

# **University of California, Berkeley**

## **Environmental Enforcement Code**

**Prepared by the Office of Environment, Health & Safety**

**Final 10/29/2018**

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## INTRODUCTION

The provisions of this University of California (UC), Berkeley Environmental Enforcement Code, hereinafter referred to as Code or Environmental Code, are adopted for the purpose of enforcing applicable federal, state, and University of California environmental laws and policies by sworn peace officers (UCPD) and Environment, Health & Safety (EH&S) Specialists within the boundaries of the University of California, Berkeley Campus, or other grounds or properties owned, operated or controlled by the Regents of the University of California and administered by the Berkeley Campus, (all hereinafter referred to as the University).

This Code establishes the methodology by which the University's EH&S and UCPD units will enforce and/or refer environmental criminal cases to the Alameda County, Contra Costa County, or other applicable County District Attorney's Office and applicable agency or agencies (Agency) having jurisdiction such as, but not limited to the Bay Area Air Quality Management District, State Water Quality Control Board, Department of Toxic Substances Control, California Fish and Wildlife, US Fish and Wildlife, US Army Corps of Engineers, and the Environmental Protection Agency.

All provisions of Title 40 of the Code of Federal Regulations and Titles 10, 14, 23, and 27 of the California Code of Regulations, as well as various other environmental laws, regulations, policies, and rules not explicitly mentioned herein, are expressly applicable on University property.

All persons who enter University property are expected to have knowledge of the provisions of this Environmental Code and are subject to penalties for violations of such provisions. Parties found in violation of the provisions of this Code are subject to Notices of Violation or other penalties from the University or appropriate regulatory enforcement agency.

All current provisions of this Environmental Code shall be maintained for public inspection at all times at the University of California, Berkeley, Police Department, hereinafter referred to as the Police Department, and during business hours at other designated places on the University, including the Environment, Health & Safety office or other administrative offices of the University of California, Berkeley. This code will reside on the EH&S website at <http://ehs.berkeley.edu>.

Questions regarding provisions of the Environmental Code can be directed to:

University of California Police:(510) 642-6760

Environment, Health & Safety: (510) 642-3073

# Chapter 1 - DEFINITIONS

## SECTION 1.01

**Administrative Civil Liability (“ACL”):** A determination by the University or outside Agency that a discharger, company, facility, or other person has violated an applicable environmental law, regulation, policy, rule, order, etc. An ACL determination may be accompanied by fines or other penalties.

**Agency:** The federal, state, or local agency responsible for oversight of environmental laws, regulations, policies, rules, orders, etc., such as: Air District, State Water Resources Control Board, Regional Water Quality Control Board, US Fish and Wildlife Service, US Coast Guard, Army Corps of Engineers, etc.

**Discharge:** Any release, emission, or other addition of any pollutant to waters, air, or land from any source.

**Discharger:** A person or company who discharges pollutants to the environment.

**EH&S:** UC Berkeley’s Office of Environment, Health, and Safety.

**Environmental emergency:** a sudden-onset of abnormal site conditions or accident resulting from natural, mechanical or human-induced factors where human health, environment, or wildlife are at risk due to the release of hazardous and noxious substances. Examples include: domestic water main breaks, sewer overflows, fires, hazardous materials spills, chemical accidents, toxic-waste dumping, and construction site runoff.

**Hazardous material:** Any material that can pose a hazard to human health or to the environment when improperly managed, as defined in both federal and state laws and regulations. Hazardous materials generally possess at least one of four characteristics: ignitability, corrosivity, reactivity or toxicity; or appear on specific federal or state lists.

**Illicit Discharge:** The discharge of pollutants to the environment in a manner contrary to relevant laws or allowances.

**Informal Enforcement Action:** Any enforcement action taken by the University or outside Agency staff where people or the environment are not at immediate risk or exposed to pollution. An informal enforcement action can include any form of communication (verbal, written, or electronic) between the University or Agency executive staff and a discharger about a violation or potential violation.

**Notice to Comply (“NTC”):** A notice issued by EH&S or an Agency for minor violations that involve no, or minimal, discharge. The violator is typically given a timeframe to comply with the NTC before the University or Agency will issue a Notice of Violation.

