

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

**EXECUTIVE OFFICER SUMMARY REPORT  
MEETING DATE: May 12, 2010**

**ITEMS: 9 through 22**

**SUBJECT: Multiple Dischargers – Hearings to Consider Administrative Civil Liability for Failure to Submit or Late Submittal of the Annual Monitoring Report Required Under the Statewide NPDES General Permit for Discharges of Storm Water Associated with Industrial Activities**

**DISCUSSION:**

For items 9 through 22, the Board's Prosecution Team has proposed administrative civil liability penalties for Board consideration against dischargers who are alleged to have failed to have timely submitted their required 2008/2009 Annual Reports to the Board. This Executive Officer Summary Report describes issues common to all items 9 through 22, while individual Executive Officer Summary Reports have been prepared specific to each of the items.

The Statewide NPDES General Permit for Discharges of Storm Water Associated with Industrial Activities (State Board Order No. 97-03-DWQ) (Industrial Stormwater Permit or Permit) regulates discharges of stormwater that has been exposed to industrial activities. Industrial facility operators are required to file a "Notice of Intent to Comply" with the Industrial Stormwater Permit to be covered under it. Those covered by the Permit (permittees) are, in part, required to do the following:

- Operate their facility in a clean way and implement stormwater runoff controls pursuant to a Storm Water Pollution Prevention Plan, which is developed by and is specific to each industrial facility and incorporates the Permit's requirements;
- Make periodic observations of the effectiveness of their Storm Water Pollution Prevention Plan and associated runoff controls, and determine whether the facility's operations and runoff controls can be improved to operate in a cleaner way; and,
- Report once per year to Regional Water Boards regarding the discharges, if any, that occurred from the facility over the year and report any changes made to correct observed problems. This report, called the Annual Report, is due July 1 of each year, and is the only report permittees are required to make under the Permit.

As of July 1, 2009, approximately 1,400 industrial facilities in our region were covered under the Industrial Stormwater Permit and required to submit a 2008/2009 Annual Report to the Board. Each year, a number of these facilities fail to submit their reports on time, and the Water Code requires Regional Water Boards to take enforcement action against such facilities. This year, to both reduce the number of late reports and reduce staff time spent tracking all 1400 annual reports, this Board's staff initiated a new compliance system in coordination with the State

Board's Office of Enforcement as described in the September and October 2009 Executive Officer's Reports. On August 3, 2009, Board staff sent approximately 180 "Expedited Settlement Letters" to permittees who had not submitted their 2008/2009 Annual Report by one month after the July 1 due date. These letters noted the lateness of the permittee's 2008/2009 Annual Report and offered to settle the violation for \$1,000, conditioned on the Board's receipt of the late Annual Report and a signed Acceptance and Waiver Form by September 4, 2009. The Expedited Settlement Letter process resolved approximately 135 late submittals. However, some permittees failed to meet the conditions of the settlement offer as follows: (1) failed to submit their 2008/2009 Annual Report by the September 4, 2009, deadline; or (2) submitted their 2008/2009 Annual Report, but failed to submit a signed Acceptance and Waiver Form agreeing to the \$1,000 settlement.

On February 16, 2010, the Board's Prosecution Team staff issued 47 administrative civil liability complaints (Complaints) against the permittees who did not settle under the Expedited Settlement Letter process. The liabilities assessed in the Complaints range from \$2,825 to \$13,300, based on days late, with the highest amounts proposed when Board staff did not receive a 2008/2009 Annual Report from the Discharger prior to preparation of the Complaint. The assessed liabilities include \$1,800 for the recovery of staff costs incurred for enforcement of each matter.

Permittees receiving a Complaint have the right by law to a Board hearing on the Complaint within 90 days. As such, the Complaints the Board's Prosecution Team issued in February must be heard by the Board by May 17, settled within that period, or be waived within that period.

Of the 47 Complaints, a few were withdrawn due to changes in facility ownership, changes in permittee contact addresses, or other due process reasons. As reported in this month's Executive Officer's Report, 23 Complaints have been resolved by payment of the assessed liabilities. At the time the May Board meeting agenda was finalized, there were 17 outstanding unresolved Complaints, of which items 9 through 22 were scheduled to be considered at the May Board meeting. Since that time, two permittees (items 16 and 21) have settled their Complaints. The remaining cases are expected to be heard at the June or July Board meetings.

The individual Executive Officer Summary Reports for items 9 through 12 that follow describe the background, liability amount, and comment status of each Complaint and includes a tentative order prepared by the Board's Prosecution Team that would assess the liability amount proposed in each Complaint. The Board must consider each tentative order separately, and I will have a recommendation on each at the close of the hearing for each item.

# ENFORCEMENT HEARING

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

EXECUTIVE OFFICER SUMMARY REPORT  
MEETING DATE: MAY 12, 2010

**ITEM:** 15

**SUBJECT:** Fireclay Tile, Inc., San Jose, Santa Clara County - Hearing to Consider Administrative Civil Liability for Late Submittal of the Annual Monitoring Report Required Under the Statewide NPDES General Permit for Discharges of Storm Water Associated with Industrial Activities

**CHRONOLOGY:** February 2010 – Prosecution staff issued ACL Complaint

**DISCUSSION:** If adopted by the Regional Water Board, the Tentative Order (Attachment 1) would impose administrative civil liability in the amount of \$3,125 against Fireclay Tile, Inc. (Discharger), for the failure to submit its 2008/2009 Annual Report by July 1, 2009. The Discharger submitted its 2008/2009 Annual Report on August 24, 2009, 53 days late. The Discharger operates a recycled tile manufacturing facility covered under the Industrial Stormwater Permit.

On February 16, 2010, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R2-2010-0010 (Attachment 3) in the amount of \$3,125 for the Discharger's failure to timely submit its 2008/2009 Annual Report as required by the Industrial Stormwater Permit. The Discharger has not submitted written comments, the Complaint waiver, or any other written evidence in response to the Complaint. The Prosecution Team's understanding is that the Discharger will appear at the Hearing.

At the Hearing, the Regional Water Board will have the opportunity to affirm, reject, or modify the proposed civil liability, or refer the matter to the California Attorney General. Note that, as part of the separation of staff functions for this matter, the Executive Officer heads the Board's Advisory Team and Assistant Executive Officers Tom Mumley and Dyan Whyte head the Board's Prosecution Team.

