



California Regional Water Quality Control Board

San Diego Region



Linda S. Adams
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9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
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[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

October 6, 2010

Certified Mail-Return Receipt Requested
#7009 1410 0002 2000 0484

John B Ward III
Lite Stone Concrete, LLC
1105 N Marshall Ave
El Cajon, CA 92020

In reply refer to:
WDID: 9 371021782
642570: ranson, jhaas

Dear Mr. Ward:

NOTICE OF HEARING AND ISSUANCE OF COMPLAINT NO. R9-2010-0127 FOR ADMINISTRATIVE CIVIL LIABILITY AGAINST LITE STONE CONCRETE, LLC FOR VIOLATIONS OF STATE BOARD ORDER NO. 97-03-DWQ, NPDES NO. CAS000001

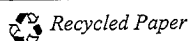
Enclosed find Complaint No. R9-2010-0127 for Administrative Civil Liability against Lite Stone Concrete, LLC (Lite Stone Concrete) in the amount of \$3,766 for violations of requirements established by the State Water Resources Control Board Order No. 97-03-DWQ, NPDES No. CAS000001. The violations addressed in the Complaint result from failure to submit the Fiscal Year (FY) 2008-2009 annual monitoring report and failure to pay the FY 2009-2010 annual fee. California Water Code (Water Code) sections 13399.33(2)(c) and (d) require the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) to impose civil liability in an amount that is not less than one thousand dollars (\$1,000) plus staff costs for failure to submit the annual report required by Order No. 97-03-DWQ. Water Code section 13261 provides the San Diego Water Board with discretion to impose Administrative Civil Liability for failure to pay fees.

Waiver of Hearing

Pursuant to Water Code section 13323, the San Diego Water Board will hold a hearing on the Complaint no later than 90 days after it is served. Lite Stone Concrete may elect to waive its right to a hearing before the San Diego Water Board. Waiver of the hearing constitutes admission of the validity of the allegations of violation in the Complaint and acceptance of the assessment of civil liability in the amount of \$3,766 as set forth in the Complaint. For the San Diego Water Board to accept the waiver of Lite Stone Concrete's right to a public hearing, Lite Stone Concrete must submit the following by 5 P.M., Thursday, November 4, 2010.

1. The enclosed waiver form signed by an authorized agent of Lite Stone Concrete; and

California Environmental Protection Agency



2. A cashier's check for the full amount of civil liability of \$3,766 made out to the State Water Resources Control Board.

Public Hearing

Alternatively, if Lite Stone Concrete elects to proceed to a public hearing, a hearing is scheduled to be held at the San Diego Water Board meeting on December 8, 2010. The meeting is scheduled to convene at the San Diego Water Board Office, 9174 Sky Park Court, Suite 100, San Diego, CA and will begin at 9 A.M. At that time, the San Diego Water Board will accept testimony and public comment and decide whether to affirm, reject, or modify the proposed liability, or whether to refer the matter for judicial civil action.

Enclosed you will find procedures I am recommending that the San Diego Water Board follow in conducting the hearing. Please note that comments on the proposed procedures are due by Thursday October 14, 2010 to the San Diego Water Board's advisory attorney, Catherine Hagan at the address indicated in the hearing procedures.

Please be advised that if Lite Stone Concrete elects to proceed to a public hearing the recommended liability may increase to recover additional staff costs.

In the subject line of any response, please include the requested "**In reply refer to:**" information located in the heading of this letter. For questions pertaining to the subject matter, please contact Ryan Anson, at (858) 467-2968 or ranson@waterboards.ca.gov, or Jeremy Haas, at (858)467-2735 or jhaas@waterboards.ca.gov.

Respectfully,



JAMES G. SMITH
Assistant Executive officer

JGS:jh:ra

- Enclosures:
1. ACL Complaint No. R9-2010-0127
 2. Technical Analysis with Exhibits A-G
 3. ACL Fact Sheet
 4. Waiver of Public Hearing Form
 5. Hearing Procedures

Cc: Via E-mail

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Greg Gearheart, Sr. WRC Engineer, State Water Board
GGearheart@waterboards.ca.gov

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

In the Matter Of:

John B Ward III
Lite Stone Concrete, LLC
1105 N Marshall Ave
El Cajon, CA 92020

WDID No. 9 371021782

**Complaint No. R9-2010-0127
For
Administrative Civil Liability**

**Violations of Order No. 97-03-DWQ and
Water Code Section 13260**

6 October 2010

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Lite Stone Concrete, LLC (Lite Stone Concrete) located at 1105 N Marshall Ave El Cajon, CA 92020, is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) must impose civil liability pursuant to Water Code section 13399.33 and may impose civil liability pursuant to Water Code sections 13261 and 13385.
2. On 3 September 2008 a Notice of Intent submitted by Lite Stone Concrete, for coverage under Order No. 97-03-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001 Waste Discharge Requirements (WDRs) for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities, was processed.
3. Order No. 97-03-DWQ requires the submittal of an annual monitoring report by July 1st of each year.
4. Order No. 97-03-DWQ and Water Code section 13260 require the payment of an annual fee to retain coverage.
5. 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.

ALLEGATIONS

6. Lite Stone Concrete violated Monitoring and Reporting Requirements in Section 14 of Order No. 97-03-DWQ by failing to submit the Fiscal Year (FY) 2008-2009 annual monitoring report by 1 July 2009.
7. In accordance with Water Code section 13399.31, the San Diego Water Board issued Notices of Violation dated 1 December 2009 and 9 March 2010. The San Diego Water Board notified Lite Stone Concrete that the San Diego Water Board had not received the FY 2008-2009 annual report that was due 1 July 2009. The San Diego Water Board urged Lite Stone Concrete to submit its annual report and alerted Lite Stone Concrete that continued failure to submit the report would trigger an administrative civil liability complaint assessing monetary penalties. As of the date of this complaint, the San Diego Water Board has not received the Lite Stone Concrete FY 2008-2009 annual report.
8. Lite Stone Concrete violated Water Code section 13260, and Paragraph 3 and Attachment 3 of Order No. 97-03 by failing to pay the annual permit fee for coverage under Order No. 97-03-DWQ for FY 2009-2010. The delinquent fee is \$1,008. The State Water Board sent an invoice to Lite Stone Concrete on 11 August 2009 indicating that payment was due by 10 September 2009. The State Water Board then notified Lite Stone Concrete of the fee delinquency with a Demand for Payment letter on 21 October 2009 and a Notice of Violation on 8 December 2009. Both the Demand for Payment letter and the Notice of Violation informed Lite Stone Concrete that failing to pay the fee could result in imposition of administrative civil liability of up to \$1,000 per day of violation.

MAXIMUM LIABILITY

9. Pursuant to Water Code section 13385, the maximum administrative civil liability which could be imposed by the San Diego Water Board for failing to comply with reporting requirements of Order No. 97-03-DWQ is ten thousand dollars (\$10,000) for each day in which the violation occurs. To date, Lite Stone Concrete has violated Order No. 97-03-DWQ for 463 days (1 July 2009 to 6 October 2010). The violation continues, therefore, the maximum administrative civil liability for failing to submit the FY 2008-2009 annual report to date is four million six hundred thirty thousand dollars (\$4,630,000).
10. 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. To date, Lite Stone Concrete has violated Water Code section 13260 for 390 days (10 September 2009 to 6 October 2010). The violation continues, therefore the maximum administrative civil liability for failing to pay the annual fee to date is three hundred ninety thousand dollars (\$390,000).

