



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## California Regional Water Quality Control Board, San Diego Region

July 31, 2014

In reply refer to: SM-827206:rstewart

Mr. Cesar Aguilera  
President  
A & L Tile, Inc.  
3722 Main Street  
San Diego, California 92113

**HAND DELIVERED**

Mr. Robinson Devadhason  
Agent for Service of Process  
A & L Tile, Inc.  
1251 3<sup>rd</sup> Avenue, Suite 103  
Chula Vista, California 91911

**Certified Mail – Return Receipt Requested**  
Article Number: 7011 0470 0002 8952 5584

Messrs. Aguilera and Devadhason:

### **Notice of Hearing and Issuance of Complaint No. R9-2014-0065 for Administrative Civil Liability Against A & L Tile, Inc. for Violation of the Water Code**

Enclosed find Complaint No. R9-2014-0065 (Complaint) for Administrative Civil Liability against A & L Tile, Inc. (Discharger) in the amount of **six thousand one hundred ninety-four dollars (\$6,194)** for alleged violation of the California Water Code (Water Code). The alleged violation is described in the attached Complaint and the Technical Analysis to the Complaint.

#### Waiver of Hearing

Pursuant to Water Code section 13323, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) shall hold a hearing on the Complaint no later than ninety (90) days after it is issued. The Discharger may elect to waive its right to a hearing before the San Diego Water Board. Waiver of the hearing constitutes admission of the violation alleged in the Complaint and acceptance of the assessment of civil liability in the amount of **six thousand one hundred ninety-four dollars (\$6,194)** as set forth in the Complaint. For the San Diego Water Board to accept the waiver of the right to a public hearing, the Discharger must submit the enclosed waiver form signed by an authorized agent of the Discharger with Option 1 selected to the San Diego Water Board by 5 p.m. on **August 29, 2014**.

HENRY ABARBANEL, CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

2375 Northside Drive, Suite 100, San Diego, CA 92108-2700 | (619) 516-1990 | [www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)



Public Hearing

Alternatively, if the Discharger elects to proceed to a public hearing, a hearing is tentatively scheduled to be held at the San Diego Water Board office on **October 15, 2014** before the Executive Officer, as a delegate of the San Diego Water Board. The hearing will convene at the San Diego Water Board office, 2375 Northside Drive, Suite 100, San Diego, California 92108. During the hearing, the San Diego Water Board will accept testimony, public comment, and decide whether to affirm, reject, or modify the proposed liability or whether to refer the matter for judicial civil action.

Enclosed is the proposed hearing procedure. Please note that comments on the proposed hearing procedure are due by **August 11, 2014**, to the San Diego Water Board's advisory attorney, Catherine Hagan, at the address indicated in the hearing procedure.

In the subject line of any response, please include the reference number **SM-827206:rstewart**. For questions or comments, please contact Rebecca Stewart by telephone at (619) 521-3004, or by email at [rstewart@waterboards.ca.gov](mailto:rstewart@waterboards.ca.gov).

Respectfully,



JAMES G. SMITH  
Assistant Executive Officer

JGS;jh:cmc:rls

Enclosures:

1. Complaint No. R9-2014-0065
2. Technical Analysis for Complaint No. R9-2014-0065
3. Administrative Civil Liability Complaint Fact Sheet
4. Proposed Hearing Procedure
5. Waiver of Public Hearing Forms

cc via email:

1. Vincenzo Barnese, City of San Diego, Storm Water Dept., [vbarnese@sandiego.gov](mailto:vbarnese@sandiego.gov)
2. Eric Becker, San Diego Water Board, [ebecker@waterboards.ca.gov](mailto:ebecker@waterboards.ca.gov)
3. Chiara Clemente, San Diego Water Board, [cclemente@waterboards.ca.gov](mailto:cclemente@waterboards.ca.gov)
4. Whitney Ghoram, San Diego Water Board, [wghoram@waterboards.ca.gov](mailto:wghoram@waterboards.ca.gov)
5. David Gibson, San Diego Water Board, [dgibson@waterboards.ca.gov](mailto:dgibson@waterboards.ca.gov)
6. Catherine Hagan, State Water Board, Office of Chief Counsel, [chagen@waterboards.ca.gov](mailto:chagen@waterboards.ca.gov)
7. Brandi Outwin-Beals, San Diego Water Board, [boutwin@waterboards.ca.gov](mailto:boutwin@waterboards.ca.gov)
8. Laura Drabandt, State Water Board, Office of Enforcement, [ldrabandt@waterboards.ca.gov](mailto:ldrabandt@waterboards.ca.gov)

Tech Staff Info & Use	
PIN	827206
WDID	9 37IN602526
Order No.	R9-2014-0065
Violation ID	853194

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

In the matter of:

**A & L Tile, Inc.  
Unauthorized Discharge of Storm Water  
Runoff and Pollutants to Chollas Creek  
and San Diego Bay**

**Complaint No. R9-2014-0065  
for  
Administrative Civil Liability**

**Violation of Water Code Sections  
13376, 13385, and 13399,  
Order No. 97-03-DWQ, and  
Federal Clean Water Act Section 301**

**PIN: SM-827206**

**July 31, 2014**

**A & L TILE, INC. IS HEREBY GIVEN NOTICE THAT:**

1. A & L Tile, Inc. (Discharger) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) may impose civil liability pursuant to sections 13385 and 13399.33 of the California Water Code (Water Code).
2. This Administrative Civil Liability Complaint is issued under authority of Water Code section 13323.

