CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER NO. R2-2010-0067

ADMINISTRATIVE CIVIL LIABILITY FOR:

UNI TILE & MARBLE, INC.
ALAMEDA COUNTY

This Order is issued in reference to an adjudicative proceeding initiated by the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Water Board"), Prosecution Team's ("Prosecution Team") issuance of Administrative Civil Liability Complaint No. R2-2009-0030 ("Complaint") to Uni Tile & Marble, Inc. ("Discharger"), for failing to obtain permit coverage for its storm water discharges associated with industrial activities. The parties to the proceeding are the Prosecution Team and the Discharger.

The Regional Water Board has been presented with a proposed settlement of the claims alleged in the Complaint. The proposed settlement is set forth in a Settlement Agreement (Attachment 1 hereto) that represents a mutually agreed-upon resolution of the Prosecution Team's claims through the Discharger's payment of an administrative civil liability under California Water Code ("CWC") section 13385 in the amount of $26,250.00 to the Cleanup and Abatement Account, of which $16,250.00 will be suspended if the Discharger undertakes certain work described in the Settlement Agreement.

Having provided public notice of the Settlement Agreement and this Order and an opportunity for public comment, the Regional Water Board through its Executive Officer finds that:

1. The Discharger is a stone countertop and kitchen cabinet retailer and installer with a facility in Hayward. The facility discharges storm water associated with industrial activities, particularly activities encompassed by Standard Industrial Classification Code description number 3281–Cut Stone and Stone Products, into waters of the U.S.

2. The Discharger violated CWC section 13376 by failing to file a report of waste discharge ("ROWD") or a notice of intent ("NOI") to comply with the terms of State Water Resources Control Board Water Quality Order No. 97-03-DWQ NPDES General Permit No. CAS000001 ("General Permit") and discharging pollutants into waters of the U.S. without authorization. At a minimum, the Discharger failed to submit a ROWD or NOI from July 3, 2008, to April 2, 2009, a total of 273 days.

3. Pursuant to CWC sections 13385(a) and 13385(c), the Discharger is subject to civil liability for violating CWC section 13376 in an amount not to exceed the sum of (a) $10,000 for each day in which the violation occurs and (b) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed $10.00 multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

4. On July 17, 2009, the Regional Water Board's Assistant Executive Officer, as head of the Prosecution Team, issued the Complaint in the amount of $26,250.00 for public notice and comment. Thereafter, the parties executed the Settlement Agreement to resolve the Prosecution Team's claims as set forth above.

5. The Executive Officer has considered all of the evidence and information in the record and the comments provided by the Parties and the public and finds that the Settlement Agreement adequately resolves the Discharger's violation of CWC section 13376. In determining the amount of civil liability to be assessed against the Discharger, the Executive Officer has taken into consideration the factors described in CWC Sections 13385(e). The Executive Officer finds that the liability amount in the Settlement Agreement is reasonable based on these factors.

6. The issuance of this order is an enforcement action and is, therefore, exempt from the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, Section 15321.

IT IS HEREBY ORDERED that:

1. The Settlement Agreement is approved.

2. The Discharger shall pay the administrative civil liability and perform the work required in the Settlement Agreement in accordance with its terms.

Digitally signed by Bruce Wolfe
Date: 2010.04.21 17:34:49 -07'00'

Bruce H. Wolfe
Executive Officer

List of Attachments

Attachment 1: Settlement Agreement, dated March 8, 2010

SETTLEMENT AGREEMENT AND MUTUAL RELEASE
FOR
ADMINISTRATIVE CIVIL LIABILITY
COMPLAINT NO. R2-2009-0030

UNI TILE & MARBLE, INC.
21105 CABOT BOULEVARD, SUITE B
HAYWARD, CA
ALAMEDA COUNTY

This Settlement Agreement and Mutual Release for Administrative Civil Liability Complaint No. R2-2009-0030 ("Agreement") is made by and between Uni Tile & Marble, Inc. ("Uni Tile") and the Prosecution Team ("Prosecution Team") of the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Water Board"), (collectively referred to as the "Parties") and effective as of the last date of the signing of the Parties, with reference to the following facts:

