



Santa Ana Regional Water Quality Control Board

July 29, 2024

Wicked Creations
13832 West Street
Garden Grove, CA 92843
(Via Certified Mail)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Wicked Creations
sales@wicked-creations.com
(Via Email)

Michael Boone – Owner, CEO, CFO
Damian Smith – Owner
Dorothy Ortega – Principal

TRANSMITTAL OF MANDATORY MINIMUM PENALTY COMPLAINT NO. R8-2024-0038, WICKED CREATIONS

Dear Messrs. Boone, Smith and Ms. Ortega:

Enclosed is Mandatory Minimum Penalty Complaint No. R8-2024-0038 (Complaint) issued to Wicked Creations (hereafter referred to as Wicked Creations or Discharger). The Complaint alleges that Wicked Creations has violated California Water Code (Water Code) section 13399.30 for failure to obtain Notice of Intent (NOI) coverage under the State's National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ as amended by Order No. 2015-0122-DWQ and Order No. 2018-0028-DWQ, NPDES No. CAS000001 (General Permit) for the industrial facility located at 13832 West Street, in the city of Garden Grove.

This Complaint proposes that an administrative civil liability in the amount of seven thousand three hundred seventy-six dollars (\$7,376) be imposed. The penalty amount is the mandatory minimum penalty including staff costs as authorized by Water Code section 13399.33, subdivisions (a)(1) and (d).

A public hearing on this matter is scheduled for the Santa Ana Water Board meeting on October 25, 2024. Pursuant to Water Code section 13323, the Discharger has the option to waive its right to a hearing. Should Wicked Creations waive its right to a hearing, submit the Notice of Intent, and pay the recommended liability, the Santa Ana Water Board may not hold a public hearing on this matter.

KRISTINE MURRAY, CHAIR | JAYNE JOY, EXECUTIVE OFFICER

3737 Main Street, Suite 500, Riverside, CA 92501-3348 | www.waterboards.ca.gov/santaana

If Wicked Creations chooses to waive its right to a hearing, please sign and submit the enclosed Waiver Form. Please make the check payable to the Waste Discharge Permit Fund for seven thousand three hundred seventy-six dollars (\$7,376) and include the Complaint Number (No. R8-2024-0038) on the memo line. Please send the following information to the appropriate location:

Mail Waiver Form to:

RWQCB
Attn: David Rosas
3737 Main Street, Suite 500
Riverside, CA 92501

Mail Payment to:

SWRCB – Accounting Office
Attn: Enforcement Payment
P.O. Box 1888
Sacramento, CA 95812-1888

The Discharger should submit the attached Waiver to the Advisory Team by contacting Lori Okun via phone at (916) 322-1667 or via e-mail at Lori.Okun@waterboards.ca.gov. The Prosecution Team reserves the right to object to the Discharger's request to pursue Option 2 as it is described on the waiver.

If Wicked Creations does not wish to waive its rights to a hearing, a pre-hearing meeting with the Prosecution Team is recommended. Should you wish to schedule a pre-hearing meeting, please submit your request to David Rosas via phone at (951) 394-9476 or via email to David.Rosas@waterboards.ca.gov prior to **August 27, 2024**.

If this matter proceeds to hearing, the Advisory Team will issue a Hearing Procedure which will provide deadlines and establish a process for submitting evidence and arguments in this matter. Procedural questions should be directed to the Advisory Team by contacting Lori Okun at the information listed above.

If you have any questions regarding the Complaint or the enclosed documents, please contact David Rosas via phone at (951) 394-9476 or via email at David.Rosas@waterboards.ca.gov. All legal questions should be directed to Carson Capps, attorney for the Prosecution Team, Office of Enforcement, via email at Carson.Capps@waterboards.ca.gov or via phone at (916) 341-5273.