**RECOMMENDATION:** I will have a recommendation at the close of the Hearing.

Item 15, Attachment 1: Tentative Order for Administrative Civil Liability  
Item 15, Attachment 2: Notice of Non Compliance  
Item 15, Attachment 3: Administrative Civil Liability Complaint  
Item 15, Attachment 4: Discharger Comment (None)  
Item 15, Attachment 5: Prosecution Team Rebuttal (April 22, 2010)  
Item 15, Attachment 6: Discharger's 2008-2009 Annual Report (This item is not included in hard copy, but is available on the web under Item 15 for the May 12, 2010, Board meeting agenda: [http://www.waterboards.ca.gov/sanfranciscobay/board\\_info/agenda.shtml](http://www.waterboards.ca.gov/sanfranciscobay/board_info/agenda.shtml))

WDID No.: 2 43I014833  
CIWQS Place ID: 224497

**Item 15**

**Attachment 1**



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

**TENTATIVE ORDER**

**ORDER SETTING ADMINISTRATIVE CIVIL LIABILITY FOR:**

**FIRECLAY TILE, INC.  
496 W. JULIAN STREET  
SAN JOSE, SANTA CLARA COUNTY**

The California Regional Water Quality Control Board, San Francisco Bay Region (“Regional Water Board”), having held a public hearing on May 12, 2010, to hear evidence and comments on the allegations contained in Administrative Civil Liability Complaint No. R2-2010-0010 (“Complaint”) issued to Fireclay Tile, Inc. (“Permittee” or “Discharger”), and deliberated on the evidence presented at the public hearing and in the record, after determining the allegations contained in the Complaint to be true, having provided public notice thereof and not less than thirty (30) days for public comment and on the recommendation for administrative assessment of Civil Liability in the amount of \$3,125 finds as follows:

1. Fireclay Tile, Inc. operates a facility located in San Jose and discharges storm water associated with industrial activities.
2. Pursuant to federal regulations, the State Water Resources Control Board adopted Water Quality Order No. 97-03-DWQ, NPDES General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities (“General Permit”), to regulate storm water discharges and authorized non-storm water discharges associated with industrial activities set forth in the federal regulations. To obtain coverage under the General Permit, facility operators must submit a notice of intent (“NOI”) and comply with the terms and conditions of the General Permit. On December 15, 1998, the Discharger submitted a Notice of Intent to obtain coverage under the General Permit. The Discharger’s Waste Discharge Identification No. is 2 43I014833.
3. Section B—Monitoring Program and Reporting Requirements, Paragraph Number 14 of the General Permit requires all facility operators to submit an annual report documenting their sampling and analyses, observations, and an annual comprehensive site compliance evaluation, to the Executive Officer of the Regional Water Board responsible for the area in which the facility is located by July 1 of each year.
4. The Discharger violated Section B of the General Permit by failing to submit its 2008/2009 annual report by July 1, 2009.

5. On August 3, 2009, the Assistant Executive Officer issued a Notice of Noncompliance letter to the Discharger by certified mail, return receipt requested. This letter informed the Discharger that it was in violation of the General Permit and that the Executive Officer would recommend enforcement action, including, but not limited to, imposition of administrative civil liability up to \$10,000 per day. The Regional Water Board received the return receipt for this notice, which indicates the Discharger received the notice on August 13, 2009.
6. Pursuant to CWC Section 13385(a)(3), any person who violates any requirements established pursuant to CWC Section 13383 (reporting requirements established by the State Water Board), shall be civilly liable. CWC Section 13385(c)(1) states that civil liability may be imposed administratively by the Regional Water Board in an amount not to exceed ten thousand dollars (\$10,000) for each day in which the violation occurs.
7. The Discharger was in violation of the General Permit for a total of 53 days (July 2, 2009, through August 24, 2009).
8. On February 16, 2010, the Assistant Executive Officer issued Complaint No. R2-2010-0010 that alleged that the Discharger violated the requirements of the General Permit by failing to submit a 2008/2009 annual report by July 1, 2009. The Complaint proposed an administrative civil liability of \$3,125 for the alleged violation, which also recovers the costs incurred by the staff of the Regional Water Board for this matter as a "matter that justice may require."
9. In imposing the proposed administrative civil liability, the Regional Water Board has considered each of the factors prescribed in CWC Section 13385(e) based upon information in the record and the testimonies at the public hearing and information described in greater detail in Complaint No. R2-2010-0010 attached hereto and incorporated by this reference.
10. This Order is an action to enforce the laws and regulations administered by the Regional 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), Chapter 3, Title 14, of the California Code of Regulations.

IT IS HEREBY ORDERED, pursuant to CWC Sections 13385 and 13323, that civil liability be imposed upon Fireclay Tile, Inc. in the amount of \$3,125 for the failure to submit a 2008/2009 annual report for its facility covered by the General Permit by July 1, 2009, in violation of CWC section 13383.

1. Fireclay Tile, Inc. shall submit a check to the Regional Water Board in the amount of \$3,125 made payable to the "San Francisco Bay Regional Water Quality Control Board" within thirty (30) days following adoption of this Order by the Regional Water Board.



2. Fulfillment of the obligation of Fireclay Tile, Inc. under this Order constitutes full and final satisfaction of any and all liability for each allegation in Complaint No. R2-2010-0010.
3. Compliance with this Order is not a substitute for compliance with all applicable laws. Future violations of the type alleged in Complaint No. R2-2010-0010 may subject the Discharger to further enforcement, including additional administrative civil liability.
4. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for collection and/or other enforcement if the Discharger fails to comply with payment of the liability as detailed in paragraph 1.

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 Regional Water Board on May 12, 2010.

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Bruce H. Wolfe  
Executive Officer

Attachment 1: Complaint No. R2-2010-0010



**Item 15**

**Attachment 3**





Linda S. Adams  
Agency Secretary

# California Regional Water Quality Control Board

## San Francisco Bay Region

1515 Clay Street, Suite 1400, Oakland, California 94612  
(510) 622-2300 • Fax (510) 622-2460  
<http://www.waterboards.ca.gov/sanfranciscobay>



Arnold Schwarzenegger  
Governor

*Via Certified Mail – Return Receipt Requested*

February 16, 2010  
WDID No.: 2 43I014833  
CIWQS Place ID: 224497

Fireclay Tile, Inc.  
Attn: Mr. Paul Burns  
Agent for Service of Process  
495 W. Julian Street  
San Jose, CA 95110

**Subject: Administrative Civil Liability Complaint No. R2-2010-0010**

Dear Mr. Burns:

Enclosed is Complaint No. R2-2010-0010 for Administrative Civil Liability in the amount of \$3,125. The Complaint alleges that Fireclay Tile, Inc. has violated the requirements of the NPDES General Permit for Discharges of Storm Water Associated with Industrial Activities by failing to submit a 2008/2009 annual report by July 1, 2009.

Fireclay Tile, Inc. can respond to the Complaint by appearing before the Regional Water Board at a public hearing to contest the matter or by signing a waiver to pursue other options.

1. The Complaint can be contested before the Regional Water Board at the following meeting:

Date/Time: May 12, 2010, commencing at 9 a.m.  
Place: First Floor Auditorium, State of California Building  
1515 Clay Street, Oakland

At this meeting, the Regional Water Board will consider whether to impose administrative civil liability (as proposed in the Complaint or for a different amount), decline the administrative civil liability, or refer the matter to the Attorney General for judicial enforcement at a public hearing.

Please refer to the enclosed Public Notice and Hearing Procedure for the Complaint and the ACL Fact Sheet for additional information about the Regional Water Board's process, hearing procedures, and important deadlines (for submitting comments or evidence, obtaining designated party status, waiving or postponing a hearing, making objections or rebuttals to evidence, etc.).

*Preserving, enhancing, and restoring the San Francisco Bay Area's waters for over 50 years*

2. The public hearing that has been scheduled (above) can be waived to pursue one of the following options:
  - a. Pay the liability as proposed in the Complaint;
  - b. Request more time and postpone the date of the public hearing;
  - c. Promptly engage in settlement discussions with the Regional Water Board Prosecution Team.

