

State of California
California Regional Water Quality Control Board
Santa Ana Region

IN THE MATTER OF:

Pacific Clay Products, Inc.)	Complaint No. R8-2011-0008
14741 Lake Street)	for
Lake Elsinore, CA 92530)	Administrative Civil Liability
Attn: Mr. Chad Warren)	
_____)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. On July 20, 2011, a draft copy of this complaint was mailed to Pacific Clay Products, Inc., (hereinafter Pacific Clay or Discharger). In a letter dated August 19, 2011, Pacific Clay provided additional information regarding the violations alleged in the draft Complaint. Some of that information was used in the formulation of this Complaint. Subsequently Pacific Clay and the Regional Board staff reached a settlement for the proposed liability. Pacific Clay has waived its right to a hearing and this document memorializes the settlement of this matter.
2. Pacific Clay is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), may impose administrative civil liability, pursuant to California Water Code (CWC) Section 13385.
3. Pacific Clay has waived its right to a hearing. However, if a hearing is deemed necessary, it will be scheduled within 90 days of the date of issuance of this Complaint. If a hearing is held, Pacific Clay, or its representative, will have the opportunity to appear and be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board.
4. If a hearing is held on this matter, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing.

THE COMPLAINT IS BASED ON THE FOLLOWING FACTORS:

5. Pacific Clay owns approximately 1,400 acres of land at the commonly known address of 14741 Lake Street in the City of Lake Elsinore (in the Alberhill area), California. The facility is currently regulated under the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The facility's Waste Discharge Identification (WDID) Number is 8 33I006218, issued on April 22, 1992.
6. Mining on the site has occurred in one form or another since approximately 1883 with different companies operating on the site. Pacific Clay has been the sole owner of the 1,400 acre property since 1979 when approximately 320 acres of the property were acquired from Gladding McBean and Company. The site has vested mining rights since mining was occurring on the site prior to January 1, 1976. Initial reclamation plan approvals from the County of Riverside date back to 1978 and 1979. Pacific Clay mines clay and aggregates and has a brick manufacturing facility within the site. Pacific Clay is a leading manufacturer of quality clay products including face brick, thin brick, clay bullnose, clay pavers and wall caps.
7. There are a number of creeks and channels flowing through the 1,400 acre site and Temescal Creek traverses through the northern portions of the site. Some of the mine excavations within the site are currently used as retention ponds. In addition, there are a number of detention/retention ponds constructed on the site to control storm water discharges from the site.
8. Regional Board records show that this site has a long history of non-compliance with the General Permit, including the discharge of sediment laden storm water to waters of the U.S. During an inspection by Regional Board staff in 1997, Pacific Clay acknowledged its problems with high concentrations of total suspended solids (TSS) in the storm water discharges from the site.
9. The most current revision of the site's SWPPP shows seven discharge locations from where storm water is discharged from the site. On September 26, 2000, Regional Board staff issued a Notice of Violation (NOV) to Pacific Clay for lack of adequate best management practices (BMPs) at the discharge point near the entrance to the site on Temescal Canyon Road. The NOV also noted that the runoff had a TSS concentration of 10,700 mg/l (milligrams per liter or ppm). The U.S. EPA benchmark for TSS is 100 mg/l. High concentrations of TSS can cause pollution, contamination, or nuisance and adversely impact the beneficial uses in the receiving waters. The discharge of storm water containing high concentrations of TSS is a violation of Provision A.2 of the General Permit.