**Notice of Violation (“NOV”):** A notice issued by EH&S or an Agency as a result of an investigation that results in enforcement of applicable environmental laws, regulations, policies, rules, orders, etc. The University at its discretion utilizes NOVs for more significant violations than violations that result in NTCs, and the NOV notifies the recipient that the University believes the recipient has committed one or more violations. The NOV provides instructions for coming into compliance and/or may include a citation and penalties.

**Person:** Any natural person, as well as any company, corporation, partnership, or other non-human entity.

**Pollutant:** Any substance defined as a “pollutant” under applicable environmental laws, regulations, policies, rules, orders, etc.

**Priority Violations:** Categories of violations that may be used by EH&S or an Agency to evaluate the application and escalation of enforcement, as outlined below:

- *High Priority Violations* are those that pose an immediate and significant threat and have detrimental actual or potential impacts to human health and/or the environment. Violations involving falsification of information, violations of prior enforcement actions, and chronic violations are also in this category.
- *Medium Priority Violations* may involve any of the following: moderate impacts on human health and/or the environment, failure to submit information or to comply with schedules, or negligent or inadvertent noncompliance with permits or regulations.
- *Low Priority Violations* are those caused by dischargers violating infrequently or for the first time, with minor actual or potential human health and/or environmental impacts.

**UCPD:** University of California Police Department.

**University Legal Representative:** University staff or hired personnel who have authority to represent the University in court proceedings and in other legal matters.

**Willful Disregard:** An act done voluntarily with either an intentional disregard of, or plain indifference to, the requirements of applicable environmental laws, regulations, policies, rules, orders, etc.

## **Chapter 2 - AUTHORITY**

### **SECTION 2.01 AUTHORITY TO ENFORCE**

Various statutes, regulations, rules, orders, and policies establish legal requirements related to, and provide the University with enforcement authority over, environmental concerns, including, but not limited to, the following:

- California Constitution, Article IX, section 9
- California Fish and Game Code sections 2080, 5650-5656
- California Penal Code, Titles 10 and 14 (particularly sections 374, 375 and 594)
- California Code of Regulations, Title 5, Division 10, Chapter 1, sections 100000 – 100016 (Regulations Governing Conduct of Non-Affiliates in the Buildings or on the Grounds of the University of California)
- State Water Resources Control Board, Order No. 2013-0001 DWQ

Based on the University's authority and self-governing status, as described above, the University may enforce and issue citations related to various federal, state, and University-specific statutes, regulations, rules, orders, policies, and other legal requirements on University property.

### **SECTION 2.02 APPLICATION OF THIS CODE**

The provisions of this Code may be enforced by: all duly sworn officers of UCPD, such persons as are delegated authority by the UC Berkeley Chief of Police, University Legal Representatives, and outside Agencies.

## **Chapter 3 – COMPLIANCE AND ENFORCEMENT**

### **SECTION 3.01 PERSONS RESPONSIBLE FOR ENFORCEMENT**

It shall be the duty of EH&S, in conjunction with members of UCPD and such persons as are authorized by the UC Berkeley Chief of Police to enforce all of the provisions of this Code and all applicable provisions of federal, state, and University-specific statutes, regulations, rules, orders, policies, and other legal requirements. EH&S and UCPD procedures are outlined in Attachment I.

### **SECTION 3.02 COMPLIANCE WITH THIS CODE**

All persons on property owned, managed, or otherwise controlled by the Regents of the University of California on behalf of its Berkeley campus shall comply with all applicable federal, state, and University-specific statutes, regulations, rules, orders, policies, and other legal requirements that are designed to protect the environment, health, and safety. Violations of this Code are subject to enforcement by the University and/or the Agency of jurisdiction in accordance with applicable provisions of law and this Code.

### **SECTION 3.03 EXEMPTION OF CERTAIN ENVIRONMENTAL ACTIVITIES**

(a) The provisions of this Code relating to the campus environment shall not apply to any emergency responder, hazardous materials responder, Police or Fire Department, public ambulance, or public utility environmental responder when any such response is properly undertaken in the manner provided by law in response to an emergency.

