

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION**

	)	<b>COMPLAINT NO. R4-2007-0036</b>
<b>In the matter of:</b>	)	<b>ADMINISTRATIVE CIVIL LIABILITY</b>
	)	<b>FOR</b>
<b>ALL WEST IRON, INC.</b>	)	<b>VIOLATIONS OF THE CALIFORNIA WATER CODE</b>
	)	<b>(NPDES PERMIT NO. CAS000001)</b>

**ALL WEST IRON, INC. IS HEREBY GIVEN NOTICE THAT:**

1. All West Iron, Inc. (Permittee) is alleged to have violated requirements contained in State Water Resources Control Board General Permit for Discharges of Storm Water Associated with Industrial Activities, Excluding Construction Activities Order No. 97-03-DWQ, NPDES Permit No. CAS000001 (General Permit), WDID No. 419 I018960, for which the California Regional Water Quality Control Board, Los Angeles Region (Regional Board), may impose liability under California Water Code (CWC) section 13385.
2. A hearing will be conducted on this Complaint by the Regional Board or Regional Board Hearing Panel (Hearing Panel) within ninety days after service of this Complaint on the Permittee, unless the Permittee waives the hearing and pays the recommended administrative civil liability amount of \$32,450.
3. The Permittee and/or Permittee's representatives will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. A notice containing the date, time and location of the hearing will be mailed to the Permittee not less than ten days prior to the hearing date.
4. At the hearing, the Regional 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 in a greater amount.
5. Storm water runoff and authorized non-storm water discharges from the Permittee's facility at 2881 Saco Street in the City of Vernon are regulated under the General Permit. The Permittee's facility discharges these waters to the Los Angeles River, a navigable water of the United States.
6. CWC § 13376 requires any person discharging pollutants or proposing to discharge pollutants to navigable waters of the United States within the jurisdiction of the Regional Board to file a report of discharge, and prohibits the discharge of pollutants except as authorized in waste discharge requirements issued by the Regional Board. CWC § 13385(a)(1) provides that any person violating CWC § 13376 shall be civilly liable, and CWC § 13385(c) provides that the Regional Board may administratively impose up to \$10,000 of civil liability for each day the violation occurs.

## **BACKGROUND**

7. The Permittee manufactures architectural and ornamental metal work which discharges waters containing pollutants to navigable waters of the United States, and is therefore subject to the requirements of the General Permit.
8. The Permittee's Notice of Intent (NOI), the General Permit enrollment application form processed by the State Board on August 11, 2004, listed 3446 as the Standard Industrial Classification (SIC) code, which is identified as architectural and ornamental metal work, and this activity is required to be enrolled in the General Permit.
9. Under the General Permit, the Permittee is allowed to discharge storm water runoff associated with industrial activities into the Los Angeles River, a navigable water of the United States, but only under specified conditions.
10. The General Permit (SECTION B. No.14) requires the Permittee to submit an annual report by July 1<sup>st</sup> of each year.
11. Pursuant to CWC § 13399.31, a Notice of Non-Compliance (NNC) was mailed to the Permittee on August 24, 2005 for failure to submit the 2004-05 stormwater annual report. A Notice of Violation (NOV) was then mailed to the Permittee on October 17, 2005 for failing to submit the subject annual report. The NOV warned the Permittee of the mandatory fines that are required to be assessed for failure to submit the stormwater annual report.
12. On January 9, 2006, Regional Board staff (Mr. James Covin) hand delivered to the Permittee the annual report forms and advised the Permittee to complete and submit the report as soon as possible to the Regional Board office.
13. On January 19, 2006, January 25, 2006, and March 20, 2006 Regional Board staff (Mr. James Covin) called the Permittee and advised the Permittee representative to fax a copy of the requested annual report. In addition, Mr. Covin informed the Permittee of the mandatory fines that are required to be assessed for failure to submit the annual report.
14. In a letter dated May 18, 2006, Mr. Jerrick Torres, Environmental Health Specialist, City of Vernon, referred the Permittee to the Regional Board for investigation and necessary enforcement action due to failure to develop and implement an adequate Storm Water Pollution Prevention Plan (SWPPP) and Best Management Practices (BMPs). In addition, the subject letter outlined the Permittee's BMP violations observed during the City's site inspections between June 14, 2004 and May 11, 2006.
15. On May 19, 2006, Regional Board staff (Mr. James Covin) inspected the permittee's facility to determine compliance with the General Permit. As documented in the inspection reports, the inspector observed that the Permittee was in violation of the General Permit. The SWPPP and Monitoring Plan (MP) were not on site as required by SECTION A.10. The Permittee had not implemented appropriate BMPs (as required by SECTION A. 8) as follows: an outdoor chemical storage area was located on the ground without any secondary containment or