Sincerely,



Eric Lindberg, P.G., C.H.G.
Assistant Executive Officer
Santa Ana Water Board Prosecution Team

enclosures: MMP Complaint No. R8-2024-0038
Waiver Form

cc (w/encl): Jayne Joy, Santa Ana Water Board Advisory Team
Lori Okun, Santa Ana Water Board Advisory Team Attorney
Eric Lindberg, Santa Ana Water Board Prosecution Team
Carson Capps, Santa Ana Water Board Prosecution Team Attorney
James Fortuna, Orange County, NPDES Coordinator
Sam Kim, City of Garden Grove, NPDES Coordinator

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

IN THE MATTER OF:

Wicked Creations)	Complaint No. R8-2024-0038
13832 West Street)	For
Garden Grove, CA 92843)	Mandatory Minimum Penalty

This Complaint is issued to Wicked Creations (hereafter referred to as Wicked Creations or Discharger) pursuant to California Water Code (Water Code) section 13399.33, which authorizes the imposition of civil liability administratively, and Water Code section 13323, which authorizes the issuance of this Complaint. This Complaint is based on allegations that the Discharger failed to obtain permit coverage in accordance with Water Code section 13399.30, for which the California Regional Water Quality Control Board, Santa Ana Region (Santa Ana Water Board), must impose a penalty pursuant to Water Code section 13399.33.

The Assistant Executive Officer of the Santa Ana Water Board alleges the following:

BACKGROUND:

1. Industrial facilities that discharge stormwater associated with industrial activities are required to obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ, NPDES No. CAS000001 (General Permit). General Permit coverage is required for industrial facilities with Standard Industrial Classification (SIC) codes listed in 40 Code of Federal Regulations section 122.26(b)(14) and in Attachment A of the General Permit. Furthermore, dischargers subject to the General Permit may qualify for a conditional exclusion from specific requirements if they submit a No Exposure Certification (NEC) demonstrating that their facilities have no exposure of industrial activities and materials to stormwater discharges.
2. Wicked Creations is located at 13832 West Street (Facility), in the city of Garden Grove, and is identified as an industrial facility engaged in manufacturing hardware, not elsewhere classified. This industrial activity is described in SIC code 3429. Since SIC code 3429 is listed on Attachment A to the General Permit as an industrial activity which requires General Permit coverage, Wicked Creations must obtain coverage under the General Permit.
3. Santa Ana Water Board staff received the Discharger's information from the City of Garden Grove regarding two businesses, United Metal Concepts and Wicked Creations, operating at the same address without General Permit coverage.

4. On December 6, 2023, Santa Ana Water Board staff attempted to conduct a joint inspection of the Facility with the City of Garden Grove to evaluate the need to obtain General Permit coverage. Staff were denied access to the site by Ms. Ashley Miles, a Facility representative. From the public right-of-way, Santa Ana Water Board staff observed industrial material, equipment, and waste stored outdoors fully exposed to stormwater on the north side of the Facility's exterior. Additionally, Staff observed metal shavings and sediment track out from the Facility onto West Street, entering the local municipality's separate storm sewer system (MS4). Staff pursued a separate enforcement action against United Metal Concepts, a business with the same listed address as Wicked Creations with similar employees. However, Staff terminated enforcement based on the City of Garden Grove's information that United Metal Concepts closed in October 2023.
5. On December 6, 2023, Santa Ana Water Board staff hand-delivered a Notice of Non-Compliance (NNC) to Wicked Creations for the failure to obtain General Permit coverage. Ms. Miles signed receipt of the enforcement document. The NNC required the Discharger to apply for General Permit coverage no later than January 4, 2024.
6. On January 4, 2024, a second NNC was issued to Wicked Creations explaining that the Facility required coverage under the General Permit but had yet to obtain permit coverage. The second NNC required the Discharger to obtain regulatory coverage by February 3, 2024.
7. On January 9, 2024, Santa Ana Water Board staff received the United States Postal Service certified mail return receipt for the second NNC.
8. On January 25, 2024, Santa Ana Water Board staff contacted United Metal Concepts' main telephone number regarding the active NNCs for United Metal Concepts and Wicked Creations. The automated answering system identified the number as associated with United Metal Concepts. Ms. Miles answered the phone and denied the number was associated with United Metal Concepts and stated only Wicked Creations was operating. Staff reiterated the final deadline and provided information on how to obtain General Permit coverage.
9. On January 29, 2024, Santa Ana Water Board staff contacted the Discharger via Wicked Creations' main telephone number. Ms. Esveidi Gomez, a Facility representative, answered the phone and verified that the number was associated with Wicked Creations. Staff reminded Ms. Gomez of the NNCs and final deadline. When asked, Ms. Gomez identified Ms. Miles as the Facility's office manager, rather than the receptionist as Ms. Miles self-identified, and stated she would remind Ms. Miles about the final deadline.
10. On February 1, 2024, Santa Ana Water Board staff left a voicemail via Wicked Creations' main telephone number. Staff requested an update regarding the

