

California Regional Water Quality Control Board, San Diego Region

May 30, 2014

In reply refer to: SM818548:WGHORAM

Mr. José Quintero
Manager
GM Materials Ready Mix
6974 Mission Gorge Road
San Diego, California 92120-2420

Certified Mail – Return Receipt Requested
Article Number: 7011 0470 0002 8952 5324

Via Facsimile (619) 286-1130

Mr. Antonio Márquez Aguilar
Agent for Service of Process
Márquez Concrete, Inc.
Owner of GM Materials Ready Mix
Suite 100
6175 Progressive Drive
San Diego, California 92154-6646

Certified Mail – Return Receipt Requested
Article Number: 7011 0470 0002 8952 5317

Dear Messrs. Quintero and Márquez:

Notice of Hearing and Issuance of Complaint No. R9-2014-0013 for Administrative Civil Liability Against GM Materials Ready Mix for Violation of the Water Code

Enclosed find Complaint No. R9-2014-0013 (Complaint) for Administrative Civil Liability against GM Materials Ready Mix and Márquez Concrete, Inc. (hereinafter Dischargers) in the amount of seventeen thousand seven hundred and forty-four dollars (\$17,744) for alleged violation of the California Water Code (Water Code). The alleged violation is described in the attached Complaint and the Technical Analysis to the Complaint.

Waiver of Hearing

Pursuant to Water Code section 13323, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) shall hold a hearing on the Complaint no later than ninety (90) days after it is issued. The Dischargers may elect to waive their right to a hearing before the San Diego Water Board. Waiver of the hearing constitutes admission of the violations alleged in the Complaint and acceptance of the assessment of civil liability in the amount of seventeen thousand seven hundred and forty-four dollars (\$17,744) as set forth in the Complaint. For the San Diego Water Board to accept the waiver of the right to a public hearing, one of the Dischargers must submit the enclosed waiver form signed by an authorized agent of the Discharger with Option 1 selected to the San Diego Water Board by 5 p.m. on June 23, 2014.

Public Hearing

Alternatively, if the Dischargers elect to proceed to a public hearing, a hearing is tentatively scheduled to be held at the San Diego Water Board meeting on **August 13, 2014**, or on **August 14, 2014**, before the Executive Officer. The hearing will convene at the San Diego Water Board, Suite 100, 2375 Northside Drive, San Diego, California 92108. During the hearing the San Diego Water Board or its delegate will accept testimony, public comment, and decide whether to affirm, reject, or modify the proposed liability, or whether to refer the matter for judicial civil action.

Enclosed is the proposed hearing procedure. Please note that comments on the proposed hearing procedure are due by **June 9, 2014**, to the San Diego Water Board's advisory attorney, Catherine Hagan, at the address indicated in the hearing procedure.

In the subject line of any response, please include the reference number **SM818548:W Ghoram**. For questions or comments, please contact Ms. Whitney Ghoram by telephone at (619) 521-8040, or by email at Whitney.Ghoram@waterboards.ca.gov.

Respectfully,



JAMES G. SMITH
Assistant Executive Officer

JGS:jh:cmc:dtb:esb:wjg:ftm

Enclosures:

1. Complaint No. R9-2014-0013
2. Technical Analysis for Complaint No. R9-2014-0013
3. Administrative Civil Liability Complaint Fact Sheet
4. Proposed Hearing Procedure
5. Waiver of Public Hearing Forms

cc via email:

1. Vincenzo Barnese, City of San Diego, Storm Water Dept., vbarnese@sandiego.gov
2. Eric Becker, San Diego Water Board, ebecker@waterboards.ca.gov
3. Chiara Clemente, San Diego Water Board, cclemente@waterboards.ca.gov
4. Whitney Ghoram, San Diego Water Board, wghoram@waterboards.ca.gov
5. David Gibson, San Diego Water Board, dgibson@waterboards.ca.gov
6. Catherine Hagan, SWRCB, Office of Chief Counsel, chagen@waterboards.ca.gov
7. Brandi Outwin-Beals, San Diego Water Board, boutwin@waterboards.ca.gov
8. James Ralph, State Water Resources Control Board, jralph@waterboards.ca.gov

Tech Staff Info & Use	
PIN	818548
WDID	9 37IN602097

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

In the matter of:

**GM Materials Ready Mix
Márquez Concrete, Inc.
Unauthorized Discharge of Storm Water
Runoff and Pollutants to the San Diego
River**

**Complaint No. R9-2014-0013
for
Administrative Civil Liability**

**Violation of Water Code § 13376,
Order No. 97-03-DWQ, and
federal Clean Water Act §301.**

May 30, 2014

**GM MATERIALS READY MIX AND MÁRQUEZ CONCRETE, INC. ARE HEREBY
GIVEN NOTICE THAT:**

1. GM Materials Ready Mix and Márquez Concrete, Inc. (Dischargers) are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) may impose civil liability pursuant to sections 13385 and 13399.33 of the California Water Code (Water Code).
2. This Administrative Civil Liability Complaint is issued under authority of Water Code section 13323.

