

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

In the matter of:)	Order No. R8-2012-0010
)	for
Mr. Chad Warren)	Administrative Civil Liability
Pacific Clay Products, Inc.)	
14741 Lake Street)	
Lake Elsinore, CA 92530)	
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The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), held a hearing on February 10, 2012 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2011-0008, dated September 23, 2011 and on the recommendation for the imposition of penalties pursuant to Water Code Section 13385 in the amount of \$40,000. The Regional Board finds as follows:

1. On April 17, 1997, the State Water Resources Control Board (State Board) adopted Waste Discharge Requirements, Order No. 97-03-DWQ (NPDES No. CAS000001), General Permit for Discharges of Storm Water Associated with Industrial Activity (General Permit). The General Permit requires dischargers of storm water from industrial sites not cause or threaten to cause pollution. Pacific Clay Products, Inc. (Pacific Clay) owns approximately 1,400 acres located at 14741 Lake Street in the City of Lake Elsinore, California (the site). It mines clay and aggregates and has a brick manufacturing facility within the site. Storm water runoff from the site is regulated under the General Permit.
2. On September 23, 2011, the Division Chief issued Administrative Civil Liability Complaint (ALC or the Complaint) No. R8-2011-0008 to Pacific Clay for the discharge of sediment laden storm water in violation of the General Permit. A copy of the Complaint is attached. The Complaint proposed to impose an administrative civil liability of \$40,000 for the violations.
3. Pacific Clay agreed to settle the Complaint by paying the assessed civil liability and waiving its right to a hearing. The Complaint and proposed settlement were noticed for public comments. During the 30-day comment period, four comments were received from interested parties and/or persons. Some of the commenters requested a public hearing regarding the Complaint.
4. The Complaint alleges Pacific Clay violated the General Permit on four days by causing and/or permitting sediment laden storm water discharges from its facility. Regional Board staff or other agencies witnessed the unauthorized discharges. These discharge incidents took place on: (1) September 7, 2006; (2) November 30,

2007; (3) December 22, 2010; and (4) December 24, 2010. The details of these discharges and other related enforcement actions are discussed in the Complaint.

5. California Water Code (CWC) section 13385(c)(1) provides that civil liability may be imposed administratively on a per day basis at \$10,000 for each day in which a violation occurs, and section 13385(c)(2) provides that an additional civil liability may be imposed on a per gallon basis. At the Pacific Clay site, due to the presence of a number of detention/retention basins, low intensity storm events do not always produce a runoff that results in a discharge to waters of the state. There were at least 35 storm events with a rainfall intensity of 0.25 inches or higher during the last five years. It is possible that there were storm water discharges from the site during one or more of these storm events. However, Regional Board staff was only able to verify unauthorized storm water discharges during four storm events where it or another agency was present at the site. The maximum liability on a per day basis for the four days of violations is \$40,000 (4 daysX\$10,000/day). Pacific Clay constructed a number of detention and retention basins to control the discharge of storm water from the site. During each of the four documented discharge events, Regional Board staff observed sediment laden discharges but could not determine the discharge volumes from the site because of a number of changes to the capacity and number of retention and detention basins. As such, no additional civil liability is proposed on a per gallon basis.
6. CWC Section 13385(e) specifies factors that the Regional Board shall consider in establishing the amount of civil liability. The Water Quality Enforcement Policy (the Policy) adopted by the State Water Resources Control Board on November 19, 2009, establishes a methodology for assessing administrative civil liability pursuant to this statute. Use of the methodology addresses the factors in CWC Section 13385(e). The policy can be found at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf
7. Using the methodology in the Policy, a civil liability is assessed on a per day basis for the discharge violations cited above. In this case, using a "potential harm" of 6 (Factor 1: harm to beneficial use =3 [moderate] + Factor 2: characteristics of the discharge=2 [discharged material poses a moderate risk or threat to potential receptors] + Factor 3: susceptibility to cleanup = 1 [less than 50% of the discharge is susceptible to cleanup]) and considering it as a "major" deviation from requirement, the per day factor from Table 2 (Page 15 of the Policy) is 0.22. Using this per day factor, the assessed amount is \$40,000X0.22=\$8,800.
8. The Policy also requires consideration of the violator's conduct factors such as culpability (range 0.5 to 1.5), cleanup and cooperation (0.75 to 1.5) and history of violations (1 and above). The Discharger was repeatedly asked to implement appropriate control measures to reduce pollutant discharges from the site. The Discharger had approximately 19 years to implement a comprehensive program with effective control measures. The Discharger did not take proactive steps to