The Waiver, attached to the Complaint, describes these options in further detail. To pursue one of these options, **the Waiver must be signed, dated, and received by the contacts listed below no later than 5:00 pm on March 18, 2010. It is at the discretion of the Regional Water Board Advisory Team to either accept or deny a waiver request.**

If you wish to communicate directly with the Prosecution Team regarding the Complaint, please contact Laurent Meillier of the Prosecution Team at (510) 622-3277 or [LMeillier@waterboards.ca.gov](mailto:LMeillier@waterboards.ca.gov).

Please refer to the letterhead for our mailing address and fax number.

Sincerely,



Thomas Mumley  
Assistant Executive Officer

Enclosures:

Complaint No. R2-2010-0010  
Public Notice for ACL Complaint No. R2-2010-0010  
Hearing Procedure for ACL Complaint No. R2-2010-0010  
Administrative Civil Liability Fact Sheet

cc (all via email):

Bruce H. Wolfe, Water Board  
SWRCB, Office of the Chief Counsel – Dorothy Dickey  
SWRCB, Division of Water Quality – Bruce Fujimoto  
SWRCB, Office of Enforcement – Ann Carroll  
Water Board Lyris Enforcement Email List

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

COMPLAINT NO. R2-2010-0010

ADMINISTRATIVE CIVIL LIABILITY  
IN THE MATTER OF  
FIRECLAY TILE, INC.  
495 W. JULIAN STREET  
SAN JOSE, SANTA CLARA COUNTY

This Complaint is issued to Fireclay Tile, Inc. ("Discharger") to assess administrative civil liability pursuant to California Water Code ("CWC") Section 13385. The Complaint addresses the Discharger's failure to submit a required annual report by July 1, 2009, as required by the State Water Resources Control Board's ("State Water Board's") Water Quality Order No. 97-03-DWQ National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities ("General Permit"). The violations cited herein occurred from July 2, 2009, through August 24, 2009).

The Assistant Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Water Board") hereby gives notice that:

1. The Discharger is alleged to have violated provisions of the law for which the Regional Water Board may impose civil liability pursuant to CWC Section 13385. This Complaint proposes to assess \$3,125 in penalties for the violations cited based on the considerations described herein. The deadline for comments on this Complaint is February 26, 2010, at 5 p.m.
2. Unless waived, the Regional Water Board will hold a hearing on this matter on May 12, 2010, in the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland, California, 94612. The Discharger or its representative(s) will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Water Board. The Discharger will be mailed an agenda approximately ten days before the hearing date. The Discharger must submit any written evidence concerning this complaint to the Regional Water Board not later than 5 pm on March 18, 2010, so that such comments may be considered. Any written evidence submitted to the Regional Water Board after this date and time will not be accepted or responded to in writing.
3. At the hearing the Regional 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.

If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing. The Discharger can waive its right to a hearing to contest the allegations contained in this Complaint by submitting a signed waiver and paying the civil liability in full as described in the attached waiver form.

4. 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.

**STATEMENT OF WATER CODE SECTIONS UPON WHICH LIABILITY IS BEING ASSESSED:**

5. Pursuant to CWC Section 13385(a)(3), any person who violates any requirements established pursuant to CWC Section 13383 (reporting requirements established by the State Water Board), shall be civilly liable. CWC Section 13385(c)(1) states that civil liability may be imposed administratively by the Regional Water Board in an amount not to exceed ten thousand dollars (\$10,000) for each day in which the violation occurs.
6. In determining the amount of any liability imposed under CWC Section 13385, the Regional Water Board shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation , and other matters that justice may require.

**FACTUAL BASIS OF THE ALLEGED VIOLATIONS IN THIS MATTER:**

7. Provision E(1) of the General Permit requires that all facility operators seeking coverage under the General Permit file a Notice of Intent (NOI) for each of the facilities they operate. The Discharger submitted a Notice of Intent (NOI) to the State Water Board to obtain coverage under the General Permit. The Discharger's Waste Discharge Identification Number is 2 43I014833.
8. Section B—Monitoring and Reporting Requirements, Number 14 of the General Permit requires all facility operators to submit an annual report documenting its sampling and analyses, observations, and an annual comprehensive site compliance evaluation, by July 1 of each year.
9. The Discharger violated the General Permit by failing to submit its 2008/2009 annual report by the July 1, 2009, deadline.



This is a violation of a reporting requirement established by the State Water Board pursuant to CWC Section 13383 for which administrative civil liability may be imposed pursuant to CWC Section 13385(a)(3).

10. On August 3, 2009, the Assistant Executive Officer issued a Notice of Noncompliance letter to the Discharger by certified mail, return receipt requested. This letter informed the Discharger that it was in violation of the General Permit and that the Executive Officer would recommend enforcement actions, including imposition of administrative civil liability up to \$10,000 per day, if an annual report was not submitted. The Regional Water Board received the return receipt for this notice, which indicates the Discharger received the notice on August 13, 2009.
11. The Discharger requested a waiver from the liability on the basis: production sector closed due to economic downturn in 2008, facility was used as warehouse and retail showroom for tile products, no ceramic materials used or stored in the facility. The Discharger applied for partial fee refund although not yet approved by Regional Water Board staff.
12. The Discharger submitted its annual report on August 24, 2009.
13. Board staff confirmed that the facility was still in business at the above address via telephone and/or mail on August 27 and October 21, 2009.
14. The Discharger was in violation of the General Permit for a total of 53 days (July 2, 2009, through August 24, 2009).

#### **FACTORS CONSIDERED**

15. Under CWC Section 13385(e), the Regional Water Board's Assistant Executive Officer considered 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 a Notice of Noncompliance letter and was contacted via telephone and site inspection.

b. Toxicity of Discharge and Susceptibility to Cleanup

The violation for which liability is proposed is a failure to submit a required report. The report is required to include quantitative and qualitative information on the amounts and/or presence of certain pollutants in discharges from the subject facility, as well as information on remedial actions taken by the Discharger to halt or minimize polluted discharges from its facility. In the absence of this information, it is not possible to make a more specific determination on this factor, and civil liability is not proposed for a specific discharge.

c. Discharger's Ability to Pay:

It is believed that the Discharger will be able to pay the proposed civil liability. According to Manta.com online business records, Fireclay Tile, Inc. was established in 1986 and incorporated in California. Current estimates show this company has an annual revenue of \$2.5 to 5 million and employs a staff ranging from 20 to 49 employees.

d. Prior History of Violations:

The Regional Water Board does not have any records of permit violations from previous years for the Discharger.

e. Degree of Culpability:

The Discharger is fully culpable for violating the terms and conditions of the General Permit, which implements the Clean Water Act. Section 402(p) of the Federal Water Pollution Control Act ("Clean Water Act") establishes a framework for regulating municipal and industrial storm water discharges under the NPDES Program that is applicable to all specified industrial sites on a nationwide basis. The U.S. Environmental Protection Agency regulations allow authorized states, such as California, to issue general permits to regulate storm water discharges (e.g., the General Permit). By filing an NOI, the Discharger demonstrated its knowledge of and intent to comply with the General Permit requirements.

f. Savings Resulting from the Violation:

The Discharger has realized cost savings by failing to timely submit an annual report. The minimum savings for submitting a late report are estimated at \$1,000. The proposed liability of \$3,125 is greater than the economic benefit obtained from the delayed compliance.

g. Other Matters That Justice May Require:

Staff time to prepare this Complaint and supporting information is estimated to be 10 hours.

