

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2011-0540

IN THE MATTER OF

ELITE READY MIX, LLC  
SACRAMENTO COUNTY

This Administrative Civil Liability Order is issued to Elite Ready Mix, LLC (hereafter Discharger) pursuant to California Water Code (CWC) section 13399.33(c) and (d) which authorizes the imposition of Administrative Civil Liability, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Order is based on a settlement of claims presented in Administrative Civil Liability Complaint R5-2011-0510 (ACL Complaint), issued by the Executive Officer on 7 January 2011 alleging that the Discharger violated provisions of State Water Resources Control Board Water Quality Order 97-03-DWQ (NPDES General Permit CAS000001).

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds the following:

1. On 17 April 1997, the State Water Resources Control Board adopted Water Quality Order 97-03-DWQ (NPDES General Permit CAS000001), *Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities* (hereafter "General Permit").
2. The General Permit requires that the operators of certain classifications of industrial facilities<sup>1</sup> apply for coverage under the General Permit, and generally requires the operators to (a) eliminate unauthorized non-storm water discharges, (b) develop and implement a Storm Water Pollution Prevention Plan, and (c) perform monitoring of storm water discharges.
3. The Discharger operates a concrete batch plant, which is classified as a "Ready-Mixed Concrete" facility and is identified with Standard Industrial Classification (SIC) number 3273. This category of industrial facility is required to obtain coverage under the General Permit.
4. Provision E.1. of the General Permit states that "all facility operators seeking coverage by [the] General Permit must submit a [Notice of Intent] for each of the facilities they operate." On 7 May 2008, the Discharger submitted a Notice of Intent for coverage under the General Permit, and was assigned WDID Number 5S34I021552.
5. Section B of the General Permit contains Monitoring and Reporting Requirements. Item 14 of Section B requires all facility operators to submit an annual report to the

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<sup>1</sup> Facilities that discharge storm water associated with industrial activity requiring coverage under the General Permit are listed by category in 40 Code of Federal Regulations Section 122.26(b)(14) and Attachment 1 of the General Permit.

Executive Officer of the Board by 1 July of each year. The annual report must include, but is not limited to, a summary of visual observations and sampling results, an evaluation of the visual observation and sampling and analysis results, laboratory reports, an annual comprehensive site compliance evaluation report, and if necessary, an explanation of why a facility did not implement any activities required by the General Permit.

6. The Discharger failed to submit its 2008/2009 annual report by the 1 July 2009 deadline. The Discharger also failed to submit its 2009/2010 annual report by the 1 July 2010 deadline.
7. On 23 July 2009, a Notice of Noncompliance was sent to the Discharger by mail. The Notice informed the Discharger that the Executive Officer had not received the Discharger's 2008/2009 annual report by 1 July as required by the General Permit, and described the penalties for the Discharger's noncompliance.
8. On 3 September 2009, the Executive Officer issued the Discharger a second Notice of Noncompliance by certified mail, return receipt requested. The Second Notice again described the Discharger's failure to timely submit an annual report as required by the General Permit, and described the penalties for the Discharger's noncompliance. Board staff received the return receipt for the Second Notice, which indicated that the Discharger received the Second Notice on 9 September 2009.
9. On 19 August 2010, the Discharger was issued a Notice of Noncompliance by certified mail, return receipt requested. The Notice informed the Discharger that the Executive Officer had not received the Discharger's 2009/2010 annual report by 1 July as required by the General Permit, and described the penalties for the Discharger's noncompliance. Board staff received the return receipt for the Notice, which indicated that the Discharger received the Notice on 20 August 2010.
10. On 30 September 2010, the Executive Officer issued the Discharger a second Notice of Noncompliance by certified mail, return receipt requested. The Second Notice again described the Discharger's failure to timely submit an annual report as required by the General Permit, and described the penalties for the Discharger's noncompliance. Board staff received the return receipt for the Second Notice, which indicated that the Discharger received the Second Notice on 30 September 2010.
11. Central Valley Water Board staff has repeatedly contacted or tried to contact the Discharger and/or the Discharger's representative. Phone messages were left for the Discharger on 22 July 2010 and 9 August 2010. A site inspection performed on 12 August 2010 confirmed that the Discharger was still in business. During the inspection, the Discharger said that the annual reports would be turned in. On 21 September 2010, staff spoke with the Discharger over the phone. The Discharger stated he had turned in the annual reports to an office of the County of Sacramento, but the office was not identified by the Discharger. The Discharger stated he would bring reports

to the Board office on 23 September 2010. On 5 October 2010 staff spoke with the Discharger over the phone and the Discharger said the 2009/2010 annual report would be turned in that day and the 2008/2009 would be turned in within three days.

