

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

**STAFF SUMMARY REPORT (Cecilio Felix)
MEETING DATE: August 13, 2008**

ITEM: 8

SUBJECT: **VVP American, Inc, 2755 Lafayette St., #65, Santa Clara – Adoption of Administrative Civil Liability Order for Late Submittal of Annual Report**

CHRONOLOGY: The Board has not previously considered this item.

DISCUSSION: We have prepared a Tentative Order (Appendix A) for the Board's consideration that would impose an administrative civil liability (ACL) of \$10,400 on VVP American, Inc. for delinquent submittal of the annual report required by its NPDES permit to discharge industrial stormwater.

VVP American, Inc. (the discharger) operates a glass and glass-related products fabrication facility which is a facility associated with industrial activity required by federal law to have a NPDES permit for discharge of stormwater. Accordingly, the facility is covered by the state Industrial Stormwater General Permit. The permit requires implementation of a stormwater pollution prevention plan to manage sources and activities at the facility that may pollute stormwater discharges, a monitoring program, and an annual comprehensive site compliance evaluation. The permit requires submittal of an annual report by July 1 of each year that provides certification that the stormwater pollution prevention plan has been implemented and a summary of the compliance evaluation and monitoring observations and samples results. The annual report must be signed and certified by a responsible corporate officer who performs decision making functions for the facility.

The discharger did not submit its 2006/07 annual report by July 1, 2007. Consequently, we issued two notice of noncompliance letters and contacted the discharger by phone. The discharger finally submitted the annual report on April 2, 2008, 293 days late. Because of the delinquent submittal of the annual report, which is the primary means of ensuring that the facility is in compliance with permit requirements, the Assistant Executive Officer issued an ACL Complaint in the amount of \$10,400 (Appendix B).

The discharger did not waive its right to a hearing and submitted a comment letter (Appendix C) in response to the Complaint. However, the role and responsibility of the person who sent the letter is not clear (it should have been sent by a responsible corporate official, and the content of the letter is primarily about the dischargers noncompliance with permit requirements in 2007/08 (the discharger did not collect required stormwater runoff samples until March 19, 2008).

In the letter the discharger's representative indicates that the discharger was led to believe that all would be well if it accomplished the task of runoff sampling and analysis in 2008. We disagree. We had informed the discharger that its failure to submit the annual report was a violation of the permit and was subject to monetary penalties and that the discharger needed to submit its delinquent 2006/07 report as soon as possible. We also answered the discharger's inquiries regarding annual report requirements and what it would have to do to demonstrate compliance with permit requirements in its 2007/08 annual report. Our intent was to assist the discharger with returning into compliance in 2007/08, not to express intent to waive enforcement action for the previous year delinquent report.

The discharger's representative indicates that the company was not informed that it was facing civil liability prior to our phone discussions. We sent the two notices of compliance letters to the corporate official and address provided by the discharger provided in its permit application. The letters were not received possibly because the facility has moved into an adjacent building on the property. However, it is the discharger's responsibility and a permit requirement to report any changes in facility contact information to the Water Board. The discharger's representative also states that the current branch manager of the facility would not have known whether a prior report had been submitted, which implies that the discharger had not maintained records required by the permit. Lastly, the discharger asks for leniency but provides no financial information indicating an inability to pay.

The proposed penalty is reasonable, accounts for cost savings by the discharger, and accounts for the eventual submittal of the required report as compared to other dischargers that failed to submit a report. It also accounts for our staff costs to prepare the Complaint and supporting information. It does not account for our staff costs associated with preparing documents and testimony for the hearing.

**RECOMMEN-
DATION:**

Prosecution staff recommends adoption of the Tentative Order. The Executive Officer who has had no involvement with the prosecution of this case will advise the Board at the hearing.

ATTACHMENTS Appendix A - Tentative Order
Appendix B - Administrative Civil Liability Complaint
Appendix C - Comment Letter in response to the ACL Complaint

File No. 2158.11 (CSF)

APPENDIX A

Tentative Order

APPENDIX B

Administrative Civil Liability Complaint

APPENDIX C

Comment Letter