(b) Any responder from UCPD, UC Berkeley Facilities Services, City of Berkeley, County of Alameda, County of Contra Costa, State of California, federal government, EH&S, contracted responding entity, or other environmental response service may be programmatically exempted from some or all of the provisions of this code by EH&S or UCPD. Such exemption must be documented in writing and may be revoked by the University at any time.

(c) Certain environmental exemptions concerning research and the construction industry exist within permitted activities and will be assessed, confirmed, and approved in writing with EH&S.

(d) The foregoing exemption shall not, however, protect any responder from the consequences of his/her willful disregard for the environment and/or health and safety of others.

### **SECTION 3.04 ENFORCEMENT**

(a) The enforcement process and tools used by the University in response to uphold this Code will be as described in detail in following sections, by escalating order:

- Informal enforcement
- Formal enforcement (notice to comply and notice of violation)
- Damage claims
- Civil or criminal action in a court of law

The University will take into consideration all relevant circumstances when determining what form of enforcement action to pursue, including, but not limited to, the following:

- The extent of harm caused by the violation.
- The nature and persistence of the violation.
- The length of time over which the violation occurs.
- The frequency of past violations.
- The record of maintenance and housekeeping.
- The unproven or innovative nature of the control equipment.
- Any action taken by the defendant, including the nature, extent, and time of response of the cleanup undertaken, to mitigate the violation.
- The financial burden to the defendant.

Violations and enforcement types that can be issued by the University are outlined in Attachment II.

Where commercial entities are found to be in violation of the Code, notices will be issued in the name of the commercial entity that employs the personnel found to be in violation. The notice will be given to the supervisor of such personnel. Where a violation occurs on University property that is occupied or leased by a developer, construction contractor, or other third party, violations may be given to the entity found to be in violation or to the lessee. Where multiple parties, tenants, or subcontractors of leased property or construction sites are involved and their responsibility for a violation is unclear for purposes of issuing a Notice of Violation, the General Contractor or entity managing the site/lease property will be named in the Notice of Violation.

#### (b) Informal enforcement

The purpose of an informal enforcement action is to quickly bring a violation to the discharger's attention and to give the discharger an opportunity to return to compliance as soon as possible.

The University or Agency may take formal enforcement action in place of, or in addition to, informal enforcement action. Continued noncompliance may be considered a high priority violation and can trigger formal enforcement action.

Verbal enforcement action may be the first step in informal enforcement, and an enforcement letter from EH&S is often appropriate as a follow-up, or in lieu of, a verbal enforcement action. Enforcement letters are signed by University staff or legal representatives or by the appropriate senior Agency staff. The letter should will the discharger of the specific alleged violations, and, if known to staff, discuss how and why the violations occurred and how and when the discharger will correct the violation and achieve compliance.

#### (c) Formal enforcement

Formal enforcement may be undertaken in any of the following manners:

##### (1) Notice to Comply

The use of a Notice to Comply (Attachment III) is a primary means by which the University or Agency will notify the discharger that activities or operations require correction, alteration, or cessation. The Notice to Comply will include appropriate citation(s) to the relevant legal requirement(s) and the expected timeline for coming into compliance. Notices to Comply are intended to be issued for conditions that are not in compliance with applicable requirements and pose the possibility of an environmental or health and safety impact.

##### (2) Notice of Violation (NOV):



The use of a Notice of Violation (Attachment IV) is a means by which the University may issue citations for any priority violations or unfulfilled Notice to Comply obligations. A violation is determined by EH&S after considering factors defined in the relevant statute, regulation, rule, order, policy, or other legal requirement, as well as the impacts to, or danger the violation poses to, or the potential that the violation has for endangering, human health, safety, public welfare, or the environment.

An NOV letter will be signed by a University Legal Representative, designated UCPD staff or other delegated University staff, and will be addressed and mailed to the discharger by certified mail. The NOV letter will include a description of specific violations, a summary of enforcement options, ACLs, and, when appropriate, a request for a written response by a specified date. A copy of the NOV letter will be filed with any Agencies that have jurisdiction.

The NOV letter may include appropriate citations to the relevant statute, regulation, rule, order, policy, or other legal requirement, and will list any Agencies that also have jurisdiction. In determining the amount of monetary penalties to be levied by the University, or in reaching any settlement regarding natural resources damages, EH&S will follow the methodology of damage assessments made by the Agency having jurisdiction of the environmental program that forms the subject of the violation. The University's methodology for determining Administrative Civil Liabilities will be detailed for each violation type as described in Attachment V.

