



California Regional Water Quality Control Board, San Diego Region

September 4, 2014

In reply refer to: SM818548:VRODRIGUEZ

Mr. José Quintero
Manager
GM Materials Ready Mix
6974 Mission Gorge Road
San Diego, California 92120-2420

Certified Mail – Return Receipt Requested
Article Number: 7011 0470 0002 8952 6505

Via Facsimile (619) 286-1130

Mr. Antonio Márquez Aguilar
Agent for Service of Process
Márquez Concrete, Inc.
Owner of GM Materials Ready Mix
Suite 100
6175 Progressive Drive
San Diego, California 92154-6646

Certified Mail – Return Receipt Requested
Article Number: 7011 0470 0002 8952 6512

Dear Messrs. Quintero and Márquez:

SUBJECT: ADOPTION OF ADMINISTRATIVE CIVIL LIABILITY (ACL) ORDER NO. R9-2014-0068 AGAINST GM MATERIALS READY MIX AND MARQUEZ CONCRETE, INC.

Enclosed find Order No. R9-2014-0068, *Administrative Assessment of Civil Liability Against GM Materials Ready Mix and Márquez Concrete, Inc., San Diego, California for Violation of Water Code Section 13376, Order No. 97-03-DWQ, and the Federal Clean Water Act*. This Order was adopted by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) through its Executive Officer on August 28, 2014.

As required by the Order, your payment of twelve thousand four hundred fifty-eight dollars (\$12,458) is payable to the State Water Resources Control Board's Cleanup and Abatement Account and must be submitted to the State Water Resources Control Board at the following address within thirty days of the date of adoption:

State Water Resources Control Board
Accounting Office
Attn: ACL Payment
PO Box 1888
Sacramento, CA 95812-1888

Please note that a copy of the check must be sent to the Designated Water Board Representative (Frank Melbourn) at the address contained in the letterhead.

In the subject line of any response, please include the reference number **SM818548:VRODRIGUEZ**. For questions or comments, please contact Mr. Vicente Rodriguez by telephone at (619) 521-3966, or by email at vrodriguez@waterboards.ca.gov.

Respectfully,



Brandi Outwin-Beals, P.E.
Senior Water Resource Control Engineer

BOB:vrr

Enclosure: ACL Order No. R9-2014-0068

cc via email (w/ enclosure):

1. Vincenzo Barnese, City of San Diego, Storm Water Dept., vbarnese@sandiego.gov
2. David Gibson, San Diego Water Board, dgibson@waterboards.ca.gov
3. David Barker, San Diego Water Board, dbarker@waterboards.ca.gov
4. Eric Becker, San Diego Water Board, ebecker@waterboards.ca.gov
5. Chiara Clemente, San Diego Water Board, cclemente@waterboards.ca.gov
6. Brandi Outwin, San Diego Water Board, boutwin@waterboards.ca.gov
7. Whitney Ghoram, San Diego Water Board, wghoram@waterboards.ca.gov
8. Frank Melbourn, San Diego Water Board, fmelbourn@waterboards.ca.gov
9. Vicente Rodriguez, San Diego Water Board, vrodriguez@waterboards.ca.gov
10. Catherine Hagan, SWRCB, Office of Chief Counsel, chagen@waterboards.ca.gov
11. Laura Drabandt, State Water Resources Control Board, ldrabandt@waterboards.ca.gov

Tech Staff Info & Use	
Application ID	429817
WDID	9 37IN602097

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

ORDER NO. R9-2014-0068

**ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY
AGAINST**

**GM MATERIALS READY MIX
AND
MÁRQUEZ CONCRETE, INC.
SAN DIEGO, CALIFORNIA**

**FOR
VIOLATION OF WATER CODE SECTION 13376, ORDER NO. 97-03-DWQ,
AND THE FEDERAL CLEAN WATER ACT**

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) through its Executive Officer, having held a public hearing on August 28, 2014, to receive evidence and comments on the allegations contained in Complaint No. R9-2014-0013 (Complaint), dated May 30, 2014, having considered all the evidence and public comment received, and on the revised recommendation for administrative assessment of Civil Liability in the amount of \$12,458, finds as follows:

1. Márquez Concrete, Inc. owns and operates GM Materials Ready Mix.
2. GM Materials Ready Mix and Márquez Concrete, Inc. (hereinafter Dischargers) operate a mobile concrete batch plant on a rented two acre property at 6974 Mission Gorge Road, San Diego, California 92120 within the County of San Diego (Site). The San Diego River flows within 100 feet of the northwest corner of the Site. The San Diego River fulfills the legal definition of “waters of the state” and “navigable waters of the United States.” The Site lies within the Mission San Diego Hydrologic Subarea (907.11).
3. Dischargers’ activities are characterized as “Ready-Mixed Concrete” (Standard Industrial Classification [SIC] 3273) under the federal regulations. Facilities classified as SIC 3273 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).

