

California Regional Water Quality Control Board
Santa Ana Region
Staff Report
February 2, 2007

ITEM: 13

SUBJECT: Order No. R8-2007-0017 Affirming Administrative Civil Liability
Complaint No. R8-2006-0080, Ross Pallet, Inc., Santa Ana, Orange
County

This item has been settled and no Board action is necessary.

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SUBJECT: Order No. R8-2007-0017 Affirming Administrative Civil Liability Complaint No. R8-2006-0080, Ross Pallet, Inc., Santa Ana, Orange County

BACKGROUND

On November 27, 2006, the Assistant Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2006-0080 to Ross Pallet, Inc. (Ross Pallet) for alleged violations of the State General Permit for Storm Water Discharges Associated with Industrial Activity (General Permit). In the ACL (attached), the Assistant Executive Officer proposed an assessment of \$5,000 for the alleged violation.

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to adopt Order No. R8-2007-0017 affirming the proposed administrative civil liability complaint against Ross Pallet.

ACL No. R8-2006-0080 was issued by the Assistant Executive Officer to Ross Pallet 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 every 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 3, 2006 (July 1 was a Saturday) and as a consequence, a Notice of Non-Compliance (NNC) was issued to Ross Pallet, by certified mail, on August 1, 2006. The return receipt showed that the NNC was received by Ross Pallet on August 24, 2006. When Board staff received no response to the first NNC, a second NNC was issued on August 31, 2006, again by certified mail, and was received by Ross Pallet on September 5, 2006. In both NNCs, Board staff requested submittal of the completed 2005-06 annual report, a statement explaining why the annual report was not submitted by the July 3 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 29, 2006 for submittal of the annual report.

On September 27, 2006, Board staff left a detailed message for Ms. Charyto Gardea (facility contact) with Ross Pallet's receptionist. On September 29, 2006, Board staff again left a detailed telephone message for Ms. Gardea with Ross Pallet's receptionist, reiterating the mandatory minimum penalty conditions. In response, the receptionist stated that Ms. Gardea had been given the message on September 27, 2006. To date, the annual report has not been received by this office.

Ross Pallet 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 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.

Section 13385(e) of the California Water Code specifies factors that the Board shall consider when establishing an amount of civil liability. A review of Ross Pallet's permit compliance history reveals that in the four years that Ross Pallet has been covered under the General Permit, they have never collected a storm water sample with the repeated explanation that no qualified storm events occurred during these four years. Further, Ross Pallet received two NNCs and paid a mandatory minimum penalty of \$1,000 for the non-submittal of its 2002-03 annual report and a Notice of Violation for late payment of its 2003-04 storm water permit fee.

Based on the history of non-compliance, the Assistant Executive Officer proposed that civil liability be imposed on Ross Pallet in the amount of \$5,000 for this violation.

RECOMMENDATION

Board staff recommends that the Board affirm the assessment of \$5,000 specified in the Administrative Civil Liability Complaint issued by the Assistant Executive Officer on November 27, 2006, by adopting Order No. R8-2007-0017.

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

In the matter of:)	Order No. R8-2007-0017
)	for
Ross Pallet, Inc.)	Administrative Civil Liability
913 East Walnut Street)	
Santa Ana, CA 92705)	
)	
Attention: Charyto Gardea)	

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on February 2, 2007 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2006-0080, dated November 27, 2006, and on the recommendation for the imposition of administrative civil liability pursuant to Water Code Sections 13385(c) and 13399.33(c) in the amount of \$5,000. 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 (General Permit). Ross Pallet, Inc. (Ross Pallet), is authorized to discharge storm water under the Permit, WDID 830I017644. The General Permit requires Ross Pallet to submit an annual report by July 1 of each year. Ross Pallet did not submit the annual report by July 3, 2006 (July 1, 2006 was a Saturday). Subsequently, Board staff sent two certified Notices of Noncompliance (NNCs) to Ross Pallet, the first one on August 1, 2006 and the second one on August 31, 2006. These NNCs reminded Ross Pallet that the annual report had not been received and that there is a mandatory penalty for non-submittal of the annual report. The second NNC required Ross Pallet to submit the annual report by September 29, 2006. Prior to September 29, 2006, Ross Pallet was also reminded by phone to submit the annual report. To date, the required annual report has not been received by this office.
2. Ross Pallet failed to submit the annual report to the Regional Board office within 60 days from the date of the original NNC.
3. Water Code Section 13399.33(c) requires the Board to assess a mandatory minimum penalty of one thousand dollars (\$1,000) for non-submittal of an annual report under these circumstances.
4. 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 no to exceed \$10,000 per day of violation. The total

