



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

**Santa Ana Regional Water Quality Control Board**

January 11, 2018

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Brent McDaniel  
McDonalds USA LLC  
3800 Kilroy Airport Way, Suite 200  
Long Beach, CA 90806

**TRANSMITTAL OF MANDATORY MINIMUM PENALTY (MMP) COMPLAINT NO. R8-2018-0017, MCDONALDS USA LLC, WDID No. 8 33C376206**

Dear Mr. McDaniel:

Enclosed is Mandatory Minimum Penalty Complaint No. R8-2018-0017 (Complaint). The Complaint alleges that McDonalds USA LLC has violated the State's General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ as amended by Order No. 2010-0014-DWQ as amended by Order No. 2012-0006-DWQ, NPDES No. CAS000002 ( Construction General Permit) by failing to submit the 2016-2017 annual report by September 1, 2017 for McDonalds Restaurant, located at 310 South Lincoln Avenue, in the city of Corona.

The Complaint proposes that a penalty in the amount of three thousand, one hundred twelve dollars (\$3,112) be imposed. The penalty amount is comprised of mandatory minimum penalties and staff costs as authorized by California Water Code Sections 13399.33(c) and 13399.33(d).

A public hearing on this matter is scheduled for the Regional Board meeting on **March 23, 2018**. A proposed Order, the staff report regarding this Complaint and the meeting agenda will be provided to you not less than 10 days prior to the hearing. A meeting agenda will also be available at: [http://www.waterboards.ca.gov/santaana/board\\_info/agendas/](http://www.waterboards.ca.gov/santaana/board_info/agendas/).

Pursuant to California Water Code Section 13323, McDonalds USA LLC has the option to waive its right to a hearing. Should the McDonalds USA LLC waive its right to a hearing and pay the proposed assessment, the Regional Board may not hold a public hearing on this matter. If the McDonalds USA LLC chooses to waive its right to a hearing, please sign and submit the enclosed Waiver Form by **February 12, 2018**. Please make the check payable to the Waste Discharge Permit Fund for three thousand, one hundred twelve dollars (\$3,112) and include the Complaint Number on the memo line. Please send the following information to the appropriate location:

**Mail Waiver Form to:**  
RWQCB  
Attn: Keith Elliott  
3737 Main Street, Suite 500  
Riverside, CA 92501

**Mail Payment to:**  
SWRCB – Accounting Office  
Attn: Storm Water MMP Payment  
P.O. Box 1888  
Sacramento, CA 95812-1888

WILLIAM RUH, CHAIR | HOPE A. SMYTHE, EXECUTIVE OFFICER

3737 Main St., Suite 500, Riverside, CA 92501 | [www.waterboards.ca.gov/santaana](http://www.waterboards.ca.gov/santaana)

January 11, 2018

If the McDonalds USA LLC does not wish to waive its right to a hearing, a pre-hearing meeting is recommended. Should you wish to schedule a pre-hearing meeting, please submit your request to Keith Elliott by email at [keith.elliott@waterboards.ca.gov](mailto:keith.elliott@waterboards.ca.gov) or by phone at (951) 782-4925 prior to January 22, 2018.

A Proposed Hearing Procedure pertaining to this Complaint is also enclosed. The Proposed Hearing Procedure sets forth important requirements and deadlines for participation in the hearing. Additionally, a Fact Sheet describing the complaint process is available at:

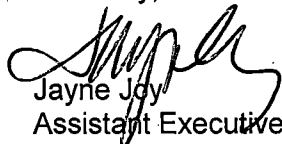
[http://www.waterboards.ca.gov/santaana/public\\_notices/enforcement\\_actions.shtml](http://www.waterboards.ca.gov/santaana/public_notices/enforcement_actions.shtml)

The Fact Sheet describes the complaint process and explains what McDonalds USA LLC can expect and its obligations as the process proceeds. If preferred, a hard copy of the Fact Sheet may be obtained by contacting Keith Elliott at [kelliott@waterboards.ca.gov](mailto:kelliott@waterboards.ca.gov) or by calling (951) 782-4925.

Please read the Proposed Hearing Procedure carefully. The Regional Board may adopt an Order requiring that you pay a penalty.

If you have any questions regarding the Complaint or the enclosed documents, please contact Keith Elliott at [kelliott@waterboards.ca.gov](mailto:kelliott@waterboards.ca.gov) or by calling (951) 782-4925. All legal questions should be directed to Catherine Hawe, Office of Enforcement, by email at [catherine.hawe@waterboards.ca.gov](mailto:catherine.hawe@waterboards.ca.gov) or by phone at (916) 322-3538.

