appropriate measures at the appropriate time to prevent violations; and 4) usage of the BEN model does not consider the difference between dischargers who are public agencies and dischargers who are private entities. The Sanitation Districts believe there should be an alternative to BEN for determining economic benefit for POTWs. One potential methodology to evaluate economic benefit could be used in those cases where the Regional Water Boards (or another applicable regulatory agency) prepared an economic or cost analysis during the regulatory adoption process, and that analysis examined

projected compliance costs with the standard(s) being promulgated. This type of analysis could be used as a basis for comparison with what the discharger in question actually did or did not do to achieve compliance. Another approach that could be used is to compare the approach to compliance used by the public agency to industry standards to determine what, if any, economic benefit might have been gained by the municipality.

The Sanitation Districts also request that the State Water Board allow expenditures made as part of "good faith efforts" by dischargers to come into compliance with permit requirements, prior to the issuance of an ACL Order, be considered in calculating economic benefits. Currently, the language of the Draft Policy does not appear to allow these prior efforts to comply to be considered when calculating what the State Water Boards consider to be "economic benefit."

**Requested changes:** 1) *On page 22 of the July 14, 2009 Draft Policy, add after the first sentence in Section a: "Calculation of economic benefit should account for actions and expenditures by the discharger to attain or maintain compliance, even if those efforts were unsuccessful at attaining full compliance."* 2) *On page 22 of the July 14, 2009 Draft Policy, add after the last sentence in Section c: "Determine the cost of actions that were taken by the discharger to attain compliance. Subtract the cost of actions taken from the cost of delayed or avoided actions."* 3) *On page 22 of the July 14, 2009 Draft Policy, modify the first sentence in Section d to read: "Calculate the present value of the economic benefit, where that is defined as the difference between the cost of delayed and avoided costs and the cost of actions that were taken by the discharger to attain compliance."* 4) *On page 23 of the July 14, 2009 Draft Policy, add at the end of the first sentence in the first full paragraph, the following: ", except as expressly provided for in the paragraphs above."*

The Sanitation Districts believe that the Draft Policy, with the proposed changes contained herein and in Attachment A will more closely align with the State Water Board's stated goals. The Sanitation Districts also concur with the comments submitted to you by Tri-TAC, along with other wastewater and municipal associations.

Thank you for the opportunity to comment on this important state policy.

Very truly yours,  
Stephen R. Maguin



Raymond Tremblay  
Assistant Department Head  
Technical Services

RT:SAG:lmb

## Attachment A

### Comments on the Ranking System for Violations

The Sanitation Districts appreciate the changes from the previous drafts regarding classification of violations, especially with regards to the prior approach to Class I violations and toxicity violation classification. The Sanitation Districts generally agree with the criteria used to identify and classify violations, however, below are several proposed changes that we feel would help to clarify and create a fairer ranking system.

*1. Provide explanation for term "violations" in section 1.a of the Class I Violations and section 2.i of the Class II Violations sections.*

Section 1.a of the Class I Violations section and section 2.i of the Class II Violations section both identify "significant measured or calculated violations" of water quality. The Sanitation Districts are unclear if the "violation" is referring to a permit requirement or effluent limit, a violation of water quality objectives, or water quality criteria as measured in receiving waters. Additionally, the July 2009 version of the Draft Policy proposes to delete the words "promulgated water quality" from Section 1.a, adding confusion to interpretation of the type of water quality criteria to which this statement applies (since, in federal water quality standards terminology, there are both recommended "advisory" water quality criteria and regulatory water quality criteria, and without the term "promulgated" Section 1.a appears to encompass both types). For the purposes of clarity, we recommend that the State Water Board reword this section to clarify that the intended meaning is a "violation of a permit requirement or effluent limit" that has a lasting effect on a "water quality objective or promulgated water quality criteria attainment in receiving waters." Accordingly, we recommend that in both places this phrase appears, it be modified to spell out the intended meaning. We also are unclear what type of violations fall into the "calculated" violations category and recommend that this phrase be explained or defined as well.

