

STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION

In the Matter of:

Niagara Bottling, LLC  
5675 East Concourse Street  
Ontario, CA 91764

Attn: Brian Hess

COMPLAINT NO. R8-2008-0010  
for  
ADMINISTRATIVE CIVIL LIABILITY  
(Revised on May 27, 2008)

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Niagara Bottling, LLC (hereinafter Niagara Bottling) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), must impose liability under Section 13399.33 and may impose additional liability under Section 13385(c) of the California Water Code.
2. A hearing concerning this Complaint may be held before the Board within ninety days of the date of issuance of this Complaint. The hearing in this matter is scheduled for the Board's regular meeting on June 6, 2008, at the City Council Chambers of Santa Ana, located at 22 Civic Center Plaza Road in Santa Ana, California. 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 and the staff report relating to this item will be mailed to you not less than 10 days prior to 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. Niagara Bottling is alleged to have violated the California Water Code by allowing the discharge of pollutants to waters of the United States without filing a Report of Waste Discharge as required under Section 13376 of the Water Code.
5. This complaint is based on the following facts:
  - a) Niagara Bottling is a bottled water company with a facility located at 2560 East Philadelphia Avenue in Ontario, California. It bottles water for private labels and commercial resale. The facility also manufactures plastic bottles at the facility.
  - b) On July 21, 2005, San Bernardino County Flood Control District staff observed an approximately 100 gallon-per-minute (gpm) discharge from the facility to Cucamonga Creek. This discharge was coming from the sand filters.

- c) On the same day, City of Ontario staff also observed non-storm water discharges from the facility, including discharges from a sand filter unit. These flows entered a storm drain inlet on the southwest side of the property that discharges to Cucamonga Creek. City staff instructed Niagara Bottling to cease unauthorized discharges and to obtain appropriate permit coverage.
- d) During the July 21, 2005 inspection, City staff noted water bottle lids, trash and sediment near storm drain inlets in the loading dock area and oil drums and batteries stored outdoors. City staff requested Niagara Bottling to implement proper housekeeping practices, including storage of oil drums and batteries in a spill containment area.
- e) Industrial facilities operating under specified Standard Industrial Classification (SIC) codes are required to obtain coverage under State Board Order No. 97-03-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001 (General Permit). City staff determined that operations at Niagara Bottling needed to be regulated under the General Permit and required the facility to obtain coverage under the General Permit. On July 21, 2005, the City issued a Notice of Violation to the facility for the violations noted above.
- f) On March 8, 2006, City staff conducted a follow up inspection of the facility and noted that the facility had developed a Storm Water Pollution Prevention Plan (SWPPP) that was not site specific and that the facility had not obtained coverage under the General Permit. There were no significant improvements in the housekeeping practices; plastic pellets were observed on the pavement at the loading dock and trash bins were uncovered; vehicle maintenance and mobile vehicle washing were occurring outdoors; batteries were still stored outside without secondary containment; and a 250-gallon waste oil container was stored on an undersized spill containment pallet. Again, City staff instructed Niagara Bottling to improve housekeeping practices, including proper handling, containment and storage of raw materials, batteries, waste oil and other waste products. On March 8, 2006, the City issued a second Notice of Violation for the violations noted above and required the facility to obtain coverage under the General Permit.
- g) On December 28, 2006, Regional Board staff issued a Notice of Non-compliance (NNC) to Niagara Bottling. The NNC required Niagara Bottling to file a Notice of Intent (NOI) to obtain coverage under the General Permit by January 29, 2007. In addition, the NNC required Niagara Bottling to prepare a site-specific SWPPP and to implement appropriate pollution control measures. Niagara Bottling failed to comply with the NNC.
- h) On April 5, 2007, Regional Board staff issued a second NNC that specified a deadline of May 7, 2007 for Niagara Bottling to obtain coverage under the General Permit. Niagara Bottling again failed to comply with the second NNC.