### (3) Damage claims

In addition to penalties levied through a Notice of Violation, contractors and non-affiliates of the University on University property may also be liable for claims filed against them for property damages or natural resources recovery costs. Recovery costs may be pursued by the University for property or environmental damages that require cleanup, restoration, or emergency response, or incur any other cost for the University, including University staff time in managing enforcement activities and responsibilities. Damage claims may be filed for any priority violation.

### (4) Civil or criminal action in a court of law

For serious, willful, or criminal violations; non-compliance with Notices of Violation; or unsatisfied damage claims; the University may refer cases to other enforcement authorities for those authorities to initiate a civil action in any federal or state court of competent jurisdiction. The University may also initiate civil action against serious or willful dischargers.

## Chapter 4 - CODE APPLICATION

### SECTION 4.01. APPLICATION OF THIS CODE

- (a) The provisions of this Code shall apply at all times except where exemptions are allowed, as described above.
- (b) All applicable provisions of this Code shall apply anywhere on property owned, managed, or otherwise controlled by the Regents of the University of California on behalf of its Berkeley campus.
- (c) Where natural resource damages have occurred and remedial action is needed, the University may choose to manage and/or hire its own personnel, contractors, and service providers and back-charge incurred costs to the violator.
- (d) Other Agencies having enforcement jurisdiction may issue citations or violations in addition to the University's enforcement procedures.
- (e) Any person subject to enforcement action by the University has the right to appeal within 30 days of receipt of the relevant notice. Appeals must be submitted in writing by email at: [ehs-ep@berkeley.edu](mailto:ehs-ep@berkeley.edu) or by mail at: University of California, Berkeley; Environment, Health & Safety – Environmental Protection; 317 University Hall, #1150, 94720, Berkeley, CA.

Within 30 days of receiving an appeal, the University will hold an in-person meeting with the discharger to review details of each violation and associated enforcement proposed by the University. Following review of each case, the University, or its Legal Representative, may withdraw the violation or a violation may be redrafted and reissued, as appropriate.

During the review of an appeal, the University and discharger may agree to:

- Follow the original ACL determination, and the discharger(s) may waive its right to a court hearing, pay any penalties and costs owed to the University, and undertake any other activities required by the University;
- Issue an adjusted or modified ACL determination;
- Negotiate a settlement wherein the violator may choose to apply a portion of any penalties or costs toward University restoration projects.

Where the alleged discharger does not agree with the enforcement or appeal decision of the University, the discharger may file a challenge in a court of relevant jurisdiction.

### SECTION 4.02 ADMINISTRATIVE CIVIL LIABILITY DETERMINATION

The University will administer violations as outlined in “Monetary Assessments in Administrative Civil Liability (ACL) Actions Made by the University,” included as Attachment V, to help ensure that these provisions are exercised in a transparent, fair, and consistent manner and to make the necessary findings when determining an ACL.

An outline of each step in determining an ACL is provided immediately below.

- Step 1. *Actual Harm or Potential for Harm for Discharge Violations*
- Step 2. *Per Gallon and Per Day Assessments for Discharge Violations*
- Step 3. *Per Day Assessments for non-Discharge Violations*
- Step 4. *Adjustment Factors*
- Step 5. *Total Base Liability Amount*

Thereafter, the Total Base Liability amount may be adjusted, based on consideration of the following:

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

Step 7. *Economic Benefit*

Step 8. *Other Factors as Justice May Require*

Step 9. *Maximum and Minimum Liability Amounts*

Step 10. *Final Liability Amount*

## ATTACHMENT I - EH&S AND UCPD PROCEDURES

### EH&S:

When notified of an environmental incident involving illicit discharges, spills, or hazardous materials, EH&S will send technical staff for initial investigation and/or cleanup, and communicate with building or department staff and site personnel to determine status of building or environmental impact and cause. If present, EH&S staff will get briefed by the UCPD on-site officer.