Facility's permit coverage application status and reiterated the final deadline of February 3, 2024. No return phone call was received.

11. On February 2, 2024, Santa Ana Water Board staff spoke again with Ms. Gomez and reiterated the final General Permit coverage deadline. Ms. Gomez stated she relayed Staff's message from the January 29th phone call to Ms. Miles and did not have any additional information. Ms. Gomez stated she would again relay the information to Ms. Miles.
12. On February 14, 2024, Santa Ana Water Board staff left a voicemail via Wicked Creations' main telephone number requesting a status update. No return phone call was received.
13. On March 27, 2024, Santa Ana Water Board staff issued Conditional Settlement Offer No. R8-2024-0038 to Wicked Creations, inviting the Discharger to participate in an Expedited Payment Program relating to violations of the General Permit, which would have provided the opportunity for the Discharger to resolve the alleged violations by paying a Mandatory Minimum Penalty of \$5,998, including staff costs. In addition, Staff advised the Discharger that they are still required to obtain permit coverage under the General Permit. The Discharger was given a deadline of April 25, 2024, to respond to the Conditional Settlement Offer.
14. On April 2, 2024, Santa Ana Water Board staff received the United States Postal Service certified mail return receipt for the Conditional Settlement Offer.
15. On April 22, 2024, Santa Ana Water Board staff left a voicemail via Wicked Creations' main telephone number and requested an update on the Discharger's status in obtaining General Permit coverage and reiterated the Conditional Settlement Offer waiver deadline of April 25, 2024.
16. On April 24, 2024, Santa Ana Water Board staff again left a voicemail via Wicked Creations' main telephone number and again requested a status update and reminded them of the deadline.
17. On June 7, 2024, Santa Ana Water Board staff again attempted an inspection of Wicked Creations. From the public right-of-way, Staff observed industrial material, equipment, and waste stored outdoors fully exposed to stormwater on the north side of the Facility's exterior. Additionally, Staff observed sediment track out from the Facility onto West Street. Santa Ana Water Board staff was again denied consent to inspect by Ms. Miles. Ms. Miles informed Staff that the Facility would obtain General Permit coverage but would not be paying the mandatory monetary penalty.
18. To date, the Discharger has not obtained General Permit coverage and continues to operate an industrial business.

LEGAL AUTHORITY

19. Section 13399.30 of the Water Code requires the regional boards to identify, on an annual basis, dischargers of stormwater that have not obtained coverage under the General Permit.
20. Pursuant to Water Code section 13399.30 subdivision (a)(2), the Santa Ana Water Board provides an NNC to any person that discharges, proposes to discharge, or is suspected of discharging stormwater associated with industrial activity without coverage under the General Permit. The first NNC directs the discharger to obtain General Permit coverage within 30 days from the date on which the Santa Ana Water Board provided notice.
21. Pursuant to Water Code section 13399.30 subdivision (b), regional boards shall send a second NNC to a discharger for failing to submit the appropriate Notice of Intent (NOI) within 30 days from the date on which the first notice was sent pursuant to 13399.30(a).
22. Pursuant to Water Code 13399.30 subdivision (c)(2), if a discharger fails to submit the required NOI within 60 days from the date on which the first NNC was sent, and after receiving a second NNC, the regional boards shall impose the penalties described in section 13399.33(a).

