

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

November 9, 2018

K&G Ready Mix Inc.
8241 Monroe Avenue
Stanton, CA 90680
(By Regular Mail)

CERTIFIED MAIL
RETURN RECEIPT REQUIRED

Kobe Pham
kg.concrete@yahoo.com
(By Email)

Alan Sofferman (Agent for Service of Process)
939 Glenneyre Street, Suite E
Laguna Beach, CA 92651
(By Certified Mail)

NOTICE OF HEARING AND ISSUANCE OF COMPLAINT NO. R8-2018-0055 FOR ADMINISTRATIVE CIVIL LIABILITY AGAINST K&G READY MIX, INC FOR VIOLATIONS OF THE GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITIES, ORDER NO. 2014-0057-DWQ, NPDES PERMIT NO. CAS000001

Dear Mr. Pham:

Enclosed find Complaint No. R8-2018-0055 (Complaint) for Administrative Civil Liability against K&G Ready Mix, Inc. (Discharger) for \$38,565 for violations of the *General Permit for Storm Water Discharges Associated with Industrial Activities*, State Water Resources Control Board Order No. 2014-0057-DWQ, NPDES Permit No. CAS000001. The alleged violations are described in the Complaint and the attached Technical Analysis to the Compliant. Pursuant to Water Code section 13323, the California Regional Water Quality Control Board, Santa Ana Region (Regional Board) shall hold a hearing on the Compliant no later than ninety (90) days after it is issued.

Waiver of Hearing

You may elect to waive your right to a hearing before the Regional Board. Waiver of the hearing constitutes admission of the violations alleged in the Complaint and acceptance of the assessment of civil liability as set forth in the Complaint. For Regional Board staff to accept the waiver of your right to a public hearing, you must sign, as the Legally Responsible Person for K&G Ready Mix, Inc., the enclosed waiver form with Option 1 selected, and submit it to the Regional Board by 5:00 p.m. on **December 10, 2018**.

Public Hearing

Alternatively, if you elect to proceed to a public hearing, a hearing is tentatively scheduled to be held at the Regional Board meeting on **February 8, 2019**. The meeting is scheduled to convene at a to be determined location. At that time, the Regional 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 recommended hearing procedure for the Regional Board to follow in conducting the hearing. Please note that comments on the proposed procedure are due by **November 23, 2018**, to the Regional Board's advisory attorney, Teresita Sablan, at the address indicated in the hearing procedure.

Please submit all written documents as PDF files. In the subject line of any response, please include the complaint number **R8-2018-0055**. For questions or comments, please contact me at (951) 782-3284 (Jayne.Joy@waterboards.ca.gov) or Michelle Beckwith at (951) 782-4433 (Michelle.Beckwith@waterboards.ca.gov).

Sincerely,



Jayne E. Joy, PE
Assistant Executive Officer
Regional Board Prosecution Team

enclosures: ACL Complaint No. R8-2018-0055 with attached Technical Analysis
ACL Complaint Fact Sheet
Proposed Hearing Procedure
Waiver of Public Hearing Form

cc (w/encl): State Water Resources Control Board, Office of Enforcement – Naomi Kaplowitz
The Law Office of Jeffrey G. Jacobs – Jeffrey G. Jacobs

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Alan Sofferman (Agent for Service of Process)
939 Glenneyre Street, Suite E
Laguna Beach, CA 92651

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:

**K&G Ready Mix, Inc.
8241 Monroe Avenue
Stanton, CA 90680**

**COMPLAINT NO. R8-2018-0055
FOR
ADMINISTRATIVE CIVIL LIABILITY
Violations of the General
Permit for Storm Water
Discharges Associated with
Industrial Activities, Order
No. 2014-0057-DWQ, NPDES
Permit No. CAS000001**

November 9, 2018

This Complaint is issued to K&G Ready Mix, Inc. (Discharger) pursuant to California Water Code (Water Code) section 13385, which authorizes the imposition of Administrative Civil Liability, and Water Code section 13323, which authorizes the Assistant Executive Officer to issue this Complaint. This Complaint is based on allegations that the Discharger violated provisions of the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Industrial Activities Order No. 2014-0057-DWQ, NPDES Permit No. CAS000001 (General Permit).

The Assistant Executive Officer of the Regional Quality Control Board, Santa Ana Region (Regional Board) alleges the following:

Background

1. The Discharger operates a ready-mix concrete business, which is classified under SIC Code 3273, at a facility on a 25,000 square-foot lot. The facility is located at 8241 Monroe Avenue in the City of Stanton, Orange County, California. Mr. Kobe Pham is the contact and the Legally Responsible Person (LRP) for the Discharger.
2. On January 23, 2013, Mr. Kobe Pham, on behalf of the Discharger filed a Notice of Intent (NOI) to comply with the General Permit. Section X.H.1. of the General Permit requires the Discharger to implement and maintain minimum Best Management Practices (BMPs) to reduce and prevent pollutants in industrial storm water discharges.
3. On November 13, 2017, Regional Board staff inspected the Discharger's facility and observed violations. At the inspection, Regional Board staff observed the following violations: Vehicle batteries, a diesel aboveground storage tank, 55-gal drums containing acid cleaner, waste oil, and various containers of unknown substances, were observed without secondary containment or spill prevention; concrete material tracking was occurring off-site onto Monroe Avenue; an unlined waste concrete pit was observed in the rear of the facility; a large hydrocarbon spill was observed in the western portion of the facility; large amounts of spilled concrete powder dye were observed in the rear of the facility; scrap metal, industrial equipment, and vehicle maintenance equipment were stored outdoors, all without BMP implementation; and; evidence of unauthorized non-storm water discharges from a concrete pump along Monroe Avenue was observed

during the inspection. Regional Board staff also established the following based on a review of the SWPPP associated documents: The SWPPP uploaded to SMARTS on October 3, 2016 differed from the SWPPP available on site. The SWPPP on site was reviewed and was missing a site map and current employee training records. Regional Board staff discussed all of these violations with the Discharger at the site inspection.