**FINDINGS**

3. A & L Tile, Inc. owns and operates A & L Tile. Cesar Aguilera is the President of A & L Tile, Inc. Robinson Devadhasan is registered as the agent for service of process.
4. Discharger operates a cut stone and stone products facility located at 3722 Main Street, San Diego, California 92113 within the County of San Diego (Site). Storm water from the Site enters Chollas Creek, less than one mile from its entrance into San Diego Bay. San Diego Bay fulfills the legal definition of "waters of the state" and "navigable waters of the United States." The Site lies within the El Toyon Hydrologic Subarea.
5. Discharger's activities are characterized as "Cut Stone & Stone Products" (Standard Industrial Classification [SIC] 3281) under the federal regulations. Facilities classified as SIC 3281 must obtain coverage under the California State Water Resources Control Board (State Water Board) 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 Excluding Construction Activities* (Order No. 97-03-DWQ).

6. Discharger began cut stone and stone products operations at the Site on or about January 1, 1998. On December 31, 2013 and February 4, 2014 the San Diego Water Board mailed certified notices to Discharger notifying it of its failure to obtain coverage under the Industrial Storm Water Permit.
7. The San Diego Water Board invested 23 staff hours to investigate, prepare enforcement documents, and consider this action for a total cost of \$1,194.

### **ALLEGATION**

8. Failure to File Notice of Intent

Discharger failed to file a Notice of Intent (NOI) for coverage under Order No. 97-03-DWQ prior to the commencement of cut stone and stone product operations at the Site on, January 1, 1998, as required by Water Code section 13376, Order No. 97-03-DWQ section E.1., and Title 40 Code of Federal Regulations Parts 122, 123, and 124 of the federal Clean Water Act section 301. As of the date of this document, the State Water Board has not received an NOI from Discharger for this Site; therefore the days of violation are 6,132 and counting.

9. The details of this violation are set forth in full in the accompanying Technical Analysis, which is incorporated herein by this reference as if set forth in full.

### **MAXIMUM LIABILITY**

10. Pursuant to Water Code section 13385(a), a person that violates Water Code section 13376, a waste discharge requirement, or a requirement of section 301 of the federal Clean Water Act is subject to administrative civil liability pursuant to Water Code section 13385(c) "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."
11. The alleged violation, set forth in full in the accompanying Technical Analysis, constitutes a violation subject to Water Code section 13385. Therefore, the maximum liability that the San Diego Water Board may assess pursuant to Water Code section 13385(c) is \$61,320,000.

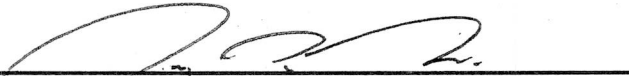
**MINIMUM LIABILITY**

12. The Storm Water Enforcement Act of 1998 (Act), specifically Water Code sections 13399.30(c)(1) and 13399.33(a)(1), requires the imposition of an administrative civil liability in an amount that is not less than five thousand dollars (\$5,000) per year of noncompliance or fraction thereof for failure to file a required NOI to obtain permit coverage after being notified pursuant to sections 13399.30 and 13399.31 of the Act. Furthermore, the Act (section 13399.33(d)) requires the San Diego Water Board to recover its incurred costs. Therefore, the minimum liability amount for one year of violation in accordance with the Act is \$6,194 (\$5,000 plus staff costs of \$1,194).

**PROPOSED LIABILITY**

13. Based on consideration of the above facts, and the applicable law, it is recommended that the San Diego Water Board impose civil liability against the Discharger in the amount of \$6,194 for violating Water Code section 13399(c)(1) alleged herein and set forth in full in the accompanying Technical Analysis.

Signed this 31<sup>st</sup> day of July, 2014.



JAMES G. SMITH  
Assistant Executive Officer

Signed pursuant to the authority delegated by the Executive Officer to the Assistant Executive Officer.