10. During an October 7, 2004 inspection, staff discussed the high TSS discharges from the facility with Pacific Clay representatives. Staff also requested Pacific Clay to improve its BMPs to control the discharge of sediment from the site.
11. On September 7, 2006, Regional Board staff was notified by the Riverside County Health Department that there was an unauthorized discharge of sediment laden water from the site. The discharge of sediment laden water could cause or threaten to cause pollution, contamination, or nuisance, which is a violation of Provision A.2 of the General Permit. During the September 7, 2006 site visit, In addition to discussing the non-storm water discharge, Regional Board staff also discussed the need for either advanced treatment system to remove the fine sediment in storm water runoff from the site or other control measures to eliminate or minimize the flows from the site. The October 11, 2006 NOV noted the September 7, 2006 discharge and other potential violations of the General Permit including the lack of an up-to-date Storm Water Pollution Prevention Plan (SWPPP).
12. On November 30, 2007, Regional Board staff noted a discharge of muddy water at the entrance to the site from Temescal Canyon Road. This is a violation of Provision A.2 of the General Permit. Pacific Clay was notified and it agreed to address the problem. This discharge was from the same location that Pacific Clay had been issued a NOV on September 26, 2000 for muddy water discharges (see Paragraph 9, above).
13. A number of problems were noted during an inspection on March 27, 2009, including a potential discharge of untreated sewage (septic system wastes) to ground and/or surface waters and the disposal of waste materials to streams within the facility boundaries. These problems were noted in the June 4, 2009, NOV. In a July 6, 2009 response to the NOV, Pacific Clay refuted the violations cited in the NOV. However, it also noted that most of the problems cited in the NOV were addressed, including problems with the malfunctioning septic system.
14. A subsequent inspection on October 4, 2010, indicated that the septic system was backing up as the line leading to the leach field was severed as noted in the October 6, 2010 NOV. The NOV also noted problems with the small sediment basin next to the brick factory. Pacific Clay agreed to address the problems with the sediment basin by pumping water from this sediment basin into the larger retention ponds thereby eliminating any discharge from this pond. It was agreed that this work would be completed in four weeks from October 4, 2010.
15. To address sediment discharge concerns, Pacific Clay plugged the drain pipe from the small basin next to the brick factory and began partially re-routing flows to the basin to other areas/basins.
16. Regional Board staff inspected the site on December 22 and 24, 2010. December 22, 2010 was the last day of a long series of storms. When Regional

Board staff arrived at the small basin at the corner of the brick factory (on December 22, 2010), the basin was overflowing, but it was not being pumped down as Pacific Clay had agreed during the October 4, 2010 inspection. There was a pump and a few hoses; but the hoses were not connected to the pump. The sediment laden water that was overflowing from the basin was flowing off the site and directly into Temescal Creek. This is a violation of Provision A.2 of the General Permit. Staff could not collect a sample on December 22, 2010 due to inclement weather conditions. A sample of the discharge collected two days after the storm event (December 24, 2010) from this basin had a turbidity of 814 NTU and TSS concentration of 167 mg/l.

17. During the December 24, 2010 inspection, Regional Board staff also observed several mining stockpiles on the property's south side near the Lake Street entrances. These stockpiles were exposed and were eroding. Sediment laden flows from this area split into two discharge points: (1) some of the sediment laden discharge flowed through a swale with check dams between Lake Street and the mining stockpiles. The check dams were overwhelmed by sediment and the sediment laden discharge entered the creek next to Lake Street; and (2) another part of the flow entered a storm drain that flows into a flood control/sediment basin. According to Alberhill Ranch, Pacific Clay's sister company, who currently maintains this basin, it had to spend a significant amount of resources to remove the sediment from this basin.
18. Regional Board staff also noted that numerous loads of faulty bricks had been dumped into a stream channel that runs through the northern portion of the site. Pacific Clay has questioned the appropriateness of designating this stream channel as a water of the U.S. and has indicated that this area would be addressed through the approved site restoration plan for which the City of Lake Elsinore is the lead agency. However, Regional Board staff is not aware of any regulatory provisions that would allow disposal of wastes into stream channels. Additionally, runoff from certain areas of Pacific Clay site leaves the site through this discharge point without adequate desiltation and appears to have caused heavy channel erosion. Furthermore, all discharges of storm water associated with industrial activities from the site are regulated under the General Permit.
19. The Lake Street realignment project took place during the period from January 2009 to April 2009. Alberhill Ranch, the contractor for the realignment project, obtained coverage under the State's General Construction Activities Storm Water Permit and was issued WDID number 833C333722. Castle & Cooke Company is the parent company of Pacific Clay and Alberhill Ranch. Alberhill Ranch development is located immediately adjacent to Pacific Clay and on the east side of Lake Street. Pacific Clay was responsible for most of the areas adjacent to the road realignment project. The adjacent area was where the mining stockpiles mentioned in paragraph 17 were located. Staff observed unprotected slopes, over slope erosion, and channel erosion in the mining stockpile area. The check dams in the channel were made of 3 inch rocks and were filled with sediment that

caused sediment to bypass the check dams, indicating a general lack of maintenance. Most of the disturbed areas within the Pacific Clay site had poor erosion control measures or erosion control measures that lacked adequate maintenance. On November 4, 2010, Regional Board staff requested Pacific Clay by e-mail to implement erosion control measures such as spraying the slopes. In its November 8, 2010 email response, Pacific Clay provided photographs that had been taken in February when the area had been hydroseeded. However, by November 2010, it was clear that there was no effective vegetation established from the hydroseeding. On December 24, 2010, Pacific Clay collected a sample of the discharge from the area that drains Pacific Clay's land adjacent to the realignment project. It had a total suspended solids (TSS) level of 17,300 mg/l. None of the additional erosion control measures that were requested were implemented.