Sincerely,



Jayne Joy  
Assistant Executive Officer  
Regional Board Prosecution Team

Enclosures: MMP Complaint No. R8-2018-0017  
Proposed Hearing Procedure  
Waiver Form  
Attachment 1: 1<sup>st</sup> Notice of Non-Compliance, dated 9/12/17  
Attachment 2: 2<sup>nd</sup> Notice of Non-Compliance, dated 10/18/17

cc: Regional Board

Mr. Carlos Madrigal, McDonald's; [carlos.madrigal@us.mcd.com](mailto:carlos.madrigal@us.mcd.com)  
Mrs. Hope Smythe, RWQCB, Riverside (Regional Board Advisory Team)  
Ms. Teresita Sablan, Office of Chief Counsel, SWRCB, Sacramento (Regional Board Advisory Team Attorney) [Teresita.Sablan@waterboards.ca.gov](mailto:Teresita.Sablan@waterboards.ca.gov)  
Ms. Catherine Hawe, Office of Enforcement, SWRCB, Sacramento;  
[Catherine.Hawe@waterboards.ca.gov](mailto:Catherine.Hawe@waterboards.ca.gov)  
Ms. Andrea Gonzalez, County of Riverside Program Manager, [jgonzalez@rivco.org](mailto:jgonzalez@rivco.org)  
Mr. Jeff Potts, City of Corona NPDES Coordinator, [Jeff.Potts@coronaca.gov](mailto:Jeff.Potts@coronaca.gov)

2299 0E50 2000 0T60 9T02

**U.S. Postal Service™**  
**CERTIFIED MAIL® RECEIPT**  
*Domestic Mail Only*

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®.

**OFFICIAL USE**

Certified Mail Fee

\$

Extra Services & Fees (check box, add fee as appropriate)

- Return Receipt (hardcopy) \$ \_\_\_\_\_
- Return Receipt (electronic) \$ \_\_\_\_\_
- Certified Mail Restricted Delivery \$ \_\_\_\_\_
- Adult Signature Required \$ \_\_\_\_\_
- Adult Signature Restricted Delivery \$ \_\_\_\_\_

Postmark  
Here

Postage

\$

Total Postage

Brent McDaniel  
 McDonalds USA LLC  
 3800 Kilroy Airport Way, Suite 200  
 Long Beach, CA 90806

\$

Sent To

Street and Ap

City, State, Zi

**State of California  
California Regional Water Quality Control Board  
Santa Ana Region**

IN THE MATTER OF:

McDonalds USA LLC	)	Complaint No. R8-2018-0017
3800 Kilroy Airport Way, Suite 200	)	for
Long Beach, CA 90806	)	Mandatory Minimum Penalty and Staff Costs
Attn: Brent McDaniel	)	
	)	

**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. You are 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 of the California Water Code.
2. Unless waived, a hearing concerning this Complaint will be held before the Regional Board at its regular meeting on March 23, 2018, at a to be determined location. The McDonalds USA LLC representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of mandatory penalties by the Regional Board. An agenda for the meeting will be provided to McDonalds USA LLC not less than 10 days before the hearing date. A meeting agenda will also be available at: [http://www.waterboards.ca.gov/santaana/board\\_info/agendas/](http://www.waterboards.ca.gov/santaana/board_info/agendas/).
3. McDonalds USA LLC can waive its right to a hearing to contest the allegation contained in this Complaint by signing and submitting the enclosed waiver and paying the liability in full or by taking other actions as described in the waiver form. If this matter proceeds to a hearing, the Prosecution Team reserves the right to seek an increase in the penalty amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing. The enforcement costs may be recovered pursuant to Water Code Section 13399.33(d).
4. At the hearing, the Regional Board will consider whether to affirm, reject, or modify the proposed mandatory minimum penalties and assessment of costs pursuant to Water Code section 13399.33, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

**THIS COMPLAINT IS BASED ON THE FOLLOWING FACTS:**

5. The construction site, **WDID 8 33C376206** identified as McDonalds Restaurant, located at 310 South Lincoln Avenue in the city of Corona, is regulated under the State's General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ as amended by Order No. 2010-0014 and Order No. 2012-0006, NPDES No. CAS000002 (Construction General Permit).
6. Section XVI.A. of the General Permit requires that an Annual Report be submitted by September 1st each year via the online SMARTS database. McDonalds USA LLC's 2016-

2017 annual report was not received by Regional Board staff by the September 1, 2017 deadline. Therefore, a Notice of Non-Compliance (NNC) was issued to McDonalds USA LLC, by certified mail, on September 12, 2017. The NNC requested that McDonalds USA LLC submit the 2016-2017 annual report by October 13, 2017 to the Regional Board. The return receipt showed the NNC was received on September 14, 2017. The NNC and return receipt are attached to this complaint as Attachment 1.

7. On October 18, 2017, Regional Board staff received no response to the first NNC, therefore a second NNC was issued. The return receipt showed that the second NNC was received on October 20, 2017. The second NNC requested that McDonalds USA LLC submit the 2016-2017 annual report by November 13, 2017. The second NNC and return receipt are attached to this complaint as Attachment 2.
8. On October 23, 2017, an email notification that the 2016-2017 Annual report was late and to contact Regional Board Staff with any questions was sent to the facility owner contact in SMARTS, Brent McDaniel [brent.mcdaniel@us.mcd.com](mailto:brent.mcdaniel@us.mcd.com). An out of office reply message provided Mr. Carlos Madrial [carlos.madrigal@us.mcd.com](mailto:carlos.madrigal@us.mcd.com) as an alternate contact. The email was read by Mr. Madrigal on Monday, October 23, 2017 4:44:58 PM. The email was then read by Mr. McDaniel on Monday, October 30, 2017 2:07:55 PM.

