

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION

STAFF REPORT FOR REGULAR MEETING OF DECEMBER 7, 2007
Prepared on November 1, 2007

ITEM NUMBER: 12

SUBJECT: Administrative Civil Liability Order No. R3-2007-0035; Gerry's Foreign Auto Wreckers, Santa Cruz County

KEY INFORMATION

Discharger: Gerry's Foreign Auto Wreckers
Location: 600 Errington Road, Watsonville, Santa Cruz County
Discharge Type: Storm Water Associated with Industrial Activity
Existing Order: 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*, WDID No. 3 44016798

This Action: **Impose Administrative Civil Liability**

SUMMARY

The Industrial Storm Water General Permit (General Permit) requires Gerry's Foreign Auto Wreckers (Discharger) to submit an annual report by July 1st of each year. After the Discharger failed to comply with the July 1, 2006 due date, Central Coast Water Board staff mailed three Notice of Violation letters reminding the Discharger of the annual reporting requirement and the possible enforcement actions for failing to comply.

California Water Code Section 13399.33(c) requires the Central Coast Water Board to impose administrative civil liability for no less than \$1,000 if a discharger fails to submit an annual report within 60 days of the first Notice of Violation. The Discharger failed to provide the 2005-2006 annual report within 60 days of staff's first Notice of Violation, and is subject to civil liability for no less than \$1,000.

California Water Code Section 13385 authorizes the Central Coast Water Board to impose administrative civil liability for up to \$10,000 for each day a violation occurs. The Discharger violated Section 13385 by failing to submit the 2005-2006 annual report by July 1, 2006.

On April 19, 2007, staff issued Administrative Civil Liability Complaint No. R3-2007-0035, recommending \$2,000 in liability to resolve the violations. Staff scheduled the original public hearing for the July 6, 2007 Central Coast Water Board meeting. On June 12, 2007, the Discharger waived its right to a hearing and submitted a check for \$2,000. The Discharger failed to provide sufficient funds for the check, and has failed to respond to correspondence requiring payment.

The proposed order seeks additional liability for the Discharger's continued failure to comply with annual reporting requirements, and the Discharger's payment of delinquent penalties.

DISCUSSION

On October 4, 2001, the Discharger filed a Notice of Intent to comply with the terms of the General Permit. By filing a Notice of Intent, the Discharger is required to comply with all terms and conditions of the General Permit, which includes submitting an annual report to the Central Coast Water Board no later than July 1st of each year (see General Permit Provision E.3, and Monitoring Program and Reporting Requirement B.14).

The Discharger was subject to the General Permit during the July 2005 to June 2006 reporting period.

On May 25, 2006, staff sent a letter to the Discharger reminding them about the July 1, 2006 annual report due date.

Notices of Violation: On August 1, 2006, September 6, 2006, and September 22, 2006, Central Coast Water Board staff issued Notice of Violation letters to the Discharger for failing to submit the annual report by July 1, 2006. Each Notice of Violation letter required the Discharger to submit the annual report **no later than October 1, 2006**, to avoid the imposition of a mandatory penalty according to California Water Code Section 13399.33(c).

Other Contact With Discharger: Staff telephoned the Discharger on September 7, 2006, and notified them that they must submit the annual report by October 1, 2006.

Staff telephoned the Discharger on November 17, 2006, and provided Mr. Richard Rodrigues, owner/operator of Gerry's Foreign Auto Wreckers, with a fax containing our fax number, mailing address, a staff member telephone number, and instructions to fax and mail the annual report as soon as possible.

Complaint Issuance: On April 19, 2007, staff mailed Administrative Civil Liability Complaint No. R3-2007-0035 to the Discharger by certified mail. Staff mailed the letter to the same address that all other correspondence was mailed to, and for which previous certified mailings were successful.

On May 15, 2007, the U.S. Postal Service returned the letter to staff, indicating the letter was "unclaimed". On May 16, 2007, staff faxed the April 19, 2007 letter to Mr. Rodrigues, who confirmed his receipt the same day.

Violation History: Allegation No. 13 of Administrative Civil Liability Complaint No. R3-2007-0035 (attached) documents the Discharger's history of violating annual reporting requirements, and the Central Coast Water Board's associated enforcement actions. The Discharger has violated the General Permit's annual reporting requirements every year since filing its Notice of Intent to comply. The Discharger's actions indicate the need for a greater incentive to submit annual reports according to General Permit requirements. In response to the Discharger's violation history, and to provide additional

incentive to comply, the imposition of civil liability for more than the mandatory minimum penalty of \$1,000 is warranted.

Furthermore, according to the factors discussed in Finding No. 21 of Administrative Civil Liability Order No. R3-2007-0035 (attached), the imposition of civil liability for equal to or greater than \$5,000 is warranted (\$2,000 for the penalty the Discharger agreed to pay according to Administrative Civil Liability Complaint No. R3-2007-0035, plus \$3,000 in staff time used for these enforcement actions).

Discharger's Failure to Pay Penalties: The original hearing regarding the late annual report was scheduled for the July 6, 2007 Central Coast Water Board meeting in Watsonville. On June 12, 2007, the Discharger waived its right to a hearing, and submitted a check for \$2,000, intended to pay the liability recommended in Administrative Civil Liability Complaint No. R3-2007-0035. The Discharger failed to provide sufficient funds for the check. Central Coast Water Board staff and State Water Board staff have notified the Discharger by letter, telephone, facsimile, and electronic mail about the Discharger's failure to pay.

As of October 22, 2007, the Discharger has not paid the late annual report penalty of \$2,000.

Status of 05-06 Annual Report: As of October 22, 2007, the Discharger has not submitted its 2005-2006 annual report.

Conclusion: The Discharger is in violation of California Water Code Section 13399.31 for failing to submit an annual report within 60 days of staff's first Notice of Violation. 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.

The Discharger is also in violation of California Water Code Section 13385 for failing to submit the 2005-2006 annual report and comply with waste discharge permit requirements, and is subject to a maximum civil liability of \$10,000 for each day the violation occurs.

RECOMMENDATION

Considering the Discharger's history of violating annual reporting requirements, the Central Coast Water Board's previous enforcement actions, and the Discharger's continued failure to pay penalties associated with these violations, staff recommends that the Central Coast Water Board adopt Order No. R3-2007-0035 to impose **Five Thousand Dollars (\$5,000)** in civil liability against the Discharger.

ATTACHMENTS

1. Proposed Administrative Civil Liability Order No. R3-2007-0035
2. Administrative Civil Liability Complaint No. R3-2007-0035