MINIMUM LIABILITY

11. Water Code section 13399.33, subdivisions (c) and (d) require that the San Diego Water Board impose a mandatory penalty of not less than \$1,000 and recover associated staff costs for any person who fails to submit an annual report in accordance with Water Code section 13399.31. There is no mandatory or minimum liability for failure to pay fees.

PROPOSED LIABILITY

12. It is recommended that the San Diego Water Board impose civil liability against Lite Stone Concrete in the amount of three thousand seven hundred sixty six dollars (\$3,766) for the violations described in this complaint. If the discharger elects to contest this matter, the recommended liability may increase to recover additional necessary staff costs.
 - a. Annual Report Violation: It is recommended that the San Diego Water Board impose civil liability against Lite Stone Concrete in the amount of 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: It is recommended that the San Diego Water Board impose civil liability against Lite Stone Concrete in the amount of 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.

The proposed liability for the annual fee violation is based on the penalty calculation methodology in the Enforcement Policy and consideration of the factors within Water Code section 13227. The proposed liability includes a substantial downward adjustment for "other factors as justice may require" in order to assess a reasonable civil liability for the subject violation. The penalty calculation methodology is detailed in the Technical Analysis for Complaint No. R9-2010-0127.

Dated this 6th day of October 2010.



JAMES G. SMITH

Assistant Executive Officer

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

Attachments: Technical Analysis

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

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

TECHNICAL ANALYSIS

**Proposed Administrative Civil Liability Contained in
Complaint No. R9-2010-0127
Lite Stone Concrete, LLC**

Noncompliance with

**State Water Resources Control Board Order No. 97-03-DWQ, National
Pollutant Discharge Elimination System General Permit No. CAS000001,
Waste Discharge Requirements (WDRs) for Discharges of Storm Water
Associated With Industrial Activities Excluding Construction Activities**

And

California Water Code Section 13260

6 October 2010

Prepared by

**Ryan Anson
Compliance Assurance Unit
San Diego Water Board**

A. INTRODUCTION

This technical analysis provides a summary of factual and analytical evidence that support the findings, allegations and proposed liability in Complaint No. R9-2010-0127 for an Administrative Civil Liability (Complaint) in the amount of \$3,766 against Lite Stone Concrete LLC (Lite Stone Concrete) for violations of California Water Code section 13260 and State Water Resources Control Board, Order No. 97-03-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS000001, Waste Discharge Requirements (WDRs) for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities.

The Complaint alleges the acts or failures to act that constitute violations of law, the provision of law authorizing civil liability to be imposed, and the proposed civil liability.

The recommended liability of \$3,766 includes a mandatory penalty of \$1,300 for failure to submit the Fiscal Year (FY) 2008-2009 annual report and a discretionary penalty of \$2,466 for failure to pay the FY 2009-2010 annual fee. Section C of this technical analysis addresses the discretionary penalty associated with the failure to pay the annual fee.

Lite Stone Concrete is a manufacturer of various pre-cast concrete products located in El Cajon, CA.

B. VIOLATIONS

On 3 September 2008 a Notice of Intent (Attachment F) submitted by Lite Stone Concrete, for coverage under Order No. 97-03-DWQ, was processed. In filing the NOI, Lite Stone Concrete agreed to timely submittals of annual reports and annual fees. The NOI was submitted by, and prepared under the direction of, Mr. John B. Ward, III.

The ACL Complaint proposes a discretionary penalty for failing to pay the FY 2009-2010 annual fee and a mandatory penalty for failing to submit the FY 2008-2009 annual report.

1. Failure to Submit Annual Report

Monitoring and Reporting Requirements in Section 14 of Order No. 97-03-DWQ require the submittal of an annual monitoring report by July 1st of each year.

Lite Stone Concrete violated Monitoring and Reporting Requirements in Section 14 of Order No. 97-03-DWQ by failing to submit the FY 2008-2009 annual monitoring report by 1 July 2009.

In accordance with Water Code section 13399.31, the San Diego Water Board issued Notices of Violation dated 1 December 2009 (Exhibit A) and 9 March 2010 (Exhibit B). The San Diego Water Board notified Lite Stone Concrete that the San Diego Water Board had not received the FY 2008-2009 annual report. The San Diego Water Board urged Lite Stone Concrete to submit its annual report and alerted Lite Stone Concrete that continued failure to submit the report would trigger an administrative civil liability complaint assessing monetary penalties.

On 17 March 2010 the San Diego Water Board received a letter, dated 15 March 2010, from Mr. John B. Ward III, the owner of Lite Stone Concrete, stating that the company did not know about the reporting requirements or how to meet them and that the company relied upon an environmental services contractor to ensure compliance. These statements do not excuse Lite Stone Concrete from civil liability resulting from the violations identified in the Complaint.

San Diego Water Board staff inspected Lite Stone Concrete on 13 July 2010. Mr. Ward was not present at the time of this inspection. The San Diego Water Board inspector, Mr. Tony Felix, verified the facility was still in operation, left a voice message by phone at the phone number listed on the 15 March 2010 letter for Mr. Ward and requested a return call. Mr. Felix did not receive a return call or other subsequent correspondence.

Pursuant to Water Code section 13385, the maximum administrative civil liability which could be imposed by the San Diego Water Board for failing to submit the annual report is ten thousand dollars (\$10,000) for each day in which the violation occurs. The violation has continued for 463 days (1 July 2009 to 6 October 2010) therefore the maximum administrative civil liability for failing to submit the FY 2008-2009 annual report is four million six hundred thirty thousand dollars (\$4,630,000).

Water Code section 13399.33, subdivisions (c) and (d) require that the San Diego Water Board impose a penalty of not less than \$1,000 and recover San Diego Water Board staff costs associated with this enforcement action for any person who fails to submit an annual report in accordance with Water Code section 13399.31. The San Diego Water Board staff costs as of 29 September 2010 are \$300.

2. Failure to Pay Annual Fee

Paragraph 3 and Attachment 3 of Order No. 97-03-DWQ require the payment of a \$1,008 annual fee. 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. The delinquent fee of \$1,008 was invoiced by the State Water Board on 11 August 2009. The payment was due on 10 September 2009. The State Water Board then sent a Demand for Payment on 21 October 2009 (Exhibit C) and a Notice of Violation on 8 December 2009 (Exhibit D). The payment was initially due on 10 September 2009 and to date the fee has not been submitted, therefore the days of violation are 390 and will continue until the fee is paid.

C. DETERMINATION OF ADMINISTRATIVE CIVIL LIABILITY

Failure to Submit Annual Report

The proposed liability for the violation of failing to submit the annual report is the mandatory penalty of \$1,000 plus staff costs required by Water Code section 13399.33. No discretionary penalty pursuant to section 13385 is proposed.

Failure to Pay Annual Fee

Pursuant to Water Code section 13261(b)(1), civil liability for failing to pay a required annual fee "may not exceed one thousand dollars (\$1,000) for each day in which the violation occurs."

Water Code section 13327 requires the San Diego Water Board to consider several factors when determining the amount of civil liability to impose under Water Code section 13261. These factors include: "...the 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 violation, and other matters that justice may require."