4. On November 14, 2017, Regional Board staff issued a Notice of Violation (NOV) to the Discharger for the violations observed during the November 13, 2017 site inspection. The Discharger requested an extension to the November 28, 2017 deadline to respond to the NOV and was granted an extension until December 5, 2017. On December 5, 2017, the Discharger responded by email, and provided photographs of the removed 55-gallon drums containing acid cleaner, waste oil, and unknown substances. Photographs pertaining to the cleanup of the large hydrocarbon spill, concrete material tracking off-site, concrete powder dye, and discharge from a concrete pump were provided as well. The Discharger's response also included a plan to minimize concrete tracking onto Monroe Avenue by cleaning the entrance and exit of the facility twice a day and documenting these activities on a "Tracking Cleaning Report." The Discharger also stated that it was in the process of creating a lined area to fully contain daily water residue to address the unlined waste pit. However, the Discharger did not address all the violations. The response did not address the scrap metal, industrial equipment, and vehicle maintenance equipment being stored outside without BMP implementation. Furthermore, despite the Discharger's claim to the contrary, the facility's site map and employee training program had not been provided, as required by the NOV.
5. On December 20, 2017, Regional Board staff conducted a second inspection and determined that the violations from the first NOV had not been fully addressed. Regional Board staff again observed concrete material tracking occurring off-site, the unlined waste concrete pit in the rear of the facility and spilled concrete powder dye in the rear of the facility. Additionally, although the site map was available, current employee training records were not. Regional Board staff also observed scrap metal, industrial equipment, and vehicle maintenance equipment stored outdoors, without BMP implementation. The Discharger was notified of these observations verbally by Regional Board staff during the inspection.
6. On January 9, 2018, Regional Board staff issued a second NOV to the Discharger citing the ongoing violations observed at the December 20, 2017 inspection. The NOV required the Discharger to respond by January 19, 2018. Regional Board staff did not receive a response from the Discharger.
7. On January 30, 2018, Regional Board staff conducted a third site inspection. During the inspection, Regional Board staff determined that the Discharger had addressed several of the violations but was still out of compliance with regard to the concrete material tracking and the vehicle maintenance activities being conducted outdoors without BMP implementation. Regional Board staff requested that the Discharger submit information demonstrating BMP implementation by February 2, 2018. Regional Board staff contacted the Discharger via email on January 31, 2018 to provide a reminder of the upcoming February 2, 2018 deadline. The Discharger did submit the overdue employee training records by email on February 2, but failed to come into compliance with regard to the rest of the requested information. The Discharger corresponded again with the Regional Board staff on February 8, 2018 asserting that it had submitted items in

compliance with the NOVs that had, in fact, not been received by Regional Board staff.

8. On October 12, 2018, City of Stanton staff inspected the facility following a complaint. City of Stanton staff observed vehicle fluid leaks and stockpiles, which were not adequately bermed and inconsistent with the facility's SWPPP, in violation of Section X.H.1. of the General Permit.
9. To date, none of the correspondence received by Regional Board staff addresses the violations regarding vehicle maintenance activities being conducted outdoors without BMP implementation or addresses the actions necessary for preventing concrete material tracking off-site onto Monroe Avenue.

Alleged Violation

The Discharger is alleged to have violated General Permit Section X.H.1 for a period of at least 4 days for failure to implement minimum BMPs. Specifically, the Discharger is alleged to have violated Section X.H.1.a.ii and Section X.H.1.a.iii of the General Permit by tracking concrete material off-site, which constitutes a failure to minimize or prevent material tracking and a failure to minimize dust generated from industrial materials or activities. The Discharger is also alleged to have violated Section X.H.1.a.v of the General Permit by conducting vehicle maintenance equipment activities without BMP implementation, which constitutes a failure to cover all stored industrial materials that can be readily mobilized by contact with storm water.

Calculation of Penalties Pursuant to Water Code Section 13385

10. Water Code section 13385 states, in relevant part:

(a) Any person who violates any of the following shall be liable civilly in accordance with this section:

*(2) A waste discharge requirement ... issued pursuant to this chapter...(5)
Any requirements of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the
Clean Water Act, as amended.*

11. The General Permit was adopted by the State Water Resources Control Board (State Water Board) on April 1, 2014, pursuant to the Clean Water Act. Section XXI.A of the General Permit states, in part:

*Permit noncompliance constitutes a violation of the Clean Water Act and the
Water Code and is grounds for enforcement action and/or removal from General
Permit coverage.*

12. The Discharger's failure to implement the elements of the General Permit described above violated the General Permit and therefore, violated the Clean Water Act and the Porter-Cologne Water Quality Control Act. Water Code section 13385 authorizes the imposition of administrative civil liability for such violations.

13. Water Code section 13385 states, in relevant part:

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 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.

