

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401**

**ADMINISTRATIVE CIVIL LIABILITY
ORDER NO. R3-2007- 0035
Waste Discharger Identification No. 3 44016798**

Issued To

**Gerry's Foreign Auto Wreckers
600 Errington Road, Watsonville, 95076
Santa Cruz County**

The California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board), finds that:

1. Gerry's Foreign Auto Wreckers, owned by Richard Rodrigues (Discharger), conducts industrial activities subject to National Pollutant Discharge Elimination System (NPDES) Permit No. CAS000001, State Water Board Order No. 97-03-DWQ, *Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities* (General Permit).
2. On October 4, 2001, the Discharger filed a Notice of Intent to comply with the terms of the General Permit.
3. The General Permit requires dischargers to submit an annual report no later than July 1st of each year (Provision E.3, and Monitoring Program and Reporting Requirement B.14).
4. The Discharger violated the General Permit by failing to submit the 2005-2006 annual report by July 1, 2006. The report covers the period from July 1, 2005, through June 30, 2006.
5. Pursuant to California Water Code (Water Code) Section 13399.31, Central Coast Water Board staff sent two Notice of Violation letters (dated August 1, 2006, and September 6, 2006) to the Discharger for failing to submit the annual report.
6. In addition, on September 22, 2006, Central Coast Water Board staff sent the Discharger a third Notice of Violation by certified mail.
7. Water Code Section 13399.31(d) provides that if a discharger fails to submit an annual report within 60 days of the first Notice of Violation, then the Water Board shall impose penalties described in Section 13399.33(c).
8. Central Coast Water Board staff mailed the first Notice of Violation on August 1, 2006. The Discharger failed to submit an annual report within 60 days, or by October 1, 2006.
9. Water Code Section 13399.33(c) requires the Central Coast Water Board to impose administrative civil liability for no less than \$1,000 upon any person that fails to submit an annual report in accordance with Section 13399.31.

10. In addition to violating the General Permit annual reporting requirements for the 2005-2006 reporting period, the Discharger also violated the same requirement for each of the four previous years (every year since submitting a Notice of Intent to comply). Staff issued seven Notice of Violation letters before the Discharger submitted the delinquent annual reports (see Complaint No. R3-2007-0035, #13, attached to the Staff Report).
11. In concurrence with the *State Water Resources Control Board Water Quality Enforcement Policy*, water boards should quickly escalate enforcement actions to increasingly more serious actions until compliance is achieved.
12. The Discharger's history of violating General Permit annual reporting requirements, and the Central Coast Water Board's repeated enforcement actions, indicate that escalating the seriousness of this enforcement action is appropriate. Liability for more than the mandatory minimum penalty amount is warranted.
13. Pursuant to 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.
14. The Discharger is in violation of 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 Water Code Section 13385(c).
15. The 2005-2006 annual report was due no later than July 1, 2006, and the Discharger has not yet submitted the report. As of October 22, 2007, the Discharger's annual report was four hundred and seventy-eight (478) days late, subjecting the Discharger to a maximum civil liability equal to four million, seven hundred and eighty thousand dollars (\$4,780,000, or 478 multiplied by \$10,000). This maximum civil liability increases by \$10,000 for each additional day the Discharger's report is late.
16. On April 19, 2007, staff issued Administrative Civil Liability Complaint No. R3-2007-0035, recommending liability for \$2,000. On June 12, 2007, the Discharger waived its right to a hearing on this matter, and submitted a check for \$2,000. The original hearing on this matter was scheduled for the July 6, 2007 Central Coast Water Board meeting in Watsonville.
17. On July 11, 2007, the State Water Board Division of Administrative Services notified staff that the Discharger failed to provide sufficient funds, so the Discharger's bank could not honor the check.
18. By letter dated July 8, 2007, the State Water Board Division of Administrative Services notified the Discharger that its bank did not honor the check, and required the Discharger to submit a cashier's check or money order for \$2,010 (additional \$10 service charge for denied check).
19. On August 6, 2007, staff telephoned the Discharger and spoke to the owner and an assistant regarding the delinquent check. Staff faxed the State Water Board's July 8, 2007 letter to the Discharger, with directions to contact State Water Board staff directly, pay the adjusted penalty, and notify staff upon completion.
20. On August 9, 2007, the Discharger telephoned staff and indicated it would mail a cashier's check to the State Water Board according to the instructions given in the July 8, 2007 letter.

21. Pursuant to 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 findings. The reporting violations and failure to pay penalties 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 Finding No. 9 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, without affecting its ability to continue business, because it owns and operates an auto wrecking business, and the property at which the business operates. 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 in paragraph No. 13 of Complaint No. R3-2007-0035 (also attached to the Staff Report for this item). The repetition of annual reporting violations indicates a chronic failure to perform the General Permit's required monitoring and reporting duties. These considerations do not warrant less than the maximum liability.
 - g. Degree of Culpability: 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 2005-2006 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 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 record in 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 Finding No. 9 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 Finding No. 9 above, and equal to or greater than \$3,000.
22. This enforcement action is taken for the protection of the environment and as such is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) in accordance with sections 15307 and 15308, Title 14, California Code of Regulations.
 23. A hearing on this matter was held before the Central Coast Water Board on December 7, 2007, at the Central Coast Water Board, 895 Aerovista Place, Suite 101, in San Luis Obispo. The Discharger, or the Discharger's representative(s), had the opportunity to be heard and to contest the allegations in Order No. R3-2007-0035.
 24. At the hearing, the Central Coast Water Board considered whether to affirm, increase, decrease, or reject the proposed administrative civil liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

IT IS HEREBY ORDERED, pursuant to Sections 13399 and 13385 of the California Water Code, the Discharger is assessed a total civil liability of \$5,000, to be paid as follows:

1. The sum of five thousand dollars (\$5,000) to be delivered to the Central Coast Regional Water Quality Control Board by January 7, 2008. The Discharger shall make the cashier's check or money order payable to the *State Water Resources Control Board Waste Discharge Permit Fund*, with "Order No. R3-2007-0035" written on the memo line of the cashier's check or money order.

I, Roger W. Briggs, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the Central Coast Regional Water Quality Control Board on December 7, 2007.

Roger W. Briggs
Executive Officer

Date