EH&S will investigate each incident and summarize its findings in the Incident Report Form (Attachment VI). EH&S's Incident Report Form classifies events and their impact to the environment, people or property, as well as their causes. This form will be utilized in determining, if applicable, which type of enforcement action will be taken by the University as outlined in Chapter 3.

The Incident Report Form will be used to clarify negligent or deliberate illicit discharges, whether the event requires emergency or non-emergency response, enforcement response, and if any imminent threat or impact to the environment, people or property occurred. Where an incident is deemed as, or suspected of being, an environmental emergency, EH&S will utilize members of its Dedicated Spill Response Team (DSRT).

If the environmental incident is determined or suspected to be a result of a deliberate illicit discharge, negligence, or willful disregard for the environment or public safety, EH&S will immediately contact UCPD and inform the dispatcher or watch commander that an environmental incident occurred that should be treated as a criminal case.

EH&S may need to request a private-persons arrest by UCPD if EH&S staff witnessed the offense.

### UCPD:

In the case of an illicit discharge, UCPD may likely be first on the scene. If a suspected environmental release is occurring, UCPD shall immediately start implementation of the items below:

- Call EH&S Reception during business hours: 642-3073. After hours call the Dedicated Spill Response Team through UCPD dispatch.
- If there is an active discharge, consult with site personnel, contractor, EH&S, or Berkeley Fire Department to attempt to stop the source or flow if safe to do so.
- Secure the area (i.e. cordon off with tape, secure door handles, post officer to prevent entry until EH&S arrives). Time spent beyond 1-hour will be recharged to EH&S.
- Penal Code citations may be issued depending on violation. UCPD should consider detaining per FGC 5650(a) or FGC 5652(a), where required. Violations are classified as misdemeanors per FGC 1602(a) or other applicable codes. A private-persons arrest might be needed from EH&S or other witness.
- Note names and contact information of anyone involved, Manager/Supervisor, construction site lead or any incident witnesses.
- Start a personnel in/out log for the site if people need access.
- Take pictures of the scene as necessary.

- Preserve the evidence in place for EH&S on-scene evaluation.
- UCPD Business Services Unit will process any applicable recharges.

EH&S technical staff responding to an incident will be in communication with the dispatcher or watch commander to discuss the incident and to determine if it needs to be treated as a criminal case.

## ATTACHMENT II – NOTICE OF VIOLATION TYPES

Violations that can be issued by the University may include, but are not limited to, the following enforcement types:

### I. NOTICES OF STORMWATER NONCOMPLIANCE

**State Water Resources Control Board Order No. 2013-0001 DWQ (Phase II Small Non-Traditional MS4 Permit) requires institutions such as the University or local RWQCB to enforce water regulations, assign violations to responsible parties accordingly and notify the SWRCB.**

This Code requires the University to conduct investigations and to require technical or monitoring reports from any person who has discharged, discharges, or is suspected of having discharged, or who proposes to discharge pollutants in accordance with the conditions in the Code.

California Water Code Sections 13267(b) and 13383, and Order No. 2013-0001 DWQ requirements are enforceable when signed by the University's Legal Representative, District Attorney or Executive Officer of the RWQCB.

California Water Code section 13267 (b) and Order No. 2013-0001 DWQ requires the University or Agency to:

- Provide the person who is required to supply the reports with a written explanation with regard to the need for the reports, and;
- Identify the evidence that supports requiring that person to provide the reports.

Failure to comply with requirements made by the University or RWQCB pursuant to California Water Code section 13267(b) is a priority violation and may result in administrative civil liability pursuant to California Water Code section 13268.

Failure to comply with orders made pursuant to California Water Code section 13383 may result in administrative civil liability pursuant to California Water Code section 13385.

### II. NOTICES OF ENVIRONMENTAL AND HEALTH CODE NONCOMPLIANCE

Under Sections 42403 and 57000-57020 of the California Health and Safety Code, the University and/or Agency have the right to seek civil penalty for violations of the Code.

### III. NOTICES OF FISH AND WILDLIFE CODE NONCOMPLIANCE

Sections 2080 and 5650.1 of Fish and Wildlife Code are enforceable by all law enforcement officers of the state and will be utilized as the primary regulation for enforcing and detaining individuals when deemed appropriate by UCPD or when a 'private-person arrest' is requested and granted on the behalf of EH&S or other campus legal representatives.

