

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2009-0539  
IN THE MATTER OF

PETER CHIU, P.E.  
BUILDING MATERIALS INDUSTRY STORM WATER GROUP  
FRESNO AND KERN COUNTIES

This Administrative Civil Liability Complaint is issued to Peter Chiu, a California registered professional engineer (P.E.), pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability (ACL) and CWC section 13323, which authorizes the Executive Officer to issue this complaint. The complaint is based on findings that Mr. Chiu submitted two falsified reports.

The Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds, with respect to Mr. Chiu's acts, or failure to act, the following:

1. On 14 November 2005, a ready-mix concrete facility at 1300 Belmont Avenue in Mendota obtained coverage under the *National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001 for Storm Water Discharges Associated With Industrial Activity, Water Quality Order No. 97-03-DWQ* (General Permit) and was issued WDID No. 5F10I019917. The site is owned by Vulcan Materials Company (Vulcan) doing business as CalMat and Triangle Rock. Vulcan terminated coverage under the General Permit on 25 November 2008 and leased the site to Central Valley Concrete.
2. On 16 September 1998, CalMat, a ready-mix concrete business, obtained coverage for the facility at 529 Dolores Street in Bakersfield under the General Permit and was issued WDID No. 5F15I014597. CalMat was bought by Vulcan in 1998 and the facility is currently owned by Vulcan doing business as CalMat.
3. The General Permit implements federal stormwater requirements, and requires the submittal of Annual Reports.
4. Mr. Chiu serves as a representative for the two facilities via an entity known as the "Building Materials Industry Storm Water Group." This entity implements a group monitoring plan pursuant to the General Permit's Monitoring Program and Reporting Requirements (B)(15). In this role, Mr. Chiu provides compliance assistance to members and submits a Group Monitoring Report to the State and Regional Water Boards each year.

5. On 30 June 2008, Mr. Chiu submitted, on behalf of Vulcan, Annual Reports for the 2007-2008 monitoring period for the facilities described in Finding Nos. 1 and 2. The Annual Report forms were blank except for the identification of the facility on the first page, with a handwritten note that stated, "Not in Operation." No other information was included, none of the questions were answered, none of the attached forms were filled out, and the reports were not signed.
6. By letters of 4 September 2008, Board staff notified Vulcan that the reports for each facility were incomplete and directed it to submit the required 2007-2008 Annual Reports.
7. On 3 October 2008, the Central Valley Water Board received revised Annual Reports from Mr. Chiu for both facilities, on Building Materials Industry Storm Water Group's letterhead . Each report contained a signature purported to be that of Tom Ferrell, Environmental Manager of Vulcan.
8. On 6 October 2008, Mr. Ferrell submitted different reports for the subject monitoring period on Vulcan's letterhead. Both reports were signed by Mr. Ferrell.
9. The reports described in Findings 7 and 8 contained the following certification statement:

*I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.*
10. Mr. Ferrell of Vulcan notified Board staff by telephone that the reports submitted by Mr. Chiu were unauthorized, and that the Annual Report certification signatures were forged.
11. On 20 October 2008, Stephen Bledsoe, Group Leader for the Building Materials Industry Storm Water Group, requested by letter that the reports submitted on 3 October 2008 be returned to him, as they were incorrect and sent in error.
12. The signatures on the 3 October 2008 reports submitted by Mr. Chiu do not match the signatures of Mr. Ferrell on the 6 October 2008 reports, or the original Notice of Intent forms, and other documents in the Board's case files.

Based on this evidence, Mr. Chiu falsified the signatures on the two Annual Reports he submitted.

### **REGULATORY CONSIDERATIONS**

13. CWC section 13323 states, in relevant part:

(a) Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision of law authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

14. CWC section 13383 states, in relevant part:

(a) The state board or a regional board may establish monitoring, inspection, entry, reporting, and recordkeeping requirements, as authorized by Section 13160, 13376, or 13377 or by subdivisions (b) and (c) of this section, for any person who discharges, or proposes to discharge, to navigable waters, any person who introduces pollutants into a publicly owned treatment works, any person who owns or operates, or proposes to own or operate, a publicly owned treatment works or other treatment works treating domestic sewage, or any person who uses or disposes, or proposes to use or dispose, of sewage sludge.

(b) The state board or the regional boards may require any person subject to this section to establish and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods, sample effluent as prescribed, and provide other information as may be reasonably required.

15. The General Order, Section B: Monitoring Program and Reporting Requirements, mandates the submittal of annual reports, and states, in relevant part:

#### 14. Annual Report

All facility operators shall submit an Annual Report by July 1 of each year to the Executive Officer of the Regional Water Board responsible for the area in which the facility is located and to the local agency (if requested). The report shall include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling and analysis results, laboratory reports, the Annual Comprehensive Site Compliance Evaluation Report required in Section A.9., an explanation of why a facility did not implement any activities required by the General Permit (if not already included in the Evaluation Report), and records specified in Section B.13.i. The method detection limit of each analytical parameter shall be included. Analytical results that are less than the method detection limit shall be reported as "less than the method detection limit." The Annual Report shall be signed and certified in accordance with Standard Provisions 9. and 10. of Section C of this General Permit. Facility operators shall prepare and submit their Annual Reports using the annual report forms provided

by the State Water Board or Regional Water Board or shall submit their information on a form that contains equivalent information.

These monitoring reports ensure compliance with the General Order, and are implemented under the authority of CWC section 13383.

16. CWC section 13385 states, in relevant part:

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

...

(3) Any requirements established pursuant to Section 13383.

...

(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.

...

(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, 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 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. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

17. Mr. Peter Chiu, P.E., falsified signatures on two reports that were required to be submitted under the terms of the General Permit.

18. The maximum liability that can be imposed administratively under CWC Section 13385 by the Central Valley Water Board for falsification of the two Annual Reports is twenty thousand dollars (\$20,000.00).

19. The factors in CWC section 13385(3), as cited in Finding No. 16, were considered and a two thousand dollar (\$2,000.00) Administrative Civil Liability is appropriate.

20. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code § 21000, et seq.), in accordance with California Code of Regulations, title 14, section 15321(a).

**PETER CHIU, P.E. IS HEREBY GIVEN NOTICE THAT:**

1. The Executive Officer of the Central Valley Water Board proposes that Peter Chiu be assessed an administrative civil liability in the amount of **two thousand dollars (\$2,000)**. The amount of the proposed liability is based upon a review of the factors cited in CWC section 13385(e), as well as the State Water Resources Control Board's Water Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **13/14 August 2009**, unless Peter Chiu does either of the following by **18 June 2009**:
  - a) Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **two thousand dollars (\$2,000)**; or
  - b) Agrees to enter into settlement discussions with the Central Valley Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Central Valley Water Board along with a letter describing the issues to be discussed.
3. If a hearing on this matter is conducted, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, which may include raising the monetary value of the civil liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

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PAMELA C. CREEDON, Executive Officer

19 May 2009

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