FINDINGS

3. Márquez Concrete, Inc. owns and operates GM Materials Ready Mix.
4. Dischargers operate a mobile concrete batch plant on a rented two acre property at 6974 Mission Gorge Road, San Diego, California 92120 within the County of San Diego (Site). The San Diego River flows within 100 feet of the northwest corner of the Site. The San Diego River fulfills the legal definition of “waters of the state” and “navigable waters of the United States.” The Site lies within the Mission San Diego Hydrologic Subarea (907.11).
5. Dischargers’ activities are characterized as “Ready-Mixed Concrete” (Standard Industrial Classification [SIC] 3273) under the federal regulations. Facilities classified as SIC 3273 must obtain coverage under the California State Water Resources Control Board (State Water Board) Water Quality Order No. 97-03-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities* (Order No. 97-03-DWQ).
6. GM Materials Ready Mix began concrete batch plant operations at the Site on or about October 23, 2012.

7. The San Diego Water Board invested 110 staff hours to investigate, prepare enforcement documents, and consider this action for a total cost of \$7,744.

ALLEGATION

8. Failure to File Notice of Intent

Dischargers failed to file a Notice of Intent (NOI) for coverage under Order No. 97-03-DWQ prior to the commencement of concrete batch plant operation at the Site on October 23, 2012, as required by Water Code section 13376, Order No. 97-03-DWQ section E.1., and Title 40 Code of Federal Regulations Parts 122, 123, and 124 as required under the federal Clean Water Act section 301. As of the date of this document, the State Water Board has not received an NOI from the Dischargers for this Site; therefore the days of violation are 584 and counting. In terms of years and months, it has been approximately one year and seven months of violation.

9. The details of this violation are set forth in the accompanying Technical Analysis, which is incorporated herein by this reference as if set forth in full.

MAXIMUM LIABILITY

10. Pursuant to Water Code section 13385(a), a person that violates Water Code section 13376, a waste discharge requirement, or a requirement of section 301 of the federal Clean Water Act is subject to administrative civil liability pursuant to Water Code section 13385(c) "in an amount not to exceed the sum of both of the following: (1) ten thousand dollars (\$10,000) for each day in which the violation occurs. (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons."
11. The alleged violation, set forth in full in the accompanying Technical Analysis, constitutes a violation subject to Water Code section 13385. Therefore, the maximum liability that the San Diego Water Board may assess pursuant to Water Code section 13385(c) is \$5,847,744.

MINIMUM LIABILITY

12. The Storm Water Enforcement Act of 1998 (Act), specifically Water Code sections 13399.30(c)(1) and 13399.33(a)(1) require the imposition of an administrative civil liability in an amount that is not less than five thousand dollars (\$5,000) per year of noncompliance or fraction thereof for failure to file a required NOI to obtain permit coverage. Furthermore, the Act requires the San Diego Water Board to recover its incurred costs. Therefore, the minimum liability amount for one year and seven months of violation is \$17,744 (\$10,000 for two years of noncompliance plus staff costs of \$7,744).

PROPOSED LIABILITY

13. Based on consideration of the above facts, and the applicable law, it is recommended that the San Diego Water Board impose civil liability against the Dischargers in the amount of \$17,744 for the violation alleged herein and set forth in full in the accompanying Technical Analysis.



JAMES G. SMITH
Assistant Executive Officer

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

Attachment: Technical Analysis.