Additionally, issuance of the Complaint requires publication of a Public Notice in a newspaper of general circulation at a cost of approximately \$300. Based on an average cost to the State of \$150 per hour, the total staff cost is estimated to be \$1,800.

**PROPOSED CIVIL LIABILITY**

16. Based on the consideration of the above facts, the Assistant Executive Officer of the Regional Water Board proposes that an administrative civil liability be imposed in the amount of \$3,125. Of this amount, \$1,800 is for recovery of staff costs.
17. 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 action(s), including referral to the Attorney General.



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Thomas Mumley  
Assistant Executive Officer

February 16, 2010  
Date



**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
NO. R2-2010-0010**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Fireclay Tile, Inc. ("Discharger") in connection with Administrative Civil Liability Complaint No. R2-2010-0010 ("Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

**OPTION 1: PAY THE CIVIL LIABILITY**

*(Check here if the Discharger waives the hearing requirement and will pay the civil liability in full.)*

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of \$3,125 by check that references "ACL Complaint No. R2-2010-0010" made payable to the "San Francisco Bay Regional Water Quality Control Board." Payment must be received by the Regional Water Board by not later than 30 days from the date the Complaint was issued or the Regional Water Board may adopt an Administrative Civil Liability Order requiring payment.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Water Board receive significant new information or comments from any source (excluding the Regional Water Board Prosecution Team) during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board or its Executive Officer, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

Complaint No. R2-2010-0010  
Fireclay Tile

**OPTION 2: REQUEST A TIME EXTENSION**

*(Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)*

I hereby waive any right the Discharger may have to a hearing before the Regional Water Board within 90 days after service of the Complaint. By checking this box, the Discharger requests that the Regional Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Regional Water Board Advisory Team to approve the extension.

**OPTION 3: ENGAGE IN SETTLEMENT DISCUSSIONS**

*(Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)*

I hereby waive any right the Discharger may have to a hearing before the Regional Water Board within 90 days after service of the Complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will contact the Regional Water Board Prosecution Team within five business days of submittal of this waiver to request that the Prosecution Team engage in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional Water Board Advisory Team delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Water Board Advisory Team to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1c and d."

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(Print Name and Title)

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(Signature)

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(Date)

HEARING PROCEDURE  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

NO. R2-2010-0010  
ISSUED TO  
FIRECLAY TILE, INC.  
INDUSTRIAL STORMWATER PERMITTEE  
495 W JULIAN STREET  
SAN JOSE, SANTA CLARA COUNTY

HEARING SCHEDULED FOR MAY 12, 2010

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

***Background***

The Assistant Executive Officer of the San Francisco Bay Regional Water Quality Control Board (“Regional Water Board”) has issued an Administrative Civil Liability Complaint (“Complaint”) pursuant to California Water Code Section 13385 against Fireclay Tile, Inc. (“Discharger”) alleging that it has violated Water Code Section 13383 by failing to submit its 2008/2009 annual report by the July 1, 2009, deadline. The Complaint proposes that a civil liability in the amount of \$3,125 be imposed as authorized by Water Code Section 13385(a)(3).

***Purpose of Hearing***

The purpose of the hearing is to consider relevant evidence and testimony regarding the Complaint. At the hearing, the Regional Water Board will consider whether to issue an administrative civil liability (ACL) order assessing the liability proposed in the Complaint, or a higher or lower amount, reject the proposed liability, or refer the matter to the Attorney General for judicial enforcement. An agenda for the Regional Water Board meeting where the hearing will be held will be issued at least ten days before the meeting and posted on the Regional Water Board’s web site (<http://www.waterboards.ca.gov/sanfranciscobay/>).

***Hearing Procedure***

The hearing will be conducted in accordance with this Hearing Procedure. This Hearing Procedure has been pre-approved by the Regional Water Board Advisory Team in model format. A copy of the general procedures governing adjudicatory hearings before the Regional Water Board may be found at Title 23 of the California Code of Regulations (CCR), Section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648 and herein, subdivision (b), Chapter 5 of the

Administrative Procedures Act (commencing with Section 11500 of the Government Code) does not apply to the hearing.

The procedures and deadlines herein may be amended by the Advisory Team at its discretion.

**Any objections to this Hearing Procedure must be received by Sandia Potter (SMPotter@waterboards.ca.gov) by February 26, 2010 or they will be waived.**

### ***Hearing Participants***

Participants in this proceeding are designated as either “parties” or “interested persons.” Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons generally may not submit evidence, cross-examine witnesses, or be subject to cross-examination, but may present policy statements. Policy statements may include comments on any aspect of the proceeding, but may not include evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the Regional Water Board, its staff or others, at the discretion of the Regional Water Board.

The following participants are hereby designated as parties in this proceeding:

- (1) The Regional Water Board Prosecution Team
- (2) Fireclay Tile, Inc., referred to as the Discharger

Fireclay Tile, Inc.  
495 W Julian Street  
San Jose, CA 95110

### ***Requesting Designated Party Status***

Persons who wish to participate in the hearing as a designated party (who have not been designated as parties above) must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received by 5 p.m. on February 26, 2010 to Sandia Potter (SMPotter@waterboards.ca.gov). 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. Any opposition to the request must be received by the Advisory Team, the person requesting party status, and all parties by 5 p.m. on March 3, 2010. The parties will be notified by 5 p.m. on March 8, 2010 in writing whether the request has been granted or denied.



***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 Team) have been separated from those who will provide advice to the Regional Water Board (Advisory Team). Members of the Advisory Team and the Prosecution Team are:

**Advisory Team:**

Bruce Wolfe, Executive Officer, [BWolfe@waterboards.ca.gov](mailto:BWolfe@waterboards.ca.gov), 510-622-2314

Yuri Won, Attorney, [YWon@waterboards.ca.gov](mailto:YWon@waterboards.ca.gov), 510-622-2491

Sandia Potter, Technical Staff, [SMPotter@waterboards.ca.gov](mailto:SMPotter@waterboards.ca.gov), 510-622-2426

Address: 1515 Clay Street, Suite 1400, Oakland, CA 94612

Primary Contact: Sandia Potter

**Prosecution Team:**

Thomas Mumley, Assistant Executive Officer, [TMumley@waterboards.ca.gov](mailto:TMumley@waterboards.ca.gov), 510-622-2395

Dyan Whyte, Assistant Executive Officer, [DWhyte@waterboards.ca.gov](mailto:DWhyte@waterboards.ca.gov), 510-622-2441

Terry Seward, Groundwater Protection Division Chief, [TSeward@waterboards.ca.gov](mailto:TSeward@waterboards.ca.gov), 510-622-2416

Keith Lichten, Section Leader, [KLichten@waterboards.ca.gov](mailto:KLichten@waterboards.ca.gov), 510-622-2380

Habte Kifle, Technical Staff, [HKifle@waterboards.ca.gov](mailto:HKifle@waterboards.ca.gov), 510-622-2371

Laurent Meillier, Technical Staff, [LMeillier@waterboards.ca.gov](mailto:LMeillier@waterboards.ca.gov), 510-622-3277

Ann Carroll, Staff Counsel, [ACarroll@waterboards.ca.gov](mailto:ACarroll@waterboards.ca.gov), 916-322-3227

Address: 1515 Clay Street, Suite 1400, Oakland, CA 94612

Primary Contact: Laurent Meillier

Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Members of the Prosecution Team may have acted as advisors to the Regional Water Board in other, unrelated matters, but they are not advising the Regional Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Regional Water Board or the Advisory Team regarding this proceeding.