### IV. NOTICES OF PENAL CODE NONCOMPLIANCE

Law Enforcement Officers are given authority to issue citations to individuals under the Penal Code utilizing the appropriate County Bail Schedule when deemed appropriate for certain violations.

UCPD will utilize the following enforcement sections when issuing citations to suspects on behalf of this Code:

- PC 374.2 – Harmful Sewer Dumping;
- PC 374.3 – Dumping;
- PC 374.3 (h) – Dumping in Commercial Quantities;
- PC 374.4 – Littering;
- PC 374.7 – Dumping of waste in waters;
- PC 375(a)(b) – Release of hazardous material;
- PC 594 – Vandalism.

**ATTACHMENT III  
NOTICE TO COMPLY**

UNIVERSITY OF CALIFORNIA, BERKELEY

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BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

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ENVIRONMENT, HEALTH AND SAFETY

BERKELEY, CALIFORNIA 94720-1150

UNIVERSITY HALL, 3<sup>rd</sup> FLOOR

XX DATE, YEARXX

RE: LETTER OF INSTRUCTION #X

XXPROJECT NAMEXX

XXADDRESSXX

XXPHONEXX

The following information is hereby issued as a clarification or interpretation of XXCODEXXLEASE AGREEMENTXXSPECSXX. This is a clarification or interpretation only and not intended to change the scope of the Work, the Contract Sum, or the Contract Time.

**Subject: Notice to Comply - Corrective Action for Stormwater Controls and Site Cleanup**

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Contractor is hereby instructed to perform the following corrective actions as specified in the project's existing XXCONTRACTXXSPECSXXPLANSXX: *Examples*

- Clean and sweep sediment built up at site perimeter and blocked storm drains.
- Add and maintain filter fabric at identified storm drain inlets.
- Restore and protect areas of open mud and landscaping.
- Install perimeter and entry controls on west side of site and east side staging/entry.
- Submit an updated erosion control/BMP map based on current site conditions and activities.

EH&S expects corrections to be made within XX working days or prior to predicted rain.

Submit photo documentation to [ehs-ep@berkeley.edu](mailto:ehs-ep@berkeley.edu) when the correctional items listed above are completed.

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XXEH&S-Environmental ProtectionXX

XXTitleXX

cc: XXReal EstateXX

Environment, Health & Safety

XXProject ManagerXX

University of California, Berkeley

**ATTACHMENT IV  
NOTICE OF VIOLATION**

UNIVERSITY OF CALIFORNIA, BERKELEY

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BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

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ENVIRONMENT, HEALTH AND SAFETY

BERKELEY, CALIFORNIA 94720-1150

UNIVERSITY HALL, 3<sup>rd</sup> FLOOR

XX DATE, YEARXX

RE: NOTICE OF VIOLATION #X

XXPROJECT NAMEXX

XXADDRESSXX

XXPHONEXX

**Subject: ~~Notice of Violation~~ – Inadequate Stormwater Controls, Discharges and Order for Site Cleanup**

Based on University Environmental Code violations that occurred at XXSiteXX on XXDate of Incident(s)XX, XXDischargerXX is hereby given Notice of Violation(s) on behalf of the State of California:

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XXDischargerXX is found to have violated the following State code(s) resulting in environmental damages and civil penalty amounts as determined by the University of California: *Examples*

- Cal. Water Code section 13385(a): NPDES Permit violation: Sediment discharges to creek from construction, unprotected site during rain storm.
- Cal. Water Code section 13272: Oil discharges to creek and land from leaky equipment.
- Cal. Water Code section 13350 & PC 374.7: 100 gallons of waste discharged to storm drain, Dumping waste in waters.
- Cal. Water Code section 13385 & Cal. Health and Safety Code section 42403: Fugitive dust emissions and discharges to land.

In addition to the listed violations, University staff time and damages recovery for the amount of \$XX\$ is being sought by Environment, Health and Safety.

ACL determinations, fines, recovery costs and factors are included as an attachment. See next page for payment and appeal instructions.

