

ITEM No. 9

November 21, 2008

ERRATA SHEET

CHANGES TO ORDER NO. R8-2008-0074

Administrative Civil Liability Complaint

Carson Hall, Jr.

Riverside County

(Deleted language is ~~strike-through~~)

(Additional language is in **bold**)

Paragraph no. 1 is amended as follows:

1. On August 19, 1999, the State Water Resources Control Board (SWRCB) adopted Waste Discharge Requirements, Order No. 99-08-DWQ (NPDES No. CAS000002), General Permit for Discharges of Storm Water Associated with Construction Activity (General Permit). The General Permit requires dischargers of storm water from construction sites to obtain permit coverage prior to the start of construction activities. **In or around July 2005**, Mr. Hall owned APNs 242-070-033, 242-070-034 (~~this parcel has since been sold~~) and 242-070-036. In or around July 2005, Mr. Hall started construction activities on these parcels without first obtaining General Permit coverage. Board staff sent two certified Notices of Noncompliance (NNCs) to Mr. Hall, the first one on July 7, 2006 and the second one on August 15, 2006. Mr. Hall received the first NNC. The second NNC was returned unclaimed. Board staff sent a third NNC by regular mail on December 12, 2007. Mr. Hall acknowledged receipt of the third NNC. These NNCs notified Mr. Hall 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 final NNC required Mr. Carson Hall to submit the NOI by January 11, 2008. Mr. Carson Hall failed to comply with the NNCs. As of November **21** ~~7~~, 2008, Mr. Hall has not obtained General Permit coverage.

Paragraph no. 4 is amended as follows:

Water Code Section 13399.33(a) requires the Board to ~~assess a mandatory penalty of five thousand dollars (\$5,000) per year of noncompliance or fraction thereof.~~ **impose civil liability administratively in an amount that is not less than \$5,000.00 per year of noncompliance or fraction thereof, unless the Regional Board makes express findings setting forth the reasons for its failure to do**

so, based on factors provided in Water Code section 13399.33(a)(2). The consideration of these factors is set forth below.

Paragraph no. 6 is amended as follows:

Water Code Section 13399.33(a)(2) requires the Regional Board to consider the following factors in determining the amount of civil liability imposed pursuant to 13399.33: the nature, circumstances, extent, and of gravity of the violation; and with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, economic benefits or savings resulting from the violation, and other matters that justice may require. ~~These factors are evaluated in the ACL, a copy of which is attached to this order.~~ **These factors are discussed in detail in the table below. Section 13399.33, subdivision (a)(2) also requires that these considerations be balanced against the need for the regulatory costs of environmental protection to be borne equally by dischargers throughout the state, and the need for predictability of enforcement when making business decisions.**

Factor	Analysis
A. Nature, Circumstance, Extent, and Gravity of Violation	Mr. Hall conducted construction activities without obtaining coverage under the General Permit, even after receiving two notices from Regional Board staff indicating that coverage was required.
B. Ability to Pay	Mr. Hall has indicated that he is currently facing financial difficulties, although no detailed documentary evidence has been submitted to support this contention. Mr. Hall is currently the owner of two parcels of property. Based on Mr. Hall's ownership interests and without sufficient information to support Mr. Hall's claim of financial hardship, the Regional Board finds that Mr. Hall has the ability to pay the assessed penalty.
C. Prior History of Violations	Regional Board staff is not aware of any prior violations by Mr. Hall.
D. Degree of Culpability	Mr. Hall failed to obtain coverage under the General Permit after substantial and significant attempts by Regional Board staff to enroll him under the General Permit.
E. Economic Benefit or Savings	By conducting construction activities without the required permit coverage, failure to pay the necessary

	application fee, Mr. Hall realized an economic benefit. Mr. Hall saved approximately \$2,542 in annual fees for four years $((\\$200 + \\$20/\text{acre}) \times 18.5\%$ surcharge. The fee for 16.81 acres is \$635.40/year). Total economic savings are therefore calculated to be \$2,542.
F. Other Factors	Regional Board staff spent at least 120 hours of staff time in its efforts to bring this facility into compliance (@\$110.00 per hour, the total cost for staff time in \$13,200).

Additionally, the Regional Board has balanced the proposed penalty against the need for the regulatory costs of environmental protection to be borne equally by dischargers throughout the state, and the need for predictability of enforcement when making business decisions, and finds that a penalty in the amount of \$20,000.00 is appropriate.

State of California
California Regional Water Quality Control Board
Santa Ana Region
November 21, 2008
Staff Report

ITEM: 9

SUBJECT: Order No. R8-2008-0074 Affirming Administrative Civil Liability Complaint No. R8-2008-0082, Carson Hall, Jr., City of Riverside, Riverside County

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to affirm, reject or modify the proposed order imposing an assessment of \$20,000 on Carson Hall, Jr. (Mr. Hall).

