



# California Regional Water Quality Control Board

## San Francisco Bay Region



Linda S. Adams  
Agency Secretary

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.

---

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.



**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."

---

(Print Name and Title)

---

(Signature)

---

(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, [SPotter@waterboards.ca.gov](mailto:SPotter@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, [ACaroll@waterboards.ca.gov](mailto:ACaroll@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](mailto: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.