*2. Change "may" to "will" in section 2.b of the Class II Violations section.*

Section 2.b of the Class II Violations section identifies "violations of acute or chronic toxicity requirements where the discharge may adversely affect fish or wildlife." The Sanitation Districts are concerned that the use of the word "may" in this section will result in every violation of acute or chronic toxicity testing being characterized as a Class II violation, regardless of whether actual receiving water impacts occur. Therefore, we recommend that the term "may" be changed to "will."

*3. Eliminate "inadvertent" from the introduction of the Class II Violations section, along with subsections 2.d and 2.e.*

An inadvertent failure to comply with monitoring requirements or submit information should be treated as a Class III violation. The term "inadvertent" means "unintentional." As such, the discharger does not possess intent to not comply, and should not be penalized in the same way that negligent or intentional acts are punished. Typically, inadvertent errors are quickly corrected once discovered, and result from simple human error. If the intent (as stated during the workshop) is to differentiate between (1) Class II and Class III violations related to monitoring and (2) an information submittal based on the nature of the information (i.e. how critical it is), then we suggest that this factor be reworded, because it currently uses terminology related to the culpability of the discharger instead of the information.

4. *Provide explanation for the term "due date" in section 2.g of the Class II Violations section.*

Section 2.g of the Class II Violations section identifies a "failure to pay fees, penalties, or liabilities within 120 days of the *due date*" as a Class II violation. The Sanitation Districts' staff is unclear if the "due date", in the case of permit fees, is the date as listed on the invoice or 120 days from the date the invoice is received by the Discharger and requests further explanation of this term. The Sanitation Districts are concerned because, at times, invoices have been received after the due date listed on the invoice. Dischargers should not be penalized for invoices that have not received in a timely manner.

**Comments on the Monetary Assessments in Administrative Civil Liability (ACL) Actions**

In general, the Sanitation Districts are supportive of the development of a more transparent approach to calculation of penalties. However, the Sanitation Districts have the following comments and recommendations regarding monetary assessments in ACL actions:

1. *Burden of proof in ACL actions.*

Section VI of the Draft Policy promotes a discharger/"defendant" centric burden of proof standard ("the defendant must demonstrate that the penalty should be less than the statutory maximum"). The discussion fails to include or reference the fact that the Regional and/or State Water Boards, as the prosecuting agencies, possess the burden to justify the type of enforcement action and penalty imposed, and must make findings supported by evidence in the administrative record. If the Draft Policy is going to address the legal issue of burden of proof, this aspect should be included in the discussion.

2. *Improper requirement to recoup economic benefit in Porter-Cologne/WDR enforcement actions.*

The Draft Policy states "the Porter-Cologne Act requires that civil liabilities be set a level that accounts for any "economic benefit or savings" violators gained through their violations. (Wat. Code §§ 13351, 13385, subd. (e))." This statement appropriately captures Porter-Cologne's requirement that economic benefit be recouped for penalties issued in response to violations of Clean Water Act related orders, including NPDES permits, as required by Water Code Section 13385(e), but improperly infers the same requirement for violations of permits or orders issued solely pursuant to the Porter-Cologne Act.

Unlike Water Code section 13385(e), Water Code Section 13327 does not require, at a minimum, the recoup of economic benefit. Rather, Water Code Section 13327 simply requires "consideration" of "economic benefit or savings, if any," in assessing an appropriate civil liability amount. Further, citation to Water Code Section 13351 is incorrect, as that section applies to penalties being issued by the Superior Court, not an administrative agency. The citation should be to Water Code Section 13327. For these reasons, we suggest that the phrase on page 10 should be revised as follows "Moreover, as discussed below, the Porter-Cologne Act requires that "economic benefit or savings," if any, be recovered for violations of orders issued pursuant to the Federal Water Pollution Control Act (Clean Water Act) (*i.e.*, NPDES permits), and that "economic benefit or savings," if any, be considered in assessing civil liability for violations of the Porter-Cologne Act or orders issued there under. (Wat. Code §§ 13327, 13385, subd. (e))."

