



California Regional Water Quality Control Board

Central Coast Region



Linda S. Adams
Secretary for
Environmental
Protection

Internet Address: <http://www.waterboards.ca.gov/centralcoast>
895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906
Phone (805) 549-3147 • FAX (805) 543-0397

Arnold Schwarzenegger
Governor

October 23, 2008

Mr. Steve Kautz
Zurn Industries Wilkins Div
1747 Commerce Way
Paso Robles, CA 93446

CERTIFIED MAIL 7008 1140 0003 7322 5234
RETURN RECEIPT REQUESTED

NOTICE OF HEARING AND ISSUANCE OF ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO SUBMIT INDUSTRIAL STORM WATER GENERAL PERMIT ANNUAL REPORT; ZURN INDUSTRIES WILKINS DIV, PASO ROBLES, SAN LUIS OBISPO COUNTY, WDID# 3 40 I 004 898

Dear Mr. Kautz:

In response to the failure of Zurn Industries Wilkins Div (Discharger) to submit the 2007-2008 annual report as required by the *General Permit for Storm Water Discharges Associated with Industrial Activity, Water Quality Order No. 97-03-DWQ, NPDES No. CA000001* (General Permit), the Assistant Executive Officer of the Central Coast Regional Water Quality Control Board (Central Coast Water Board) hereby issues the enclosed Administrative Civil Liability Complaint No. R3-2008-0078 (Complaint). Discharger is still required to submit the late report, if it has not already done so, and failure to do so could result in further late-reporting penalties. Though Discharger may have already submitted the report, it was not received by the due date and is subject to the penalty described in the Complaint.

The Complaint proposes that administrative civil liability in the amount of \$5,000 be imposed as authorized by California Water Code sections 13385 and 13399.31. Unless Discharger waives its right to a hearing and pays the proposed penalty, a hearing will be held before the Central Coast Water Board on **December 4 or 5, 2008**, at our offices in San Luis Obispo, unless otherwise scheduled by the Water Board.

If Discharger chooses to waive the right to a public hearing, then an authorized agent must sign the attached waiver form, and return it along with payment of the proposed penalty to the Central Coast Water Board **no later than November 26, 2008**. Alternatively, a hearing will occur on December 4 or 5, 2008, at our offices in San Luis Obispo, unless otherwise scheduled by the Water Board. At that time, the Water Board will hear public testimony and decide whether to adopt the proposed penalty as described in the Complaint, modify the penalty, or take any other action appropriate as a result of the hearing.

Please note that all written comments, other written submissions, legal objections to hearing process as set forth herein, and all other written legal argument that you want to provide to Water Board members for consideration at the hearing are **due no later than 5 pm on Wednesday, November 26, 2008**. Written material received after the due date will not be provided to Water Board members or become part of the record, unless the Board Chair rules that exclusion would create a severe hardship and that no party (including Central Coast Water

California Environmental Protection Agency

Board prosecution staff) will be prejudiced by the late submission. The Board Chair will make such a ruling at or before the hearing. Late submissions that consist of evidence (as opposed to policy statements or comments) will generally be deemed prejudicial unless all designated parties have time to consider the evidence before the meeting.

If you have questions about the annual report or otherwise complying with the General Permit, please contact **David Innis at (805) 549-3150**, or dbinnis@waterboards.ca.gov.

If you have questions about this enforcement action, please contact **Todd Stanley at (805) 542-4769**, Harvey Packard at (805) 542-4639, or State Water Resources Control Board Office of Enforcement attorney, Yvonne West, at (916) 341-5445.

