

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

In the Matter Of:

John B Ward III
Lite Stone Concrete, LLC
1105 N Marshall Ave
El Cajon, CA 92020

WDID No. 9 371021782

**Complaint No. R9-2010-0127
For
Administrative Civil Liability**

**Violations of Order No. 97-03-DWQ and
Water Code Section 13260**

6 October 2010

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Lite Stone Concrete, LLC (Lite Stone Concrete) located at 1105 N Marshall Ave El Cajon, CA 92020, is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) must impose civil liability pursuant to Water Code section 13399.33 and may impose civil liability pursuant to Water Code sections 13261 and 13385.
2. On 3 September 2008 a Notice of Intent submitted by Lite Stone Concrete, for coverage under Order No. 97-03-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001 Waste Discharge Requirements (WDRs) for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities, was processed.
3. Order No. 97-03-DWQ requires the submittal of an annual monitoring report by July 1st of each year.
4. Order No. 97-03-DWQ and Water Code section 13260 require the payment of an annual fee to retain coverage.
5. The integrity and effectiveness of the Industrial NPDES regulatory program relies upon discharger compliance accomplished by self-evaluation and self-reporting. Self-evaluation is accomplished by implementing the programs and provisions of Order No. 97-03-DWQ. Self-reporting is accomplished by the submission of an annual report as outlined in Order No. 97-03-DWQ Section B-14. The annual report includes a summary and evaluation of visual observations and sampling results, laboratory reports and an Annual Comprehensive Site Compliance Evaluation Report. Therefore, timely submittal of the required annual report is critically important for the evaluation of a facility's compliance with water quality standards.

ALLEGATIONS

6. Lite Stone Concrete violated Monitoring and Reporting Requirements in Section 14 of Order No. 97-03-DWQ by failing to submit the Fiscal Year (FY) 2008-2009 annual monitoring report by 1 July 2009.
7. In accordance with Water Code section 13399.31, the San Diego Water Board issued Notices of Violation dated 1 December 2009 and 9 March 2010. The San Diego Water Board notified Lite Stone Concrete that the San Diego Water Board had not received the FY 2008-2009 annual report that was due 1 July 2009. The San Diego Water Board urged Lite Stone Concrete to submit its annual report and alerted Lite Stone Concrete that continued failure to submit the report would trigger an administrative civil liability complaint assessing monetary penalties. As of the date of this complaint, the San Diego Water Board has not received the Lite Stone Concrete FY 2008-2009 annual report.
8. Lite Stone Concrete violated Water Code section 13260, and Paragraph 3 and Attachment 3 of Order No. 97-03 by failing to pay the annual permit fee for coverage under Order No. 97-03-DWQ for FY 2009-2010. The delinquent fee is \$1,008. The State Water Board sent an invoice to Lite Stone Concrete on 11 August 2009 indicating that payment was due by 10 September 2009. The State Water Board then notified Lite Stone Concrete of the fee delinquency with a Demand for Payment letter on 21 October 2009 and a Notice of Violation on 8 December 2009. Both the Demand for Payment letter and the Notice of Violation informed Lite Stone Concrete that failing to pay the fee could result in imposition of administrative civil liability of up to \$1,000 per day of violation.

MAXIMUM LIABILITY

9. Pursuant to Water Code section 13385, the maximum administrative civil liability which could be imposed by the San Diego Water Board for failing to comply with reporting requirements of Order No. 97-03-DWQ is ten thousand dollars (\$10,000) for each day in which the violation occurs. To date, Lite Stone Concrete has violated Order No. 97-03-DWQ for 463 days (1 July 2009 to 6 October 2010). The violation continues, therefore, the maximum administrative civil liability for failing to submit the FY 2008-2009 annual report to date is four million six hundred thirty thousand dollars (\$4,630,000).
10. Pursuant to Water Code section 13261(b)(1), the maximum administrative civil liability which could be imposed by the San Diego Water Board for the failure to pay a required fee is one thousand dollars (\$1,000) for each day in which the violation occurs. To date, Lite Stone Concrete has violated Water Code section 13260 for 390 days (10 September 2009 to 6 October 2010). The violation continues, therefore the maximum administrative civil liability for failing to pay the annual fee to date is three hundred ninety thousand dollars (\$390,000).

