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Secretary for
Environmental
Protection

California Regional Water Quality Control Board

Central Coast Region



Arnold Schwarzenegger
Governor

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

CENTRAL COAST REGION

In the matter of:

Monterey Peninsula Unified School
District

540 Canon Del Rey Boulevard, Suite 3

Monterey, CA 93940

WDID# 3 27 1 003 624

Complaint No. R3-2007-0088

Administrative Civil Liability

For

Violations of California Water Code

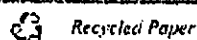
Sections 13399.31 and 13385

Industrial Storm Water General Permit
Violations

MONTEREY PENINSULA UNIFIED SCHOOL DISTRICT IS HEREBY GIVEN NOTICE THAT:

1. Monterey Peninsula Unified School District, owner/operator of a vehicle maintenance facility located at 540 Canon Del Rey Boulevard, Monterey, in Monterey County (Discharger), is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board), may impose civil liability pursuant to Sections 13399.33 and 13385 of the California Water Code.
2. Unless the Discharger waives the right to a hearing and pays the civil liability as described in this complaint, a hearing on this matter will be held before the Central Coast Water Board during a public meeting on December 7, 2007, in San Luis Obispo, California. The Discharger and/or its representative(s) will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of civil liability by the Central Coast Water Board. The Central Coast Water Board will mail the Discharger an agenda for the hearing not less than ten days before the hearing date.
3. At the hearing, the Central Coast Water Board will consider whether to affirm, decrease, or increase the proposed civil liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability, or to take any other action appropriate as a result of the hearing.
4. The State of California has adopted the *General Permit for Storm Water Discharges Associated with Industrial Activity, Water Quality Order No. 97-03-DWQ, NPDES No. CA000001* (General Permit). The General Permit requires industrial facilities to submit a Notice of Intent to comply with the General Permit if the facility presents a threat of waste discharge to waters of the state because of contact between a facility's industrial

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Item No. 10 Attachment No. 2
December 7, 2007 Meeting
Monterey Peninsula USD

process and storm water runoff, or through non-stormwater discharges, as prescribed by the General Permit.

5. On April 6, 1992, the Discharger filed a Notice of Intent to comply with the terms of the General Permit. By filing a Notice of Intent, the Discharger agreed to comply with all terms and conditions of the General Permit, which requires the submittal of an annual report to the Central Coast Water Board by July 1st of each year.
6. On June 20, 2007, the Central Coast Water Board mailed a reminder notice to the Discharger stating that the 2006-2007 annual report was due no later than July 1, 2007.
7. The Discharger failed to submit its annual report on or before the July 1, 2007 due date, for the reporting period covering July 1, 2006, through June 30, 2007.
8. As required by California Water Code Section 13399.31, on July 12, 2007, the Central Coast Water Board issued a Notice of Non-Compliance to the Discharger for failure to submit the annual report. As further required by Section 13399.31, on August 14, 2007, the Central Coast Water Board issued a second Notice of Non-Compliance to the Discharger. The Central Coast Water Board mailed all Notices of Non-Compliance by certified mail, and received return receipts confirming delivery to the Discharger. On August 21, 2007, staff telephoned Mr. Carlos Pina, the Discharger's representative, and left a voicemail message regarding the annual reporting requirement. On the same day, staff telephoned another District employee in the transportation department, and repeated a similar message. On September 10, 2007, staff again left a telephone message for Mr. Pina, and spoke to another District employee about the annual reporting requirement. More than 60 days have passed since the Central Coast Water Board sent the first Notice of Non-Compliance.
9. Pursuant to California Water Code Sections 13399.31 and 13399.33, if a discharger fails to submit an annual report within 60 days of the first Notice of Non-Compliance [13399.31(d)], the Central Coast Water Board must impose administrative civil liability of no less than \$1,000 [13399.33(c)].
10. The Discharger is in violation of the General Permit and California Water Code Section 13399.31 for failure to submit an annual report within 60 days of the first Notice of Non-Compliance, and is subject to penalties put forth in California Water Code Section 13399.33.
11. In accordance with Section 13399.33(c) of the California Water Code, the Discharger is civilly liable for no less than \$1,000.
12. To compel compliance from repeat violators, Section 1.D of the *State Water Resources Control Board Water Quality Enforcement Policy* states that water boards should quickly escalate enforcement actions to increasingly more formal and serious actions until compliance is achieved.
13. Central Coast Water Board records indicate that the Discharger has a history of violating the General Permit annual reporting requirements. The Central Coast Water Board Executive Officer issued past Notices of Non-Compliance to the Discharger for failing to submit timely annual reports as shown in the table below. The Discharger eventually submitted the late reports. This table does not include the two Notices of Non-

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Compliance sent for the 2006-2007 reporting period (the subject of this complaint). The Discharger's history of repetitive annual reporting violations warrants civil liability in an amount greater than the \$1,000 minimum prescribed by California Water Code Section 13399.33(c).