BACKGROUND

On August 15, 2008, the Assistant Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2008-0082 to Mr. Hall for alleged violations of California Water Code Section 13399.30.

On March 24, 2008, ACL Complaint No. R8-2008-0048 was issued by the Assistant Executive Officer to Mr. Hall for failing to obtain coverage under State Water Resources Control Board Order No. 99-08-DWQ, General Construction Activities Storm Water Permit, NPDES No. CAS000002, (General Permit). On June 19, 2008, ACL Complaint No. R8-2008-0048 was rescinded and reissued as ACL Complaint No. R8-2008-0062 to correct an error in the Water Code citation (ACL Complaint No. R8-2008-0048 cited the violation as Water Code Section 13399.31; the correct citation should have been Water Code Section 13399.30). On August 15, 2008, it was again rescinded and reissued as ACL Complaint No. R8-2008-0082, in order to send the Complaint to a different address.

DISCUSSION

The General Permit regulates the discharge of storm water from construction 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 with the State Water Resources Control Board. In or around July 2005, Mr. Hall is alleged to have conducted construction activities, including grading and grubbing, on approximately 17 acres of his property (APNs 242-070-033, 242-070-034 [this parcel was subsequently sold], and 242-070-036), located southwest of Bradley Street and Jefferson Street in Riverside. Activities that disturb an acre, or greater, of soil require General Permit coverage.

On July 7, 2006, Board staff issued a Notice of Non-Compliance (NNC) to Mr. Mr. Hall via certified mail, requiring him to obtain General Permit coverage. The return receipt shows

the NNC was received on July 8, 2006. Permit coverage was not obtained; so on August 15, 2006, Board staff issued a second NNC to Mr. Hall, via certified mail. The letter was unclaimed by Mr. Hall and was returned to the Board office on September 8, 2006. On December 12, 2007, Board staff issued another NNC to Mr. Hall, by regular mail. The second NNC required Mr. Hall to get General Permit coverage by January 11, 2008. Mr. Hall acknowledged the receipt of the second NNC during a January 16, 2008 telephone conversation with Board staff. On the same day, Board staff mailed Mr. Hall a copy of the General Permit and Notice of Intent form. As of November 7, 2008, Mr. Hall has not obtained Permit coverage.

WATER CODE VIOLATIONS/PENALTIES

Section 13399.30 of the Water Code requires the regional boards to identify and notify each non-filer of the requirement to obtain coverage under the General Permit. If the discharger fails to obtain coverage after the first notification, a second notice must be issued. If the discharger fails to obtain coverage after two notifications, Water Code Section 13399.33(a)(1) specifies that the Board shall impose civil liability administratively in an amount that is not less than five thousand dollars per year of non-compliance, or fraction thereof. Mr. Hall started construction activities in 2005 and has not obtained coverage under the General Permit. There, the mandatory minimum penalty for the four years (2005, 2006, 2007 and 2008) of violation is \$20,000 (@\$5,000/yr).

Water Code Section 13399.33(a)(2) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors include the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator the ability to pay, any prior history of violations, the degree of culpability, economic benefits, or savings resulting from the violation, and other matters as justice may require. These factors are discussed in ACL Complaint No. R8-2008-0082.

After consideration of these factors, the Assistant Executive Officer proposed that civil liability be imposed on Mr. Hall in the amount of \$20,000.

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 ACL Complaint is in accordance with the Statewide Enforcement Policy.

RECOMMENDATION

Board staff recommends that the Board adopt Order No. R8-2008-0074 affirming the assessment of \$20,000.

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

In the matter of:)	Order No. R8-2008-0074
)	for
Carson Hall, Jr.)	Administrative Civil Liability
310 N. Indian Hill Boulevard)	
Claremont, CA 91711-4611)	
)	
Attn: Carson Hall)	

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on November 21, 2008 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2008-0082, dated August 15, 2008 and on the recommendation for the imposition of penalties pursuant to Water Code Section 13399.33 in the amount of \$20,000. The Board finds as follows:

