

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0510

IN THE MATTER OF

ELITE READY MIX, LLC
SACRAMENTO COUNTY

This Complaint 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 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on findings that the Discharger violated provisions of State Water Board Order WQO 97-03-DWQ (NPDES General Permit CAS000001).

The 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 facilities¹ 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 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

¹ 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.

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. To date, the Executive Officer has 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.
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 both violations pursuant to Section 13385 of the Water Code is \$7,450,000.
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. The Discharger is also

subject to a minimum of \$1,000 in civil liability for failure to submit the 2009/2010 annual report.

22. In pursuing this enforcement action, approximately \$5,850 in staff costs were incurred, as shown in Attachment A to this Complaint.
23. Issuance of this Administrative Civil Liability Complaint 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(a)(2).

ELITE READY MIX, LLC IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **seven thousand eight hundred fifty dollars (\$7,850)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **6/7/8 April 2011**, unless the Discharger does one of the following by **7 February 2011**:
 - a) Waives the hearing by completing the attached waiver form (checking off the box next to Option 1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **seven thousand eight hundred fifty dollars (\$7,850)**; or
 - b) Requests to engage in settlement discussions by checking off the box next to Option #2 on the attached waiver form, and returns it to the Board along with a letter describing the issues to be discussed. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing; or
 - c) Requests a delay by checking off the box next to Option #3 on the attached waiver form, and returns it to the Board along with a letter describing the amount of additional time requested and the rationale. It remains within the discretion of the Central Valley Water Board to approve the extension.
3. If a hearing on this matter is held, the Central Valley 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.
4. If this matter proceeds to hearing, the Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

5. Further failure to comply with the General Permit beyond the date of this Complaint may subject the Discharger to further administrative civil liability, and/or other enforcement actions, including but not limited to referral to the Attorney General.

Original signed by Frederick Moss for

PAMELA C. CREEDON, Executive Officer

7 January 2011

DATE

Attachment: Waiver Form
Attachment A: Staff costs

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Elite Ready Mix, LLC (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2011-0510 (hereafter 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. The person who has been issued a complaint may waive the right to a hearing."

- (OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)**
- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
 - b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **seven thousand eight hundred fifty dollars (\$7,850)** by check that references "ACL Complaint R5-2011-0510" made payable to the *Waste Discharge Permit Fund*. Payment must be received by the Central Valley Water Board by **7 February 2011**.
 - 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 a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. 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: 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 Central Valley 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 promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."
- (OPTION 3: 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 Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley 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 Central Valley Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0510
ELITE READY MIX, LLC, SACRAMENTO COUNTY**

Staff costs to obtain compliance:

Staff position	Task	Estimated hours	Estimated Cost
Asst Exec Officer	Review case and documents	0.75	\$112.50
Attorney	Review case, edit documents	3.5	\$525
Exec Officer	Review case	0.5	\$75
Office Technician	Mail documents	0.25	\$37.50
Program Manager	Review case, edit documents	5	\$750
Senior Geologist	Review case, edit documents	3	\$450
Staff Scientist	Notifications to Discharger	5	\$750
Staff Scientist	Inspections	5	\$750
Staff Scientist	Review enforcement case	1	\$150
Staff Scientist	Prepare enforcement documents	12	\$1800
Staff Scientist	Internal meetings with management	2	\$300
Staff Scientist	Finalize documents	1	\$150
Total		39	\$5,850

Note: Staff costs are based on an average rate of \$150 per hour, as directed by the State Water Board Office of Enforcement