

**State of California
California Regional Water Quality Control Board
Santa Ana Region
September 13, 2013
Staff Report**

ITEM: 11

SUBJECT: Order No. R8-2013-0051 Affirming Mandatory Minimum Penalty
Complaint No. R8-2013-0030, Torco International, San Bernardino
County

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Regional Board), is whether to affirm, reject or modify the proposed Order imposing an assessment of \$1,450 against Torco International (owner, Olivia Tanson).

BACKGROUND

On July 16, 2013, the Division Chief issued Mandatory Minimum Penalty Complaint (Complaint) No. R8-2013-0030 to Torco International, owned by Olivia Tanson (Discharger) for alleged violations of the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 97-03-DWQ (General Permit). In the Complaint, the Division Chief proposed an assessment of \$1,450 for the alleged violations. The Complaint and the supporting documents are attached as Exhibit 1.

Complaint No. R8-2013-0030 was issued to the Discharger for the non-submittal of the 2011-2012 storm water annual report. Non-submittal of the annual report is a violation of the General Permit for which the Board shall assess a minimum penalty as stipulated in Water Code Section 13399.31(d).

The public hearing on this item is scheduled for the September 13, 2013 Board meeting.

DISCUSSION

The General Permit regulates the discharge of storm water from industrial facilities as required under Section 402(p) of the Federal Clean Water Act. The Discharger owns and operates an industrial facility at 9145 Milliken Avenue in Rancho Cucamonga, California and the discharge of storm water from the facility is regulated under the State's General Permit.

The General Permit requires submittal of an annual report by July 1 of each year. The Discharger failed to submit the annual report for 2011-12 by the July 1, 2012 deadline. Regional Board staff issued a certified letter reminding the Discharger to submit the annual report, but the certified letter was returned to the Board office after several attempts by the postal service to deliver it. Board staff hand-delivered the letter to the facility on December 12, 2012. When Board staff received no response to the first letter, a second letter was issued and hand-delivered to the facility on January 24, 2013. As Ms. Tanson's voicemail is not set up for receiving messages, staff left a number of telephone messages with Ms. Olivia Tanson's receptionist to remind Ms. Tanson to submit the annual report and to contact Board staff. The Discharger was also reminded about the mandatory minimum penalty for non-submittal of the annual report. The Discharger did not respond to the letters, or the follow-up phone calls, and did not submit the annual report as requested.

The Water Code specifies that the Regional Board shall impose a minimum penalty of \$1,000 and recover staff costs from dischargers who fail to submit the annual reports. On July 16, 2013, the attached Complaint was issued to the Discharger (Exhibit 1). The Discharger was given an option to waive its right to a hearing. The Discharger did not waive its right to a hearing. The Complaint includes details of a number of prior violations and the enforcement actions taken by Regional Board staff, including a number of Notices of Violation issued to the Discharger.

WATER CODE VIOLATIONS/PENALTIES

California Water Code Section 13399.33(c) requires that the Regional Board impose a minimum penalty of \$1,000 for non-submittal of annual reports. Section 13399.33(d) allows the Regional Board to recover staff costs incurred by Regional Board staff. Despite repeated reminders and warnings, the Discharger has not submitted the annual report.

CONSISTENCY WITH THE STATEWIDE ENFORCEMENT POLICY

On November 19, 2009, the State Water Resources Control Board adopted a State Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are consistent, predictable, and fair. The above-described Complaint and the proposed Order are in accordance with the Statewide Enforcement Policy.

RECOMMENDATION

Board staff recommends that the Board adopt Order No. R8-2013-0051 affirming the assessment of \$1,450.

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

In the matter of:

*Olivia Tanson
Torco International
9145 Milliken Avenue
Rancho Cucamonga, CA 91730*