coverage, discharge of oily grease was observed on the ground surface next to a 55-gal. drum. All drums were not properly labeled. Further, rusted, oily metal parts and spilled paint were exposed to storm water. In addition, the permittee failed to submit the 2004/2005 annual report as required by the General Permit SECTION B.14.

16. On May 22, 2006, during a rain event, the Regional Board staff (Mr. James Covin) re-inspected the permittee's facility to determine compliance with the General Permit. The SWPPP and Monitoring Plan (MP) were not on site as required by SECTION A.10. In addition, the Permittee did not correct any BMPs violations observed during the May 19, 2006 site inspection.
17. On June 14, 2006, the Regional Board Executive Officer (Executive Officer) issued a NOV to the Permittee for failure to develop and implement a SWPPP including MP, failure to submit the 2004/2005 annual report and inadequate BMPs, including spills of oil and paint on the ground. In the NOV, staff advised the Permittee of the penalties for violations of the General Permit. The Permittee was required to submit immediately to the Regional Board staff the delinquent 2004/2005 annual report, and by July 14, 2006, the SWPPP, and MP, and to certify in the SWPPP that all BMPs had been implemented and were being monitored.
18. On July 7, 2006, the Permittee submitted a letter in response to the NOV dated June 14, 2006. The response includes an inadequate and incomplete SWPPP, and incomplete annual reports for 2004-2005 and 2005-2006. The Permittee failed to address the BMP violations as required in the NOV.
  - a) The SWPPP was missing the following information:
    - signed certification (SECTION C.9 and C.10)
    - pollution prevention team (SECTION A.3.a.)
    - site map including drainage areas, direction of flow, municipal storm drain (SECTION A.4.a. through A.4.d.)
    - list of significant materials, including storage location, and quantity (SECTION A.5)
    - assessment of potential pollutant sources (SECTION A.7.)
    - storm water BMPs; non-structural and structural (SECTION A.8)
    - employee training (SECTION A.8.a.v.)
    - monitoring program and reporting requirements (SECTION B.1 through B.10)
  - b) Incomplete annual reports covering 2004-2005 and 2005-2006 were received on July 12, 2006. The annual reports do not include any visual observation data, storm water sampling data or an explanation regarding the lack of the required information.
19. On July 18, 2006 Regional Board staff (Ann Zaszkodna) reinspected the site and observed the following as documented in the inspection report:
  - The SWPPP was not complete and the MP was not developed and implemented as required.
  - Effective BMPs were not implemented; no corrective actions were taken to bring the site into compliance. Oily spills and paint were observed on the ground. Drums containing chemicals were not properly labeled and were stored on the ground without any

containment or cover. In addition, rusted metal parts and equipment were stored on the ground exposed to storm water. Further, poor housekeeping practices including lack of adequate sweeping and segregation of materials were observed throughout the site. Site inspection findings were discussed on site with Mr. George Caradain (operator).