MINIMUM LIABILITY

11. Water Code section 13399.33, subdivisions (c) and (d) require that the San Diego Water Board impose a mandatory penalty of not less than \$1,000 and recover associated staff costs for any person who fails to submit an annual report in accordance with Water Code section 13399.31. There is no mandatory or minimum liability for failure to pay fees.

PROPOSED LIABILITY

12. It is recommended that the San Diego Water Board impose civil liability against Lite Stone Concrete in the amount of three thousand seven hundred sixty six dollars (\$3,766) for the violations described in this complaint. If the discharger elects to contest this matter, the recommended liability may increase to recover additional necessary staff costs.

- a. Annual Report Violation: It is recommended that the San Diego Water Board impose civil liability against Lite Stone Concrete in the amount of one thousand three hundred dollars (\$1,300) for failure to submit the FY 2008-2009 annual report required by Order No. 97-03-DWQ. This includes the minimum penalty of \$1,000 plus staff costs to date of \$300.
- b. Annual Fee Violation: It is recommended that the San Diego Water Board impose civil liability against Lite Stone Concrete in the amount of two thousand four hundred sixty six dollars (\$2,466) for failure to pay the FY 2009-2010 annual fee. This includes staff costs of \$450 to date.

The proposed liability for the annual fee violation is based on the penalty calculation methodology in the Enforcement Policy and consideration of the factors within Water Code section 13227. The proposed liability includes a substantial downward adjustment for "other factors as justice may require" in order to assess a reasonable civil liability for the subject violation. The penalty calculation methodology is detailed in the Technical Analysis for Complaint No. R9-2010-0127.

Dated this 6th day of October 2010.



JAMES G. SMITH

Assistant Executive Officer

Signed pursuant to the authority delegated
by the Executive Officer to the Assistant
Executive Officer.

Attachments: Technical Analysis

SMARTS: Violation ID 840360
Enforcement ID 402598
WDID No. 9 371021782

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

TECHNICAL ANALYSIS

**Proposed Administrative Civil Liability Contained in
Complaint No. R9-2010-0127
Lite Stone Concrete, LLC**

Noncompliance with

**State Water Resources Control Board Order No. 97-03-DWQ, National
Pollutant Discharge Elimination System General Permit No. CAS000001,
Waste Discharge Requirements (WDRs) for Discharges of Storm Water
Associated With Industrial Activities Excluding Construction Activities**

And

California Water Code Section 13260

6 October 2010

Prepared by

**Ryan Anson
Compliance Assurance Unit
San Diego Water Board**

A. INTRODUCTION

This technical analysis provides a summary of factual and analytical evidence that support the findings, allegations and proposed liability in Complaint No. R9-2010-0127 for an Administrative Civil Liability (Complaint) in the amount of \$3,766 against Lite Stone Concrete LLC (Lite Stone Concrete) for violations of California Water Code section 13260 and State Water Resources Control Board, Order No. 97-03-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS000001, Waste Discharge Requirements (WDRs) for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities.

The Complaint alleges the acts or failures to act that constitute violations of law, the provision of law authorizing civil liability to be imposed, and the proposed civil liability.

The recommended liability of \$3,766 includes a mandatory penalty of \$1,300 for failure to submit the Fiscal Year (FY) 2008-2009 annual report and a discretionary penalty of \$2,466 for failure to pay the FY 2009-2010 annual fee. Section C of this technical analysis addresses the discretionary penalty associated with the failure to pay the annual fee.

Lite Stone Concrete is a manufacturer of various pre-cast concrete products located in El Cajon, CA.

B. VIOLATIONS

On 3 September 2008 a Notice of Intent (Attachment F) submitted by Lite Stone Concrete, for coverage under Order No. 97-03-DWQ, was processed. In filing the NOI, Lite Stone Concrete agreed to timely submittals of annual reports and annual fees. The NOI was submitted by, and prepared under the direction of, Mr. John B. Ward, III.

The ACL Complaint proposes a discretionary penalty for failing to pay the FY 2009-2010 annual fee and a mandatory penalty for failing to submit the FY 2008-2009 annual report.

1. Failure to Submit Annual Report

Monitoring and Reporting Requirements in Section 14 of Order No. 97-03-DWQ require the submittal of an annual monitoring report by July 1st of each year.

