

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

In the matter of:

Carson Hall, Jr.
310 N. Indian Hill Boulevard
Claremont, CA 91711-4611

Complaint No R8-2008-0082
For
Administrative Civil Liability

YOU ARE HEREBY GIVEN NOTICE THAT:

1. You are alleged to have violated California Water Code (CWC) section 13399.30 and requirements contained in State Water Resources Control Board Order No. 99-08-DWQ, NPDES Permit No. CAS000002 ("General Permit") for which the Regional Water Quality Control Board, Santa Ana Region (Regional Board), must impose liability under CWC section 13399.33.
2. A hearing concerning this Complaint will be held before the Regional Board within ninety days of the date of issuance of this Complaint, unless you waive your right to a hearing and agree to pay the recommended administrative civil liability amount of \$20,000.
3. You will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. This item is currently scheduled for the October 24, 2008 Regional Board meeting. A notice containing the time and location of the hearing and a staff report pertaining to this item will be mailed to you not less than 10 days prior to the hearing date.
4. At the hearing, the Regional Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

THIS COMPLAINT IS BASED ON THE FOLLOWING FACTS:

5. Mr. Carson Hall, Jr. was the owner of three parcels of land (APNs 242-070-033, 242-070-034, and 242-070-036) located south of Bradley Street and west of Washington Street in the City of Riverside. These parcels are located downstream of Woodcrest Dam. An arroyo on these parcels is tributary to an unnamed blue-line stream that enters Riverside Canal, which is tributary to Temescal Wash and ultimately the Santa Ana River. These are waters of the United States. Mr. Hall

sold APN 242-070-034 on August 18, 2005. He remains the current owner of the two other parcels.

6. In July or August of 2005, Mr. Hall cleared these parcels of riparian vegetation and rough graded the land so the property could be used to build a house and develop a commercial horse ranch.
7. The federal Water Pollution Control Act (Clean Water Act) Section 402 prohibits the discharge of pollutants to waters of the United States unless such discharges are in compliance with a National Pollutant Discharge Elimination System (NPDES) Permit. (33 U.S.C. §§ 1342). The General Permit requires that construction activities, including clearing, grading, disturbances to the ground such as stockpiling, or excavation that results in soil disturbance on one or more acres, be covered under the General Permit.
8. On December 1, 2005, Department of Fish and Game staff, Army Corps of Engineers staff, and Regional Board staff inspected Mr. Hall's properties. Regional Board staff observed and photographed evidence of construction activities that require coverage under the General Permit. These activities include grading, removal of trees and other vegetation, diversion of flows from a stream into a pond, streambed alteration, and installation of corrugated culverts.
9. On July 7, 2006, Regional Board staff sent Mr. Hall a certified letter that was received on July 8, 2006. The letter requested that Mr. Hall obtain coverage under the General Permit for the construction activities that were occurring or had occurred on his property.
10. In response to the July 7, 2006 letter from Regional Board staff, Mr. Dale Sexton, acting as an agent for Mr. Hall, submitted a letter indicating that there were no construction activities at the site that needed to be regulated under the General Permit. Mr. Sexton's letter was not considered a valid Notice of Non-Applicability because, in fact, the activities at the site required coverage under the General Permit.
11. Because Mr. Hall did not obtain coverage under the General Permit in response to Regional Board staff's first request, a second certified letter was sent on August 15, 2006, again requesting that Mr. Hall obtain coverage under the General Permit. The August 15, 2006 letter was returned unclaimed.
12. On September 5, 2006, Ms. Tam Doduc, State Water Resources Control Board Chair, sent a letter to Mr. Sexton indicating that the

construction activities at Mr. Hall's property should be covered under the General Permit.