Sincerely,



Michael J. Thomas
Assistant Executive Officer

Enclosures: 1. Complaint No. R3-2008-0078
 2. Waiver of Hearing Form
 3. Procedural Information for ACL Complaint Hearing and Payment

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ACL.doc





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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

CENTRAL COAST REGION

In the matter of:

Zurn Industries Wilkins Div

1747 Commerce Way

Paso Robles, CA 93446

WDID# 3 40 I 004 898

Complaint No. R3-2008-0078

Administrative Civil Liability

For

Violations of Industrial Storm Water

General Permit Violations

California Water Code

Sections 13399.31 and 13385

ZURN INDUSTRIES WILKINS DIV IS HEREBY GIVEN NOTICE THAT:

1. Zurn Industries Wilkins Div, a plumbing/water control product manufacturer located at 1747 Commerce Way, Paso Robles, in San Luis Obispo County (Discharger), is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board), may impose civil liability pursuant to Sections 13385 and 13399.33 of the California Water Code.
2. Unless the Discharger waives the right to a hearing and pays the civil liability as described in this complaint, a hearing on this matter will be held before the Central Coast Water Board during a public meeting on December 4 or 5, 2008, in San Luis Obispo, California. The Discharger and/or its representative(s) will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of civil liability by the Central Coast Water Board. The Central Coast Water Board will mail the Discharger an agenda for the hearing not less than ten days before the hearing date.
3. At the hearing, the Central Coast Water Board will consider whether to affirm or modify (decrease or increase) the proposed civil liability, or to take any other action appropriate as a result of the hearing.
4. The State of California has adopted the *General Permit for Storm Water Discharges Associated with Industrial Activity, Water Quality Order No. 97-03-DWQ, NPDES No. CA000001* (General Permit). The General Permit requires industrial facilities to submit a Notice of Intent to comply with the General Permit if the facility presents a threat of waste discharge to waters of the state because of contact between a facility's industrial process and storm water runoff, or through non-stormwater discharges, as prescribed by the General Permit.

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5. On April 7, 1992, the Discharger filed a Notice of Intent to comply with the terms of the General Permit. By filing a Notice of Intent, the Discharger agreed to comply with all terms and conditions of the General Permit, which requires the submittal of an annual report to the Central Coast Water Board by July 1st of each year.
6. On June 2, 2008, the Central Coast Water Board mailed a reminder notice to the Discharger stating that the 2007-2008 annual report was due no later than July 1, 2008.
7. The Discharger failed to submit its annual report on or before the July 1, 2008 due date, for the reporting period covering July 1, 2007, through June 30, 2008.
8. As required by California Water Code Section 13399.31, on July 11, 2008, the Central Coast Water Board issued a Notice of Non-Compliance for the Discharger's failure to submit the annual report. As further required by Section 13399.31, on August 15, 2008, the Central Coast Water Board issued a second Notice of Non-Compliance to the Discharger. The Central Coast Water Board mailed all Notices of Non-Compliance by certified mail, and received return receipts confirming delivery to the Discharger. More than 60 days have passed since the Central Coast Water Board sent the first Notice of Non-Compliance.
9. Pursuant to California Water Code Sections 13399.31(d) and 13399.33(c), if a discharger fails to submit an annual report within 60 days of the first Notice of Non-Compliance, the Central Coast Water Board must impose administrative civil liability of no less than \$1,000.
10. The Discharger is in violation of the General Permit for failure to submit an annual report. Furthermore, California Water Code section 13399.31 provides that a discharger that fails to submit an annual report within 60 days of the first Notice of Non-Compliance shall be subject to administrative penalties put forth in California Water Code Section 13399.33.
11. In accordance with Section 13399.33(c) of the California Water Code, the Discharger is civilly liable for at least the mandatory minimum of \$1,000.
12. To compel compliance from repeat violators, Section 1.D of the *State Water Resources Control Board Water Quality Enforcement Policy* states that water boards should quickly escalate enforcement actions to increasingly more formal and serious actions until compliance is achieved.
13. Central Coast Water Board records indicate that the Discharger has a limited history of violating the General Permit annual reporting requirements. The Central Coast Water Board Executive Officer issued past Notices of Non-Compliance to the Discharger for failing to submit timely annual reports as shown in the table below. This table does not include the two Notices of Non-Compliance sent for the 2007-2008 reporting period (the subject of this complaint). The Discharger's history of repetitive annual reporting violations warrants civil liability in an amount greater than the \$1,000 minimum prescribed by California Water Code Section 13399.33(c).