(e) ...At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

14. Pursuant to Water Code section 13385(c), the violation of the General Permit identified above is subject to penalties not to exceed \$10,000 per day. The Discharger failed to comply with the minimum BMP requirements for, at least, the four (4) days on which the Regional Board staff observed violations during site inspections. Therefore, the maximum penalty is \$10,000 multiplied by four (4) days, or \$40,000.
15. Pursuant to Water Code section 13385(e), at a minimum, civil liability must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The violations of the General Permit were due to failure to implement minimum BMPs. The economic benefit is the savings incurred by the Discharger, valued at \$25,743, as described in the Technical Analysis (Attachment A).

Proposed Liability

16. Pursuant to Water Code section 13385(e), in determining the amount of any civil liability, the Regional Board shall consider the nature, circumstances, extent, and gravity of the violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge; and with respect to the Discharger, the ability to pay, the effect on the Discharger's 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.
17. The State Water Board adopted Resolution 2017-0020, thereby adopting the Water Quality Enforcement Policy (Enforcement Policy), which became effective October 5, 2017. The Enforcement Policy establishes a methodology for assessing administrative civil liability that address factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13385, subdivision, and section 13327. The required factors have been considered for the violation alleged herein using the methodology in the Enforcement Policy, as explained in detail in the Technical Analysis.
18. Based on consideration of the above facts, the applicable law, and after applying the penalty calculation methodology in the Enforcement Policy, the Prosecution Team recommends that the Regional Board impose civil liability against the Discharger in the amount of **thirty-eight thousand five hundred and sixty-five dollars (\$38,565)** for the violation alleged herein and set forth in full in the accompanying Technical Analysis.

Regulatory Considerations

19. Notwithstanding the issuance of this Complaint, the Regional Board retains the authority to assess additional penalties for violations of the requirements of the General Permit for which penalties have not yet been assessed or for violations that may subsequently occur.
20. An administrative civil liability may be imposed pursuant to the procedures described in Water Code section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.
21. Issuance of this Administrative Civil Liability Complaint to enforce Water Code Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a) (2).

K&G READY MIX, INC. IS HEREBY GIVEN NOTICE THAT:

22. The Assistant Executive Officer of the Regional Board proposes an administrative civil liability in the amount of thirty-eight thousand five hundred and sixty-five dollars (\$38,565). The amount of the proposed liability is based upon a review of the factors cited in Water Code section 13385, as well as the State Water Board's Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.
23. A hearing on this matter will be conducted at the Regional Board meeting scheduled on February 8, 2019, unless one of the following options occurs by December 10, 2018:
 1. The Discharger waives the hearing by completing the attached form (checking off the box next to Option #1) and returning it to the Regional Board, along with payment for the proposed civil liability of thirty-eight thousand five hundred and sixty-five dollars (\$38,565).
 2. The Discharger waives the 90-day hearing requirement in order to extend the hearing date (checking off the box next to Option #2) and returning it to the Regional Board, along with rationale for the extension.



Jayne Joy
Assistant Executive Officer

November 9, 2018

Date

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

ATTACHMENT A

Technical Analysis for Administrative Civil Liability Complaint No. R8-2018-0055 K&G Ready Mix, Inc.

This document provides details to support the proposed Administrative Civil Liability Complaint (Complaint) against K&G Ready Mix, Inc. (Discharger) in response to alleged violations for failing to comply with the State Water Resources Control Board (State Water Board) General Permit for Stormwater Discharges Associated with Industrial Activities Order No. 2014-0057-DWQ, NPDES Permit No. CAS000001 (General Permit).

The State Water Board's Water Quality Enforcement Policy (2017) (Enforcement Policy) establishes a methodology for assessing administrative civil liability by addressing the factors that are required to be considered under California Water Code section 13385(e). Each factor of the nine-step approach is discussed below, as is the basis of assessing the corresponding score according to the Enforcement Policy.

The Discharger is alleged to have failed to comply with Section X.H.1 of the General Permit for industrial activities at the facility located at 8241 Monroe Ave, in Stanton, California (WDID 8 30I0024030). The alleged violation and the proposed penalty are presented here.

Violation: FAILURE TO IMPLEMENT MINIMUM BEST MANAGEMENT PRACTICES

Step 1 and Step 2 – Potential Harm and Assessments for Discharge Violations

These steps are not applicable to the violation because this is a non-discharge violation.

Step 3 – Per Day Factor for Non-Discharge Violations

Step 3 of the Enforcement Policy's penalty calculation methodology directs the Regional Water Quality Control Board, Santa Ana Region (Regional Board) to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the extent of deviation from the applicable requirements.

Potential for Harm: Moderate

The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm and/or threat to beneficial uses. The Discharger's failure to implement the minimum BMPs harms the regulatory program. The storm water regulatory program is not prescriptive and relies on permittees to implement BMPs that are tailored to the specific site characteristics and conditions. By failing to implement minimum BMPs, the Discharger undermined the effectiveness of the program.

In addition to undermining the regulatory program, this violation has the potential to directly impact beneficial uses. The Santa Ana Regional Basin Plan establishes the applicable beneficial uses. The Discharger's storm water runoff discharges into the Bolsa Chica Channel, which is hydrologically connected to the Anaheim Bay- Seal Beach National Wildlife Refuge and Sunset

Bay-Huntington Harbor. The beneficial uses applicable to the Anaheim Bay-Seal Beach National Wildlife Refuge and Sunset Bay-Huntington Harbor are Navigation, Water Contact and Non-Contact Water Recreation, Commercial and Sportfishing, Wildlife and Marine Habitat, Biological Habitats of Special Significance, Spawning, Reproduction and Development, Estuarine Habitat, and Rare, Threatened, or Endangered Species. In addition, the Bolsa Chica Channel is identified as a 303(d) listed impaired water body and has been impaired for pH since 2010.