PROPOSED MANDATORY MINIMUM PENALTIES AND ASSESSMENT OF COSTS

23. Pursuant to Water Code section 13399.33 subdivision (a)(1), the Santa Ana Water Board shall administratively impose a penalty in an amount that is not less than five thousand dollars (\$5,000) per year of noncompliance or fraction thereof against a discharger who fails to submit the required NOI in accordance with Water Code section 13399.30. The Santa Ana Water Board shall impose this mandatory minimum penalty unless it makes express finding setting forth the reasons for its failure to do so, based on specific factors required to be considered pursuant to 13399.33 subdivision (a)(2).
24. Water Code section 13399.33 subdivision (d) further requires the recovery of costs incurred by the Santa Ana Water Board for enforcement actions against dischargers who fail to submit the required NOI in accordance with Water Code section 13399.30. Staff spent nineteen (19) hours for this enforcement action resulting in total staff costs of two thousand three hundred seventy-six dollars (\$2,376).
25. Therefore, the liability for the violation alleged herein, including staff costs, is seven thousand three hundred seventy-six dollars (\$7,376).

REGULATORY CONSIDERATIONS

26. Notwithstanding issuance of this Complaint, the Santa Ana Water Board retains the authority to assess additional penalties for any violations that have not yet been assessed or for violations that may subsequently occur.
27. An administrative civil liability may be imposed pursuant to the procedures described in Water Code section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.
28. 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).

WICKED CREATIONS IS HEREBY GIVEN NOTICE THAT:

29. The Assistant Executive Officer of the Santa Ana Water Board proposes an administrative civil liability in the amount of seven thousand three hundred seventy-six dollars (\$7,376). The amount of the proposed liability is based on the mandatory minimum penalties authorized to be imposed under Water Code section 13399.33, subdivisions (a)(1) and (d).
30. A hearing on this matter will be conducted at the Santa Ana Water Board meeting scheduled on October 25, 2024, unless one of the following options occurs:
 - a. The Discharger waives the hearing by completing the Waiver Form (checking off the box next to Option 1), attached herein, and returning it to the Santa Ana Water Board, along with payment for the proposed liability of seven thousand three hundred seventy-six dollars (\$7,376).
 - b. The Discharger waives the 90-day hearing requirement in order to extend the hearing date (checking off the box next to Option 2) and returning it to the Santa Ana Water Board, along with rationale for the extension.



Eric Lindberg, P.G., C.H.G.
Assistant Executive Officer
Santa Ana Water Board Prosecution Team



Santa Ana Regional Water Quality Control Board

WAIVER FORM FOR MANDATORY MINIMUM PENALTY COMPLAINT NO. R8-2024-0038

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

I am duly authorized to represent Wicked Creations in connection with Mandatory Minimum Penalty Complaint No. R8-2024-0038 (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. The person who has been issued a complaint may waive the right to a hearing.”*

(OPTION 1: Check here if Wicked Creations waives the hearing requirement and will pay the liability in full.)

- a. I hereby waive any right Wicked Creations may have to a hearing before the Santa Ana Water Board.
- b. I certify that Wicked Creations will remit payment for the proposed penalty in the full amount of **seven thousand three hundred seventy-six dollars (\$7,376)** by submitting a check made payable to the *“Waste Discharge Permit Fund,”* that references *“Complaint No. R8-2024-0038.”*
- 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 Santa Ana Water Board receive significant new information or comments from any source (excluding the Santa Ana Water Board’s Prosecution Team) during this comment period, the Santa Ana 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 Santa Ana Water Board (or the Santa Ana Water Board’s delegee), and that the Santa Ana Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in Wicked Creations 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 Wicked Creations to further enforcement, including additional civil liability.

KRISTINE MURRAY, CHAIR | JAYNE JOY, EXECUTIVE OFFICER

(OPTION 2: Check here if Wicked Creations waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)

I hereby waive any right Wicked Creations may have to a hearing before the Santa Ana Water Board within 90 days after service of the Complaint. By checking this box, Wicked Creations requests that the Santa Ana Water Board delay the hearing and/or hearing deadlines so that Wicked Creations may have additional time to prepare for the hearing. Please provide a written explanation of why additional time is needed. It remains within the discretion of the Santa Ana Water Board to approve the extension and the Prosecution Team reserves the right to object to this delay.

(Print Name and Title)

(Signature)

(Date)

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