Water Quality Enforcement Policy

The 2009 State Water Resources Control Board Water Quality Enforcement Policy, Section VI, provides a penalty calculation methodology for Regional Water Boards to use in administrative civil liability cases. The penalty calculation methodology enables the water boards to fairly and consistently implement liability provisions of the Water Code for maximum enforcement impact to address, correct, and deter water quality violations. The penalty calculation methodology provides a consistent approach and analysis of factors to determine liability based on the applicable Water Code section.

The Enforcement Policy suggests that the penalty calculation methodology apply to discretionary penalties subject to consideration of the factors in Water Code section 13227 or 13385, but not mandatory penalties such as those required by Water Code section 13399.33. Since the prosecution team is proposing a mandatory penalty for the late annual report violation, the following analysis only applies the methodology to the violation of failing to pay the annual fee.

1. Step 1 - Potential for Harm for Discharge Violations

The failure to pay annual fees is a “non-discharge violation.” Therefore this step does not apply.

2. Step 2 – Assessments for Discharge Violations

The failure to pay annual fees is a “non-discharge violation.” Therefore this step does not apply.

3. Step 3 – Per Day Assessments for Non-Discharge Violations

Step three of the Enforcement Policy’s penalty calculation methodology directs the San Diego Water 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 is determined to be minor because the failure to pay annual fees presents no direct threat to beneficial uses and does only minor harm to the regulatory program.

The Extent of Deviation from applicable requirements was determined to be major because no portion of the annual fee was submitted.

Using “TABLE 3 – Per Day Factor” and applying a Potential for Harm of minor and an Extent of Deviation of major results in a factor of **0.3**. As a result, the Initial Base Liability for failing to pay the annual fee is:

$$\text{Initial Base Liability} = (0.3) \times (390 \text{ days of violation}) \times (\$1,000) = \$117,000$$

4. Step 4 – Adjustment Factors

The Enforcement Policy describes three factors related to the violator's conduct that should be considered for modification of the amount of initial liability: the violator's culpability, the violator's efforts to cleanup or cooperate with regulatory authorities after the violation, and the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

a. Adjustment for Culpability

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case a culpability multiplier of 1.5 has been selected.

Lite Stone Concrete verified its understanding of, and commitment to, the annual fee requirement in Order No. 97-03-DWQ when the Notice of Intent was filed. In addition, the State Water Board twice notified Lite Stone Concrete that the FY 2009 fee was late with a delinquent notice and notice of violation. The continued failure to pay the annual fee is negligent behavior. Therefore, an adjustment for culpability factor of 1.5 is appropriate.

b. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation.

This adjustment was not considered because this is a non-discharge violation.

c. Adjustment for History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this. In this case, a multiplier of 1.0 is proposed because Lite Stone Concrete has no prior history of non-compliance. A factor of 1.0 has no effect on the liability amount.

d. Adjustment for Multiple Violations Resulting from the Same Incident

The Enforcement Policy provides that for situations not addressed by statute, a single base liability amount can also be assessed for multiple violations resulting from the same incident at the discretion of the water boards under certain, specific circumstances. Except where statutorily required, however, multiple violations shall not be grouped and considered as a single base liability amount when those multiple violations each result in a distinguishable economic benefit to the violator.

Failure to pay the annual fee violates both Order No. 97-03-DWQ and Water Code section 13260. Both violations will be grouped and considered as a base liability under Water Code section 13261, rather than section 13385 because the plain language of section 13261 indicates the legislative intent for it to be used when considering administrative civil liability for failing to pay annual fees.

e. Adjustment for Multiple Day Violations

The Enforcement Policy provides that for violations lasting more than 30 days, the San Diego Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per day economic benefit, if any, resulting from the violation.

The failure to pay the FY 2009-2010 annual fee has continued for 390 days since 10 September 2009.

The continuance of the violation is not causing daily detrimental impacts to the environment; therefore an adjustment can be made.

The prosecution team recommends the alternate approach to penalty calculation described in the Enforcement Policy be applied. Using this approach, penalties will be assessed for days 1, 5, 10, 15, 20, 25, 30, 60, 90, 120, 150, 180, 210, 240, 270, 300, 330, 360, and 390 of violation. This results in the consideration of **19** days in violation.

5. Step 5 - Determination of Total Base Liability Amount

The Total Base Liability amount is determined by adding the initial liability amounts (from Steps 1-3) for each applicable violation and applying the adjustment factors from Step 4. Accordingly, the Total Base Liability Amount for failing to pay the annual fee is calculated as follows:

$$(\text{Initial Liability}) \times (\text{Per Day Factor}) \times (\text{Culpability Adjustment}) \times (\text{Multiple Day Adjustment}) = (\text{Total Base Liability Amount})$$

$$\text{Total Base Liability Amount} = (\$1,000) \times (0.3) \times (1.5) \times (19) = \$8,550$$

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

The Enforcement Policy provides that if the San Diego Water Board has sufficient financial information necessary to assess the violator's ability to pay the Total Base Liability or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability Amount may be adjusted downward.

The San Diego Water Board Prosecution Team has sufficient information to suggest that Lite Stone Concrete has the ability to pay the proposed liability. Lite Stone Concrete is an active business and, according to its website (limestoneconcrete.com), Lite Stone Concrete is a major manufacturer of precast architectural concrete products, maintains a complete design facility and has a full time fabrication staff.

7. Step 7 – Other Factors As Justice May Require

The Enforcement Policy provides that if the San Diego Water Board believes that the amount determined using the above factors is inappropriate, the liability amount may be adjusted under the provision for "other factors as justice may require," if express findings are made. In addition, the costs of investigation should be added to the liability amount according to the Enforcement Policy.

The prosecution staff recommends the Total Base Liability amount of \$8,550 should be adjusted downward because \$8,550 is more than eight times the original fee, which is disproportionate to the magnitude and effect of the violation.

The prosecution staff recommends a reduction of \$6,534 to the Total Base Liability amount, resulting in an adjusted amount of \$2,016, which is twice the original fee. This amount bears a reasonable relationship to the gravity of the violation and the harm to the regulatory program resulting from the violation, and it deters similar conduct in the future.

In addition, the San Diego Water Board associated staff costs to date of \$450 associated with this violation should be added to the liability amount.

8. Step 8 – Economic Benefit

The Enforcement Policy directs the San Diego Water Board to determine any economic benefit of the violations based on the best available information and suggests that the amount of the administrative civil liability should exceed this amount whether or not economic benefit is a statutory minimum.

The economic benefit of the violation was estimated to be the unpaid fee of \$1,008 plus a time value of \$13 using the USEPA Economic Benefit Calculator.

$$\$1,008 + \$13 = \$1,021$$

Therefore the adjusted total base liability amount should be greater than \$1,021.

The adjusted total base liability amount suggested would recover the economic benefit.

9. Step 9 – Maximum and Minimum Liability Amounts

The Enforcement Policy directs the San Diego Water Board to determine the maximum and minimum liability amounts set forth in the applicable statutes.

Water Code 13261(b)(1) establishes that a discharger failing to pay a required fee is liable in an amount that may not exceed \$1,000 for each day of violation. The violation has continued for 390 days (10 September 2009 to 6 October 2010) so the maximum liability is \$390,000.

There is no statutory minimum liability for failure to pay a fee. However, the enforcement policy directs the San Diego Water Board to recover, at a minimum, ten percent more than the economic benefit of \$1,021. In this case that would be one thousand one hundred twenty three dollars (\$1,123).

The proposed liability falls within the maximum and minimum liability amounts.