#### LEGAL AUTHORITY

9. Water Code section 13399.31, subdivision (d), provides that "[i]f a discharger to which a notice is sent pursuant to subdivision (c) fails to submit the annual report ... to the regional board within 60 days from the date on which the notice is sent pursuant to subdivision (b), the regional board shall impose the penalties described in subdivision (c) of Water Code section 13399.33."
10. Water Code section 13399.33, subdivision (c) requires the regional board to assess a mandatory minimum penalty of \$1,000 for each violation when the discharger fails to submit an annual report in accordance with Water Code section 13399.31.
11. Water Code section 13399.33, subdivision (d) provides that the regional board shall "[r]ecover from the persons described in subdivisions (a), (b), and (c) the costs incurred by the regional board in regards to those persons."
12. While this Complaint only seeks the mandatory minimum penalty amount pursuant to Water Code section 13399.33, the maximum amount of administrative civil liability assessable pursuant to Water Code section 13385, subdivision (c) is \$10,000 per day per violation.

#### VIOLATION

13. McDonalds USA LLC failed to submit the 2016-2017 Annual Report and must be assessed the Mandatory Minimum Liability: The first NNC issued on September 12, 2017 and the second NNC issued on October 18, 2017 gave McDonalds USA LLC notice that it was obligated to submit the annual report in order to comply with the Construction General Permit. To date, the annual report has not been submitted.

**PROPOSED MANDATORY MINIMUM PENALTIES AND ASSESSMENT OF COSTS**

14. Pursuant to Water Code section 13399.33(c), the Regional Board shall administratively impose a penalty in an amount that is not less than one thousand dollars (\$1,000) for the violation cited above.
15. Based on the non-submittal of the 2016-2017 annual report by September 1, 2017, McDonalds USA LLC is alleged to have violated the Construction General Permit for 131 days (from September 2, 2017 to January 11, 2018, the date of this Complaint).
16. Water Code section 13399.33(d) allows for the recovery of costs incurred by the Regional Board for enforcement actions against dischargers who fail to submit the required annual report. Staff spent approximately ten (10) hours at \$139/hr, staff's supervisor spent about four (4) hours at \$131/hr, and the AEO spent approximately one (1) hour at \$198/hr for this enforcement action resulting in total staff costs of \$2112. The total liability, including staff costs, is \$3,112 (\$1,000 mandatory penalty+\$2112 in staff costs).
17. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code Section 21000 et seq.) pursuant to Title 14, California Code of Regulations Sections 15308 and 15321, subdivision (a), paragraph (2).

**WAIVER OF HEARING**

McDonalds USA LLC may waive its right to a hearing. If McDonalds USA LLC chooses to do so, please sign the enclosed Waiver Form and return it, together with a check for **\$3,112**. Indicate "**R8-2018-0017**" on the check and make it payable to the Waste Discharge Permit Fund. Send the check to the following address:

State Water Resources Control Board  
Division of Administrative Services  
Accounting Branch  
P.O. Box 1888  
Sacramento, CA 95814

The waiver and a copy of the check shall also be mailed to the Regional Board at the following address:


Santa Ana Regional Water Quality Control Board  
3737 Main Street, Suite 500  
Riverside, CA 92501-3348  
Attention: Keith Elliott

If McDonalds USA LLC waives its right to a hearing and pays the assessed amount, the Regional Board may not hold a hearing regarding this Complaint.

If you have any questions regarding the Complaint or the enclosed documents, please contact Keith Elliott at [keith.elliott@waterboards.ca.gov](mailto:keith.elliott@waterboards.ca.gov) or by calling (951) 782-4925.

All legal questions should be directed to Catherine Hawe, Office of Enforcement, by email at [Catherine.Hawe@waterboards.ca.gov](mailto:Catherine.Hawe@waterboards.ca.gov) or by phone at (916) 322-3538.

1/11/2018  
Date

  
\_\_\_\_\_  
Jayne Joy  
Assistant Executive Officer  
Regional Board Prosecution Team



EDMUND G. BROWN, JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

**Santa Ana Regional Water Quality Control Board**

**California Regional Water Quality Control Board  
Santa Ana Region**

**PROPOSED HEARING PROCEDURE  
FOR MANDATORY MINIMUM PENALTY COMPLAINT**

**NO. R8-2018-0017**

**ISSUED TO**

**McDonalds USA LLC  
3800 Kilroy Airport Way, Suite 200  
Long Beach, CA 90806**

**For the Construction Site  
McDonald's Restaurant  
310 South Lincoln Avenue  
Corona, CA 92882  
Riverside County**

**SCHEDULED FOR MARCH 23, 2018**

**PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.**

**Background**

On January 11, 2018, the Assistant Executive Officer, acting as head of the Santa Ana Regional Water Quality Control Board (Regional Board) Prosecution Team, issued a Mandatory Minimum Penalty Complaint (Complaint) pursuant to California Water Code (Water Code) Section 13323 against McDonalds USA LLC, alleging that it violated the State's General Permit for Storm Water Discharges Associated with Construction Activities, Order No. 2009-0009-DWQ, NPDES No. CAS000002 (Construction General Permit) by failing to submit the 2016-2017 annual report by September 1, 2017.

