

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

February 29, 2008

ITEM: 18

SUBJECT: Order No. R8-2008-0037 Affirming Administrative Civil Liability Complaint No. R8-2007-0090, WDID No. 8 36I004480, Downtown Auto Wrecking, San Bernardino, San Bernardino County

BACKGROUND

On December 21, 2007, the Assistant Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2007-0090 (copy attached) to Downtown Auto Wrecking 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 \$10,000 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 Downtown Auto Wrecking.

ACL No. R8-2007-0090 was issued by the Assistant Executive Officer to Downtown Auto Wrecking for violations of the General Permit, including the failure of Downtown Auto Wrecking 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 6, 1992, Downtown Auto Wrecking filed a NOI and obtained coverage under the General Permit, WDID No. 8 36I004480. The General Permit requires submittal of an annual report by July 1 of each year. Downtown Auto Wrecking 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 Downtown Auto Wrecking. The first NNC was mailed on August 7, 2007, and was received by the facility on August 9, 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 contacted Mr. Steve Reich by telephone on September 6, 2007 and reminded him of the requirement to submit the annual report.

On October 4, 2007, Board staff again telephoned Mr. Reich to remind him to submit the annual report. Mr. Reich indicated that he submitted documents to the state to prove that the facility was no longer an auto wrecking yard. Board staff has neither received any documentation from Downtown Auto Wrecking to indicate that it has changed its operations nor has the facility submitted a Notice of Termination to terminate coverage under the General Permit. Mr. Reich indicated that the facility only sells used auto parts and therefore should not be under the General Permit. However, Mr. Reich admitted that the used auto parts are removed from vehicles within his facility, and a permit is required for such operations.

Board staff again reminded Mr. Reich that the facility should be, and is, regulated under the General Permit. The Permit requires him to submit the annual report. Board staff has neither received the annual report nor any information to indicate that the permit coverage is no longer needed for this facility. In fact, from what Mr. Reich indicated, the facility is still required to be covered under the General Permit.

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.

Downtown Auto Wrecking failed to submit the required annual report to the Regional Board office within 60 days from the date the original NNC was sent. Under those circumstances, California 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 172 days (from July 2, 2007 to December 21, 2007, the date of issuance of the ACL). The maximum liability for this violation is \$1,720,000.

The facility's permit compliance history reveals that the facility has been chronically late in submitting its annual reports, except for the timely submittal of 1997-98 and 1998-99 annual reports. In 1998, an ACL was issued for non-submittal of the 1996-97 annual report. However, it was withdrawn based on the discharger's claim that the annual report was mailed to the wrong address. Board staff issued ACLs for the 2001-02 and 2003-04 reporting years.

On April 4, 2003, the Regional Board affirmed ACL Complaint No. R8-2003-0008 issued to Downtown Auto Wrecking for failure to submit the 2001-02 annual report and for its failure to conduct the required inspections and monitoring program. Downtown Auto Wrecking has not paid the \$2,500 penalty that was assessed. On April 15, 2005, the Regional Board affirmed ACL No. R8-2005-0028 issued to Downtown Auto Wrecking for its failure to submit the 2003-04 annual report. Downtown Auto Wrecking has not paid this assessment of \$5,000. The unpaid assessments have been entered as judgments against the facility by the Superior Court of California, County of San Bernardino. A detailed discussion of the factors under Section 13385(e) is included in Complaint No. R8-2007-0090 (attached). After consideration of these factors, including the history of violations, the Assistant Executive Officer proposed that civil liability be imposed on Downtown Auto Wrecking in the amount of \$10,000.

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 \$10,000 specified in the Administrative Civil Liability Complaint issued by the Assistant Executive Officer on December 21, 2007, by adopting Order No. R8-2008-0037.