*Order for
Mandatory Minimum Penalty

Order No. R8-2013-0051*

1. The California Regional Water Quality Control Board, Santa Ana Region (Regional Board), held a hearing on September 13, 2013 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2013-0030, dated July 16, 2013 and on the recommendation for the imposition of penalties and staff costs pursuant to Water Code Sections 13399.33(c) and (d) in the amount of \$1,450. The Regional Board finds as follows:
2. Torco International, owned by Olivia Tanson (Discharger), is regulated under the State Water Resources Control Board's Waste Discharge Requirements, Order No. 97-03-DWQ, NPDES No. CAS000002 (General Permit). The General Permit requires submittal of an annual report by July 1 of each year. The Discharger failed to submit the annual report for 2011-12 by the July 1, 2012 deadline.
3. Regional Board staff issued two certified letters. The first certified letter was sent on August 9, 2012 and was returned undelivered after several attempts by the postal service. Nam Nguyen, Regional Board staff, hand delivered the letter to the facility on December 12, 2012. The second letter was hand delivered on January 24, 2013 to the same facility. In both instances, staff requested the receptionist to inform Ms. Tanson to call Regional Board staff and to submit the annual report. Staff also reminded the Discharger through telephone calls on August 21 2012, October 10, 2012, December 16, 2012, and January 23, 2013. The Discharger was informed in these communications of the mandatory penalties that are assessed for non-submittal of an annual report required by the General Permit. The Discharger did not respond to the certified letters or the phone calls.
4. Water Code Section 13399.33(c) requires the Regional Board to impose a minimum penalty of \$1,000 to dischargers enrolled in the General Permit who do not submit an annual report. In addition, Section 13399.33(d) requires the Regional Board to

recover staff costs incurred by the Regional Board for prosecution of dischargers who fail to submit their annual report.

5. Accordingly, on July 16, 2013, the attached Mandatory Minimum Penalty Complaint was issued to the Discharger (Exhibit 1). The Discharger was given an option to pay the assessed amount and waive its right to a hearing. The Discharger neither paid the assessed amount nor waived its right to a hearing.
6. By adopting this order, the Board incorporates the findings in Mandatory Minimum Penalty Complaint No. R8-2013-0030 and affirms the penalty specified therein.
7. 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.
8. In the event that the Discharger fails to comply with the requirements of this Order, the Executive Officer or his delegee is authorized to refer this matter to the Attorney General's Office for enforcement.
9. Any person aggrieved by this action of the Santa Ana Regional Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date that this Order becomes final, except that if the thirtieth day following the date that this Order becomes final falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

IT IS HEREBY ORDERED that, pursuant to California Water Code Sections 13399.33(c) and (d), the Discharger shall make a cash payment of \$1,450 to the Waste Discharge Permit Fund no later than 30 days from the adoption of this Order. Payment of the penalty does not waive Ms. Tanson's responsibility to submit the 2011-2012 annual report.

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 September 13, 2013.

Kurt V. Berchtold
Executive Officer



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

July 16, 2013

Ms. Olivia Tanson
Torco International
9145 Milliken Avenue
Rancho Cucamonga, CA 91730

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
(AND BY REGULAR MAIL)

MANDATORY MINIMUM PENALTY (MMP) COMPLAINT NO. R8-2013-0030, TORCO INTERNATIONAL

Dear Ms. Tanson:

Enclosed is a certified copy of Mandatory Minimum Penalty Complaint No. R8-2013-0030 (hereinafter "Complaint"). The Complaint alleges that Torco International has violated the General Permit for Storm Water Discharges Associated with Industrial Activity, Order No. 97-03-DWQ by failing to submit the 2011-2012 annual report by July 1, 2012. Pursuant to California Water Code Section 13399.33, the Complaint proposes that the Regional Board impose one thousand four hundred fifty dollars (\$1,450) in mandatory minimum penalties and staff costs.

A public hearing on this matter has been scheduled for the Regional Board meeting on September 13, 2013. The staff report regarding this Complaint and the meeting agenda will be mailed to you not less than 10 days prior to the hearing.

A Fact Sheet describing the Complaint process is also enclosed. The Fact Sheet describes the complaint process and explains what Torco International can expect and its obligations as the process proceeds.

OPTION 1: Pursuant to California Water Code Section 13323, Torco International, has the option to waive its right to a hearing. Should Torco International waive its right to a hearing and pay the proposed assessment, the Regional Board may not hold a public hearing on this matter. If Torco International chooses to waive its right to a hearing, please sign and submit the enclosed Waiver Form with a check for one thousand four hundred fifty dollars (\$1,450) made payable to the Waste Discharge Permit Fund. The Waiver Form, the check, and any other correspondence regarding this Complaint should be sent to the Regional Board office in the enclosed pre-printed envelope.

OPTION 2: If Torco International does not wish to waive its right to a hearing, a pre-hearing meeting is recommended. Should you wish to schedule a pre-hearing meeting, please submit your request to Nam Nguyen at (951) 321-4582 or nnguyen@waterboards.ca.gov prior to August 1, 2013.