10. Step 10 – Final Liability Amount

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts. The final liability amount calculation for the violation of failing to pay the annual fee was performed as follows.

$$(\text{Total Base Liability Amount}) + (\text{Staff Costs}) - (\text{Adjustment for Other Factors as Justice May Require}) = (\text{Final Liability Amount})$$

$$\text{Final Liability Amount} = (\$8,550) + (\$450) - (\$6,534) = \$2,466$$

D. CONCLUSION

To calculate the total recommended amount of civil liability, the amounts for each violation are added together as follows.

Violation	Penalty	Staff Costs	Total
Failure to Pay Annual Fee	\$2,016	\$450	\$2,466
Failure to Submit Annual Report	\$1,000	\$300	\$1,300
Total	\$3,016	\$750	\$3,766

The final Assessment of Civil Liability amount recommended by the Prosecution Staff is three thousand seven hundred sixty six dollars (\$3,766).

E. EXHIBITS

- A Notice of Violation No. R9-2009-0221 (1 December 2009)
- B Notice of Violation No. R9-2010-0050 (9 March 2010)
- C Demand for Payment Letter (21 October 2009)
- D Notice of Violation for Facility ID:9 371021782 (8 December 2009)
- E Lite Stone Concrete response letter (15 March 2010)
- F Notice of Intent for Facility ID:9 371021782 (Processed 3 September 2008)
- G Penalty Methodology Decisions Summary Sheet



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board

San Diego Region

Over 50 Years Serving San Diego, Orange, and Riverside Counties
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CERTIFIED MAIL
7009 1410 0002 2347 6576

In reply refer to:
WDID# 9 371021782
Unit Initials: Dquach

December 1st, 2009

Lite Stone Concrete
1105 N Marshall Ave
El Cajon, CA 92020

Subject: Notice of Violation No. R9-2009-0221: NPDES No. CAS000001: Order No. 97-03-DWQ: Discharger Name: WDID 9371021782: Failure to Submit 2008-2009 Industrial Storm Water Annual Report

**Facility: Lite Stone Concrete
1105 N Marshall Ave
El Cajon, CA 92020**

YOU ARE HEREBY NOTIFIED THAT:

You are in violation of the statewide General Industrial Storm Water Permit Order No. 97-03-DWQ (Order) for failure to submit the 2008-2009 Annual Report. The Annual Report was due to the California Regional Water Quality Control Board, San Diego Region (Regional Board) by July 1, 2009 as required by Section B.14 of the Order.

Pursuant to California Water Code (CWC) Sections 13399.31-33, and 13385, your failure to submit the Annual Report subjects you to possible enforcement action by the Regional Board. Civil liability could range from a minimum of \$1,000 and up to \$10,000 a day for each day of violation, or up to \$25,000 a day if the liability is assessed by a court. You may also be subject to criminal penalties under Section 13387 of the CWC. The number of days of violation would be counted from July 1, 2009, up to the date the 2008-2009 Annual Report is received. To minimize the potential liability assessed, please submit the Annual Report immediately. Mail the Annual Report to the address at the top of this page, attention Dat Quach. As of December 4th, 2009, your report is 156 days late and your attention to this matter is needed immediately.

California Environmental Protection Agency

December 1, 2009

Lite Stone Concrete
NOV No. R9-2009-0221

If you have any questions pertaining to the submission of the Annual Report, and or the issuance of this NOV, please contact Dat Quach at (858) 467-2978, or by email at Dquach@waterboards.ca.gov. If you feel you have received this NOV in error, please contact our office immediately.

Respectfully,



David Barker, P.E.
Supervising Water Resources Control Engineer
Surface Water Basins Branch

DTB:esb:dpp

SMARTS:

Violation ID	840360
Regulatory ID	400533

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Lite Stone Concrete
 1105 N. Marshall Ave
 El Cajon, CA 92020

2. Article Number
 (Transfer from service label)

7009 1410 0002 2347 6576

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee
 X

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

PLEASE STICKER AT TOP OF ENVELOPE TO THE RIGHT
 OF THE RETURN ADDRESS. FOLD AT DOTTED LINE.
CERTIFIED MAIL™



7009 1410 0002 2347 6576
 7009 1410 0002 2347 6576

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
 Here

Sent To Lite Stone Concrete
 Street, Apt. No.,
 or PO Box No. 1105 N. Marshall Ave
 City, State, ZIP+4 El Cajon, CA 92020

PS Form 3800, August 2006

See Reverse for Instructions

502595-02-M-1540



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board San Diego Region

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA



Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>

March 9, 2010

CERTIFIED MAIL NO. 7009 1410 0002 2000 0040
(Return receipt requested)

In reply refer to:
SMARTS-2 App. ID: 351217
NWPU: tfelix

John B. Ward III
Lite Stone Concrete
1105 N. Marshall Avenue
El Cajon, CA 92020

Subject: 2nd Notice of Violation No. R9-2010-0050: Order No. 97-03-DWQ, NPDES No. CAS000001 to Lite Stone Concrete, WDID No. 9371021782: Failure to Submit 2008-2009 Industrial Storm Water Annual Report

**Facility: Lite Stone Concrete
1105 N. Marshall Avenue
El Cajon, CA 92020**

YOU ARE HEREBY NOTIFIED THAT:

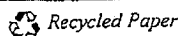
On December 1, 2009, you were notified that you are in violation of the statewide General Industrial Storm Water Permit Order No. 97-03-DWQ (Order) for failure to submit the 2008-2009 Annual Report. The Annual Report was due to the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) by July 1, 2009 as required by Section B.14 of the Order.

Pursuant to California Water Code (CWC) Sections 13399.33 and 13385, your continued noncompliance for failure to submit the Annual Report may subject you to escalated enforcement actions by the San Diego Water Board. Civil liability could range from a minimum of \$1,000 and up to \$10,000 a day for each day of violation, or up to \$25,000 a day if the liability is assessed by a court. You may also be subject to criminal prosecution under Section 13387 of the CWC. The number of days of violation would be counted from July 1, 2009, up to the date the 2008-2009 Annual Report is received. To date, we have not received a report or response to this notification and the report is 251 days late.

To minimize the potential liability assessed, please submit the Annual Report immediately. Mail the Annual Report to the address at the top of this page.

If you have any questions pertaining to the submission of the Annual Report, and for the issuance of this NOV, please contact Mr. Tony Felix at (858) 636-3134, or by email at

California Environmental Protection Agency

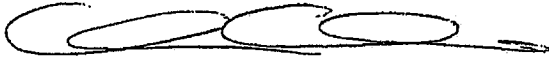



Lite Stone Concrete - 2 -
Notice of Violation No. R9-2010-0050

March 9, 2010

TFelix@waterboards.ca.gov. If you feel you have received this NOV in error, please contact our office immediately.