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XXEH&SX

X Environmental Protection ManagerXX

Environment, Health & Safety

cc: XXReal EstateXX

University of California, Berkeley

XXProject ManagerXX



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UC Berkeley Notice of Violation Appeals and Payment Options

Any party issued a violation from the University EH&S office has the right to appeal within 30-days of receipt. Appeals must be submitted in writing by email at: [ehs-ep@berkeley.edu](mailto:ehs-ep@berkeley.edu) or by mail at:

University of California, Berkeley

Environment, Health & Safety – Environmental Protection

317 University Hall, #1150

Berkeley, CA. 94720

Within 30-days of receiving a request to appeal, the University will hold an in-person meeting with the alleged discharger to review details of each violation and associated enforcement proposed by the University. Following review of each case, the University, or legal representatives, may withdraw the violation or a violation may be redrafted and reissued as appropriate.

During an appeal review, the University and discharger may agree to:

- Follow the original ACL determination, and the discharger(s) may waive its right to a court hearing, pay any penalties and costs owed to the University, and undertake any other activities required by the University;
- Issue an adjusted or modified ACL determination;
- Negotiate a settlement wherein the violator may choose to apply a portion of any penalties or costs toward University restoration projects.

Where the alleged discharger does not agree to enforcement or appeal decisions made by the University, the discharger may petition with the local Water Board or file registry with the appropriate jurisdiction for a court hearing.

Any payment made directly to the University for violations, restoration projects and/or recovery damages, shall be made within 30-days of final violation, settlement agreement, or claim and addressed to:

University of California, Berkeley

Environment, Health & Safety – Environmental Protection

317 University Hall, #1150

Berkeley, CA. 94720

## ATTACHMENT V

### MONETARY ASSESSMENTS IN ADMINISTRATIVE CIVIL LIABILITY (ACL) ACTIONS MADE BY THE UNIVERSITY

#### **A. Penalty Calculation Methodology**

As a general matter, where a civil penalty structure has been devised to address environmental violations for illicit discharges, as in the California Water Code, the University will follow the latest methodology of damage assessments made by the agency having jurisdiction of the environmental program (such as Air District, Water Board or Fish and Wildlife). The University's methodology for determining Administrative Civil Liabilities will be detailed for each violation type.

The Porter-Cologne Act requires that certain civil liabilities be set at a level that accounts for any "economic benefit or savings" violators gained through their violations. (Wat. Code, § 13385, subd. (e).) Economic benefit or savings is a factor to be considered in determining the amount of other civil liabilities. (Wat. Code, § 13327.)

The Phase II Small MS4 Permit requires the University to impose civil liabilities at levels sufficient to ensure that violators do not gain a competitive economic advantage from avoiding and/or delaying the costs of compliance. The University is entitled with liability provisions at their disposal which the Legislature and the public expect them to fairly and consistently implement for maximum enforcement impact to address, correct, and deter water quality violations.

Accordingly, any assessment of an ACL, whether negotiated pursuant to a settlement agreement or imposed after an administrative adjudication, should:

- Be assessed in a fair and consistent manner;
- Fully eliminate any economic advantage obtained from noncompliance;
- Fully eliminate any unfair competitive advantage obtained from noncompliance;
- Contain evidence-based and/or policy-based findings that provide transparency in understanding the bases for a decision;
- Bear a reasonable relationship to the gravity of the violation and the harm or potential for harm to beneficial uses or regulatory program resulting from the violation;
- Deter the specific person(s) identified in the ACL from committing further violations; and,
- Deter similarly situated person(s) in the regulated community from committing the same or similar violations.

The liability calculation process followed by the University will be consistent with these objectives.

#### **B. Other Administrative Civil Liability Settlement Components**

In addition to a reduction of ACLs, a settlement can result in the permanent suspension of a portion of the liability when the discharger voluntarily agrees to fund University restoration projects.

Settlement agreements should be memorialized by the University as stipulated ACL orders, and resolve only the claims that are made or could have been made based on the specific facts alleged in the ACL complaint. A settlement shall never include the release of any unknown claims or a waiver of rights under Civil Code section 1542.

