

California Regional Water Quality Control Board
Santa Ana Region
Staff Report
March 4, 2011

ITEM: 8

SUBJECT: Order No. R8-2011-0010 Affirming Mandatory Minimum Penalty Complaint No. R8-2010-0066, Durham Transportation Inc., Santa Ana, Orange County

BACKGROUND

On December 15, 2010, the Division Chief issued Mandatory Minimum Penalty Complaint (MMP) No. R8-2010-0066 to Durham Transportation, Inc. for alleged violations of the State General Permit for Storm Water Discharges Associated with Industrial Activity (General Permit). In the MMP (Attachment A), the Division Chief proposed an assessment of \$1,000 for the alleged violation and \$750 to recover staff costs as required by Section 13399.33(d) of the California Water Code.

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to adopt Order No. R8-2011-0010 affirming the proposed MMP against Durham Transportation, Inc.

MMP No. R8-2010-0066 was issued by the Division Chief to Durham Transportation, Inc. for failing to submit the annual report as required by the General Permit.

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, with the State Water Resources Control Board. One of the requirements of the General Permit is that permittees submit by July 1 of each year, an annual report that documents: storm water sampling and analysis results; visual observations of facility conditions; the facility's Annual Comprehensive Site Compliance Evaluation; and a certification as to the accuracy of the submitted information.

The required annual report was not received by July 1, 2010 and as a consequence, a Notice of Non-Compliance (NNC) was issued to Durham Transportation, Inc., by certified mail, on July 30, 2010, and was received by Durham Transportation, Inc. on August 4, 2010. When Board staff received no response to the first NNC, a second NNC was issued on August 30, 2010, again by certified mail, and was received by Durham Transportation, Inc. on September 13, 2010. In both NNCs, Board staff requested submittal of the completed 2009-2010

annual report, 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 also identified the mandatory minimum penalty of \$1,000 for failure to submit the annual report and the second NNC specified a deadline of September 28, 2010 (60 days from the date of the first NNC) for submittal of the annual report.

On September 27, 2010, Board staff spoke with Mr. Jim Elsinger, Durham Transportation, Inc.'s facility contact, informing him of the mandatory minimum penalty if the annual report was not submitted by September 28, 2010. Also, on September 27, 2010, Board staff spoke with Mr. Mike Nolte, Durham Transportation, Inc.'s corporate contact, informing him of the need to submit the annual report and the mandatory minimum penalty if the annual report was not submitted by September 28, 2010.

On September 29, 2010, Durham Transportation, Inc. submitted the 2009-2010 annual report. Durham Transportation, Inc. 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.

Durham Transportation, Inc. 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 an administrative civil liability 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.

Pursuant to Section 13399.33(c) of the California Water Code, the Division Chief proposes that the mandatory minimum penalty of \$1,000 be imposed on Durham Transportation, Inc., for the violation cited above. In addition, the Division Chief proposes that staff costs in the amount of \$750 be recovered from the discharger. The total proposed mandatory minimum penalty and staff costs amount is \$1,750.

RECOMMENDATION

Board staff recommends that the Board affirm the assessment of \$1,750 specified in the Mandatory Minimum Penalty Complaint issued by the Division Chief on December 15, 2010, by adopting Order No. R8-2011-0010.

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

In the Matter of:)	
)	
Durham Transportation, Inc./)	Order No. R8-2011-0010
Durham School Services, L.P.)	for
4300 Weaver Parkway)	Mandatory Minimum Penalty and Staff
Warrenville, IL 60555)	Costs
)	
Attention: Mike Nolte)	

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), held a hearing on March 4, 2011 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2010-0066, dated December 15, 2010 and on the recommendation for the imposition of penalties pursuant to Water Code Section 13399.33 in the amount of \$1,750. The Regional Board finds as follows:

1. Durham Transportation, Inc./Durham School Services, L. P., (hereinafter Durham), located at 2818 W. 5th Street in Santa Ana, CA, 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 WQID Number is 8 30I011540. The General Permit requires submittal of an annual report by July 1 of each year.
2. Durham'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 Durham, by certified mail, on July 30, 2010. The return receipt showed it was received on August 4, 2010. When Board staff received no response to the first NNC, a second NNC was issued on August 30, 2010, again by certified mail. The return receipt showed the second NNC was received on September 13, 2010. In both NNCs, Board staff requested submittal of the completed annual report. The second NNC requested that the annual report be submitted to the Regional Board office 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 also identified the mandatory minimum penalty for failure to submit the annual report by the July 1, 2010 deadline.
3. On September 27, 2010, Board staff spoke with Mr. Jim Elsinger, Durham's contact person at the Santa Ana facility, informing him of the mandatory minimum penalty if the annual report was not submitted by September 28, 2010. On September 27, 2010, Board staff also spoke with Mr. Mike Nolte, Durham's corporate contact, informing him of the mandatory minimum penalty for non-submittal of the 2009-2010 annual report. The annual report was received by Board staff on September 29, 2010. Durham violated the General Permit, the Federal Clean Water Act, and the California Water Code by failing to submit the 2009-2010 annual report by July 1, 2010.

Tentative

Durham Transportation, Inc./Durham School Services, L. P.

4. 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.
5. 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.
6. On December 15, 2010, the Division Chief issued Mandatory Minimum Penalty Complaint (MMP) No. R8-2020-0066 to Durham, proposing that the Regional Board impose the mandatory minimum penalty in the amount of \$1,000 for the violation cited above and that costs in the amount of \$750 be recovered from Durham. The total proposed mandatory minimum penalty and staff costs amount was \$1,750.
7. Notwithstanding the issuance of this Complaint, the Regional Board retains the authority to assess additional penalties for violations of the requirements of Durham's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.
8. 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).

IT IS HEREBY ORDERED that pursuant to Water Code Section 13399, a penalty shall be imposed on Durham Transportation, Inc./Durham School Services, L.P. in the amount of \$1,750, as proposed in Complaint No. R8-2010-0066 for the violations cited, payable as set forth below.

1. Durham Transportation, Inc. and Durham School Services, L.P. are jointly and severally liable for the assessed amount and shall pay \$1,750 by April 4, 2011.

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, Kurt V. Berchtold, 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 March 4, 2011.

Kurt V. Berchtold
Executive Officer