1. On August 19, 1999, the State Water Resources Control Board (SWRCB) adopted Waste Discharge Requirements, Order No. 99-08-DWQ (NPDES No. CAS000002), General Permit for Discharges of Storm Water Associated with Construction Activity (General Permit). The General Permit requires dischargers of storm water from construction sites to obtain permit coverage prior to the start of construction activities. Mr. Hall owned APNs 242-070-033, 242-070-034 (this parcel has since been sold) and 242-070-036. In or around July 2005, Mr. Hall started construction activities on these parcels without first obtaining General Permit coverage. Board staff sent two certified Notices of Noncompliance (NNCs) to Mr. Hall, the first one on July 7, 2006 and the second one on August 15, 2006. Mr. Hall received the first NNC. The second NNC was returned unclaimed. Board staff sent a third NNC by regular mail on December 12, 2007. Mr. Hall acknowledged receipt of the third NNC. These NNCs notified Mr. Hall 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 final NNC required Mr. Carson Hall to submit the NOI by January 11, 2008. Mr. Carson Hall failed to comply with the NNCs. As of November 7, 2008, Mr. Hall has not obtained General Permit coverage.
2. Mr. Carson Hall failed to submit an NOI within 60 days from the date of the original NNC.
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 penalty of five thousand dollars (\$5,000) per year of noncompliance or fraction thereof.
5. On March 24, 2008, the Assistant Executive Officer issued Administrative Civil Liability (ACL) Complaint No. R8-2008-0048 to Mr. Carson Hall proposing that the Board impose a penalty of \$20,000 on Mr. Carson Hall for the violations cited above. On June 19, 2008, Complaint No. R8-2008-0048 was rescinded and reissued as Complaint No. R8-2008-0062 to correct a citation of the Water Code section (R8-2008-0048 cited the violation as Water Code Section 13399.31; the correct citation should have been Water Code Section 13399.30). On August 15, 2008, it was again rescinded and reissued as ACL No. R8-2008-0082 in order to send the Complaint to a different address.
6. Water Code Section 13399.33(a)(2) requires the Regional Board to consider the following factors in determining the amount of civil liability imposed pursuant to 13399.33: the nature, circumstances, extent of gravity of the violation; and with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings resulting from the violation, and other matters that justice may require. These factors are evaluated in the ACL, a copy of which is attached to this order.
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 Section 13399.33(a), a penalty shall be imposed on Mr. Carson Hall, in the amount of \$20,000, as proposed in Complaint No. R8-2008-0082 for the violations cited, payable as set forth below.

1. Mr. Carson Hall shall pay \$20,000 to the State Water Resources Control Board by December 22, 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 November 21, 2008.

Gerard J. Thibeault
Executive Officer

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

In the matter of:

**Carson Hall, Jr.
310 N. Indian Hill Boulevard
Claremont, CA 91711-4611**

Complaint No R8-2008-0082
For
Administrative Civil Liability

YOU ARE HEREBY GIVEN NOTICE THAT:

1. You are alleged to have violated California Water Code (CWC) section 13399.30 and requirements contained in State Water Resources Control Board Order No. 99-08-DWQ, NPDES Permit No. CAS000002 ("General Permit") for which the Regional Water Quality Control Board, Santa Ana Region (Regional Board), must impose liability under CWC section 13399.33.
2. A hearing concerning this Complaint will be held before the Regional Board within ninety days of the date of issuance of this Complaint, unless you waive your right to a hearing and agree to pay the recommended administrative civil liability amount of \$20,000.
3. You 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 Regional Board. This item is currently scheduled for the October 24, 2008 Regional Board meeting. A notice containing the time and location of the hearing and a staff report pertaining to this item will be mailed to you not less than 10 days prior to the hearing date.
4. At the hearing, the Regional Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

THIS COMPLAINT IS BASED ON THE FOLLOWING FACTS:

5. Mr. Carson Hall, Jr. was the owner of three parcels of land (APNs 242-070-033, 242-070-034, and 242-070-036) located south of Bradley Street and west of Washington Street in the City of Riverside. These parcels are located downstream of Woodcrest Dam. An arroyo on these parcels is tributary to an unnamed blue-line stream that enters Riverside Canal, which is tributary to Temescal Wash and ultimately the Santa Ana River. These are waters of the United States. Mr. Hall

sold APN 242-070-034 on August 18, 2005. He remains the current owner of the two other parcels.

6. In July or August of 2005, Mr. Hall cleared these parcels of riparian vegetation and rough graded the land so the property could be used to build a house and develop a commercial horse ranch.
7. The federal Water Pollution Control Act (Clean Water Act) Section 402 prohibits the discharge of pollutants to waters of the United States unless such discharges are in compliance with a National Pollutant Discharge Elimination System (NPDES) Permit. (33 U.S.C. §§ 1342). The General Permit requires that construction activities, including clearing, grading, disturbances to the ground such as stockpiling, or excavation that results in soil disturbance on one or more acres, be covered under the General Permit.
8. On December 1, 2005, Department of Fish and Game staff, Army Corps of Engineers staff, and Regional Board staff inspected Mr. Hall's properties. Regional Board staff observed and photographed evidence of construction activities that require coverage under the General Permit. These activities include grading, removal of trees and other vegetation, diversion of flows from a stream into a pond, streambed alteration, and installation of corrugated culverts.
9. On July 7, 2006, Regional Board staff sent Mr. Hall a certified letter that was received on July 8, 2006. The letter requested that Mr. Hall obtain coverage under the General Permit for the construction activities that were occurring or had occurred on his property.
10. In response to the July 7, 2006 letter from Regional Board staff, Mr. Dale Sexton, acting as an agent for Mr. Hall, submitted a letter indicating that there were no construction activities at the site that needed to be regulated under the General Permit. Mr. Sexton's letter was not considered a valid Notice of Non-Applicability because, in fact, the activities at the site required coverage under the General Permit.
11. Because Mr. Hall did not obtain coverage under the General Permit in response to Regional Board staff's first request, a second certified letter was sent on August 15, 2006, again requesting that Mr. Hall obtain coverage under the General Permit. The August 15, 2006 letter was returned unclaimed.
12. On September 5, 2006, Ms. Tam Doduc, State Water Resources Control Board Chair, sent a letter to Mr. Sexton indicating that the