RECITALS:

A. On July 17, 2009, the Assistant Executive Officer of the Regional Water Board, as head of the Prosecution Team, issued Administrative Civil Liability Complaint No. R2-2009-0030 (Attachment A hereto). The Complaint alleges that Uni Tile violated Water Code section 13376 by failing to obtain the required permit coverage for its discharges of storm water pollutants into waters of the U.S. from its industrial facility in Hayward. The Complaint proposes that Uni Tile pay a civil liability in the amount of $26,250.00.

B. The Parties have reached a proposed settlement that includes the issuance of an Administrative Civil Liability Order (Attachment B hereto; "ACL Order"). If the Regional Water Board Executive Officer chooses to have a hearing on this matter, the Parties agree to present the proposed ACL Order to the Regional Water Board for issuance at a publicly noticed meeting.

C. Under this Agreement, in exchange for a full release of all claims arising out of the specified violations alleged in the Complaint, Uni Tile shall pay a liability of $10,000.00 and undertake the work described herein to suspend the remaining liability of $16,250.00.

D. In order to facilitate the approval of the proposed settlement, and to carry out its terms, the Parties desire to enter into the following agreement.

NOW THEREFORE, in exchange for their mutual promises and for other good and valuable consideration specified in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The Parties shall support, advocate for, and promote the proposed ACL Order attached as Attachment B. The Parties further agree that they will not contest the proposed ACL Order before the Regional Water Board, the State Water Resources Control Board, or any court.

2. Uni Tile shall pay an administrative civil liability of $10,000.00 to the State Pollution Cleanup and Abatement Account in four installments as follows:

    a. $5,000.00 no later than April 30, 2010.
    b. $2,500.00 no later than May 31, 2010.
    c. $2,500.00 no later than June 30, 2010.

3. If and only if Uni Tile adequately completes all of the following actions at and for its Hayward facility by April 28, 2010, the remaining civil liability proposed in the Complaint of $16,250.00 shall be permanently suspended:

    a. Remove all parts and accessory objects associated with the former stone cutting operation, including cutting tables, curbing, piping and sumps.

    b. Remove all plastic debris from the entire outdoor storage area, including areas between granite storage rows and the dirt and grass areas at the perimeter of the facility.

    c. Install screening or other appropriate best management practices ("BMPs") at storm drain inlets to filter plastic debris from storm water discharges.

    d. Prepare and submit a Storm Water Pollution Prevention Plan to the Regional Water Board. This plan shall be prepared by a registered professional who has experience preparing storm water prevention plans for industrial facilities. The plan shall include BMPs to prevent plastic debris from entering the storm drain, including the regular collection of plastic debris from the facility, the installation and maintenance of storm drain inlet screens, and steps that will be taken to transition to the use of granite countertop packing materials that will not degrade into particles that can be transported by storm water.

4. The Prosecution Team staff shall inspect the facility for compliance with the actions required above in paragraph 3(b) through 3(d) on March 25, 2010, and provide feedback to Uni Tile.

5. If Uni Tile fails to comply with the actions required in paragraphs 2 and 3 above by the stated deadlines and, with respect to the actions required in paragraph 3, to the satisfaction of the Prosecution Team, Uni Tile shall be liable for the entire civil liability set forth in the Complaint of $26,250.00. In such event, Uni Tile shall pay any unpaid sums to the State Pollution Cleanup and Abatement Account in equal monthly installments so that the entire civil liability is paid by June 30, 2010.

6. Uni Tile agrees that in the event of its failure to make any required payment provided herein, the Regional Water Board may immediately seek an order under Water Code section 13328 in a court of competent jurisdiction requiring payment of the entire remaining amount.

