

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

RESOLUTION NO. R8-2004-0069

Rescinding Order No. R8-2004-0019 And Adopting Order No. R8-2004-0066

Whereas, the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), finds that:

1. On January 22, 2004, this Board adopted Order No. R8-2004-0019 affirming mandatory minimum penalties proposed against USA Gasoline Corporation (USA). The adoption of Order No. R8-2004-0019 followed a hearing during which Staff and representatives of Waterstone Environmental, Inc. (Waterstone) presented evidence and argument regarding Mandatory Penalties Complaint (MPC) No. R8-2003-0093;
2. USA filed a petition with the State Water Resources Control Board seeking review of Order No. R8-2004-0019 on various specified grounds;
3. By letter dated April 27, 2004, the State Water Resources Control Board dismissed the petition filed by Waterstone, on behalf of USA;
4. Following this Board's adoption of Order No. R8-2004-0019, Staff discovered that the penalty assessed by MPC No. R8-2003-0093 was erroneously determined;

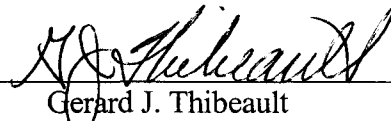
The determination of violations included in Order No. R8-2004-0019 was based on Staff's review of USA's self-monitoring reports, which indicated effluent limit violations for tertiary butyl alcohol (TBA) and dichlorobromomethane (DCBM). The determination utilized an application of EPA Guidance QA/G-4 and G-9, which resulted in a finding of eight violations subject to mandatory minimum penalties. Following the Board's adoption of Order No. R8-2004-0019, Staff determined that the EPA Guidance was the incorrect method to apply to the reported discharges. The correct method is that protocol set forth in the State Policy for Implementation of Toxics Standards for Inland Surface Water, Enclosed Bays and Estuaries, 2000, Section 2.4.5. This is the protocol normally used in determining discharges subject to mandatory minimum penalties. Application of this protocol to the reported discharges yields a result of six violations subject to mandatory minimum penalties under California Water Code Section 13385(h). Accordingly, the assessment payable by USA should be reduced by \$6,000;

5. The error described above was not among the grounds set forth by USA or Waterhouse in support of the petition filed with the State Water Resources Control Board;
6. The error resulted in the imposition by the Board of an erroneous mandatory minimum penalty in Order No. R8-2004-0019;
7. It is in the interest of justice, pursuant to California Water Code Section 13385(e), that the assessment in Order No. R8-2004-0019 be reduced to reflect use of the correct method to determine whether a discharge is a violation subject to mandatory minimum penalties;
8. Staff has notified USA and Waterstone of its intent to recommend that Order No. R8-2004-0019 be rescinded and replaced with Order No. R8-2004-0066;
9. In all other respects, Order No. R8-2004-0019 should be reaffirmed;
10. USA and Waterstone consent to the rescission of Order No. R8-2004-0019 and adoption of Order No. R8-2004-0066;

NOW THEREFORE, BE IT RESOLVED:

1. Order No. R8-2004-0019 is hereby rescinded and replaced by Order No. R8-2004-0066, which corrects the erroneous assessment amount and reflects the appropriate mandatory minimum penalty;
2. By this action, it is the intent of the Board solely to correct the error in use of assessment calculation protocol. It is not the intent of the Board to provide the discharger or Waterstone with a second opportunity to seek review of Order No. R8-2004-0019, which in all other respects, remains unchanged.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Santa Ana Region, on August 13, 2004.



Gerard J. Thibeault
Executive Officer