

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

IN THE MATTER OF:

MK Enterprise LLC)	Complaint No. R8-2024-0028
1860 Loma Vista Drive)	For
Beverly Hills, CA 90210)	Mandatory Minimum Penalty

This Complaint is issued to MK Enterprise LLC (hereafter referred to as MK Enterprise LLC 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 submit the 2022-2023 Annual Report in accordance with Water Code section 13399.31, 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. Construction sites that discharge stormwater associated with construction activities are required to obtain coverage under the National Pollutant Discharge Elimination System (NPDES) 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 and Order No. 2012-0006-DWQ, NPDES No. CAS000002 (General Permit). General Permit coverage is required for construction sites that result in disturbance greater than one acre of total land area. Dischargers enrolled under the General Permit are required to comply with reporting requirements, including the requirement to submit an Annual Report by September 1 of each year.
2. On October 31, 2022, MK Enterprise LLC obtained General Permit coverage, under Waste Discharge Identification Number 8 36C399033, for the Victoria Square construction site located at 6909 Victoria Ave, in the City of Highland. General Permit coverage authorizes discharges of stormwater associated with construction activity so long as the dischargers comply with all requirements, provisions, limitations, and prohibitions in the permit.
3. On August 13, 2023, the State Water Board sent a courtesy email reminder to dischargers reiterating the September 1st deadline for the submittal of the Annual Report.

4. On August 23, 2023, the Santa Ana Water Board sent another courtesy email reminder to dischargers reiterating the September 1st deadline of the submittal of Annual Report
5. On September 1, 2023, the Discharger's Annual Report for the 2022-2023 reporting year was due per General Permit Section.
6. On September 18, 2023, the Santa Ana Water Board issued a Notice of Non-Compliance (NNC) MK Enterprise LLC for the failure to submit the 2022-2023 Annual Report. The NNC required the Discharger to submit the 2022-2023 Annual Report via the Stormwater Multiple Application and Report Tracking System (SMARTS) no later than October 17, 2023.
7. On October 4, 2023, Santa Ana Water Board staff received the United States Postal Service certified mail return receipt for the first NNC.
8. On October 18, 2023, a second NNC was issued to MK Enterprise LLC for the failure to submit the 2022-2023 Annual Report by the deadline specified in the first NNC. The second NNC required the Discharger to submit the 2022-2023 Annual Report via SMARTS by November 16, 2022.
9. On October 23, 2023, Santa Ana Water Board staff received the United States Postal Service certified mail return receipt for the second NNC.
10. On October 26, 2023, Kam Khorshidi emailed Santa Ana Water Board staff requesting help navigating SMARTS to comply with the NNCs. Santa Ana Water Board staff provided instructions and a help guide to submit the Annual Report and reiterated the final deadline of November 16, 2023.
11. On November 7th, 13th, 15th, and 16th, 2023, Santa Ana Water Board staff sent reminder emails stating that the 2022-2023 Annual Report had still not been submitted, the final deadline was approaching, and mandatory minimum penalties would be assessed if the Annual Report was not submitted.
12. On December 29, 2023, Kam Khorshidi submitted the 2022-2023 Annual Report, forty-two (42) days after the final deadline of November 16, 2023.
13. On March 21, 2024, the Santa Ana Water Board issued Conditional Settlement Offer (Settlement Offer) No. R8-2024-0028 to MK Enterprise LLC 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 MMP of \$1,735, including staff costs. The Discharger was given a deadline of April 19, 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. To date, the Discharger has not responded to the Conditional Settlement Offer and continues to ignore outreach efforts made by Santa Ana Water Board staff.

LEGAL AUTHORITY

16. Section 13399.31 of the Water Code requires the regional boards to conduct a review of the Annual Reports in accordance with the requirements of the General Permit, and identify, on an annual basis, dischargers that have failed to submit that Annual Report.
17. Pursuant to Water Code section 13399.31 subdivision (b), the Santa Ana Water Board provides an NNC to any person that is identified to have failed to submit an Annual Report by the deadline specified in the General Permit. The first NNC directs the discharger to submit the Annual Report within 30 days from the date on which the Santa Ana Water Board provided notice.
18. If a discharger does not come into compliance in response to the first NNC, Water Code section 13399.31 subdivision (c) directs the regional boards to send a second NNC to a discharger. Failure to submit the appropriate Annual Report within 60 days of the first NNC, after the second NNC is issued, subjects the discharger to a mandatory minimum penalty (MMP).
19. Pursuant to Water Code section 13399.33, subdivisions (c) and (d), a discharger is subject to a minimum penalty of not less than one thousand dollars (\$1,000) plus staff costs for its failure to submit the required Annual Report as required by the General Permit within 60 days from the date of issuance of the first NNC, when a second NNC was also issued.

PROPOSED MANDATORY MINIMUM PENALTIES AND ASSESSMENT OF COSTS

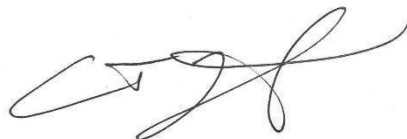
20. Pursuant to Water Code section 13399.33 subdivision (c), the Santa Ana Water Board shall administratively impose a penalty in an amount that is not less than one thousand dollars (\$1,000) against a discharger who fails to submit the required Annual Report.
21. Water Code section 13399.33 subdivision (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 Annual Report in accordance with Water Code section 13399.31. Staff spent sixteen (16) hours for this enforcement action resulting in total staff costs of one thousand seven hundred and seventy-nine dollars (\$1,779).
22. Therefore, the mandatory minimum liability for the violation alleged herein, including staff costs, is two thousand seven hundred and seventy-nine dollars (\$2,779).