Late Annual Reporting History for Zurn Industries Wilkins Div

Applicable Reporting Period July 1 st – June 30 th	Dates of Notices of Non-Compliance Sent Before Discharger Submitted Late Annual Report
1995-1996	October 22, 1996

14. Pursuant to California Water Code Section 13385, any person who violates a waste discharge requirements permit shall be civilly liable for up to ten thousand dollars (\$10,000) for each day in which the violation occurs.
15. The Discharger is in violation of California Water Code Section 13385(a)(2) for failure to submit an annual report as required by a waste discharge requirements permit (the General Permit), and is subject to the penalties prescribed in California Water Code Section 13385(c).
16. The 2007-2008 annual report was due no later than July 1, 2008. As of October 23, 2008 (the date staff issued this complaint), the Discharger's annual report was one hundred and fourteen (114) days late, subjecting the Discharger to a maximum civil liability equal to one million, one hundred and forty thousand dollars (\$1,140,000, or 114 multiplied by \$10,000). This maximum civil liability increases by \$10,000 for each additional day the Discharger's report is late.
17. Pursuant to California Water Code Sections 13385(e) and 13399.33(a)(2), in determining the amount of liability, the Central Coast Water Board must consider the nature, circumstances, extent, and gravity of the violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, the discharger's ability to pay, the effect on the discharger's ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, any economic benefit or savings resulting from the violation, and other matters that justice may require. These considerations shall 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. At a minimum, the Water Board must assess liability at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.
 - a. Nature, Circumstances, Extent, and Gravity of Violations: These considerations are described in the above paragraphs. The reporting violation does not warrant the applicable maximum liability, but does warrant liability greater than the minimum \$1,000 required by Water Code Section 13399.33(c) described in paragraph No. 11 above.
 - b. Discharge Susceptibility to Cleanup or Abatement: Cleanup or abatement does not apply to reporting violations.
 - c. Degree of Toxicity of Discharge: Toxicity determinations do not apply to reporting violations.

- d. Discharger's Ability to Pay the Liability, and the Effect on the Discharger's Ability to Continue Business: The Discharger has the apparent ability to pay because it owns and operates a 162,000 square foot manufacturing facility in Paso Robles with over 200 employees, and is part of Zurn Industries' international, multi-company conglomerate. This consideration warrants less than the maximum liability, but warrants liability greater than the minimum \$1,000 required by Water Code Section 13399.33(c) described in paragraph No. 11 above.
- e. Voluntary Cleanup Efforts Undertaken: Voluntary cleanup efforts do not apply to reporting violations.
- f. Prior History of Violations: The Discharger's prior history of reporting violations is described above in paragraph No. 13. This consideration warrants less than the maximum liability.
- g. Degree of Culpability: As described in the above paragraphs, the Discharger was warned multiple times by certified letter, telephone, or facsimile about the annual reporting requirements. As the owner of the regulated facility, the Discharger has the highest degree of culpability. This consideration warrants less than the maximum liability, but warrants liability greater than the minimum \$1,000 required by Water Code Section 13399.33(c) described in paragraph No. 11 above.
- h. Economic Benefit or Savings Resulting from the Violations: Assuming that the Discharger performed all observations, monitoring, and other duties required throughout the 2007-2008 reporting year, which generate the data required in the annual report, the economic benefit or savings to the Discharger would be limited to the time and expense of preparing the report itself. With the appropriate information available, staff estimates the Discharger could complete the annual report in two hours or less. Assuming an hourly rate of \$75, the economic benefit equates to \$150.

