

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

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| <u>IN THE MATTER OF:</u> |) | COMPLAINT No. R8-2008-0041 |
| Terry Miller |) | FOR |
| Miller Foundry Co. |) | ADMINISTRATIVE CIVIL LIABILITY |
| 1018-A E. Chestnut Street |) | |
| Santa Ana, CA 92701 |) | |
| _____ |) | |

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Terry Miller, DBA Miller Foundry Co. (hereinafter jointly referred to as Miller), is alleged to have violated provisions of law for which the California Regional Water Quality Board, Santa Ana Region (hereinafter Board), may impose civil liability under California Water Code (Water Code) Section 13361.
2. A hearing concerning this Complaint will 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, City of 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 pertaining 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 complaint or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Miller is alleged to have violated Water Code Section 13260 by failing to pay the annual fees for its industrial facility located at 1018-A E. Chestnut Street, Santa Ana, CA. The facility is regulated under the State's General Permit for Storm Water Discharges Associated with Industrial Activity, Water Quality Order No. 97-03-DWQ (General Permit), WDID No. 8 30S014847. The facility has not paid its annual fees for fiscal years 2002-03, 2003-04, 2004-05, 2005-06, 2006-07 and 2007-08.
5. This complaint is based on the following facts:
 - a. Miller operates an aluminum casings operation at its facility in Santa Ana. General Permit coverage is required for such operations. On December

- 22, 1998, the facility submitted a Notice of Intent to be covered under the General Permit.
- b. To continue permit coverage, the facility is required to pay an annual fee in accordance with the fee schedule established by the State Water Resources Control Board (State Board).
 - c. In 2002, Miller indicated that it might discontinue its operations. However, Miller has continued to operate and has refused to pay the annual fees despite a number of written demands for payment.
6. Pursuant to Water Code Section 13261, civil liability may be imposed for the preceding violations in an amount that may not exceed one thousand dollars per day for each day of violation. Miller is alleged to have violated Water Code Section 13260 for a total of 1,923 days (from December 22, 2002 to March 20, 2008). At one thousand dollars per day, the maximum penalty for this violation is \$1,927,738 (this includes \$1,923,000 @\$1,000/day for 1,923 days of violation + \$4,738 in unpaid annual fees).
 7. Water Code 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. These factors are evaluated in the following table:

| Factor | Comment |
|--|--|
| A. Nature, Circumstance, Extent, and Gravity of Violation | Miller is fully aware of the requirements to pay the annual fees to continue coverage under the General Permit. Miller has been notified repeatedly of the requirement to pay these fees. The owner of the facility, Mr. Miller, has willfully refused to pay the annual fees. |
| B. Culpability | The owner's willful refusal to pay the annual fees is a violation of the Water Code. |
| C. Economic Benefit or Savings | Miller has avoided payment of \$4,738 in annual fees. The additional economic benefit of postponing the payment is not significant. |
| D. Prior History of Violations | No prior history of violations. |

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| E. Other Factors | The total staff costs for payment demand and follow up enforcement actions are approximately \$1,200. |
| F. Ability to pay | The owner of the facility has indicated in a letter that the facility is having financial problems and is behind in rent payments. |

10. After consideration of these factors, the Assistant Executive Officer proposes that civil liability be imposed on Miller in the amount of \$5,000.

WAIVER OF HEARING

You may waive your right to a hearing. If you choose to do so, please sign the attached waiver form and mail it, together with a check payable to the State Water Resources Control Board for \$5,000. The waiver form and the check should be mailed to this office in the enclosed preprinted envelope.

If you have any questions, please contact Mark Smythe at (951) 782-4998, or Michelle Beckwith at (951) 782-4433.

3/20/08
Date

Kurt V. Berchtold
Kurt V. Berchtold
Assistant Executive Officer

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Terry Miller) **FOR**
Miller Foundry Co.) **ADMINISTRATIVE CIVIL LIABILITY**
1018-A E. Chestnut Street)
Santa Ana, CA 92701)
_____)

WAIVER OF HEARING

I, Terry Miller, on my behalf and on behalf of Miller Foundry Co., agree to waive the right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2008-0041.

I have enclosed a check, payable to the State Water Resources Control Board, in the amount of \$5,000. I understand that I am giving up my right and the right of Miller Foundry Co. 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

Terry Miller/Miller Foundry Co.