implement proper control measures and the BMPs that were implemented were completed on a piece-meal basis only after notices of violation were issued. The Discharger does not appear to have an ongoing program to recognize problems and implement timely corrective actions on its own. As such, the culpability was set at 1.3, the clean-up and cooperation at 1.3 and the history of violations at 1.2. The total base liability after consideration of these factors is $\$8,800 \times 1.3 \times 1.3 \times 1.2 = \$17,846.40$.

1. The Policy also requires consideration of the Discharger's ability to pay and ability to continue in business, economic benefit or savings resulting from the violations and other factors as justice may require. Each of these factors is discussed below:
 - A. The Discharger owns over 1,400 acres at the site. The assessed value of the parcel at 14741 Lake Street is \$15,726,191 according to County records. The parent company of Pacific Clay also owns other land across Lake Street and in other parts of the country. Current estimates show this company has annual revenue of \$20 to \$50 million. Accordingly, no adjustment to the proposed civil liability is recommended based on ability to pay or continue in business.
 - B. The Discharger realized at least \$232,500 in cost savings by failing to implement proper erosion and sediment control measures (from 2006 to 2011). This amount represents the lowest of the costs that staff estimated for construction and maintenance of onsite retention basins using Pacific Clay's own equipment and personnel and the two estimates that staff obtained from other vendors for sediment and/or flow control measures that could have controlled pollutant discharges from the site. The Policy requires that the liability amount shall be at least 10 percent higher than the economic benefit.
 - C. The costs of investigation and enforcement are considered as one of the "other factors as justice may require," and should be added to the final liability. Investigation costs have been estimated to be \$13,500 (90 hours at \$150 per hour = \$13,500).
9. If staff costs are added to the amount calculated as per the Policy, the total assessed amount as per the Policy is \$31,346.40 (\$17,846.40+\$13,500).
10. After consideration of these factors, the Division Chief proposes that civil liability be imposed on Pacific Clay in the amount of forty thousand dollars (**\$40,000**) for the violations cited above. This amount is the maximum amount allowed per the Water Code for the four days of discharge violations from June 1, 2006 to June 1, 2011. The maximum amount is proposed in this case instead of the amount calculated using the Policy as the economic benefit was higher than both the calculated and the maximum allowable civil liability. Furthermore, no penalty was assessed based on a per gallon basis or for all the potential discharges from the site.

11. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to California Water Code Section 13385(c), a civil liability of \$40,000 shall be imposed on Pacific Clay Products, Inc., as proposed in Complaint No. R8-2011-0008 for the violations cited, payable as set forth below.

1. Pacific Clay Products, Inc. is liable for the assessed amount and shall pay \$40,000 to the State Water Pollution Cleanup and Abatement Account by March 12, 2012.

The Executive Officer is hereby authorized to refer this matter to the Attorney General for further enforcement in the event it is required.

Pursuant to Water Code Section 13320, you may petition the State Water Resources Control Board for review of this order. If you choose to do so, you must submit the petition to the State Board within 30 days of the Regional Board's adoption of this Order.

I, Kurt V. Berchtold, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on February 10, 2012.

2/13/12

Date

K.V. Berchtold

Kurt V. Berchtold
Executive Officer