

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

In the Matter Of:

San Diego Truck Body and Equipment Inc.
8373 Broadway
Lemon Grove, CA 91945

WDID No. 9 371021218

Complaint No. R9-2010-0129

For

Administrative Civil Liability

**Violations of Order No. 97-03-DWQ and
Water Code Section 13260**

7 October 2010

YOU ARE HEREBY GIVEN NOTICE THAT:

1. San Diego Truck Body and Equipment Inc. (SDTBE) formerly located at 8373 Broadway, Lemon Grove, CA 91945, is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) must impose civil liability pursuant to Water Code section 13399.33 and may impose civil liability pursuant to Water Code sections 13261 and 13385.
2. On 18 October 2007 a Notice of Intent submitted by SDTBE, for coverage under Order No. 97-03-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001 Waste Discharge Requirements (WDRs) for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities, was processed.
3. Order No. 97-03-DWQ requires the submittal of an annual monitoring report by July 1st of each year.
4. Order No. 97-03-DWQ and Water Code section 13260 require the payment of an annual fee to retain coverage.
5. The integrity and effectiveness of the Industrial NPDES regulatory program relies upon discharger compliance accomplished by self-evaluation and self-reporting. Self-evaluation is accomplished by implementing the programs and provisions of Order No. 97-03-DWQ. Self-reporting is accomplished by the submission of an annual report as outlined in Order No. 97-03-DWQ Section B-14. The annual report includes a summary and evaluation of visual observations and sampling results, laboratory reports and an Annual Comprehensive Site Compliance Evaluation Report. Therefore, timely submittal of the required annual report is critically important for the evaluation of a facility's compliance with water quality standards.

ALLEGATIONS

6. SDTBE violated Monitoring and Reporting Requirements in Section 14 of Order No. 97-03-DWQ by submitting the Fiscal Year (FY) 2008-2009 annual monitoring report 355 days late.

In accordance with Water Code section 13399.31, the San Diego Water Board issued Notices of Violation dated 1 December 2009 and 9 March 2010. The San Diego Water Board notified SDTBE that the San Diego Water Board had not received the FY 2008-2009 annual report that was due 1 July 2009. The San Diego Water Board urged SDTBE to submit its annual report and alerted SDTBE that continued failure to submit the report would trigger an administrative civil liability complaint assessing monetary penalties. SDTBE submitted the FY 2008-2009 annual monitoring report on 21 June 2010, 355 days past the initial due date of 1 July 2009.

7. SDTBE violated Monitoring and Reporting Requirements Section 14 of Order No. 97-03-DWQ by submitting the Fiscal Year (FY) 2007-2008 annual monitoring report 155 days late.

In accordance with Water Code section 13399.31, the San Diego Water Board issued Notices of Violation dated 8 September 2008 and 17 October 2008. The San Diego Water Board notified SDTBE that the San Diego Water Board had not received the FY 2007-2008 annual report that was due 1 July 2008. The San Diego Water Board urged SDTBE to submit its annual report and alerted SDTBE that continued failure to submit the report would trigger an administrative civil liability complaint assessing monetary penalties. SDTBE submitted the FY 2007-2008 annual monitoring report on 12 December 2008, 155 days past the initial due date of 1 July 2008.

8. SDTBE violated Water Code section 13260(d)(1)(A), and Paragraph 3 and Attachment 3 of Order No. 97-03 by failing to pay the annual permit fee for coverage under Order No. 97-03-DWQ for FY 2007-2008. The fee of \$1,008 was invoiced by the State Water Board to SDTBE on 31 October 2008 indicating that payment was due by 30 November 2008. The State Water Board then notified SDTBE of the fee delinquency with a Demand for Payment letter on 12 December 2008 and a Notice of Violation on 27 January 2009. Both the Demand for Payment letter and the Notice of Violation informed SDTBE that failing to pay the fee could result in imposition of administrative civil liability of up to \$1,000 per day of violation.

MAXIMUM LIABILITY

9. Pursuant to Water Code section 13385, the maximum administrative civil liability which could be imposed by the San Diego Water Board for failing to comply with reporting requirements of Order No. 97-03-DWQ is ten thousand dollars (\$10,000) for each day in which the violation occurs. SDTBE violated Order No. 97-03-DWQ for 355 days (1 July 2009 to 21 June 2010). Therefore, the maximum administrative civil liability for failing to submit the FY 2008-2009 annual report to date is three million five hundred fifty thousand dollars (\$3,550,000).
10. Pursuant to Water Code section 13385, the maximum administrative civil liability which could be imposed by the San Diego Water Board for failing to comply with reporting requirements of Order No. 97-03-DWQ is ten thousand dollars (\$10,000) for each day in which the violation occurs. SDTBE violated Order No. 97-03-DWQ for 155 days (1 July 2008 to 2 December 2008). Therefore, the maximum administrative civil liability for failing to submit the FY 2007-2008 annual report is one million five hundred fifty thousand dollars (\$1,550,000).
11. Pursuant to Water Code section 13261(b)(1), the maximum administrative civil liability which could be imposed by the San Diego Water Board for the failure to pay a required fee is one thousand dollars (\$1,000) for each day in which the violation occurs. To date, SDTBE has violated Water Code section 13260 for 675 days (30 November 2008 to 6 October 2010). The violation continues, therefore the maximum administrative civil liability for failing to pay the annual fee to date is six hundred seventy five thousand dollars (\$675,000).

