

State of California
California Regional Water Quality Control Board
Santa Ana Region

February 29, 2008

ITEM: 19

SUBJECT: Order No. R8-2008-0038 Affirming Administrative Civil Liability
Complaint No. R8-2007-0088, NYK Logistics (Americas), Inc., Mira
Loma, Riverside County

BACKGROUND

On December 21, 2007, the Assistant Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2007-0088 (copy attached) to NYK Logistics (Americas), Inc. (NYK), for alleged violations of the State's General Permit for Storm Water Discharges Associated with Industrial Activity, Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). In the ACL, the Assistant Executive Officer proposed an assessment of \$6,000 for the alleged violations.

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board) is whether to affirm, reject, or modify the proposed administrative civil liability assessment against NYK.

ACL No. R8-2007-0088 was issued by the Assistant Executive Officer to NYK for violations of the General Permit, including the failure of NYK to submit the 2006-2007 annual report by the July 2, 2007 deadline.

DISCUSSION

The General Permit regulates the discharge of storm water from industrial sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and a fee (annual fee of \$830), with the State Water Resources Control Board.

On April 8, 1999, NYK filed a NOI and obtained coverage under the General Permit, WDID No. 8 331015053. The General Permit requires submittal of an annual report by July 1 of each year.

NYK did not submit the annual report by the July 2, 2007 deadline (July 1, 2007 was a Sunday). Subsequently, Board staff sent two certified Notices of Noncompliance (NNCs) to NYK. The first NNC was mailed on August 7, 2007 by

certified mail. The second NNC was issued on September 10, 2007, again by certified mail. In addition, Board staff spoke to Mr. Butch Doser on September 10, 2007 and reminded him that the annual report was overdue and that he would be receiving a second NNC.

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 2 deadline, and the measures that would be taken to ensure that future annual reports are submitted on time. Both NNCs also warned about the mandatory 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.

On October 3, 2007, Board staff spoke to Mr. Butch Doser and again reminded him to submit the annual report. Mr. Doser indicated that the report would be sent as soon as possible. On December 17, 2007, the Assistance Executive Officer issued Administrative Civil Liability (ACL) Complaint No. R8-2007-0088 to NYK.

After receiving the ACL, Board staff communicated with Mr. Cameron Smith and Ms. Veronica, who indicated that the annual report would be submitted soon. As of February 14, 2008, the report had not been received.

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 2, 2007.

NYK failed to submit the required annual report to the Regional Board office within 60 days from the date on which the original NNC was sent. Under those circumstances, Water Code Section 13399.33(c) requires that a mandatory penalty shall be imposed by the Regional Board in an amount that is not less than one thousand dollars (\$1,000). In addition, Water Code Section 13385(c) provides that administrative civil liability may be imposed on any person who violates waste discharge requirements in an amount not to exceed \$10,000 per day of violation.

Based on non-submittal of the 2006-2007 annual report, the facility is alleged to have violated the General Permit for 168 days (from July 2, 2007 to December 17, 2007, the date of issuance of the ACL). The maximum liability for this violation is \$1,680,000.

A review of NYK's permit compliance history reveals that the facility has been chronically late in submitting its annual reports except for the timely submittal of the 1998-99 and 2001-02 annual reports. ACL Complaint No. R8-2005-0026 was issued to the facility in 2005 for non-submittal of the 2003-04 annual report and NYK paid a penalty of \$1,000.

A detailed discussion of the factors under Section 13385(e) is included in Complaint No. R8-2007-0088 (attached). After consideration of those factors, including the history of violations, the Assistant Executive Officer proposed that civil liability be imposed on NYK in the amount of \$6,000.

STATEWIDE ENFORCEMENT POLICY

On February 19, 2002, the State Water Resources Control Board adopted a State Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are consistent, predictable, and fair. The above-described administrative civil liability complaint is in accordance with the Statewide Enforcement Policy.

RECOMMENDATION

Board staff recommends that the Board affirm the assessment of \$6,000 specified in the Administrative Civil Liability Complaint issued by the Assistant Executive Officer on December 17, 2007, by adopting Order No. R8-2008-0038.