This Complaint proposes that the Regional Board impose a mandatory minimum penalty and staff costs in the amount of **three thousand, one hundred and twelve dollars (\$3,112)** pursuant to Water Code Section 13399.33. Unless McDonalds USA LLC pays the proposed liability, a hearing will be held before the Regional Board during its **March 23, 2018** meeting.

WILLIAM RUH, CHAIR | HOPE A. SMYTHE, EXECUTIVE OFFICER

3737 Main St., Suite 500, Riverside, CA 92501 | [www.waterboards.ca.gov/santaana](http://www.waterboards.ca.gov/santaana)

♻️ RECYCLED PAPER



### **Purpose of Hearing**

The purpose of the hearing is to consider relevant evidence and testimony regarding the Complaint and any proposed Order. At the hearing, the Regional Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability.

The public hearing will be held on **March 23, 2018**, and will commence no earlier than 9:00 a.m., as soon thereafter as practical, or as announced in the Regional Board meeting agenda. The meeting will be held at a location to be determined.

Any proposed Order and an agenda for the meeting will be issued at least ten days before the meeting and posted on the Regional Board's web page at:

[http://www.waterboards.ca.gov/santaana/board\\_info/agendas/](http://www.waterboards.ca.gov/santaana/board_info/agendas/)

### **Hearing Procedure**

The hearing will be conducted in accordance with this Proposed Hearing Procedure. If the Advisory Team takes no action in regard to the Proposed Hearing Procedure, this document will become the final hearing procedure on **February 26, 2018**. The procedures governing adjudicatory hearings before the Regional Board may be found at California Code of Regulations, title 23, section 648 *et seq.*, and are available at:

<http://www.waterboards.ca.gov>

Copies will be provided upon request. In accordance with Section 648(d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648(b) and herein, Chapter 5 of the Administrative Procedures Act (Gov. Code, § 11500 *et seq.*) does not apply to this hearing.

McDonalds USA LLC shall attempt to resolve objections to this Hearing Procedure with the Prosecution Team BEFORE submitting objections to the Advisory Team.

### **Separation of Prosecutorial and Advisory Functions**

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Regional Board (the Prosecution Team) have been separated from those who will provide legal and technical advice to the Regional Board (the Advisory Team). Members of the Advisory Team are: Hope Smythe, Executive Officer and Teresita Sablan, Staff Counsel. Members of the Prosecution Team are: Jayne Joy, Assistant Executive Officer; Adam Fischer, Senior Environmental Scientist; Keith Elliott, PE, Water Resource Control Engineer; and Catherine Hawe, Attorney, Office of Enforcement.

Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding and vice versa. Other members of the Prosecution Team act or have acted as advisors to the Regional Board in other unrelated matters but they are not advising the Regional Board in this

proceeding. Members of the Prosecution Team have not had any *ex parte* communications with the members of the Regional Board or the Advisory Team regarding this proceeding.

### **Hearing Participants**

Participants in this proceeding are designated as either "Designated Parties" or "Interested Persons." Designated Parties may present evidence and cross-examine witnesses and are subject to cross-examination. Interested Persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested Persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). At the hearing, both Designated Parties and Interested Persons may be asked to respond to clarifying questions from the Regional Board, staff, or others, at the discretion of the Board Chair.

The following participants are hereby designated as Designated Parties in this proceeding:

1. Regional Board Prosecution Team
2. McDonalds USA LLC

### **Requesting Designated Party Status**

Persons who wish to participate in the hearing as a Designated Party must request designated party status by submitting a request in writing so that it is received no later than the deadline listed under "Important Deadlines" below. The request shall include an explanation of the basis for status as a Designated Party (i.e., how the issues to be addressed at the hearing affect the person, the need to present evidence or cross-examine witnesses), along with a statement explaining why the parties listed above do not adequately represent the person's interest. Any objections to these requests for designated party status must be submitted so that they are received no later than the deadline listed under "Important Deadlines" below.

### **Primary Contacts**

#### **Advisory Team:**

##### General

Hope Smythe, Executive Officer  
Regional Water Quality Control Board – Santa Ana Region  
3737 Main Street, Suite 500, Riverside, CA 92501  
Phone: (951) 782-4493  
[hope.smythe@waterboards.ca.gov](mailto:hope.smythe@waterboards.ca.gov)

Legal

Teresita Sablan  
State Water Resources Control Board  
P.O. Box 100, Sacramento, CA 95812  
Phone: (916) 341-5174  
[Teresita.Sablan@waterboards.ca.gov](mailto:Teresita.Sablan@waterboards.ca.gov)

**Prosecution Team:**

Keith Elliott, PE  
Regional Water Quality Control Board – Santa Ana Region  
3737 Main Street, Suite 500, Riverside, CA 92501  
Phone: (951) 782-4925  
[keith.elliott@waterboards.ca.gov](mailto:keith.elliott@waterboards.ca.gov)