The above assumption is very conservative. In staff's experience, dischargers that fail to submit annual reports frequently do not have the required information to enter into the report because they have not completed the monitoring requirements throughout the year. Economic savings in time, analytical costs, and group monitoring program fees (where applicable) are higher than the cost of preparing the report for submittal. The Discharger's failure to submit the annual report prevents staff from evaluating the completeness of the report and the Discharger's activities over the reporting period. This consideration warrants less than the maximum liability, but warrants liability greater than the minimum \$1,000 required by Water Code Section 13399.33(c) described in paragraph No. 11 above.
- i. Other Matters Justice May Require: Central Coast Water Board staff, including technical staff, administrative staff, management, and legal counsel, spent 18 hours informing the Discharger of its responsibilities and preparing civil liability documents. At \$135 per hour, staff costs resulting from the Discharger's violations equate to **\$2,430**. This consideration warrants less than the maximum liability, but warrants liability greater than the minimum \$1,000 required by Water Code Section 13399.33(c) described in paragraph No. 11 above.

18. Nothing in this complaint relieves the Discharger of any reporting obligation under the General Permit, including the obligation to submit the 2007-2008 annual report if the Discharger has not already done so. Failure to submit the annual report may subject the Discharger to additional enforcement action, including penalties accrued after the days of violation accounted for in this complaint. The Discharger's submittal of the annual report at any time after the 60-day period following the first Notice of Non-Compliance does not relieve the Central Coast Water Board's obligation to impose civil liability of at least \$1,000 on the Discharger.
19. If the Discharger waives its right to a hearing and pays the civil liability recommended herein, this complaint only resolves liability that the Discharger incurred through the days of violation accounted for in this complaint, only for the violations specified herein, and does not relieve the Discharger from liability for any violations after the days of violation accounted for in this complaint or any violations not alleged in the complaint (such as deficiencies in the annual report itself).

RECOMMENDED CIVIL LIABILITY: Considering the factors described in paragraph No. 17 above, the Assistant Executive Officer recommends imposing civil liability in the amount of **\$3,500**.

WAIVER OF A HEARING: The Discharger may waive the right to a hearing. If the Discharger wishes to waive the right to a hearing, please sign the attached waiver and return it, along with a cashier's check or money order in the amount of **\$3,500**, to the Central Coast Water Board at 895 Aerovista Place, Suite 101, San Luis Obispo, CA 93401-7906. Make the cashier's check or money order payable to the State Water Resources Control Board, Waste Discharge Permit Fund, and write "Complaint No. R3-2007-0078" on the check or money order's memo line.

If you have any questions, please contact Todd Stanley at (805) 542-4769, Harvey Packard at (805) 542-4639, or State Water Board Office of Enforcement attorney, Yvonne West, at (916) 341-5445.



Michael J. Thomas
Assistant Executive Officer

10-23-08

Date

WAIVER OF HEARING

By signing below, I hereby affirm and acknowledge the following in connection with Administrative Civil Liability Complaint No. R3-2008-0078 (Complaint) against Zurn Industries Wilkins Div (Discharger):

1. I am the Discharger identified in the Complaint or a duly authorized representative of the Discharger;
2. I am informed of the right provided by Water Code Section 13323, Subdivision (b), to a hearing within ninety (90) days after being served with the Complaint;
3. I hereby waive the Discharger's right to a hearing before the California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board), with regard to the violations alleged in the Complaint.
4. I agree to the terms of the Complaint including, but not limited to, the requirement to remit payment for the civil liability proposed.
5. I understand that the payment of the civil liability proposed constitutes a settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period expires and the Executive Officer has approved the settlement under his delegated authority and issues final written approval. Should the Central Coast Water Board receive new information or comments during this comment period, the Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. In that circumstance, for the purpose of any liability hearing for the alleged violations, I understand that this waiver will be treated as a settlement communication and will not be used as evidence in such a hearing.
6. I understand that the Executive Officer has complete discretion to modify or terminate this settlement before finalizing it in writing.
7. I understand that payment of the civil liability proposed is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