7. The Prosecution Team agrees that this settlement fully resolves the allegations in the Complaint and that it will not pursue any action of any kind for those alleged violations.

8. Performance of paragraphs 2 and 3 (and if applicable, paragraphs 5 and 6) shall effect a mutual release and discharge of the Parties and their respective successors and assigns, agents, attorneys, employees, officers, and representatives from any and all claims, demands, actions, causes of action, obligations, damages, penalties, liabilities, debts, losses, interest, costs, or expense of whatever nature, character, or description, that they may have or claim to have against one another by reason of any matter or omission arising from any cause whatsoever relating to the proposed ACL Order or the Complaint.

9. In the event that the Regional Water Board or its Executive Officer does not approve the attached ACL Order or the Order is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise.

   The Parties agree that in the event that the Regional Water Board or its Executive Officer does not approve the settlement by the Parties through adoption of the proposed ACL Order, they waive any and all objections related to their attempt to settle this matter, including, but not limited to objections related to prejudice or bias of any of the board members or their advisors and any other objections that are premised in whole or in part on the fact that the board members and their advisors were exposed

to some of the material facts and the Parties' settlement positions and, therefore, may have formed impressions or conclusions prior to the conducting an evidentiary hearing on the merits of the Complaint.

10. The Parties intend that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected by the proposed ACL Order and this Agreement will be legally sufficient. In the event that objections to the procedures are raised during the public comment period for the proposed ACL Order, the Parties agree to meet and confer concerning any such objections and agree to revise or adjust the procedure as necessary or advisable under the circumstances.

11. Each person executing this Agreement in a representative capacity represents and warrants that he or she is authorized to execute this Agreement on behalf of and to bind the entity on whose behalf he or she executes this Agreement.

12. This Agreement shall not be construed against the Party preparing it, but shall be construed as if the Parties prepared it jointly and any uncertainty or ambiguity shall not be interpreted against any one Party.

13. This Agreement shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications to the Agreement must be made in writing and signed by both Parties.

14. Each Party to this Agreement shall bear its own attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

15. The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

16. This Agreement may be executed as duplicate originals, each of which shall be deemed an original Agreement, and all of which shall constitute one Agreement. Facsimile or electronic signatures are acceptable.

17. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.

18. If any part of this Agreement is ultimately determined not to be enforceable, the entire Agreement shall become null and void.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth above.

California Regional Water Quality Control Board.
San Francisco Bay Region, Prosecution Team

By: Dyan C. Whyte

Dyan C. Whyte
Assistant Executive Officer

Date: March 2, 2010

Uni Tile & Marble, Inc.
a California Coroporation

By:

Date: March 08, 10

List of Attachments
Attachment A: ACL Complaint R2-2009-0030
Attachment B: Tentative ACL Order

Attachment – A

ACL Complaint R2-2009-0030

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

COMPLAINT NO. R2-2009-0030

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
UNI TILE & MARBLE, INC.
21105 CABOT BOULEVARD, SUITE B
HAYWARD, ALAMEDA COUNTY

This Complaint is issued to Uni Tile & Marble, Inc. (hereinafter "Discharger" or "Uni Tile") to assess administrative civil liability pursuant to California Water Code ("CWC") Section 13385(a)(1) and 13323. The Complaint addresses the Discharger's failure to obtain required permit coverage from July 3, 2008, to April 2, 2009 (273 days) for its storm water discharges associated with its industrial activities at its facility located at 21105 Cabot Boulevard, Suite B, Hayward, Alameda County.

The Assistant Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter the "Regional Water Board") hereby gives notice that:

1. Uni Tile violated provisions of law for which the Regional Water Board may impose civil liability pursuant to Section 13385(a)(1) and 13323 of the CWC. Based on the allegations and considerations described below, this Complaint proposes to assess $26,250 in liabilities for the violations cited.