13. In a letter sent via regular mail and dated December 12, 2007, Regional Board staff again informed Mr. Hall that he had conducted grading activity on his property without first properly obtaining coverage under the General Permit. The letter requested that Mr. Hall file a Notice of Intent to obtain coverage under the General Permit by January 11, 2008.
14. In a telephone conversation with Mary Bartholomew, Regional Board Environmental Scientist, on January 16, 2008, Mr. Hall confirmed receipt of the December 12, 2007 letter.
15. As of August 15, 2008, Mr. Hall has not filed a notice of intent to obtain coverage under the General Permit. This is a violation of CWC section 13399.30 subject to a mandatory penalty.
16. Pursuant to CWC section 13399.33(a)(1), the Regional Board must impose a mandatory penalty of \$5,000 per year of non-compliance or fraction thereof if a discharger fails to obtain coverage after the discharger has been served with two Notices of Noncompliance. Mr. Hall is alleged to have violated CWC section 13399.30 for at least four years (2005, 2006, 2007, and 2008). The mandatory minimum liability under section 13399.33 for this violation is \$20,000.
17. This action is strictly for violations of CWC section 13399.30. The Regional Board reserves the right to seek additional enforcement pursuant to CWC section 13385, or any other appropriate provision of law.

CONSIDERATION OF FACTORS

18. Pursuant to CWC section 13399.33, subdivision (a)(2), the Regional Board is required to consider the following factors in determining the penalty imposed pursuant to section 13399.33, subdivision (a)(1): the nature, circumstance, extent, and gravity of the violation; and with respect to the violator, the ability to pay; prior history of violations; the degree of culpability; economic benefit or savings, if any, resulting from the violation; and other matters that justice may require. These factors are discussed in detail in the table below. Section 13399.33, subdivision (a)(2) also requires that these considerations be balanced against the need for the regulatory costs of environmental protection to be borne equally by dischargers throughout the state, and the need for predictability of enforcement when making business decisions.

Factor	Comment
A. Nature, Circumstance, Extent, and Gravity of Violation	Mr. Hall conducted construction activities without obtaining coverage under the General Permit, even after receiving two notices from Regional Board staff indicating that coverage was required.
B. Ability to Pay	Mr. Hall and his representatives have indicated that Mr. Hall is currently facing financial difficulties, although no detailed information has been submitted to support this contention. Mr. Hall is currently the owner of two parcels of property. Based on Mr. Hall's ownership interests and without sufficient information to support Mr. Hall's claim of financial hardship, Regional Board staff presumes Mr. Hall has the ability to pay the proposed liability.
C. Prior History of Violations	Regional Board staff is not aware of any prior violations by Mr. Hall.
D. Degree of Culpability	Mr. Hall failed to obtain coverage under the General Permit even after receiving two notices. The Water Code provides for mandatory penalties for failure to obtain coverage under the General Permit.
E. Economic Benefit or Savings	By conducting construction activities without the required permit coverage, failure to pay the necessary application fee, Mr. Hall realized an economic benefit. Mr. Hall saved approximately \$2,542 in annual fees for four years (((\$200 + \$20/acre) x 18.5% surcharge. The fee for 16.81 acres is 635.40/year). Total economic savings are therefore calculated to be \$2,542.
F. Other Factors	Regional Board staff spent at least 120 hours of staff time in its efforts to bring this facility into compliance (@\$110.00 per hour, the total cost for staff time in \$13,200).

RECOMMENDED CIVIL LIABILITY

19. After consideration of the factors described above, the Assistant Executive Officer proposes civil liability be imposed on Mr. Hall in the amount of \$20,000 for the violations cited above.

You may waive your right to a hearing. If you do so, please sign the attached waiver form and mail it, together with a check payable to the State Water Resources Control Board for \$20,000. The waiver form and the check should be mailed to this office in the enclosed preprinted envelope.

If you have any questions concerning this Complaint, contact Stephen Mayville, Enforcement Section Chief, at (951) 782-4992.

Kt V. Berchtold
Kurt V. Berchtold
Assistant Executive Officer

8/15/08
Date

**WAIVER OF HEARING FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

1. I am duly authorized to represent Carson Hall Jr. (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R8-2008-0082 (hereinafter the "Complaint");
2. I hereby waive any right the Discharger may have to a hearing before the California Regional Water Quality Control Board, Santa Ana Region (Regional Water Board).
3. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **twenty thousand dollars (\$20,000)** by check, which contains a reference to "ACL Complaint No. R8-2008-0082" and is made payable to the "*State Water Resources Control Board, WDPF.*" Payment must be received by the Regional Water Board by October 1, 2008 or this matter will be placed on the Regional Water Board's agenda for consideration as initially proposed in the Complaint.
4. 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.
5. If a hearing on this matter is held, the Regional Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

(Print Name and Title)

(Signature)

(Date)