***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 Team 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 the Complaint between a member of a designated party or interested person on the one hand, and a Regional Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if verbal).

Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

### ***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 a combined 30 minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have three 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. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than April 22, 2010, by 5 p.m. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Regional Water Board Chair (at the hearing) upon a showing that additional time is necessary.

### ***Submission of Evidence and Policy Statements***

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the designated party would like the Regional Water Board to consider. Evidence and exhibits already in the public files of the Regional Water Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, CCR, Section 648.3.
2. All legal and technical arguments or analysis.
3. The name of designated party members, title and/or role, and contact information (email addresses, addresses, and phone numbers).
4. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the qualifications of each expert witness.
5. (Discharger only) If the Discharger intends to argue an inability to pay the civil liability proposed in the Complaint (or an increased or decreased amount as may be imposed by the Regional Water Board), the Discharger should submit supporting evidence as set forth in the "ACL Fact Sheet" under "Factors that must be considered by the Board."

The Prosecution Team shall submit one hard copy and one electronic copy of the above information not already included in or with the Complaint to Sandia Potter (SMPotter@waterboards.ca.gov) and other designated parties no later than April 2, 2010, by 5 p.m.

The remaining designated parties shall submit one hard copy and one electronic copy of the above information to Sandia Potter (SMPotter@waterboards.ca.gov) and other designated parties no later than April 12, 2010, by 5 p.m.

Any designated party that would like to submit information that rebuts the information previously submitted by other designated parties shall submit one hard copy and one electronic copy to Sandia Potter (SMPotter@waterboards.ca.gov) and the other designated parties no later than April 22, 2010, by 5 p.m. Rebuttal information shall be limited to the scope of the information previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team to Sandia Potter (SMPotter@waterboards.ca.gov) and each designated party no later than March 18, 2010, by 5 p.m. Interested persons do not need to submit written non-evidentiary policy statements in order to speak at the hearing.

For all submissions, the Advisory Team may require additional hard copies for those submittals that are either lengthy or difficult and expensive to reproduce.

In accordance with Title 23, CCR, Section 648.4, the Regional Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Regional Water Board may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will not be considered by the Regional Water Board and will not be included in the administrative record for this proceeding. PowerPoint and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team at or before the hearing for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

### ***Request for Pre-hearing Conference***

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code Section 13228.15. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, as early as practicable.

### ***Evidentiary Objections***

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection to Sandia Potter (SMPotter@waterboards.ca.gov) and all other designated parties no later than April 22, 2010, by 5 p.m. The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

***Evidentiary Documents and File***

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Regional Water Board's office. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Regional Water Board Chair. Many of these documents are also posted on the Regional Water Board's web site. Although the web page is updated regularly, to assure access to the latest information, you may contact Mr. Laurent Meillier ([LMeillier@waterboards.ca.gov](mailto:LMeillier@waterboards.ca.gov)).

***Questions***

Questions concerning this proceeding may be addressed to Sandia Potter ([SMPotter@waterboards.ca.gov](mailto:SMPotter@waterboards.ca.gov)).

### **IMPORTANT DEADLINES**

Note: the Regional Water Board is required to provide a hearing within 90 days of issuance of the Complaint (Water Code Section 13323). The Advisory Team will generally adhere to this schedule unless the Discharger waives that requirement.

**These deadlines apply to all cases upon issuance of the Complaint whether or not the 90-day hearing requirement is waived.**

February 16, 2010	Prosecution Team issues the Complaint to Discharger
February 26, 2010	Deadline for objections, if any, to this Hearing Procedure
February 26, 2010	Deadline for requests for designated party status
March 3, 2010	Deadline for oppositions to requests for designated party status
March 8, 2010	Advisory Team issues decision on requests for designated party status, if any
March 18, 2010	Discharger's deadline for waiving right to hearing
March 18, 2010	Interested persons deadline for submission of written non-evidentiary policy statements

**These deadlines apply to cases scheduled to be heard by the Regional Water Board (actual dates are subject to change if the 90-day hearing requirement is waived).**

April 2, 2010	Prosecution Team's deadline for all information required under "Submission of Evidence and Policy Statements"
April 12, 2010	Remaining designated parties' deadline for all information required under "Submission of Evidence and Policy Statements"
April 22, 2010	All designated parties' deadline for rebuttal information, evidentiary objections, and requests for additional time, if any
May 12, 2010:	Regional Water Board Hearing

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

NOTICE OF PENDING ENFORCEMENT ACTION  
FIRECLAY TILE, INC.

The California Regional Water Quality Control Board, San Francisco Bay Region (Water Board) Prosecution Team issued a Complaint for Administrative Civil Liability (ACL) on February 16, 2010. The Complaint alleges that Fireclay Tile, Inc. (Discharger) is responsible for not submitting an NPDES Industrial Stormwater Permit annual report by the July 1, 2009, reporting deadline, and proposes that the Discharger pay \$3,125.

The Complaint and related documents, including the procedure for Water Board hearings (with deadlines for submitting comments), are available at [http://www.waterboards.ca.gov/sanfranciscobay/public\\_notices/pending\\_enforcement.shtml](http://www.waterboards.ca.gov/sanfranciscobay/public_notices/pending_enforcement.shtml). The Prosecution Team may amend and re-notice its Complaint in response to comments from the Discharger and the public.

The Water Board will hold a hearing on May 12, 2010 to consider adoption of the ACL and/or referral of the matter to the Attorney General, unless the Discharger waives its right to a hearing within 90 days. The 90-day hearing requirement may be waived to pay the penalty as proposed, extend deadlines, or pursue settlement and/or a supplemental environmental project.

For additional information and updates, please contact Laurent Meillier at (510) 622-3277 or [LMeillier@waterboards.ca.gov](mailto:LMeillier@waterboards.ca.gov) or check the Water Board's website link cited above.

**Item 15**

**Attachment 2**







Linda Adams  
Secretary for  
Environmental Protection

# California Regional Water Quality Control Board

## San Francisco Bay Region

1515 Clay Street, Suite 1400, Oakland, California 94612  
(510) 622-2300 • Fax (510) 622-2460  
<http://www.waterboards.ca.gov/sanfranciscobay>



Arnold Schwarzenegger  
Governor

August 3, 2009

Burns, Paul  
Attn: Paul Burns  
495 W Julian St  
San Jose, CA 95110

VIA CERTIFIED MAIL  
No. 7008 1830 0003 0496 6546  
CIWQS Place ID: 224497  
Project Tracking ID: 150

**OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM FOR THE FAILURE TO SUBMIT AN ANNUAL REPORT AS REQUIRED BY STATE WATER RESOURCES CONTROL BOARD GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITIES, ORDER NO. 97-DWQ, NPDES NO. CAS000001**

**Facility Name: FIRECLAY TILE (WDID No. 2 431014833)**  
**Facility Address: 495 W JULIAN ST, SAN JOSE, CA 95110**

Dear Paul Burns:

This letter is to notify Burns, Paul (hereinafter "Permittee") of an alleged violation of the California Water Code regarding the failure to submit an annual report to the San Francisco Bay Regional Water Quality Control Board (hereinafter "Regional Water Board"), as required by the State Water Resources Control Board's General Permit for Stormwater Discharges Associated with Industrial Activities (hereinafter "General Permit"). This letter also notifies the Permittee of the opportunity to participate in the Regional Water Board's Expedited Payment Program for Annual Reporting Violations (hereinafter "Expedited Payment Program"). The Expedited Payment Program addresses liability that may be assessed pursuant to California Water Code section 13385.

