

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

**COMPLAINT R2-2017-1039
ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF**

**ISAIAS MUNOZ
MUNOZ GRANITE
1260 YARD COURT, SUITE E
SAN JOSE, CA 95133**

This Complaint to assess the mandatory minimum penalty pursuant to California Water Code (Water Code) section 13399.33 is issued to Isaias Munoz (Operator) for the failure to obtain the required permit coverage for the discharge of stormwater associated with industrial activity at 1260 Yard Court, Suite E, in San Jose. The Operator failed to recertify his industrial facility's coverage under the General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ, National Pollutant Discharge Elimination System (NPDES) No. CAS000001 (2014 General Permit), by August 14, 2015. The proposed penalty is \$14,000, which includes \$4,000 in staff costs.

The Assistant Executive Officer of the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) alleges the following:

FACTUAL BASIS FOR THE ALLEGED VIOLATION

1. The Operator owns and operates Munoz Granite, a granite cutting and processing facility located at 1260 Yard Court, Suite E, San Jose, Santa Clara County (Facility). The Facility discharges stormwater associated with industrial activity. The Facility's industrial activity is classified under Standard Industrial Classification (SIC) code 3281 – Cut Stone and Stone Products. Runoff from the Facility is discharged to a municipal storm drain system that discharges to Coyote Creek and/or other San Francisco Bay tributaries. Coyote Creek, San Francisco Bay, and any tributaries thereto are waters of the United States.
2. On April 17, 1997, the State Water Resources Control Board (State Water Board) adopted Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities, Water Quality Order No. 97-03-DWQ, NPDES Permit No. CAS000001 (1997 General Permit), to regulate stormwater discharges and authorized non-stormwater discharges associated with industrial activities set forth in federal regulations. To obtain coverage, facility operators were required to submit a Notice of Intent (NOI) and comply with the 1997 General Permit's terms and conditions.
3. On April 23, 2013, the Operator filed an NOI to cover the Facility's operations under the 1997 General Permit. The State Water Board assigned WDID number 2 43I024224 to the Facility.

4. On July 1, 2015, the 2014 General Permit superseded the 1997 General Permit. To continue permit coverage, existing operators were required to recertify their industrial facility in the Stormwater Multiple Application and Report Tracking System (SMARTS) by July 1, 2015. The recertification process required the operators to recertify the NOI and to submit the required permit registration documents, which include a facility site map and Storm Water Pollution Prevention Plan (SWPPP), electronically via SMARTS.
5. On August 4, 2015, the State Water Board extended the 2014 General Permit's due date to recertify an industrial facility from July 1, 2015, to August 14, 2015. The filing date for existing dischargers that registered for NOI coverage by August 14, 2015, would be deemed July 1, 2015. Failure to complete the recertification process by August 14, 2015, would result in the termination of permit coverage.
6. On October 30, 2015, the Regional Water Board's Assistant Executive Officer issued a Notice of Non-Compliance (Notice) via certified mail to the Operator for his failure to recertify the Facility under the 2014 General Permit. The Notice states that a failure to complete the recertification process within 60 days from the date of the Notice subjects the Operator to a penalty not less than \$5,000 per year of non-compliance, plus staff costs, pursuant to Water Code section 13399.33. The Notice was delivered to the Facility on November 2, 2015.
7. On December 11, 2015, the Regional Water Board's Assistant Executive Officer issued a second Notice via certified mail to the Operator for his failure to recertify the Facility under the 2014 General Permit. The Notice states that a failure to complete the recertification process by December 28, 2015, subjects the Operator to a penalty not less than \$5,000 per year, plus staff costs, pursuant to Water Code section 13399.33. The second Notice issued to the Operator was returned unclaimed.
8. On February 25, 2016, the State Water Board administratively terminated the Facility's coverage under the 1997 General Permit because the Operator failed to recertify the Facility under the 2014 General Permit.
9. All facilities that failed to complete the recertification process, including the Operator's Facility, were referred to the Regional Water Board's Enforcement Section in August 2016.
10. On November 18, 2016, the Regional Water Board's Assistant Executive Officer sent the Operator a conditional offer to settle an alleged violation of operating an industrial facility without a stormwater discharge permit from July 1, 2015, to June 30, 2016. The conditional settlement offer proposed to resolve the violation for the mandatory minimum penalty of \$5,000 pursuant to Water Code section 13399.33, and included copies of the two Notices sent to the Operator. The conditional settlement offer was delivered to the Facility on December 6, 2016.