Annual Reporting Violation History for Monterey Peninsula Unified School District

Applicable Reporting Period July 1 st – June 30 th	Notice of Non-Compliance Date
1994 – 1995	September 25, 1995
1996 – 1997	July 17, 1997
1997 – 1998	July 20, 1998 (First Notice)
1997 – 1998	September 8, 1998 (Second Notice)
1999 – 2000	September 1, 2000
2000 – 2001	August 1, 2001 (First Notice)
2000 – 2001	September 4, 2001 (Second Notice)
2001 – 2002	August 1, 2002 (First Notice)
2001 – 2002	September 3, 2002 (Second Notice)
2002 – 2003	August 5, 2003 (First Notice)
2002 – 2003	September 9, 2003 (Second Notice)
2003 – 2004	September 10, 2004 (First Notice)
2003 – 2004	October 13, 2004 (Second Notice)
2004 – 2005	August 10, 2005 (First Notice)
2004 – 2005	September 14, 2005 (Second Notice)
2005 – 2006	August 1, 2006

14. Pursuant to California Water Code Section 13385, any person who violates a waste discharge requirements permit shall be civilly liable for up to ten thousand dollars (\$10,000) for each day in which the violation occurs.
15. The Discharger is in violation of California Water Code Section 13385(a)(2) for failure to submit an annual report as required by a waste discharge requirements permit (the General Permit), and is subject to the penalties prescribed in California Water Code Section 13385(c).
16. The 2006-2007 annual report was due no later than July 1, 2007. As of October 9, 2007, the Discharger's annual report was one hundred (100) days late, subjecting the Discharger to a maximum civil liability equal to one million dollars (\$1,000,000, or 100 multiplied by \$10,000). This maximum civil liability increases by \$10,000 for each additional day the Discharger's report is late.

- 17 Pursuant to California Water Code Section 13385(e), in determining the amount of any liability under Section 13385, the Central Coast Water Board must consider the nature, circumstances, extent, and gravity of the violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, the discharger's ability to pay, the effect on the discharger's ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, any economic benefit or savings resulting from the violation, and other matters that justice may require. At a minimum, the Water Board must assess liability at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.
- a. Nature, Circumstances, Extent, and Gravity of Violations: These considerations are described in the above paragraphs. The reporting violations do not warrant the applicable maximum liability, but do warrant liability greater than the minimum \$1,000 required by Water Code Section 13399.33(c) described in paragraph No. 11 above.
 - b. Discharge Susceptibility to Cleanup or Abatement: Cleanup or abatement does not apply to reporting violations.
 - c. Degree of Toxicity of Discharge: Toxicity determinations do not apply to reporting violations.
 - d. Discharger's Ability to Pay the Liability, and the Effect on the Discharger's Ability to Continue Business: The Discharger has the apparent ability to pay because it operates a school district serving approximately 11,000 students, with annual revenues of approximately 83 million dollars¹. The Discharger does not operate a business. This consideration does not warrant less than the maximum liability.
 - e. Voluntary Cleanup Efforts Undertaken: Voluntary cleanup efforts do not apply to reporting violations.
 - f. Prior History of Violations: The Discharger's prior history of reporting violations is described above in paragraph No. 13. The repetition of annual reporting violations indicates a chronic failure to perform the General Permit's required monitoring and reporting duties. This consideration does not warrant less than the maximum liability.
 - g. Degree of Culpability: As described in the above paragraphs, the Discharger was warned multiple times by certified letter, telephone, or facsimile about the annual reporting requirements. As the owner of the regulated facility, the Discharger has the highest degree of culpability. This consideration does not warrant less than the maximum liability.
 - h. Economic Benefit or Savings Resulting from the Violations: Assuming that the Discharger performed all observations, monitoring, and other duties required throughout the 2006-2007 reporting year, which generate the data required in the annual report, the economic benefit or savings to the Discharger would be limited to the time and expense of preparing the report itself. With the appropriate information available, staff estimates the Discharger could complete the annual report in two

¹ Monterey Peninsula Unified School District, *District Accountability Report, 2003 - 2004*, District Financial Detail table, page 19, <http://www.mpusd.k12.ca.us/admin.html>.

hours or less. Assuming an hourly rate of \$75, the economic benefit equates to \$150.

The above assumption is very conservative. In staff's experience, dischargers that fail to submit annual reports frequently do not have the required information to enter into the report because they have not completed the monitoring requirements throughout the year. Economic savings in time, analytical costs, and group monitoring program fees (where applicable) are higher than the cost of preparing the report for submittal. The Discharger's failure to submit the annual report prevents staff from evaluating the completeness of the report and the Discharger's activities over the reporting period. This consideration warrants less than the maximum liability, but warrants liability greater than the minimum \$1,000 required by Water Code Section 13399.33(c) described in paragraph No. 11 above.

