

EXECUTIVE OFFICER SUMMARY REPORT  
December 14, 2010

- ITEM: 11
- SUBJECT: Administrative Civil Liability against Lite Stone Concrete, LLC. The San Diego Water Board will consider adoption of a tentative Order that would impose a \$3,766 penalty recommended in Complaint R9-2010-0127 for failure to submit the Fiscal Year (FY) 2008-09 annual storm water monitoring report (annual report) and failure to submit the FY 2009-10 Annual Storm Water Fee for State Water Resources Control Board (State Water Board) Order No. 97-03-DWQ, NPDES No. CAS00001, *Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities*. (Tentative Order R9-2010-0152) (Laurie Walsh)
- PURPOSE: The San Diego Water Board may approve, modify, or reject assessment of a \$3,766 in civil liability as recommended in Complaint No. R9-2010-0127.
- PUBLIC NOTICE: On October 11, 2010, a notice of the public hearing was posted on the San Diego Water Board website and distributed to known interested parties.
- DISCUSSION: The State Water Board's NPDES statewide general industrial storm water permit (Order No. 97-03-DWQ) requires the submittal of an annual report to document an industrial facility's status of compliance and results of water quality monitoring. The annual reports are due by July 1 of each year. The Complaint alleges that Lite Stone Concrete, LLC, failed to submit the Fiscal Year 2008-09 annual report. On December 1, 2009 and March 9, 2010 the San Diego Water Board issued Notices of Violation notifying the discharger that the 2008-09 report had not been received and that the violation could subject them to administrative civil liability. Lite Stone Concrete, LLC, submitted the FY 2008-09 annual monitoring report on November 15, 2010. The submission was 503 days past the initial due date of July 1, 2009 and 355 days after the

initial Notice of Violation.<sup>1</sup> The recommended civil liability for failure to submit the FY 2008-09 annual report is \$1,300. This includes the minimum penalty of \$1,000 plus staff costs to date of \$300 required by Water Code section 13399.33, subdivisions (c) and (d).

Order No. 97-03-DWQ requires submittal of a \$1,008 annual fee to maintain coverage under the Order. Lite Stone Concrete, LLC, allegedly failed to submit the Fiscal Year 2009-10 annual fee. The State Water Resources Control Board notified Lite Stone Concrete, LLC of the fee delinquency with a Demand for Payment letter on October 21, 2009 and a Notice of Violation on December 8, 2009. Pursuant to California Water Code section 13261(b)(1), the maximum administrative civil liability which could be imposed by the San Diego Water Board for the failure to pay a required fee is one thousand dollars (\$1,000) for each day in which the violation occurs. As of the date the Complaint was issued, Lite Stone Concrete, LLC had violated California Water Code section 13260 for 390 days (September 10, 2009 to October 6, 2010). The maximum administrative civil liability for failing to pay the annual fee is three hundred ninety thousand dollars (\$390,000). The recommended civil liability for failure to submit the FY 2009-10 annual fee is \$2,466 (Tentative Order Exhibit 1).

On October 6, 2010 the Assistant Executive Officer issued Complaint No. R9-2010-0127 recommending the imposition of civil liability of \$3,766 pursuant to California Water Code sections 13261 and 13399.33. The total recommended liability includes \$3,016 in civil liability and recovery of \$750 in San Diego Water Board staff costs.

No comments concerning this matter have been received to date. Although the discharger, Lite Stone Concrete, did not respond to the Complaint, it submitted the FY 2008-2009 Annual Report on November 15, 2010, within the time frame for submitting evidence or other information concerning the complaint set forth in the hearing procedures for this item. Because the FY 2008-2009 Annual Report is relevant to the Complaint and includes some explanatory statements concerning the delay in submittal of the report, the Advisory Team has included the report for the Board's consideration.

LEGAL CONCERNS: None.

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<sup>1</sup> See Supporting Document No. 9.

SUPPORTING  
DOCUMENTS:

- (1) Location Map
- (2) Tentative Order No. R9-2010-0152
- (3) Complaint No. R9-2010-0127 with Technical Analysis
- (4) December 1, 2009 Notice of Violation Failure to submit FY08-09 Annual Report
- (5) March 9, 2010 2<sup>ND</sup> Notice of Violation Failure to submit FY08-09 Annual Report
- (6) October 21, 2009 State Board Demand for Payment
- (7) December 8, 2009 State Board Fee Notice of Violation
- (8) Prosecution Team Evidence and Policy Statement dated November 10, 2010
- (9) FY 2008-2009 Annual Report

RECOMMENDATION: Recommendations from the Advisory and Prosecution staff will be provided at the hearing.