11. On December 15, 2016, Regional Water Board staff member Margaret Monahan left a voicemail for the Operator to remind him to respond to the conditional settlement offer. On December 22, 2016, the Operator called Ms. Monahan and asked to speak to someone in Spanish about his case. Ms. Monahan told the Operator she would make arrangements with a Spanish speaker.
12. On January 4, 2017, Regional Water Board staff member Marcos De la Cruz left a voicemail for the Operator, offering to speak with the Operator in Spanish about his case. The Operator did not return the call.
13. On February 27, 2017, Regional Water Board staff member Lena Germinario called the Operator's number on file and another business phone number on the Facility's Yelp business webpage. Both numbers were out of service.
14. On April 28, 2017, Regional Water Board staff members Jack Gregg, Mr. De la Cruz, and Ms. Germinario visited the Facility and spoke with Juan Cordero, a Facility employee. The following occurred during the visit:
 - a. Ms. Germinario observed industrial operations requiring coverage under the 2014 General Permit. Various materials, including slabs of granite and equipment, were stored outdoors. Dust from granite-cutting activities was being tracked outdoors.
 - b. Mr. De la Cruz spoke in Spanish with Mr. Cordero. Mr. Cordero attempted to reach the Operator by phone but was unsuccessful. Mr. De la Cruz informed Mr. Cordero that the Facility required coverage under the 2014 General Permit, stated that Regional Water Board staff would return to the Facility on May 1, 2017, and requested that the Operator be present for the next visit. Mr. Cordero agreed to convey this information to the Operator.
15. On May 1, 2017, Mr. Gregg, Mr. De la Cruz, and Ms. Germinario returned to the Facility and spoke with Manuel Acevedo, a Facility employee. The following occurred during the visit:
 - a. Ms. Germinario observed the following: a worker running a large granite slab through an industrial granite-cutting machine; white-gray dust coating the Facility floor and tracked outdoors; and materials stored outside and exposed to stormwater, including uncovered granite slabs, granite packaging materials, and an uncovered dumpster filled with granite processing and cutting materials.
 - b. Mr. De la Cruz spoke to Mr. Acevedo in Spanish. Mr. De la Cruz explained that the Facility's operations needed coverage under the 2014 General Permit and that the Operator is subject to a mandatory minimum penalty for his failure to recertify the Facility, as explained in the two Notices and a conditional settlement offer previously sent to the Operator. Mr. De la Cruz provided hardcopies of the Notices and conditional settlement offer to Mr. Acevedo and explained that the Operator can either accept the settlement offer (obtain coverage for the Facility

under the 2014 General Permit and pay the minimum penalty of \$5,000), or face the possibility of an administrative civil liability action and higher penalties. Mr. De la Cruz provided his contact information and asked Mr. Acevedo to deliver the paperwork to the Operator, explain the contents, and have the Operator call Mr. De la Cruz to discuss the matter. Mr. Acevedo said he would try to do so the following morning.

16. Regional Water Board staff had several phone conversations with the Operator. Staff explained the need to obtain coverage under the 2014 General Permit, the mandatory minimum penalty, and the conditional settlement offer. Staff provided Spanish language assistance during phone calls on May 3, June 5, and June 13, 2017. During each call, the Operator agreed to respond to the conditional settlement offer and to obtain permit coverage. The Operator failed to follow through on his verbal commitments. Between July 6 and August 15, 2017, staff left seven voicemail messages in Spanish in an attempt to solicit a response from the Operator.
17. During a phone call on August 17, 2017, Regional Water Board staff member Anna Torres, who also speaks Spanish, spoke with the Operator. The Operator said he intended to promptly accept the settlement offer and obtain coverage under the 2014 General Permit. The Operator agreed to meet with Regional Water Board staff at their Oakland office on August 21, 2017, at 11:00 a.m., to sign the settlement offer. Ms. Torres informed the Operator that a certified Spanish language interpreter would be present at the meeting.
18. The Operator arrived an hour late to the meeting on August 21, 2017. The Operator met with Ms. Monahan, Ms. Germinario, and a certified language interpreter. The following occurred during the meeting at the Regional Water Board's office:
 - a. The interpreter translated the entire conditional settlement offer into Spanish for the Operator.
 - b. The interpreter aided Ms. Germinario in explaining that the settlement was conditioned on the Operator obtaining permit coverage within approximately one month. Staff would revoke the settlement offer and file a complaint if the Operator failed to attend scheduled meetings with Regional Water Board staff and complete the agreed-upon tasks to obtain permit coverage, or failed to timely reply to communications from Regional Water Board staff.
 - c. The Operator confirmed that he understood the terms of settlement and signed the conditional settlement offer.
 - d. Ms. Germinario provided resources in Spanish, including a detailed outline of 2014 General Permit requirements and contact information for a State Water Board staff member who could provide guidance on SMARTS to Spanish speakers. Mses. Monahan and Germinario explained the basic steps required to

obtain coverage under the 2014 General Permit. These communications were in English.

- e. Ms. Monahan helped the Operator register a new account for the Facility in SMARTS. She also provided detailed guidance on how to prepare the site map and upload it to SMARTS.
 - f. The Operator agreed to attend a second meeting with Regional Water Board staff at their Oakland office on September 5, 2017, at 12:00 p.m., and to upload a site map for the Facility onto SMARTS prior to the meeting. The communication was in English.
19. On September 5, 2017, the Operator did not appear for the second scheduled conference with Regional Water Board staff. At 12:15 p.m., Ms. Germinario called the Operator, who stated that he was unable to attend the meeting because of an emergency. The Operator said that he did not prepare a site map. In response to the Operator's questions, Ms. Germinario again described the site map requirement and the information to be included.
20. On September 20, 2017, Ms. Germinario left the Operator a voicemail stating that Regional Water Board staff revoked the conditional settlement offer because the Operator violated the conditional settlement offer's terms by failing to obtain coverage under the 2014 General Permit.
21. To date, the Operator has failed to obtain coverage for the Facility under the 2014 General Permit. The Facility continues to operate as a granite cutting and processing facility with industrial materials and activities exposed to stormwater.