Respectfully,



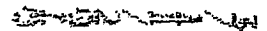
 David T. Barker, P.E.
Supervising Water Resources Control Engineer
Surface Water Basins Branch

DTB:esb:aaf

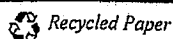
SMARTS-2:

Violation ID	841033
Enforcement ID	401207

S:\Surface Waters Basins Branch\Northern Watershed Unit\Tony\Storm Water Program\Industrial SW2nd NOV\Lite Stone.doc



California Environmental Protection Agency



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

**JOHN B. WARD III
1105 N. MARSHALL AVE
EL CAJON, CA 92020**

2. Article Number
(Transfer from service label)

7009 1410 0002 2000 0040

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee
X

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
 OF THE RETURN ADDRESS. FOLD AT DOTTED LINE.
CERTIFIED MAIL™



7009 1410 0002 2000 0040
7009 1410 0002 2000 0040

**U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT**
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

Sent To **JOHN B. WARD III**
 Street, Apt. No.,
 or PO Box No. **1105 N. MARSHALL AVE**
 City, State, ZIP+4 **ELCAJON, CA 92020**

PS Form 3800, August 2006
 PS Form 3800, August 2006

See Reverse for Instructions
 See Reverse for Instructions



DEMAND FOR PAYMENT

Annual Permit Fees Required by Sections 13260 & 13269 of the California Water Code

Date: 10/21/2009
Facility ID: 9 371021782
Facility Name: LITE STONE CONCRETE
1105 N MARSHALL AVE
EL CAJON, CA 92020

Fiscal Year: 2009/10
Invoice Number: SW-0000304
Billing Period: 07/01/09 - 06/30/10
Invoice Date: 8/11/2009
Amount Past Due: \$ 1,008.00
Region: 9
Index Number: 040010

LITE STONE CONCRETE
JOHN WARD
1105 N MARSHALL AVE
EL CAJON, CA 92020

For details please refer to the original invoice

DEMAND FOR PAYMENT OF ANNUAL STORM WATER PERMIT FEES

This is a FORMAL DEMAND FOR PAYMENT on the above delinquent invoice. Our accounting office records indicate that you have failed to pay the required annual fee. Failure to pay the required fee is considered a misdemeanor under California law (Water Code Section 13261) and could result in a civil liability assessment of up to \$1000 per day for each day that the fees go unpaid, revocation of your discharge permit, or referral to a collection agency. Please return payment in the attached envelope along with the bottom portion of the invoice. Payment must be received no later than 30 days from the date of this notice.

Please note that a transfer of ownership or relocation of a facility requires a new Storm Water Permit. If your facility is closed or project completed, please file a Notice of Termination. Forms can be accessed on our website at:

(Construction) http://www.swrcb.ca.gov/water_issues/programs/stormwater/docs/constnot.doc
Or (Industrial) http://www.swrcb.ca.gov/water_issues/programs/stormwater/docs/indusnot.doc

If you have any questions about this invoice, please call the
State Water Resources Control Board at (916) 341-5247.

For payment status of your invoice, please go to the "Stormwater and Wastewater Permit Fee Invoice Information" link at
<http://water101.waterboards.ca.gov/dwqdas/feeunit/search/DischargerInvoiceInfo.asp>

Please allow 15 business days after mailing for your payment to be posted to the database.



Please detach and return this portion with your payment

Region: 9

Fiscal Year: 2009/10

Invoice Number: SW-0000304

Index Number: 040010

(Please print the above number on check or money order)

RM #: 351217

LITE STONE CONCRETE
JOHN WARD
1105 N MARSHALL AVE
EL CAJON, CA 92020

SWRCB
PO BOX 1888
SACRAMENTO, CA 95812-1888

Amount Due: \$ 1,008.00
Billing Period: 07/01/09 - 06/30/10
Invoice Date: 8/11/2009
Facility ID: 9 371021782
Facility Name: LITE STONE CONCRETE
1105 N MARSHALL AVE
EL CAJON, CA 92020



Linda S. Adams
Secretary for
Environmental
Protection

State Water Resources Control Board

Division of Administrative Services
1001 I Street * Sacramento, California 95814 * (916) 341-5247
Mailing Address: P.O. Box 1888 * Sacramento, California 95812-1888



Arnold
Schwarzenegger
Governor

December 08, 2009

LITE STONE CONCRETE
JOHN WARD
1105 N MARSHALL AVE
EL CAJON, CA 92020

NOTICE OF VIOLATION FOR FACILITY ID: 9 371021782

This is a **NOTICE OF VIOLATION** for failure to pay the required annual fee issued for LITE STONE CONCRETE facility, located at 1105 N MARSHALL AVE EL CAJON, CA. Failure to pay the required fee is a violation under California law (Water Code Section 13261) and could result in criminal prosecution as well as a civil liability assessment of up to \$1000 per day for each day that fees go unpaid and/or rescission of your permit. Failure to comply will make you potentially liable for the full amount of a civil liability assessment from the date of the first invoice in addition to the original invoice amount. **The Regional Board that has jurisdiction over your facility has been notified and may issue an Administrative Civil Liability complaint pursuant to Water Code Section 13261.**

If you have questions about why you are being regulated or other questions related to the above mentioned permit, please call the Regional Board or Fee Unit at the phone number on the attached invoice.

Sincerely,

David Ceccarelli
Fee Branch Manager

State Water Resources Control Board

Division of Administrative Services

1001 I Street * Sacramento, California 95814 * (916) 341-5247
Mailing Address: P.O. Box 1888 * Sacramento, California 95812-1888

Date: 12/8/2009

Facility ID: 9 371021782

Facility Name: LITE STONE CONCRETE
1105 N MARSHALL AVE
EL CAJON, CA 92020

Fiscal Year: 2009/10
Invoice Number: SW-0000304
Billing Period: 07/01/09 - 06/30/10
Invoice Date: 8/11/2009
Amount Past Due: \$ 1,008.00
Region: 9
Index Number: 040010

LITE STONE CONCRETE
JOHN WARD
1105 N MARSHALL AVE
EL CAJON, CA 92020

For details please refer to the original invoice

NOTICE OF VIOLATION OF STORMWATER REQUIREMENTS

THIS IS A FORMAL NOTICE OF VIOLATION on the above delinquent invoice. Our accounting office records indicate that you have failed to pay the required annual fee. Failure to pay the required fee is considered a misdemeanor under California law (Water Code Section 13261) and could result in a civil liability assessment of up to \$1000 per day for each day that fees go unpaid. The Regional Board has been notified of your delinquent account and may issue a complaint that could result in Civil Liability actions.

Please note that a transfer of ownership or relocation of a facility requires a new Storm Water Permit. If your facility is closed or project completed, please file a Notice of Termination. Forms can be accessed on our website at:

(Construction) http://www.swrcb.ca.gov/water_issues/programs/stormwater/docs/constnot.doc

Or (Industrial) http://www.swrcb.ca.gov/water_issues/programs/stormwater/docs/indusnot.doc

If you have any questions about this invoice, please call the
State Water Resources Control Board at (916) 341-5247.

For payment status of your invoice, please go to the "Stormwater and Wastewater Permit Fee Invoice Information" link at
<http://water101.waterboards.ca.gov/dwqdas/feeunit/search/DischargerInvoiceInfo.asp>

Please allow 15 business days after mailing for your payment to be posted to the database.