Attachment: Technical Analysis

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD**

**SAN DIEGO REGION**

# **TECHNICAL ANALYSIS**

**Proposed Administrative Civil Liability Contained in  
Complaint No. R9-2014-0065**

**A & L Tile, Inc.**

**Noncompliance with**

**State Water Resources Control Board Order No. 97-03-DWQ  
*Waste Discharge Requirements for Discharges of Storm  
Water Associated with Industrial Activities Excluding  
Construction Activities***

**Water Code Sections 13376, 13385, and 13399  
and  
Clean Water Act Section 301**

**Prepared by**

**Rebecca Stewart  
Sanitary Engineering Associate  
Compliance Assurance Unit**

**July 31, 2014**

A. Introduction

This technical analysis provides a summary of factual and analytical evidence that support the findings in Administrative Civil Liability Complaint No. R9-2014-0065 (Complaint) and the recommended administrative assessment of civil liability in the amount of \$6,194 against A & L Tile, Inc. (Discharger) for violation of California State Water Resources Control Board (State Water Board) Order No. 97-03-DWQ, *Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities* (Industrial Storm Water Permit), section 301 of the Clean Water Act, and section 13376 of the California Water Code (Water Code). The Complaint was issued to Discharger because it failed to file a Notice of Intent (NOI) to comply with the terms and conditions of the Industrial Storm Water Permit at its cut stone and stone products facility located at 3722 Main Street, San Diego, California 92113 (Site). See Figure 1. Site Location Map.

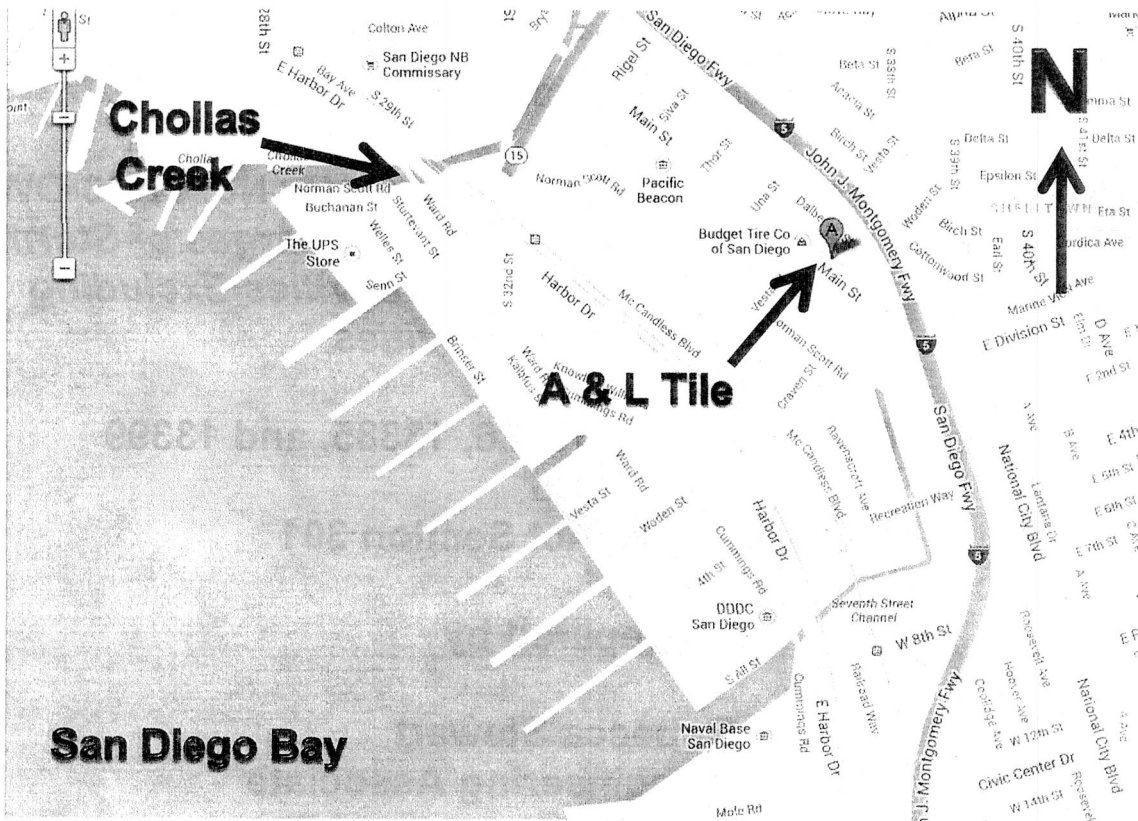


Figure 1. Site Location Map. Location of A & L Tile site at 3722 Main Street, San Diego, California, 92113.



## B. Failure to File NOI

Responsible Party: A & L Tile is owned and operated by A & L Tile, Inc.<sup>1</sup> According to City of San Diego Storm Water Inspections dated October 6, 2009, March 6, 2012, and October 17, 2013, Cesar Aguilera is identified as the owner and operator of A & L Tile.<sup>2,3,4</sup> A & L Tile began operating a cut stone and stone product facility at the Site on or about January 1, 1998.<sup>5</sup>

