

NOTICE OF PUBLIC HEARING
TO CONSIDER

ADMINISTRATIVE CIVIL LIABILITY
REVISED COMPLAINT R2-2008-0063
ISSUED TO
VULCAN MATERIALS COMPANY
PLEASANTON ASPHALT, SAND, AND GRAVEL FACILITY
IN
CITY OF PLEASANTON
ALAMEDA COUNTY

NOTICE IS HEREBY GIVEN THAT A HEARING WILL BE HELD
BEFORE THE REGIONAL BOARD ON APRIL 8, 2009

Background

The Assistant Executive Officer issued an Administrative Civil Liability Complaint pursuant to California Water Code Section 13385 (CWC) against Vulcan Materials Company (Discharger) in October 2008, and subsequently issued a revised Complaint (Revised Complaint) on January 29, 2009, after discussions with the Discharger.

The Revised Complaint alleges that the Discharger violated General Permit for Discharges from Aggregate Mining and Sand Washing Facilities to Surface Waters, Order No. 2002-0063 (NPDES Permit No. CAG982001). The Revised Complaint proposes that administrative civil liability in the amount of \$190,000 (the same as the initial complaint) be imposed as authorized by CWC Section 13385.

Purpose of Hearing

A hearing will be held on the Revised Complaint before the Regional Water Board during its meeting on **April 8, 2009**. The purpose of the hearing will be to receive relevant evidence and testimony regarding the proposed Revised Complaint. At the hearing, the Regional Water Board will consider whether to adopt the proposed assessment, modify it, or reject it. The Discharger can waive its right to a hearing to contest the allegations against it by paying the civil liability in full. If the Discharger waives its right to a hearing, no hearing will be held, provided no significant comments are received during the public comment period.

The public hearing on this matter will commence at 9 a.m. or as soon thereafter as practical, or as announced in the Regional Water Board's meeting agenda. The meeting will be held in the Auditorium at 1515 Clay Street, Oakland, CA. An agenda for the meeting will be issued at least ten days before the meeting and will be posted on the Regional Water Board's web page at <http://www.waterboards.ca.gov/sanfranciscobay>.

Hearing Procedures

A copy of the procedures governing an adjudicatory hearing before the Regional Water Board may be found at Title 23 of the California Code of Regulations, § 648 et seq., and is available at <http://www.swrcb.ca.gov> or upon request. Except as provided in Title 23 of the California Code of Regulations (CCR), § 648(b), Chapter 5 of the Administrative Procedures Act (commencing with § 11500 of the Government Code) does not apply to adjudicatory hearings before the Regional Water Board. THIS NOTICE MAY BE AMENDED BY THE ADVISORY STAFF AS NECESSARY. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY. Any objections to the hearing process set forth herein shall be sent to the staff contact listed below by February 11, 2009.

Hearing Participation

Participants in these proceeding are designated as either “parties” or “interested persons”. Designated parties to the hearings may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Both designated parties and interested persons may be asked to respond to clarifying questions from the Regional Water Board, staff or others, at the discretion of the Regional Water Board.

The following participants are hereby designated as parties:

- Regional Water Board Prosecution Staff
- Vulcan Materials Company

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Regional Water Board (Prosecution Staff) have been separated from those who will provide advice to the Regional Water Board (Advisory Staff). Members of the Advisory Staff and the Prosecution Staff are listed below. Yuri Won of the Prosecution Staff advises the Regional Water Board on unrelated matters. Advisory Staff Bruce Wolfe manages the Regional Water Board staff but has not exercised any authority or discretion over the Prosecution Staff on these matters.

Regional Water Board Advisory Staff:

Bruce Wolfe, Executive Officer, bwolfe@waterboards.ca.gov

Dorothy Dickey, Senior Staff Counsel, ddickey@waterboards.ca.gov

Sandia Potter, Technical Staff, smpotter@waterboards.ca.gov

Regional Water Board Prosecution Staff:

Thomas Mumley, Assistant Executive Officer, tmumley@waterboards.ca.gov

Dyan Whyte, Assistant Executive Officer, dwhyte@waterboards.ca.gov

Lila Tang, NPDES Wastewater Division Chief, ltang@waterboards.ca.gov

Yuri Won, Senior Staff Counsel, ywon@waterboards.ca.gov

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in *ex parte* communications regarding this matter with members of the Advisory Staff or members of the Regional Water Board. An *ex parte* contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of administrative liability complaints between a member of a designated party or interested party on the one hand, and a Regional Water Board member or an Advisory Staff member on the other hand, unless the communication is copied to all other designated and interested parties or made at a proceeding open to all other parties and interested persons (if verbal).

Communications regarding non-controversial procedural matters are not *ex parte* contacts and are not restricted. Communications among the designated and interested parties themselves are not *ex parte* contacts.

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party shall request party status by submitting a request in writing (with copies to the designated parties) no later than 5 p.m. on **February 11, 2009**, to the staff contact listed below who will forward it to the Advisory Staff for a decision. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Water Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. The parties will be notified within seven days if the request is denied.

Hearing Time limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have 20 minutes to testify, present evidence, and cross-examine witnesses, and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Additional time may be provided at the discretion of the hearing officer upon a showing that additional time is necessary.

Written Comment and Evidence Deadline

The deadline to submit any and all written evidence and comments to be offered at the hearing is **5 p.m. on March 2, 2009**. PowerPoint and other computer assisted visual

presentations may be presented at the hearing as long as the contents do not exceed the scope of other submitted written material. They may be submitted prior to the hearing.

Evidentiary Documents and File

The Revised Complaint, evidentiary documents supporting it, and comments received are on file and may be inspected or copied at the Regional Water Board's office at 1515 Clay Street, Oakland, CA 94612 during weekdays between 8 a.m. and 5 p.m. Please call (510) 622-2300 to make arrangements for file review. The Revised Complaint and associated documents are also available on the Board's website at www.waterboards.ca.gov/sanfranciscobay.

Staff Contact and Questions

Questions, requests, and all required submittals shall be directed to Lila Tang, who will route the matter to the appropriate parties. She may be reached at (510) 622-2425 or ltang@waterboards.ca.gov. Her mailing address is 1515 Clay Street, Suite 1400, Oakland, CA 94612. For future developments and updates, including any hearing date changes, please refer to the website listed above.

Date: January 29, 2009