

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

|                                  |   |                                       |
|----------------------------------|---|---------------------------------------|
| <b>In the matter of:</b>         | ) | <b>Order No. R8-2008-0066</b>         |
|                                  | ) | <b>for</b>                            |
| <b>Niagara Bottling, LLC</b>     | ) | <b>Administrative Civil Liability</b> |
| <b>5675 East Concoors Street</b> | ) |                                       |
| <b>Ontario, CA 91764</b>         | ) |                                       |
|                                  | ) |                                       |
| <b><u>Attn: Brian Hess</u></b>   | ) |                                       |

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on June 6, 2008 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2008-0010, dated March 18, 2008 (revised on May 27, 2008), and on the recommendation for the imposition of penalties pursuant to Water Code Sections 13385 and 13399.33 in the amount of \$30,000. The Board finds as follows:

1. On April 17, 1997, the State Water Resources Control Board (SWRCB) adopted Waste Discharge Requirements, Order No. 97-03-DWQ (NPDES No. CAS000001), General Permit for Storm Water Discharges Associated with Industrial Activities (General Permit). The General Permit requires Niagara Bottling, LLC (Niagara Bottling) to obtain permit coverage prior to the start of operations. Board staff sent two certified Notices of Noncompliance (NNCs) to Niagara Bottling, the first one on December 28, 2006 and the second one on April 5, 2007. These NNCs notified Niagara Bottling that the facility is required to obtain coverage under the General Permit and that there is a mandatory penalty for not obtaining coverage under the General Permit. Coverage under the General Permit is obtained by filing a Notice of Intent (NOI). The second NNC required Niagara Bottling to submit the NOI by May 7, 2007. Niagara Bottling failed to comply with the NNCs. On December 26, 2007, State Board received an NOI from Niagara Bottling and the facility was issued WDID No. 8 36I021366.
2. Niagara Bottling failed to submit a NOI within 60 days from the date of the original NNC. Furthermore, Niagara Bottling was discharging unauthorized non-storm water without a permit in violation of Water Code Section 13376.
3. Water Code Section 13399.30 requires the Board to impose penalties described in subdivision (a) of Section 13399.33 if a discharger fails to submit the required NOI to the Board within sixty (60) days from the date on the original NNC.
4. Water Code Section 13399.33(a) requires the Board to assess a mandatory minimum penalty of five thousand dollars (\$5,000) for failure to obtain coverage under the

General Permit for each year of violation. Water Code Section 13385 provides for penalties for violations of Section 13376.

5. On March 19, 2008, the Assistant Executive Officer issued Administrative Civil Liability (ACL) Complaint No. R8-2008-0010 to Niagara Bottling proposing that the Board impose a penalty of \$55,000 on Niagara Bottling for the violations cited above. In response to additional information provided by Niagara Bottling on May 1, 2008, the March 19, 2008 ACL was revised on May 27, 2008. The revised ACL proposes a penalty of \$30,000.
6. Water Code Section 13385(e) requires the Regional Board to consider the following factors in determining the amount of civil liability imposed pursuant to that section: the nature, circumstances, extent of gravity of the violation or violations; 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 its ability to continue its business, any voluntary cleanup efforts undertaken, 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. Section 13385(e) further requires that, 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. These factors are evaluated in the following table:

| Factor  | Comment  |
|---|--|
| A. Nature, Circumstances, Extent and Gravity of Violation | The facility discharged wastewater from the sand filter units without prior authorization, and operated an industrial facility without General Permit coverage. City of Ontario and Regional Board staff repeatedly advised Niagara Bottling to obtain General Permit coverage and to implement pollution control measures at the site. Niagara Bottling did not develop and implement a site-specific SWPPP and pollutants were exposed to storm water. |
| B. Culpability  | The discharger failed to file a NOI for General Permit coverage after multiple requests over three years. However, the discharger obtained coverage for a similar facility it owned at a different location in Ontario. So the discharger was fully aware of the permit requirements. The discharger was not responsive to the City of Ontario or Regional Board staff efforts to bring the site into compliance.  |
| C. Economic Benefit or Savings                            | Niagara Bottling saved approximately \$6,416 by not obtaining General Permit coverage and by not developing and implementing a SWPPP and Monitoring and Reporting program.   |

|                                |  |
|--------------------------------|--|
| D. Prior History of Violations | No prior history of violations.  |
| E. Staff Costs                 | Regional Board staff spent approximately 39 hours investigating this incident. The total cost for staff time is \$3,960. |
| F. Ability to pay              | The discharger has not provided any information to indicate that it is unable to pay the proposed amount.                |

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.

**IT IS HEREBY ORDERED** that, pursuant to California Water Code Sections 13385 and 13399.33(a), a penalty shall be imposed on Niagara Bottling, in the amount of \$15,000, amending the proposed penalty in Complaint No. R8-2008-0010 (as revised on May 27, 2008) for the violations cited, payable as set forth below.

1. Niagara Bottling shall pay \$15,000 to the State Water Resources Control Board by July 7, 2008.

The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

Pursuant to Water Code Section 13320, you may petition the State Water Resources Control Board for review of this Order. If you choose to do so, you must submit the petition to the State Board within 30 days of the Regional Board's adoption of this Order.

I, Gerard J. Thibeault, 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 June 6, 2008.

  
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Gerard J. Thibeault  
Executive Officer