The Discharger failed to implement minimum Best Management Practices (BMPs) in violation of the General Permit. Specifically, the Discharger is alleged to have violated Section X.H.1.a.ii and Section X.H.1.a.iii of the General Permit by tracking concrete material off-site, which constitutes a failure to minimize or prevent material tracking and a failure to minimize dust generated from industrial materials or activities. The Discharger is also alleged to have violated Section X.H.1.a.v of the General Permit by conducting vehicle maintenance equipment activities, without BMP implementation, which constitutes a failure to cover all stored industrial materials that can be readily mobilized by contact with storm water. By not implementing minimum BMPs, the Discharger failed to reduce or prevent industrial pollutants, such as total suspended solids, oil and grease, and iron, from readily mobilizing in storm water.

Discharges from cement mixing facilities, such as K&G Ready Mix, Inc. typically contain high levels of pH. Low or high concentrations of pH in storm water runoff affects the beneficial uses of the receiving waters. In addition, other constituents in the discharge could affect wildlife and marine habitat, biological habitats of special significance, spawning, estuarine habitat, and rare, threatened, or endangered species. By failing to implement the minimum BMPs required, the Discharger increased the risk of pollutants entering the receiving waters, which constitutes a substantial threat to beneficial uses and a substantial potential for harm. Based on the substantial potential for harm due to the impairment of the regulatory program and the threat to beneficial uses, the potential for this violation is moderate.

Deviation from Requirement: Moderate

The General Permit requires the Discharger to implement and maintain minimum BMPs to reduce or prevent pollutants in industrial storm water discharges. The Discharger failed to develop, implement, and maintain minimum BMPs as required by Section X.H.1. of the General Permit.

Concrete material tracking off-site constitutes a failure to minimize or prevent material tracking and a failure to minimize dust generated from industrial materials or activities. These are violations of failing to implement minimum BMPs, as outlined in Section X.H.1.a.ii and Section X.H.1.a.iii of the General Permit, respectively. Conducting vehicle maintenance equipment activities throughout the facility violates the General Permit's requirement to cover all stored industrial materials that can be readily mobilized by contact with storm water. This is a violation of Section X.H.1.a.v of the General Permit.

In this case, the intended effect of the requirement to implement minimum BMPs is to reduce or prevent the discharge of pollutants. By failing to implement the minimum BMPs, the requirements in Section X.H.1. of the General Permit were not met and the intended effectiveness of the requirement was, at best, only partially achieved. The appropriate score for this factor is

moderate.

Per Day Factor: 0.40

Using the matrix in Table 3 of the Enforcement Policy and applying a Potential for Harm of moderate and Extent of Deviation of moderate, results in a Per Day Factor range of 0.3 to 0.4. A 0.4 is selected due to the Potential for Harm associated with the likelihood that the violation was ongoing throughout the inspection dates, and the likelihood that discharge violations occurred throughout that time.

Days of Violation: 4 days

The Discharger was first inspected on November 13, 2017 and a NOV was subsequently issued. A second inspection was performed on December 20, 2017 and a second NOV was issued. On January 30, 2018, Regional Board staff conducted a third inspection to determine compliance with the General Permit and status of the outstanding items identified in the second NOV. On October 12, 2018, City of Stanton staff inspected the facility following a complaint. The corresponding City of Stanton Investigation Report and photographs taken at the inspection show that BMP violations associated with Section X.H.1. of the General Permit were occurring. Four (4) days of violations were observed over the course of the inspections. At the very least, there are four days of violation.

Initial Liability Amount

The initial liability amounts for the violation calculated on a per-day basis are as follows:

$$4 \text{ days} \times \$10,000 \times 0.40$$

Total Initial Liability = \$16,000

Step 4 – Adjustment Factors

Three additional factors to be considered for modification of the amount of initial liability are the violators' culpability, efforts to clean up or cooperate with regulatory authority, and the violators' compliance history.

Culpability: 1.4

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.75 and 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. A neutral assessment of 1.0 should be used when a discharger is determined to have acted as a reasonable and prudent person would have.

The Discharger has been on notice of the General Permit requirements at least since it submitted the Notice of Intent to enroll under the General Permit on January 23, 2013. Regional Board staff discussed the General Permit requirements, particularly those regarding BMPs, with

the Discharger in-person at the three facility inspections. In addition to those oral notices, Regional Board staff provided the Discharger with written notice of the Section X.H.1 General Permit requirements in the NOV's dated November 14, 2017 and January 9, 2018, and emails dated December 12, 2017, January 31, 2018, February 15, 2018, and February 27, 2018.

The Discharger failed to act as a reasonable and prudent permittee under the General Permit. A reasonable and prudent permittee would have implemented the minimum BMPs as required in Section X.H.1. of the General Permit. The Discharger had both constructive and actual notice of these requirements following the multiple inspections, NOV's, and emails. The Discharger disregard of the General Permit requirements was grossly negligent. The culpability factor is 1.4.

History of Violations: 1.0

Where a discharger has no prior history of violations, this factor should be neutral, or 1.0. The Discharger does not have a history of violations that have been formally adjudicated. Therefore, a factor of 1.0 is applied.