2. The Regional Water Board will hold a hearing on this matter on **October 14, 2009**, in the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland, California, 94612 unless the Discharger waives its right to a hearing. The Discharger and/or its representatives(s) will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of civil liability by the Regional Water Board. An agenda for the public hearing will be mailed to you approximately ten days before the hearing date. The deadline to submit all comments and written evidence concerning this complaint to the Regional Water Board is **August 17, 2009**, at 5 p.m.

3. At the hearing the Regional Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, to refer the matter to the Attorney General for recovery of judicial civil liability, or take other enforcement actions.

4. The Discharger can waive its right to a hearing to contest the allegations contained in this Complaint in accordance with the procedures and limitations set forth in the attached waiver. including waiving its right to a hearing and (a) paying the civil liability in full or (b) engaging prosecution staff of the Regional Water Board in discussions to resolve outstanding violations and/or propose a supplemental environmental project, not to exceed $6,825, in accordance with the criteria attached to this complaint

ALLEGATIONS

5. Uni Tile is a stone countertop and kitchen cabinet retailer and installer with locations in San Francisco and Hayward. The subject facility discharges storm water associated with industrial activities.

6. Federal regulations require operators of specific categories of facilities where discharges of storm water associated with industrial activity occur to obtain a national pollutant discharge elimination system ("NPDES") permit and to implement Best Available Technology Economically Achievable ("BAT") and Best Conventional Pollutant Control Technology ("BCT") to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm discharges. The regulations require such operators either apply for an individual NPDES permit or seek coverage under a promulgated storm water general permit.

7. Pursuant to federal regulations, the State Board adopted Water Quality Order No. 97-03-DWQ NPDES General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities (hereafter, the "General Permit"), to regulate storm water discharges and authorized non-storm water discharges associated with industrial activities set forth in the federal regulations. To obtain coverage, covered facility operators must submit a notice of intent ("NOI") and comply with the terms and conditions of the General Permit.

8. CWC section 13376 requires any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States to submit a report of waste discharge and prohibits the discharge of pollutants except as authorized by waste discharge requirements. Submission of an NOI for coverage under and compliance with the General Permit satisfies the requirements of section 13376.

9. Discharger discharges storm water associated with industrial activities at its facility that requires an NPDES permit. The activities are included in the Standard Industrial Classification ("SIC") Code description number 3281 - Cut Stone and Stone Products. Discharger failed to seek an individual NPDES permit or coverage under the General Permit for the time period set forth in this Complaint.

10. The City of Hayward notified the Discharger of its obligation to comply with the above requirements during a June 6, 2006, inspection, and referred the case against this discharger to the Regional Water Board for enforcement.

11. Based on the referral from the City of Hayward, Regional Water Board staff notified the Discharger of its obligation to file a Notice of Intent ("NOI") to obtain coverage under the General Permit via certified mail dated January 31, 2007. The Discharger was required to respond by March 2, 2007. The Discharger did not submit an NOI and did not otherwise respond to the letter.

12. By certified mail dated October 9, 2007, Regional Water Board staff issued a Notice of Violation ("NOV") letter to the Discharger. This letter informed the Discharger that it was in violation of the CWC by allowing pollutants to enter waters of the United States without a permit. Staff also informed the Discharger that if it did not submit an NOI to obtain coverage under the General Permit by November 1, 2007, Regional Water Board staff would recommend enforcement actions, including imposition of administrative civil liability up to $10,000 per day. The Discharger did not submit an NOI and did not otherwise respond to the letter.

13. On July 3, 2008, Regional Water Board staff inspected the facility and notified Uni Tile staff verbally that the Regional Water Board was anticipating imposing administrative civil liability due to the discharger's continuing violation. Regional Water Board staff noted during the July 3, 2008 inspection that there was stone dust and slurry discharging from the stone cutting area and that the plastic sheeting covering the marble stored outside was disintegrating and would be mobilized to a storm drain and thence to waters of the United States during a rainfall event or, in the interim, by wind.