Please detach and return this portion with your payment

Region: 9

Fiscal Year: 2009/10

Invoice Number: SW-0000304

Index Number: 040010

(Please print the above number on check or money order)

RM #: 351217

SWRCB
PO BOX 1888
SACRAMENTO, CA 95812-1888

LITE STONE CONCRETE
JOHN WARD
1105 N MARSHALL AVE
EL CAJON, CA 92020

Amount Due: \$ 1,008.00
Billing Period: 07/01/09 - 06/30/10
Invoice Date: 8/11/2009
Facility ID: 9 371021782
Facility Name: LITE STONE CONCRETE
1105 N MARSHALL AVE
EL CAJON, CA 92020

Lite Stone

CONCRETE

SAN DIEGO REGIONAL
WATER QUALITY
CONTROL BOARD

2010 MAR 17 P 1:35

March 15, 2010

California Water Control Board
Attn: Mr. Tony Felix
9174 Sky Park Court, Ste. 100
San Diego, Ca. 92123-4353

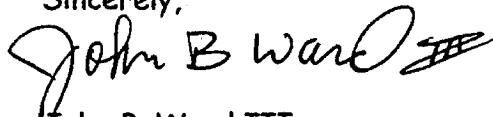
RE: SMARTS-2 App. ID: 351217

Dear Mr. Felix,

We received a letter that Lite Stone Concrete is in violation for failure to submit 2008-2009 Industrial Storm Water Annual Report. We are not sure what this is and how to go about submitting it. Lite Stone Concrete is a tenant at this location of 1105 N. Marshall Ave., El Cajon, California.

The owner of this property has had a company called EnviroSolve here at this location numerous times throughout the year to test water. We are not aware that it is our responsibility to do anything. If you would please contact me at 619-596-9151 so that we can get this matter resolved.

Sincerely,



John B. Ward III

Owner

R: 351217

JODY E.

PI: 41984

071792

SAN DIEGO REGIONAL
WATER QUALITY CONTROL BOARD
NOTICE OF INTENT

TO COMPLY WITH THE TERMS OF THE
GENERAL PERMIT TO DISCHARGE STORM WA
ASSOCIATED WITH INDUSTRIAL ACTIVITY (WQ ORDER NC
4 Excluding Construction Activities)

REFERENCE: 351217

DATE: 9/3/2008

WDD: 9 371021782

SAN DIEGO REGIONAL
WATER QUALITY CONTROL BOARD

3 P I: 2008 OCT 3 11 11

SECTION I. NOI STATUS (please check only one box)

A. New Permittee B. Change of Information WDDID # _____

SECTION II. FACILITY OPERATOR INFORMATION (See instructions)

A. NAME: Lite Stone Concrete Phone: 619-596-9151

Mailing Address: 1105 N Marshall Ave

City: El Cajon State: CA Zip Code: 92020

Contact Person: John B Ward III

B. OPERATOR TYPE: (check one) 1. Private 2. City 3. County 4. State 5. Federal 6. Special District 7. Gov. Combo

SECTION III. FACILITY SITE INFORMATION

A. FACILITY NAME: Lite Stone Concrete Phone: 619-596-9151

Facility Location: 1105 N Marshall Ave County: San Diego

City: El Cajon State: CA Zip Code: 92020

B. MAILING ADDRESS: 1105 N Marshall Ave

City: El Cajon State: CA Zip Code: 92020

Contact Person: John B Ward III

C. FACILITY INFORMATION (check one)
Total Size of Site: _____ Acres [] Sq. Ft. [] Percent of Site Impervious (including rooftops) _____ %

D. SIC CODE(S) OF REGULATED ACTIVITY:
1. 3272
2. _____
3. _____

E. REGULATED ACTIVITY (describe each SIC code):
Pre-Cast Concrete Mfg

FOR STATE USE ONLY:

Empty box for state use only.

Storm Water
SEP 2008
Division of
Water Quality

351217

SECTION IV. ADDRESS FOR CORRESPONDENCE

Facility Operator Mailing Address (Section II) Facility Mailing Address (Section III, B.) Both

SECTION V. BILLING ADDRESS INFORMATION

SEND BILL TO: Facility Operator Mailing Address (Section II) Facility Mailing Address (Section III, B.) Other (enter information below)

Name: Lite Stone Concrete Phone: 619-596-9151

Mailing Address: 1105 N Marshall Ave

City: Escondido State: CA Zip Code: 92020

Contact Person: John B Ward III

SECTION VI. RECEIVING WATER INFORMATION

Your facility's storm water discharges flow: (check one) Directly OR Indirectly to waters of the United States.

Name of receiving water: _____ (river, lake, stream, ocean, etc.) unknown

SECTION VII. IMPLEMENTATION OF PERMIT REQUIREMENTS

A. STORM WATER POLLUTION PREVENTION PLAN (SWPPP) (check one)

A SWPPP has been prepared for this facility and is available for review.

A SWPPP will be prepared and ready for review by (enter date): _____

B. MONITORING PROGRAM (check one)

A Monitoring Program has been prepared for this facility and is available for review.

A Monitoring Program will be prepared and ready for review by (enter date): _____

C. PERMIT COMPLIANCE RESPONSIBILITY

Has a person been assigned responsibility for:

1. Inspecting the facility throughout the year to identify any potential pollution problems?	YES	NO
2. Collecting storm water samples and having them analyzed?	YES	NO
3. Preparing and submitting an annual report by July 1 of each year?	YES	NO
4. Eliminating discharges other than storm water (such as equipment or vehicle wash-water) into the storm drain?	YES	NO

Storm Water Division of Water Quality AUG 2008

For State Use only. _____

SECTION VIII. SITE MAP

I HAVE ENCLOSED A SITE MAP YES A new NOI submitted without a site map will be rejected.

SECTION IX. CERTIFICATION

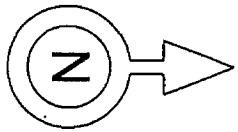
"I certify under penalty of law that this document and all attachments were prepared under my direction and supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. In addition, I certify that the provisions of the permit, including the development and implementation of a Storm Water Pollution Prevention Plan and a Monitoring Program Plan, will be complied with."