In addition, page 11 of the Draft Policy recommends that any assessment of administrative liability should "Fully eliminate any economic advantage obtained from non-compliance." As noted above, economic benefit is only a consideration in assessing penalties for orders issued solely under Porter-Cologne. This bullet point should be revised to reflect the statutory differences between civil penalties assessed for violation of Clean Water Act and Porter-Cologne related orders. To be consistent, Step 8 on page 22 should also be revised accordingly.

3. *Modify the use of the MCL example in Step 1, Factor 1.*

The Draft Policy assigns a Factor of 3 or 4 for "moderate" and 4 for "more than moderate" threats to beneficial uses, and provides examples. Among these are the following two specific examples, respectively, to describe "moderate" and "more than moderate" threats: "material contribution to MCL exceedences for drinking water supplies" (assigned Factor of 3) and "causes short term MCL exceedences for drinking water supplies" (assigned a Factor of 4). The inclusion of these examples as requiring Factors of 3 and/or 4 is problematic, and will result in overly punitive penalties. Regional Water Boards have incorporated State Water Board Resolution 88-63 into their Basin Plans, applying the MUN beneficial use to all waters in California, with enumerated exceptions. The State Water Board has opined that those exceptions can only be applied via the UAA/de-designation process (*see* Vacaville Order). Therefore, many water bodies that are considered "drinking water supplies" for purposes of water quality regulation in California are not, in fact, used for drinking water, and exceedance of a permit limit for a constituent that has an MCL may have no actual impact to drinking water supplies, even though a brief or geographically limited receiving water exceedance occurs. In effluent dominated water bodies, prevalent in Southern California, a discharge exceedance can both cause a short term MCL exceedance in a limited geographic area, or contribute to an MCL exceedance in the receiving water; yet, no drinking water supplies are actually compromised. However, under the Draft Policy, any discharge that "contributes" to or "causes" an MCL exceedance is assigned a Factor of 3 or 4, respectively. These examples should be removed from the Draft Policy in favor of a more site-specific determination of whether a particular violation presents an actual moderate or above moderate threat to beneficial uses.

4. *Proposed consideration of recycled water during ACL assessment.*

The Sanitation Districts acknowledge that the Draft Policy was revised to specifically include a maximum recommended assessment of \$1/gallon for releases of recycled water. Although the maximum per gallon assessment for recycled water was set at an amount less than that for sewage spills (\$2/gallon), the Sanitation Districts believe that \$1/gallon is disproportionate to the degree of risk (compared with raw sewage), given that recycled water has already been treated and thus is relatively benign. Recognizing there may be a need for various maximum amounts based on the level of treatment, the Sanitation Districts recommend a maximum amount of \$0.10/gallon - \$0.50/gallon for recycled water, depending on the level of treatment, unless actual adverse impacts to beneficial uses are observed. These actions would be consistent with the State Water Board's recent adoption of the Recycled Water Policy, and other efforts to encourage widespread use of recycled water in lieu of scarce potable water sources for uses such as landscape or crop irrigation.

5. *Provide clarification of Deviations from Standards (Step 2).*

It is unclear which category (minor, moderate, or major) will be assigned for the exceedance of a numeric effluent limitation. For example, if a POTW exceeds a monthly average effluent limitation for TSS, is that considered minor, moderate, or major? The Sanitation Districts suggest that exceedance of technical limits only be categorized as minor, if pursued using discretionary authority.

6. *Cleanup and Cooperation factor (Step 4) should be used to recognize cleanup and compliance efforts.*

A discharger who voluntarily returns to compliance, undertakes aggressive cleanup efforts and/or corrects environmental damage should be recognized for the efforts undertaken, when penalties are calculated. Therefore, a lower cleanup and cooperation adjustment factor should be included as the lower end of the range of possible factors, in the Draft Policy. Inclusion of a lower multiplier will not only recognize good cleanup and compliance efforts, but also provide dischargers with a strong positive incentive to cleanup and cooperate. The Sanitation Districts recommend that the cleanup and cooperation factor range from 0.25 to 1.5 instead of the current range of 0.75 to 1.5.