Date

Signature

Printed Name and Title

Check Number

**PROCEDURAL INFORMATION
FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
HEARING AND PAYMENT**

HEARING

Unless you waive your right to a hearing and pay the recommended liability, a hearing on this matter will be held before the Central Coast Regional Water Quality Control Board (Central Coast Water Board or Water Board) within 90 days after you have been served with this administrative civil liability (ACL) complaint. You or your representatives will have the opportunity to be heard and to contest the allegations in the ACL complaint and the imposition of civil liability by the Water Board. A meeting is scheduled for:

December 5, 2008, at 8:30 a.m.
Central Coast Water Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

At the hearing, the Water Board will consider the proposed administrative civil liability and may either accept or modify (increase or decrease) it consistent with applicable limits imposed by law, or direct other appropriate action. At this time, your hearing is not scheduled for a particular time during the meeting, and may occur at any time during the meeting. Depending on the size of the agenda, the Water Board may also expand the meeting to include an afternoon session on December 4, 2008. The Water Board will mail the Discharger an agenda for the hearing not less than ten days before the hearing date. The agenda will also be posted on the Water Board's web page at:

http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2008_agendas.shtml.

HEARING PROCEDURES

A copy of the procedures governing this adjudicatory hearing before the Water Board may be found at Title 23 of the California Code of Regulations, § 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. Except as provided in Title 23 of the California Code of Regulations (CCR), § 648(b), Chapter 5 of the Administrative Procedures Act (commencing with § 11500 of the Government Code) does not apply to adjudicatory hearings before the Water Board. This Notice provides additional requirements and deadlines related to the proceeding. **FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.**

WAIVER OF HEARING AND PAYMENT OF CIVIL LIABILITY

You may waive your right to a hearing. If you want to waive your right to the hearing, you or a duly authorized person¹ must sign the attached WAIVER OF HEARING form and pay the civil liability amount specified on the ACL complaint. Make a cashier's check or money order payable to "State Water Resources Control Board, Waste Discharge Permit Fund" and write the ACL complaint number on your check to assure correct crediting of your account. Do not send cash. Send your PAYMENT and WAIVER OF HEARING form to:

¹ A duly authorized person is defined as a principal executive officer of at least the level of vice president in a corporation, a general partner or the proprietor in a partnership or sole proprietorship, a principal executive officer or ranking elected official in a public agency, or a properly authorized representative.

California Regional Water Quality Control Board
Central Coast Region
ATTENTION: Todd Stanley
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

If full PAYMENT and a signed WAIVER OF HEARING form are not received in this office **by November 26, 2008**, the Water Board will conduct a hearing on this matter as stated above.

SEPARATION OF FUNCTIONS

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Water Board (Prosecution Staff) have been separated from those who will provide advice to the Water Board (Advisory Staff).

WRITTEN EVIDENCE, EXHIBITS AND LEGAL OBJECTIONS

All written comments, evidence, exhibits, other written submission, and legal objections and all other written legal arguments that Discharger wishes to present to the Central Coast Water Board members for consideration at the hearing are **due no later than 5 pm on Wednesday, November 26, 2008**.

EVIDENTIARY DOCUMENTS AND FILES

The Complaint, related evidentiary documents and comments received are on file and may be inspected or copied at the Water Board office at 895 Aerovista Place, Suite 101, San Luis Obispo. Please contact Sue Gerdson at (805) 549-3465 to schedule a file review Monday through Friday, 8 a.m. to 5 p.m. (except holidays). Many of these documents are also posted on the Water Board's web page at:

http://www.waterboards.ca.gov/centralcoast/board_decisions/tentative_orders/index.shtml

Although the web page is updated regularly, to assure access to the latest information, you may contact Todd Stanley at (805) 542-4769 or tstanley@waterboards.ca.gov.