Industrial Storm Water Permit: On April 17, 1997, the State Water Board adopted Order No. 97-03-DWQ. The Industrial Storm Water Permit implements federal regulations for storm water discharges introduced into the National Pollutant Discharge Elimination System (NPDES) program in 1990 to implement amendments calling for regulation of storm water discharges under section 402 of the Clean Water Act [33 USC § 1342(p); regulations addressing storm water codified in Title 40 of the Code of Federal Regulations (CFR) in Parts 122, 123, and 124]. The NPDES regulations require specific categories of facilities where discharges of storm water associated with industrial activity occur to obtain a “permit” and to implement Best Available Technology Economically Achievable and Best Conventional Pollutant Control Technology (BAT/BCT) to eliminate industrial storm water pollution. Mandatorily covered industrial activities are identified by their federal Standard Industrial Classification (SIC). Attachment 1 to the Industrial Storm Water Permit identifies facilities requiring permit coverage by SIC, federal regulation or statute. Property owners or facility operators engaged in a covered industrial activity must file an NOI with the State Water Board and prepare and implement a Storm Water Pollution Prevention Plan (SWPPP) prior to the start of industrial activity.

Stone Cutting and Stone Product Operation: On October 6, 2009, March 6, 2012, and October 17, 2013, the City of San Diego conducted storm water compliance inspections at the Site. During each of the inspections, City staff noted stone and tile cutting waste that could be discharged to receiving waters and during storm events. On December 19, 2013, a San Diego Water Board inspector confirmed that A & L Tile operates a stone cutting and stone product operation on the Site.<sup>6</sup> The industrial activities conducted on the Site are best described by SIC 3281 “Cut Stone and Stone Products.” Attachment 1 of the Industrial Storm Water Permit identifies SIC 3281 as a facility requiring coverage under the Industrial Storm Water Permit.

<sup>1</sup> Secretary of State Business Entity Detail Report, Entity Number C3115403, June 23, 2014

<sup>2</sup> City of San Diego Storm Water Compliance Inspection Report, October 6, 2009

<sup>3</sup> City of San Diego Storm Water Compliance Inspection Report, March 6, 2012

<sup>4</sup> City of San Diego Storm Water Compliance Inspection Report, October 17, 2013

<sup>5</sup> City of San Diego, Office of the City Treasurer, San Diego Business Lookup, Business Tax Certificate #1999004783, June 23, 2014

<sup>6</sup> SMARTS Inspection Details, Inspection ID 2020812, December 19, 2013

Notification: The San Diego Water Board mailed certified notices to A & L Tile notifying it of its failure to obtain coverage under the Industrial Storm Water Permit on two separate occasions.<sup>7,8</sup> San Diego Water Board staff attempted to provide A & L Tile employee Bobby Aguilera with copies of the Industrial Storm Water Permit including a blank NOI form with instructions during the December 19, 2013 inspection; however, Mr. Aguilera refused to accept the documents.

To date, the State Water Board has not received an NOI form for the facility. Therefore, the number of days of violation is 6,132 and counting.

Water Resources & Beneficial Uses: Storm Water runoff from the Site flows through the municipal separate storm sewer system (MS4) into Chollas Creek upstream of San Diego Bay. Chollas Creek and San Diego Bay at the mouth of Chollas Creek are listed as impaired water bodies in accordance with section 303(d) of the Clean Water Act. Chollas Creek and San Diego Bay are approximately one mile from the Site. The Site resides in the El Toyon Hydrologic Subarea (908.31). According to the *Water Quality Control Plan for the San Diego Basin (9)*, Chollas Creek has the following beneficial uses: Contact Water Recreation (REC1); Non-contact Water Recreation (REC2); Warm Freshwater Habitat (WARM); and Wildlife Habitat (WILD). San Diego Bay has the following beneficial uses: Industrial Service Supply (IND); Navigation (NAV); Contact Water Recreation (REC1); Non-contact Water Recreation (REC2); Commercial and Sport Fishing (COMM); Preservation of Biological Habitats of Special Significance (BIOL); Estuarine Habitat (EST); Wildlife Habitat (WILD); Rare, Threatened, or Endangered Species (RARE); Marine Habitat (MAR); Migration of Aquatic Organisms (MIGR); and Shellfish Harvesting (SHELL).

Pollutants: Pollutants associated with stone cutting and stone products include the following: total suspended solids and oil and grease. The key component of the Industrial Storm Water Permit is the requirement to develop and implement a SWPPP. A SWPPP is a site specific plan to eliminate and reduce pollutants in storm water runoff through the implementation of Best Management Practices (BMPs). Development of a site specific SWPPP and implementation of its BMPs will eliminate these pollutant exposures.

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<sup>7</sup> San Diego Water Board Notice, December 31, 2013

<sup>8</sup> San Diego Water Board Notice, February 4, 2014

### C. Determination of Administrative Civil Liability

The Storm Water Enforcement Act of 1998 (Act), specifically Water Code sections 13399.30(c)(1) and 13399.33(a)(1), requires the imposition of an administrative civil liability in an amount that is not less than five thousand dollars (\$5,000) per year of noncompliance or fraction thereof for failure to file a required NOI to obtain permit coverage after being notified pursuant to sections 13399.30 and 13399.31 of the Act, and to recover its incurred costs (section 13399.33(d)). Discharger was notified of their requirement to submit a NOI on December 31, 2013 and February 4, 2014. To date, no response has been received. The San Diego Water Board has invested 23 staff hours to investigate, prepare enforcement documents, and consider this action for a total cost of \$1,194.<sup>9</sup> Therefore, the minimum liability amount for one year of violation in accordance with the Act is \$6,194 (\$5,000 plus staff costs of \$1,194). If Discharger elects to contest this matter, the recommended liability may increase to recover additional necessary staff costs incurred through the hearing.