12. As of 7 January 2011, the Executive Officer had not received the Discharger's 2008/2009 or 2009/2010 annual reports.

### **Regulatory Considerations**

13. CWC section 13399.31(b) states: *The regional board shall notify each discharger [that has failed to submit an annual report as required by the General Permit] with regard to its noncompliance and penalties therefore.*
14. CWC section 13399.31(c) states: *If a discharger to which a notice is sent pursuant to subdivision (b) fails to submit the annual report ... to the regional board within 30 days from the date on which the notice is sent, the executive officer of the regional board shall send a second notice to that discharger.*
15. CWC section 13399.31(d) states: *If a discharger to which a notice is sent pursuant to subdivision (c) fails to submit the annual report ... to the regional board within 60 days from the date on which the notice is sent pursuant to subdivision (b), the regional board shall impose the penalties described in subdivision (c) of Section 13399.33.*
16. CWC section 13399.33(c) requires the Board to impose administrative civil liability in an amount that is not less than one thousand dollars (\$1,000) for the failure to submit an annual report as required by the General Permit. CWC section 13399.33(d) requires that the Board recover the staff costs incurred in attempting to obtain that report.
17. Section 13385(a)(2) of the California Water Code provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.

### **Violations Alleged in ACL Complaint R5-2011-0510**

18. For the non-submittal of the 2008/2009 annual report, the Discharger is alleged to have violated the General Permit for 555 days (from 1 July 2009 to 7 January 2011). The total maximum liability for this violation pursuant to Section 13385 of the Water Code is \$5,550,000.
19. For the non-submittal of the 2009/2010 annual report, the Discharger is alleged to have violated the General Permit for 190 days (from 1 July 2010 to 7 January 2011). The total maximum liability for this violation pursuant to Section 13385 of the Water Code is

\$1,900,000.

20. The total maximum liability for the two violations pursuant to Section 13385 of the Water Code is \$7,450,00.
21. Based on the findings set forth herein, the Discharger is subject to a minimum of \$1,000 in civil liability for failure to submit the 2008/2009 annual report and a minimum of \$1,000 in civil liability for failure to submit the 2009/2010 annual report. The total minimum liability is \$2,000.
22. On 7 January 2011, the Executive Officer issued the ACL Complaint to the Discharger, proposing that the Discharger be assessed seven thousand eight hundred and fifty dollars (\$7,850) in administrative civil liability pursuant to CWC section 13399.33. The proposed liability included the minimum administrative civil liability for failure to submit the 2008/2009 and 2009/2010 annual reports (\$1,000 for each report) and staff costs in the amount of \$5,850 incurred with regard to the Discharger (i.e., in attempting to obtain the annual reports).
23. As detailed in Attachment A to the ACL Complaint, Board staff spent approximately 39 hours pursuing this enforcement action. The Board staff costs were based on a rate of \$150 per hour.
24. On 23 April 2009, the Central Valley Water Board delegated the authority to issue Administrative Civil Liability Orders, where the matter is not contested by the Discharger, to the Executive Officer, or to an Assistant Executive Officer when the Executive Officer is serving as head of the Board's Prosecution Team (Resolution R5-2009-0027). Executive Officer Pamela C. Creedon is serving as the head of the Board's Prosecution Team for this matter, and therefore Assistant Executive Officer Kenneth D. Landau has the authority to issue this Order.
25. This Order constitutes a settlement of the violations alleged in the ACL Complaint. On 7 January 2011, the Executive Officer issued the ACL Complaint and provided notice to the public that the alleged violations could be resolved by settlement. Notice was published on the Central Valley Water Board's website for a 30-day comment period as mandated by Part 123.27 of the Environmental Protection Agency regulations (40 CFR 123.27) and was provided to all interested parties via mail or the website. During the 30-day public comment period, no persons submitted comments to the Board regarding the ACL Complaint and/or potential settlement of the violations alleged in the Complaint. This Order is not substantially different than the ACL Complaint and, therefore, settlement of the violations alleged in the Complaint has been properly noticed.
26. Issuance of this Administrative Civil Liability Order to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub.

Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321 subdivision (a)(2).

**IT IS HEREBY ORDERED THAT:**

1. Elite Ready Mix, LLC shall pay **seven thousand eight hundred fifty dollars (\$7,850)** in administrative civil liability. Payment is due no later than 30 days from the date on which this Order is signed. Payment shall be made by a check made payable to the *Waste Discharge Permit Fund* that references "ACL Order R5-2011-0540". The check shall be remitted to the Central Valley Regional Board located at 11020 Sun Center Drive, Suite 200, Rancho Cordova, California, 95670.
2. Payment of the administrative civil liability in accordance with the terms of this Order shall resolve the violations alleged in ACL Complaint R5-2011-0510; however, that payment is not a substitute for compliance with applicable laws, and continuing or new violations of the type alleged in the Complaint may subject Elite Ready Mix, LLC to further enforcement, including additional administrative civil liability.
3. If the Discharger fails to make the payment in accordance with this Order, the Assistant Executive Officer may directly refer this matter to the State Attorney General for enforcement of the terms of this Order.
4. This Order is effective and final upon the date of signature.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date that this Order becomes final, except that if the thirtieth day following the date that this Order becomes final falls on a Saturday, Sunday, or state holiday (including mandatory furlough days), the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

[http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality/index.shtml](http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml)

or will be provided upon request.

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ORIGINAL SIGNED BY  
KENNETH D. LANDAU, Assistant Executive Officer

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25 March 2011  
DATE