

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION

STAFF REPORT FOR REGULAR MEETING OF JULY 6, 2007
Prepared on May 31, 2007

ITEM NUMBER: 14

SUBJECT: Administrative Civil Liability Order No. R3-2007-0031; S&S
Land Development, Monterey County

KEY INFORMATION

Discharger: S&S Land Development
Location: 516A Dolan Road, Moss Landing, Monterey County
Discharge Type: Storm Water Associated with Industrial Activity (Auto
Dismantling)
Existing Order: National Pollutant Discharge Elimination System (NPDES) Permit
No. CAS000001, State Water Board Order No. 97-03-DWQ,
*Waste Discharge Requirements for Discharges of Storm Water
Associated with Industrial Activities Excluding Construction
Activities*, WDID No. 3 271 012 685
This Action: **Impose Administrative Civil Liability**

SUMMARY

The Industrial Stormwater General Permit (General Permit) requires S&S Land Development (Discharger) to submit an annual report by July 1st of each year. After the Discharger failed to comply with the July 1, 2006 due date, Central Coast Water Board staff mailed three Notice of Violation letters reminding the Discharger of the annual reporting requirement and the possible enforcement actions for failing to comply. California Water Code Section 13399.33(c) requires the Central Coast Water Board to impose administrative civil liability for no less than \$1,000 if a discharger fails to submit an annual report within 60 days of the first Notice of Violation. The Discharger failed to provide the annual report within 60 days of staff's first Notice of Violation, and is subject to civil liability for no less than \$1,000.

DISCUSSION

On November 12, 1996, the Discharger filed a Notice of Intent to comply with the terms of the General Permit. By filing a Notice of Intent, the Discharger is required to comply with all terms and conditions of the General Permit, which includes submitting an annual report to the Central Coast Water Board no later than July 1st of each year (see General Permit Provision E.3, and Monitoring Program and Reporting Requirement B.14).

The Discharger was subject to the General Permit during the July 2005 to June 2006 reporting period.

On May 25, 2006, staff sent a letter to the Discharger reminding them about the July 1, 2006 annual report due date.

Notices of Violation: On August 1, 2006, September 6, 2006, and September 22, 2006, Central Coast Water Board staff issued Notice of Violation letters to the Discharger for failing to submit the annual report by July 1, 2006. Each Notice of Violation letter required the Discharger to submit the annual report **no later than October 1, 2006**, to avoid the imposition of a mandatory penalty according to California Water Code Section 13399.33(c).

Other Contact With Discharger: Staff telephoned the Discharger on September 7, 2006, and notified them that they must submit the annual report by October 1, 2006. Mr. Stanley Silva noted that he was aware the report was overdue, and that he would send the annual report on September 15, 2006. The Discharger did not submit the annual report.

Complaint Issuance: On April 19, 2007, staff mailed Administrative Civil Liability Complaint No. R3-2007-0031 to the Discharger by certified mail.

Status of Annual Report: The Discharger submitted its annual report on October 16, 2006, but not within 60 days of the first Notice of Violation (i.e., by October 1, 2006), as required in California Water Code Section 13399.31.

Violation History: Allegation No. 13 of Administrative Civil Liability Complaint No. R3-2007-0031 (attached) documents the Discharger's history of violating annual reporting requirements, and the Central Coast Water Board's associated enforcement actions. The Discharger has violated the General Permit's annual reporting requirements for seven different reporting years (including 2005-2006) since filing its Notice of Intent to comply in 1996. The Discharger's actions indicate the need for a greater incentive to submit annual reports according to General Permit requirements. In response to the Discharger's violation history, and to provide additional incentive to comply, the imposition of civil liability for more than the mandatory minimum penalty of \$1,000 is warranted.

Staff Consideration of Recommended Liability Amounts: For the 2005-2006 annual reporting period, five dischargers failed to submit annual reports soon enough to avoid mandatory penalties. Of the five, one had no previous history of annual report violations, three had substantial histories of annual report violations and Notice of Violation letters, and one had the latter history in addition to a previous administrative civil liability order for annual report violations. Therefore, staff recommended the liability amounts with consideration of these three categories of violators.

Staff applied the mandatory minimum penalty of \$1,000 to the discharger with no previous reporting violations. Staff then applied a larger amount of liability to the other two categories of dischargers with violation and enforcement histories, with progressively larger amounts applying to those with more serious histories.

Staff applied \$2,000 to the second category of dischargers that have substantial histories of annual report violations and Notice of Violation letters. These violations are more serious because of the repetitive violations and associated Central Coast Water

Board staff resources used to achieve compliance. Therefore, the Water Board should assess liability against this category in an amount larger than the violator category described in the previous paragraph.

Staff recommended \$3,000 for the third category of discharger that, in addition to having the type of history associated with the \$2,000 category, also had previous administrative civil liability assessed against it for annual reporting violations. This violation category is the most serious because the Central Coast Water Board's previous formal enforcement action did not provide adequate incentive for the discharger to comply. Therefore, the Water Board should assess liability against this category in an amount larger than the previous action, and larger than the two violator categories described above.

S&S Land Development is part of the second category of annual report violators (substantial history of annual report violations and Notice of Violation letters), as reflected in staff's recommendation below.

Conclusion: The Discharger is in violation of California Water Code Section 13399.31 for failing to submit an annual report within 60 days of staff's first Notice of Violation. Section 13399.33(c) requires the Central Coast Water Board to impose administrative civil liability for no less than \$1,000 upon any person that fails to submit an annual report in accordance with Section 13399.31.

RECOMMENDATION

Considering the Discharger's history of violating annual reporting requirements, and the Central Coast Water Board's previous enforcement actions, staff recommends that the Central Coast Water Board adopt Order No. R3-2007-0031 to impose **Two Thousand Dollars (\$2,000)** in administrative liability against the Discharger.

ATTACHMENTS

1. Administrative Civil Liability Order No. R3-2007-0031
2. Administrative Civil Liability Complaint No. R3-2007-0031

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