

STATE OF CALIFORNIA  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

In the Matter of:	)	
	)	COMPLAINT NO. R2-2009-0023
	)	for
Miller Dismantler	)	ADMINISTRATIVE
9835 Pearmain Street	)	CIVIL LIABILITY
Oakland, Alameda County	)	
_____	)	

This Complaint is issued to Miller Dismantler (hereinafter Discharger) to assess administrative civil liability pursuant to California Water Code (CWC) Section 13385. The Complaint addresses failure to submit a required annual report for a period of 256 days. The Discharger violated the State Water Resources Control Board's Water Quality Order No. 97-03-DWQ National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities (General Permit). The violations cited herein occurred from July 2, 2008, to March 15, 2009.

The Assistant Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter Regional Water Board) hereby gives notice that:

1. Miller Dismantler is alleged to have violated provisions of the law for which the Regional Water Board may impose civil liability pursuant to Section 13385 of the CWC. This Complaint proposes to assess \$16,800 in penalties for the violations cited based on the considerations described herein. The deadline for comments on this Complaint is May 8, 2009, at 5 p.m.
2. Unless waived, the Regional Water Board will hold a hearing on this matter on June 10, 2009, in the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland, California, 94612. You or your representatives(s) will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of civil liability by the Regional Water Board. You will be mailed an agenda approximately ten days before the hearing date. You must submit any written evidence concerning this complaint to the Regional Water Board not later than 5 pm on May 8, 2009, so that such comments may be considered. Any written evidence submitted to the Regional Water Board after this date and time will not be accepted or responded to in writing.
3. At the hearing the Regional Water 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. The Discharger can waive its right to a

hearing to contest the allegations contained in this Complaint by submitting a signed waiver and paying the civil liability in full as described in the attached waiver form.

#### ALLEGATIONS

4. The following facts are the basis of the alleged violations in this matter:
  - a. The Discharger submitted a Notice of Intent (NOI) to obtain coverage under the General Permit. The Discharger's Waste Discharge Identification Number is 2 01S 017298.
  - b. The General Permit requires the Discharger to submit an annual report documenting its sampling and analyses, observations, and an annual comprehensive site compliance evaluation, by July 1 of each year.
  - c. The Discharger violated its waste discharger requirements by failing to submit its 2007-2008 annual report by the July 1, 2008, deadline. This is a violation of CWC Section 13385(a)(1), for which administrative civil liability may be imposed.
  - d. On August 22, 2008, the Assistant Executive Officer issued a Notice of Noncompliance letter to the Discharger. The Discharger was notified of its obligation to submit an annual report and to comply with the General Permit. The Discharger was required to respond by September 22, 2008, but failed to do so.
  - e. By certified mail dated October 31, 2008, the Assistant Executive Officer issued a second Notice of Noncompliance letter to the Discharger. This letter informed the Discharger that it was in violation of the General Permit and that the Executive Officer would recommend enforcement actions, including administrative civil liability up to \$10,000 per day, if an annual report was not submitted. No written or verbal response to the letter was received from the Discharger.
  - f. Board staff confirmed that the facility was still in business at the above address during a Site inspection on February 24, 2009. During this inspection Mr. Edward Miller verbally committed to submit the 2007-2008 annual report by February 27, 2009. The Discharger did not submit its annual report by that date.
  - g. As of March 16, 2009, the Discharger has failed to submit its 2007/2008 annual report. The Discharger has been in violation of the General Permit for a total of 256 days (July 2, 2008 through March 15, 2009).

#### PROPOSED CIVIL LIABILITY

5. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code 21000 et seq.) in accordance with Section 15321 of Title 14, California Code of Regulations.

6. Under CWC Section 13385(c)(1), the Regional Water Board can impose a maximum civil liability of \$10,000 per day of violation. This Complaint addresses violations for the 256 day period from July 2, 2008, through March 15, 2009.
7. Under Section 13385(e) of the CWC, the Regional Water Board shall consider the following factors in determining the amount of civil liability to be imposed:

- a. The nature, circumstances, extent, and gravity of the violation:

These annual reports are a key means of determining the quality of stormwater runoff from the Discharger's site and ensuring the Discharger is implementing appropriate control measures at the site. Additionally, they are one of the Discharger's primary tools to self-evaluate site compliance with the permit and to identify any needed improvements.

The Discharger was sent two Notice of Noncompliance letters and was contacted via telephone.