Cleanup and Cooperation: 1.3

This factor ranges from 0.75 to 1.5 and reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A reasonable and prudent response to a discharge violation or timely response to a Water Board order should receive a neutral adjustment (1.0) as it is assumed a reasonable amount of cooperation is the warranted baseline. Here, Regional Board staff made multiple efforts to bring the Discharger into compliance using progressive enforcement. As described herein, despite multiple site-visits, written communications, and phone-calls, the Discharger failed to come into compliance.

On November 13, 2017, Regional Board staff first inspected the Discharger's facility and observed BMP violations. Regional Board staff discussed those violations with the Discharger and issued a NOV on November 14, 2017. The Discharger requested and was granted an extension to respond. On December 5, 2017, the Discharger responded by email, and provided photographs of the removed 55-gallon drums containing acid cleaner, waste oil, and unknown substances. Photographs pertaining to the cleanup of the large hydrocarbon spill, concrete material tracking off-site, concrete powder dye, and discharge from a concrete pump were provided as well. The Discharger's response also included a plan to minimize concrete tracking onto Monroe Avenue by cleaning the entrance and exit of the facility twice a day and documenting these activities on a "Tracking Cleaning Report." The Discharger also stated that it was in the process of creating a lined area to fully contain daily water residue to address the unlined waste pit. However, the Discharger did not address all the violations. The response did not address the scrap metal, industrial equipment, and vehicle maintenance equipment being stored outside without BMP implementation. Furthermore, despite the Discharger's claim to the contrary, the facility's site map and employee training program had not been provided, as required by the NOV.

From December 5 through December 12, Regional Board staff and the Discharger corresponded by email regarding the BMP violations. A second inspection was performed on December 20, 2017 and Regional Board staff determined that the violations from the first NOV had not been fully addressed. Specifically, Regional Board staff again observed concrete material tracking occurring off-site, the unlined waste concrete pit in the rear of the facility and spilled concrete powder dye in the rear of the facility. Additionally, although the site map was available,

current employee training records were not. Regional Board staff also observed scrap metal, industrial equipment, and vehicle maintenance equipment stored outdoors, without BMP implementation. The Discharger was notified of these observations verbally by Regional Board staff during the inspection. On January 9, 2018, a second NOV was issued.

Regional Board staff did not receive correspondence from the Discharger regarding the ongoing violations cited in the second NOV. Thus, Regional Board staff conducted a third inspection on January 30, 2018. During the inspection, Regional Board staff determined that the Discharger had addressed several of the violations but was still out of compliance with regard to the concrete material tracking and the vehicle maintenance activities being conducted outdoors without BMP implementation. Regional Board staff requested that the Discharger submit information demonstrating BMP implementation by February 2, 2018. Regional Board staff contacted the Discharger via email on January 31, 2018 to provide a reminder of the upcoming February 2, 2018 deadline. The Discharger did submit the overdue employee training records by email on February 2, but failed to come into compliance with regard to the rest of the requested information. The Discharger corresponded again with the Regional Board staff on February 8, 2018 asserting that it had submitted items in compliance with the NOVs that had, in fact, not been received by Regional Board staff.

On October 12, 2018, City of Stanton staff inspected the facility following a complaint. City of Stanton staff observed vehicle fluid leaks and stockpiles, which were not adequately bermed and inconsistent with the facility's SWPPP, in violation of Section X.H.1. of the General Permit.

To date, none of the correspondence received by Regional Board staff addresses the concerns regarding vehicle maintenance activities being conducted outdoors without BMP implementation and addressing the concrete material tracking off-site onto Monroe Avenue.

The Discharger failed to comply with the General Permit requirements even after repeated attempts by Regional Water Board staff to bring it into compliance via site visits, NOVs, and emails. The cleanup and cooperation factor is 1.3 due to the lack of cooperation in coming into compliance.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability Amount for the violation is determined by applying the adjustment factors from Step 4 to the Total Initial Liability Amount determined in Step 3.

<u>Total Base Liability Amount</u>
Total Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability
\$16,000 x 1.4 x 1.0 x 1.3
Total Base Liability = \$29,120

Step 6 – Ability to Pay and Ability to Continue in Business

The Enforcement Policy provides that if there is sufficient financial information to assess the violator's ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on the violator's ability to continue in business, then the Total Base Liability Amount may be adjusted downward if warranted.

Based on a preliminary search of publicly available information, the Discharger has the ability to pay the proposed liability and continue in business. The Discharger is an active for-profit business serving Orange and Los Angeles Counties. Based on the Discharger's own website, it owns 15 mixer trucks.

Step 7 – Economic Benefit

Estimated Economic Benefit: \$25,743

The Enforcement Policy provides that the economic benefit of noncompliance should be calculated using the United States Environmental Protection Agency's (US EPA) Economic Benefit Model (BEN)¹ penalty and financial modeling program unless it is demonstrated that an alternative method of calculating the economic benefit is more appropriate. Economic benefit was calculated using BEN Version 5.8.0. Using standard economic principals such as time-value of money and tax deductibility of compliance costs, BEN calculates a Discharger's economic benefit derived from delaying or avoiding compliance with environmental statutes.

