

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

REVISED TENTATIVE ORDER

SETTING ADMINISTRATIVE CIVIL LIABILITY FOR:

**Alum Rock School District
2930 Gay Avenue
San Jose, Santa Clara County**

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter called the Water Board), finds with respect to Alum Rock School District (hereinafter called the Discharger), that:

1. The Discharger operates the facility, which discharges storm water associated with industrial activity. In 1993, 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 ID No. is 243I009860.
2. The General Permit states, in part:

“Section B. Monitoring Program and Reporting Requirements

“14. All facility operators shall submit an Annual Report by July 1 of each year to the Executive Officer of the Regional Water Board responsible for the area in which the facility is located and to the local agency (if requested).”
3. The Discharger violated Section B of the General Permit by failing to submit its 2006/2007 annual report by July 1, 2007.
4. 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 8, 2007, but failed to do so.
5. By certified mail dated November 13, 2007, the Executive Officer issued a second NNC letter to the Discharger. This letter was to inform the Discharger that it was in violation of the General Permit and that the Executive Officer would recommend enforcement actions if an annual report was not submitted. No written or verbal response to the letter was provided by the Discharger.
6. Board staff left a telephone message on January 2, 2008. During a phone discussion with the Discharger's representative via telephone on February 4, 2008, the representative confirmed that the 2006/2007 annual report had not been submitted at that time.
7. On February 13, 2008, the Discharger submitted to the Water Board's office the 2006-2007 annual report.

8. Water Code Section 13385 states, in part:

“(a) Any person who violates any of the following shall be liable civilly in accordance with this section:

(2) Any waste discharge requirements or dredge and fill material permit.

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.”

(2) [subsection 2 is not pertinent to this ACL]

9. Water Code Section 13385 authorizes Administrative Civil Liability not exceeding \$10,000 for each day in which the violation occurs. The 2006/2007 annual report was submitted on February 13, 2008, 227 days past the July 1, 2008 deadline.

10. On June 20, 2008, the Assistant Executive Officer issued a Complaint (R2-2008-0034) to the Discharger proposing a \$9,200 Administrative Civil Liability for the violation of the General Permit, and California Water Code Section 13385. The Discharger has not contested the Complaint's allegations.

11. On July 18, 2008, the Assistant Executive Officer circulated an Errata Notice regarding the June 20, 2008 Complaint. The Errata Notice revised the proposed administrative civil liability to \$9,175 from \$9,200 to correct a calculation error.

12. The Water Board, after hearing all testimony, determined the Discharger is subject to civil penalties. In determining the amount of civil liability the following factors have been taken into consideration:

“...the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup and abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and other matters of justice may require.”

13. The Board determined, with respect to the factors in Finding No. 12, the following:

a. Nature, circumstances, extent, and gravity of the violation

Late submittal of the annual report is a significant violation because the Water Board relies on the report to determine the Discharger's compliance with the General Permit.

The Discharger was given a number of warnings, including two Notices of Noncompliance and two telephone conversations. 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 its site. In addition, the

annual report eventually submitted past the deadline indicated that requirements of the General Permit, including implementation of the SWPPP and site monitoring, were not met.

b. Susceptibility to cleanup, violator's voluntary cleanup efforts, and toxicity of the discharge

Cleanup is not applicable to failure to submit the annual report. Toxicity of discharge cannot be addressed.

c. Prior history of violations

The discharger has submitted its annual reports from previous years in a timely manner.

d. Degree of culpability

The storm water regulations are applicable to all industrial sites on a nationwide basis. All dischargers are required to comply with the General Permit. 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 perform required sampling and analyses, failure to prepare the annual report, and failure to implement and/or document its SWPPP. Assuming an average-sized site, the minimum economic savings for not submitting and annual report is approximately \$1000/year.

f. Discharger's ability to pay

The Discharger has not demonstrated an inability to pay the proposed amount.

g. Other matters that justice may require

Staff time to prepare a Complaint and supporting information is estimated to be 15 hours. Based on an average cost to the State of \$125 per hour, the total cost is \$2,500.

14. A \$9,175 Administrative Civil Liability is appropriate based on the determinations in Finding No. 13. This includes staff costs of \$2,500. The Discharger is civilly liable for its Permit violations in the amount of \$9,175.

15. The Discharger has proposed, in its August 25, 2008, letter to Board staff, a Supplemental Environmental Project in the form of an environmental education program for students in the District, and separately remitted payment of \$4,600 toward the proposed ACL amount.

16. The Board finds that the payment of \$4,600 along with the timely completion of the proposed Supplemental Environmental Project by June 30, 2009, will satisfy the proposed administrative civil liability.

17. This action is an Order to enforce the laws and regulations administered by the Water Board. 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 Section 15321(a)(2), Title 14, of the California Code of Regulations.

18. The Discharger may petition the State Board to review this action. The State Board must receive the petition within 30 days of the date this order was adopted by the Water Board. The petition will be limited to raising only the substantive issues or objections that were raised before the Water Board at the public hearing or in a timely submitted written correspondence delivered to the Water Board.

IT IS HEREBY ORDERED that:

- a. The Discharger is civilly liable for the violation of the General Permit cited in Complaint No. R2-2008-0034 in the amount of \$9,175, and shall pay this liability by completing the SEP as proposed in its August 25, 2008, letter to Board staff and described herein, and through its already-remitted payment of \$4,600 to the State Water Pollution Cleanup and Abatement Account for the remaining amount;
- b. The Discharger shall complete its SEP, as proposed in its August 25, 2008, letter, not later than June 30, 2009. The Discharger shall submit a report, acceptable to the Executive Officer, not later than one month after completion of the SEP, and in any case not later than July 30, 2009, documenting that the SEP was fully implemented as proposed, and including the information necessary to support that documentation, such as the number of field trips, number of students on each field trip, the date of each field trip, and an outline of the curriculum for the field trips, as implemented; and
- c. The Discharger's remaining unpaid liability in the amount of \$4,575 is suspended contingent upon full and timely implementation of the proposed SEP by not later than June 30, 2009. The remaining unpaid liability will become immediately due and payable if the SEP is not fully implemented by that date.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, complete, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on September 10, 2008.

Bruce H. Wolfe
Executive Officer