Printed Name: John B. Ward III

Signature: [Signature] Date: 8/1/08

Title: owner

Storm Water Division of Water Quality AUG 2008



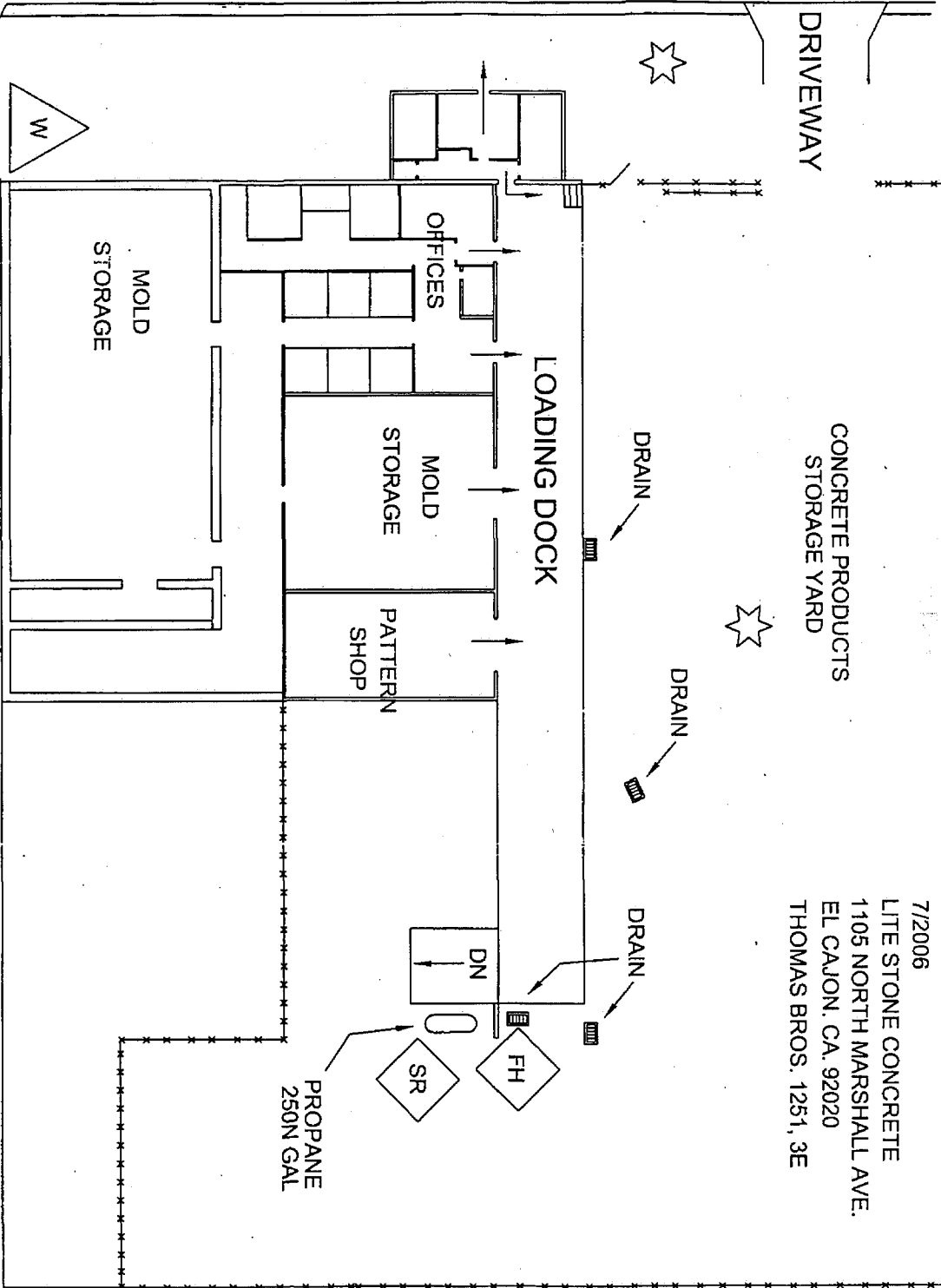
NORTH MARSHALL AVE.

DRIVEWAY

DRIVEWAY

CONCRETE PRODUCTS
STORAGE YARD

7/2006
LITE STONE CONCRETE
1105 NORTH MARSHALL AVE.
EL CAJON, CA. 92020
THOMAS BROS. 1251, 3E



FILE/SITE

7/2006

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 Assesments for Non-Discharge Violations					
Violations	Per Day Factor				Statutory Maximum Per Day [sec. 13261]
	Potential for Harm [minor, moderate, major]	Deviation from Requirement [minor, moderate, major]	Total Per Day Factor	Days of Violation	
Failure to pay Annual Fee	minor	major	0.3	390	\$1,000

Initial Liability From Steps 1 - 3
 $(.3) \times (390) \times (\$1000) = \$117,000$

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 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
n/a	\$390,000

Step 7: Other Factors as Justice May Require	
Costs of Investigation and Enforcement	Other
\$450	-\$6,534

Step 10: Final Liability Amount
 (total base liability) + (other factors)
 $(\$8,550) + (\$450) - (\$6,534) = \$2,466$

Administrative Civil Liability Complaint

Fact Sheet

The State Water Resources Control Board and the regional boards are authorized to issue a complaint for civil liabilities under California 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 sets forth the violations that are alleged to have been committed, the Water Code provisions alleged to have been violated and it summarizes the evidence that supports the allegations, **If you receive a complaint, you must respond timely as directed. If you fail to do so, a default order may be issued against you.** The complaint is accompanied by a letter of transmittal, 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 or state board Prosecution Team and the person named in the complaint, referred to as the "Discharger." The Prosecution Team is comprised of Regional Board staff and management. Other interested persons may become involved and may become a "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 hearing, the hearing will be held before the full membership of the Regional Board (nine volunteer members) or before a panel. The board members who will hear the evidence and rule on the matter act as judges. They are assisted by advisory staff, 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 board members 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; (5) hearing.

Withdrawal: may result if the discharger provides information to the Prosecution Staff 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 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 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. Qualifying criteria for Compliance Projects and SEPs are contained in the State Board's Enforcement Policy, which is available at the State Board's website at: www.swrcb.ca.gov/plans_policies/docs/wqcp.doc.

Hearing: if the matter proceeds to hearing, the parties will be allowed time to present evidence and testimony in support of their respective positions. The hearing must be held within 90 days of the issuance of the Complaint, unless the Discharger waives that requirement by signing and submitting the Waiver Options 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 parties, the board members will deliberate to decide the outcome. The 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 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 (California Water Code Section 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 years of signed federal income tax returns (IRS Form 1040) including schedules;
2. Members of household, including relationship, age, employment and income;
3. Current living expenses;
4. Bank account statements;
5. Investment statements;
6. Retirement account statements;
7. Life insurance policies;
8. Vehicle ownership documentation;
9. Real property ownership documentation;
10. Credit card and line of credit statements;
11. Mortgage loan statements;
12. Other debt documentation.

For a business:

1. Copies of last three years of company IRS tax returns, signed and dated,
2. Copies of last three years of company financial audits
3. Copies of last three years of IRS tax returns of business principals, signed and dated.
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 years, specifically:
 - IRS Form 1120 for C Corporations
 - IRS Form 1120 S for S Corporations
 - IRS Form 1065 for partnerships
2. A completed and signed IRS Form 8821. This allows IRS to provide the SWRCB 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:
 - Audited Financial Statements for last three years;
 - A list of major accounts receivable with names and amounts;
 - A list of major accounts payable with names and amounts;
 - A list of equipment acquisition cost and year purchased;
 - Ownership in other companies and percent of ownership for the last three years;
 - Income from other companies and amounts for the last three years.

For a municipality, county, or district:

1. Type of entity:
 - City/Town/Village;
 - County;
 - Municipality with enterprise fund;
 - Independent or publicly owned utility;
2. The following 1990 and 2000 US Census data:
 - Population;
 - Number of persons age 18 and above;
 - Number of persons age 65 and above;
 - Number of Individual below 125% of poverty level;
 - Median home value;
 - Median household income.
3. Current or most recent estimates of:
 - Population;
 - Median home value;
 - Median household income;
 - Market value of taxable property;
 - 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.
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 your 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 Board issues an order requiring payment, the discharger may challenge that order by filing a petition for review with the State Board pursuant to Water Code section 13320. More information on the petition process is available at www.swrcb.ca.gov/public_notices/petitions.

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

Once an order for payment of penalties becomes final, the regional or state 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.

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent Lite Stone Concrete, LLC (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R9-2010-0127 (hereinafter the "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay the liability.)