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

In the matter of:)	Order No. R8-2008-0038
)	for
NYK Logistics (Americas), Inc.)	Administrative Civil Liability
3285 De Forest Street)	
Mira Loma, CA 91752)	
)	
<u>Attention: Mr. Cameron Smith</u>)	

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on February 29, 2008 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2007-0088, dated December 17, 2007, and on the recommendation for the imposition of administrative civil liability pursuant to California Water Code Sections 13385 and 13399.33 in the amount of \$6,000. 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 (Permit). NYK Logistics (Americas), Inc. (NYK), located at 3285 De Forest Street, Mira Loma, is authorized to discharge storm water under the Permit, WDID 8 33I015053.
2. The Permit requires submittal of an annual report by July 1 of each year. NYK did not submit the annual report by July 2, 2007 (July 1, 2007 was a Sunday). Subsequently, Board staff sent two certified Notices of Non-Compliance (NNCs) to NYK. The first NNC was mailed to NYK, 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. Additionally, staff spoke to Mr. Butch Doser on September 10, 2007 to remind him that the annual report was overdue and that the facility would be receiving a second NNC.
3. 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 2 deadline, and the measures that would be taken to ensure that future annual reports are submitted on time. Both NNCs also warned about the mandatory 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.

4. In addition, Board staff spoke to Mr. Butch Doser on October 3, 2007 reminding him that the annual report must be submitted by October 10, 2007, or a penalty would be assessed. Mr. Doser indicated that the report would be sent as soon as possible.
5. 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.
6. On December 17, 2007, the Assistant Executive Officer issued Administrative Civil Liability (ACL) Complaint No. R8-2007-0088 to NYK proposing that the Board impose civil liability in the amount of \$6,000 on NYK for its failure to submit the annual report by the due date.
7. After receiving the ACL, Mr. Cameron Smith and Ms. Veronica communicated with Board staff and indicated that the annual report would be submitted soon. The report has not been received.
8. Water Code Section 13399.33(c) requires the Board to assess a mandatory penalty of one thousand dollars (\$1,000) for failure to submit the annual report. Water Code Section 13385(a)(2) provides that any person who violates waste discharge requirements issued pursuant to 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 \$10,000 per day of violation. The total maximum liability for failure to submit the annual report is \$1,360,000.
9. Water Code Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. A review of NYK's permit compliance history reveals that the facility has been chronically late in submitting its annual reports except for the timely submittal of the 1998-99 and 2001-02 annual reports. An ACL (R8-2005-0026) for \$1,000 was issued to NYK in 2005 for non-submittal of the 2003-04 annual report. NYK paid the assessment at that time. These and other factors were considered by the Assistant Executive Officer in establishing the amount of civil liability.
10. 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, administrative civil liability shall be imposed on NYK, in the amount of \$6,000, as proposed in Complaint No. R8-2007-0088 for the violations cited, payable as set forth below.

1. NYK shall pay \$6,000 to the State Water Resources Control Board by March 31, 2008.

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

Pursuant to Water Code Section 13320, NYK may petition the State Water Resources Control Board for a 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 February 29, 2008.

Gerard J. Thibeault
Executive Officer

Tentative

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

In the matter of:)	Complaint No. R8-2007-0088
)	for
NYK Logistics (Americas), Inc.)	Administrative Civil Liability
3285 De Forest Street)	
Mira Loma, CA 91752)	
)	
<u>Attention: Mr. Butch Doser</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), must impose liability under Section 13399.33 of the California Water Code, and may impose additional liability under Section 13385 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 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 civil liability by the Board. The staff report pertaining to this item and the agenda for the meeting 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 to refer the matter to the Attorney General for recovery of judicial civil liability.
4. NYK Logistics (Americas), Inc. (NYK), located at 3285 De Forest Street, Mira Loma, 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 33I 015053. The General Permit requires submittal of an annual report by July 1 of each year. In 2006, the facility indicated that it changed the facility name from United Warehouse and Distribution Corporation to its current name, NYK Logistics (Americas), Inc., UWDC Division.
5. The 2006-2007 annual report, which was due on July 2, 2007 (July 1, 2007 was a Sunday), was not received from NYK. A Notice of Non-Compliance (NNC) was issued to NYK, by certified mail, on August 7, 2007.