- i) On October 4, 2007, Regional Board staff inspected Niagara Bottling's facility. Staff observed inadequate housekeeping, uncovered trash bins, uncovered chemicals in the outdoor vehicle maintenance area, and undersized secondary containment. Staff reiterated the need for Niagara Bottling to obtain coverage under the General Permit and to comply with the terms and conditions of the Permit. Niagara Bottling obtained permit coverage on December 28, 2007.
6. Niagara Bottling is alleged to have violated Sections 13376 and 13399.30(c)(2) of the California Water Code. Niagara Bottling violated Section 13376 by failing to file a report of waste discharge prior to the discharge of pollutants. Pursuant to Section 13399.30(c)(2) of the California Water Code, if a discharger fails to submit the required NOI to the Regional Board within 60 days from the date on which the original NNC was sent, the Board shall impose the penalties described in subdivision (a) of Section 13399.33 of the California Water Code.
  7. Pursuant to Section 13385 of the Water Code, a regional board may impose civil liability administratively for violations of Section 13376. On July 21, 2005, Niagara Bottling discharged wastewater in violation of Section 13376. The maximum penalty for this violation is \$10,000 (one day of violation at \$10,000 per day) plus an additional liability of \$10 per gallon for any discharge over 1,000 gallons that was not cleaned up. City/County staff observed the discharge for at least 40 minutes (100 gpm X 40 minutes = 4,000 gallons). At \$10/gallon, the maximum assessment based on the discharge volume is \$30,000 ([4,000 - 1,000 = 3,000] X \$10 = \$30,000).
  8. In addition, pursuant to Section 13399.30(c)(2) of the California Water Code, if a discharger fails to submit the required NOI to the Regional Board within 60 days from the date on which the original Notice of Noncompliance was sent, the Regional Board shall impose the penalties described in subdivision (a) of Section 13399.33 of the California Water Code.
  9. Pursuant to Section 13399.33(a) of the California Water Code, the Regional Board shall administratively impose a mandatory penalty in an amount that is not less than five thousand dollars (\$5,000) per year of noncompliance or fraction thereof, unless the Regional Board makes express findings based on specific factors listed in Section 13399.33(a)(2). These factors are the same as those discussed under Paragraph 11, below. The mandatory penalty for this violation is \$5,000 based on one year of violation.
  10. The total maximum penalty per Sections 13385 and 13399 of the Water Code is \$45,000 (\$10,000/day for one day of violation + \$30,000 @ \$10/gallon for 3,000 gallons + \$5,000/yr for three years of violation). Niagara Bottling saved approximately \$6,416 by not obtaining permit coverage and by not developing and implementing a site-specific SWPPP. Regional Board staff costs for investigating this incident were approximately \$3,960. These factors were considered in assessing the penalty proposed in Paragraph 12, below.

11. Section 13385(e) specifies factors that the Regional 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. These factors are evaluated in the table below.

| Factor   | Comment  |
|--|--|
| <b>A. Nature, Circumstances, Extent and Gravity of Violation</b> | The facility discharged wastewater from the sand filter units without prior authorization, and operated an industrial facility without General Permit coverage. City of Ontario and Regional Board staff repeatedly advised Niagara Bottling to obtain General Permit coverage and to implement pollution control measures at the site. Niagara Bottling did not develop and implement a site-specific SWPPP and pollutants were exposed to storm water. |
| <b>B. Culpability</b>  | The discharger failed to file a NOI for General Permit coverage after multiple requests over three years. However, the discharger obtained coverage for a similar facility it owned at a different location in Ontario. So the discharger was fully aware of the permit requirements. The discharger was not responsive to the City of Ontario or Regional Board staff efforts to bring the site into compliance.  |
| <b>C. Economic Benefit or Savings</b>                            | Niagara Bottling saved approximately \$6,416 by not obtaining General Permit coverage and by not developing and implementing a SWPPP and Monitoring and Reporting program.   |
| <b>D. Prior History of Violations</b>                            | No prior history of violations.  |
| <b>E. Staff Costs</b>  | Regional Board staff spent approximately 39 hours investigating this incident. The total cost for staff time is \$3,960.   |
| <b>F. Ability to pay</b>   | The discharger has not provided any information to indicate that it is unable to pay the proposed amount.  |

12. After consideration of the above factors, the Assistant Executive Officer proposes civil liability be imposed on Niagara Bottling in the amount of \$30,000 for the violations cited above. This includes \$5,000 in mandatory penalties, \$10,000 for one day of violation and \$15,000 based on flow (3,000 gallons@ \$5/gallon).

#### WAIVER OF HEARING

Niagara Bottling may waive its right to a hearing. If you choose to do so, please sign the attached waiver form and return it, together with a check for \$30,000 payable to the State Water Resources Control Board in the enclosed preprinted envelope. If you waive your right to a hearing and pay the assessed amount, the Regional Board may not hold a hearing regarding this complaint.

If you have any questions, please contact Steve Mayville at (951) 782-4992 or Mary Bartholomew at (951) 321-4586.

5/27/08  
Date

Kurt V. Berchtold  
Kurt V. Berchtold  
Assistant Executive Officer

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|---------------------------|---|--------------------------------|
| In the matter of:         | ) | Complaint No. R8-2008-0010     |
|                           | ) | for                            |
| Niagara Bottling, LLC     | ) | Administrative Civil Liability |
| 5675 East Concours Street | ) |                                |
| Ontario, CA 91764         | ) |                                |
|                           | ) |                                |
| Attn: Brian Hess          | ) |                                |

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WAIVER OF HEARING

I agree to waive the right of Niagara Bottling, LLC, to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2008-0010. I have enclosed a check, made payable to the State Water Resources Control Board, in the amount of \$30,000. I understand that I am giving up the right of Niagara Bottling, LLC, to be heard and to argue against allegations made by the Assistant Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

\_\_\_\_\_  
Date

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for Niagara Bottling, LLC