

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

June 6, 2008

ITEM: 13

SUBJECT: Order No. R8-2008-0065 Affirming Administrative Civil Liability for Amazing Steel Company (Amazing Steel), Montclair, San Bernardino County

BACKGROUND

On January 3, 2008, the Assistant Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2008-0013 to Amazing Steel 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). Complaint No. R8-2008-0013 was later withdrawn by the Assistant Executive Officer and a new complaint, Complaint No. R8-2008-0055 was issued on March 28, 2008. The Assistant Executive Officer proposed an assessment of \$2,725 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 Amazing Steel. Tentative Order No. R8-2008-0065 would affirm the assessment.

ACL No. R8-2008-0055 was issued by the Assistant Executive Officer to Amazing Steel for violations of the General Permit, including the failure of Amazing Steel 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 January 13, 2006, Amazing Steel filed a NOI and obtained coverage under the General Permit, WDID No. 8 361020019. The General Permit requires submittal of an annual report by July 1 of each year. Amazing Steel did not submit the 2006-2007 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 Amazing Steel. The first NNC was mailed on August 7, 2007, and was received by the facility on August 8, 2007. The second NNC was issued on September 10, 2007, again by certified mail. The facility received the second NNC on September 11, 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 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. In addition, Board staff left messages for Mr. Mitchell (owner of Amazing Steel) on October 3, 2007, once again reminding him to submit the annual report by October 10, 2007. On November 16, 2007, a copy of the annual report was submitted.

On January 3, 2008, the Assistant Executive Officer issued Administrative Civil Liability (ACL) Complaint No. R8-2008-0013 to Amazing Steel for failure to submit the annual report by the July 2, 2007 deadline. After receiving the ACL on January 4, 2008, Mr. Mitchell contacted Board staff and scheduled a pre-hearing meeting for January 17, 2008. Despite staff's reminder, Mr. Mitchell did not attend the pre-hearing meeting.

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.

Amazing Steel 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, California Water Code Section 13399.33(c) requires that a mandatory penalty of not less than one thousand dollars (\$1,000) be imposed on the discharger by the Regional Board. 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 136 days (from July 2, 2007 to November 15, 2007). The maximum liability for this violation is \$1,360,000.

A review of Amazing Steel's permit compliance history reveals that the facility was late in submitting its 2005-06 annual report. A detailed discussion of the factors under Section 13385(e) is included in Complaint No. R8-2008-0055 (attached). After consideration of those factors, including the history of violations, the Assistant

Executive Officer proposed that civil liability be imposed on Amazing Steel in the amount of \$2,725.

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 \$2,725 specified in the Administrative Civil Liability Complaint issued by the Assistant Executive Officer on March 28, 2008, by adopting Order No. R8-2008-0065.

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

In the matter of:)	Order No. R8-2008-0065
)	for
Amazing Steel Company)	Administrative Civil Liability
4564 Mission Blvd.)	
Montclair, CA 91763)	
)	
<u>Attention: Mr. James Mitchell</u>)	

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. R8-2008-0055, dated March 28, 2008, 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 \$2,725. 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). Amazing Steel Company (Amazing Steel), located at 4564 Mission Blvd., Montclair, is authorized to discharge storm water under the Permit, WDID 8 36I020019. The General Permit requires submittal of an annual report by July 1 of each year. Amazing Steel did not submit the 2006-2007 annual report by July 2, 2007 (July 1, 2007 was a Sunday). Subsequently, Board staff sent two certified Notices of Non-Compliance (NNCs) to Amazing Steel. The first NNC was mailed to Amazing Steel, by certified mail, on August 7, 2007, and was received by the facility on August 8, 2007. When Board staff received no response to the first NNC, a second NNC was issued on September 10, 2007, again by certified mail. The facility received the second NNC on September 11, 2007.
2. 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.

3. In addition, Board staff left a message for Mr. Mitchell on October 3, 2007 reminding him that the annual report must be submitted by October 10, 2007, or a penalty would be assessed for the non-submittal of the annual report.
4. On November 16, 2007, the annual report was submitted to the Board office. 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.
5. On January 3, 2008, the Assistant Executive Officer issued Administrative Civil Liability (ACL) Complaint No. R8-2008-0013 to Amazing Steel proposing that the Board impose civil liability in the amount of \$2,725 on Amazing Steel for failure to submit the annual report by the due date. The facility received the ACL Complaint on January 4, 2008 (confirmed by the return receipt). Shortly after that, Mr. Mitchell contacted Board staff and scheduled a pre-hearing meeting for January 17, 2008. Mr. Mitchell did not attend the pre-hearing meeting. ACL Complaint No. R8-2008-0013 was later withdrawn, and the Assistant Executive Officer issued ACL Complaint No. R8-2008-0055 on March 28, 2008 replacing Complaint No. R8-2008-0013.
6. 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. Additionally, 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 (for 136 days from July 3 to November 15, 2007).
7. Water Code Section 13385(e) specifies factors that the Board shall consider in establishing an amount of civil liability, including prior history of violations. Amazing Steel was late in submitting its 2005-06 annual report and a Notice of Non-Compliance was issued. These and other factors were considered by the Assistant Executive Officer in establishing the amount of civil liability. These factors are discussed in the attached ACL.
8. 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 13399.33, an administrative civil liability shall be imposed on Amazing Steel, in the amount of \$2,725, as proposed in Complaint No. R8-2008-0055 for the violations cited, payable as set forth below.

1. Amazing Steel shall pay \$2,725 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, Amazing Steel may petition the State Water Resources Control Board for a review of this Order. If you choose to do so, you must submit a 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.

Gerard J. Thibeault
Executive Officer