maximum liability as of November 27, 2006 (the date of issuance of the administrative civil liability complaint) is \$1,480,000.

5. Water Code Section 13385(e) specifies factors that the Board shall consider in establishing an amount of civil liability, including prior history of violations. Ross Pallet has a history of violations including a mandatory minimum penalty complaint issued for non-submittal of the 2002-03 annual report. In addition, Ross Pallet received a number of NNCs for late submittal of annual reports and a Notice of Violation for late payment of annual fee for 2003-04. These and other factors were considered by the Assistant Executive Officer in establishing the amount of civil liability.
6. On November 27, 2006, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R8-2006-080 to Ross Pallet proposing that the Board impose a penalty of \$5,000 on Ross Pallet for the violations cited above.
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 Sections 13385(c) and 13399.33(c), an administrative civil liability shall be imposed on Ross Pallet, Inc., in the amount of \$5,000, as proposed in Complaint No. R8-2006-080 for the violations cited, payable as set forth below.

1. Ross Pallet shall pay \$5,000 to the State Water Resources Control Board by March 5, 2007.

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 February 2, 2007.

Gerard J. Thibeault
Executive Officer



California Regional Water Quality Control Board

Santa Ana Region



Linda S. Adams
Secretary for
Environmental Protection

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Arnold Schwarzenegger
Governor

November 27, 2006

Ms. Charyto Gardea
Ross Pallet, Inc.
913 East Walnut Street
Santa Ana, CA 92705

CERTIFIED MAIL
RETURN MAIL REQUESTED

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2006-0080

Dear Ms. Gardea:

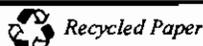
Enclosed is a certified copy of Complaint No. R8-2006-0080, proposing an administrative civil liability of \$5,000 for violations of the California Water Code and the State's General Permit for Storm Water Discharges Associated with Industrial Activity, Order No. 97-03-DWQ, NPDES No. CAS000001. The assessment includes a civil liability of \$4,000 and a mandatory penalty of \$1,000 for failure to submit the annual report. An invoice for this amount is also enclosed.

If necessary, a public hearing on this matter will be scheduled for the Regional Board meeting on February 2, 2007. The staff report regarding this complaint and the meeting agenda will be mailed to you not less than 10 days prior to the Regional Board meeting.

You have the option to waive your right to a hearing. Should you waive your right to a hearing and pay the proposed assessment, the Regional Board may not hold a public hearing on this matter. If you choose to waive your right to a hearing, please sign the enclosed waiver form and submit the form with a check or money order for \$5,000. The check or money order should be made payable to the State Water Resources Control Board. The waiver form, the bottom portion of the invoice, the check and any other correspondence regarding this Complaint should be sent to this office at the address on this letterhead.

If you do not wish to waive your right to a hearing, a pre-hearing meeting with Board staff is recommended. Should you wish to schedule a pre-hearing meeting, please call us prior to January 3, 2007. At that time, you may submit information that may not have been previously available to Board staff regarding this matter.

California Environmental Protection Agency



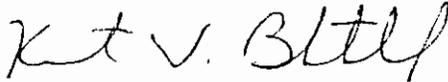
Ms. Charyto Gardea
Ross Pallet, Inc.

November 27, 2006

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If you have any questions regarding this complaint, you may contact Michelle Beckwith at (951) 782-4433, or Mark Smythe at (951) 782-4998. All legal questions should be referred to our legal counsel, Erik Spiess, at (916) 341-5167.

