

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

**TENTATIVE
ORDER NO. R9-2010-0152**

**ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY
AGAINST**

**LITE STONE CONCRETE, LLC
EL CAJON, CALIFORNIA**

FOR

**VIOLATION OF STATE BOARD ORDER NO. 97-03-DWQ
AND WATER CODE SECTION 13260**

The California Regional Water Quality Control Board, San Diego Region (hereinafter San Diego Water Board), having held a public hearing on December 14, 2010, to hear evidence and comments on the allegations contained in Complaint No. R9-2010-0127, dated October 6, 2010 (Complaint), having provided public notice thereof and not less than thirty (30) days for public comment, and on the recommendation for administrative assessment of Civil Liability in the amount of \$3,766, finds as follows:

1. Lite Stone Concrete, LLC submitted a Notice of Intent on September 3, 2008 for coverage under State Board Order No. 97-03-DWQ, *National Pollutant Discharge Elimination System General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities (General Permit)*.
2. The integrity and effectiveness of the Industrial NPDES regulatory program relies upon discharger compliance accomplished by self-evaluation and self-reporting. Self-evaluation is accomplished by implementing the programs and provisions of Order No. 97-03-DWQ. Self-reporting is accomplished by the submission of an annual report as outlined in Order No. 97-03-DWQ Section B-14. The annual report includes a summary and evaluation of visual observations and sampling results, laboratory reports and an Annual Comprehensive Site Compliance Evaluation Report. Therefore, timely submittal of the required annual report is critically important for the evaluation of a facility's compliance with water quality standards.

3. Order No. 97-03-DWQ requires the submittal of an annual storm water monitoring report by July 1 of each year. Lite Stone Concrete, LLC failed to submit the annual report for Fiscal Year (FY) 2008-2009.
4. Paragraph 3 and Attachment 3 of Order No. 97-03-DWQ require the payment of a \$1,008 annual fee. California Water Code (Water Code) section 13260(d)(1)(A) requires the payment of an annual fee if required by an applicable order. Lite Stone Concrete violated Water Code section 13260(d)(1)(A) by failing to pay the annual permit fee required to maintain coverage under Order No. 97-03-DWQ for FY 2009-2010.

Annual Report

5. Pursuant to Water Code section 13399.31, the San Diego Water Board issued Notices of Violation dated December 1, 2009 and March 9, 2010 for failure to submit the FY 2008-2009 annual storm water monitoring report. Both notices indicated the penalties associated with the failure to submit the required annual report.
6. Water Code sections 13399.31(d) and 13399.33 direct the San Diego Water Board to impose administrative civil liability in an amount that is not less than one thousand dollars (\$1,000) and recover the costs incurred if a discharger fails to submit the required annual report within 60 days after the San Diego Water Board issues the initial notice of noncompliance.
7. Lite Stone Concrete, LLC submitted the FY 2008-2009 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 non-compliance.

Annual Fee

8. The FY 2009-2010 fee of \$1,008 was invoiced by the State Water Board to Lite Stone Concrete, LLC on August 11, 2009 indicating that payment was due by September 10, 2009. The State Water Board then 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.
9. Pursuant to 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 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).

Complaint

10. On October 7, 2010, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R9-2010-0127 to Lite Stone Concrete, LLC recommending the imposition of \$3,766 in liability for the violations described as follows:

- a. Annual Report Violation: One thousand three hundred dollars (\$1,300) for failure to submit the FY 2008-2009 annual report required by Order No. 97-03-DWQ. This includes the minimum penalty of \$1,000 plus staff costs to date of \$300.
- b. Annual Fee Violation: Two thousand four hundred sixty six dollars (\$2,466) for failure to pay the FY 2009-2010 annual fee. This includes staff costs of \$450 to date.

11. The amount of discretionary assessment proposed for the annual fee violation is based upon consideration of factors contained in Water Code section 13327. Section 13327 specifies the factors that the San Diego Water Board shall consider in establishing the amount of discretionary liability for the alleged violations, which include: the nature, circumstance, extent, and gravity of the violations, the ability to pay, the effect on ability to continue in business, prior history of violation, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.

12. The penalty calculation methodology within section VI of the Water Quality Enforcement Policy incorporates the factors of Water Code section 13327 and supports the administrative civil liability against the Lite Stone Concrete, LLC in the amount of \$2,466 for the failure to pay the FY 2009-2010 annual fee (see Exhibit 1).

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 45321(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.

IT IS HEREBY ORDERED that pursuant to sections 13399.33 and 13261(b)(1) of the California Water Code, that:

1. Civil liability is imposed on Lite Stone Concrete, LLC in the amount of three thousand seven hundred sixty six dollars (\$3,766).
2. Lite Stone Concrete, LLC shall submit a check to the San Diego Water Board for \$3,766 payable to the "State Water Board Waste Discharge Permit Fund" within 30 days of the adoption of this Order.
3. Fulfillment of Lite Stone Concrete, LLC's obligations under this Order constitutes full and final satisfaction of any and all liability for each allegation in Complaint No. R9-2010-0127.
4. If Lite Stone Concrete, LLC fails to make the specified payment within the time limits specified in this Order, the San Diego Water Board may enforce this Order, including referring the matter to the Attorney General for collection.

I, David W. Gibson, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of an Order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region, on December 14, 2010.

TENTATIVE
DAVID W. GIBSON
Executive Officer

Exhibit 1: Penalty Calculation Methodology Decisions Summary Sheet

SMARTS: Violation ID 840360
Enforcement ID 402598
WDID No. 9 371021782

Step 1: Potential Harm Factor = n/a for non-discharge violations

Step 2: Assessments for Discharge Violations = n/a for non-discharge violations

Step 3: Per Day Assessments for Non-Discharge Violations

Violations	Per Day Factor			Days of Violation	Statutory Maximum Per Day [sec. 13350]
	Potential for Harm [minor, moderate, major]	Deviation from Requirement [minor, moderate, major]	Total Per Day Factor		
Failure to pay FY 2009-2010 Annual Fee	minor	major	0.3	390	\$1,000

(Per Day Factor) x (Total Days of Violation) x (Statutory Maximum)= Initial Liability From Steps 1 - 3

$(.3) \times (390) \times (\$1,000) = \$117,000$

Step 4: Adjustments

Violations	Culpability [0.5 - 1.5]	Cleanup and Cooperation [0.75 - 1.5]	History of Violations	Multiple Violations (Same Incident)	Adjusted Days of Violation
Failure to pay FY 2009-2010 Annual Fee	1.5	n/a	n/a	n/a	19

Step 5: Total Base Liability Amount

(Per day Factor x statutory maximum) x (Step 4 Adjustments)
 $(.3) \times (\$1,000) \times (1.5) \times (19) = \$8,550$

Step 8: Economic Benefit

\$1,021

Step 6: Ability to Pay/Continue in Business

[Yes, No, Partly, Unknown]
Yes

Step 9

Minimum Liability Amount	Maximum Liability Amount
\$1,123	\$390,000

Step 7: Other Factors as Justice May Require

Costs of Investigation and Enforcement	Other Factors
\$450	(-\$6,534)

Step 10: Final Liability Amount for Annual Fee Violation

(total base liability) + (other factors)
 $(\$8,550) + (\$450) - (\$6,534) = \$2,466$