14. The area in which the facility is located receives on average about 18 inches of rain per year. The facility footprint is about 175,000 square feet and consists of impermeable asphalt, concrete, and roofing materials. The facility does not have containment structures sufficient to contain and appropriately dispose of stormwater runoff at the facility, but rather uses the surrounding storm drain system, which discharges to San Francisco Bay, a water of the United States. The majority of rainfall in a given year would have run off the facility and discharged into San Francisco Bay.

15. As of April 2, 2009, Uni Tile had not submitted the required NOI.

16. The number of days of violation for which this Complaint proposes an administrative civil liability is 273 days, which is the number of days between the date of the Regional Water Board staff inspection, July 3, 2008, and a final date of April 2, 2009, the date this complaint was drafted. The starting date was selected because the Discharger may not have received the second certified mail notification and we provided copies of all correspondence on the day of the inspection. The final date was selected because as of April 2, 2009 Uni Tile had not submitted an NOI.

PROPOSED CIVIL LIABILITY

17. Water Code Section 13385 states, in part:

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

(1) Section 13375 or 13376.

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars ($10,000) for each day in which the violation occurs.

(2)Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars ($10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

18. The Discharger violated Water Code section 13376 by failing to file a report of waste discharge through submission of an NOI for coverage under the General Permit and discharging pollutants without authorization. At a minimum, the Discharger failed to submit a report of waste discharge or NOI for General Permit coverage from July 3, 2008, to April 2, 2009, a total of 273 days. At $10,000 per day, the maximum potential civil liability is $2,730,000.

19. As required by Section 13385(e) of the CWC, in determining the amount of civil liability the following factors have to be taken into consideration:

"...the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup and 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 savings, if any, resulting from the violation, and other matters of justice may require."

These factors to be used in determining the amount of civil liability to be imposed are discussed below:

(a) <u>The nature, circumstances, extent, and gravity of the violation</u>: Failure to apply for and comply with applicable permits is a significant violation, especially considering the problems associated with storm water runoff in San Francisco Bay. The General Permit is a key means of protecting water quality from potential impacts from industrial storm

water runoff. To obtain coverage under the General Permit, the Discharger must submit an NOI and prepare and implement a storm water pollution prevention plan ("SWPPP"). The SWPPP specifies appropriate control measures to protect the quality of storm water runoff from the Discharger's site. Additionally, the General Permit has reporting requirements that are the Discharger's primary tools to self-evaluate site compliance with the permit and to identify any needed improvements.

Based on Regional Water Board inspections, the activities are conducted outside and exposed to rain and would likely have contributed pollution to the facility's stormwater discharges. Specifically, Regional Water Board staff noted during the July 3, 2008, inspection that the stone cutting area would discharge stone dust and slurry and that the plastic covering the stone countertops stored outside was disintegrating and would discharge plastic.

(b) Susceptibility to cleanup: The stormwater discharges associated with this industrial facility are not susceptible to cleanup because: 1) the discharges happened in the past; and 2) the increase in volume once the discharges mix with Bay waters render collection and treatment both infeasible and impracticable.

(c) Violator's voluntary cleanup efforts: The Discharger did not participate in any voluntary cleanup efforts.

(d) Toxicity of the discharge: The discharger has not prepared and implemented a SWPPP to protect the quality of storm water runoff from the facility. This first step towards compliance has not occurred even after receiving notification from City of Hayward inspectors since 2006, two letters delivered via certified mail from this agency, and an inspection by a Regional Water Board inspector. As a result, uncontrolled industrial storm water has been discharged from the facility since at least 2006. These discharges contributed to receiving water quality impacts because they transported pollutants from facility industrial activities to the storm drain and then to waters of the United States.

The toxicity of the facility's discharges cannot be specifically estimated at this time. However, the studies presented in the following publications have documented that industrial stormwater is deleterious to the environment, typically exhibits chronic toxicity, and is at times acutely toxic. Based on Regional Board staff's inspections of the site, runoff from the site likely contained turbidity, sediment, plastic and other pollutants related to the facility's industrial operations, and posed a threat to water quality and the beneficial uses of San Francisco Bay.