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.
- b. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **three thousand seven hundred sixty six dollars (\$3,766)** by check that references "ACL Complaint No. R9-2010-0127." made payable to the "State Water Resources Control Board". Payment must be received by the Regional Water Board by **Thursday, 4 November, 2010** or this matter will be placed on the Regional Water Board's agenda for a hearing as initially proposed in the Complaint.
- 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 30-day public notice and comment period. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer or the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.) I hereby waive any right the Discharger may have to a hearing before the Regional Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Regional Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.) I hereby waive any right the Discharger may have to a hearing before the Regional Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Regional Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Regional Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

STATE WATER RESOURCES CONTROL BOARD, SAN DIEGO REGION

PROPOSED DRAFT

HEARING PROCEDURE FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R9-2010-0127
ISSUED TO

LITE STONE CONCRETE, LLC

SCHEDULED FOR DECEMBER 8, 2010

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Background

The Assistant Executive Officer of the Regional Water Quality Control Board, San Diego Region (San Diego Water Board) has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code Section 13323 (Water Code) against Lite Stone Concrete, LLC (Discharger) for violation of Prohibitions contained in State Water Resources Control Board (State Water Board) Order No. 97-03-DWQ, by failing to submit the Fiscal Year (FY) 2008-2009 annual monitoring report and failure to pay the FY 2009-2010 annual fee. The Complaint proposes that administrative civil liability in the amount of \$3,766 be imposed pursuant to Water Code section 13399.33 and 13621. Unless the Discharger waives its right to a hearing and pays the proposed liability, a hearing will be held before the San Diego Water Board during its meeting of **December 8, 2010**, in San Diego.

Purpose of Hearing

The purpose of the hearing is to receive relevant evidence and testimony regarding the proposed ACL Complaint. At the hearing, the San Diego Water Board will consider whether to adopt, modify, or reject the proposed assessment.

The public hearing on **December 8, 2010**, will commence as announced in our San Diego Water Board meeting agenda. The meeting will be held at the San Diego Water Board Office, 9174 Sky Park Court, Suite 100, San Diego, CA and the meeting will begin at 9 A.M. An agenda for the meeting will be issued at least ten days before the meeting and will be posted on the San Diego Water Board's web page at: www.waterboards.ca.gov/sandiego.

Hearing Procedures

The hearing will be conducted in accordance with this hearing procedure. This proposed draft version of the hearing procedure has been prepared by the Prosecution Team and is subject to revision and approval by the San Diego Water Board's Advisory Team. A copy of the procedures governing an adjudicatory hearing before the San Diego Water Board may be found at Title 23 of the California Code of Regulations, § 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (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), § 648(b), Chapter 5 of the Administrative Procedures Act (commencing with § 11500 of the Government Code) does not apply to adjudicatory hearings before the San Diego Water Board. This Notice provides additional requirements and deadlines related to the proceeding.

THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM IN ITS DISCRETION. **ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY CATHERINE HAGAN, SENIOR STAFF COUNSEL, NO LATER THAN OCTOBER 14, 2010, OR THEY WILL BE WAIVED.** FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Hearing Participation

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the San Diego Water Board, staff or others, at the discretion of the San Diego Water Board.

The following participants are hereby designated as parties in this proceeding:

- (1) San Diego Water Board Prosecution Staff
- (2) Lite Stone Concrete

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party, and not already be listed above, shall request party status by submitting a request in writing (with copies to the existing designated parties) no later than 5 p.m. on **October 28, 2010**, to Catherine Hagan, Senior Staff Counsel, at the address set forth above. The request

shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the San Diego Water Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be submitted by 5 p.m. on **November 4, 2010**. The parties will be notified by 5 p.m. on **November 11, 2010** as to whether the request has been granted or denied.

Contacts

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Discharger:

Lite Stone Concrete, LLC

John B. Ward III
Lite Stone Concrete
1105 N Marshall Ave
El Cajon, CA 92020

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the San Diego Water Board (Prosecution Staff) have been separated from those who will provide advice to the San Diego Water Board (Advisory Staff). Members of the Advisory Staff are: Catherine Hagan, Senior Staff Counsel, and David Gibson, Executive Officer. Members of the Prosecution Staff are: James Smith, Assistant Executive Officer, Jeremy Haas, Senior Environmental Scientist of the Compliance Assurance Unit, David Boyers, Senior Staff Counsel, and Ryan Anson.

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 Staff or members of the San Diego Water Board. An *ex parte* contact is any written or verbal communication pertaining to the investigation, preparation, or prosecution of the ACL Complaint between a member of a designated party or interested party on the one hand, and a San Diego Water Board member or an Advisory Staff 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 20 minutes to present evidence, cross-examine witnesses (if warranted), and provide a

closing statement; and each interested person shall have 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 so that it is received no later than ten days after all of the evidence has been received (**November 18, 2010**). Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the San Diego Water Board Chair (at the hearing) upon a showing that additional time is necessary.

Submission of Evidence and Policy Statements

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the San Diego Water Board to consider. Evidence and exhibits already in the public files of the San Diego Water Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, CCR, Section 648.3.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.
5. (Discharger only) If the Discharger intends to argue an inability to pay the civil liability proposed in the Complaint (or an increased or decreased amount as may be imposed by the San Diego Water Board), the Discharger should submit supporting evidence as set forth in the "ACL Fact Sheet" under "Factors that must be considered by the Board."

The Prosecution Team shall submit an electronic copy of the information to Catherine Hagan, Senior Staff Counsel, so that it is received no later than 5 p.m. on **November 11, 2010**.

The remaining designated parties shall submit 20 hard copies and one electronic copy of the information to Catherine Hagan, Senior Staff Counsel, so that they are received no later than 5 p.m. on **November 18, 2010**.

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

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to Catherine Hagan, Senior Staff Counsel, as early as possible, but they must be received by **November 24, 2010**, prior to the hearing. Interested persons do not need to submit written comments in order to speak at the hearing.

In accordance with Title 23, California Code of Regulations, Section 648.4, the San Diego Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the San Diego Water Board may exclude evidence and testimony that is not submitted in accordance with this hearing procedure. Excluded evidence and testimony will not be considered by the San Diego Water Board and will not be included in the administrative record for this proceeding. Power Point 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 hearing¹ for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Request for Pre-hearing Conference

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code Section 13228.15. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code Section 11511.5. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, no later than 5 p.m. on **November 18, 2010**.

Evidentiary Objections

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection so that it is received by 5 p.m. on **November 28, 2010** to the Advisory Team with a copy to all other designated parties. The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the San Diego Water Board office at 9174 Sky Park Court, Suite 100, San Diego, CA 92123. 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 Chair. Many of these documents are also posted on-line at www.waterboards.ca.gov/sandiego. Although the web page is updated regularly, to assure access to the latest information, you may contact Catherine Hagan, Senior Staff Counsel.

Questions

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

IMPORTANT DEADLINES

October 6, 2010	Prosecution Team issues ACL Complaint to Discharger and Advisory Team, sends proposed Hearing Procedure to Discharger and Advisory Team.
October 14, 2010	Objections due on proposed Hearing Procedure
October 21, 2010	Advisory Team issues Hearing Procedure *
October 28, 2010	Deadline for submission of request for designated party status.
November 4, 2010	Deadline for opposition to request for designated party status.
November 4, 2010	Discharger's deadline for waiving right to hearing.
November 11, 2010	Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above.
November 11, 2010	Advisory Team issues decision on requests for designated party status, if any.
November 18, 2010	Remaining Designated Parties' Deadline for submission of all information required under "Evidence and Policy Statements," above.
November 18, 2010	All Designated Parties' deadline for submission of request for pre-hearing conference.
November 24, 2010	Deadline for submission of written non-evidentiary policy statements by interested persons.
November 28, 2010	All Designated Parties' deadline for submission of rebuttal evidence (if any) and evidentiary objections.
December 8, 2010	Hearing

*These draft hearing procedures become final without issuance by the Advisory Team if no objections to the procedures were timely submitted and the Advisory Team does not issue revised hearing procedures on or before this date.

David W. Gibson
Executive Officer

DATE