- b. Toxicity of Discharge and Susceptibility to Cleanup

The violation for which liability is proposed is a failure to submit a required report. The report is required to include quantitative and qualitative information on the amounts and/or presence of certain pollutants in discharges from the subject facility, as well as information on remedial actions taken by the Discharger to halt or minimize polluted discharges from its facility. In the absence of this information, it is not possible to make a more specific determination on this factor, and civil liability is not proposed for a specific discharge.

- c. Discharger's ability to pay:

Water Board staff was unable to locate available public documents addressing the Discharger's ability to pay. We believe the Discharger owns the property on which it operates and also leases portions thereof to other businesses. We believe the Discharger will be able to pay the proposed civil liability. As described below, as part of its response to this Complaint, the Discharger may submit additional information on this issue.

- d. Prior history of violations:

The discharger has submitted its annual reports from previous years modestly late. For example, the 2006-2007 annual report was received on November 7, 2007, 127 days late.

- e. Degree of culpability:

The storm water regulations are applicable to all specified industrial sites on a nationwide basis. All dischargers are required to comply with the Clean Water Act. The Discharger is fully culpable for violating the terms and conditions of the General Permit, which implements the Clean Water Act.

f. Savings resulting from the violation:

The Discharger has realized cost savings by: failure to perform required sampling and analyses, failure to submit the annual report, and failure to implement and/or document its Stormwater Pollution Prevention Plan. Assuming an average-sized site, Board staff estimates the minimum economic savings for submitting a late and incomplete annual report to be \$1000/year.

g. Other matters that justice may require:

Staff time to prepare a Complaint and supporting information is estimated to be 20 hours. Based on an average cost to the State of \$135 per hour, the total cost is \$2,700.

Additionally, issuance of the Complaint requires publication of a Public Notice in a newspaper of general circulation at a cost of approximately \$300.

Basis for Liability Amount

8. Per CWC Section 13385(e) the following factors in determining an appropriate civil liability amount were considered: the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and with respect to the violator, the ability to pay, the effect on the ability to continue in business, any voluntary cleanup efforts undertaken, and prior history of violations, the degree of culpability, economic benefit or saving, if any, resulting from the violation, and such other matters as justice may require. Using this section as a guide as well as the monetary assessment guidance set forth State Water Resources Control Board's Enforcement Policy, the proposed liability was derived.
9. The Assistant Executive Officer of the Regional Water Board proposes that an administrative civil liability be imposed in the amount of \$16,800. Of this amount, \$3,000 is for recovery of staff costs.

Claims of inability to pay must be substantiated by adequate proof of financial hardship (e.g., two years of income tax returns or an audited financial statement).

10. Further failure to comply with the General Permit or amendments thereof beyond the date of this Complaint may subject the Discharger to further administrative civil liability, and/or other appropriate enforcement actions(s), including referral to the Attorney General.

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Thomas E. Mumley  
Assistant Executive Officer

April 8, 2009

Date

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)  
)  
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9835 Pearmain Street )  
Oakland, Alameda County )  
\_\_\_\_\_ )

COMPLAINT NO. R2-2009-0023  
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ADMINISTRATIVE  
CIVIL LIABILITY

WAIVER OF HEARING

If you waive your right to a hearing, the matter will be included on the agenda of a Regional Water Board meeting but there will be no hearing on the matter, unless a) the Regional Water Board staff receives significant public comment during the comment period, or b) the Regional Water Board determines it will hold a hearing because it finds that new and significant information has been presented at the meeting that could not have been submitted during the public comment period. If you waive your right to a hearing but the Regional Water Board holds a hearing under either of the above circumstances, you will have a right to testify at the hearing notwithstanding your waiver. Your waiver is due no later than May 8, 2009, at 5 p.m.

- Waiver of the right to a hearing and agreement to make payment in full.  
By checking the box, I agree to waive my right to a hearing before the Regional Water Board with regard to the violations alleged in Complaint No. R2-2009-0023 and to remit the full penalty payment of \$16,800 to the State Water Pollution Cleanup and Abatement Account, c/o Regional Water Quality Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the Regional Water Board meeting for which this matter is placed on the agenda. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Assistant Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Regional Water Board holds a hearing under either of the circumstances described above. If the Regional Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Regional Water Board adopts the order imposing the liability.
  
- Waiver of right to a hearing within 90 days  
By checking this box, I hereby waive my right to a hearing before the Regional Water Board within 90 days after service of the Complaint, but I reserve the right to have a hearing in the future. I agree to promptly engage the Regional Water Board prosecution staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional Water Board delay the hearing so the Discharger and Regional Water Board staff can discuss settlement. It remains within the discretion of the Regional Water Board to agree to delay the hearing.

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title/Organization