Whalen, P.J., and M.G. Cullum. 1989. *An Assessment of Urban Land Use/Stormwater Runoff Quality Relationships and Treatment Efficiencies of Selected Stormwater Management Systems.* South Florida Water Management District Resource Planning Department, Water Quality Division, Technical Publication No. 88-9.

Pitt, R.E. 1991. *Nonpoint Source Water Pollution Management*. Department of Civil Engineering, University of Alabama, Birmingham, AL

Horner, R.R., and B.W. Mar. 1982. *Guide for Water Quality Impact Assessment of Highway Operations and Maintenance*. FHWA WA-RD-39.14. Federal Highway Administration, United States Department of Transportation, McLean, VA

Bay Area Stormwater Management Agencies Association, Woodward Clyde, 1996. *San Francisco Bay Area Stormwater Runoff Monitoring Data Analysis 1988-1995*. San Francisco Bay Area, California.

(e) Discharger's ability to pay: Uni Tile is a privately held stone countertop and kitchen cabinet retailer and installer with locations in both San Francisco and Hayward. There is no reason to indicate that the Discharger will not be able to pay the proposed civil liability. As described in the Public Notice and Hearing Procedure, as part of its response to this Complaint, the Discharger may submit additional information on this issue.

(f) Prior history of violations: Uni Tile has operated without permit coverage for its storm water discharges associated with industrial activity since at least June 6, 2006. Civil liability proposed in this Complaint, however, only encompasses the time between July 3, 2008 (the date of the Regional Water Board inspection) and April 2, 2009 (the date this Complaint was first drafted).

(g) Degree of culpability: The storm water regulations are applicable to all specified industrial sites on a nationwide basis. All dischargers are required to comply with the Clean Water Act and CWC.

The Discharger was notified of its requirement to obtain coverage under the General Permit in a letter dated January 31, 2007. The March 2, 2007, response date was an opportunity to comply with the General Permit. After receiving no response from the Discharger, an NOV letter was issued to the Discharger on October 9, 2007. The November 1, 2007 response date was another opportunity to comply, and yet the Discharger has not complied as of April 2, 2009.

The City of Hayward notified Uni Tile regarding their requirement to obtain coverage under and comply with the industrial stormwater permit obligations as early as June 6, 2006. Thus, the discharger was notified of its obligation to comply with the General Permit and has failed to do so as of April 2, 2009.

The Discharger is fully culpable.

(h) Economic savings resulting from the violation: The Discharger has realized cost savings by failing to pay General Permit annual fees, failing to develop and implement SWPPP, failing to perform required sampling and analyses, and failing to report annually on its compliance. Estimated costs are as follows:

(1) Annual fee: $1,008/year;

(2) Sampling and analyses at one discharge location: $300;

(3) Development of a SWPPP: an EPA survey indicates average one-time costs to prepare SWPPP of about $2,095 - 105,091, dependent on the size/complexity of facility. SWPPP preparation for this facility would cost about $2,095; and

(4) SWPPP implementation including preparation and submittal of annual reports: an EPA survey indicates average annual costs of about $750 - $25,000, dependent on the size/complexity of facility. Annual costs for this facility would be about $750.

(i) Other matters that justice may require:

Staff time to investigate and prepare a Notice of Noncompliance, NOV, Complaint and supporting information is estimated to be 80 hours. Based on an average cost to the State of $150 per hour, the total cost is $12,000. Issuance of the complaint also requires publication of a Public Notice in a newspaper of general circulation at a cost of approximately $600. These costs, totaling $12,600 have been included in the amount of the proposed administrative civil liability.