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

In the matter of:)	Order No. R8-2008-0037
)	for
Steve Reich, Owner)	Administrative Civil Liability
Downtown Auto Wrecking)	
519 E. Mill Street)	
San Bernardino, CA 92408)	

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 concerning the allegations contained in Complaint No. R8-2007-0090, dated December 21, 2007, and concerning the recommendation for the imposition of administrative civil liability pursuant to California Water Code sections 13385 and 13399.33 in the amount of \$10,000. 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). Downtown Auto Wrecking (Downtown Auto) is authorized to discharge storm water under the Permit, WDID 836I004480. The Permit requires Downtown Auto to submit an annual report by July 1 of each year. Downtown Auto did not submit the annual report by July 2, 2007 (July 1, 2007 was a Sunday). Subsequently, Board staff sent two certified Notices of Noncompliance (NNCs) to Downtown Auto. The first NNC was mailed on August 7, 2007 and was received by the facility on August 9, 2007. 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 11, 2007.
3. On September 6, 2007 and October 4, 2007 Board staff contacted Mr. Reich to remind him to submit the annual report. Mr. Reich indicated that he submitted documents to the state to prove that the facility was no longer an auto wrecking yard and that coverage under the General Permit is no longer required. Board

staff has not received any documentation from Downtown to indicate that it has changed its operations and the facility has not submitted a Notice of Termination to terminate coverage under the General Permit. Mr. Reich stated that the facility only sells used auto parts. However, Mr. Reich admitted that the used auto parts are removed from vehicles within his facility (an auto wrecking yard). Based on what Mr. Reich Indicated, the facility is still required to be covered under the General Permit.

4. On December 21, 2007, the Assistant Executive Officer issued Administrative Civil Liability (ACL) Complaint No. R8-2007-0090 to Downtown Auto proposing that the Board impose civil liability in the amount of \$10,000 on Downtown Auto for failure to submit the annual report by the due date. Because Mr. Reich refused to accept the certified mail, Board staff visited the facility on December 28, 2007 and hand delivered the ACL. Mr. Reich indicated that he wanted to terminate coverage under the General Permit.
5. On December 28, 2007, Board staff faxed Mr. Reich a copy of the Notice of Termination. As of February 14, 2008, Mr. Reich has neither filed a Notice of Termination nor submitted the annual report.
6. 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.
7. Water Code Section 13399.33(c) of the California Water Code requires the Board to assess a mandatory penalty of one thousand (\$1000), and Section 13385 allows the Board to assess additional penalties for violations of Waste Discharge Requirements. During the last several years, Downtown Auto has submitted the annual report on time only twice.
8. Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors are discussed in detail in the Complaint (attached). The Board has considered the history of violations and other factors as discussed in the Complaint.
9. On December 12, 2007, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R8-2007-0090 to Downtown Auto, proposing that the Board impose civil liability in the amount of \$ 10,000 for the violations cited above
10. Issuance of this order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 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 Downtown Auto, in the

amount of \$10,000 for the violations cited in the Complaint No. R8-2007-0090, payable as set forth below.

1. Downtown Auto shall pay the entire amount of \$10,000 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, you 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. R8-2007-0090
)	for
Steve Reich, Owner)	Administrative Civil Liability
Downtown Auto Wrk'n)	
519 E. Mill Street)	
<u>San Bernardino, CA 92408</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 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, 25541 Barton Road, 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 civil liability 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 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.
4. Downtown Auto Wrk'n (Downtown) is located at 519 E. Mill St., San Bernardino, and 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 836I004480. The General Permit requires Downtown to submit an annual report by July 1 of each year.
5. The 2006-2007 annual report, which was due on July 2, 2007 (July 1, 2007 was a Sunday), was not received from Downtown. A Notice of Noncompliance was issued to Downtown on July 7, 2007. A second Notice of Noncompliance was issued on September 10, 2007. Both Notices were sent by certified mail and the return receipts indicate that they were received by the facility. The Notices of Noncompliance requested submittal of the completed annual report to the Board

office within 30 days, with a statement explaining why the annual report was not submitted by the July 1 deadline, and the measures that will be taken to ensure that future annual reports are submitted on time. The September 10, 2007 Notice of Noncompliance also noted the mandatory penalty for failure to submit the annual report.

6. On September 6, 2007, Board staff contacted Mr. Reich by telephone and reminded him to submit the annual report. On October 4, 2007, Board staff again telephoned Mr. Reich to remind him to submit the annual report. Mr. Reich indicated that he submitted documents to prove that the facility was no longer an auto wrecking yard. Board staff has not received any documentation from Downtown to indicate that it has changed its operations and the facility has not submitted a Notice of Termination to terminate coverage under the General Permit. Mr. Reich stated that now the facility just sells used auto parts. However, Mr. Reich admitted that the used auto parts are removed from vehicles within his facility. Board staff again reminded Mr. Reich that the facility is still regulated under the General Permit and the Permit requires him to submit the annual report. Board staff has neither received the annual report nor any information to indicate that permit coverage is no longer needed for this facility. In fact, from what Mr. Reich indicated, the facility is still required to be covered under the General Permit. As of the date of this complaint, the annual report has not been received.
7. 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.
7. Based on non-submittal of the 2006-07 annual report, the facility is alleged to have violated the General Permit for 172 days (from July 2, 2007 to December 21, 2007). The total maximum liability for this violation is \$1,720,000.
8. 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.
9. Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. These factors are evaluated in the table on the following page.

