

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER No. 01-104

ORDER SETTING ADMINISTRATIVE LIABILITY FOR:

**TXI/PACIFIC CUSTOM MATERIALS, INC.
9000 CARQUINEZ SCENIC DRIVE
PORT COSTA, CONTRA COSTA COUNTY**

The California Regional Water Quality Control Board, San Francisco Bay Region (hereafter Board), finds that:

1. On April 25, 1997, the State Water Resources Control Board adopted Order No. 97-03-DWQ, implementing National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001, Waste Discharge Requirements (WDRs) for Discharges of Storm Water Runoff Associated with Industrial Activities (hereafter the General Permit).
2. On June 11, 1997, Texas Industries, Inc. (TXI), and Pacific Custom Materials, Inc., hereafter the discharger, filed with the State Board a Notice Of Intent (NOI) to comply with the provisions of the General Permit, for its Port Costa Plant, WDID No. 2-07S012421. The Port Costa Plant is a 175-acre facility that produces lightweight aggregate from raw material mined at the site.
3. Provisions of Sections 301 and 402 of the Clean Water Act require control of pollutant discharges using Best Available Technology economically achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) to prevent and reduce pollutants to meet water quality standards. The General Permit requires development and implementation of a Storm Water Pollution Prevention Plan (SWPPP), which should identify BAT/BCT for the industry and specify Best Management Practices (BMPs) to be implemented at the facility.
4. On October 27, 1999, staff inspected the facility to determine its General Permit compliance. Staff found that the discharger was not in compliance with the General Permit and observed the discharge of sediment to Little Bull Valley Creek and to Carquinez Strait. Staff issued a Notice To Comply (NTC) to the facility's plant manager. The NTC identified conditions at the facility that violated both the San Francisco Bay Water Quality Control Plan (Basin Plan) and the General Permit. The NTC served as written notification to the discharger regarding General Permit violations, and included recommended actions for the discharger to consider to correct those violations.

5. Pursuant to the October 27, 1999, Notice to Comply, the discharger proposed acceptable BAT/BCT which may have prevented or eliminated pollutants entering Waters of the United States. However, the discharger never implemented these measures and did not comply with the NTC. Acceptable BMPs had not been completed as of May 18, 2001. The lack of compliance with the NTC and the General Permit and implementation of adequate BAT/BCT has resulted, and will likely continue to result, in the discharge of significant volumes of sediment to Little Bull Valley Creek and to Carquinez Strait.
6. The discharger's failure to comply with the NTC and the General Permit issued pursuant to Water Code Section 13377 constitutes violations for which this Board may pursue civil liability against the discharger pursuant to Water Code Sections 13268 and 13385(a)(2).
7. On July 5, 2001, the Executive Officer issued Complaint No. 01-004 to the discharger. The complaint proposed that administrative civil liability be imposed by this Board in the amount of \$113,200, which includes \$12,000 in staff costs. The discharger requested a postponement of the hearing before the Board to September 19, 2001. The Board agreed, on August 15, 2001, to continue the hearing to its September 19, 2001, meeting.
8. The discharger, by delaying and not complying with the NTC and the General Permit, has realized an economic benefit of at least \$92,000. Water Code Section 13385(e) requires that, at a minimum, liability be assessed at a level that recovers the economic benefits derived from the acts that constitute violations.
9. In determining the amount of administrative civil liability, the Regional Board has considered the following factors described in the July 26, 2001, staff report attached to the Complaint No. 01-004:
"the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the ability to pay, 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 Code Section 13385(e)].
10. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Section 15321(a)(2), Title 14, of the California Code of Regulations.
11. The Board has notified the discharger and all interested agencies and persons that it would hold a public hearing on this matter and has provided them with an opportunity to submit written comments.
12. The Board, at a public hearing, heard and considered all comments pertaining to this case.

IT IS HEREBY ORDERED, PURSUANT TO CALIFORNIA WATER CODE SECTIONS 13268 AND 13385, that the discharger is civilly liable for these violations and shall pay administrative civil liability in the amount of \$113,200, which includes \$12,000 in staff costs plus estimated economic benefits enjoyed by the discharger by not implementing BAT/BCT which could have reduced or eliminated pollutant discharge.

I, Loretta K. Barsamian, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on September 19, 2001.



Loretta K. Barsamian
Executive Officer