

Document prepared by the Prosecution Team

ITEM: 22

SUBJECT: Toyautomart, Sacramento County

BOARD ACTION: *Consideration of Administrative Civil Liability Order*

BACKGROUND: Toyautomart (the Discharger) operates an automobile dismantling facility in Rancho Cordova. The facility is situated on a one-half acre parcel which includes a store front with an associated backyard for storage of salvaged vehicles. The dismantled vehicles and parts pose a significant risk of polluting storm water runoff with metals, oil and grease, and other fluids. During storm events, rain falls onto the dismantled vehicles and vehicle parts and then runs off the facility, leading to the potential for polluted storm water discharges.

The Discharger is enrolled in the statewide Water Quality Order 97-03-DWQ (NPDES General Permit CAS000001), *Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities* (the General Permit) because it is one of the many types of facilities that are required by the federal Clean Water Act to obtain NPDES permit coverage for its storm water discharges.

The General Permit contains Monitoring and Reporting Requirements. Facility operators are required to submit an annual report to the Water Board by 1 July each year. The annual report must include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling and analysis results, laboratory reports, an annual comprehensive site compliance evaluation report, and if necessary, an explanation of why a facility did not implement any activities required by the General Permit.

The Discharger failed to submit its 2011/2012 annual report by the 1 July 2012 deadline.

The Water Code provides a process for the regional boards to follow in obtaining delinquent annual storm water reports. It requires that the regional board notify each discharger that fails to submit an annual report with regard to its noncompliance and the associated penalties. If the discharger does not submit its annual report within 30 days of that notice, then the regional board sends a second notice to the discharger. If the discharger still fails to submit the annual report, then the regional board can impose the penalties described in Water Code section 13399.33. These penalties are a minimum administrative civil liability of \$1,000 plus costs incurred by the regional board while attempting to obtain the annual report.

The vast majority of dischargers submit their annual reports as required. Out of approximately 1,100 dischargers regulated by the Board's Rancho Cordova office, 167 received a first notice of non-compliance for failure to submit the annual report for the 2011/2012 reporting year. The majority then submitted their report, but 36 dischargers received a second notice. After the second notice, only two dischargers, including this Discharger, did not submit their reports and received Administrative Civil Liability

(ACL) Complaints for the 2011/2012 reporting year.

As documented in the Water Board's case file, the Board provided the Discharger with both the first and second notices as required by the Water Code. The Discharger did not respond to either notice. Board staff also called the Discharger on two occasions and discussed the need to submit the report. However, to date the Discharger has not submitted its annual report.

On 4 March 2013, the Executive Officer issued ACL Complaint R5-2013-0517 pursuant to Water Code section 13399.33 in the amount of \$4,450 to the Discharger for failure to submit its 2011/2012 annual report. The liability amount includes the \$1,000 minimum penalty plus \$3,450 in staff costs as shown in Attachment A to the ACL Complaint.

As of 29 April 2013, the Discharger did not respond to the ACL Complaint, did not submit a 90-Day Hearing Waiver Form, and did not submit the 2011/2012 Annual Report.

ISSUES:

This is the second enforcement action against the Discharger for failure to submit annual reports. In 2011, the Executive Officer issued an ACL Complaint to Toyautomart for \$9,375 for failure to submit annual reports in 2008, 2009, and 2010. To resolve that complaint, the Discharger entered into a settlement agreement with the Board whereby the Discharger agreed to pay the penalty amount over a 12 month period. However, the Discharger only paid \$3,906.25 and then stopped making payments. Resolution of this matter is being addressed separately.

Because the Discharger did not respond to the 2013 ACL Complaint or waive its right to a hearing, Board staff has prepared this ACL Order pursuant to the requirements of Water Code section 13399.33 for consideration by the Board. The minimum penalty under the Water Code is \$1,000 plus staff costs while the maximum penalty is \$3,140,000. Water Code section 13399.33(c) requires assessment of at least the minimum penalty. Due to the need to prepare for a Board hearing, staff costs have increased from \$3,450 to \$5,925 since the ACL Complaint was issued as shown in Attachment A to the proposed ACL Order.

RECOMMENDATION:

Staff recommends adoption of the proposed ACL Order, requiring payment of the minimum penalty plus revised staff costs. The total proposed minimum penalty is \$6,925.

Mgmt. Review WSW
Legal Review JR

30/31 May 2013

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