If you have any questions about the Complaint or the enclosed documents, please contact Nam Nguyen at (951) 321-4582 (nnguyen@waterboards.ca.gov) or Milasol Gaslan at (951) 782-4419

CAROLE H. BESWICK, CHAIR | KURT V. BERCHTOLD, EXECUTIVE OFFICER

3737 Main St., Suite 500, Riverside, CA 92501 | www.waterboards.ca.gov/santaana

July 16, 2013

(mgaslan@waterboards.ca.gov). All legal questions should be directed to Cris Carrigan at (916) 341-5889 (ccarrigan@waterboards.ca.gov), Director, Office of Enforcement.

Sincerely,



Michael J. Adackapara
Division Chief
Regional Board Prosecution Team

Enclosures: Complaint No. R8-2013-0030
Waiver Form
Exhibit 1 (NNC dated December 17, 2012)
Exhibit 2 (NNC dated January 24, 2013)
Hearing Procedure
Fact Sheet

cc: Regional Board
Executive Officer – Kurt Berchtold (Regional Board Advisory Team)
State Water Resources Control Board, Office of Chief Counsel – David Rice
(Regional Board Advisory Team Attorney)
State Water Resources Control Board, Division of Water Quality – Diana Messina
State Water Resources Control Board, Office of Enforcement – Cris Carrigan
(Regional Board Prosecution Team Attorney)
U.S. Environmental Protection Agency, Region 9 (WTR-7) – Ken Greenberg
San Bernardino County, NPDES – Marc Rodabaugh
(Marc.Rodabaugh@dpw.sbcounty.gov)
City of Rancho Cucamonga, NPDES – Scott Rapp (scott.rapp@cityofrc.us)
Torco International – Olivia Tanson (otanson@torcousa.com)

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

In the matter of:)	
)	
Torco International)	Complaint No. R8-2013-0030
9145 Milliken Avenue)	for
Rancho Cucamonga, CA 91730)	Mandatory Minimum Penalty and Staff Costs
)	
Attention: Olivia Tanson)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. You are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), must impose liability under Section 13399.33 of the California Water Code.
2. A hearing concerning this Complaint will be held before the Board within ninety days of the date of issuance of this Complaint. The hearing in this matter has been scheduled for the Board's regular meeting on September 13, 2013 at the City Council Chambers of Loma Linda, 25541 Barton Road, Loma Linda, CA 92354.
3. You or your representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of a mandatory penalty and staff costs by the Board. A Hearing Procedure is enclosed. An agenda for the meeting and the staff report pertaining to this item will be mailed to you not less than 10 days before the hearing date.
4. At the hearing, the Board will consider whether to affirm, reject or modify the proposed Mandatory Minimum Penalty and assessment of staff costs pursuant to Section 13399.33 of the Water Code, to assess discretionary penalties pursuant to Section 13385 of the Water Code, or to refer the matter to the Attorney General for recovery of judicial civil liability.
5. Torco International, located at 9145 Milliken Avenue in Rancho Cucamonga, is currently regulated under the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The facility's WDID Number is 8 36I022280. The General Permit requires submittal of an annual report by July 1 of each year.
6. Torco International's 2011-2012 annual report was not received by Board staff by the July 1, 2012 deadline. Therefore, on August 9, 2012, a Notice of Non-Compliance (NNC) was issued to Torco International, but the certified letter was returned to the Board office after several attempts by the postal service to deliver it. Board staff hand-

delivered the certified letter on December 12, 2012 (Exhibit 1). When Board staff received no response to the first NNC, a second NNC was issued and hand-delivered to the facility on January 24, 2013 (Exhibit 2). In both NNCs, Board staff requested submittal of the completed annual report and reminded Torco International of the mandatory minimum penalty for late submittal of the annual report. The second NNC requested that the annual report be submitted by February 25, 2013 along with a statement explaining why the annual report was not submitted by the July 1 deadline, and the measures that would be taken to ensure that future annual reports would be submitted on time.