7. *History of violations (Step 4) factor should be applied on a case-by-case basis.*

Adjustments for prior history of violations may disproportionately affect POTWs. POTWs have continual discharges that are highly regulated, with a myriad of effluent, receiving water, and other limitations. Even with an exceptionally well-run facility, occasional exceedances will occur for a variety of reasons (how permit limits are calculated, lack of control of influent concentrations, etc.). Penalties should not be increased by 10% simply due to the fact that prior violations have occurred, unless they are indicative of an ongoing problem that has not been properly addressed.

8. *Remove Reference to Civil Code Section 1542 from the Draft Policy.*

Civil Code Section 1542 states "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." A general release is a release of all claims that exist between two parties, independent of relation to the subject of the current dispute. This differs from a special release, which addresses only specific claims. Regional Water Boards initiate enforcement actions for administrative civil liabilities by the issuance of a complaint, based on claims that specific sections of the Water Code or permits or orders issued by the Regional Water Board have been violated. When settlement of such a complaint is considered, typically the parties are only seeking to reach a settlement of the claims set forth in the complaint. Therefore, it is typically not necessary to obtain a general release in order to protect the debtor in connection with the settlement of a specific set of claims. In order to settle a complaint for administrative civil liabilities, it is sufficient to obtain a full and final release "of all claims alleged in the complaint." Since the settlement of "all claims alleged in the complaint" is a special release, a waiver of Civil Code Section 1542 is often not necessary to settle those claims. On rare occasions, however, there is a request for 1542 waivers when there is a concern there may be some unknown consequences of a known claim, and there is a desire to make clear that the settlement covers all such consequences. Therefore, the sentence disallowing Civil Code Section 1542 waivers in all circumstances should be removed from the Draft Policy and, instead, this issue should be negotiated between parties based on the nature of the particular settlement.

**Comments on the Enhanced Compliance Actions Section**

1. *Modify the Enhanced Compliance Action (ECA) limitation to encourage ECAs.*

ECAs should be encouraged, especially since they can result in water quality benefits that may not otherwise occur. By limiting the amount of the ECA to only the amount in excess of any economic benefit plus an additional amount consistent with the factors for monetary liability assessment, the State Water Board is discouraging these types of projects, as the amount allowed toward an ECA may not be enough to accomplish capital or operational improvements in most cases. A more appropriate limitation for ECAs is 50% of the assessed penalty, or similar limitation.

**Scenario 1: Chlorine residual effluent limitation violation to effluent dominated water body- Non-NPDES Discharge**

Quantity: 312,500 gallons  
 # of days: 1  
 Duration of chlorine residual: 0.021 days  
 15 MGD plant with 30 minute chlorine residual

**Step 1 - Potential Harm Factor:**

Factor No.	Consideration	Determined Score	Comments
1	Harm or potential harm to BUs	3	Moderate threat to BUs - observed impacts to aquatic life or restrictions on use of a water body
2	Physical, chem, bio, or thermal characteristics of discharge	3	Discharged material poses a major risk of harm - chemical characteristics pose a significant risk of harm
3	Susceptibility to cleanup or abatement	1	Less than 50% of the discharge is susceptible to cleanup or abatement

Potential for Harm Score: 7

**Step 2 - Assessment:**

Deviation from Standards Category	
Minor	
Moderate	
Major	x

Per gallon factor (from Table 1): 0.310  
 Assume usage of maximum amount of \$10.00/gal  
 Based on California Water Code 13350(e) the liable amount is for each gallon of waste discharged  
 Therefore, number of gallons liable for is: 312,500  
 Per gallon amount of ACL: \$968,750