Pursuant to Water Code section 13385(a), a person that violates Water Code section 13376, a waste discharge requirement or a requirement of section 301 of the federal Clean Water Act, is subject to administrative civil liability pursuant to Water Code section 13385(c) "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." The alleged violation constitutes a violation subject to Water Code section 13385. Therefore, based on 6,132 days of violation, the maximum liability that the San Diego Water Board may assess pursuant to Water Code section 13385(c) is \$61,320,000 (January 1, 1998 through October 15, 2014).

Based on consideration of the above facts, and the applicable law, the Prosecution Team recommends that the San Diego Water Board impose civil liability against the Discharger in the amount of \$6,194 for the violation alleged herein. The recommended liability is within the statutory constraints. The Prosecution Team recommends assessment of the minimum penalty pursuant to Water Code section 13399.33, and does not recommend assessment of any discretionary penalty available pursuant to Water Code section 13385. The methodology established in the Water Quality Enforcement Policy does not need to be applied when minimum penalties are proposed.

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<sup>9</sup> Staff Costs Worksheet

Footnotes/Documents Relied On with ECM Document Handle in Parentheses

1. Secretary of State Business Entity Detail Report, Entity Number C3115403, June 23, 2014 (1427771)
2. City of San Diego Storm Water Compliance Inspection Report, October 6, 2009 (1427768)
3. City of San Diego Storm Water Compliance Inspection Report, March 6, 2012 (1427769)
4. City of San Diego Storm Water Compliance Inspection Report, October 17, 2013 (1427770)
5. City of San Diego, Office of the City Treasurer, San Diego Business Lookup, Business Tax Certificate #1999004783, June 23, 2014 (1427904)
6. SMARTS Inspection Details, Inspection ID 2020812, December 19, 2013 (1427764)
7. San Diego Water Board Notice, December 31, 2013 (1321892)
8. San Diego Water Board Notice, February 14, 2014 (1347873)
9. Staff Costs Worksheet (1435466)

# Administrative Civil Liability Complaint

## Fact Sheet

The California State Water Resources Control Board (State Water Board) and the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) are authorized to issue complaints for civil liabilities under California Water Code (Water Code) section 13323 for violations of the Water Code. This document describes generally the process that follows the issuance of a complaint.

The issuance of a complaint is the first step in the possible imposition of an order requiring payment of penalties. The complaint details the alleged violations including the appropriate Water Code citations, and it summarizes the evidence that supports the allegations. **If you receive a complaint, you must respond timely as directed. If you fail to respond, a default order may be issued against you.** The complaint is accompanied by a transmittal letter, a Waiver Form, and a Hearing Procedure. Each document contains important information and deadlines. You should read each document carefully. A person issued a complaint is allowed to represent him or herself. However, legal advice may be desirable to assist in responding to the complaint.

### Parties

The parties to a complaint proceeding are the San Diego Water Board Prosecution Team and the person(s) named in the complaint, referred to as the "Discharger(s)." The Prosecution Team is comprised of San Diego Water Board staff and management. Other interested persons may become involved and may become "designated parties." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit comments. If the matter proceeds to a hearing, the hearing will be held before the San Diego Water Board (either the seven Governor appointed board members or the Executive Officer). Those who hear the evidence and rule on the matter act as judges. The San Diego Water Board is assisted by an Advisory Team, who provide advice on technical and legal issues. Both the Prosecution Team and the Advisory Team have their own attorney. Neither the Prosecution Team nor the Discharger or his/her representatives are permitted to communicate with the San Diego Water Board, or the Advisory Team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Notice.

### Complaint Resolution Options

Once issued, a complaint can lead to (1) withdrawal of the complaint; (2) withdrawal and reissuance; (3) payment and waiver; (4) settlement; or (5) hearing.

Withdrawal may result if the Discharger provides information to the Prosecution Team that clearly and unmistakably demonstrates that a fundamental error exists in the information set forth in the complaint.

## ACL Complaint Fact Sheet

Withdrawal and Reissuance may result if the Prosecution Team becomes aware of information contained in the complaint that can be corrected.

Payment and Waiver may result when the Discharger elects to pay the amount of the complaint rather than to contest it. The Discharger makes a payment for the full amount and the matter is ended, subject to public comment.