construction activities at Mr. Hall's property should be covered under the General Permit.

13. In a letter sent via regular mail and dated December 12, 2007, Regional Board staff again informed Mr. Hall that he had conducted grading activity on his property without first properly obtaining coverage under the General Permit. The letter requested that Mr. Hall file a Notice of Intent to obtain coverage under the General Permit by January 11, 2008.
14. In a telephone conversation with Mary Bartholomew, Regional Board Environmental Scientist, on January 16, 2008, Mr. Hall confirmed receipt of the December 12, 2007 letter.
15. As of August 15, 2008, Mr. Hall has not filed a notice of intent to obtain coverage under the General Permit. This is a violation of CWC section 13399.30 subject to a mandatory penalty.
16. Pursuant to CWC section 13399.33(a)(1), the Regional Board must impose a mandatory penalty of \$5,000 per year of non-compliance or fraction thereof if a discharger fails to obtain coverage after the discharger has been served with two Notices of Noncompliance. Mr. Hall is alleged to have violated CWC section 13399.30 for at least four years (2005, 2006, 2007, and 2008). The mandatory minimum liability under section 13399.33 for this violation is \$20,000.
17. This action is strictly for violations of CWC section 13399.30. The Regional Board reserves the right to seek additional enforcement pursuant to CWC section 13385, or any other appropriate provision of law.

CONSIDERATION OF FACTORS

18. Pursuant to CWC section 13399.33, subdivision (a)(2), the Regional Board is required to consider the following factors in determining the penalty imposed pursuant to section 13399.33, subdivision (a)(1): the nature, circumstance, extent, and gravity of the violation; and with respect to the violator, the ability to pay; 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. These factors are discussed in detail in the table below. Section 13399.33, subdivision (a)(2) also requires that these considerations be balanced against the need for the regulatory costs of environmental protection to be borne equally by dischargers throughout the state, and the need for predictability of enforcement when making business decisions.

Factor	Comment
A. Nature, Circumstance, Extent, and Gravity of Violation	Mr. Hall conducted construction activities without obtaining coverage under the General Permit, even after receiving two notices from Regional Board staff indicating that coverage was required.
B. Ability to Pay	Mr. Hall and his representatives have indicated that Mr. Hall is currently facing financial difficulties, although no detailed information has been submitted to support this contention. Mr. Hall is currently the owner of two parcels of property. Based on Mr. Hall's ownership interests and without sufficient information to support Mr. Hall's claim of financial hardship, Regional Board staff presumes Mr. Hall has the ability to pay the proposed liability.
C. Prior History of Violations	Regional Board staff is not aware of any prior violations by Mr. Hall.
D. Degree of Culpability	Mr. Hall failed to obtain coverage under the General Permit even after receiving two notices. The Water Code provides for mandatory penalties for failure to obtain coverage under the General Permit.
E. Economic Benefit or Savings	By conducting construction activities without the required permit coverage, failure to pay the necessary application fee, Mr. Hall realized an economic benefit. Mr. Hall saved approximately \$2,542 in annual fees for four years (((\$200 + \$20/acre) x 18.5% surcharge. The fee for 16.81 acres is 635.40/year). Total economic savings are therefore calculated to be \$2,542.
F. Other Factors	Regional Board staff spent at least 120 hours of staff time in its efforts to bring this facility into compliance (@\$110.00 per hour, the total cost for staff time in \$13,200).

RECOMMENDED CIVIL LIABILITY

19. After consideration of the factors described above, the Assistant Executive Officer proposes civil liability be imposed on Mr. Hall in the amount of \$20,000 for the violations cited above.

You may waive your right to a hearing. If you do so, please sign the attached waiver form and mail it, together with a check payable to the State Water Resources Control Board for \$20,000. The waiver form and the check should be mailed to this office in the enclosed preprinted envelope.

If you have any questions concerning this Complaint, contact Stephen Mayville, Enforcement Section Chief, at (951) 782-4992.

Kt v. Btll
Kurt V. Berchtold
Assistant Executive Officer

8/15/08
Date