**Discharger:**

McDonalds USA LLC  
3800 Kilroy Airport Way, Suite 200  
Long Beach, CA 90806  
Attn: Mr. Brent McDaniel  
Phone: (714) 914-8338  
[brent.mcdaniel@us.mcd.com](mailto:brent.mcdaniel@us.mcd.com)

**Ex Parte Communications**

Designated Parties and Interested Persons are forbidden from engaging in *ex parte* communications regarding this matter. An *ex parte* communication is a written or verbal communication related to the investigation, preparation, or prosecution of the Complaint between a Designated Party or an Interested Person and a Board Member or a member of the Board's Advisory Team (see Gov. Code, § 11430.10 *et seq.*). However, if the communication is copied to all other persons (if written) or is made in a manner open to all other persons (if verbal), then the communication is not considered an *ex parte* communication. Communications regarding non-controversial procedural matters are also not considered *ex parte* communications and are not restricted.

**Hearing Time Limits**

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each Designated Party shall have a combined 20 minutes to present evidence (including evidence presented by witnesses called by the Designated Party), to cross-examine witnesses (if warranted), and to provide a closing statement. Each Interested Person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations and participants are requested to avoid redundant comments. Participants who would like additional time must

submit their request to the Advisory Team so that it is received no later than the deadline listed under "Important Deadlines" below. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Board Chair (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments, or legal argument requires extra time, and why it could not have been provided in writing by the applicable deadline.

A timer will be used, but will not run during Board questions or the responses to such questions, or during discussions of procedural issues.

### **Submission of Evidence and Policy Statements**

The Prosecution Team and all other Designated Parties (including McDonalds USA LLC) must submit the following information in advance of the hearing:

1. All documentary evidence and exhibits to be offered at the hearing.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the Designated Party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony. Alternatively, the testimony of any witness may be presented by declaration, so long as that witness will be available for cross-examination at the hearing.
4. The qualifications of each expert witness, if any.

**Prosecution Team:** The Prosecution Team's information must include the legal and factual basis for its claims against McDonalds USA LLC; a list of all evidence on which the Prosecution Team relies, which must include, at a minimum, all documents cited in the Complaint, Staff Report, or other material submitted by the Prosecution Team; and the witness information required under items 3-4 for all witnesses, including Board staff.

**Designated Parties** (including McDonalds USA LLC): All Designated Parties shall submit comments regarding the Complaint along with any additional supporting evidence not cited by the Regional Board's Prosecution Team no later than the deadline listed under "Important Deadlines" below.

**Rebuttal:** Any Designated Party that would like to submit evidence, legal analysis, or policy statements to rebut information previously submitted by other Designated Parties shall submit this rebuttal information so that it is received no later than the deadline listed under "Important Deadlines" below. "Rebuttal" means evidence, analysis or comments offered to disprove or contradict other submissions. Rebuttal shall be limited to the scope of the materials previously submitted. Rebuttal information that is not responsive to information previously submitted may be excluded.

**Copies:** For each evidentiary deadline, each Designated Party shall send one electronic copy of the above materials to each of the other Designated Parties at the address or addresses provided above by 5:00 p.m. on the deadline described above.

**Interested Persons:** Interested Persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but they must be received by the deadline listed under "Important Deadlines" to be included in the Board's agenda package. Interested Persons do not need to submit written comments in order to speak at the hearing.

**Prohibition on Surprise Evidence:** In accordance with California Code of Regulations, title 23, section 648.4, the Regional Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Board Chair may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will *not* be considered by the Regional Board and will not be included in the administrative record for this proceeding.

**Presentations:** Power Point and other visual presentations may be used at the hearing, but their content shall not exceed the scope of other submitted written material. These presentations must be provided to the Advisory Team at or before the hearing both in hard copy and in electronic format so that they may be included in the administrative record.

**Witnesses:** All witnesses who have submitted written testimony shall appear at the hearing to affirm that the testimony is true and correct, and shall be available for cross-examination.

### **Questions**

Questions concerning this proceeding may be addressed to the Advisory Team attorney (contact information above).

### **IMPORTANT DEADLINES**

*All required submissions must be received by 5:00 p.m. on the respective due date.*

January 11, 2018	<ul style="list-style-type: none"><li>• Prosecution Team issues Complaint and Proposed Hearing Procedure on McDonalds USA LLC.</li></ul>
January 22, 2018	<ul style="list-style-type: none"><li>▪ McDonalds USA LLC deadline to request a pre-hearing meeting.</li></ul>
February 12, 2018	<ul style="list-style-type: none"><li>▪ McDonalds USA LLC. deadline to submit 90-Day Hearing Waiver Form and payment.</li><li>▪ McDonalds USA LLC deadline to submit the 2016-17 Annual Report in SMARTS <a href="https://smarts.waterboards.ca.gov">https://smarts.waterboards.ca.gov</a>.</li><li>▪ Objections due on Proposed Hearing Procedure.</li></ul> <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic or Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
February 16, 2018*	<ul style="list-style-type: none"><li>▪ Prosecution Team's deadline for submission of information required under "Submission of Evidence and Policy Statements," above.</li></ul> <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons</p>