Lite Stone Concrete violated Monitoring and Reporting Requirements in Section 14 of Order No. 97-03-DWQ by failing to submit the FY 2008-2009 annual monitoring report by 1 July 2009.

In accordance with Water Code section 13399.31, the San Diego Water Board issued Notices of Violation dated 1 December 2009 (Exhibit A) and 9 March 2010 (Exhibit B). The San Diego Water Board notified Lite Stone Concrete that the San Diego Water Board had not received the FY 2008-2009 annual report. The San Diego Water Board urged Lite Stone Concrete to submit its annual report and alerted Lite Stone Concrete that continued failure to submit the report would trigger an administrative civil liability complaint assessing monetary penalties.

On 17 March 2010 the San Diego Water Board received a letter, dated 15 March 2010, from Mr. John B. Ward III, the owner of Lite Stone Concrete, stating that the company did not know about the reporting requirements or how to meet them and that the company relied upon an environmental services contractor to ensure compliance. These statements do not excuse Lite Stone Concrete from civil liability resulting from the violations identified in the Complaint.

San Diego Water Board staff inspected Lite Stone Concrete on 13 July 2010. Mr. Ward was not present at the time of this inspection. The San Diego Water Board inspector, Mr. Tony Felix, verified the facility was still in operation, left a voice message by phone at the phone number listed on the 15 March 2010 letter for Mr. Ward and requested a return call. Mr. Felix did not receive a return call or other subsequent correspondence.

Pursuant to Water Code section 13385, the maximum administrative civil liability which could be imposed by the San Diego Water Board for failing to submit the annual report is ten thousand dollars (\$10,000) for each day in which the violation occurs. The violation has continued for 463 days (1 July 2009 to 6 October 2010) therefore the maximum administrative civil liability for failing to submit the FY 2008-2009 annual report is four million six hundred thirty thousand dollars (\$4,630,000).

Water Code section 13399.33, subdivisions (c) and (d) require that the San Diego Water Board impose a penalty of not less than \$1,000 and recover San Diego Water Board staff costs associated with this enforcement action for any person who fails to submit an annual report in accordance with Water Code section 13399.31. The San Diego Water Board staff costs as of 29 September 2010 are \$300.

2. Failure to Pay Annual Fee

Paragraph 3 and Attachment 3 of Order No. 97-03-DWQ require the payment of a \$1,008 annual fee. Water Code section 13260(d)(1)(A) requires the payment of an annual fee if required by an applicable order.

Lite Stone Concrete violated Water Code section 13260(d)(1)(A) by failing to pay the annual permit fee required to maintain coverage under Order No. 97-03-DWQ for FY 2009-2010. The delinquent fee of \$1,008 was invoiced by the State Water Board on 11 August 2009. The payment was due on 10 September 2009. The State Water Board then sent a Demand for Payment on 21 October 2009 (Exhibit C) and a Notice of Violation on 8 December 2009 (Exhibit D). The payment was initially due on 10 September 2009 and to date the fee has not been submitted, therefore the days of violation are 390 and will continue until the fee is paid.

C. DETERMINATION OF ADMINISTRATIVE CIVIL LIABILITY

Failure to Submit Annual Report

The proposed liability for the violation of failing to submit the annual report is the mandatory penalty of \$1,000 plus staff costs required by Water Code section 13399.33. No discretionary penalty pursuant to section 13385 is proposed.

Failure to Pay Annual Fee

Pursuant to Water Code section 13261(b)(1), civil liability for failing to pay a required annual fee "may not exceed one thousand dollars (\$1,000) for each day in which the violation occurs."

Water Code section 13327 requires the San Diego Water Board to consider several factors when determining the amount of civil liability to impose under Water Code section 13261. These factors include: "...the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require."

Water Quality Enforcement Policy

The 2009 State Water Resources Control Board Water Quality Enforcement Policy, Section VI, provides a penalty calculation methodology for Regional Water Boards to use in administrative civil liability cases. The penalty calculation methodology enables the water boards to fairly and consistently implement liability provisions of the Water Code for maximum enforcement impact to address, correct, and deter water quality violations. The penalty calculation methodology provides a consistent approach and analysis of factors to determine liability based on the applicable Water Code section.