20. On August 18, 2006, the Executive Officer issued a NOV to the Permittee for failure to submit a complete SWPPP, lack of MP and inadequate BMPs including spills of oil and paint on the ground. The Permittee was required to immediately develop and implement a complete SWPPP, MP, and certify in the SWPPP that all BMPs have been implemented and are being monitored and to submit a complete SWPPP to the Regional Board staff by September 18, 2006.
21. The Permittee submitted a written response dated September 18, 2006 to the NOV dated August 18, 2006. In a letter dated October 6, 2006 Regional Board staff responded to the September 18, 2006 submittal and indicated that the SWPPP was incomplete and that BMPs were not effectively implemented. The Permittee was required to immediately address the inadequate SWPPP and BMPs implementation.
22. On October 9, 2006, the Permittee faxed a letter which included an incomplete response to the Regional Board letter of October 6, 2006. A written description of each improvement and/or actions taken to remediate the site was not provided as required.
23. On November 13, 2006, Regional Board staff (Ann Zaskodna) called the Permittee and requested an immediate written submittal to address the inadequate BMPs.
24. On November 13, 2006, the Permittee submitted a faxed letter addressing the inadequate BMPs. The letter was adequate and provided a description of the required improvements and/or actions taken to remediate the site.
25. On January 18, 2007 Regional Board staff (Ann Zaskodna) re-inspected the site and observed the following as documented in the inspection report:
  - A Monitoring Program was not implemented and was not available at the facility. In addition, documentation of staff training for SWPPP preparation, implementation and permit compliance was not available at the site.
  - Effective BMPs were not implemented: no corrective actions were taken to bring the site into compliance. Oily spills and paint were observed on the ground. Drums containing chemicals were not properly labeled and were stored on the ground without any containment or cover. Rusted metal parts and equipment were stored on the ground exposed to storm water. Poor housekeeping practices, including inadequate sweeping and segregation of materials, were observed at the site.
26. On January 29, 2007, the Executive Officer issued a NOV to the Permittee for failure to develop and implement a Monitoring Program, failure to document staff training, and for inadequate BMPs, including spills of oil and paint on the ground. The Permittee was immediately instructed to develop and implement a Monitoring Program, including staff

training and submit a copy to Regional Board staff by February 13, 2007. Further, the Permittee was instructed to immediately improve material handling, storage and housekeeping practices to minimize potential spills and leaks and exposure of significant materials to storm water and to submit certification by February 13, 2007 stating that corrective measures had been effectively implemented and monitored.

27. The Permittee submitted a written response dated February 12, 2007, to the NOV dated January 29, 2007. The response indicated that the Permittee had contracted with ProActive Consulting Group to assist in implementing the SWPPP and Monitoring Program. A copy of a SWPPP Best Management Practices was submitted along with the response. In a letter dated March 15, 2007 Regional Board staff responded to the February 12, 2007 submittal and indicated that a copy of staff training involved in SWPPP preparation, implementation and permit compliance was not included and a written description of each improvement and /or actions taken to comply with BMP violations outlined in the January 29, 2007 NOV was not provided.
28. The Permittee submitted a letter dated March 26, 2007 requesting a time extension to prepare a response to the Regional Board letter dated March 15, 2007. The Permittee response letter dated April 24, 2007 did not include a copy of the staff training and did not provide an implementation schedule or photographs of improved areas, as required. The response was inadequate.

### **CONCLUSION**

29. The Permittee has failed to submit a complete SWPPP, a MP and complete 2004/2005 and 2005/2006 annual stormwater reports. The Permittee has failed to implement adequate BMPs at the site. These are violations of the General Permit.

### **POTENTIAL CIVIL LIABILITY**

30. Section 13385 of the CWC provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a Regional Board in an amount not to exceed ten thousand dollars (\$10,000) per violation for each day the violation occurs.
31. The Permittee is alleged to have violated the General Permit by not developing and implementing an adequate SWPPP, a MP, complete annual reports, and ineffective BMPs since at least May 19, 2006 until January 18, 2007. Therefore, the maximum liability under section 13385(a) (1) of the CWC is:

### POTENTIAL MAXIMUM PENALTY

PENALTY CATEGORY	CALCULATION	TOTAL
CWC § 13385 failure to comply with waste discharge requirements	(May 19, 2006 through January 18, 2007 ) 241 days x \$10,000/day	\$2,410,000
Potential Penalty		\$2,410,000