The BEN model is the appropriate tool for estimating the economic benefit of failing to implement best management practices for compliance with the General Permit. Based on the chronic nature of the violations, the following compliance actions were identified that should be implemented to prevent a similar scenario in the future:

1. Install a covered maintenance area for outdoor vehicle and equipment maintenance to prevent mobilization of contaminants associated with those activities.
2. Install a trench drain system at each point of entry at the facility to prevent wash water or contaminated storm water from discharging from the property. This action would also prevent vehicle track out of wash water.
3. Implement regular power sweeping operations onsite, at points of entry, and in the public right-of-way to prevent cementitious material track-out.
4. Implement an improved training program covering at a minimum sweeping, outdoor operations and maintenance, and run-off management, in addition to current storm water pollution prevention training.

Although the Discharger has indicated that some of these actions would be implemented, no plans or cost estimates have been received to date. Therefore, staff at the State Board, Office of Enforcement have estimated potential costs associated with each proposed action. The total implementation cost for the four actions listed above was estimated to be \$46,436. Although none

¹ US EPA Economic Benefit Model, or BEN. At the time this document was prepared, BEN was available for download at <http://www2.epa.gov/enforcement/penalty-and-financial-models>; the Central Valley Water Board's application of the BEN Model to the circumstances here is summarized on the last page of Attachment E.

of the actions described above have been undertaken, it is assumed that the Discharger intends to remain in business and comply with the conditions of the General Permit, it is assumed that actions #1 and #2 will be implemented by the Discharger and, therefore, are considered delayed. For conservative purposes, it is assumed that these actions would be completed by February 9, 2019. For actions #3 and #4, the Discharger should have implemented these actions following notification of non-compliance by Regional Board staff, and therefore are considered avoided. Details regarding the cost estimates for these actions are included in the attached table.

For the purposes of computing the economic benefit using BEN, the penalty payment date is the day after the tentative date of administrative hearing, February 9, 2019. Based on specific assumptions within the model, the total economic benefit of noncompliance was determined to be approximately \$25,743.

Step 8 – Other Factors as Justice May Require

The Regional Board may exercise its discretion to include some of the costs of investigation and enforcement in a total administrative civil liability. Regional Water Board staff recommends here that staff costs be added to the administrative civil liability for the investigation and enforcement work undertaken by staff prior to the issuance of the administrative civil liability complaint. Staff costs are \$9,445 (90 hours since November 13, 2017) based on the applicable hourly rates.

Step 9 – Maximum and Minimum Liability Amounts

The Enforcement Policy directs the Regional Water Board to consider the maximum and minimum liability amounts for the alleged violation.

Maximum Liability Amount: \$40,000

Minimum Liability Amount: \$28,317

The Enforcement Policy states that the total liability shall be at least 10% higher than the economic benefit, “so that liabilities are not construed as the cost of doing business and that the assessed liability provides meaningful deterrent to future violations.” The minimum liability amount is \$28,317.

Step 10 – Final Proposed Liability Amount

Final Proposed Liability Amount: \$38,565

Economic Benefit Analysis

K&G Ready Mix

Compliance Action	One-Time Non-Depreciable Expenditure				Non-Compliance Date	Compliance Date	Penalty Payment Date	Discount Rate	Benefit of Non-Compliance
	Amount	Basis	Date	Delayed?					
Covered Maintenance Area	\$ 3,000	ECI	2/9/2019	Y	11/13/2017	2/9/2019	2/9/2019	7.30%	-
Install Trench Drain	\$ 5,861	ECI	1/1/2015	Y	11/13/2017	2/9/2019	2/9/2019	7.30%	-
Sweeper Operation	\$ 36,575	ECI	1/1/2015	N	11/13/2017	2/9/2019	2/9/2019	7.30%	25,114
Improved Training Program	\$ 1,000	ECI	2/9/2019	N	11/13/2017	2/9/2019	2/9/2019	7.30%	629

Income Tax Schedule: Corporation **Total Benefit: \$ 25,743**
USEPA BEN Model Version: Version 5.8.0 (April 2018)
Analyst: Bryan Elder
Date/Time of Analysis: 11/8/18 20:20

Assumptions:

- 1 Covered Maintenance Area is based on typical cost of large (>12' H), temporary steel/aluminum vehicle cover.
 - 2 Trench drain installation based on excavation and drainage conduit cost for three facility entrances (20' wide) and a 200' section to the concrete washout containment structure. Source: RSMeans 2015, G1030 805 1310, trenching/backfill =\$2.65/linear foot (lf). RSMeans 2015, 33 41 13.60 1010, 6" diameter, non-reinforced concrete pipe =\$19.15/lf. Location factor (Santa Ana, CA - 1.034).
 - 3 Sweeper operation based on 3 hours of right-of-way and onsite sweeping per day, 5 days per week for 13 weeks from 11/13/2017 to 2/5/18. RSMeans 2015, 01 54 33 50 3450, vacuum assisted weekly rental =\$1,900. Operator cost =\$50 per hour (inclusive of labor, overhead, benefits, employer expenses, etc) 3 hrs per day.
 - 4 Improved training program based on 3 personnel for 4 hours @ \$50 per hour (inclusive of labor, overhead, benefits, employer expenses, etc) and 1 instructor @ \$100 per hour.
 - 5 Non-compliance date for all activities is assumed to be the 11/13/2017 inspection date.
 - 6 Covered maintenance area and trench drain installation are assumed to be delayed, as the discharger is still expected to implement these measures. Compliance date is assumed to be 2/9/2019.
 - 7 Sweeper operation is assumed to be avoided, as these practices were not in place over the non-compliance period.
 - 8 Improved training program is assumed to be avoided as ongoing, annual training is necessary and required by the IGP. Based on inspection findings through January 2017, inadequate pollution prevention efforts are still prevalent at the site indicating a lack of proper and/or effective training.
 - 9 The penalty payment date is assumed to be 2/9/2019.
- 10**
 The discharger is assumed to operate as a legal corporation. Changes in 2018 federal tax laws have resulted in significant tax liability reductions for corporations and small businesses. As a result, delayed compliance expenses realized after 1/1/2018 inaccurately reflect the economic benefit a discharger received by not undertaking the activity. These misrepresentations are therefore excluded from the analysis.