### **NOTICE OF VIOLATION:**

Based on the Regional Water Board's records, it is alleged that as of July 31, 2009, the Permittee has failed to submit an annual report by July 1, 2009, to the Regional Water Board as required under Section B.14 of the General Permit. Failure to submit such an annual report violates the requirements of the General Permit, the California Water Code, and the Federal Clean Water Act. This failure is identified in the Notice of Noncompliance (hereinafter "NON").

**STATUTORY LIABILITY:**

Pursuant to California Water Code sections 13385(a)(2) and 13385(c)(1), the Permittee is subject to discretionary administrative civil liabilities of up to TEN THOUSAND DOLLARS (\$10,000.00) for each day in which a violation occurs (i.e., each day the Permittee fails to submit an annual report after July 1 of each year). These discretionary administrative civil liabilities may be assessed by the Regional Water Board, beginning with the date that the violation(s) first occurred. In this matter, and as set forth above, the days in violation will be calculated from July 2, 2009.

In addition, pursuant to California Water Code sections 13399.31(c) and 13399.33(c), the Permittee shall also be subject to a *minimum* penalty of *not less than* ONE THOUSAND DOLLARS (\$1,000.00) to be assessed by the Regional Water Board if the Permittee fails to submit an annual report within sixty (60) days after the first notice of such failure was sent. The statute requires that the Regional Water Board provide the Permittee with two separate notices of noncompliance (each at least thirty [30] days apart) outlining the Permittee's failure to submit an annual report. A copy of the first NON issued to the Permittee is attached. California Water Code section 13399.33(d) also allows the Regional Water Board to recover the enforcement costs it incurred regarding the Permittee's failure to submit an annual report.

The formal enforcement action that the Regional Water Board uses to assess such civil liabilities is an administrative civil liability complaint, although the Regional Water Board may instead refer such matters to the Office of the Attorney General for prosecution. If referred to the Attorney General for prosecution, the Superior Court may assess civil liability up to TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) per violation, as set forth in California Water Code section 13385(b)(1).

**CONDITIONAL OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM:**

The Permittee can avoid a formal enforcement action and settle the alleged annual reporting violation identified in the NON by participating in the Regional Water Board's Expedited Payment Program. Details of the proposed settlement are described in detail below, as well as in the "Acceptance of Conditional Resolution and Waiver of Right to Hearing, [Proposed] Order" (hereinafter "Acceptance and Waiver") enclosed herewith.

To promote resolution of the alleged annual reporting violation, the Regional Water Board makes the following conditional offer. The Permittee may accept this offer, waive its right to a hearing, submit its overdue annual report on or before September 4, 2009, and pay a ONE THOUSAND DOLLARS (\$1,000.00) administrative civil liability for the annual reporting violation identified in the NON. If the Permittee elects to do so, subject to the conditions set forth herein, the Regional Water Board will accept the Permittee's overdue annual report and the payment of the administrative civil liability in settlement of any enforcement action that would otherwise arise out of the annual reporting violation identified in the NON. After timely receipt of the Permittee's overdue annual

report and payment of the administrative civil liability, the Regional Water Board will forego issuance of a formal administrative civil liability complaint, will not refer said violations to the Attorney General, and will waive its right to seek any additional penalties or liabilities, including the Regional Water Board's costs of enforcement, for the annual reporting violation identified in the NON.

The Expedited Payment Program does not address liability for any violation that is not specifically identified in the NON.

**PERMITTEE'S OPTIONS AND INSTRUCTIONS FOR RESPONDING TO OFFER:**

**ACCEPTING OFFER:**

If the Permittee accepts this offer, please complete and return the Acceptance and Waiver enclosed herewith on or before September 4, 2009, by certified mail, return receipt requested addressed as follows:

San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612  
Attn: Danny Pham

Additionally, submit an annual report as required under the General Permit on or before September 4, 2009, by certified mail, return receipt requested to the address referenced above or by submitting a signed, electronic copy of the report by e-mail to Danny Pham at [dapham@waterboards.ca.gov](mailto:dapham@waterboards.ca.gov). A blank copy of the annual report form may be downloaded from the State Water Resources Control Board web site:

[http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/annualreport.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/annualreport.shtml)

Further, the Permittee must also submit the ONE THOUSAND DOLLARS (\$1,000.00) administrative civil liability by cashier's check or by certified check made payable to the "State Water Pollution Cleanup and Abatement Account" to the Regional Water Board, at the address referenced above, no later than ten (10) calendar days after the date the Permittee receives written notice that the Executive Officer of the Regional Water Board has formally endorsed the "Acceptance and Waiver." Failure to pay the penalty within the required time period may subject the Permittee to further liability.

**CONTESTING THE ALLEGED VIOLATION:**

If the Permittee wishes to contest the annual reporting violation alleged in the NON, the challenge must be received on or by September 4, 2009. Please identify, in writing and sent by certified mail, return receipt requested to the address above, the basis for the Permittee's challenge (factual error, affirmative defense, etc.). The Regional Water Board staff will evaluate that basis and make one of the following determinations: If the

Regional Water Board staff determines that the alleged annual reporting violation is not supported, no further action will be taken against the Permittee for that violation, and the Permittee will be notified of that determination. If the Regional Water Board staff determines that the contested violation as alleged is meritorious, the Permittee should expect that a formal enforcement action will be pursued and that the Permittee will receive notice of any deadlines associated with that action. In a formal enforcement action, the liability amount sought and/or imposed may significantly exceed the liability amount set forth in this Conditional Offer. Moreover, the cost of enforcement is a factor that can be considered in assessing the liability amount.

**REJECTING OFFER:**

If the Permittee chooses to reject the Regional Water Board's offer and/or chooses not to complete and return the Acceptance and Waiver, the Permittee should expect that a formal enforcement action will be pursued and that it will receive notice of any deadlines associated with that action. As previously stated, in such an action, the liability amount sought and/or imposed may significantly exceed the liability amount set forth in this Conditional Offer. Moreover, the Regional Water Board's cost of enforcement is a factor that can be considered in assessing the Permittee's liability amount.

The Permittee should also note that in the event the Regional Water Board pursues a formal enforcement action for the annual reporting violation alleged in the NON attached hereto as Exhibit "A," the Regional Water Board shall review its records to determine whether the Permittee has previously failed to submit an annual report as required by the General Permit, and whether the Permittee has repeatedly failed to comply with that requirement. The Regional Water Board shall consider any such previous failures when assessing the Permittee's liability amount. This consideration may result in the liability amount being sought and/or imposed to significantly exceed the liability amount set forth in this Conditional Offer.

