

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

In the matter of:)	Complaint No. R8-2003-0008
)	for
Steve Reich, Owner)	Administrative Civil Liability
Downtown Auto Wrecking)	
519 E. Mill Street)	
<u>San Bernardino, CA 92408</u>)	

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), may impose liability under Sections 13385 of the California Water Code.
2. A hearing in this matter has been scheduled for the Board's regular meeting on April 4, 2003 at the Cucamonga County Water District, 10440 Ashford Street, Rancho Cucamonga, CA 91730-3057. 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 civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days before the hearing date.
3. At the April 4, 2003 hearing, the 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.
4. Your facility, located at 519 E. Mill St., San Bernardino, 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). Your facility's WDID Number is 836S004480. The General Permit requires you to submit an annual report by July 1 of each year.
5. Prior to the July 1 deadline, a blank form for the annual report was mailed to you. Because the annual report was not submitted, a Notice of Noncompliance was issued to you on July 15, 2002. A second Notice of Noncompliance was issued on August 15, 2002. Both letters were returned to us with a notation from the postal service that the letters were refused by the addressee. The Notices of Noncompliance requested submittal of the completed annual report to the Board office by September 16, 2002, with a statement explaining why the annual report was not submitted by the July 1 deadline, and the measures that you will take to ensure that future annual reports are submitted on time. The August 15, 2002 Notice of Noncompliance also warned you of the mandatory fines for failure to

submit the annual report. On August 14, 2002, Board staff drove by your site and verified that the facility was still in business at the location indicated above. On September 16, 2002, Board staff spoke to Mr. Steve Reich, who said that he would submit the report by September 20, 2002. On September 23, 2002, Board staff again called Mr. Reich to remind him about the annual report and about the mandatory penalties for non-submittal of the annual report. On September 26, 2002, Mr. Reich submitted an incomplete annual report.

6. The annual report submitted on September 26, 2002 was a copy of the previous year's annual report, with all of the dates whited out and changed. The annual report also indicated that the facility did not have records of any visual inspections or monitoring records as required by the General Permit. A complete annual report was finally submitted on October 16, 2002. The facility violated the California Water Code and the Clean Water Act.
7. 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.
8. The facility is alleged to have violated the General Permit for 86 days (from July 1, 2002 to September 26, 2002, excluding both days). The maximum liability for this violation is \$860,000.
9. Section 13399.33(c) of the California Water Code provides that the Regional 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.
10. Board staff have examined the cost savings from the late submittal of the annual report and determined that it is less than \$50. Additionally, Downtown Auto Wrecking saved approximately \$360 (18 hours per year at \$20/hour) by not implementing an inspection and monitoring program during the year. This factor was also considered in establishing the amount of civil liability.
11. Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors include: nature, circumstances, extent, and gravity of the violation, and, with respect to the discharger, the ability to pay, any 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. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The factors are evaluated in the table on the following page.

Factor	Comment
A. Nature, Circumstances, Extent and Gravity of Violation	<p>The annual report was not submitted on time.</p> <p>Downtown Auto Wrecking refused to accept two written notifications and ignored two oral requests for submittal of the report.</p> <p>The report submitted was inaccurate and incomplete. The report indicates that the facility is not complying with the General Permit requirements. The facility did not conduct the required inspections or the monitoring and the facility has poor record keeping practices.</p>
B. Culpability	<p>The discharger violated the terms of the General Permit by failing to submit its annual report and failing to conduct and properly document its inspection and monitoring program. The facility did not respond in a timely manner to staff requests to submit the annual report. Downtown Auto Wrecking has not been responsive to Board staff's efforts to bring the site into compliance, and it has a long history of non-compliance, including submitting incomplete and/or inaccurate reports.</p>
C. Economic Benefit or Savings	<p>Cost savings from the late submittal of the annual report is estimated to be less than \$50. Additionally, Downtown Auto Wrecking saved approximately \$360 (18 hours per year at \$20/hour) by not developing and implementing an inspection and monitoring program.</p>
D. Prior History of Violations	<p>Board staff issued Notices of Non-Compliance or Notices of Violation for non-submittal of annual reports for 1992-93, 1995-96, 1996-97, 1999-00, 2000-01, and 2001-02. In 1998, an ACL was issued for non-submittal of the 1996-97 annual report. However, it was withdrawn based on the discharger's claim that the annual report was mailed to the wrong address. The facility has a history of submitting incomplete and/or inaccurate reports. On October 3, 2001, the facility was told of non-compliance issues based on an inspection conducted by US EPA contractors.</p> <p>The facility obtained coverage under the General Permit on April 6, 1992. Except for the timely submittal of the 1997-98 and 1998-1999 annual reports, the facility has been chronically late in submitting its annual reports.</p>
E. Staff Costs	<p>Regional Board staff spent approximately 10 hours investigating this incident (@\$70.00 per hour, the total cost for staff time is \$700).</p>