Per day factor (from Table 2): 0.310  
 Assume \$5,000/day of violation based on California Water Code 13350(e)  
 Per day amount of ACL: \$1,550

**Total Base Liability Amount: \$968,750 or \$1,550**

**Step 3 - Per Day Assessments for Non Discharge**  
Assume no non discharge violations**Step 4 - Adjustment Factors**

Factor	Adjustment
Culpability (a)	0.5
Cleanup and Coop (b)	1
History (c)	1.1

- a) Assume incident was accidental  
 b) Spill was not captured but there was cooperation  
 c) Assume entity has a previous violation - increase by min of 10%

**Adjusted Base Liability: \$532,813 or \$853**

**Step 5 - Determining Total Base Liability Amount**  
Single incident, so the Total Base Liability Amount is the Adjusted Base Liability listed above.**Step 6 - Ability to Pay and Ability to Cont. Business**  
Determined by the Water Board - Adjusted Base Liability value may be increased or decreased based on ability to pay and deterrent considerations.**Step 7 - Other Factors**  
At discretion of the Water Board, including staff costs, environmental justice issues, and size of assessment relative to past penalties.**Step 8 - Economic Benefit**  
Calculated based on type and cost of actions required, present value of economic benefit, and any economic benefits gained by discharger.  
Note: Adjusted Total Base Liability amount shall be at least 10% higher than the Economic Benefit Amount.  
Examples of actions that could have been taken include: providing a redundant chlorine residual monitoring system, providing automatic chlorine shutoff.**Step 9 - Max and Min Liability Amounts**  
Compare value with statutes - penalty is within statutory constraints.**Step 10 - Final Liability Amount**  
Based on allowed adjustments: **\$532,813 or \$853**  
However, this amount does not include adjustments at the discretion of the Water Board or based on economic benefit so value may be higher (must be at least 10% higher than economic benefit)

**Scenario 2: Exceedance of effluent daily copper limit- Non-NPDES Discharge**

Quantity: 15 MG  
 # of days: 1  
 15 MGD plant

**Step 1 - Potential Harm Factor:**

Factor No.	Consideration	Determined Score	Comments
1	Harm or potential harm to BUs	2	Below moderate threat to BUs - observed, but minor, impacts to aquatic life due to effluent limit violation
2	Physical, chem, bio, or thermal characteristics of discharge	2	Discharged material is non-hazardous waste and poses a moderate risk of harm - relatively benign but moderate risk
3	Susceptibility to cleanup or abatement	1	Less than 50% of the discharge is susceptible to cleanup or abatement
Potential for Harm Score:		5	

**Step 2 - Assessment:**

Deviation from Standards Category	
Minor	
Moderate	x
Major	

Per gallon factor (from Table 1): 0.100  
 Assume usage of maximum amount of \$10.00/gal  
 Based on California Water Code 13350(e) the liable amount is for each gallon of waste discharged  
 Therefore, number of gallons liable for is: 15,000,000  
 Per gallon amount of ACL: \$15,000,000

Per day factor (from Table 2): 0.100  
 Assume \$5,000/day of violation based on California Water Code 13350(e)  
 Per day amount of ACL: \$500

**Total Base Liability Amount: \$15,000,000 or \$500**

**Step 3 - Per Day Assessments for Non Discharge**

Assume no non discharge violations

**Step 4 - Adjustment Factors**

Factor	Adjustment
Culpability (a)	0.5
Cleanup and Coop (b)	1
History (c)	1.1

- a) Assume incident was accidental  
 b) Spill was not captured but there was cooperation  
 c) Assume entity has a previous violation - increase by min of 10%

**Adjusted Base Liability: \$8,250,000 or \$275**

**Step 5 - Determining Total Base Liability Amount**

Single incident, so the Total Base Liability Amount is the Adjusted Base Liability listed above.

**Step 6 - Ability to Pay and Ability to Cont. Business**

Determined by the Water Board - Adjusted Base Liability value may be increased or decreased based on ability to pay and deterrent considerations.