ALLEGED VIOLATION

22. **Failure to Recertify:** The Notice of Noncompliance issued on October 30, 2015, and the conditional settlement offer issued on November 18, 2016, put the Operator on notice that he was required to recertify the Facility under the 2014 General Permit within 60 days from the date of the Notice of Noncompliance, and notice of the mandatory minimum penalty for failure to comply. The Operator failed to recertify the Facility under the 2014 General Permit within 60 days of the Notice of Noncompliance. Pursuant to Water Code section 13399.33, this violation is subject to a mandatory minimum penalty in the amount of \$5,000 per year of non-compliance or fraction thereof, plus staff costs.

STATUTORY LIABILITY

23. Pursuant to Water Code section 13399.30(a), the Regional Water Board shall take reasonable efforts to identify stormwater dischargers that have not obtained coverage under an appropriate stormwater permit. Dischargers shall submit to the Regional Water Board the appropriate NOI to obtain coverage within 30 days from the date on which a notice is sent.

24. Pursuant to Water Code section 13399.30(b), if a discharger to which notice is sent pursuant to subdivision (a) fails to submit the appropriate NOI to obtain coverage within 30 days, the Regional Water Board shall send a second notice.
25. Pursuant to Water Code section 13399.30(c)(2), if a discharger to which notice is sent pursuant to subdivision (b) fails to submit the required NOI to obtain coverage to the Regional Water Board within 60 days from the date on which the notice pursuant to subdivision (a) was sent, the Regional Water Board shall impose the penalties described in Water Code section 13399.33(a).
26. Water Code section 13399.33(a)(1) provides that, with regard to a discharger of stormwater associated with industrial activity that fails to submit the required NOI to obtain coverage in accordance with Water Code section 13399.30, the Regional Water Board shall impose administrative civil liability in an amount not less than \$5,000 per year of non-compliance or fraction thereof, unless the Regional Water Board makes express findings setting forth the reasons for its failure to do so as required in Water Code section 13399.33(a)(2).
27. Water Code section 13399.33(d) states that the Regional Water Board shall recover from the persons described in subdivision (a), (b), and (c) the costs incurred by the Regional Water Board with regard to those persons.
28. While this Complaint seeks only the mandatory minimum penalty pursuant to the Storm Water Enforcement Act, the maximum amount of administrative civil liability assessable pursuant to Water Code section 13385(c) is \$10,000 per day of violation.

YOU ARE HEREBY GIVEN NOTICE THAT:

29. The Assistant Executive Officer proposes that the Operator be assessed a mandatory minimum penalty under Water Code section 13399.33 in the amount of **\$14,000** for the failure to obtain coverage under the 2014 General Permit in accordance with Water Code section 13399.30. The \$14,000 mandatory minimum penalty proposed herein assesses a \$5,000 penalty per year of non-compliance or fraction thereof from 2015 to 2017 pursuant to 13399.33(a)(1), and assesses an additional \$4,000 in staff costs pursuant to 13399.33(d) ($[\$5,000 \times 2 \text{ years of non-compliance}] + [\$4,000 \text{ staff costs}]$).
30. The Operator may waive the right to hearing and pay the proposed civil liability of \$14,000. If the Operator chooses to waive its right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return it to the Regional Water Board by **January 12, 2018**. If the hearing is waived, a check in the amount of \$14,000, made payable to the *State Water Resources Control Board, Waste Discharge Permit Fund*, must be received by the State Water Board (with a copy to the Regional Water Board) by 5:00 p.m. on **January 12, 2018**.

31. If the Regional Water Board does not receive a waiver and copy of the full payment of the proposed civil liability by January 12, 2018, the Complaint will be heard before the Regional Water Board on March 14, 2018. 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 judicial civil liability. The Operator and 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 enclosed *Hearing Procedures for Administrative Civil Liability Complaint No. R2-2017-1039* contains the date, time, location, and specific procedures for the scheduled hearing on this matter.
32. No statutes of limitation apply to administrative proceedings. The statutes of limitation that refer to “actions” and “special proceedings” and are contained in the Code of Civil Procedure apply to judicial proceedings, not administrative proceedings. (*City of Oakland v. Public Employees’ Retirement System* (2002) 95 Cal.App.4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, Section 405(2), p. 510.)
33. Notwithstanding the issuance of this Complaint, the Regional Water Board and/or the State Water Board shall retain the authority to assess additional penalties against the Operator for other violations of waste discharge requirements or Basin Plan requirements for which penalties have not yet been assessed, or for any violations that may subsequently occur.
34. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code section 21000 et seq., in accordance with California Code of Regulations, title 14, section 15321.
35. Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of a civil liability occasioned by violation of the Clean Water Act, including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.



Thomas Mumley
Assistant Executive Officer
San Francisco Bay Regional Water Quality Control Board