**CONDITIONS FOR REGIONAL WATER BOARD'S ACCEPTANCE OF RESOLUTION:**

This offer to participate in the Regional Water Board's Expedited Payment Program is conditioned upon the Regional Water Board's receipt of the Permittee's annual report, as required by the General Permit, on or before September 4, 2009. If the Permittee chooses not to, or fails to submit, an annual report on or before September 4, 2009, this offer will be deemed withdrawn and a formal enforcement action will be pursued. After the offer is deemed withdrawn, the Regional Water Board will notify the Permittee of the impending enforcement action and any associated deadlines.

Should the Permittee participate in the Expedited Payment Program, the settlement will be published in the following manner: Federal regulations require the Regional Water Board to publish notice of and to provide at least thirty (30) days for public comment on any settlement of an enforcement action addressing NPDES permit violations

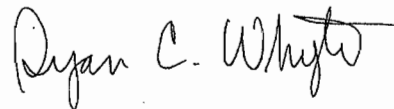
(40 C.F.R. section 123.27(d)(2)(iii)). Upon the receipt of the Permittee's Acceptance and Waiver and annual report on or before September 4, 2009, the Regional Water Board staff will publish a notice of the proposed resolution of the annual reporting violation alleged in the NON.

If no comments are received within the notice period, the Regional Water Board's Executive Officer will formally endorse the Acceptance and Waiver as a stipulated order assessing the uncontested penalty amount pursuant to California Water Code section 13385(c)(1), as described under the heading "Statutory Liability" herein.

If, however, significant comments are received in opposition to the settlement, this offer may be withdrawn. If the Regional Water Board's offer is withdrawn, the Permittee will be advised of that withdrawal, and the Permittee's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. After the Regional Water Board's offer and the Permittee's waiver are deemed withdrawn, the unresolved violations will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued and the matter may be set for a hearing before the Regional Water Board or the State Water Board. For such a liability hearing, the Permittee understands that this Acceptance and Waiver endorsed by the Permittee shall be treated as a settlement communication and shall not be used as evidence in that hearing.

Any questions about the Notice of Noncompliance, this Conditional Offer, and/or the Acceptance and Waiver, should be directed to Danny Pham at (510) 622-2402 or by email at [dapham@waterboards.ca.gov](mailto:dapham@waterboards.ca.gov).

Sincerely,



Dyan C. Whyte  
Assistant Executive Officer

Enclosures:

- Exhibit "A"—Notice of Noncompliance
- Acceptance of Conditional Resolution and Waiver of Right to Hearing; (Proposed) Order

cc: Ann Carroll, Office of Enforcement, State Water Resources Control Board



Linda Adams  
Secretary for  
Environmental Protection

# California Regional Water Quality Control Board

## San Francisco Bay Region

1515 Clay Street, Suite 1400, Oakland, California 94612  
(510) 622-2300 • Fax (510) 622-2460  
<http://www.waterboards.ca.gov/sanfranciscobay>



Arnold Schwarzenegger  
Governor

!  
August 3, 2009

Burns, Paul  
Attn: Paul Burns  
495 W Julian St  
San Jose, CA 95110

VIA CERTIFIED MAIL  
No. 7008 1830 0003 0496 6546  
CIWQS Place ID: 224497  
Project Tracking ID: 150

Exhibit "A"

### NOTICE OF NONCOMPLIANCE

**FAILURE TO SUBMIT AN ANNUAL REPORT AS REQUIRED BY STATE WATER RESOURCES CONTROL BOARD GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITIES, ORDER NO. 97-DWQ, NPDES NO. CAS000001**

**Facility Name: FIRECLAY TILE (WDID No. 2 431014833)**  
**Facility Address: 495 W JULIAN ST, SAN JOSE, CA 95110**

Dear Paul Burns:

Your facility, located at the above address, is regulated under the State Water Resources Control Board's General Permit for Stormwater Discharges Associated with Industrial Activities (hereinafter "General Permit"), which requires you to submit an annual report by July 1 of each year. According to our office's records, as of July 31, 2009, we have not received your facility's annual report. Please submit a complete annual report to this office by **September 4, 2009**, by certified mail, return receipt requested addressed as follows:

San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612  
Attn: Danny Pham

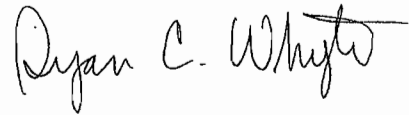
or by submitting a signed, electronic copy of the report by e-mail to Danny Pham at [dapham@waterboards.ca.gov](mailto:dapham@waterboards.ca.gov). A blank copy of the annual report form may be downloaded from the State Water Resources Control Board web site:

[http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/annualreport.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/annualreport.shtml)

Failure to submit your annual report violates the requirements of the General Permit, the California Water Code, and the Federal Clean Water Act. Thus, we are considering taking formal enforcement action against you.

If you have any questions, please contact Danny Pham at (510) 622-2402 or email [dapham@waterboards.ca.gov](mailto:dapham@waterboards.ca.gov).

Sincerely,

A handwritten signature in black ink that reads "Dyan C. Whyte". The signature is written in a cursive style with a long horizontal stroke at the end of the name.

Dyan C. Whyte  
Assistant Executive Officer





**ACCEPTANCE OF CONDITIONAL RESOLUTION  
AND WAIVER OF RIGHT TO HEARING; (Proposed) ORDER**

Burns, Paul

**Facility Name: FIRECLAY TILE (WDID No. 2 43I014833)**

**Facility Address: 495 W JULIAN ST, SAN JOSE, CA 95110**

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (hereinafter "Acceptance and Waiver") to the San Francisco Bay Regional Water Quality Control Board ("Regional Water Board"), Burns, Paul (hereinafter "Permittee") hereby accepts the "Offer to Participate in the Regional Water Board's Expedited Payment Program for Annual Reporting Violations" (hereinafter "Conditional Offer") and waives the right to a hearing before the Regional Water Board to dispute the allegations of violations described in the Notice of Noncompliance (hereinafter "NON") and incorporated herein by reference.

Burns, Paul agrees that the NON shall serve as a complaint pursuant to Article 2.5 of the California Water Code and that no separate complaint is required for the Regional Water Board to assert jurisdiction over the alleged violations through its Executive Officer. Burns, Paul agrees to perform the following:

- (1) Submit an annual report as required under Section B.14 of the General Permit for Stormwater Discharges Associated with Industrial Activities (hereinafter "General Permit") on or before September 4, 2009, by certified mail, return receipt requested addressed as follows:

San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612  
Attn: Danny Pham

or by submitting a signed, electronic copy of the report by e-mail to Danny Pham at [dapham@waterboards.ca.gov](mailto:dapham@waterboards.ca.gov); and

- (2) Pay discretionary penalties authorized by California Water Code section 13385(c)(1), in the sum of ONE THOUSAND DOLLARS (\$1,000.00) (hereinafter "Expedited Payment Amount") by cashier's check or by certified check made payable to the "State Water Pollution Cleanup and Abatement Account," which shall be deemed payment in full of any civil liability pursuant to California Water Code section 13385 or California Water Code section 13399.33 that otherwise might be assessed for the violations described in the NON.

Burns, Paul understands that this Acceptance and Waiver waives the Permittee's right to contest the allegations in the NON and the civil liability amount for such violations.