Settlement results when the Parties negotiate a resolution of the complaint. The settlement can be payment of an amount less than the proposed penalty or partial payment and suspension of the remainder pending implementation by the Discharger(s) of identified activities, such as making improvements that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project (CP). Qualifying criteria for CPs and SEPs are contained in the State Water Board's Enforcement Policy, which is available at the State Water Board's website at: [www.swrcb.ca.gov/plans\\_policies/docs/wqcp.doc](http://www.swrcb.ca.gov/plans_policies/docs/wqcp.doc).

Hearing: If the matter proceeds to hearing, the Parties will be allowed time to present evidence and testimony in support of their respective positions. The hearing must be held within ninety (90) days of the issuance of the Complaint, unless the Discharger waives that requirement by signing and submitting the Waiver Form included in this package. The hearing will be conducted under rules set forth in the Hearing Notice. The Prosecution Team has the burden of proving the allegations and must present competent evidence to the Board regarding the allegations. Following the Prosecution Team's presentation, the Discharger and other parties are given an opportunity to present evidence, testimony and argument challenging the allegations. The parties may cross-examine each others' witnesses. Interested persons may provide comments, but may generally not submit evidence or testimony. At the end of the presentations by the Designated Parties, the San Diego Water Board will deliberate to decide the outcome. The San Diego Water Board may issue an order requiring payment of the full amount recommended in the complaint; it may issue an order requiring payment of a reduced amount; it may order the payment of a higher amount, decide not to impose an assessment; or it may refer the matter to the Attorney General's Office.

### **Factors That Must Be Considered By the Board**

Except for Mandatory Minimum Penalties under Water Code Section 13385 (i) and (h), the San Diego Water Board is required to consider several factors specified in the Water Code, including nature, circumstance, 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 ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any resulting from the violations, and other matters as justice may require (Water Code sections 13327, 13385(e) and 13399). During the period provided to submit evidence (set forth in the Hearing Notice) and at the hearing, the Discharger may submit information that it believes supports its position regarding the complaint.

## ACL Complaint Fact Sheet

If the Discharger intends to present arguments about its ability to pay it must provide reliable documentation to establish that ability or inability. The kinds of information that may be used for this purpose include:

### For an individual:

1. Last three (3) years of signed federal Internal Revenue Service (IRS) income tax returns (IRS Form 1040) including schedules;
2. Members of household, including relationship, age, employment and income;
3. Current living expenses;
4. Bank account statements;
5. Investment statements;
6. Retirement account statements;
7. Life insurance policies;
8. Vehicle ownership documentation;
9. Real property ownership documentation;
10. Credit card and line of credit statements;
11. Mortgage loan statements; and
12. Other debt documentation.

### For a business:

1. Copies of last three (3) years of company IRS tax returns, signed and dated;
2. Copies of last three (3) years of company financial audits;
3. Copies of last three (3) years of IRS tax returns of business principals, signed and dated; and
4. Any documentation that explains special circumstances regarding past, current, or future financial conditions.

### For larger firms:

1. Federal income tax returns for the last three (3) years, specifically:
  - a. IRS Form 1120-C for C Corporations;
  - b. IRS Form 1120-S for S Corporations; or
  - c. IRS Form 1065 for partnerships.
2. A completed and signed IRS Form 8821. This allows the IRS to provide the State Water Board with a summary of the firm's tax returns that will be compared to the submitted income tax returns. This prevents the submission of fraudulent tax returns;
3. The following information can be substituted if income tax returns cannot be made available:
  - a. Audited Financial Statements for last three (3) years;
  - b. A list of major accounts receivable with names and amounts;
  - c. A list of major accounts payable with names and amounts;
  - d. A list of equipment acquisition cost and year purchased;
  - e. Ownership in other companies and percent of ownership for the last three (3) years; and
  - f. Income from other companies and amounts for the last three (3) years.

## ACL Complaint Fact Sheet

For a municipality, county, or district:

1. Type of entity:
  - a. City/Town/Village;
  - b. County;
  - c. Municipality with enterprise fund; or
  - d. Independent or publicly owned utility.
2. The following 1990 and 2000 United States Census data:
  - a. Population;
  - b. Number of persons age eighteen (18) years and above;
  - c. Number of persons age sixty-five (65) years and above;
  - d. Number of Individuals below one hundred and twenty-five percent (125%) of poverty level;
  - e. Median home value; and
  - f. Median household income.
3. Current or most recent estimates of:
  - a. Population;
  - b. Median home value;
  - c. Median household income;
  - d. Market value of taxable property; and
  - e. Property tax collection rate.
4. Unreserved general fund ending balance;
5. Total principal and interest payments for all governmental funds;
6. Total revenues for all governmental funds;
7. Direct net debt;
8. Overall net debt;
9. General obligation debt rating;
10. General obligation debt level; and
11. Next year's budgeted/anticipated general fund expenditures plus net transfers out.

This list is provided for information only. The Discharger remains responsible for providing all relevant and reliable information regarding its financial situation, which may include items in the above lists, but could include other documents not listed. Please note that all evidence regarding this case, including financial information, will be made public.

