California Regional Water Quality Control Board
Santa Ana Region

Alan C. Lloyd, Ph.D.
Agency Secretary

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Arnold Schwarzenegger
Governor

March 1, 2005

Mr. Steve Reich
Downtown Auto Wrecking
519 E. Mill Street
San Bernardino, CA 92408

CERTIFIED MAIL
RETURN RECIPT REQUESTED

ADMINISTRATIVE CIVIL PENALTY COMPLAINT NO. R8-2005-0028, DOWNTOWN AUTO WRECKING, SAN BERNARDINO, CALIFORNIA, WDID NO. 8 36S004480

Dear Mr. Reich:

We are enclosing a certified copy of Complaint No. R8-2005-0028, proposing administrative civil liability of $5,000 for failure to submit the annual report on time, as required by the State's General Permit for Storm Water Discharges Associated with Industrial Activity (Order No. 97-03-DWQ, NPDES Permit No. CAS000001, General Permit). This is for your facility located at 519 E. Mill Street in the City of San Bernardino (WDID No. 8 36S004480). An invoice and a preprinted envelope are also enclosed.

If necessary, a public hearing on this matter will be scheduled for the Regional Board Meeting on April 15, 2005. The staff report regarding this complaint and the meeting agenda will be mailed to you not less than ten days prior to the 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 return it with a check for $ 5,000 and the bottom portion of the invoice in the enclosed preprinted envelope. The check should be payable to the State Water Resources Control Board.

If you do not wish to waive your right to a hearing, you may wish to schedule a pre-hearing meeting with the Board staff. Should you wish to schedule a meeting, please call us prior to March 17, 2005. At that time, you may submit information that may not have been previously available to staff regarding this incident. The information should address the following:

1. Nature, circumstances, extent, and gravity of the violation;
2. Your ability to pay the proposed assessment;
3. Your degree of culpability;
4. Any prior history of violations;
5. Economic benefit or savings; and,

6. Such other matters as justice may require.

If you have any questions regarding this complaint, you may contact Mr. Muhammad Bashir at (951) 320-6396 or Ms. Milasol Gaslan at (951) 782-4419. All legal questions should be referred to our legal counsel, Mr. Jorge Leon, at (916) 471-5180.

Sincerely,

Gerard J. Thibeault
Executive Officer

Enclosures: Complaint No. R8-2005-0028, Waiver Form, Invoice, Preprinted Envelope

Cc: Regional Board
Bruce Fujimoto, State Water Resources Control Board, Division of Water Quality
Jorge Leon, State Water Resources Control Board, Office of the Chief Counsel
Kathi Moore, US-EPA, Region 9 (WTR-7)
Naresh Varma, San Bernardino County Public Works Department
Michael Grubbs, City of San Bernardino

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

In the matter of:	)	**Complaint No. R8-2005-0028**
	)	**for**
Steve Reich, Owner	)	**Administrative Civil Liability**
Downtown Auto Wrecking	)	
519 E. Mill Street	)	
San Bernardino, CA 92408	)	

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), may impose liability under Sections 13385 of the California Water Code.

2. A hearing in this matter has been scheduled for the Board's regular meeting on April 15, 2005 at 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 April 15, 2005 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. Your facility, located at 519 E. Mill St., San Bernardino, 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). Your facility's WDID Number is 836I004480. The General Permit requires you to submit an annual report by July 1 of each year.

5. Because the annual report was not submitted, a Notice of Noncompliance was issued to you on July 26, 2004. A second Notice of Noncompliance was issued on September 2, 2004. Both letters were sent by certified mail and the return receipts indicate that they were received by your 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 you will take to ensure that future annual reports are submitted on time. The September 2, 2004 Notice of Noncompliance also warned you of the mandatory fines for failure to submit the annual report.

6. 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 2003-2004 Annual Report, the facility is alleged to have violated the General Permit for 173 days (from July 2, 2004 to December 22, 2004, date of submittal of the annual report). The total maximum liability for this violation is $1,730,000.

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. These factors include: nature, circumstances, extent, and gravity of the violation, and, with respect to the discharger, the ability to pay, any 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. 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. The factors are evaluated in the table on the following page.

Factor	Comment
A. Nature, Circumstances, Extent and Gravity of Violation	Downtown Auto Wrecking has received two written notifications to submit their annual report. The report was due on July 1, 2004; the report was submitted on December 22, 2004. The annual report was not submitted on time.
B. Culpability	The facility obtained coverage under the General Permit on April 6, 1992. Annual reporting has always been a requirement of the General Permit. Downtown Auto Wrecking violated the terms of the General Permit by failing to submit the annual report in a timely manner.
C. Economic Benefit or Savings	Cost savings from the late submittal of the annual report is estimated to be less than $50.

D. Prior History of Violations	Downtown Auto Wrecking has a long history of non-compliance with timely reporting and submittal of incomplete and/or inaccurate reports. On April 4, 2003, the Regional Board affirmed an Administrative Civil Liability (ACL) complaint issued to Downtown for failure to submit the 2001-2002 annual report and failure to conduct or document an adequate inspection and monitoring program. Mr. Reich did not attend the hearing. The $2500 penalty has not been paid. The facility obtained coverage under the General Permit on April 6, 1992. Except for the timely submittal of the 1997-98 and 1998-1999 annual reports, the facility has been chronically late in submitting its annual reports. Board staff issued Notices of Non-Compliance or Notices of Violation for non-submittal of annual reports for 1992-93, 1995-98, 1996-1997, 1999-00, 2000-01, and 2001-02. In 1998, an ACL was submitted for non-submittal of the 1996-1997 annual report. However, it was withdrawn based on the discharger's claim that the annual report was mailed to the wrong address.
E. Staff Costs	Regional Board staff spent approximately 10 hours investigating this incident (@$70.00 per hour, the total cost for staff time is $700).
F. Ability to pay	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 business has not been good.

10. After consideration of those factors, the Executive Officer proposes that civil liability of $5,000 be imposed on Downtown Auto Wrecking for the violation cited above. This includes the mandatory minimum penalty.

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 the bottom portion of the invoice and a check or money order payable to the State Water Resources Control Board for $5,000.

If you have any questions, please contact Milasol Gaslan at (951) 782-4419, or contact the Regional Board's counsel, Jorge Leon, at (916) 341-5180.

3-1-05
Date

GJ Thibeault
Gerard J. Thibeault
Executive Officer