

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

TENTATIVE ORDER

ORDER SETTING ADMINISTRATIVE CIVIL LIABILITY FOR:

**UNI TILE & MARBLE, INC.
21105 CABOT BOULEVARD, SUITE B
HAYWARD, ALAMEDA COUNTY**

The California Regional Water Quality Control Board, San Francisco Bay Region (“Regional Water Board”), held a duly public noticed hearing concerning an administrative civil liability complaint (“Complaint”) issued to Uni Tile & Marble, Inc. (“Uni Tile” or “Discharger”), and finds that:

1. Uni Tile violated provisions of law for which the Regional Water Board may impose civil liability pursuant to sections 13385(a)(1) and 13323 of the CWC. This Order assesses \$26,250 in liabilities for the violations cited below.
2. Uni Tile is a stone countertop and kitchen cabinet retailer and installer with locations in San Francisco and Hayward. The subject facility, in Hayward, discharges storm water associated with industrial activities.
3. Federal regulations require operators of specific categories of facilities where discharges of storm water associated with industrial activity occur to obtain a national pollutant discharge elimination system (“NPDES”) permit and to implement Best Available Technology Economically Achievable (“BAT”) and Best Conventional Pollutant Control Technology (“BCT”) to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm discharges. The regulations require such operators either apply for an individual NPDES permit or seek coverage under a promulgated storm water general permit.
4. 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, covered facility operators must submit a notice of intent (“NOI”) and comply with the terms and conditions of the General Permit.
5. CWC section 13376 requires any person discharging pollutants, or proposing to discharge pollutants, to navigable waters of the United States to submit a report of waste discharge, and prohibits the discharge of pollutants except as authorized by waste discharge requirements.

Submission of an NOI for coverage under and compliance with the General Permit satisfies the requirements of section 13376.

6. The Discharger has discharges of storm water associated with industrial activities at its Hayward facility that require an NPDES permit. The activities are included in the Standard Industrial Classification (“SIC”) Code 3281 - Cut Stone and Stone Products. Rain falling at the facility (about 18 inches each year) contacts pollutants from industrial operations and discharges from the site through the surrounding storm drain system into San Francisco Bay, a water of the United States. The pollutants at the Discharger’s site exposed to storm water include, but are not limited to, stone cutting slurry and plastic debris.
7. The Discharger failed to seek an individual NPDES permit or obtain coverage under the General Permit after being told of the requirement to do so:
 - The City of Hayward notified the Discharger of its obligation to comply with the above requirements during a June 6, 2006, inspection, and referred the case against the Discharger to the Regional Water Board for enforcement.
 - Based on the referral from the City of Hayward, Regional Water Board staff notified the Discharger of its obligation to file an NOI to obtain coverage under the General Permit via certified mail dated January 31, 2007. The Discharger was required to respond by March 2, 2007. The Discharger did not submit an NOI and did not otherwise respond to the letter.
 - By certified mail dated October 9, 2007, Regional Water Board staff issued a Notice of Violation (“NOV”) letter to the Discharger. The NOV informed the Discharger that it was in violation of the CWC by allowing pollutants to enter waters of the United States without a permit. Staff also informed the Discharger that if it did not submit an NOI to obtain coverage under the General Permit by November 1, 2007, Regional Water Board staff would recommend enforcement actions, including imposition of administrative civil liability up to \$10,000 per day. The Discharger did not submit an NOI and did not otherwise respond to the letter.
 - On July 3, 2008, Regional Water Board staff inspected the facility and notified Uni Tile staff verbally that the Regional Water Board was anticipating imposing administrative civil liability due to the Discharger’s continuing violation. Regional Water Board staff noted during the July 3, 2008, inspection that there was stone dust and slurry discharging from the stone cutting area and that the plastic sheeting covering the marble stored outside was disintegrating and could be transported to a storm drain and thence to waters of the United States during a rainfall event or by wind.
 - On July 17, 2009, the Regional Water Board’s Assistant Executive Officer issued the Complaint. The Complaint alleges that the Discharger violated CWC section 13376 by discharging industrial stormwater to waters of the State and waters of the United States without a permit from July 3, 2008 (the date of the Regional Water Board staff

inspection), to April 2, 2009 (the date of the Complaint), a total of 273 days. The Complaint proposes administrative civil liability of \$26,250 for these violations.

8. CWC section 13385 states, in part:

(a) Any person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376.

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

9. The Discharger violated CWC section 13376 by failing to file a report of waste discharge through submission of an NOI for coverage under the General Permit and discharging pollutants without authorization. The Discharger failed to submit a report of waste discharge or NOI for General Permit coverage from July 3, 2008 (the date of the Regional Water Board staff inspection), to April 2, 2009 (the date of the Complaint), a total of 273 days. At \$10,000 per day, the maximum potential civil liability is \$2,730,000.

10. In imposing the proposed administrative civil liability, the Regional Water Board has considered each of the factors prescribed in CWC section 13385(e). The Regional Water Board's consideration of these factors is based upon information in the record and the testimonies at the public hearing.

11. Staff time to investigate and prepare a Notice of Noncompliance, NOV, Complaint and supporting information is estimated to be 80 hours. Based on an average cost to the State of \$150 per hour, the total cost is \$12,000. Issuance of the Complaint also required publication of a public notice in a newspaper of general circulation at a cost of approximately \$600. These costs, totaling \$12,600, are appropriate to recoup in the amount of the administrative civil liability imposed against the Discharger, under the "other matters as justice may require" factor in CWC section 13385(e).

12. This Order is 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), Title 14, of the California Code of Regulations.

IT IS HEREBY ORDERED that:

1. Administrative civil liability under CWC sections 13385(a)(1) and 13323 be imposed against Uni Tile in the amount of \$26,250 for the violations described above.
2. Uni Tile shall pay the sum of \$26,250 to the Regional Water Board for deposit in the State Water Pollution Cleanup and Abatement Account within thirty (30) days following adoption of this Order by the Regional Water Board.

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 February 10, 2010.

Bruce H. Wolfe
Executive Officer

Attachment 1: Complaint No. R2-2009-0030