SMARTS: Application ID: 429817

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN DIEGO REGION

TECHNICAL ANALYSIS

**Proposed Administrative Civil Liability Contained in
Complaint No. R9-2014-0013
GM Materials Ready Mix and Márquez Concrete, Inc.**

Noncompliance with

**State Water Resources Control Board Order No. 97-03-DWQ
*Waste Discharge Requirements for Discharges of Storm
Water Associated with Industrial Activities Excluding
Construction Activities***

**Water Code section 13376
and
Clean Water Act section 301**

by

**Whitney Ghoram
Sanitary Engineering Associate
Storm Water Management Unit**

May 30, 2014

A. Introduction

This technical analysis provides a summary of factual and analytical evidence that support the findings in Administrative Civil Liability Complaint No. R9-2014-0013 (Complaint) and the recommended administrative assessment of civil liability in the amount of \$17,744 against GM Materials Ready Mix and Márquez Concrete, Inc. (Dischargers) for violation of California State Water Resources Control Board (State Water Board) Order No. 97-03-DWQ, *Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities* (Industrial Storm Water Permit), section 301 of the Clean Water Act, and section 13376 of the California Water Code (Water Code). The Complaint was issued to the Dischargers because they failed to file a Notice of Intent (NOI) to comply with the terms and conditions of the Industrial Storm Water Permit at their mobile batch concrete plant located on a two acre property at 6974 Mission Gorge Road, San Diego, California 92120 (Site). See Figure 1. Site Location Map.

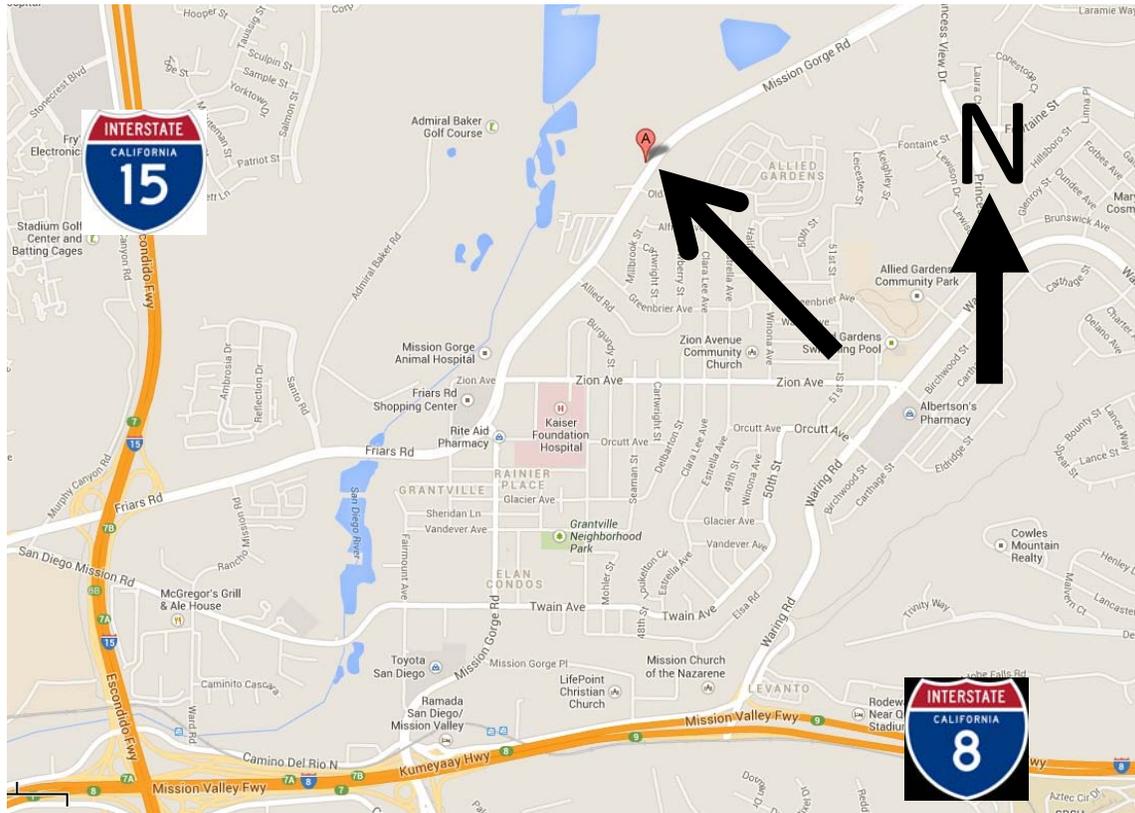


Figure 1. Site Location Map. Location of GM Materials Ready Mix site (indicated with the letter “A” within the red balloon) at 6974 Mission Gorge Road, San Diego, California.



Figure 2. Site Aerial. Location of GM Materials Ready Mix site (area indicated within red line).

