

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

In the matter of:)	Complaint No. R8-2010- 0067
)	for
Oakley, Inc.)	Mandatory Minimum Penalty and Staff Costs
1 Icon)	
Foothill Ranch, CA 92610)	
)	
Attention: John Ince-Scott)	

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 January 21, 2011, at the Loma Linda City Council Chambers, 25541 Barton Road, City of Loma Linda, California. 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. An agenda for the meeting will be mailed to you not less than 10 days before the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed Mandatory Minimum Penalty and assessment of 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.
4. Oakley, Inc. (hereinafter Oakley), located at 1 Icon in Foothill Ranch, 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 30I017498. The General Permit requires submittal of an annual report by July 1 of each year.
5. Oakley's 2009-2010 annual report was not received by Board staff by the July 1, 2010 deadline. Therefore a Notice of Non-Compliance (NNC) was issued to Oakley, by certified mail, on July 30, 2010. The return receipt showed that it was received on July 31, 2010. When Board staff received no response to the first NNC, a second NNC was issued on August 30, 2010. According to the return receipt, the second NNC was received on August 31, 2010. In both NNCs, Board staff requested submittal of the completed annual report and reminded Oakley of the mandatory minimum penalty for late submittal of the annual report. The second NNC requested that the annual report be submitted by September 28, 2010 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 are submitted on time. Both NNCs are attached to this Complaint as Exhibits 1 and 2.
6. On September 27, 2010, Board staff left a voice mail message for Mr. John Ince-Scott, Oakley's contact, informing him of the mandatory minimum penalty if the annual report

was not submitted by September 28, 2010. On September 28, 2010, Board staff again spoke with Mr. Ince-Scott and staff was told that he would complete the 2009-2010 annual report and submit it by the end of the day. To date, the annual report has not been received by the Regional Board office. Oakley violated the General Permit, the Federal Clean Water Act and the California Water Code by failing to submit the annual report by July 1, 2010.

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. Based on non-submittal of the 2009-2010 annual report, Oakley is alleged to have violated the General Permit for 166 days (from July 2, 2010 to December 15, 2010, the date of issuance of this complaint). The total maximum liability for this violation is \$1,660,000 (166 days of non-compliance x \$10,000/day).
9. Section 13399.33(c) of the California Water Code requires that the Regional Board 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 Regional Board recover the costs incurred by the Regional Board with regard to those persons.

PROPOSED MANDATORY MINIMUM PENALTIES AND ASSESSMENT OF COSTS

1. Pursuant to Section 13399.33(c) the Division Chief proposes that the mandatory minimum penalty of \$1,000 be imposed on Oakley for the violation cited above. In addition, the Division Chief proposes that staff costs in the amount of \$750 be recovered from Oakley. The total proposed mandatory minimum penalty and staff costs amount is \$1,750.
2. Notwithstanding the issuance of this Complaint, the Regional Board retains the authority to assess additional penalties for violations of the requirements of Oakley's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.
3. 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).

12/15/2010
Date



Michael J. Adackapara, Division Chief



California Regional Water Quality Control Board Santa Ana Region



Linda S. Adams
Secretary for
Environmental Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221
www.waterboards.ca.gov/santaana

Arnold Schwarzenegger
Governor

WAIVER FORM FOR MANDATORY MINIMUM PENALTY COMPLAINT NO. R8-2010-0067

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

I am duly authorized to represent Oakley, Inc. (hereinafter "Oakley") in connection with Mandatory Minimum Penalty Complaint No. R8-2010-0067 (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."

Check here and sign below if Oakley waives the hearing requirement and will pay the liability in full.

- a. I hereby waive any right Oakley may have to a hearing before the Regional Board.
- b. I certify that Oakley will remit payment for the proposed penalty in the full amount of one thousand seven hundred fifty dollars (\$1,750) by check that references "Complaint No. R8-2010-0067" made payable to the Waste Discharge Permit Fund. Payment must be received by the Regional Board office no later than **February 03, 2011** 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 Oakley having waived the right to contest the allegations in the Complaint and the imposition of penalty.
- 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 Oakley to further enforcement, including additional penalties.

(Print Name and Title)

(Signature)

(Date)

California Environmental Protection Agency





California Regional Water Quality Control Board

Santa Ana Region



Linda S. Adams
Secretary for
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Arnold Schwarzenegger
Governor

July 30, 2010

Oalkey Inc
1 Icon
Foothill Ranch, California 92610

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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) WDID No. 8 301017498

Dear John Ince Scott:

Your facility located at 1 Icon, in the city of Foothill Ranch, is regulated under the General Permit and is identified by WDID No. **8 301017498**. Section B.16 of the General Permit requires you to submit an annual report by July 1 of each year. According to our records, we have not received your 2009-2010 annual report.

Currently you are in violation of the General Permit, the California Water Code and the federal Clean Water Act for failure to submit a complete 2009-2010 annual report. We request that you submit a complete 2009-2010 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 at http://www.waterboards.ca.gov/water_issues/programs/stormwater/annualreport.shtml). You can also submit your annual report electronically via SMARTS (Storm Water Multiple Application and Report Tracking System). To register for SMARTS, download the application form at https://smarts.waterboards.ca.gov/smarts/faces/help/lrp_registration.pdf.

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 insure 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 mandatory minimum penalty of \$1,000 to those permittees that do not submit their annual reports after notification.

If you need assistance in completing the annual report or if you have any questions, please contact Michelle Beckwith by phone at (951) 782-4433 or by e-mail at mbeckwith@waterboards.ca.gov.

Sincerely,

Michael J. Adackapara
Division Chief

California Environmental Protection Agency





California Regional Water Quality Control Board

Santa Ana Region



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Arnold Schwarzenegger
Governor

August 30, 2010

Oalkey Inc
1 Icon
Foothill Ranch, California 92610

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOTICE OF NON-COMPLIANCE: 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) WDID NO. 8 30I017498 SECOND NOTICE

Dear John Ince Scott:

Your facility located at 1 Icon, in the city of Foothill Ranch, is regulated under the General Permit and is identified by WDID No. 8 30I017498. Section B.16 of the General Permit requires you to submit an annual report by July 1 of each year. According to our records, we have not received your July 1, 2010 annual report.

Currently you are in violation of the General Permit, the California Water Code and the federal Clean Water Act for failure to submit a complete 2009-2010 annual report. We request that you submit a complete 2009-2010 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 at http://www.waterboards.ca.gov/water_issues/programs/stormwater/annualreport.shtml). You can also submit your annual report electronically via SMARTS (Storm Water Multiple Application and Report Tracking System). To register for SMARTS, download the application form at https://smarts.waterboards.ca.gov/smarts/faces/help/lrp_registration.pdf.

This is your second notice. The first notice was dated and sent on 7/30/10. To date, we have not received a response to that notice. Please note that Section 13399.31 of the California Water Code stipulates failure to submit the requested information by the September 28 due date will result in a mandatory minimum fine of \$1,000 to those permittees that do not submit their annual reports within 60 days of notification. Further enforcement action, including civil monetary penalties of up to \$10,000 for each day of violation, may result.

If you need assistance in completing the annual report or if you have any questions, please contact Michelle Beckwith by phone at (951) 782-4433 or by e-mail at mbeckwith@waterboards.ca.gov.

Sincerely,

Michael J. Adackapara
Division Chief

California Environmental Protection Agency