7. Board staff also made several attempts to reach Olivia Tanson, but the voicemail system was not properly set up for receiving messages. However, Staff left several messages with Ms. Fatima, the receptionist, to request Ms. Olivia Tanson to contact Board staff. Ms. Tanson did not contact Board staff.
8. The NOI for this facility indicates that Ms. Olivia Tanson is the owner of the facility. To date, the annual report has not been received at the Board office. This facility violated the General Permit, the Federal Clean Water Act and the California Water Code by failing to submit the annual report by July 1, 2012.
9. Section 13385(a)(2) of the California Water Code provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.
10. Section 13399.33(c) of the California Water Code specifies that the Board shall impose a minimum penalty of \$1,000 for any person who fails to submit an annual report in accordance with Section 13399.31 of the Water Code. Section 13399.33(d) of the California Water Code further requires that the Board recover the costs incurred by the Regional Board staff with regard to those persons.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY AND ASSESSMENT OF COSTS

11. Pursuant to Section 13399.33(c), the Division Chief proposes that the mandatory minimum penalty of \$1,000 be imposed on Torco International for the violation cited above. In addition, the Division Chief proposes that staff costs in the amount of \$450 (3 hours at \$150 per hour=\$450) be recovered from Torco International. The total proposed mandatory minimum penalty (\$1,000) and staff costs (\$450) are \$1,450. The Division Chief is not proposing to impose any penalty as per Water Code Section 13385(c) since any additional penalties would be a significant financial burden on such a small business.
12. Notwithstanding the issuance of this Complaint, the Regional Board retains the authority to assess additional penalties for violations of the General Permit for which penalties have not yet been assessed or for violations that may subsequently occur.

13. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to Title 14, California Code of Regulations, Sections 15308 and 15321 Subsection (a) (2).

7-16-2013
Date



Michael J. Adackapara, Division Chief
Regional Board Prosecution Team

Santa Ana Regional Water Quality Control Board

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent Torco International (hereinafter "Discharger") in connection with Mandatory Minimum Penalty Complaint No. R8-2013-0030 (hereinafter the "Complaint"). I am informed that California Water Code Section 13323, subdivision (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."

OPTION 1

(Check here if the Discharger waives the hearing requirement and will pay the liability in full.)

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of one thousand four hundred fifty dollars (\$1,450) by check that references "Complaint No. R8-2013-0030" made payable to the Waste Discharge Permit Fund. Payment must be received by the Regional Board office no later than August 1, 2013 or the Regional Board may adopt an Order requiring payment.
- c. I understand the payment of the above amount 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 Board receive significant new information or comments from any source (excluding the Regional Board's Prosecution Team) during this comment period, the Regional Board's Division Chief 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 Board, and that the Regional 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.
- d. 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.

- OPTION 2**
(Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)

I hereby waive any right the Discharger may have to a hearing before the Regional Board within 90 days after service of the Complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Regional Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

- OPTION 3**
(Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)

I hereby waive any right the Discharger may have to a hearing before the Regional Board within 90 days after service of the Complaint. By checking this box, the Discharger requests that the Regional 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 Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

December 17, 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Attn: Olivia Tanson or Facility Manager
Torco International
9145 Milliken Avenue
Rancho Cucamonga, CA

Notice of Noncompliance: Failure to Comply With the General Permit for Storm Water Discharges Associated With Industrial Activities, Order No. 97-03-DWQ, NPDES NO. CAS000001 (General Permit), Waste Discharge Identification (WDID) Number 8 36I022280

Dear Olivia Tanson or Facility Manager:

Your facility located at 9145 Milliken Avenue, in the city of Rancho Cucamonga, is regulated under the General Permit and is identified by WDID number 8 36I022280. Section B.14 of the General Permit requires you to submit an annual report by July 1 of each year. Our records show that your annual report for the July 1, 2011 to June 30, 2012 reporting period has not been received.

You are in violation of the General Permit, the California Water Code and the federal Clean Water Act for failure to submit a complete 2011-2012 annual report. We request that you submit a complete 2011-2012 annual report to this office no later than 30 days from the date of this letter. A blank copy of the report form can be downloaded from the Storm Water section of the State Water Resources Control Board web site at:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/annualreport.shtml

Along with the annual report, you must also provide a statement explaining why the annual report was not submitted by the July 1 deadline and the measures you have taken to ensure timely submittals in the future. Failure to submit the requested information may result in enforcement action, including civil monetary penalties of up to \$10,000 for each day of violation. Please note that Section 13399.33 of the California Water Code stipulates a minimum penalty of \$1,000 to those permittees that do not submit their annual reports after notification.

If you wish to be notified electronically of future annual report submittals prior to the due date, please update the first page of annual report contact information with the appropriate e-mail address. If you wish to add additional contact person(s) to the notification list, please indicate on a separate page.