B. Failure to File NOI

Responsible Parties: GM Materials Ready Mix is owned and operated by Márquez Concrete, Inc¹. Márquez Concrete, Inc. is an active California corporation as of February 2, 2012, with Antonio Márquez Aguilar as its owner and agent for service of process². GM Materials Ready Mix assumed control and operation of the two acre site from Diamond Concrete, Inc. on or about July 13, 2012³. José Quintero manages the day to day operations at the Site for GM Materials Ready Mix⁴. Mobile concrete batch plant operations began on the Site on or about October 23, 2012⁵.

Industrial Storm Water Permit: On April 17, 1997, the State Water Board adopted Order No. 97-03-DWQ. The Industrial Storm Water Permit implements federal regulations for storm water discharges introduced into the NPDES program in 1990 to implement amendments calling for regulation of storm water discharges under section 402 of the Clean Water Act [33 USC § 1342(p); regulations addressing storm water codified in Title 40 of the Code of Federal Regulations (CFR) in Parts 122, 123, and 124]. The NPDES regulations require specific categories of facilities where discharges of storm water associated with industrial activity occur to obtain a “permit” and to implement Best Available Technology Economically Achievable and Best Conventional Pollutant Control Technology (BAT/BCT) to eliminate industrial storm water pollution. Mandatorily covered industrial activities are identified by their federal Standard Industrial Classification (SIC). Attachment 1 to the Industrial Storm Water Permit identifies facilities requiring permit coverage by SIC, federal regulation or statute. Property owners or facility operators engaged in a covered industrial activity must file an NOI with the State Water Board and prepare and implement a SWPPP prior to the start of industrial activity.

Mobile Concrete Batch Plant: On October 23, 2012, June 25, 2013, and January 17, 2014, San Diego Water Board inspectors documented that GM Materials Ready Mix operates a mobile concrete batch plant on the Site^{5 6 7}. The industrial activities conducted on the Site are best described by SIC 3273 “Ready-Mixed Concrete.” Attachment 1 of the Industrial Storm Water Permit identifies SIC Group 32, of which SIC 3273 is part, as a facility requiring coverage under the Industrial Storm Water Permit.

Notification: The San Diego Water Board mailed certified notices to GM Materials Ready Mix notifying it of its failure to obtain coverage under the Industrial Storm

¹ County of San Diego Fictitious Business Name Statement, February 27, 2013, [Filing Number 2013-005820]

² California Secretary of State Entity Number C3450206

³ SMARTS Inspection Details, Inspection ID: 2016045, July 13, 2012

⁴ Telephone Summary, January 7, 2014

⁵ SMARTS Inspection Details, Inspection ID: 2016946, October 23, 2012

⁶ SMARTS Inspection Details, Inspection ID: 2019176, June 25, 2013

⁷ SMARTS Inspection Details, Inspection ID: 2020985, January 17, 2014

Water Permit on three separate occasions; however the first notice was never claimed and returned to the San Diego Water Board^{8 9 10}. San Diego Water Board staff also verbally informed Mr. Quintero, or other GM Materials Ready Mix representatives, of GM Materials Ready Mix's obligation to obtain coverage under the Industrial Storm Water Permit on five separate occasions: July 13, 2012; June 25, 2013; January 7, 2014; January 13, 2014; and January 17, 2014^{3 4 5 6 7}. Furthermore San Diego Water Board staff provided GM Materials with copies of the Industrial Storm Water Permit including a blank NOI form with instructions on three separate occasions: July 13, 2012; June 25, 2013; and January 7, 2014^{3 4 6}. On January 17, 2014, during an inspection of the Site, San Diego Water Board staff assisted Mr. Quintero in filling out the NOI form, and explained to him that he needed to submit the NOI form to the State Water Board along with a check for \$1,791, and a site map. Mr. Quintero said that he would do so. To date, the State Water Board has not received an NOI from Mr. Quintero or GM Materials Ready Mix. Therefore, the number of days of violation is 584 and counting.

Water Resources & Beneficial Uses: The San Diego River flows along the northwest corner of the Site. Storm Water runoff from the Site flows directly into the San Diego River. The Site resides in the Mission San Diego Hydrologic Subarea (907.11). According to the *Water Quality Control Plan for the San Diego Basin (9)*, the San Diego River has the following beneficial uses: Agricultural Supply (AGR); Industrial Service Supply (IND); Contact Water Recreation (REC1); Non-contact Water Recreation (REC2); Preservation of Biological Habitats of Special Significance (BIOL) (San Diego River Ecological Preserve); Warm Freshwater Habitat (WARM); Wildlife Habitat (WILD); and Rare, Threatened, or Endangered Species (RARE).