20. Regional Board staff inspected the areas within the Pacific Clay site adjacent to the realignment project on February 25, 2011. Staff noted a lot of evidence of sediment discharges, including a sediment basin that failed, the areas that had been hydromulched/seeded in February 2010 that had germinated less than 25% and check dams in the channel that were still not maintained. Some of the flow from the swale drained to a flood control/sediment basin and some bypassed it and flowed directly to a creek which is tributary to the creek discussed in paragraph 16, above. Some of the slopes that drained to the swale were not stabilized and had undergone significant erosion. There were indications that the sediment laden discharges that bypassed the swale had entered the creek.
21. The TSS levels in the storm water discharges from the Pacific Clay site have been consistently high. The following table summarizes TSS levels in mg/l in discharges from the site as reported by Pacific Clay in the annual reports from 1993-94 to 2009-2010. Every reported TSS analysis for each of the 6 discharge points (SWR) is listed in the table. TSS, like the other constituents tested under the General Permit, does not have a numeric effluent limit. The USEPA benchmark for TSS is 100 mg/l. Exceedance of this benchmark usually indicates that the BMPs at the site do not meet the required BAT/BCT standard for the General Permit and need to be improved. As can be seen in the table below, the site has a history of high TSS discharges. In 2005, Pacific Clay became a member of the Building Materials Industry Monitoring Group. Therefore, sampling did not have to be done every year as per the Group Monitoring Program requirements of the General Permit. The annual report for 2009-10 stated that there was no runoff from the site except on one occasion and no samples were taken on that day due to the need to concentrate on making emergency repairs caused by the 6 or 7 inches of rain received over two days. There is no exception in the General Permit for not collecting samples because of having to focus on emergency repairs. There is an exception for not collecting samples if it is dangerous to do so, but the annual report did not indicate such a situation. Therefore, not taking a required sample is a violation of Section B.5 of the General Permit.

Year	SWR 1	SWR 2	SWR 3	SWR 4	SWR 5	SWR 6
1993-94	3000	3100				
1994-95	4100	160	190	7820		
1995-96	4700	13000				
1996-97						
1997-98	180	9200		130	41000	
1997-98		10000				
1998-99		8680				
1998-99	100	240	990			
1999-00		10700				
2000-01	320	5120	7380	7660		
2001-02						
2002-03	220					8200
2003-04						
2004-05	730	14000	6700	13000	22000	1100
2004-05		20			580	
2005-06	3240					
2006-07						
2007-08	505	1390				
2008-09						
2009-10						

22. The discharge of high levels of TSS (sediment) to waters of the U.S. could cause or threaten to cause pollution, contamination, or nuisance and it could adversely impact the beneficial uses of the receiving waters. Pacific Clay did not implement BMPs that achieve BAT/BCT as required under Provisions B.3 and C.3 of the Permit. These are violations of Provisions A.2, B.3 and C.2 of the General Permit.
23. In accordance with Section 13385(a)(2) of the CWC, civil liability may be administratively imposed by the Regional Board for any violation of waste discharge requirements.
24. CWC Section 13385(c)(1) states that civil liability may be imposed administratively on a per day basis at \$10,000 for each day in which the violation occurs and Section 13385(c)(2) states that additional penalty may be imposed on a per gallon basis. It is reasonable to assume that there were discharges of sediment laden storm water from the site during most of the storm events during the last five years for which penalty is being proposed in this Complaint. Generally a rainfall intensity of 0.1 inches or higher produces storm water runoff. At the Pacific Clay site, due to the presence of a number of detention/retention basins, low intensity storm events do not always produce a runoff. There were at least 35 storm events with a rainfall intensity of 0.25 inches or higher during the last five years. However, staff visited the site only during five events during which sediment laden discharges were

observed or evident and were documented. These inspections were conducted on September 7, 2006, November 30, 2007, December 22 and 24, 2010, and February 25, 2011. Even though there was evidence of potential discharges from the site during the February 25, 2011 inspection, Pacific Clay has indicated that the precipitation event on February 25, 2011 could not have produced a runoff from the site. The maximum liability on a per day basis for the four days of violations is \$40,000 (4 days X \$10,000/day). During each of the four documented discharge events, Regional Board staff observed large volumes of sediment laden discharges or evidence of sediment discharges, from the site but could not determine the discharge volumes from the site because of a number of changes to the capacity and number of retention and detention basins. As such, no penalty has been assessed on a per gallon basis.