CAROLE H. BESWICK, CHAIR | KURT V. BERCHTOLD, EXECUTIVE OFFICER

3737 Main St., Suite 500, Riverside, CA 92501 | www.waterboards.ca.gov/santaana

Should you need assistance in completing the annual report or have any questions, please contact Nam Nguyen at 951-321-4582 (e-mail: nnguyen@waterboards.ca.gov), or Michael Roth at 951-320-2027 (e-mail: mroth@waterboards.ca.gov)

Sincerely,

A handwritten signature in black ink, appearing to read "mjadackapara". The signature is written in a cursive, flowing style.

Michael J. Adackapara
Division Chief

CC to Owner: Olivia Tanson or Facility Owner. Torco International. 9145 Milliken Avenue, Rancho Cucamonga, CA 91730

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Olivia Tanson
 9145 Milliken Ave
 Rancho Cucamonga, CA 91730
 WDD: 8 36102280
 * Hand Delivery

2. Article Number

(Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature

x *John M. Sorensen* Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

01/17/12

D. Is delivery address different from item 1? Yes

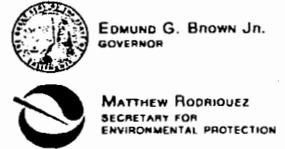
If YES, enter delivery address below: No

3. Service Type

- Certified Mail Express Mail
- Registered Return Receipt for Merchandise
- Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

January 24, 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Facility Owner or Olivia Tanson
Torco Internation
9145 Milliken Avenue
Rancho Cucamonga, CA 91730

Notice of Noncompliance - Second and Final Notice: Failure to Comply with the General Permit for Storm Water Discharges Associated with Industrial Activities, (Order No. 97-03-DWQ, NPDES No. CAS000001) WDID No. 8 36I022280

Dear Facility Owner or Olivia Tanson:

Your facility located at 9145 Milliken Avenue, in the city of Rancho Cucamonga, is regulated under the General Permit and is identified by WDID No. **8 36I022280**. Section B.14 of the General Permit requires you to submit an annual report by July 1 of each year. Our records show that your annual report for the July 1, 2011 to June 30, 2012 reporting period has not been received.

You are currently in violation of the General Permit, the California Water Code and the federal Clean Water Act for failure to submit a complete 2011-2012 annual report. We request that you submit a complete 2011-2012 annual report to this office no later than 30 days from the date of this letter. A blank copy of the report form can be downloaded from the Storm Water section of the State Water Resources Control Board website:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/annualreport.shtml

Along with the annual report, you must also provide a statement explaining why the annual report was not submitted by the July 1 deadline and the measures you have taken to ensure timely submittals in the future.

This is your second and final notice. The first notice was dated and hand delivered on December 17, 2012. Failure to submit the requested information may result in enforcement action, including civil monetary penalties of up to \$10,000 for each day of

CAROLE H. BESWICK, CHAIR | KURT V. BERCHTOLD, EXECUTIVE OFFICER

3737 Main St., Suite 500, Riverside, CA 92501 | www.waterboards.ca.gov/santaana

January 24, 2013

violation. Please note that Section 13399.33 of the California Water Code stipulates a minimum penalty of \$1,000 to those permittees that do not submit their annual reports after notification.

If you wish to be notified electronically of future annual report submittals prior to the due date, please update the first page of annual report contact information with the appropriate e-mail address. If you wish to add additional contact person(s) to the notification list, please indicate on a separate page.

Should you need assistance in completing the annual report or have any questions, please contact Nam Nguyen at (951) 321-4582 (email: nnguyen@waterboards.ca.gov), or Michael Roth at (951) 320-2027 (email: mroth@waterboards.ca.gov).

Sincerely,



Michael J. Adackapara
Division Chief

SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Facility Owner of Olivia Tanson
 Torco International
 9145 Milliken Avenue
 Rancho Cucamonga, CA 91730
 WDD: 8 361 022280

2. Article Number

(Transfer from service label)

Hand Delivered

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

John Sacchi

- Agent
- Addressee

B. Received by (Printed Name)

Fatima Sacchi

C. Date of Delivery

1/24/13

D. Is delivery address different from item 1? Yes

If YES, enter delivery address below: No

3. Service Type

- Certified Mail
- Registered
- Insured Mail
- Express Mail
- Return Receipt for Merchandise
- C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes



California Regional Water Quality Control Board Santa Ana Region



Matthew Rodriguez
Secretary for
Environmental Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 • FAX (951) 781-6288
www.waterboards.ca.gov/santaana