20. Based on the above factors to be considered, the Assistant Executive Officer of the Regional Water Board proposes an administrative civil liability of $26,250 against the Discharger for the violations described in this Complaint. The Discharger may complete a supplemental environmental project (SEP) in lieu of the suspended liability up to **$6,825.** In summary, the Discharger operates a large light industrial facility where pollution-causing activities are completed outdoors and frequently exposed to rain. The Discharger operated this facility without General Permit coverage for a minimum of 273 days, and as of June 8, 2009, has not submitted an NOI.

21. This action is an Order to enforce the laws and regulations administered by the Regional Water Board. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.), in accordance with Section 15321(a)(2), Title 14, of the California Code of Regulations.

22. The Assistant Executive Officer will not consider any request to reduce the amount of proposed liability based on the Discharger's alleged inability to pay unless the Discharger submits adequate proof of financial hardship. Such information should substantially demonstrate that the Discharger cannot, and could not, pay the proposed liability. It could

consist of, for example, two years of income tax returns, or an audited financial statement with appropriate supporting information.

23. Further failure to comply with CWC Section 13376, and the General Permit may subject the Discharger to further administrative civil liability, and/or other appropriate enforcement actions(s), including referral to the Attorney General.

Dyan C. Whyte

Dyan C. Whyte
Assistant Executive Officer

July 17, 2009
Date

WAIVER OF HEARING
DUE NO LATER THAN August 17, 2009, at 5 p.m.

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

I am duly authorized to represent Uni Tile & Marble, Inc. (hereinafter, "Discharger") in connection with Administrative Civil Liability Complaint No. R2-2009-0030 ("Complaint"). I am informed that California Water Code section 13323(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."

☐ Waiver of the right to a hearing and agreement to make payment in full.

By checking the box, I agree to waive my right to a hearing before the Regional Water Board with regard to the violations alleged in the Complaint and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o Regional Water Quality Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the scheduled Hearing date.

I understand the payment of the amount in the Complaint 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 during the 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 of 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 the civil liability.

☐ Waiver of right to a hearing and agreement to make payment and undertake an SEP

By checking the box, I agree to waive my right to a hearing before the Regional Water Board with regard to the violations alleged in the Complaint and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to **$6,825** and paying the balance of the fine to the State Water Pollution Cleanup and Abatement Account (CAA) within 30 days after the scheduled hearing date. **The SEP proposal shall be submitted no later than August 26, 2009, at 5 p.m.** I understand that the SEP proposal shall conform to the requirements specified in the Policy on Supplemental Environmental Projects, which was adopted by the State Water Resources Control Board on February 3, 2009, and be subject to approval by the Assistant Executive Officer. If the SEP proposal, or its revised version, is not acceptable to the Assistant Executive Officer, I agree to pay the suspended penalty amount within 30 days of the date of the letter from the Assistant Executive Officer rejecting the proposed/revised SEP. If payment is not

timely received, the Regional Water Board may adopt an administrative civil liability order requiring payment.

I further understand that the acceptance or rejection of the SEP and payment of the remainder of the proposed civil liability constitutes a settlement of the Complaint and that any settlement will not become final until after a 30-day public notice and comment period. Should the Regional Water Board receive significant new information or comments during this 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 of 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.

☐ Waiver of right to a hearing within 90 days in order to engage in settlement discussions.

By checking this box, I hereby waive my right to have a hearing within 90 days after service of the Complaint, but I reserve the right to have a hearing in the future. I agree to promptly engage the Regional Water Board prosecution staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional Water Board delay the hearing and hearing deadlines so the Discharger and Regional Water Board staff can discuss settlement. It remains within the discretion of the Regional Water Board to agree to delay the hearing.

☐ Waiver of a right to a hearing within 90 days in order to extend the hearing date and/or hearing deadlines. Attach separate sheet with the amount of additional time requested and the rationale.

By checking this box, I hereby waive my right to have a hearing within 90 days after service of the Complaint and request 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 agree to delay the hearing.

Name (print)	Signature
Date	Title/Organization

Attachment – B

Tentative (Settlement) Order

The preceding Tentative Order, pages 1 and 2, was included as an attachment to the settlement agreement.