Sincerely,



Kurt V. Berchtold
Assistant Executive Officer

Enclosures: Complaint No. R8-2006-0080, Waiver Form, Invoice, and envelope

cc: State Water Resources Control Board, Division of Water Quality – Bruce Fujimoto
State Water Resources Control Board, Office of Chief Counsel – Erik Spiess
U.S. Environmental Protection Agency, Region 9 (WTR-7) – Kathi Moore
Orange County RDMD – Richard Boon
City of Santa Ana, NPDES Coordinator – Joe Parco



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

In the matter of:)	Complaint No. R8-2006-0080
)	for
Ross Pallet, Inc.)	Administrative Civil Liability
913 East Walnut Street)	
Santa Ana, CA 92705)	
)	
Attention: Ms. Charyto Gardea)	

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 has been scheduled for the Board's regular meeting on February 2, 2007, at the Loma Linda City Council Chambers, in the city of Loma Linda. 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 mandatory penalties by the Board. An agenda for the meeting will be mailed to you not less than 10 days before the hearing date.
3. At the hearing, the Board must consider whether to affirm, reject or modify the proposed Administrative Civil Liability Complaint or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Ross Pallet, Inc. (hereinafter Ross Pallet), located at 913 East Walnut Street in Santa Ana, 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 830I017644. The General Permit requires submittal of an annual report by July 1 of each year.
5. The 2005-2006 Annual Report, which was due on July 3, 2006, as July 1 was a Saturday, was not received from Ross Pallet. A Notice of Non-Compliance (NNC) was issued to Ross Pallet, by certified mail, on August 1, 2006 and the return receipt indicated that the NNC was received by Ross Pallet on August 24, 2006. When Board staff did not receive a response to the first NNC, a second NNC was issued on August 31, 2006, again by certified mail, and that second NNC was received by Ross Pallet on September 5, 2006. In both NNCs, Board staff

Factor	Comment
A. Nature, Circumstance, Extent, and Gravity of Violation (cont.)	annual report states that no qualified storms events occurred during the year (i.e., for all storm events during this four year period, either the first hour of discharge occurred outside of normal business hours or the storm water discharge was not preceded by 3 working days without discharge.)
B. Culpability	Ross Pallet failed to submit their annual report as required by the General Permit. Ross Pallet received two certified mailings and two phone calls reminding them that the annual report was overdue and the consequences of non-submittal.
C. Economic Benefit or Savings	Staff has estimated that Ross Pallet saved approximately \$2,000 during the 2005-2006 reporting year by not collecting and analyzing storm water samples, not performing the required observations and not completing and submitting their annual report.
D. Prior History of Violations	Ross Pallet received two Notices of Non-Compliance and a Minimum Mandatory Penalty in the amount of \$1,000 for the non-submittal of their 2002-2003 Annual Report. Further, Ross Pallet received a Notice of Violation from the State Board for late payment of their 2003-2004 storm water permit fee.
E. Staff Costs	Board staff spent at least 2 hours of staff time in association with this violation (@\$70.00 per hour, the total cost for staff time is \$140).
F. Ability to pay	Ross Pallet has not provided any information to indicate that it is unable to pay the proposed amount.

11. After consideration of the factors listed in Item 10, the Assistant Executive Officer proposes that civil liability be imposed on Ross Pallet in the amount of \$5,000 for the violation cited above.

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 or money order payable to the State Water Resources Control Board, for the amount of the penalty proposed in Item 11. The waiver form, the bottom portion of the invoice, the check and any other correspondence regarding this Complaint should be sent to this office at the address on this letterhead.

If you have any questions, please contact Michelle Beckwith at (951) 782-4433, or Mark Smythe at (951) 782-4998. For legal questions, contact the Regional Board's staff counsel, Erik Spiess at (916) 341-5167.

11/27/06
Date

Kurt V. Berchtold
Kurt V. Berchtold
Assistant Executive Officer