The Enforcement Policy suggests that the penalty calculation methodology apply to discretionary penalties subject to consideration of the factors in Water Code section 13227 or 13385, but not mandatory penalties such as those required by Water Code section 13399.33. Since the prosecution team is proposing a mandatory penalty for the late annual report violation, the following analysis only applies the methodology to the violation of failing to pay the annual fee.

1. Step 1 - Potential for Harm for Discharge Violations

The failure to pay annual fees is a “non-discharge violation.” Therefore this step does not apply.

2. Step 2 – Assessments for Discharge Violations

The failure to pay annual fees is a “non-discharge violation.” Therefore this step does not apply.

3. Step 3 – Per Day Assessments for Non-Discharge Violations

Step three of the Enforcement Policy’s penalty calculation methodology directs the San Diego Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

Potential for Harm is determined to be minor because the failure to pay annual fees presents no direct threat to beneficial uses and does only minor harm to the regulatory program.

The Extent of Deviation from applicable requirements was determined to be major because no portion of the annual fee was submitted.

Using “TABLE 3 – Per Day Factor” and applying a Potential for Harm of minor and an Extent of Deviation of major results in a factor of **0.3**. As a result, the Initial Base Liability for failing to pay the annual fee is:

$$\text{Initial Base Liability} = (0.3) \times (390 \text{ days of violation}) \times (\$1,000) = \$117,000$$

4. Step 4 – Adjustment Factors

The Enforcement Policy describes three factors related to the violator's conduct that should be considered for modification of the amount of initial liability: the violator's culpability, the violator's efforts to cleanup or cooperate with regulatory authorities after the violation, and the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

a. Adjustment for Culpability

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case a culpability multiplier of 1.5 has been selected.

Lite Stone Concrete verified its understanding of, and commitment to, the annual fee requirement in Order No. 97-03-DWQ when the Notice of Intent was filed. In addition, the State Water Board twice notified Lite Stone Concrete that the FY 2009 fee was late with a delinquent notice and notice of violation. The continued failure to pay the annual fee is negligent behavior. Therefore, an adjustment for culpability factor of 1.5 is appropriate.

b. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation.

This adjustment was not considered because this is a non-discharge violation.

c. Adjustment for History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this. In this case, a multiplier of 1.0 is proposed because Lite Stone Concrete has no prior history of non-compliance. A factor of 1.0 has no effect on the liability amount.

d. Adjustment for Multiple Violations Resulting from the Same Incident

The Enforcement Policy provides that for situations not addressed by statute, a single base liability amount can also be assessed for multiple violations resulting from the same incident at the discretion of the water boards under certain, specific circumstances. Except where statutorily required, however, multiple violations shall not be grouped and considered as a single base liability amount when those multiple violations each result in a distinguishable economic benefit to the violator.

Failure to pay the annual fee violates both Order No. 97-03-DWQ and Water Code section 13260. Both violations will be grouped and considered as a base liability under Water Code section 13261, rather than section 13385 because the plain language of section 13261 indicates the legislative intent for it to be used when considering administrative civil liability for failing to pay annual fees.

e. Adjustment for Multiple Day Violations

The Enforcement Policy provides that for violations lasting more than 30 days, the San Diego Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per day economic benefit, if any, resulting from the violation.

The failure to pay the FY 2009-2010 annual fee has continued for 390 days since 10 September 2009.

The continuance of the violation is not causing daily detrimental impacts to the environment; therefore an adjustment can be made.

The prosecution team recommends the alternate approach to penalty calculation described in the Enforcement Policy be applied. Using this approach, penalties will be assessed for days 1, 5, 10, 15, 20, 25, 30, 60, 90, 120, 150, 180, 210, 240, 270, 300, 330, 360, and 390 of violation. This results in the consideration of **19** days in violation.

5. Step 5 - Determination of Total Base Liability Amount

The Total Base Liability amount is determined by adding the initial liability amounts (from Steps 1-3) for each applicable violation and applying the adjustment factors from Step 4. Accordingly, the Total Base Liability Amount for failing to pay the annual fee is calculated as follows:

$$(\text{Initial Liability}) \times (\text{Per Day Factor}) \times (\text{Culpability Adjustment}) \times (\text{Multiple Day Adjustment}) = (\text{Total Base Liability Amount})$$

$$\text{Total Base Liability Amount} = (\$1,000) \times (0.3) \times (1.5) \times (19) = \$8,550$$

6. Step 6 – Ability to Pay and Ability to Continue in Business

The Enforcement Policy provides that if the San Diego Water Board has sufficient financial information necessary to assess the violator's ability to pay the Total Base Liability or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability Amount may be adjusted downward.