F. Ability to pay	The discharger has not provided any information to indicate that it is unable to pay the proposed amount. However, it is a small business with limited resources and Mr. Reich has indicated that business has not been good lately.
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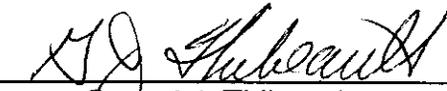
12. The total maximum liability for the violations of the General Permit is \$860,000. After consideration of the above factors, the Executive Officer proposes that civil liability be imposed on Downtown Auto Wrecking in the amount of \$2,500 for the violations cited above. An invoice for this amount is enclosed.

WAIVER OF HEARING

You may waive your right to a hearing. If you wish to waive your right to a hearing, please sign the attached waiver form and return it in the enclosed preprinted envelope, together with the bottom portion of the invoice and a check or money order payable to the State Water Resources Control Board for \$2,500.

If you have any questions, please contact Milasol Gaslan at (909) 782-4419, or contact the Regional Board's staff counsel, Jorge Leon, at (916) 341-5180.

2-19-03
Date


Gerard J. Thibeault
Executive Officer

In the matter of:)
)
Steve Reich, Owner)
Downtown Auto Wrecking)
519 E. Mill Street)
San Bernardino, CA 92408)

Complaint No. R8-2003-0008
for
Administrative Civil Liability

WAIVER OF HEARING

I agree to waive the right of Downtown Auto Wrecking to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2003-0008. I have enclosed a check or money order, made payable to the State Water Resources Control Board, in the amount of \$2,500. I understand that I am giving up Downtown Auto Wrecking's right to be heard and to argue against allegations made by the Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

Date

for DOWNTOWN AUTO WRECKING



California Regional Water Quality Control Board

Santa Ana Region



Gray Davis
Governor

Winston H. Hickox
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb8>
3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (909) 782-4130 - FAX (909) 781-6288

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.swrcb.ca.gov/rwqcb8.

February 19, 2003

Mr. Steve Reich
Downtown Auto Wrecking
519 E. Mill Street
San Bernardino, CA 92408

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2003-0008, DOWNTOWN AUTO WRECKING, SAN BERNARDINO, CALIFORNIA, WDID NO. 8 36S004480

Dear Mr. Reich:

We are enclosing a certified copy of Complaint No. R8-2003-0008, proposing administrative civil liability of \$2,500 for failure to submit the annual report and failure to conduct or document an adequate inspection and monitoring program, pursuant to the State's General Permit for Storm Water Discharges Associated with Industrial Activity (Order No. 97-03-DWQ, NPDES Permit No. CAS000001, General Permit). This is for your facility located at 519 E. Mill Street in the City of San Bernardino (WDID No. 8 36S004480). An invoice and a preprinted envelope are also enclosed.

If necessary, a public hearing on this matter will be scheduled for the Regional Board Meeting on April 4, 2003. The staff report regarding this complaint and the meeting agenda will be mailed to you not less than ten days prior to the Board meeting.

You have the option to waive your right to a hearing. Should you waive your right to a hearing and pay the proposed assessment, the Regional Board may not hold a public hearing on this matter. If you choose to waive your right to a hearing, please sign the enclosed Waiver Form and return it with a check for \$2,500 and the bottom portion of the invoice in the enclosed preprinted envelope. The check should be payable to the State Water Resources Control Board.

If you do not wish to waive your right to a hearing, you may wish to schedule a pre-hearing meeting with the Board staff. Should you wish to schedule a meeting, please call us prior to March 5, 2003. At that time, you may submit information that may not have been previously available to staff regarding this incident. The information should address the following:

1. Nature, circumstances, extent, and gravity of the violation;
2. Your ability to pay the proposed assessment;

California Environmental Protection Agency

3. Your degree of culpability;
4. Any prior history of violations;
5. Economic benefit or savings; and,
6. Such other matters as justice may require.

If you have any questions regarding this complaint, you may contact Mr. Muhammad Bashir at (909) 320-6396 or Ms. Milasol Gaslan at (909) 782-4419. All legal questions should be referred to our legal counsel, Mr. Jorge Leon, at (916) 471-5180.

Sincerely,



Gerard J. Thibeault
Executive Officer

Enclosures: Complaint No. R8-2003-0008, Waiver Form, Invoice, Preprinted Envelope

Cc: Regional Board
Bruce Fujimoto, State Water Resources Control Board, Division of Water Quality
Jorge Leon, State Water Resources Control Board, Office of the Chief Counsel
Tom Huetteman, US-EPA, Region 9 (WTR-7)
Naresh Varma, San Bernardino County Public Works Department
Michael Grubbs, City of San Bernardino