## ATTACHMENT VI - EH&S INCIDENT RESPONSE FORM

Incident ID # (year.month.day.location)	Upland Problem Description	Investigation Notes																				
	<i>Check all that apply</i>	Initial investigation date: <input type="text"/>																				
<b>Responder Information</b>	Dumping <input type="checkbox"/>	Investigators: <input type="text"/>																				
Call/email taken by: <input type="text"/>	Wash water, suds, etc. <input type="checkbox"/>																					
Call/email time: <input type="text"/>	Oil/solvents/chemicals <input type="checkbox"/>	<i>Check all that apply</i>																				
Call/email date: <input type="text"/>	Construction site <input type="checkbox"/>	No investigation made <input type="checkbox"/>																				
Rainfall (inches) in past 24-48 hours: <input type="text"/>	Sewage <input type="checkbox"/>	Referred to different dept/agency <input type="checkbox"/>																				
	Other <input type="checkbox"/>	Investigated: No action necessary <input type="checkbox"/>																				
<b>Reporter Information</b>		Investigated: Requires action <input type="checkbox"/>																				
Incident time: <input type="text"/>	<b>Stream corridor problem indicator description</b>																					
Incident date: <input type="text"/>	<i>Check all that apply</i>	Hours between call and investigation: <input type="text"/>																				
Caller contact information (optional): <input type="text"/>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; vertical-align: top;">Odor</td> <td style="width: 50%;">None <input type="checkbox"/></td> </tr> <tr> <td></td> <td>Sulfide (rotten eggs) or natural gas <input type="checkbox"/></td> </tr> <tr> <td></td> <td>Sewage <input type="checkbox"/></td> </tr> <tr> <td></td> <td>Rancid/sour <input type="checkbox"/></td> </tr> <tr> <td></td> <td>Petroleum <input type="checkbox"/></td> </tr> <tr> <td></td> <td>Other <input type="checkbox"/></td> </tr> <tr> <td></td> <td>Normal <input type="checkbox"/></td> </tr> <tr> <td></td> <td>Oil sheen <input type="checkbox"/></td> </tr> <tr> <td></td> <td>Cloudy (greyish) <input type="checkbox"/></td> </tr> <tr> <td></td> <td>Suds <input type="checkbox"/></td> </tr> </table>	Odor	None <input type="checkbox"/>		Sulfide (rotten eggs) or natural gas <input type="checkbox"/>		Sewage <input type="checkbox"/>		Rancid/sour <input type="checkbox"/>		Petroleum <input type="checkbox"/>		Other <input type="checkbox"/>		Normal <input type="checkbox"/>		Oil sheen <input type="checkbox"/>		Cloudy (greyish) <input type="checkbox"/>		Suds <input type="checkbox"/>	Hours to close incident: <input type="text"/>
Odor		None <input type="checkbox"/>																				
		Sulfide (rotten eggs) or natural gas <input type="checkbox"/>																				
		Sewage <input type="checkbox"/>																				
		Rancid/sour <input type="checkbox"/>																				
		Petroleum <input type="checkbox"/>																				
		Other <input type="checkbox"/>																				
		Normal <input type="checkbox"/>																				
		Oil sheen <input type="checkbox"/>																				
		Cloudy (greyish) <input type="checkbox"/>																				
	Suds <input type="checkbox"/>																					
<b>Incident Location (complete one or more of the following)</b>		Date case closed: <input type="text"/>																				
Latitude and Longitude <input type="text"/>	Appearance	Notes: <input style="width: 100%; height: 100%;" type="text"/>																				
Stream address or Outfall #: <input type="text"/>																						
Closest street address: <input type="text"/>																						
Nearby landmark: <input type="text"/>																						
<b>Primary Location Description</b>	Observed Impacts																					
<i>Check all that apply</i>																						
Stream corridor (in or adjacent to stream) <input type="checkbox"/>																						
Upland area (land not adjacent to stream) <input type="checkbox"/>																						
<b>Secondary Location Description</b>	Narrative description of problem																					
<i>Check all that apply</i>																						
Outfall <input type="checkbox"/>																						
In-stream flow <input type="checkbox"/>																						
Near storm drain <input type="checkbox"/>																						
Along banks <input type="checkbox"/>	Suspected Violator (name, personal or vehicle description, license plate #, etc)																					
Near other water source <input type="checkbox"/>																						
Other description: <input type="text"/>																						