Factor	Comment
A. Nature, Circumstances, Extent and Gravity of Violation	The facility is fully aware of the General Permit requirement to submit the annual report and received two written notifications to submit the annual report and the facility was reminded over the phone that the annual reports were overdue.
B. Culpability	The facility obtained coverage under the General Permit on April 6, 1992. As indicated above, the facility is fully aware of its obligations under the General Permit including the annual reporting requirement. Downtown violated the terms of the General Permit by failing to submit the annual report.
C. Economic Benefit or Savings	Staff estimates that Downtown saved approximately \$1,000 during the 2006-2007 reporting year by not collecting and analyzing storm water samples. Its savings from not submitting the annual report itself is negligible. Further, the facility has not paid its permit fees for a number of years. The following invoices have not been paid: 0631270 (\$830), 0432025 (\$830), 0321965 (\$830), and 0231289 (\$700). Total unpaid invoices=\$3,190.

D. Prior History of Violations	<p>Downtown has a long history of late submittal of reports and submittal of incomplete and/or inaccurate reports. The facility obtained coverage under the General Permit on April 6, 1992. Except for the timely submittal of the 1997-98 and 1998-99 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 1992-93, 1995-96, 1996-97, 1999-2000, 2000-01, and 2001-02, 2002-03, 2003-04. As described above, ACLs were issued for the 2001-02 and 2003-04 reporting years. In 1998, an ACL was issued for non-submittal of the 1996-97 annual report. However, it was withdrawn based on the discharger's claim that the annual report was mailed to the wrong address.</p> <p>On April 4, 2003, the Regional Board affirmed Administrative Civil Liability (ACL) Complaint No. R8-2003-0008 issued to Downtown for failure to submit the 2001-2002 annual report and for its failure to conduct the required inspections and monitoring program. Downtown has not paid the \$2,500 penalty that was assessed.</p> <p>On April 15, 2005, the Regional Board affirmed ACL no. R8-2005-0028 issued to Downtown for its failure to submit the 2003-04 annual report. Downtown has not paid this assessment of \$5,000.</p> <p>The unpaid assessments have been entered as judgments against the facility by Superior Court of California, County of San Bernardino. The Board has recorded these judgments as liens against the facility, and the Attorney General's Office is proceeding with the collection of these judgments.</p>
E. Staff Costs	<p>Regional Board staff spent approximately 15 hours investigating this incident (@\$115.00 per hour, the total cost for staff time is \$1,725).</p>
F. Ability to pay	<p>The discharger has not provided any information to indicate that it is unable to pay the proposed amount. However, it is a small business with limited resources and Mr. Reich has previously indicated that the business is unable to pay any assessment.</p>

10. After consideration of these factors, the Assistant Executive Officer proposes that civil liability of \$10,000 be imposed on Downtown for the violations cited above. This amount includes \$1,000 as mandatory penalty under Section 13399.33, \$3,190 in unpaid permit fees, and a penalty of \$5,810.

WAIVER OF HEARING

You may waive your right to a hearing. If you wish to waive your right to a hearing, please sign the attached waiver form and return it in the enclosed preprinted envelope, together with a check payable to the State Water Resources Control Board for \$10,000. The waiver form and the check should be mailed to this office in the enclosed preprinted envelope.

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

12/21/07
Date

Kurt V. Berchtold
Kurt V. Berchtold
Assistant Executive Officer

In the matter of:)
)
Steve Reich, Owner)
Downtown Auto Wrk'n)
519 E. Mill Street)
San Bernardino, CA 92408)

Complaint No. R8-2007-0090
for
Administrative Civil Liability

WAIVER OF HEARING

I agree to waive my right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2007-0090. I have enclosed a check or money order, made payable to the State Water Resources Control Board, in the amount of \$10,000. I understand that I am giving up my right 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

Steve Reich, Owner
Downtown Auto Wrk'n