### **Petitions**

If the San Diego Water Board issues an order requiring payment, the Discharger may challenge that order by filing a petition for review with the State Water Board pursuant to Water Code section 13320. More information on the petition process is available at [www.swrcb.ca.gov/public\\_notices/petitions](http://www.swrcb.ca.gov/public_notices/petitions). An order of the State Water Board, including its ruling on a petition from a San Diego Water Board order, can be challenged by filing a petition for writ of mandate in Superior Court pursuant to Water Code section 13330.



## **ACL Complaint Fact Sheet**

Once an order for payment of penalties becomes final, the San Diego Water Board or State Water Board may seek an order of the Superior Court under Water Code section 13328, if necessary, in order to collect payment of the penalty amount.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION

PROPOSED DRAFT

HEARING PROCEDURE FOR  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
NO. R9-2014-0065  
ISSUED TO

A & L TILE, INC.

SCHEDULED FOR **OCTOBER 15, 2014**

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 California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code (Water Code) sections 13323 and 13399.33 against A & L Tile, Inc. (Discharger) alleging it has violated Water Code sections 13376, 13385, and 13399 by failing to file a Notice of Intent (NOI) for coverage under California State Water Resources Control Board Order No. 97-03-DWQ prior to the commencement of scrap metal and dismantling operations. The ACL Complaint proposes that administrative civil liability in the amount of **six thousand one hundred ninety-four dollars (\$6,194)** be imposed as authorized by Water Code section 13399.33. Unless the Discharger waives its right to a hearing and pays the proposed liability, a hearing will be held before the San Diego Water Board's Executive Officer pursuant to delegated authority on **October 15, 2014**, in San Diego.

**Purpose of Hearing**

The purpose of the hearing is to receive relevant evidence and testimony regarding the proposed ACL Complaint. At the hearing, the San Diego Water Board will consider whether to adopt, modify, or reject the proposed assessment. The hearing will be held at the San Diego Water Board office at 2375 Northside Drive, Suite 100, in San Diego. An agenda for the hearing will be issued at least ten (10) days before the hearing and will be posted on the San Diego Water Board's web page at:  
[www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego).

**Hearing Procedure**

The hearing will be conducted in accordance with this hearing procedure. This proposed draft version of the hearing procedure has been prepared by the Prosecution Team, and is subject to revision and approval by the San Diego Water Board's Advisory Team. A copy of the procedures governing an adjudicatory hearing before the San

Diego Water Board may be found at Title 23 of the California Code of Regulations, section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with section 648(d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Title 23 of the California Code of Regulations (CCR), section 648(b), Chapter 5 of the Administrative Procedures Act (commencing with section 11500 of the Government Code) does not apply to adjudicatory hearings before the San Diego Water Board. This Notice provides additional requirements and deadlines related to the proceeding.

THE PROCEDURE AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM IN ITS DISCRETION. **ANY OBJECTIONS TO THE PROPOSED PROCEDURE MUST BE RECEIVED BY CATHERINE HAGAN, SENIOR STAFF COUNSEL, NO LATER THAN AUGUST 11, 2014, OR THEY WILL BE WAIVED.** FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

### Hearing Participation

Participants in this proceeding are either "designated parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested persons generally may not present 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 San Diego Water Board, staff or others, at the discretion of the San Diego Water Board.

The following participants are hereby designated parties in this proceeding:

- (1) San Diego Water Board Prosecution Team;
- (2) A & L Tile, Inc.

### Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party, and are not already listed above, shall request party status by submitting a request in writing (with copies to the existing designated parties) no later than 5 p.m. on **August 11, 2014**, to Catherine Hagan, Senior Staff Counsel, at the address set forth below. 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 San Diego 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 submitted by 5 p.m. on **August 18, 2014**. The parties will be notified by 5 p.m. on **September 9, 2014**, as to whether the request has been granted or denied.

**Contacts**

**Advisory Team:**

Catherine Hagan, Esq.  
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State Water Resources Control Board, Office of Chief Counsel  
c/o/ San Diego Water Board  
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(619) 521-3004

**Discharger:**

Cesar Aguilera, President  
A & L Tile, Inc.  
3722 Main Street  
San Diego, CA 92113

**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 San Diego Water Board (Prosecution Team) have been separated from those who will provide advice to the San Diego Water Board (Advisory Team). Members of the Advisory Team are: Catherine Hagan, Senior Staff Counsel, and Brandi Outwin-Beals, Senior Water Resource Control Engineer. Members of the Prosecution Team are: Laura Drabandt, Staff Counsel; James Smith, Assistant Executive Officer; Jeremy Haas, Environmental Program Manager; Chiara Clemente, Senior Environmental Scientist of the Compliance Assurance Unit; and Rebecca Stewart, Sanitary Engineering Associate of the Compliance Assurance Unit.