- i. Other Matters Justice May Require: Central Coast Water Board staff, including technical staff, administrative staff, management, and legal counsel, spent 40 hours informing the Discharger of its responsibilities and preparing civil liability documents. At \$75 per hour, staff costs resulting from the Discharger's violations equate to \$3,000. This consideration warrants less than the maximum liability, but warrants liability greater than the minimum \$1,000 required by Water Code Section 13399.33(c) described in paragraph No. 11 above, and equal to or greater than \$3,000.

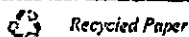
18. Nothing in this complaint relieves the Discharger of any reporting obligation under the General Permit, including the obligation to submit the 2006-2007 annual report if the Discharger has not already done so. Failure to submit the annual report may subject the Discharger to additional enforcement action, including penalties accrued after the days of violation accounted for in this complaint. The Discharger's submittal of the annual report at any time after the 60-day period following the first Notice of Non-Compliance does not relieve the Central Coast Water Board's obligation to impose civil liability of at least \$1,000 on the Discharger.

19. If the Discharger waives its right to a hearing and pays the civil liability recommended herein, this complaint only resolves liability that the Discharger incurred through the days of violation accounted for in this complaint, only for the violations specified herein, and does not relieve the Discharger from liability for any violations after the days of violation accounted for in this complaint or any violations not alleged in the complaint (such as deficiencies in the annual report itself).

RECOMMENDED CIVIL LIABILITY: Considering the factors described in paragraph No. 17 above, particularly the Discharger's history of violating the General Permit's annual reporting requirements, and the need to compel compliance from repeat violators by escalating enforcement actions, the Assistant Executive Officer recommends imposing civil liability in the amount of \$3,000.

WAIVER OF A HEARING: The Discharger may waive the right to a hearing. If the Discharger wishes to waive the right to a hearing, the Discharger must sign the attached waiver and return it, along with a check in the amount of \$3,000, to the Central Coast Water Board at 895 Aerovista Place, Suite 101, San Luis Obispo, CA 93401-7906. Make the check payable to the State Water Resources Control Board, Waste Discharge Permit Fund, and write "Complaint No. R3-2007-0088" on the check's memo line.

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If you have any questions, please contact Todd Stanley at (805) 542-4769, Harvey Packard at (805) 542-4639, or State Water Board Office of Enforcement attorney, Yvonne West, at (916) 341-5445.



Michael J. Thomas
Assistant Executive Officer

11-1-07

Date

PROCEDURAL INFORMATION
FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
HEARING AND PAYMENT

HEARING

Unless you waive your right to a hearing and pay the recommended liability, a hearing on this matter will be held before the Central Coast Water Board within 90 days after you have been served with this administrative civil liability (ACL) complaint. You or your representatives will have the opportunity to be heard and to contest the allegations in the ACL complaint and the imposition of civil liability by the Water Board. A meeting is scheduled for:

December 7, 2007, at 8:30 a.m.
Central Coast Water Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

At the hearing, the Water Board will consider the proposed administrative civil liability and may either accept or modify (increase or decrease) it consistent with applicable limits imposed by law, or direct other appropriate action. At this time, your hearing is not scheduled for a particular time during the meeting, and may occur at any time during the meeting.

WAIVER OF HEARING AND PAYMENT OF CIVIL LIABILITY

You may waive your right to a hearing. If you want to waive your right to the hearing, you or a duly authorized person must sign the attached WAIVER OF HEARING form and pay the civil liability amount specified on the ACL complaint. Make a cashier's check or money order payable to "State Water Resources Control Board, Waste Discharge Permit Fund" and write the ACL complaint number on your check to assure correct crediting of your account. Do not send cash. Send your PAYMENT and WAIVER OF HEARING form to:

California Regional Water Quality Control Board
Central Coast Region
ATTENTION: Todd Stanley
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

A duly authorized person is defined as a principal executive officer of at least the level of vice president in a corporation, a general partner or the proprietor in a partnership or sole proprietorship, a principal executive officer or ranking elected official in a public agency, or a duly authorized representative.

If full PAYMENT and a signed WAIVER OF HEARING form are not received in this office by December 6, 2007, the Water Board will conduct a hearing on this matter as stated above.

WAIVER OF HEARING

By signing below, I hereby affirm and acknowledge the following in connection with Administrative Civil Liability Complaint No. R3-2007-0088 (hereafter "Complaint"):

1. I am the Discharger identified in the Complaint or a duly authorized representative of the Discharger;
2. I am informed of the right provided by Water Code Section 13323, Subdivision (b), to a hearing within ninety (90) days of issuance of an Administrative Civil Liability Complaint;
3. I waive the Discharger's right to a hearing before the California Regional Water Quality Control Board, Central Coast Region, with regard to the violations alleged in the Complaint.
4. I agree to the terms of the Complaint including, but not limited to, the requirement to remit payment for the civil liability proposed.
5. I understand that this settlement will not become effective until after a public comment period and the Executive Officer issues final written approval.
6. I understand that the Executive Officer has complete discretion to modify or terminate this settlement before finalizing it in writing.

Date

Signature

Printed Name and Title

Check Number