	<u>Electronic or Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney
February 20, 2018*	<ul style="list-style-type: none"> <li>▪ Deadline to request "Designated Party" status.</li> </ul> <u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney <u>Electronic or Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact
February 22, 2018*	<ul style="list-style-type: none"> <li>▪ Deadline to submit opposition to requests for Designated Party status.</li> </ul> <u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney <u>Electronic or Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact
February 26, 2018*	<ul style="list-style-type: none"> <li>▪ Advisory Team adopts Proposed Hearing Procedure with any applicable modifications. If the Advisory Team takes no actions with regard to the Hearing Procedure, the Proposed Hearing Procedure will become final.</li> <li>▪ Advisory Team issues decision on requests for Designated Party status.</li> </ul>
March 1, 2018*	<ul style="list-style-type: none"> <li>▪ Remaining Designated Parties' (including McDonalds USA LLC) deadline to submit all information required under "Submission of Evidence and Policy Statements" above. This includes all written comments regarding the complaint and any rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections.</li> <li>▪ Interested Persons' comments are due.</li> </ul> <u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney <u>Electronic or Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact
March 5, 2018*	<ul style="list-style-type: none"> <li>▪ Prosecution Team's deadline to submit any rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections.</li> <li>▪ Deadline to submit requests for additional time.</li> <li>▪ If rebuttal evidence is submitted, all requests for additional time (to respond to the rebuttal at the hearing) must be made within 3 working days of <i>this</i> deadline.</li> </ul> <u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney <u>Electronic or Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact
March 13, 2018*†	<ul style="list-style-type: none"> <li>▪ Advisory Team submits Hearing information on the parties and Board.</li> </ul> <u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons <u>Electronic or Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney
March 23, 2018*	Hearing

\* McDonalds USA LLC has the right to a hearing before the Board within 90 days of receiving the Complaint, but this right can be waived (to facilitate settlement discussions, for example). By submitting the waiver form, McDonalds USA LLC is not waiving the right to a hearing; unless a settlement is reached, the Board will hold a hearing prior to imposing civil liability. However, if the Board accepts the waiver, all deadlines marked with an "\*" will be revised if a settlement cannot be reached.

† This deadline is set based on the date that the Board Members' agenda packages are compiled. Any material received after this deadline will not be included in the Board Members' agenda packages.

Santa Ana Regional Water Quality Control Board

## WAIVER FORM FOR MANDATORY MINIMUM PENALTY COMPLAINT

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent McDonalds USA LLC in connection with Mandatory Minimum Penalty Complaint No. R8-2018-0017 (Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served with the complaint. The person(s) who have been issued a complaint may waive the right to a hearing."

**(Check here if McDonalds USA LLC waives the hearing requirement and will pay the liability in full.)**

- a. I hereby waive any right McDonalds USA LLC may have to a hearing before the Regional Water Board.
- b. I certify that McDonalds USA LLC will remit payment for the proposed penalty in the full amount of **three thousand, one hundred and twelve dollars (\$3,112)** by submitting a check made payable to the "Waste Discharge Permit Fund," that references "Complaint No. R8-2018-0017." Payment must be received by the Regional Water Board by **February 12, 2018** or the Regional Water Board may adopt an Order requiring payment.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board (or the Regional Board's delegate), and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in McDonalds USA LLC having waived the right to contest the allegations in the Complaint and the imposition of civil liability.

- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)



# **Attachment 1**



EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

**Santa Ana Regional Water Quality Control Board**

September 12, 2017

Brent Mcdaniel  
McDonalds  
3800 Kilroy Airport Way, Suite 200  
Long Beach, CA 90806

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

**NOTICE OF NON-COMPLIANCE: FAILURE TO COMPLY WITH THE GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION AND LAND DISTURBANCE ACTIVITIES, ORDER NO. 2009-0009-DWQ, NPDES NO. CAS000002 (GENERAL PERMIT) WDID NO. 8 33C376206**

Dear Mr. Mcdaniel:

Your construction site identified as McDonalds Restaurant, located at 310 South Lincoln Avenue, in the city of Corona is regulated under the General Permit and is identified by WDID 8 33C376206. Section XVI.A. of the General Permit requires that an Annual Report be submitted by September 1st each year via the online SMARTS database. Our records show that your annual report for the July 1, 2016 to June 30, 2017 reporting period has not been submitted.

McDonalds is consequently in violation of Section XVI.A. of the General Permit for failure to submit a complete 2016-2017 Annual Report. We request that you submit a complete **2016-2017 Annual Report** via the online SMARTS database no later than **October 13, 2017**.

**The online SMARTS database is available at:**

<https://smarts.waterboards.ca.gov>

Please note that in order to submit the annual report, the Legally Responsible Person (LRP) or the legal owner of the property must complete the e-Authorization Form if the e-Authorization Form was not processed in the prior years. This form can be accessed, once logged into SMARTS, under the main menu. Click on the "Update User Profile" link on the left. The LRP must complete the form shown, sign it, and mail the original form to one of the Sacramento addresses noted at the end of the e-Authorization Form. You will be notified when the e-Authorization Form has been processed, enabling you to submit the report electronically.