5. The 2006-2007 annual report, which was due on July 2, 2007 (July 1, 2007 was a Sunday), was not received from NYK. A Notice of Non-Compliance (NNC) was issued to NYK, by certified mail, on August 7, 2007.
6. On September 10, 2007, Board staff spoke to Mr. Butch Doser and reminded him that the annual report was overdue and that he would be receiving a second NNC. He indicated that the first NNC was received by his office and the report would be submitted shortly. A second NNC was issued on September 10, 2007, again by certified mail.
7. In both NNCs, Board staff requested submittal of the annual report, a statement explaining why the annual report was not submitted by the 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 annual report by October 10, 2007.
8. On October 3, 2007, Board staff again spoke to Mr. Butch Doser and reminded him to submit the annual Report. Mr. Doser indicated that the report would be sent as soon as possible. As of the date of this complaint, the annual report has not been received.
9. 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.
10. 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.
11. Based on non-submittal of the 2006-2007 annual report, the facility is alleged to have violated the General Permit for 168 days (from July 2, 2007 to December 17, 2007). The maximum liability for this violation is \$1,680,000.
12. 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.
13. Section 13385(e) of the California Water Code specifies factors that the Board shall consider in establishing the amount of civil liability. These factors are addressed in the table below:

Factor	Comment
A. Nature, Circumstance, Extent, and Gravity of Violation	NYK did not submit its annual report for 2006-07. NYK obtained coverage under the General Permit on April 8, 1999. The facility has been regulated under the General Permit for at least 8 full reporting years. The facility should be fully aware of the reporting requirements, including the need to collect and analyze storm water runoff from the facility.
B. Culpability	NYK failed to submit its annual report as required by the General Permit. The facility was notified twice by certified mail and a number of times by phone. The facility was also warned about the mandatory penalties for non-submittal of the annual report. The facility has not yet submitted the annual report.
C. Economic Benefit or Savings	Staff estimates that NYK saved less than \$1,000 during the 2006-2007 reporting year by not submitting its annual report (assuming that the facility did not collect and analyze storm water samples). The savings due to delaying the submittal of the annual report itself are negligible.
D. Prior History of Violations	NYK has a long history of non-compliance. The facility obtained coverage under the General Permit on April 8, 1999. Except for the timely submittal of the 1998-99 and 2001-02 annual reports, the facility has been chronically late in submitting its annual reports. Board staff issued Notices of Non-Compliance for non-submittal of annual reports for 2000-01, 2002-03, 2003-04, 2004-05, and 2006-07. In 2005, the facility received Administrative Civil Liability Complaint No. R8-2005-0026 for non-submittal of the 2003-04 annual report and paid a penalty of \$1,000.
E. Other Factors	Board staff spent at least 15 hours in its efforts to bring this facility into compliance with respect to submittal of the annual report (@\$115 per hour, the total cost for staff time is \$1725).
F. Ability to pay	NYK has not provided any information to indicate that it is unable to pay the proposed assessment.

After consideration of these factors, the Assistant Executive Officer proposes that civil liability be imposed on NYK in the amount of \$6,000 for the violations cited above. This amount includes \$1,000 of mandatory penalty under Section 13399.33 and \$5,000 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 the amount of \$6,000. The waiver form and the check should be mailed to this office in the enclosed pre-printed envelope.

If you have any questions, please contact Muhammad Bashir at 951-320-6396, or Michael J. Adackapara at (951)782-3238.

12/17/07
Date

Kurt V. Berchtold
Kurt V. Berchtold
Assistant Executive Officer

In the matter of:)
)
NYK Logistics (Americas), Inc.)
3285 De Forest Street)
Mira Loma, CA 91752)
)
Attention: Mr. Butch Doser)

Complaint No. R8-2007-0088
for
Administrative Civil Liability

WAIVER OF HEARING

I agree to waive the right of NYK Logistics (Americas), Inc., to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2007-0088.

I have enclosed a check, made payable to the State Water Resources Control Board, in the amount of \$6,000. I understand that I am giving up the right of NYK Logistics (Americas), Inc., 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 NYK Logistics (Americas), Inc.