

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

In the Matter of:)	
)	COMPLAINT NO. R2-2008-0034
)	for
Alum Rock School District)	ADMINISTRATIVE
2930 Gay Ave.)	CIVIL LIABILITY
San Jose, Santa Clara County)	
_____)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Alum Rock School District (hereinafter the Discharger) is alleged to have violated provisions of the law for which the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter Water Board) may impose civil liability pursuant to Section 13385 of the California Water Code (CWC).
2. The Water Board will hold a hearing on this matter on August 13, 2008, in the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland, California, 94612. You or your representatives(s) will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of civil liability by the Water Board. You will be mailed an agenda no less than ten days before the hearing date. You must submit any written evidence concerning this complaint to the Water Board not later than 5 pm on July 21, 2008, so that such comments may be considered. Any written evidence submitted to the Water Board after this date and time will not be accepted or responded to in writing.
3. At the hearing the Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

ALLEGATIONS

4. The following facts are the basis of the alleged violation in this matter:
 - a. The Discharger submitted a Notice of Intent (NOI) to obtain coverage under the State Water Resources Control Board's discharge permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order NO. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The Discharger's Waste Discharge Identification Number is 243I009860.

- b. The General Permit requires the Discharger to submit an annual report documenting its sampling and analyses, observations, and an annual comprehensive site compliance evaluation, by July 1 of each year. The General Permit also requires that a copy of the Storm Water Pollution Prevention Plan (SWPPP) be maintained at the site.
- c. The Discharger violated the General Permit by submitting its 2006-2007 annual report on February 13, 2008, 228 days past the July 1, 2007 deadline.
- d. On August 6, 2007, the Executive Officer issued a Notice of Noncompliance (NNC) letter to the Discharger. The Discharger was notified of its obligation to submit an annual report and to comply with the General Permit. The Discharger was required to respond by September 24, 2007, but failed to do so.
- e. By certified mail dated November 13, 2007, the Executive Officer issued a second NNC letter to the Discharger. This letter informed the Discharger that it was in violation of the General Permit and that the Executive Officer would recommend enforcement actions, including administrative civil liability up to \$10,000 per day, if an annual report was not submitted. No written or verbal response to the letter was provided by the Discharger.

Board staff left a telephone message with the Discharger on January 2, 2008, and discussed the issue of noncompliance with the Discharger's representative on February 4, 2008. During the conversations, the Discharger's representative confirmed that the 2006/2007 annual report had not been submitted, and that due to staffing issues, the SWPPP could not be located.

- f. The Discharger submitted the 2006/2007 annual report on February 13, 2008. In the annual report, the Discharger indicated implementation of the SWPPP could not be verified. Based on the late and inadequate annual report and the reported absence of a SWPPP, the Discharger has been in violation of the General Permit for a total of 228 days (July 2, 2007 through February 13, 2008).

PROPOSED CIVIL LIABILITY

- 5. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code 21000 et seq.) in accordance with Section 15321 of Title 14, California Code of Regulations.
- 6. Under CWC Section 13385(c)(1), the Water Board can impose a maximum civil liability of \$10,000 per day of violation. This Complaint addresses violations for the 228 day period from July 2, 2007, through February 13, 2008.
- 7. Under Section 13385(e) of the CWC, the Water Board shall consider the following factors in determining the amount of civil liability to be imposed:

- a. The nature, circumstances, extent, and gravity of the violation:
These annual reports are a key means of determining the quality of stormwater runoff from the Discharger's site and ensuring the Discharger is implementing appropriate control measures at the site. Additionally, they are one of the Discharger's primary tools to self-evaluate site compliance with the permit and to identify any needed improvements.

The Discharger was sent two Notice of Noncompliance letters and was contacted twice via telephone. Also, the Discharger, by submitting an NOI, indicated its intent to comply with all requirements of the General Permit, including the requirement to submit an annual report.

- b. Discharger's ability to pay:
The Discharger has not demonstrated an inability to pay the proposed amount.
- c. Prior history of violations:
The discharger has submitted its annual reports from the previous years in a timely manner.
- d. Degree of culpability:
The storm water regulations are applicable to all specified industrial sites on a nationwide basis. All dischargers are required to comply with the Clean Water Act. The Discharger is fully culpable for violating the terms and conditions of the General Permit, which implements the Clean Water Act.
- e. Savings resulting from the violation:
The Discharger has realized cost savings by: failure to document required sampling and analyses, late submittal of the annual report, and failure to implement and/or document its SWPPP. Assuming an average-sized site, Board staff estimates the minimum economic savings for the violations is approximately \$1000/year.
- f. Other matters that justice may require:
Staff time to prepare a Complaint and supporting information is estimated to be 20 hours. Based on an average cost to the State of \$125 per hour, the total cost is \$2,500.

Basis for Penalty Amount

8. Per CWC Section 13385(e) the following factors in determining an appropriate civil liability amount were considered: the nature, circumstance, 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, and prior history of violations, the degree of culpability, economic benefit or saving, if any, resulting from the violation, and such other matters as justice may require. Using this section as a guide as well as the monetary assessment guidance set forth State Water Resources Control Board's Enforcement Policy, the Settlement Amount was derived.

9. The Assistant Executive Officer of the Water Board proposes that an administrative civil liability be imposed in the amount of \$9,200. Of this amount, \$2,500 is for recovery of staff costs.

The Assistant Executive Officer will not consider any request to reduce the amount of proposed liability based on the Discharger's alleged inability to pay unless the Discharger submits adequate proof of financial hardship, e.g., two years of income tax returns or an audited financial statement.

10. Further failure to comply with the General Permit or amendments thereof beyond the date of this Complaint may subject the Discharger to further administrative civil liability, and/or other appropriate enforcement actions(s), including referral to the Attorney General.

Thomas E. Mumley, Ph.D.
Assistant Executive Officer

Date

WAIVER OF HEARING

You may waive the right to a hearing. If you wish to waive the hearing, an authorized person must check and sign the waiver below and return it to the Regional Water Quality Control Board, San Francisco Bay Region, at 1515 Clay Street Suite 1400, Oakland, CA 94612. Payment of the civil liability must be made within 30 days from the date of this Complaint. Any waiver will not be effective until 30 days from the date of this Complaint was issued, to allow other interested persons to comment on this action.

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WAIVER OF HEARING

I agree to waive my right to a hearing before the San Francisco Bay Regional Water Quality Control Board with regard to violations alleged in Complaint No. R2-2008-0034. I understand that I am giving up my right to be heard and to argue against allegations made by the Executive Officer in this Complaint, and against the imposition of the civil liability proposed.

By waiving my right to a hearing, I agree to pay the full civil liability proposed in Complaint No. R2-2008-0034 by July 21, 2008.

Date

Signature of Discharger's
Authorized Representative

Printed Name

Title