Edmund G. Brown Jr.
Governor

HEARING PROCEDURE
FOR MANDATORY MINIMUM PENALTY
ORDER NO. R8-2013-00XX
ISSUED TO
TORCO INTERNATIONAL
9145 Milliken Avenue
Rancho Cucamonga, CA 91730

SCHEDULED FOR SEPTEMBER 13, 2013

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Background

On July 16, 2013, the Division Chief for the Santa Ana Regional Water Quality Control Board issued Mandatory Minimum Penalty (MMP) Complaint No. R8-2013-0030 to Torco International (owner: Olivia Tanson) (hereinafter Discharger) and provided them an opportunity for an early settlement by waiving its right to a hearing and paying the assessed amount. Torco International has neither waived its right to a hearing nor paid the proposed assessment. The MMP Complaint alleged that the Discharger violated California Water Code Section 13399.31 by failing to submit an annual report as required by the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The Complaint proposed that a mandatory minimum penalty and staff costs in the amount of one thousand four hundred fifty dollars (\$1,450) be imposed as authorized by Water Code Sections 13399.33(c) and (d).

The Regional Board is required to provide a hearing within 90 days of issuance of the Complaint (Water Code Section 13323).

The Complaint can be accessed from:

http://www.waterboards.ca.gov/santaana/public_notices/enforcement_actions.shtml

A hearing on this matter is scheduled to be held before the Regional Board during its September 13, 2013 meeting.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the MMP Complaint and the proposed Order. At the hearing, the Regional Board will

California Environmental Protection Agency



consider whether to issue a mandatory minimum penalty order assessing the proposed liability, or a lower/higher amount, reject the proposed liability, or seek a higher liability amount through a judicial civil liability action. Here are the details regarding the public hearing:

Date of Hearing: September 13, 2013
Time: 9:00 a.m.
Location: City Council Chambers
City of Loma Linda
25541 Barton Road
Loma Linda, CA 92354

A staff report, tentative order pertaining to this item and an agenda for the meeting will be issued at least ten days before the meeting and posted on the Regional Board's web page at:

http://www.waterboards.ca.gov/santaana/board_info/agendas/index.shtml

The agenda will include the final hearing date and location and the estimated start time for the meeting. Since the start time for this item is uncertain, all interested parties are urged to be present from the start of the Board meeting.

Hearing Procedures

The hearing will be conducted in accordance with this hearing procedure. This hearing procedure has been pre-approved by the Regional Board's Advisory Team in model format. A copy of the general procedures governing adjudicatory hearings before the Regional Board may be found at Title 23 of the California Code of Regulations, Section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with Section 11500 of the Government Code) does not apply to this hearing.

THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM AT ITS DISCRETION. ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY THE REGIONAL BOARD'S ADVISORY TEAM BY AUGUST 1, 2013 OR THEY WILL BE WAIVED. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Regional Board (Prosecution Team) have been separated from those who will provide advice to the Regional Board (Advisory Team). Any members of the Advisory Team

who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Members of the Prosecution Team may have acted as advisors to the Regional Board in other, unrelated matters, but they are not advising the Regional Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications (see below) with the members of the Regional Board or the Advisory Team regarding this proceeding.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Regional Board. An ex parte contact is any written or oral communication pertaining to the investigation, preparation, or prosecution of the Complaint between a member of a designated party or interested person on the one hand, and a Regional Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if oral). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

Hearing Participants

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons generally may not submit evidence, cross-examine witnesses, or be subject to cross examination, but may present policy statements. Policy statements may include comments on any aspect of the proceeding, but may not include evidence (e.g., photographs, eye-witness testimony, monitoring data, etc.). Interested persons who would like to submit evidence may do so if the evidence is submitted in accordance with the procedures and deadlines for submitting evidence described below. Interested persons who present evidence may be subject to cross-examination. Both designated parties and interested persons may be asked to respond to clarifying questions from the Regional Board, staff or others, at the discretion of the Regional Board.

The following participants are hereby designated as parties in this proceeding:

- (1) Regional Board Prosecution Team

Prosecution Team Members: Michael Adackapara, Division Chief, Santa Ana Regional Water Quality Control Board; Milasol Gaslan, Chief of Inland Storm Water Section, Santa Ana Regional Water Quality Control Board; Nam Nguyen, Water Resources Control Board, Santa Ana Regional Water Quality Control Board; and Cris Carrigan, Director, Office of Enforcement, State Water Resources Control Board.