4. GM Materials Ready Mix began concrete batch plant operations at the Site on or about October 23, 2012.
5. Dischargers received Notices of Non-Compliance pursuant to Water Code section 13399.30 on July 2 and December 13, 2013.
6. The State Water Board processed GM Materials Ready Mix's Notice of Intent (NOI) to comply with Order No. 97-03-DWQ on June 6, 2014 (WDID No. 9 371024895).
7. As of May 30, 2014, the San Diego Water Board invested 106 staff hours to investigate, prepare enforcement documents, and consider this action for a cost of \$7,458.
8. On May 30, 2014, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R9-2014-0013 with attached Technical Analysis to GM Materials Ready Mix and Márquez Concrete, Inc., recommending the imposition of \$17,744 in liability for the failure to file a NOI.

Failure to File Notice of Intent Prior to Operation

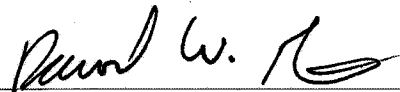
9. Dischargers failed to file a NOI for coverage under Order No. 97-03-DWQ prior to the commencement of concrete batch plant operation at the Site on October 23, 2012, as required by Water Code section 13376, Order No. 97-03-DWQ section E.1., and Title 40 Code of Federal Regulations Parts 122, 123, and 124 as required under the federal Clean Water Act section 301. GM Materials Ready Mix operated from October 23, 2012, until June 6, 2014, without coverage under the Industrial Storm Water Permit; therefore, pursuant to Water Code section 13385 the days of violation are 591. Pursuant to Water Code section 13399.33, Dischargers failed to respond to Notices of Non-Compliance for 332 days.
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 maximum liability that the San Diego Water Board may assess pursuant to Water Code section 13385(c) for 591 days of violation is \$5,917,744; of which \$7,458 is staff costs.
12. The Storm Water Enforcement Act of 1998 (Act), specifically Water Code sections 13399.30(c)(2) and 13399.33(a)(1) require 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 portion thereof for failure to respond to a Notice of Non-Compliance by obtaining permit coverage. Furthermore, the Act requires the San Diego Water Board to recover its incurred costs. Therefore, the minimum liability amount for 332 days of violation is \$12,458(i.e. \$5,000 for one year of noncompliance plus \$7,458 in staff costs).
13. Issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) pursuant to section 15321(a)(2), Chapter 3, Title 14 of the California Code of Regulations. This action is also exempt from the provisions of CEQA in accordance with section 15061(b)(3) of Chapter 3, Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
14. Any person aggrieved by this action of the San Diego Water Board may petition the State Water Board to review the action in accordance with Water Code 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 of this Order. 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 or will be provided upon request.

IT IS HEREBY ORDERED, that pursuant to Water Code section 13399.33(a)(1) that:

1. Civil liability is imposed on GM Materials Ready Mix and Márquez Concrete, Inc., in the amount of twelve thousand four hundred fifty-eight dollars (\$12,458).

2. GM Materials Ready Mix and Márquez Concrete, Inc., shall remit payment for the administrative civil liability imposed in the amount of \$12,458 by check that references "ACL Order No. R9-2014-0068" made payable to the "State Water Resources Control Board" for deposit into the Waste Discharge Permit Fund within 30 days of the adoption of this Order. A copy of the check must also be received by the San Diego Water Board at 2375 Northside Drive, Suite 100, San Diego, California 92108-0002 within 30 days of adoption of this Order.
3. Fulfillment of GM Materials Ready Mix and Márquez Concrete, Inc.'s obligation under this Order constitutes full and final satisfaction of any and all liability for the allegation in Administrative Civil Liability Complaint No. R9-2014-0013.
4. If GM Materials Ready Mix and Márquez Concrete, Inc., fail to make the specified payment within the time limit specified in this Order, the San Diego Water Board may enforce this Order, including referring the matter to the Attorney General for collection.



DAVID W. GIBSON
Executive Officer

WDID No. 9 371024895

Place ID: SM818548