The San Diego Water Board Prosecution Team has sufficient information to suggest that Lite Stone Concrete has the ability to pay the proposed liability. Lite Stone Concrete is an active business and, according to its website (limestoneconcrete.com), Lite Stone Concrete is a major manufacturer of precast architectural concrete products, maintains a complete design facility and has a full time fabrication staff.

7. Step 7 – Other Factors As Justice May Require

The Enforcement Policy provides that if the San Diego Water Board believes that the amount determined using the above factors is inappropriate, the liability amount may be adjusted under the provision for "other factors as justice may require," if express findings are made. In addition, the costs of investigation should be added to the liability amount according to the Enforcement Policy.

The prosecution staff recommends the Total Base Liability amount of \$8,550 should be adjusted downward because \$8,550 is more than eight times the original fee, which is disproportionate to the magnitude and effect of the violation.

The prosecution staff recommends a reduction of \$6,534 to the Total Base Liability amount, resulting in an adjusted amount of \$2,016, which is twice the original fee. This amount bears a reasonable relationship to the gravity of the violation and the harm to the regulatory program resulting from the violation, and it deters similar conduct in the future.

In addition, the San Diego Water Board associated staff costs to date of \$450 associated with this violation should be added to the liability amount.

8. Step 8 – Economic Benefit

The Enforcement Policy directs the San Diego Water Board to determine any economic benefit of the violations based on the best available information and suggests that the amount of the administrative civil liability should exceed this amount whether or not economic benefit is a statutory minimum.

The economic benefit of the violation was estimated to be the unpaid fee of \$1,008 plus a time value of \$13 using the USEPA Economic Benefit Calculator.

$$\$1,008 + \$13 = \$1,021$$

Therefore the adjusted total base liability amount should be greater than \$1,021.

The adjusted total base liability amount suggested would recover the economic benefit.

9. Step 9 – Maximum and Minimum Liability Amounts

The Enforcement Policy directs the San Diego Water Board to determine the maximum and minimum liability amounts set forth in the applicable statutes.

Water Code 13261(b)(1) establishes that a discharger failing to pay a required fee is liable in an amount that may not exceed \$1,000 for each day of violation. The violation has continued for 390 days (10 September 2009 to 6 October 2010) so the maximum liability is \$390,000.

There is no statutory minimum liability for failure to pay a fee. However, the enforcement policy directs the San Diego Water Board to recover, at a minimum, ten percent more than the economic benefit of \$1,021. In this case that would be one thousand one hundred twenty three dollars (\$1,123).

The proposed liability falls within the maximum and minimum liability amounts.

10. Step 10 – Final Liability Amount

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts. The final liability amount calculation for the violation of failing to pay the annual fee was performed as follows.

$$(\text{Total Base Liability Amount}) + (\text{Staff Costs}) - (\text{Adjustment for Other Factors as Justice May Require}) = (\text{Final Liability Amount})$$

$$\text{Final Liability Amount} = (\$8,550) + (\$450) - (\$6,534) = \$2,466$$

D. CONCLUSION

To calculate the total recommended amount of civil liability, the amounts for each violation are added together as follows.

Violation	Penalty	Staff Costs	Total
Failure to Pay Annual Fee	\$2,016	\$450	\$2,466
Failure to Submit Annual Report	\$1,000	\$300	\$1,300
Total	\$3,016	\$750	\$3,766

The final Assessment of Civil Liability amount recommended by the Prosecution Staff is three thousand seven hundred sixty six dollars (\$3,766).

E. EXHIBITS

- A Notice of Violation No. R9-2009-0221 (1 December 2009)
- B Notice of Violation No. R9-2010-0050 (9 March 2010)
- C Demand for Payment Letter (21 October 2009)
- D Notice of Violation for Facility ID:9 371021782 (8 December 2009)
- E Lite Stone Concrete response letter (15 March 2010)
- F Notice of Intent for Facility ID:9 371021782 (Processed 3 September 2008)
- G Penalty Methodology Decisions Summary Sheet