25. CWC Section 13385(e) specifies factors that the Regional Board shall consider in establishing the amount of civil liability. The Water Quality Enforcement Policy (the Policy) adopted by the State Water Resources Control Board on November 19, 2009, establishes a methodology for assessing administrative civil liability pursuant to this statute. Use of the methodology addresses the factors in CWC section 13385(e). The policy can be found at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf
26. Using the methodology in the Policy, a penalty is assessed on a per day basis for the discharge violations cited above. In this case, using a "potential harm" of 6 (Factor 1: harm to beneficial use = 3 [moderate] + Factor 2: characteristics of the discharge = 2 [discharged material poses a moderate risk or threat to potential receptors] + Factor 3: susceptibility to cleanup = 1 [less than 50% of the discharge is susceptible to cleanup]) and considering it as a "major" deviation from requirement, the per day factor from Table 2 (Page 15 of the Policy) is 0.22. Using this per day factor, the assessed amount is $\$40,000 \times 0.22 = \$8,800$.
27. The Policy also requires consideration of the violator's conduct factors such as culpability (range 0.5 to 1.5), cleanup and cooperation (0.75 to 1.5) and history of violations (1 and above). The Discharger was repeatedly asked to implement BMPs to reduce pollutant discharges from the site. The Discharger had approximately 19 years to implement a comprehensive program with effective BMPs. The Discharger did not take proactive steps to implement proper control measures and the BMPs that were implemented were completed on a piece-meal basis only after notices of violation were issued. The Discharger does not appear to have an ongoing program to recognize problems and implement timely corrective actions on its own. As such, the culpability was set at 1.3, the clean-up and cooperation at 1.3 and the history of violations at 1.2. The total base liability after consideration of these factors is $\$8,800 \times 1.3 \times 1.3 \times 1.2 = \$17,846.40$.

28. The Policy also requires consideration of the Discharger's ability to pay and ability to continue in business, economic benefit or savings resulting from the violations and other factors as justice may require. Each of these factors is discussed below:

- A. The Discharger owns over 1,400 acres at the site. The assessed value of the parcel at 14741 Lake Street is \$15,726,191 according to County records. The parent company of Pacific Clay also owns other land across Lake Street and in other parts of the country. Current estimates show this company has annual revenue of \$20 to 50 million.
- B. The Discharger realized at least \$232,500 in cost savings by failing to implement proper erosion and sediment control measures (from 2006 to 2011). This amount represents the lowest of the costs that staff estimated for construction and maintenance of onsite retention basins using Pacific Clay's own equipment and personnel and the two estimates that staff obtained from other vendors for sediment and/or flow control measures that could have controlled pollutant discharges from the site. The Policy requires that the liability amount shall be at least 10 percent higher than the economic benefit.
- C. The costs of investigation and enforcement are considered as one of the "other factors as justice may require," and should be added to the final liability. Investigation costs have been estimated to be \$13,500 (90 hours at \$150 per hour = \$13,500).
- D. If staff costs are added to the amount calculated as per the Policy, the total assessed amount as per the Policy is \$31,346.40 (\$17,846.40+\$13,500).

29. After consideration of these factors, the Division Chief proposes that civil liability be imposed on Pacific Clay in the amount of forty thousand dollars (**\$40,000**) for the violations cited above. This amount is the maximum amount allowed per the Water Code for the four days of discharge violations from June 1, 2006 to June 1, 2011. The maximum amount is proposed in this case instead of the amount calculated using the Policy as the economic benefit was higher than both the calculated and the maximum allowable penalties. Furthermore, no penalty was assessed based on a per gallon basis or for all the potential discharges from the site.

This Complaint will be posted on the Regional Board's website for 30-days for public comments. If no significant comments are received, this matter will be considered as settled at the end of the 30-day comment period upon payment of the assessed amount by Pacific Clay. If there are unresolved significant comments, this matter will be scheduled for a public hearing at a regularly scheduled Board meeting at a later date. If a public hearing is to be held, all interested parties will be notified of the public hearing.

If you have any questions, please contact Milasol G. Gaslan at (951) 782-4419.

Date

Michael J. Adackapara
Division Chief
Regional Board Prosecution Team