

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

IN THE MATTER OF:

Dieu Ngu Temple)
14472 Chestnut Street)
Westminster, CA 92683)
Attn: Thich Ly)

**Affirming Order No. R8-2016-0046
for
Mandatory Minimum Penalty**

INTRODUCTION

This Affirming Order No. R8-2016-0046 (Order) is entered into by and between the Division Chief of the California Regional Water Quality Control Board, Santa Ana Region (Regional Board) on behalf of the Regional Board Prosecution Team and Dieu Ngu Temple (Discharger) (the Regional Board and the Discharger are collectively referred to as the Parties) and is presented to the Regional Board or its delegee, for adoption as an Order by settlement, pursuant to Government Code 11415.60. This Order accepts the penalties assessed to the Discharger for violations subject to administrative civil liability pursuant to California Water Code (hereinafter Water Code) sections 13399.33, subdivisions (c) and (d).

RECITALS

1. The Discharger is engaged in construction activity located at 14472 Chestnut Street, in the city of Westminster. The Discharger is currently regulated under the State's General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ as amended by Order No. 2010-0014-DWQ as amended by Order No. 2012-0006-DWQ, NPDES No. CAS000002 (General Permit) under WDID Number 8 30C369619. The General Permit requires submittal of an annual report by September 1 of each year.
2. The Discharger's 2014-2015 annual report was not received by Regional Board staff by the September 1, 2015 deadline. Therefore a Notice of Non-Compliance (NNC) was issued to Dieu Ngu Temple, by certified mail, on October 1, 2015. The NNC requested that Dieu Ngu Temple submit the 2014-2015 annual report by October 30, 2015 to the Regional Board. The return receipt showed the NNC was received on October 5, 2015.
3. On October 19, 2015, Mr. David Crane, Thich Ly's representative, left a voicemail with Board staff indicating that he didn't believe the 2014-2015 annual report should be required to be submitted due to a "miscategorization". Mr. Crane did not elaborate on the matter. Thich Ly is Dieu Ngu Temple's contact on file.

4. On November 2, 2015, Regional Board staff did not receive an adequate response to the first NNC, therefore a second NNC was issued. The return receipt showed it was received on November 6, 2015. The second NNC requested that Dieu Ngu Temple submit the 2014-2015 annual report by November 29, 2015.
5. On November 13, 2015, Mr. Crane left a voicemail with Board staff stating that he spoke to someone who told him to disregard the above-mentioned Notices of Non-Compliance.
6. On November 17, 2015, Board staff spoke to Mr. Crane regarding Dieu Ngu Temple's 2014-2015 annual report. Mr. Crane stated that someone from the Santa Ana Regional Water Quality Control Board office told him to disregard the Notices of Non-Compliance. Mr. Crane did not know who he spoke to, but was under the impression that the 2014-2015 annual report was not required to be submitted. Board staff told Mr. Crane that the information he received was incorrect and reiterated the final annual report submittal deadline of November 29, 2015.
7. On November 17, 2015, following the above-mentioned conversation, Board staff contacted Mr. Crane and Thich Ly via email, again reiterating the deadline and impending monetary penalties. Included in the email were instructions for submitting the 2014-2015 annual report and copies of the Notices of Non-Compliance dated October 1, 2015 and November 2, 2015.
8. On November 23, 2015, Mr. Crane told Board staff that Thich Ly was out of town, but that the 2014-2015 annual report would be completed by November 29, 2015. Board staff informed Mr. Crane that they would be available to provide assistance in submitting the 2014-2015 annual report.
9. On November 25, 2015 Board staff contacted Mr. Crane via phone and explained that this day was Board staff's last opportunity to provide assistance with submitting the 2014-2015 annual report due to the state holiday. Mr. Crane indicated that he would follow-up with Board staff at a later time.
10. No additional correspondence with Board staff was received from the discharger.
11. The Santa Ana Regional Water Quality Control Board received the 2014-2015 annual report from the Westminster School District via the Water Board's Storm Water Multiple Application and Report Tracking System (SMARTS) on June 1, 2016.

LEGAL AUTHORITY

12. Pursuant to California Water Code section 13399.33(c), the Regional Board is required to impose a minimum mandatory penalty of \$1,000 for any person who fails to submit an annual report in accordance with section 13399.31 of the Water Code. Section 13399.33(d) of the Water Code further requires that the Regional Board recover the costs incurred by the Regional Board with regard to those persons (\$900 in staff costs).

SETTLEMENT

13. The Discharger waived its rights to a hearing and has paid the total assessment of \$1,900.
14. The Regional Board Prosecution Team believes that the resolution of the alleged violation is fair and reasonable and fulfills its enforcement objectives and that no further action is warranted concerning the violation.

STIPULATIONS

This Affirming Order is entered into by the Parties to resolve by consent and without further administrative proceedings alleged violations of Complaint No. R8-2016-0021. The Parties incorporate Paragraphs 1 through 14 by this reference, as set forth fully herein and recommend that the Regional Board issue this Affirming Order:

15. **Public Notice:** The Parties acknowledge that the Affirming Order, as signed by the Parties, was noticed for a 30-day public comment period prior to being presented to the Regional Board, or its delegee, for adoption in the Order.
16. **Appeals:** Upon adoption of this Affirming Order, the Discharger waived their right to appeal this Order to the State Board, a California Superior Court and/or any California appellate level court. Nothing in this Order, however, shall be construed to prevent the Discharger from participating as parties or interveners in any appeal of this Order brought by a third party before any California court of law or the State Board.
17. **Water Boards not Liable:** Neither the Regional Board members nor the Regional Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from the negligent or intentional acts or omissions by the Discharger or their respective directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Order.
18. **Authority to Enter Stipulated Order:** Each person executing this Affirming Order in a representative capacity represents and warrants that he or she is authorized to execute this Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
19. **Third Party Claims:** Nothing in this Affirming Order shall be deemed to create any rights in favor of, or to inure to the benefit of, any third party or parties, or to waive or release any defense or limitation against third party claims.
20. **Effective Date:** The effective date of the Affirming Order shall be the date on which it is adopted by the Executive Officer

HAVING CONSIDERED THE PARTIES' STIPULATIONS, THE SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

21. In adopting this Order, the Santa Ana Regional Water Quality Control Board or its Delegee has assessed a penalty in accordance with Water Code section 13385(c) and the Enforcement Policy.
22. The Affirming Order resolves an action brought to enforce the laws and regulations administered by the Santa Ana Regional Water Quality Control Board. The Santa Ana Regional Water Quality Control Board, acting through its Executive Officer, finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.

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

Kurt V. Berchtold
Kurt V. Berchtold
Executive Officer
Santa Ana Regional Water Quality Control Board

6/8/16
Date

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Street and Apt. No., or PO Box No.	14472 Chestnut Street
City, State, ZIP+4®	Westminster, CA 92683