

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:)	
)	
Behr Process Corporation)	Complaint No. R8-2002-0082
3400 West Segerstrom)	for
Santa Ana, CA 92702)	Administrative Civil Liability
)	
<u>Attn: Mr. Michael Butler</u>)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Behr Process Corporation (Behr) is 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 Section 13385(c)(2) of the California Water Code. A hearing concerning this Complaint will be held before the Board within sixty days of the date of issuance of this Complaint. The hearing in this matter will be scheduled for the Board's regular meeting on October 25, 2002 at the City Council Chambers of Corona, 815 West 6th Street, Corona, CA 92882.
2. Behr or its 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. The storm water runoff from the Behr facility at 1603 West Alton in the City of Santa Ana is regulated under the State's General Permit for Storm Water Runoff Associated with Industrial Activities, Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit), WDID No. 8 30S002952.
5. Behr is alleged to have violated Provision A.1 (" . . . materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited".) As more fully set forth below, Behr allowed non-storm water discharges to leave their facility, which caused or threatened to cause pollution, contamination, or nuisance. Behr failed to adequately implement appropriate Best Management Practices (BMPs) for the elimination or reduction of pollutants. Behr discharged pollutants to waters of the United States from the facility. Appropriate reporting of the discharge was not performed. Pursuant to Water Code Section 13385(a)(2), civil liability may be imposed for the preceding violations.

6. This complaint is based on the following facts:

- a) The facility's Notice of Intent, showing the manufacturing of paint as the type of business, was filed on April 2, 1992 and has remained active to the present;
- b) Board staff received a complaint on July 29, 2002 that "acid had spilled from the facility to the street and the storm drain." The complainant stated that the spill had occurred approximately 2-3 weeks prior;
- c) After receiving the complaint, Board staff investigated the spill on July 29, 2002. White staining and etching in the gutter were evident from the boundary of the facility to and into the drop structure into the flood control channel;
- d) Facility personnel stated that the spill was detected on Monday morning, July 8, 2002 and the product that had spilled was approximately 1,000 gallons of Behr's "Concrete Rust Remover and Etcher", which consists of 44.99% phosphoric acid by weight;
- e) Facility personnel stated that the spill originated from a faulty tank valve, which had failed sometime during the weekend. Board staff observed that the phosphoric acid overwhelmed and/or migrated through breaks in the concrete, secondary containment wall; entered a down-gradient storm drain; filled the 600 gallon clarifier; discharged into the street; and entered a drop structure and a flood control channel that eventually discharges into Upper Newport Bay;
- f) Facility personnel stated that the product in the clarifier and the product which had pooled between the facility boundary and the flood control channel drop structure was recovered, as was over 200 gallons of water used to wash the gutters/swales; and,
- g) Facility personnel stated that the spill had been reported to Behr's Director of Environmental and Regulatory Affairs and that an internal spill report had been prepared, but that no notification was made to any regulatory agency until August 13, 2002, when Behr personnel filed a report with the Governor's Office of Emergency Services (OES).

7. Section 13385(a)(2) provides that any person who violates waste discharge requirements 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. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons. Based on statements made by the facility personnel, of the 1,000 gallons released, over 600 gallons were recovered, resulting in an unauthorized, non-storm water discharge of less than 1,000 gallons.

8. Pursuant to Section 13385(c), Behr is civilly liable for the sum of \$20,000 (\$10,000 per day for at least two days of discharge). This unauthorized, non-storm water discharge occurred without adequate or properly maintained BMPs to eliminate/reduce the discharge of sediment-laden water. The total maximum assessment is \$20,000 for the violations cited in Paragraph 6, above.
9. Board staff spent a total of 2 hours investigating this incident (@\$70.00 per hour, the total cost for staff time is \$140.00). Behr saved approximately \$5,000.00 by not developing, implementing, and maintaining adequate BMPs to prevent an unauthorized discharge. These factors were considered in assessing the penalty indicated in Paragraph 10, below.
10. 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. After consideration of these factors, the Executive Officer proposes civil liability be imposed on Behr in the amount of \$20,000 for the violations cited above. An invoice for this amount is enclosed.

Factor	Comment
A. Nature, Circumstances, Extent and Gravity of Violation	A spill of phosphoric acid solution to private and public storm drain systems occurred without monitoring, reporting, proper action or adequate BMPs to prevent discharge. An unknown quantity of acid was discharged over a weekend, but reportedly less than 1,000 gallons. Visibly damaged storm drain system as well as impacted water quality.
B. Culpability	The discharger violated the terms of the General Permit by failing to implement appropriate BMPs and by discharging non-storm water containing pollutants. The discharger also violated the Porter-Cologne Water Quality Control Act by not reporting the spill to the proper authorities.
C. Economic Benefit or Savings	Behr saved approximately \$5000.00 by not developing and implementing proper BMPs.
D. Prior History of Violations	There is an extensive prior history of violations. These include a Notice of Violation issued by Board staff on February 14, 2001 for several violations of the General Permit including an inadequately maintained containment wall surrounding the "Finished Product" tank area and more than six prior complaints and spills investigated by state and county agencies.
E. Staff Costs	Regional Board staff spent approximately 2 hours investigating this incident (@\$70.00 per hour, the total cost for staff time is \$140.00).
F. Ability to pay	The discharger has not provided any information to indicate that it is unable to pay the proposed amount.

WAIVER OF HEARING

Behr may waive its right to a hearing in this matter. If Behr chooses to do so, please sign the attached waiver, which is on page 6 of this Complaint, and return it, together with the bottom portion of the invoice and a check for \$20,000, to the State Water Resources Control Board in the preprinted enclosed envelope.

If you have any questions, please contact Mark Smythe at (909) 782-4998 or Michael Adackapara at (909) 782-3238, or contact the Board's staff counsel, Jorge Leon, at (916) 341-5180.

Date



Gerard J. Thibeault
Executive Officer

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Santa Ana, CA 92702)	
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<u>Attn: Mr. Michael Butler</u>)	

WAIVER OF HEARING

I agree to waive Behr Process Corporation's right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2002-0082. I have enclosed a check, made payable to the State Water Resources Control Board, in the amount of \$20,000. I understand that I am giving up Behr Process Corporation's right to be heard and to argue against allegations made by the Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

Date

for Behr Process Corporation