Burns, Paul understands that the failure to submit an annual report, as identified and described above, shall cause the Regional Water Board's Conditional Offer and the Permittee's waiver pursuant to this Acceptance and Waiver to be withdrawn. After the Regional Water Board's Conditional Offer and the Permittee's waiver are deemed withdrawn, the Permittee will be advised of the withdrawals, an administrative civil liability complaint may be issued, and the matter may be set for a hearing before the Regional Water Board or the State Water Board. For such a liability hearing, the Permittee understands that this Acceptance and Waiver executed by the Permittee will be treated as a settlement communication and will not be used as evidence in that hearing.

Burns, Paul understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the NON.

Upon execution by Burns, Paul, the Acceptance and Waiver shall be returned to the following:

Expedited Payment Program  
San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612  
Attn: Danny Pham

Burns, Paul understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Regional Water Board to publish notice of and provide at least thirty (30) days for public comment on any proposed resolution of an enforcement action. Accordingly, this Acceptance and Waiver, prior to being formally endorsed by the Executive Officer of the Regional Water Board, will be published as required by law for public comment.

If no comments are received within the notice period that cause the Executive Officer of the Regional Water Board to reconsider the Expedited Payment Amount, the Executive Officer will formally endorse this Acceptance and Waiver. Resolution of these violations by the Regional Water Board will preclude Regional Water Board action for the annual reporting violation alleged in the NON and incorporated by reference herein.

Burns, Paul understands that if significant comments are received in opposition to the Expedited Payment Amount, the offer on behalf of the Regional Water Board to resolve the violations set forth in the NON may be withdrawn. If the Regional Water Board's offer is withdrawn, the Permittee will be advised of that withdrawal, and the Permittee's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. After the Regional Water Board's offer and the Permittee's waiver are deemed withdrawn, the unresolved violations will be addressed in a formal enforcement action. An

administrative civil liability complaint may be issued and the matter may be set for a hearing before the Regional Water Board or the State Water Board. For such a liability hearing, the Permittee understands that this Acceptance and Waiver endorsed by the Permittee shall be treated as a settlement communication and shall not be used as evidence in that hearing.

Burns, Paul understands that once this Acceptance and Waiver is formally endorsed by the Executive Officer of the Regional Water Board, the full payment required by the deadline set forth below is a condition of this Acceptance and Waiver. The Permittee shall pay the Expedited Payment Amount of ONE THOUSAND DOLLARS (\$1,000.00) by a cashier's check or certified check for the full amount made payable to the "State Water Resources Control Board Waste Discharge Permit Fund". The payment will be submitted to the Regional Water Board's Expedited Payment Program, at the address listed above no later than ten (10) calendar days after the date the Permittee receives written notice of that the Executive Officer of the Regional Water Board has formally endorsed this "Acceptance and Waiver."

I hereby affirm that I am duly authorized to act on behalf of and to bind the Permittee in the making and giving of this Acceptance and Waiver.

\_\_\_\_\_  
(Permittee)

By: \_\_\_\_\_  
(Signed Name)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Printed or typed name)

\_\_\_\_\_  
(Title)

IT IS SO ORDERED PURSUANT TO CALIFORNIA WATER CODE SECTION 13385

Date: \_\_\_\_\_

By: \_\_\_\_\_

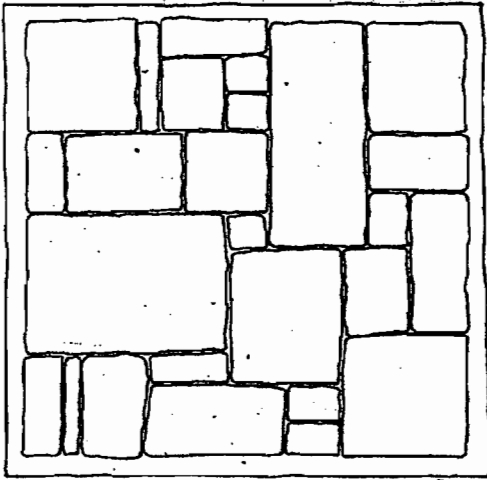
Bruce H. Wolfe  
EXECUTIVE OFFICER  
San Francisco Bay Regional Water Quality Control Board



**Item 15**

**Attachment 4  
(NONE)**





# FIRECLAY TILE

CALIFORNIA REGIONAL WATER

SEP 08 2009

QUALITY CONTROL BOARD

495 W. JULIAN STREET  
SAN JOSE, CA. 95110-2337  
(408) 275-1182  
(408) 275-1187 FAX  
email: info@fireclaytile.com

August 31, 2009

State Water Resources Quality Board  
San Francisco Bay Regional Water  
1515 Clay Street Suite 1400  
Oakland, CA 94612  
Attn: Danny Pham

Due to the downturn in the economy in 2008 we were forced to close our manufacturing operations. We will not be restarting manufacturing in San Jose at any future time. We are using the facility as a warehouse and retail showroom for tile products and have no ceramic materials used or stored at the facility.

My Bookkeeper, Julie Coopman, called the State Water Resource Board to see if we could get a partial refund for the permit fees we paid in 2008 for 2008-2009 and was told that we could not get a refund but we would not have to renew it or file a report if our production facility was non-operational.

I am writing this letter to ask for your forgiveness and waive penalty fees for not submitting an annual report on time. After receiving the notice that the report was required eventhough our facility was closed, we submitted a report for 2008-2009.

Thank you for your consideration.  
Sincerely,

Paul Burns  
President





**Item 15**

**Attachment 5**



## PROSECUTION TEAM EVIDENCE LIST

The Prosecution Team references the following items already in the public files of the Regional Water Board to be included in the Administrative Record for the San Francisco Regional Water Quality Control Board (Regional Water Board) hearing regarding Administrative Civil Liability Complaint No. R2-2010-0010, FIRECLAY TILE (Permittee). This matter is scheduled to be heard at the May 12, 2010 Regional Water Board meeting. These items have been provided to the Permittee or have been provided by the Permittee.

Item	Title of Document	Location
1	Administrative Civil Liability Complaint (ACLC) R2-2010-0010	Permittee's public file located at the Regional Water Board's Office; Regional Water Board website: <a href="http://www.waterboards.ca.gov/sanfranciscobay/public_notices/pending_enforcement.shtml">http://www.waterboards.ca.gov/sanfranciscobay/public_notices/pending_enforcement.shtml</a>
2	Water Quality Order No. 97-03-DWQ NPDES General Permit No. CAS000001	State Water Board Website: <a href="http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/induspmt.pdf">http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/induspmt.pdf</a>
3	Settlement Offer with Notice of noncompliance (with Certified Mail Receipt): Project Tracking No. 150	Permittee's public file located at the Regional Water Board's Office
4	Permittee's 2008/2009 Annual Report	Permittee's public file located at the Regional Water Board's Office

### Regional Water Board Prosecution Team Response to Comments

To date, the Prosecution Team has not received a waiver form from the Permittee. Thus, a hearing on this matter must be held in May. The Prosecution Team also has not received any information from the Permittee as required under the "Submission of Evidence and Policy Statements" section set forth in the Hearing Procedure for this matter. The deadline for such information was April 12, 2010.



## **Item 15**

### **Attachment 6**

Discharger's 2008-2009 Annual Report (This item is not included in hard copy, but is available on the web under Item 15 for the May 12, 2010, Board meeting agenda [http://www.waterboards.ca.gov/sanfranciscobay/board\\_info/agenda.shtml](http://www.waterboards.ca.gov/sanfranciscobay/board_info/agenda.shtml))