

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

In the matter of:	)	<b>Complaint No. R8-2008-0014</b>
	)	<b>for</b>
<b>Lowes California RDC</b>	)	<b>Administrative Civil Liability</b>
<b>3894 Indian Avenue</b>	)	
<b>Perris, CA 92571</b>	)	
	)	
<b><u>Attention: Mr. Humberto Huerta</u></b>	)	

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 and 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 is scheduled for the Board's regular meeting on February 29, 2008 at the City Council Chambers, 25541 Barton Road, Loma Linda, CA 92354. 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 and the staff report pertaining to this item will be mailed to you not less than 10 days prior to the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed penalty or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Lowes California RDC, 3894 Indian Ave., Perris, 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 33I020543. The General Permit requires submittal of an annual report by July 1 of each year.
5. The 2006-2007 annual report, which was due on July 2, 2007 (July 1, 2007 being a Sunday), was not received from Lowes California RDC. A Notice of Non-Compliance (NNC) was issued to Lowes California RDC, by certified mail, on August 7, 2007. When Board staff received no response to the first NNC, a second NNC was issued on September 10, 2007, again by certified mail, and was received by the facility on September 12, 2007. In both NNCs, Board staff requested

submittal of the completed annual report, 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 are submitted on time. Both NNCs identified the mandatory minimum penalty for failure to submit the annual report. In the second NNC, Board staff requested submittal of the completed annual report by October 10, 2007.

6. On October 4, 2007, Board staff spoke to Mr. John Comstock and reminded him of the requirement to submit the annual report. During the phone conversation, Mr. Comstock indicated that Mr. Robert Gass, Senior HazMat Integrity Specialist of the HazMat Department for Lowes, would be submitting the report. On October 17, 2007, the annual report was submitted to the Board office.
7. The facility violated the General Permit, the federal Clean Water Act and the California Water Code by failing to submit the annual report by July 2, 2007.
8. 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.
9. Based on non-submittal of the 2006-2007 annual report, the facility is alleged to have violated the General Permit for 106 days (from July 2, 2007 to October 16, 2007). The maximum liability for this violation is \$1,060,000.
10. Section 13399.33(c) of the California Water Code requires that the Board impose a mandatory 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.
11. Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors are addressed in the following table:

Factor	Comment
<b>A. Nature, Circumstance, Extent, and Gravity of Violation</b>	Lowes California RDC did not submit its annual report in a timely manner. The facility is currently regulated under the State's General Permit, which requires them to submit the annual report and all related sampling results by July 1 of each year.
<b>B. Culpability</b>	Lowes California RDC failed to submit its annual report as required by the General Permit. Lowes California RDC received two certified letters and a phone call reminding them that the annual report was overdue and of the consequences of non-submittal.
<b>C. Economic Benefit or Savings</b>	Staff estimates that Lowes California RDC saved approximately \$1,000 during the 2006-2007 reporting year by not submitting its annual report by not collecting and analyzing storm water samples. The savings due to delaying the submittal of the annual report itself are negligible.
<b>D. Prior History of Violations</b>	Lowes California RDC obtained its coverage under the General Permit on November 15, 2006 and does not have any prior history of violations.
<b>E. Other Factors</b>	Board staff spent at least 15 hours of staff time in its efforts to bring this facility into compliance (at an average rate of \$115.00 per hour, the total cost for staff time is \$1,725).
<b>F. Ability to pay</b>	Lowes California RDC has not provided any information to indicate that it is unable to pay the proposed assessment.

14. After consideration of these factors, the Assistant Executive Officer proposes that civil liability be imposed on Lowes California RDC in the amount of \$2,725. This amount includes \$1,000 of mandatory penalty under Section 13399.33 and \$1,725 assessment under Section 13385 of the Water Code.

**WAIVER OF HEARING**

You may waive your right to a hearing. If you choose to do so, please sign the attached waiver form and mail it, together with a check payable to the State Water Resources Control Board for \$2,725. The waiver form and the check should be mailed to this office in the enclosed preprinted envelope.

If you have any questions, please contact Kathleen Fong at (951)774-0114 or Milasol C. Gaslan at (951) 782-4419.

1/3/08  
Date

Kurt V. Berchtold  
Kurt V. Berchtold  
Assistant Executive Officer

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Perris, CA 92571	)	
<u>Attention: Mr. Humberto Huerta</u>	)	

**WAIVER OF HEARING**

I agree to waive the right of Lowes California RDC, to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2008-0014.

I have enclosed a check, payable to the State Water Resources Control Board, in the amount of \$2,725. I understand that I am giving up the right of Lowes California RDC, to be heard and to argue against allegations made by the Assistant Executive Officer in this Complaint, and against the imposition of, and the amount of, the liability proposed.

\_\_\_\_\_  
Date

\_\_\_\_\_  
for Lowes California RDC