

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

TENTATIVE ORDER

ORDER SETTING ADMINISTRATIVE CIVIL LIABILITY FOR:

**Christopher Rockenbaugh dba
Ro Sal Auto Wreckers and Tow
4030 Folsom Court
Concord, Contra Costa County**

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter called the Water Board) finds, with respect to Christopher Rockenbaugh dba Ro Sal Auto Wreckers and Tow (hereinafter called the Discharger), that:

1. The Discharger operates the facility, which discharges storm water associated with industrial activity. The Discharger submitted a Notice of Intent (NOI) to obtain coverage under the State Water Resources Control Board's discharge permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The Discharger's Waste Discharge ID No. is 207I015587.
2. The General Permit states, in part:

“Section B. Monitoring Program and Reporting Requirements

“14. All facility operators shall submit an Annual Report by July 1 of each year to the Executive Officer of the Regional Water Board responsible for the area in which the facility is located and to the local agency (if requested).”
3. The Discharger violated Section B of the General Permit by failing to submit its 2004/2005 annual report by July 1, 2005.
4. On August 5, 2005, the Executive Officer issued a Notice of Noncompliance (NNC) letter to the Discharger. The Discharger was notified of its obligation to submit an annual report and to comply with the General Permit. The Discharger was required to respond by September 5, 2005, but failed to do so.
5. By certified mail dated September 7, 2005, the Executive Officer issued a second NNC letter to the Discharger. The Discharger's employees were instructed to refuse all certified mail, and the second NNC letter was returned unopened. This letter was to inform the Discharger that it was in violation of the General Permit and that the Executive Officer would recommend enforcement actions if an annual report was not submitted.

Board staff hand delivered the second NNC letter during a site visit on September 20, 2005. The letter required the Discharger to respond by October 7, 2005. The Discharger agreed to submit an annual report by October 7, 2005, but failed to do so. Board staff left a phone message on October 12, 2005, requesting an annual report but the Discharger did not respond to the message.

6. 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:

(2) Any waste discharge requirements or dredge and fill material permit.

(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) [subsection 2 is not pertinent to this ACL]

7. Water Code Section 13385(a)(2) authorizes Administrative Civil Liability not exceeding \$10,000 for each day in which the violation occurs. The Discharger submitted the 2004/2005 annual report on February 19, 2006 and was 233 days delinquent.

8. On January 19, 2006, the Executive Officer issued a Complaint (R2-2006-0005) to the Discharger proposing a \$13,900 Administrative Civil Liability for the violation of the General Permit, and California Water Code Section 13385. In its response dated February 13, 2006, the Discharger has not contested the Complaint’s allegations.

9. The Water Board, after hearing all testimony, determined the Discharger is subject to civil penalties. In determining the amount of civil liability the following factors have been 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 as justice may require.” [Water Code Section 13327]

10. The Board determined, with respect to the factors in Finding No. 9, the following:

a. Nature, circumstances, extent, and gravity of the violation

Failure to submit the annual report is a significant violation because the Water Board relies on the report to determine the Discharger’s compliance with the General Permit.

The Discharger was given a number of warnings, including two Notices of Non-Compliance, telephone messages, and a site visit by staff. These annual reports are a key means of determining the quality of stormwater runoff from the Discharger’s site and ensuring the Discharger is implementing appropriate control measures at its site.

- b. Susceptibility to cleanup, violator's voluntary cleanup efforts, and toxicity of the discharge
Cleanup is not applicable to failure to submit the annual report. Toxicity of discharge cannot be addressed.
 - c. Prior history of violations
The Discharger has submitted its annual reports from previous years in a timely manner.
 - d. Degree of culpability
The storm water regulations are applicable to all industrial sites on a nationwide basis. All dischargers are required to comply with the General Permit. The Discharger is fully culpable for violating the terms and conditions of the General Permit, which implements the Clean Water Act.
 - e. Savings resulting from the violation
The Discharger has realized cost savings by: failure to perform required sampling and analyses, failure to prepare the annual report, and failure to implement and/or document its SWPPP. Assuming an average-sized site, the minimum economic savings for not submitting an annual report is approximately \$2000/year.
 - f. Discharger's ability to pay
The Discharger has not demonstrated an inability to pay the proposed amount.
 - g. Other matters that justice may require.
Staff time to prepare a Complaint and supporting information is estimated to be 15 hours. Based on an average cost to the State of \$100 per hour, the total cost is \$1,500.
11. A \$13,900 Administrative Civil Liability is appropriate based on the determinations in Finding No. 10. This includes the staff costs of \$1,500.
12. In lieu of paying the fine, the Discharger may waive the right to a hearing and complete a supplemental environmental project (SEP). There will be no hearing on this matter provided that the Water Board staff receives no significant public comment during the comment period. The SEP must be acceptable to the Executive Officer. Any proposed SEP should conform to the general criteria for SEPs set forth in the State Water Resources Control Board's Guidance to implement the Water Quality Enforcement Policy, Resolution No. 96-030, as amended by Resolution No. 97-085. The amount of the SEP shall be up to \$13,900 and the remainder shall be paid to the State Cleanup and Abatement Account within 30 days after Board adoption of this Order.

If the Discharger wishes to propose an SEP, it must submit the proposal(s) to the Water Board no later than 30 days from the date this Order was adopted by the Water Board. If the proposed SEP is not acceptable to the Executive Officer, or if the Discharger fails to adequately complete the approved SEP, the Discharger has 30 days from receipt of notice denying the proposal or the completion report(s) to make a payment for the appropriate suspended liability or liabilities to the State Cleanup and Abatement Account. Any money not used by the date specified by the Executive Officer must be submitted to the Water

Board and made payable to the State Cleanup and Abatement Account. Any SEP acceptable to the Executive Officer must be completed within a time schedule approved by the Executive Officer. Progress reports shall be provided to the Water Board according to a time schedule acceptable to the Executive Officer. The final report on the SEP shall be submitted to the Water Board within 30 days of project completion.

The Discharger may waive the right to a hearing and choose not to do the SEP, but it must pay the full amount of Compliant No RB2-2006-0005. There will be no hearing on this matter, provided that Water Board staff receives no significant public comment during the comment period. If the Discharger waives its right to a hearing and chooses not to do the SEP, the Discharger must send a check for \$13,900 within 30 days of the date this Order was adopted by the Water Board. The check must be made payable to the State Water Resources Control Board and sent to the Water Board's office at 1515 Clay Street, Suite 1400, Oakland, CA.

13. This action is an Order to enforce the laws and regulations administered by the 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.
14. The Discharger may petition the State Board to review this action. The State Board must receive the petition within 30 days of the date this Order was adopted by the Water Board. The petition will be limited to raising only the substantive issues or objections that were raised before the Water Board at the public hearing or in a timely submitted written correspondence delivered to the Water Board.

IT IS HEREBY ORDERED that Christopher Rockenbaugh dba Ro Sal Auto Wreckers and Tow is civilly liable for the violation of the General Permit as cited in Compliant No. R2-2006-0005, and shall pay the administrative civil liability in the amount of \$13,900. The liability shall be paid to the State Water Pollution Cleanup and Abatement Account within 30 days of the date of this Order.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, complete, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on March 8, 2006.

Bruce H. Wolfe
Executive Officer