MINIMUM LIABILITY

12. Water Code section 13399.33, subdivisions (c) and (d) require that the San Diego Water Board impose a mandatory penalty of not less than \$1,000 and recover associated staff costs for any person who fails to submit an annual report in accordance with Water Code section 13399.31. There is no mandatory or minimum liability for failure to pay annual fees.

PROPOSED LIABILITY

13. It is recommended that the San Diego Water Board impose civil liability against SDTBE in the amount of four thousand nine hundred sixteen dollars (\$4,916) for the violations described in this complaint. If the discharger elects to contest this matter, the recommended liability may increase to recover additional necessary staff costs.

- a. FY 2008-2009 Annual Report Violation: It is recommended that the San Diego Water Board impose civil liability against SDTBE in the amount of one thousand three hundred dollars (\$1,300) for failure to submit the FY 2008-2009 annual report required by Order No. 97-03-DWQ. This includes the minimum penalty of \$1,000 plus staff costs of \$300.
- b. FY 2007-2008 Annual Report Violation: It is recommended that the San Diego Water Board impose civil liability against SDTBE in the amount of one thousand one hundred fifty dollars (\$1,150) for failure to submit the FY 2007-2008 annual report required by Order No. 97-03-DWQ. This includes the minimum penalty of \$1,000 plus staff costs of \$150.
- c. FY 2007-2008 Annual Fee Violation: It is recommended that the San Diego Water Board impose civil liability against SDTBE in the amount of two thousand four hundred sixty six dollars (\$2,466) for failure to pay the FY 2007-2008 annual fee. This includes staff costs to date of \$450.

The proposed liability for the annual fee violation is based on the penalty calculation methodology in the Enforcement Policy and consideration of the factors within Water Code section 13227. The proposed liability includes a substantial downward adjustment for "other factors as justice may require" in order to assess a reasonable civil liability for the subject violation. The penalty calculation methodology is detailed in the attached Technical Analysis for Complaint No. R9-2010-0129.

Dated this 7th day of October 2010.



JAMES G. SMITH

Assistant Executive Officer

Signed pursuant to the authority delegated
by the Executive Officer to the Assistant
Executive Officer.

Attachments: Technical Analysis for ACL Complaint No. R9-2010-0129

SMARTS: Violation ID 840411
Enforcement ID 402597
WDID No. 9 371021218

Step 1: Potential Harm Factor = n/a for non-discharge violations

Step 2: Assessments for Discharge Violations = n/a for non-discharge violations

Step 3: Per Day Assesments for Non-Discharge Violations					
Violations	Per Day Factor				Statutory Maximum Per Day [sec. 13350]
	Potential for Harm [minor, moderate, major]	Deviation from Requirement [minor, moderate, major]	Total Per Day Factor	Days of Violation	
Failure to pay FY 2007-2008 Annual Fee	minor	major	0.3	675	\$1,000

Initial Liability From Steps 1 - 3
 $(.3) \times (675) \times (\$1,000) = \$202,500$

Step 4: Adjustments					
Violations	Culpability [0.5 - 1.5]	Cleanup and Cooperation [0.75 - 1.5]	History of Violations	Multiple Violations (Same Incident)	Adjusted Days of Violation
Failure to pay FY 2007-2008 Annual Fee	1.5	n/a	n/a	n/a	28

Step 5: Total Base Liability Amount
 (Per day Factor x statutory maximum) x (Step 4 Adjustments)
 $(.3) \times (\$1,000) \times (1.5) \times (28) = \$12,600$

Step 8: Economic Benefit
 \$1,076

Step 6: Ability to Pay/Continue in Business
 [Yes, No, Partly, Unknown]
 yes

Step 9	
Minimum Liability Amount	Maximum Liability Amount
\$1,184	\$675,000

Step 7: Other Factors as Justice May Require	
Costs of Investigation and Enforcement	Other Factors
\$450	-\$10,584

Step 10: Final Liability Amount
 (total base liability) + (other factors)
 $(\$12,600) + (\$450) - (\$10,584) = \$2,466$