

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ORDER NO. R5-2013-0050

ADMINISTRATIVE CIVIL LIABILITY ORDER
IN THE MATTER OF

TOYAUTOMART
SACRAMENTO COUNTY

This Order is issued to Toyautomart (hereafter Discharger) pursuant to Water Code section 13399.33(c) and (d), and section 13385, which authorizes the imposition of Administrative Civil Liability (ACL). This Order is based on findings that the Discharger violated provisions of State Water Board Order WQO 97-03-DWQ (NPDES General Permit CAS000001).

The California Regional Water Quality Control Board, Central Valley Region (Regional Water Board) finds the following:

1. On 17 April 1997, the State Water Resources Control Board adopted Water Quality Order 97-03-DWQ (NPDES General Permit CAS000001), *Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities* (hereafter General Permit).
2. The General Permit requires that the operators of certain classifications of industrial facilities¹ apply for coverage under the General Permit, and generally requires the operators to (a) eliminate unauthorized non-storm water discharges, (b) develop and implement a Storm Water Pollution Prevention Plan, and (c) perform monitoring of storm water discharges.
3. The Discharger operates an auto dismantling facility, which is classified as a “Motor Vehicle Parts, Used” facility and is identified with Standard Industrial Classification (SIC) number 5015. This category of industrial facility is required to obtain coverage under the General Permit.
4. Provision E.1. of the General Permit states that “all facility operators seeking coverage by [the] General Permit must submit a [Notice of Intent] for each of the facilities they operate.” On 14 January 1997, the Discharger submitted a Notice of Intent for coverage under the General Permit, and was assigned WDID Number 5S34I012847.
5. Section B of the General Permit contains Monitoring and Reporting Requirements. Item 14 of Section B requires all facility operators to submit an annual report to the Executive Officer of the Board by 1 July of each year. The annual report must include, but is not limited to, a summary of visual observations and sampling results, an evaluation of the visual observation and sampling and analysis results, laboratory reports,

¹ Facilities that discharge storm water associated with industrial activity requiring coverage under the General Permit are listed by category in 40 Code of Federal Regulations Section 122.26(b)(14) and Attachment 1 of the General Permit.

an annual comprehensive site compliance evaluation report, and if necessary, an explanation of why a facility did not implement any activities required by the General Permit.

6. The Discharger failed to submit its 2011/2012 annual report by the 1 July 2012 deadline.
7. On 31 August 2012, the Executive Officer issued a Notice of Noncompliance to the Discharger by certified mail, return receipt requested. The Notice informed the Discharger that the Executive Officer had not received the Discharger's 2011/2012 annual report by 1 July as required by the General Permit, and described the penalties for the Discharger's noncompliance. Board staff received the signed return receipt, documenting that the Discharger received the Notice.
8. On 23 October 2012, the Executive Officer issued the Discharger a second Notice of Noncompliance by certified mail, return receipt requested. The Second Notice again described the Discharger's failure to timely submit an annual report as required by the General Permit, and described the penalties for the Discharger's noncompliance. Board staff received the return receipt for the Second Notice, which indicated that the Discharger received the Second Notice on 24 October 2012.
9. In addition to the notices described above, Board staff has repeatedly contacted the Discharger and/or the Discharger's representative. The Discharger was contacted by phone on 12 August 2012 and staff was told that the annual report would be turned in. On 28 October 2012, staff again contacted the Discharger, and was told that the annual report would be submitted as soon as possible.
10. To date, the Executive Officer has not received the Discharger's 2011/2012 annual report.
11. On 4 March 2013, the Executive Officer issued ACL Complaint R5-2013-0517 pursuant to Water Code section 13399.33 to the Discharger for failure to submit its 2011/2012 annual report. As of 29 April 2013, the Discharger did not respond to the ACL Complaint and did not submit a 90-Day Hearing Waiver Form.

REGULATORY CONSIDERATIONS

12. Water Code section 13399.31(b) states: *The regional board shall notify each discharger [that has failed to submit an annual report as required by the General Permit] with regard to its noncompliance and penalties therefore.*
13. Water Code section 13399.31(c) states: *If a discharger to which a notice is sent pursuant to subdivision (b) fails to submit the annual report ... to the regional board within 30 days from the date on which the notice is sent, the executive officer of the regional board shall send a second notice to that discharger.*

14. Water Code section 13399.31(d) states: *If 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 Section 13399.33.*
15. Water Code section 13399.33(c) requires the Board to impose administrative civil liability in an amount that is not less than one thousand dollars (\$1,000) for the failure to submit an annual report as required by the General Permit. Water Code section 13399.33(d) requires that the Board recover the staff costs incurred in attempting to obtain that report.
16. Section 13385(a)(2) of the Water Code provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act 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.
17. Based on non-submittal of the 2011/2012 annual report, the Discharger is alleged to have violated the General Permit for at least 314 days (from 1 July 2012 through 10 May 2013). The total maximum liability for this violation pursuant to Section 13385 of the Water Code is at least \$3,140,000.
18. Based on the findings set forth herein, the Discharger is subject to a minimum of \$1,000 plus staff costs in civil liability for failure to submit the 2011/2012 annual report.
19. In pursuing this enforcement action, approximately \$5,925 in staff costs were incurred, as shown in Attachment A to this Order.
20. Issuance of this Administrative Civil Liability Order to enforce Water Code Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).
21. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board to review this action. The State Water Board must receive the petition within thirty (30) days of issuance of this Order. Copies of the law and regulations applicable to filing petitions applicable to filing petitions will be provided upon request.

IT IS HEREBY ORDERED that the Discharger shall pay a civil liability of \$6,925 as follows:

Within 30 days of adoption of this Order, the Discharger shall pay six thousand nine hundred twenty five dollars (\$6,925) by check made payable to the *Waste Discharge Permit Fund*. The check shall have written upon it the number of this ACL Order.

I, Pamela C. Creedon, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 31 May 2013.

Original signed by

PAMELA C. CREEDON, Executive Officer

ATTACHMENT A
 ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2013-0050
 TOYAUTOMART, SACRAMENTO COUNTY

Staff costs to obtain compliance:

Staff position	Task	Estimated hours	Estimated Cost
Preparation of ACLC			
Asst Exec Officer	Review case and documents	1	\$150
Attorney	Review case, edit documents	2	\$300
Exec Officer	Review case	0.5	\$75
Office Tech	Mail documents	0.5	\$75
Program Manager	Review case, edit documents	2	\$300
Senior Geologist	Review case, edit documents	2	\$300
Staff Scientist	Notifications to Discharger	3	\$450
Staff Scientist	Review enforcement case	1	\$150
Staff Scientist	Prepare enforcement documents	8	\$1200
Staff Scientist	Internal meetings with management	2	\$300
Staff Scientist	Finalize documents	1	\$150
Preparation of ACLO			
Executive Officer	Briefing, presentation practice	1	\$150
Asst Exec Officer	Briefing, presentation practice	1	\$150
Attorney	Review and edit documents, presentation	2	\$300
Program Manager	Review and edit documents, presentation	3	\$450
Senior Geologist	Review and edit documents, presentation	4	\$600
Staff Scientist	Edit documents, presentation	5	\$750
Office Tech	Mail documents	0.5	\$75
Total		39.5 hours	\$5,925

Note: Staff costs are based on an average rate of \$150 per hour, as directed by the State Water Board Office of Enforcement