**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 San Diego Water Board. An *ex parte* contact is any written or verbal communication pertaining to the investigation, preparation, or prosecution of the ACL Complaint between a member of a designated party or interested party on the one hand, and a San Diego Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated and interested parties (if written) or made at a proceeding open to all other parties and interested persons (if verbal). Communications regarding non-controversial procedural matters

are not *ex parte* contacts and are not restricted. Communications among the designated and interested parties 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 twenty (20) minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have three (3) 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 no later than **September 18, 2014**. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the San Diego Water Board (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 San Diego Water Board to consider. Evidence and exhibits already in the public files of the San Diego 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 each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.
5. (Dischargers only) If the Dischargers intend 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 San Diego Water Board), the Dischargers should submit supporting evidence as set forth in the "ACL Fact Sheet" under "Factors that must be considered by the Board."
6. (Dischargers only) If the Dischargers would like to propose a Supplemental Environmental Project (SEP) or Enhanced Compliance Action (ECA) in lieu of paying some or all of the civil liability in accordance with the State Water Board's Water Quality Enforcement Policy, the Dischargers shall submit a detailed SEP or ECA proposal including a specific implementation timetable.

The Prosecution Team shall submit two (2) hard copies and one (1) electronic copy of the information to Catherine Hagan, Senior Staff Counsel, so that it is received no later than 5 p.m. on **September 9, 2014**.

The remaining designated parties shall submit two (2) hard copies and one (1) electronic copy of the information to Catherine Hagan, Senior Staff Counsel, so that they are received no later than 5 p.m. on **September 17, 2014**.

In addition to the foregoing, each designated party shall send one (1) copy of the above information to each of the other designated parties by 5 p.m. on the deadline specified above.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to Catherine Hagan, Senior Staff Counsel, as early as possible, but they must be received by **October 1, 2014**. Interested persons do not need to submit written comments in order to speak at the hearing.

In accordance with Title 23, California Code of Regulations, section 648.4, the San Diego Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the San Diego 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 San Diego 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. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code section 11511.5. 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, no later than 5 p.m. on **September 16, 2014**.

#### **Evidentiary Objections**

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection so that it is received by 5 p.m. on **September 26, 2014**, to the Advisory Team with a copy to all other designated parties. 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 San Diego Water Board office at 2375 Northside Drive, Suite 100, San Diego, California 92108. 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 San Diego Water Board. Many of these documents are also posted online at [www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego). Although the web page is updated regularly, to ensure access to the latest information, you may contact Catherine Hagan, Senior Staff Counsel.

**Questions**

Questions concerning this proceeding may be addressed to Catherine Hagan, Senior Staff Counsel.



**IMPORTANT DEADLINES**

July 31, 2014	Prosecution Team issues ACL Complaint to Discharger and Advisory Team, sends proposed Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice.
August 11, 2014	Objections due on proposed Hearing Procedure.
August 11, 2014	Deadline for submission of request for designated party status.
August 18, 2014	Deadline for opposition to request for designated party status.
August 29, 2014	Dischargers' deadline for waiving right to hearing.
September 9, 2014	Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above.
September 9, 2014	Advisory Team issues Hearing Procedure, and issues decision on requests for designated party status, if any.
September 17, 2014	Remaining Designated Parties' Deadline for submission of all information required under "Evidence and Policy Statements," above.
September 25, 2014	All Designated Parties' deadline for submission of request for pre-hearing conference.
September 26, 2014	All Designated Parties' deadline for submission of rebuttal evidence (if any) and evidentiary objections.
October 1, 2014	Interested Parties' deadline for submission of non-evidentiary policy statements.
October 15, 2014	Hearing.

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JAMES G. SMITH  
Assistant Executive Officer

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DATE

**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent **A & L Tile, Inc.** (Discharger) in connection with Administrative Civil Liability Complaint No. **R9-2014-0065** (Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within ninety (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: Check here if the Discharger waives the hearing requirement and will pay the liability.**

- a. I hereby waive any right the Discharger may have to a hearing before the San Diego Water Board.
- b. I certify that upon approval of this settlement by the San Diego Water Board the Discharger will remit payment for the administrative civil liability imposed in the amount of **six thousand one hundred ninety-four dollars (\$6,194)** by check that references "**ACL Complaint No. R9-2014-0065**" made payable to the "**State Water Resources Control Board Waste Discharge Permit Fund.**" Payment must be received within thirty (30) days of approval by the San Diego Water Board at the following address: State Water Resources Control Board, Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, CA 95812-1888. A copy of the check must also be received by the San Diego Water Board at 2375 Northside Drive, Suite 100, San Diego, CA 92108 within thirty (30) days of approval.
- 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 thirty (30) day public notice and comment period. Should the San Diego Water Board receive significant new information or comments from any source (excluding the San Diego Water Board's Prosecution Team) during this comment period, the San Diego Water Board's Assistant Executive Officer may withdraw the complaint and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer of the San Diego Water Board, and that the San Diego 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: 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 San Diego Water Board within ninety (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 San Diego Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the San Diego Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the San Diego 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 San Diego Water Board within ninety (90) days after service of the complaint. By checking this box, the Discharger requests that the San Diego 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 San Diego Water Board to approve the extension.

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)