REGULATORY CONSIDERATIONS

23. 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.
24. 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, identifies the provision of law authorizing administrative civil liability to be imposed, and declares the proposed administrative civil liability.
25. 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).

MK ENTERPRISE LLC IS HEREBY GIVEN NOTICE THAT:

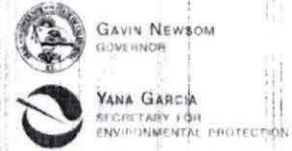
26. The Assistant Executive Officer of the Santa Ana Water Board proposes an administrative civil liability in the amount of two thousand seven hundred and seventy-nine dollars (\$2,779). The amount of the proposed liability is based on the mandatory minimum penalties authorized to be imposed under Water Code section 13399.33, subdivisions (c) and (d).
27. 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 returns it to the Santa Ana Water Board, along with payment for the proposed liability of two thousand seven hundred and seventy-nine dollars (\$2,779).
 - 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 returns 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



24001103



Santa Ana Regional Water Quality Control Board

WAIVER FORM FOR MANDATORY MINIMUM PENALTY COMPLAINT NO. R8-2024-0028

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

I am duly authorized to represent MK Enterprise LLC in connection with Mandatory Minimum Penalty Complaint No. R8-2024-0028 (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 MK Enterprise LLC waives the hearing requirement and will pay the liability in full.)

- a. I hereby waive any right MK Enterprise LLC may have to a hearing before the Santa Ana Water Board.
- b. I certify that MK Enterprise LLC will remit payment for the proposed penalty in the full amount of **two thousand seven hundred and seventy-nine dollars (\$2,779)** by submitting a check made payable to the "Waste Discharge Permit Fund," that references "Complaint No. R8-2024-0028."
- 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 MK Enterprise 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 MK Enterprise LLC to further enforcement, including additional civil liability.

KRISTINE MURRAY, CHAIR | JAYNE JOY, EXECUTIVE OFFICER

(OPTION 2: Check here if MK Enterprise LLC 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 MK Enterprise LLC may have to a hearing before the Santa Ana Water Board within 90 days after service of the Complaint. By checking this box, MK Enterprise LLC requests that the Santa Ana Water Board delay the hearing and/or hearing deadlines so that MK Enterprise LLC 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.

KAM KHORSHIDI - OWNER

(Print Name and Title)

KamK

(Signature)

8-15-2024

(Date)



Santa Ana Regional Water Quality Control Board

ACCEPTANCE OF RESOLUTION AND WAIVER OF RIGHT TO A BOARD HEARING: ORDER

MK Enterprise LLC (WDID No. 8 36C399033)
Settlement Offer No. R8-2024-0028

By signing and returning the Waiver Form for Mandatory Minimum Penalty Complaint No R8-2024-0028 to the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board), MK Enterprise LLC (Discharger) hereby accepted the liability in full and waived the right to a hearing before the Santa Ana Water Board to dispute the violations described in the Notices of Non-Compliance (NNCs).

The Discharger agreed that the Mandatory Minimum Penalty shall serve as a complaint pursuant to Article 2.5 of the California Water Code and that no separate complaint is required for the Santa Ana Water Board to assert jurisdiction over the alleged violations through its Chief Prosecutor. The Discharger agreed to pay the administrative civil liability authorized by California Water Code sections 13399.31 and 13399.33, in the sum of \$2,779 (Mandatory Minimum Penalty Amount) which shall be deemed payment in full of any civil liability pursuant to California Water Code section 13399.33 that otherwise might be assessed for the violations described in the NNCs.


The Discharger understood that 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 the comment period, the Santa Ana Water Board's Assistant Executive Officer may withdraw the Complaint, return payment, and issue a new complaint. The Discharger understood that the 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. Approval of the settlement will result in MK Enterprise LLC having waived the right to contest the allegations in the Complaint and the imposition of civil liability.

Per federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii), the Santa Ana Water Board published notice and provided at least (30) days for public comment on the proposed resolution of the enforcement action addressing NPDES permit violations. Accordingly, the Waiver Form for Mandatory Minimum Penalty Complaint No R8-2024-0028, prior to execution by the Santa Ana Water Board Executive Officer, was published as required by law for public comment.

Since no comments were received within the notice period that causes the Santa Ana Water Board Executive Officer to question the Mandatory Minimum Penalty, the Santa Ana Water Board Executive Officer will execute the Acceptance and Waiver.

The Discharger further understood that once this Acceptance and Waiver is executed by the Santa Ana Water Board Executive Officer, full payment is required to the State Water Resources Control Board no later than thirty (30) calendar days after the date the Acceptance and Waiver is executed by the Santa Ana Water Board Executive Officer. In accordance with California Water Code section 13399.37(a), funds collected for violations pursuant to sections 13399.33(c) and 13399.33(d) shall be deposited in the Waste Discharge Permit Fund. Accordingly, the \$2,779 liability including staff costs shall be paid by a cashiers or certified check made out to the "State Water Resources Control Board" referencing this Order number for deposit into the Waste Discharge Permit Fund.

IT IS SO ORDERED PURSUANT TO CALIFORNIA WATER CODE SECTION 13323 AND GOVERNMENT CODE SECTION 11415.60.

By: **Jayne Joy**  Digitally signed by Jayne Joy
Date: 2024.10.31 13:26:58 -07'00'
Jayne E. Joy, P.E.
Executive Officer
Santa Ana Regional Water Quality Control Board

October 31, 2024

Date