Santa Ana Regional Water Quality Control Board

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT No. R8-2018-0055**

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

I am duly authorized to represent **K&G Ready Mix, Inc.** (Discharger) in connection with Administrative Civil Liability Complaint No. **R8-2018-0055** (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.

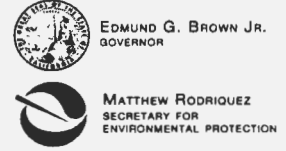
- a. I hereby waive any right the Discharger may have to a hearing before Regional Board.
- b. I certify that upon approval of this settlement by the Regional Board the Discharger will remit payment for the administrative civil liability imposed in the amount of **thirty eight thousand five hundred and sixty five dollars (\$38,565)** by check that references "**ACL Complaint No. R8-2018-0055**" made payable to the "**State Water Pollution Cleanup and Abatement Account.**" Payment must be received within thirty (30) days of approval by the Regional 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 Regional Board at 3737 Main Street, Suite 500, Riverside, CA 92501 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 Regional Board receive significant new information or comments from any source (excluding the Regional Board's Prosecution Team) during this comment period, the Regional Board's Assistant Executive Officer may withdraw the complaint and issue a new complaint. I understand that this proposed settlement may be subject to approval by the Regional Board (or the Regional Board's delegee), and that the Regional 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 extend the hearing date. 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 Regional Board within ninety (90) days after service of the complaint. By checking this box, the Discharger requests that the Regional Board delay the hearing. It remains within the discretion of the Regional Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)



Santa Ana Regional Water Quality Control Board

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

**PROPOSED HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
NO. R8-2018-0055
ISSUED TO
K&G READY MIX, INC.
ORANGE COUNTY**

SCHEDULED FOR FEBRUARY 8, 2019

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.

Overview

The Assistant Executive Officer of the California Regional Water Quality Control Board, Santa Ana Region (Regional Board) has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code (Water Code) section 13323 to K&G Ready Mix, Inc. (Discharger) alleging it has violated the *General Permit for Storm Water Discharges Associated with Industrial Activities*, State Water Resources Control Board Order No. 2014-0057-DWQ, NPDES Permit No. CAS000001. The ACL Complaint proposes that administrative civil liability in the amount of **thirty-eight thousand five hundred and sixty-five dollars (\$38,566)** be imposed on the Discharger as authorized by Water Code section 13385. Unless the Discharger waives its right to a hearing and pays the proposed liability, a hearing will be held before the Regional Board on **February 8, 2019** at a to be determined location.

The purpose of the hearing is to receive relevant evidence and testimony regarding the proposed ACL Complaint. At the hearing, the Regional Board will consider whether to adopt, modify, or reject the proposed assessment. An agenda for the hearing will be issued at least ten (10) days before the hearing and will be posted on the Santa Ana Water Board's web page at: www.waterboards.ca.gov/santaana/

Hearing Procedure

The hearing will be a formal adjudicative proceeding conducted in accordance with these Hearing Procedures. This proposed hearing procedure has been prepared by the Prosecution Team and is subject to revision and approval by the Regional Board's Advisory Team. A copy of the procedures governing adjudicatory hearings before the Regional 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 Regional Board. This Notice provides additional requirements and deadlines related to the proceeding.

THE PROCEDURE AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM AT ITS DISCRETION. **ANY OBJECTIONS TO THE PROPOSED PROCEDURE MUST BE RECEIVED BY TERESITA SABLAN, STAFF COUNSEL, NO LATER THAN NOVEMBER 23, 2018, 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 Participants

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 Regional Board, staff, or others, at the discretion of the Regional Board.

The following participants are hereby designated parties in this proceeding:

1. Regional Board Prosecution Team
2. K&G Ready Mix, 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 5:00 p.m. on **December 20, 2018**, to Teresita Sablan, 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 Regional 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 5:00 p.m. on **December 26, 2018**. The parties will be notified by 5:00 p.m. on **January 2, 2019**, as to whether the request has been granted or denied.

Primary Contacts

Advisory Team:¹

Teresita Sablan, Staff Counsel State Water Resources Control Board, Office of Chief Counsel c/o Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501
Teresita.Sablan@waterboards.ca.gov
(916) 341-5174

Prosecution Team:

Michelle Beckwith, Senior Environmental Scientist
California Regional Water Quality Control Board, Santa Ana Region
3737 Main Street, Suite 500
Riverside, CA 92501
Michelle.Beckwith@waterboards.ca.gov
(951) 782-4433

Discharger:

Kobe Pham, Legally Responsible Person
K&G Ready Mix, Inc.
8241 Monroe Avenue
Stanton, CA 90680
kg.concrete@yahoo.com
(714) 761-6431

Separation of Prosecutorial and Advisory 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 Regional Board (Prosecution Team) have been separated from those who will provide advice to the Santa Ana Water Board (Advisory Team). Members of the Advisory Team¹ include Teresita Sablan, Staff Counsel, and Hope Smythe, Executive Order. Members of the Prosecution Team are: Naomi Kaplowitz, Staff Counsel; Jayne Joy, Assistant Executive Officer; and Michelle Beckwith, Senior Environmental Scientist; Kaitlin Traver, Environmental Scientist; and Bryan Elder, Senior Water Resource Control Engineer.