You must also provide a statement explaining why the annual report was not submitted by the September 1 deadline, propose the measures you will take to ensure timely

WILLIAM RUH, CHAIR | HOPE A. SMYTHE, EXECUTIVE OFFICER

3177 Main St., Suite 500, Riverside, CA 92501 | [www.waterboards.ca.gov/santaana](http://www.waterboards.ca.gov/santaana)

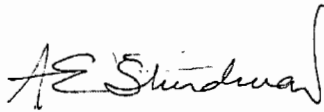
♻️ RECYCLED PAPER

submittals in the future, and upload the statement as part of SMARTS annual report Attachments.

Failure to submit the requested information within 30 days of the date of this letter will result in further enforcement action, which may include civil monetary penalties of up to \$10,000 for each day of violation. Please note that Section 13399.33 of the California Water Code stipulates a mandatory minimum penalty of \$1,000 to those permittees that do not submit their annual reports after notification.

Should you need assistance in completing the Annual Report or have any questions relating to SMARTS, please contact the SMARTS Helpdesk at [stormwater@waterboards.ca.gov](mailto:stormwater@waterboards.ca.gov). You may also contact Keith Elliott at 951-782-4925 or [keith.elliott@waterboards.ca.gov](mailto:keith.elliott@waterboards.ca.gov).

Sincerely,

A handwritten signature in cursive script, appearing to read "Ann Sturdivant".

Ann Sturdivant, PG, CEG, CHG  
Supervising Engineering Geologist  
Chief, Groundwater and Regulatory Division

U.S. Postal Service  
**CERTIFIED MAIL® RECEIPT**  
Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Certified Mail Fee **\$3.30**

9/12/2017

Extra Services & Fees (check box, add fee as appropriate)

- Return Receipt (hardcopy) \$ **\$2.70**
- Return Receipt (electronic) \$ \_\_\_\_\_
- Certified Mail Restricted Delivery \$ \_\_\_\_\_
- Adult Signature Required \$ \_\_\_\_\_
- Adult Signature Restricted Delivery \$ \_\_\_\_\_

Postmark  
Here

**1st NNC**

Postage

\$ **\$ .47**

**8 33C376206**

Total Postage and Fees

\$ **\$6.47**

**470673**

Sent To **Mr. Brent McDaniel**

Street and Apt. No. or PO Box No.  
**McDonalds**

City, State, ZIP+4®  
**3800 Kilroy Airport Way, Suite 200**

**Long Beach, CA 90806**

PS Form 3800, April 2016 PSN 7530-02-000-9047 (See Reverse for Instructions)

7016 2070 0000 6805 2853

**Certified Mail service provides the following benefits:**

- A receipt (this portion of the Certified Mail label).
- A unique identifier for your mailpiece.
- Electronic verification of delivery or attempted delivery.
- A record of delivery (including the recipient's signature) that is retained by the Postal Service™ for a specified period.

**Important Reminders:**

- You may purchase Certified Mail service with First-Class Mail®, First-Class Package Service®, or Priority Mail® service.
- Certified Mail service is *not* available for international mail.
- Insurance coverage is *not* available for purchase with Certified Mail service. However, the purchase of Certified Mail service does not change the insurance coverage automatically included with certain Priority Mail items.
- For an additional fee, and with a proper endorsement on the mailpiece, you may request the following services:
  - Return receipt service, which provides a record of delivery (including the recipient's signature). You can request a hardcopy return receipt or an electronic version. For a hardcopy return receipt, complete PS Form 3811, *Domestic Return Receipt*, attach PS Form 3811 to your mailpiece;

for an electronic return receipt, see a retail associate for assistance. To receive a duplicate return receipt for no additional fee, present this USPS®-postmarked Certified Mail receipt to the retail associate.

- Restricted delivery service, which provides delivery to the addressee specified by name, or to the addressee's authorized agent.
- Adult signature service, which requires the signee to be at least 21 years of age (not available at retail).
- Adult signature restricted delivery service, which requires the signee to be at least 21 years of age and provides delivery to the addressee specified by name, or to the addressee's authorized agent (not available at retail).
- To ensure that your Certified Mail receipt is accepted as legal proof of mailing, it should bear a USPS postmark. If you would like a postmark on this Certified Mail receipt, please present your Certified Mail item at a Post Office™ for postmarking. If you don't need a postmark on this Certified Mail receipt, detach the barcoded portion of this label, attach it to the mailpiece, apply appropriate postage, and deposit the mailpiece.