Pollutants: Pollutants associated with concrete batch plants include the following: cement; sand; aggregates, chemical admixtures, metals from used tires and brake pads, dust, fuels; and lubricants. The key component of the Industrial Storm Water Permit is the requirement to develop and implement a Storm Water Pollution Prevention Plan (SWPPP). A SWPPP is a site specific plan to eliminate and reduce pollutants in storm water runoff through the implementation of Best Management Practices (BMPs). For example, washout from concrete trucks is required to be conducted in specially built concrete washout basins. Development of a site specific SWPPP, and implementation of its BMPs, will eliminate or minimize pollutants discharged from these activities.

⁸ San Diego Water Board Notice, August 6, 2012

⁹ San Diego Water Board Notice, July 2, 2013

¹⁰ San Diego Water Board Notice, December 13, 2013

C. Determination of Administrative Civil Liability

The Storm Water Enforcement Act of 1998, specifically Water Code sections 13399.30(c)(1) and 13399.33(a)(1), requires the imposition of an administrative civil liability in an amount that is not less than five thousand dollars (\$5,000) per year of noncompliance or fraction thereof for failure to file a required NOI to obtain permit coverage. Furthermore, the Act requires the San Diego Water Board to recover its incurred costs. The San Diego Water Board invested 110 staff hours to investigate, prepare enforcement documents, and consider this action for a total cost of \$7,744¹¹. Therefore, the minimum liability amount for one year and seven months of violation is \$17,744 (\$10,000 for two years of noncompliance plus staff costs of \$7,744).

Pursuant to Water Code section 13385(a), a person that violates Water Code section 13376, a waste discharge requirement, or a requirement of section 301 of the federal Clean Water Act, is subject to administrative civil liability pursuant to Water Code section 13385(c) "in an amount not to exceed the sum of both of the following: (1) ten thousand dollars (\$10,000) for each day in which the violation occurs. (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons." The alleged violation constitutes a violation subject to Water Code section 13385. Therefore, the maximum liability that the San Diego Water Board may assess pursuant to Water Code section 13385(c) is \$5,847,744.

Based on consideration of the above facts, and the applicable law, it is recommended that the San Diego Water Board impose civil liability against the Dischargers in the amount of \$17,744 for the violation alleged herein. The recommended liability is within the statutory constraints.

Footnotes/Documents Relied On with ECM Document Handle in Parentheses

1. County of San Diego Fictitious Business Name Statement, February 27, 2013, [Filing Number 2013-005820] (1404997)
2. California Secretary of State Entity Number C3450206 (1405004)
3. SMARTS Inspection Details, Inspection ID: 2016045, July 13, 2012 (1405005)
4. Telephone Summary, January 7, 2014 (1405006)
5. SMARTS Inspection Details, Inspection ID: 2016946, October 23, 2012 (1405007)
6. SMARTS Inspection Details, Inspection ID: 2019176, June 25, 2013 (1405008)
7. SMARTS Inspection Details, Inspection ID: 2020985, January 17, 2014 (1405009)
8. San Diego Water Board Notice, August 6, 2012 (913138)
9. San Diego Water Board Notice, July 2, 2013 (1405011)
10. San Diego Water Board Notice, December 13, 2013 (1405012)
11. Staff Costs (1405013)

Administrative Civil Liability Complaint

Fact Sheet

The California State Water Resources Control Board (State Water Board) and the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) are authorized to issue complaints for civil liabilities under Water Code section 13323 for violations of the Water Code. This document describes generally the process that follows the issuance of a complaint.

The issuance of a complaint is the first step in the possible imposition of an order requiring payment of penalties. The complaint details the alleged violations including the appropriate Water Code citations, and it summarizes the evidence that supports the allegations. **If you receive a complaint, you must respond timely as directed. If you fail to respond, a default order may be issued against you.** The complaint is accompanied by a transmittal letter, a waiver options form, and a Hearing Procedure. Each document contains important information and deadlines. You should read each document carefully. A person issued a complaint is allowed to represent him or herself. However, legal advice may be desirable to assist in responding to the complaint.

Parties

The parties to a complaint proceeding are the San Diego Water Board Prosecution Team and the person(s) named in the complaint, referred to as the “Discharger(s).” The Prosecution Team is comprised of San Diego Water Board staff and management. Other interested persons may become involved and may become “designated parties.” Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit comments. If the matter proceeds to hearing, the hearing will be held before the San Diego Water Board (either the seven Governor appointed board members or the Executive Officer). Those who hear the evidence and rule on the matter act as judges. The San Diego Water Board is assisted by advisory staff, who provides 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 San Diego Water Board, or the Advisory Team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Notice.