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

¹ Additional staff may be designated as advisory staff with the Final Hearing Procedures.

Regional 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 Regional 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 **January 18, 2019**. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Regional 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 Regional Board to consider. Evidence and exhibits already in the public files of the Regional Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, California Code of Regulations, 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.

The Prosecution Team shall submit one (1) electronic copy of the information to Teresita Sablan, Staff Counsel, so that it is received no later than 5:00 p.m. on **December 19, 2018**.

The remaining designated parties shall submit one (1) electronic copy of the information to Teresita Sablan, Staff Counsel, so that they are received no later than 5:00 p.m. on **January 10, 2019**.

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 5:00 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 Teresita Sablan, Staff Counsel, as early as possible, but they must

be received by **January 18, 2019**. 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 Regional Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Regional 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 Regional 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 5:00 p.m. on **November 23, 2018**.

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 5:00 p.m. on **January 18, 2019**, 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 Regional Board office at 3737 Main Street, Suite 500, Riverside, California 92501. 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 Regional Board. Many of these documents are also posted online at www.waterboards.ca.gov/santaana/. Although the web page is updated regularly, to ensure access to the latest information, you may contact Teresita Sablan, Staff Counsel.

Questions

Questions concerning this proceeding may be addressed to Teresita Sablan, Staff Counsel.

IMPORTANT DEADLINES

All required submissions must be received by 5:00 p.m. on the respective due date.

November 9, 2018	<ul style="list-style-type: none"> ▪ Prosecution Team issues Complaint and Hearing Procedure on K&G Ready Mix, Inc. and other parties.
November 23, 2018	<ul style="list-style-type: none"> ▪ K&G Ready Mix Inc.'s deadline to request a pre-hearing meeting. ▪ Objections due on Hearing Procedure
December 10, 2018	<ul style="list-style-type: none"> ▪ K&G Ready Mix's deadline to submit 90-Day Hearing Waiver Form and payment. ▪ Advisory Team issues decision on Hearing Procedure objections. ▪ Advisory Team issues Final Hearing Procedures. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney.</p> <p><u>Electronic or Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact.</p>
December 19, 2018	<ul style="list-style-type: none"> ▪ Prosecution Team's deadline for submission of information required under "Submission of Evidence and Policy Statements", above. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons.</p> <p><u>Electronic or Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney.</p>
December 20, 2018	<ul style="list-style-type: none"> ▪ Deadline to request "Designated Party" status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney.</p> <p><u>Electronic or Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact.</p>
December 26, 2018*	<ul style="list-style-type: none"> ▪ Deadline to submit opposition to requests for Designated Party status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney.</p> <p><u>Electronic or Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact.</p>
January 2, 2019	<ul style="list-style-type: none"> ▪ Advisory Team issues decision on requests for designated party status.
January 10, 2019*	<ul style="list-style-type: none"> ▪ Discharger's and Remaining Designated Parties' deadline to submit all information required under "Submission of Evidence and Policy Statements" above. This includes all written comments regarding the Order, and any rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections. ▪ Interested Persons' comments are due. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney.</p>

	<u>Electronic or Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact.
January 18, 2019*	<ul style="list-style-type: none"> ▪ Prosecution Team’s deadline to submit any rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections. ▪ Deadline to submit requests for additional time. ▪ If rebuttal evidence is submitted, all requests for additional time (to respond to the rebuttal at the hearing) must be made within 3 working days of <i>this</i> deadline. <u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney. <u>Electronic or Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact.
January 29, 2019* ¹	<ul style="list-style-type: none"> ▪ Prosecution Team submits Hearing binder on the parties and Board. <u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons. <u>Electronic or Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney.
February 8, 2019*	Hearing

* K&G Ready Mix, Inc. has the right to a hearing before the Board within 90 days of receiving the Complaint, but this right can be waived (to facilitate settlement discussions, for example). By submitting the waiver form, K&G Ready Mix, Inc. is not waiving the right to a hearing; unless a settlement is reached, the Board will hold a hearing prior to imposing civil liability. However, if the Board accepts the waiver, all deadlines marked with an "*" will be revised if a settlement cannot be reached.

¹ This deadline is set based on the date that the Board compiles the Board Members’ agenda packages. Any material received after this deadline will not be included in the Board Members’ agenda packages.

Administrative Civil Liability Complaint

Fact Sheet

The California State Water Resources Control Board (State Water Board) and the California Regional Water Quality Control Board, Santa Ana Region (Regional 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 options 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 Regional Board Prosecution Team and the person(s) named in the complaint, referred to as the "Discharger(s)." The Prosecution Team is comprised of Regional 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 Regional 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 Regional 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 Regional 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.

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

ACL Complaint Fact Sheet

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 enforcement website at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/policy.shtml

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 Regional Board will deliberate to decide the outcome. The Regional 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 Regional 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.

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;

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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.

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;

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- 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 Regional 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 http://www.waterboards.ca.gov/public_notices/petitions/wqpetition_instr.shtml.

An order of the State Water Board, including its ruling on a petition from a Regional Board order, can be challenged by filing a petition for writ of mandate in Superior Court pursuant to Water Code section 13330.

Once an order for payment of penalties becomes final, the Regional 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.