**Step 7 - Other Factors**

At discretion of the Water Board, including staff costs, environmental justice issues, and size of assessment relative to past penalties.

**Step 8 - Economic Benefit**

Calculated based on type and cost of actions required, present value of economic benefit, and any economic benefits gained by discharger.

Note: Adjusted Total Base Liability amount shall be at least 10% higher than the Economic Benefit Amount.

Examples of actions that could have been taken include:

**Step 9 - Max and Min Liability Amounts**

Compare value with statutes - penalty is within statutory constraints.

**Step 10 - Final Liability Amount**

Based on allowed adjustments: \$8,250,000 or \$275

However, this amount does not include adjustments at the discretion of the Water Board or based on economic benefit so value may be higher (must be at least 10% higher than economic benefit)

**Scenario 3: Exceedance of monthly average DEHP effluent limit- Non-NPDES Discharge**

Quantity: 465 MG  
 # of days: 7 (assume 31 day month, per page 18 days counted 1, 5, 10,  
 Duration of exceedance: 31 15, 20, 25, and 30 days, assuming a 31 day month)  
 15 MGD plant

**Step 1 - Potential Harm Factor:**

Factor No.	Consideration	Determined Score	Comments
1	Harm or potential harm to BUs	3	Moderate threat to BUs - observed impacts to aquatic life or restrictions on use of a water body
2	Physical, chem, bio, or thermal characteristics of discharge	1	Discharged material is non-hazardous waste and poses only a minor or potential risk of harm - dilute effluent
3	Susceptibility to cleanup or abatement	1	Less than 50% of the discharge is susceptible to cleanup or abatement

Potential for Harm Score: 5

**Step 2 - Assessment:**

Deviation from Standards Category	
Minor	
Moderate	x
Major	

Per gallon factor (from Table 1): 0.100  
 Assume usage of maximum amount of \$10.00/gal  
 Based on California Water Code 13350(e) the liable amount is for each gallon of waste discharged  
 Therefore, number of gallons liable for is: 465,000,000  
 Per gallon amount of ACL: \$465,000,000

Per day factor (from Table 2): 0.100  
 Assume \$5,000/day of violation based on California Water Code 13350(e)  
 Per day amount of ACL: \$3,500

**Total Base Liability Amount: \$465,000,000 or \$3,500**

**Step 3 - Per Day Assessments for Non Discharge**

Assume no non discharge violations

**Step 4 - Adjustment Factors**

Factor	Adjustment
Culpability (a)	0.5
Cleanup and Coop (b)	1
History (c)	1.1

- a) Assume incident was accidental
- b) Spill was not captured but there was cooperation
- c) Assume entity has a previous violation - increase by min of 10%

**Adjusted Base Liability: \$255,750,000 or \$1,925**

**Step 5 - Determining Total Base Liability Amount**

Single incident, so the Total Base Liability Amount is the Adjusted Base Liability listed above.

**Step 6 - Ability to Pay and Ability to Cont. Business**

Determined by the Water Board - Adjusted Base Liability value may be increased or decreased based on ability to pay and deterrent considerations.

**Step 7 - Other Factors**

At discretion of the Water Board, including staff costs, environmental justice issues, and size of assessment relative to past penalties.

**Step 8 - Economic Benefit**

Calculated based on type and cost of actions required, present value of economic benefit, and any economic benefits gained by discharger.

Note: Adjusted Total Base Liability amount shall be at least 10% higher than the Economic Benefit Amount.

Examples of actions that could have been taken include:

**Step 9 - Max and Min Liability Amounts**

Compare value with statutes - penalty is within statutory constraints.

**Step 10 - Final Liability Amount**

Based on allowed adjustments: \$255,750,000 or \$1,925

However, this amount does not include adjustments at the discretion of the Water Board or based on economic benefit so value may be higher (must be at least 10% higher than economic benefit)