Complaint Resolution Options

Once issued, a complaint can lead to (1) withdrawal of the complaint; (2) withdrawal and reissuance; (3) payment and waiver; (4) settlement; or (5) hearing.

Withdrawal may result if the Discharger provides information to the Prosecution Team that clearly and unmistakably demonstrates that a fundamental error exists in the information set forth in the complaint.

ACL Complaint Fact Sheet

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(s) of identified activities, such as making improvements that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project (CP). Qualifying criteria for CPs and SEPs are contained in the State Water Board's Enforcement Policy, which is available at the State Water Board's 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 ninety (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 Designated Parties, the San Diego Water Board will deliberate to decide the outcome. The San Diego Water 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 San Diego Water Board is required to consider several factors specified in the Water Code, including nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any resulting from the violations, and other matters as justice may require (Water Code sections 13327, 13385(e) and 13399). During the period provided to submit evidence (set forth in the Hearing Notice) and at the hearing, the Discharger may submit information that it believes supports its position regarding the complaint.

ACL Complaint Fact Sheet

If the Discharger intends to present arguments about its ability to pay it must provide reliable documentation to establish that ability or inability. The kinds of information that may be used for this purpose include:

For an individual:

1. Last three (3) years of signed federal Internal Revenue Service (IRS) income tax returns (IRS Form 1040) including schedules;
2. Members of household, including relationship, age, employment and income;
3. Current living expenses;
4. Bank account statements;
5. Investment statements;
6. Retirement account statements;
7. Life insurance policies;
8. Vehicle ownership documentation;
9. Real property ownership documentation;
10. Credit card and line of credit statements;
11. Mortgage loan statements; and
12. Other debt documentation.

For a business:

1. Copies of last three (3) years of company IRS tax returns, signed and dated;
2. Copies of last three (3) years of company financial audits;
3. Copies of last three (3) years of IRS tax returns of business principals, signed and dated; and
4. Any documentation that explains special circumstances regarding past, current, or future financial conditions.

For larger firms:

1. Federal income tax returns for the last three (3) years, specifically:
 - a. IRS Form 1120-C for C Corporations;
 - b. IRS Form 1120-S for S Corporations; or
 - c. IRS Form 1065 for partnerships
2. A completed and signed IRS Form 8821. This allows the IRS to provide the State Water Board with a summary of the firm's tax returns that will be compared to the submitted income tax returns. This prevents the submission of fraudulent tax returns;
3. The following information can be substituted if income tax returns cannot be made available:
 - a. Audited Financial Statements for last three (3) years;
 - b. A list of major accounts receivable with names and amounts;
 - c. A list of major accounts payable with names and amounts;
 - d. A list of equipment acquisition cost and year purchased;
 - e. Ownership in other companies and percent of ownership for the last three (3) years; and
 - f. Income from other companies and amounts for the last three (3) years.

ACL Complaint Fact Sheet

For a municipality, county, or district:

1. Type of entity:
 - a. City/Town/Village;
 - b. County;
 - c. Municipality with enterprise fund; or
 - d. Independent or publicly owned utility.
2. The following 1990 and 2000 United States Census data:
 - a. Population;
 - b. Number of persons age eighteen (18) years and above;
 - c. Number of persons age sixty-five (65) years and above;
 - d. Number of Individuals below one hundred and twenty-five percent (125%) of poverty level;
 - e. Median home value; and
 - f. Median household income.
3. Current or most recent estimates of:
 - a. Population;
 - b. Median home value;
 - c. Median household income;
 - d. Market value of taxable property; and
 - e. Property tax collection rate.
4. Unreserved general fund ending balance;
5. Total principal and interest payments for all governmental funds;
6. Total revenues for all governmental funds;
7. Direct net debt;
8. Overall net debt;
9. General obligation debt rating;
10. General obligation debt level; and
11. Next year's budgeted/anticipated general fund expenditures plus net transfers out.

This list is provided for information only. The Discharger remains responsible for providing all relevant and reliable information regarding its financial situation, which may include items in the above lists, but could include other documents not listed. Please note that all evidence regarding this case, including financial information, will be made public.

Petitions

If the San Diego Water Board issues an order requiring payment, the Discharger may challenge that order by filing a petition for review with the State Water Board pursuant to Water Code section 13320. More information on the petition process is available at www.swrcb.ca.gov/public_notices/petitions. An order of the State Water Board, including its ruling on a petition from a San Diego Water Board order, can be challenged by filing a petition for writ of mandate in Superior Court pursuant to Water Code section 13330.

