

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

In the matter of:)	
)	
Montclair Auto Dismantling, Inc.)	Complaint No. R8-2011-0012
4015 State Street)	for
Montclair, CA 91763)	Mandatory Minimum Penalty and Staff Costs
)	
Attention: Quay Benh Phun)	

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 March 4, 2011 at the City Council Chambers of Loma Linda, 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 a mandatory penalty and staff costs 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 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. Montclair Auto Dismantling, Inc. (Montclair Auto), located at 4015 State Street in Montclair, 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 361020013. The General Permit requires submittal of an annual report by July 1 of each year.
5. Montclair Auto's 2009-2010 annual report was not received by Board staff by the July 1, 2010 deadline. Therefore, on July 29, 2010, a Notice of Non-Compliance (NNC) was issued to Montclair Auto, by certified mail (Exhibit 1). 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 September 22, 2010 (Exhibit 2). According to the return receipt, the second NNC was received on September 23, 2010. In both NNCs, Board

staff requested submittal of the completed annual report and reminded Montclair Auto of the mandatory minimum penalty for late submittal of the annual report. The second NNC requested that the annual report be submitted by October 21, 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.

6. Regional Board staff attempted to contact Mr. Quay Phun by phone on three different occasions and was not able to reach him. Telephone messages left for him were not returned. Subsequently, Regional Board staff conducted a joint inspection with the City on November 8, 2010 to verify if the business was still in operation. Upon arriving at the facility, staff spoke with Mr. Nam Phun, who identified himself as the business partner of the facility owner. Regional Board staff informed Mr. Nam Phun about the delinquent 2009-10 annual report and the mandatory penalty for non-submittal of the annual report.
7. The Secretary of State's website indicates that Montclair Auto Dismantling, Inc., is registered as a corporation and Mr. Quay Benh Phun is the Agent for Service of Process for this corporation. The NOI for this facility also indicates that Mr. Quay Phun is the owner of the facility. To date, the annual report has not been received by the Regional Board office. This facility 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.
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 2009-2010 Annual Report, the facility is alleged to have violated the General Permit for 194 days (from July 2, 2010 to January 11, 2011, the date of issuance of this Complaint). The total maximum liability for this violation is \$1,940,000 (194 days of noncompliance x \$10,000/day).
10. 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.

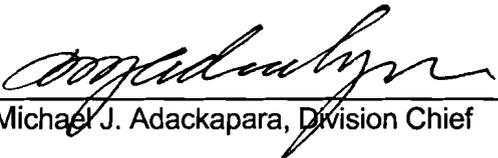
PROPOSED ADMINISTRATIVE CIVIL LIABILITY AND ASSESSMENT OF COSTS

11. Pursuant to Section 13399.33(c) the Division Chief proposes that the mandatory minimum penalty of \$1,000 be imposed on Montclair Auto Dismantling for the violation cited above. In addition, the Division Chief proposes that staff costs in the amount of \$1,200 (8 hours at \$150 per hour=\$1,200) be recovered from Montclair Auto. The total proposed mandatory minimum penalty and staff costs amount is \$2,200.

12. Notwithstanding the issuance of this Complaint, the Regional Board retains the authority to assess additional penalties for violations of the requirements of Montclair Auto's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.

13. 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).

01/11/2011
Date



Michael J. Adackapara, Division Chief