- (2) Discharger Team

Discharger Team Member: OLIVIA TANSON

- (3) Advisory Team

Advisory Team Members: Kurt Berchtold, Executive Officer, Santa Regional Water Quality Control Board and David Rice, Legal Counsel, State Water Resources Control Board.

Advisory Team Primary Contact:

David Rice
Email: Davidrice@waterboards.ca.gov)
Phone: 916-341-5182
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Prosecution Team Primary Contact:

Milasol Gaslan
Email: mgaslan@waterboards.ca.gov)
Phone: 951-782-4419
Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348

Discharger Primary Contact:

Olivia Tanson0
Email: otanson@torcousa.com
Phone: 909-XXX-XXXX
9145 Milliken Avenue
Rancho Cucamonga, CA 91730

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party must request party status by submitting a request in writing (with copies to the existing designated parties listed above) so that it is received by 5 p.m. on August 1, 2013 by Advisory Team Attorney David Rice, **Davidrice@waterboards.ca.gov**. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be received by the

Advisory Team, the person requesting party status, and all parties by 5 p.m. on August 8, 2013. The parties will be notified by 5 p.m. on August 15, 2013 in writing whether the request has been granted or denied.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: Each designated party shall have a combined 20 minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than August 19, 2013. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Regional Board Chair (at the hearing) upon a showing that additional time is necessary.

Submission of Evidence and Policy Statements

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Regional Board to consider. Evidence and exhibits already in the public files of the Regional Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, CCR, Section 648.3.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.
5. If the Discharger intends to argue an inability to pay the mandatory minimum penalty proposed in the Complaint (or an increased or decreased amount as may be imposed by the Regional Board), the Discharger should submit supporting evidence as set forth in the "MMP Fact Sheet" under "Factors that must be considered by the Board." See http://www.waterboards.ca.gov/santaana/water_issues/programs/investigations_enforcement/docs/ACLC_FACT_SHEET_3-30-09.pdf

All designated parties to the hearing shall submit all evidence in an electronic format to Advisory Team Attorney David Rice so that it is received by 5 p.m. on August 19, 2013, with a copy to all other designated parties.

Any designated party that would like to submit information that rebuts the information previously submitted by other designated parties shall submit an electronic copy of their rebuttal information to Advisory Team Attorney David Rice so that they are received by

5 p.m. on August 22, 2013 with a copy to all other designated parties. Rebuttal information shall be limited to the scope of the information previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but no later than August 19, 2013. Interested persons do not need to submit written non-evidentiary policy statements in order to speak at the hearing.

In accordance with Title 23, California Code of Regulations, Section 648.4, the Regional Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Regional Board may exclude evidence and testimony that is not submitted in accordance with this hearing procedure. Excluded evidence and testimony will not be considered by the Regional Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team by September 3, 2013 for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Request for Pre-hearing Conference

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code Section 13228.15. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code Section 11511.5. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, as early as practicable.

Evidentiary Objections

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection to the Advisory Team and all other designated parties so that it is received by 5 p.m. on September 9, 2013. The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Regional Board office at 3737 Main Street, Suite 500, Riverside, CA 92501 by contacting August Lucas (email: alucas@waterboards.ca.gov; phone: 951-782-7961). This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will

become a part of the administrative record absent a contrary ruling by the Regional Board Chair. Many of these documents are also posted on-line at: http://www.waterboards.ca.gov/santaana/public_notices/enforcement_actions.shtml. Although the web page is updated regularly, to assure access to the latest information, you may contact Milasol C. Gaslan (mgaslan@waterboards.ca.gov).

Questions

Questions concerning this proceeding may be addressed to the Advisory Team Attorney David Rice (Davidrice@waterboards.ca.gov).

IMPORTANT DEADLINES

(Note: the Regional Board is required to provide a hearing within 90 days of issuance of the Complaint (Water Code Section 13323).

- July 16, 2013: Prosecution Team issues the MMP Complaint and sends the Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice.
- August 1, 2013: Deadline to file objections to Hearing Procedures; requests for designated party status.
- August 8, 2013: Deadline for oppositions to requests for designated party status
- August 15, 2013: Advisory Team issues decision on requests for designated party status, if any.
- August 19, 2013: Deadline for submitting all evidentiary documents for the hearing; requests for additional time for presentation at the hearing.
- August 22, 2013: All Designated Parties' deadline for rebuttal information.
- September 3, 2013: All parties deadline for presentation materials (PowerPoint or other materials)
- September 9, 2013: All parties deadline for objections to presentation material submitted by other parties.
- September 13, 2013: Public Hearing.