ACL Complaint Fact Sheet

Once an order for payment of penalties becomes final, the San Diego Water Board or State Water Board may seek an order of the Superior Court under Water Code section 13328, if necessary, in order to collect payment of the penalty amount.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

PROPOSED DRAFT

HEARING PROCEDURE FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
NO. R9-2014-0013
ISSUED TO

GM MATERIALS READY MIX
AND
MÁRQUEZ CONCRETE, INC.

SCHEDULED FOR **AUGUST 13 OR 14, 2014**

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 California 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 (Water Code) sections 13323 and 13399.33 against GM Materials Ready Mix and Márquez Concrete, Inc. (collectively, Dischargers) alleging that they have violated Water Code section 13376 by failing to file a Notice of Intent (NOI) for coverage under California State Water Resources Control Board Order No. 97-03-DWQ prior to the commencement of concrete batch plant operations. The ACL Complaint proposes that administrative civil liability in the amount of seventeen thousand seven hundred and forty-four dollars (\$17,744) be imposed as authorized by Water Code section 13399.33. Unless one of the Dischargers waives their right to a hearing and agrees to pay the proposed liability, a hearing will be held before the San Diego Water Board on August 13 or 14, 2014, 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 hearing will be held at the San Diego Water Board Office at 2375 Northside Drive, Suite 100, in San Diego. An agenda for the hearing will be issued at least ten (10) days before the hearing and will be posted on the San Diego Water Board's web page at: www.waterboards.ca.gov/sandiego.

Hearing Procedure

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, section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with section 648(d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Title 23 of the California Code of Regulations (CCR), section 648(b), Chapter 5 of the Administrative Procedures Act (commencing with section 11500 of the Government Code) does not apply to adjudicatory hearings before the San Diego Water Board. This Notice provides additional requirements and deadlines related to the proceeding.

THE PROCEDURE AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM IN ITS DISCRETION. **ANY OBJECTIONS TO THE PROPOSED PROCEDURE MUST BE RECEIVED BY CATHERINE HAGAN, SENIOR STAFF COUNSEL, NO LATER THAN JUNE 9, 2014, 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 either “designated parties” or “interested persons.” Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the San Diego Water Board, staff or others, at the discretion of the San Diego Water Board.

The following participants are hereby designated parties in this proceeding:

- (1) San Diego Water Board Prosecution Staff;
- (2) GM Materials Ready Mix; and
- (3) Márquez Concrete, Inc.

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party, and not already listed above, shall request party status by submitting a request in writing (with copies to the existing designated parties) no later than 5 p.m. on **June 11, 2014**, to Catherine Hagan, Senior Staff Counsel, at the address set forth below. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the 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 **June 23, 2014**. The parties will be notified by 5 p.m. on **July 15, 2014**, as to whether the request has been granted or denied.

Contacts

Advisory Staff:

Catherine Hagan, Esq.
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Prosecution Staff:

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Dischargers:

Antonio Márquez
GM Materials Ready Mix
6974 Mission Gorge Road
San Diego, California 92120
(619) 240-0276

Antonio Márquez
Márquez Concrete, Inc.
Suite 100
6175 Progressive Drive
San Diego, California 92154
(619) 240-0276

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 Brandi Outwin-Beals, Senior Water Resource Control Engineer. Members of the Prosecution Staff are: James Ralph, Staff Counsel; James Smith, Assistant Executive Officer; Jeremy Haas, Environmental Program Manager; Chiara Clemente, Senior Environmental Scientist of the Compliance Assurance Unit; and Whitney Ghoram, Sanitary Engineering Associate of the Storm Water Management Unit.

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 twenty (20) minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have three (3) minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than ten (10) days after all of the evidence has been received (**July 23, 2014**). Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the San Diego Water Board (at the hearing) upon a showing that additional time is necessary.

Submission of Evidence and Policy Statements

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

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the 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. (Dischargers only) If the Dischargers intend 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 Dischargers should submit supporting evidence as set forth in the "ACL Fact Sheet" under "Factors that must be considered by the Board."
6. (Dischargers only) If the Dischargers would like to propose a Supplemental Environmental Project (SEP) or Enhanced Compliance Action (ECA) in lieu of paying some or all of the civil liability in accordance with the State Water Board's Water Quality Enforcement Policy, the Dischargers shall submit a detailed SEP or ECA proposal including a specific implementation timetable.