**IMPORTANT: Save this receipt for your records.**

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
**Mr. Brent McDaniel**  
**McDonalds**  
**3800 Kilroy Airport Way, Suite 200**  
**Long Beach, CA 90806**  
**WDID: 833C376206 AppID: 470673**  
**9/12/2017**



9590 9402 2001 6123 9374 84

2. Article Number (Transfer from service label)

7016 2070 0000 6805 2853

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X

- Agent
- Addressee

B. Received by (Printed Name)

CHRIS SMITH

C. Date of Delivery

9-14-17

D. Is delivery address different from item 1? If YES, enter delivery address below:

- Yes
- No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

USPS TRACKING #



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

9590 9402 2001 6123 9374 84

United States  
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box •

SANTA ANA REGIONAL  
WATER QUALITY CONTROL BOARD  
3737 MAIN STREET, SUITE 500  
RIVERSIDE, CA 92501-3348



ATTN: INLAND STORM WATER  
2016-2017 Construction General Permit  
IN NNC (KLE)

# **Attachment 2**





EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

**Santa Ana Regional Water Quality Control Board**

October 18, 2017

Mr. Brent Mcdaniel  
McDonalds  
3800 Kilroy Airport Way, Suite 200  
Long Beach, CA 90806

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

**FINAL NOTICE OF NON-COMPLIANCE - GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION AND LAND DISTURBANCE ACTIVITIES, ORDER NO. 2009-0009-DWQ, NPDES NO. CAS000002**

Dear Mr. Mcdaniel:

The construction site identified as McDonalds Restaurant, located at 310 South Lincoln Avenue, in the city of Corona is regulated under the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (General Permit) and is identified by **8 33C376206**.

Section XVI.A. of the General Permit requires that an Annual Report be submitted by September 1st each year via the online SMARTS database. Our records show that your annual report for the July 1, 2016 to June 30, 2017 reporting period has not been submitted.

McDonalds is consequently in violation of Section XVI.A. of the General Permit for failure to submit a complete **2016-2017 Annual Report**. We request that you submit a complete 2016-2017 Annual Report via the online SMARTS database no later than **November 13, 2017**.

The online SMARTS database is available at <https://smarts.waterboards.ca.gov>.

Please note that in order to submit the annual report, the Legally Responsible Person (LRP) or the legal owner of the property must complete the e-Authorization Form if the e-Authorization Form was not processed in the prior years. This form can be accessed, once logged into SMARTS, under the main menu. Click on the "Update User Profile" link on the left. The LRP must complete the form shown, sign it, and mail the original form to one of the Sacramento addresses noted at the end of the e-Authorization Form. You will be notified when the e-Authorization Form has been processed, enabling you to submit the report electronically.

You must also provide a statement explaining why the annual report was not submitted by the September 1 deadline, describe the measures you will take to ensure timely

WILLIAM RUH, CHAIR | HOPE A. SMYTHE, EXECUTIVE OFFICER

3737 Main St., Suite 500, Riverside, CA 92501 | [www.waterboards.ca.gov/santaana](http://www.waterboards.ca.gov/santaana)

♻️ RECYCLED PAPER

Mr. Brent McDaniel  
McDonalds

- 2 -

October 18, 2017

submittals in the future, and upload the statement as part of SMARTS annual report Attachments.

Failure to submit the requested information by **November 13, 2017**, will result in further enforcement action, which may include civil monetary penalties of up to \$10,000 for each day of violation. Please note that Section 13399.33 of the California Water Code stipulates a mandatory minimum penalty of \$1,000 to those permittees who do not submit their annual reports after notification.

Should you need assistance in completing the Annual Report or have any questions relating to SMARTS, please contact the SMARTS Helpdesk at [stormwater@waterboards.ca.gov](mailto:stormwater@waterboards.ca.gov). You may also contact Keith Elliott at 951-782-4925 or [keith.elliott@waterboards.ca.gov](mailto:keith.elliott@waterboards.ca.gov).

Sincerely,

Original Signed by:

Lauma Willis  
Environmental Program Manager  
Chief, Planning Division  
Santa Ana Regional Water Quality Control Board

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.


1. Article Addressed to:  
**Mr. Brent McDaniel**  
**McDonalds**  
**3800 Kilroy Airport Way, Suite 200**  
**Long Beach, CA 90806**  
**WDID: 8 33C376206 AppID: 470673**  
**10/16/2017**



9590 9402 2001 6123 9351 52

2. Article Number (Transfer from service label)  
**7016 2070 0000 6805 4215**

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature   Agent  
 Addressee

B. Received by (Printed Name) **Chris Smart** C. Date of Delivery **10-20-17**

D. Is delivery address different from Item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type
- |  |   |
|--|---|
| <input type="checkbox"/> Adult Signature                               | <input type="checkbox"/> Priority Mail Express®                     |
| <input type="checkbox"/> Adult Signature Restricted Delivery           | <input type="checkbox"/> Registered Mail™                           |
| <input checked="" type="checkbox"/> Certified Mail®                    | <input type="checkbox"/> Registered Mail Restricted Delivery        |
| <input type="checkbox"/> Certified Mail Restricted Delivery            | <input type="checkbox"/> Return Receipt for Merchandise             |
| <input type="checkbox"/> Collect on Delivery                           | <input type="checkbox"/> Signature Confirmation™                    |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery       | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Insured Mail                                  |   |
| <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) |   |

USPS TRACKING #



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

9590 9402 2001 6123 9351 52

United States  
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box •

SANTA ANA REGIONAL  
WATER QUALITY CONTROL BOARD  
3737 MAIN STREET, SUITE 500  
RIVERSIDE, CA 92501-3348



ATTN: INLAND STORM WATER  
2016-2017 Construction General Permit  
2nd\_NNC (KLE)