Michael J. Adackapara
Division Chief
Regional Board Prosecution Team

7-16-2013

Date

Administrative Civil Liability Fact Sheet

The California Regional Water Quality Control Boards (Regional Water Boards) have the authority to impose administrative civil liabilities for a variety of violations under California Water Code section 13323. This document generally describes the process that the Regional Water Boards follow in imposing administrative civil liabilities.

The first step is the issuance of an administrative civil liability complaint (complaint) by the authorized Regional Water Board's Executive Officer or Assistant Executive Officer. The complaint describes the violations that alleged to have been committed, the Water Code provisions authorizing the imposition of liability, and the evidence that supports the allegations. **Any person who receives a complaint must respond timely as directed, or risk the Regional Water Board imposing the administrative civil liability by default.** The complaint is accompanied by a letter of transmittal, a Waiver Form and a Hearing Procedure. Each document contains important information and deadlines. You should read each document carefully. A person issued a complaint is allowed to represent him or herself. However, legal advice may be desirable to assist in responding to the complaint.

Parties

The parties to a complaint proceeding are the Regional Water Board Prosecution Team and the person/s named in the complaint, referred to as the "Discharger." The Prosecution Team is comprised of Regional Water Board staff and management. Other interested persons may become involved and may become "designated parties." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit non-evidentiary policy statements. If the matter proceeds to hearing, the hearing will be held before the full membership of the Regional Water Board (composed of up to nine board members appointed by the Governor) or before a panel of three board members. The board members who will hear the evidence and rule on the matter act as judges. They are assisted by an Advisory Team, which provides advice on technical and legal issues. Both the Prosecution Team and the Advisory Team have their own attorney. Neither the Prosecution Team nor the Discharger or his/her representatives are permitted to communicate with the board members or the Advisory Team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Procedure.

Complaint Resolution Options

Once issued, a complaint can lead to (1) withdrawal of the complaint; (2) withdrawal and reissuance; (3) payment and waiver; (4) settlement; or (5) hearing. Each of these options is described below:

whether the discharge is susceptible to cleanup or 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 benefit or savings, if any resulting from the violations, and other matters as justice may require (Cal. Water Code §§ 13327, 13385(e) & 13399). During the period provided to submit evidence (set forth in the Hearing Procedure) and at the hearing, the Discharger may submit information that it believes supports its position regarding the complaint. If the Discharger intends to present arguments about its ability to pay it must provide reliable documentation to establish that ability or inability. The kinds of information that may be used for this purpose include:

For an individual:

1. Last three years of signed federal income tax returns (IRS Form 1040) including schedules;
2. Members of household, including relationship, age, employment and income;
3. Current living expenses;
4. Bank account statements;
5. Investment statements;
6. Retirement account statements;
7. Life insurance policies;
8. Vehicle ownership documentation;
9. Real property ownership documentation;
10. Credit card and line of credit statements;
11. Mortgage loan statements;
12. Other debt documentation.

For a business:

1. Copies of last three years of company IRS tax returns, signed and dated,
2. Copies of last three years of company financial audits
3. Copies of last three years of IRS tax returns of business principals, signed and dated.
4. Any documentation that explains special circumstances regarding past, current, or future financial conditions.

For larger firms:

1. Federal income tax returns for the last three years, specifically:
 - IRS Form 1120 for C Corporations
 - IRS Form 1120 S for S Corporations
 - IRS Form 1065 for partnerships
2. A completed and signed IRS Form 8821. This allows IRS to provide the Regional Water Board with a summary of the firm's tax returns that will be compared to the submitted income tax returns. This prevents the submission of fraudulent tax returns;
3. The following information can be substituted if income tax returns cannot be made available:

Petitions

If the Regional Water Board issues an order requiring payment, the Discharger may challenge that order by filing a petition for review with the State Water Board pursuant to Water Code section 13320. More information on the petition process is available at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml

An order of the State Water Board resolving the petition for review of the Regional Water Board's Administrative Civil Liability Order can be challenged by filing a petition for writ of mandate in the superior court pursuant to Water Code section 13330.

Once an Administrative Civil Liability Order becomes final, the Regional Water Board or State Water Board may seek a judgment of the superior court under Water Code section 13328, if necessary, in order to collect payment of the administrative civil liability amount.

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