The Prosecution Team shall submit two (2) hard copies of the information to Catherine Hagan, Senior Staff Counsel, so that it is received no later than 5 p.m. on **July 1, 2014**.

The remaining designated parties shall submit two (2) hard copies and one (1) electronic copy of the information to Catherine Hagan, Senior Staff Counsel, so that they are received no later than 5 p.m. on **July 14, 2014**.

In addition to the foregoing, each designated party shall send one (1) copy of the above information to each of the other designated parties by 5 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 **July 16, 2014**. 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. PowerPoint and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team at or before the hearing for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Request for Pre-hearing Conference

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code section 13228.15. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code section 11511.5. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, no later than 5 p.m. on **July 24, 2014**.

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 **July 23, 2014**, 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 2375 Northside Drive, Suite 100, San Diego, California 92108. 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 San Diego Water Board. Many of these documents are also posted online at www.waterboards.ca.gov/sandiego. Although the web page is updated regularly, to ensure 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

May 30, 2014	Prosecution Team issues ACL Complaint to Discharger and Advisory Team, sends proposed Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice.
June 9, 2014	Objections due on proposed Hearing Procedure.
June 11, 2014	Deadline for submission of request for designated party status.
June 23, 2014	Deadline for opposition to request for designated party status.
June 23, 2014	Dischargers' deadline for waiving right to hearing.
July 1, 2014	Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above.
July 14, 2014	Remaining Designated Parties' Deadline for submission of all information required under "Evidence and Policy Statements," above.
July 15, 2014	Advisory Team issues Hearing Procedure, and issues decision on requests for designated party status, if any.
July 16, 2014	Interested Parties' deadline for submission of non-evidentiary policy statements.
July 23, 2014	All Designated Parties' deadline for submission of rebuttal evidence (if any) and evidentiary objections.
July 24, 2014	All Designated Parties' deadline for submission of request for pre-hearing conference.
August 13 or 14, 2014	Hearing.

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent **GM Materials Ready Mix** (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. **R9-2014-0013** (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 ninety (90) days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

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

- a. I hereby waive any right the Discharger may have to a hearing before the San Diego Water Board.
- b. I certify that upon approval of this settlement by the San Diego Water Board the Discharger will remit payment for the administrative civil liability imposed in the amount of **seventeen thousand seven hundred and forty-four dollars (\$17,744)** by check that references "**ACL Complaint No. R9-2014-0013**" made payable to the "**State Water Resources Control Board Waste Discharge Permit Fund.**" Payment must be received within thirty (30) days of approval by the San Diego Water Board at the following address: State Water Resources Control Board, Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, CA 95812-1888. A copy of the check must also be received by the San Diego Water Board at 2375 Northside Drive, Suite 100, San Diego, CA 92108 within thirty (30) days of approval.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the thirty (30) day public notice and comment period. Should the San Diego Water Board receive significant new information or comments from any source (excluding the San Diego Water Board's Prosecution Team) during this comment period, the San Diego Water Board's Assistant Executive Officer may withdraw the complaint and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer of the San Diego Water Board, and that the San Diego 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 San Diego Water Board within ninety (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 San Diego Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the San Diego Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the San Diego 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 San Diego Water Board within ninety (90) days after service of the complaint. By checking this box, the Discharger requests that the San Diego 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 San Diego Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent **Márquez Concrete, Inc.** (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. **R9-2014-0013** (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 ninety (90) days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

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

- a. I hereby waive any right the Discharger may have to a hearing before the San Diego Water Board.
- b. I certify that upon approval of this settlement by the San Diego Water Board the Discharger will remit payment for the administrative civil liability imposed in the amount of **seventeen thousand seven hundred and forty-four dollars (\$17,744)** by check that references "**ACL Complaint No. R9-2014-0013**" made payable to the "**State Water Resources Control Board Waste Discharge Permit Fund.**" Payment must be received within thirty (30) days of approval by the San Diego Water Board at the following address: State Water Resources Control Board, Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, CA 95812-1888. A copy of the check must also be received by the San Diego Water Board at 2375 Northside Drive, Suite 100, San Diego, CA 92108 within thirty (30) days of approval.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the thirty (30) day public notice and comment period. Should the San Diego Water Board receive significant new information or comments from any source (excluding the San Diego Water Board's Prosecution Team) during this comment period, the San Diego Water Board's Assistant Executive Officer may withdraw the complaint and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer of the San Diego Water Board, and that the San Diego 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 San Diego Water Board within ninety (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 San Diego Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the San Diego Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the San Diego Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

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(Print Name and Title)

(Signature)

(Date)