### RECOMMENDED CIVIL LIABILITY

32. Pursuant to CW Section 13385(e) the Regional Board is required to consider the following factors in determining the amount of civil liability to be imposed:
- a) Nature, circumstances, extent, and gravity of the violations: The violations included not developing an adequate SWPPP, a MP, late and incomplete 2004/2005 annual report, incomplete 2005/2006 annual report, poor housekeeping practices including oily spills and paint on the ground, lack of secondary containment or cover for a chemical storage area, and exposure of oily rusted metal parts to storm water. The Permittee was enrolled in the General Permit on August 11, 2004, and is expected to comply with all the requirements of the General Permit especially after a NNC dated August 24, 2005 and four NOVs from the Regional Board dated October 17, 2005, June 14, 2006, August 18, 2006 and January 29, 2007. During site inspections on May 19, 2006, May 22, 2006, July 18, 2006 and January 18, 2007 Regional Board staff observed continuous poor housekeeping practices such as oily spills and paint on the ground, and lack of secondary containment. In addition, inadequate BMPs were reported by an Environmental Health Specialist from the City of Vernon, in a letter dated May 18, 2006, referring the Permittee to the Regional Board for investigation and enforcement action due to failure to develop and implement a SWPPP and ineffective. Therefore, a reduction in the assessment of the penalty is not warranted.
  - b) Degree of pollutant toxicity: Oil, grease, paint and other pollutants including heavy metals are toxic to aquatic life if discharged to receiving water. Because evidence that pollutants from the site have impacted receiving water is inconclusive, a reduction in the assessment of the penalty is warranted.
  - c) Susceptibility of the discharge to cleanup or abatement: The discharge of oil, grease, paint and other pollutants are not easily cleaned up once released into the storm drain and into the receiving water. However, the evidence that pollutants reached the receiving water or caused damage is inconclusive, therefore, a reduction from the maximum civil liability is warranted.
  - d) The ability of the Permittee to pay: Regional Board staff does not have information to determine the Permittee's ability to pay.
  - e) The effect on the Permittee's ability to continue business: The Permittee has not provided information to indicate payment of the civil liabilities will jeopardize the Permittee's ability to continue business.

- f) Any voluntary cleanup efforts undertaken: The Permittee did not take appropriate actions to come into compliance. Therefore a reduction in the assessment of the civil liability is not warranted.
- g) Prior history of violations: The Permittee was enrolled in the General Permit on August 11, 2004. A letter from the City of Vernon dated May 18, 2006 indicated BMP violations observed during the City's site inspections between June 14, 2004 and May 11, 2006.
- h) Degree of culpability: The Permittee violated the terms of the General Permit by failing to develop an adequate SWPPP, a MP, failing to submit complete annual stormwater reports, and to implement appropriate BMPs. In addition, the Permittee should have been aware of the potential threat to water quality and the need for effective BMPs as required in the General Permit, especially after repeated warning by Regional Board staff. Therefore a reduction in the assessment of the civil liability is not warranted.
- i) Economic benefit or savings: Regional Board staff have examined the cost from non-submittal of an adequate SWPPP and determined it to be at least \$500 per year. The Permittee was enrolled in the General Permit on August 11, 2004, therefore, the cost saving is estimated to be \$1,500 for three years.

The Permittee's lack of compliance with BMPs resulted in cost savings, which are estimated to be \$7,450. The cost includes lack of a spill prevention program by not installing drum spill pallet unit(s) which cost approximately \$250 for four 55-gal drums, storage cabinets for flammable materials such as paint and solvent, which costs approximately \$650. In order to prevent contact of storm water with metal parts or other equipment stored on racks, weather-resistant tarp could be used (or an alternative cover) which costs approximately \$200. Adequate housekeeping including frequent sweeping activities would cost approximately \$50 per week; therefore the cost savings for a period of two years and 6 months is estimated to be \$6,000. In addition, cost of spill absorbent is estimated to be \$100 for a period of two years and 6 months.

Therefore, the Permittee's economic savings are estimated to be \$8,950 for non-compliance with the SWPPP and BMP requirements.

- j) Other matters as justice may require: An additional matter to consider includes time spent by the staff of the Regional Board in evaluating the incidents of violation and preparing this Order and related documents. The Regional Board charges a rate of \$70 per hour for staff cost recovery. With total staff time of 50 hours, staff costs incurred by the Regional Board are estimated to total \$3,500.
33. After consideration of these factors, the Executive Officer proposes civil liability be imposed on the Permittee in the amount of \$32,450 which consists of the following:
- An assessment of \$20,000, for 4 days (\$5,000 per day) for not implementing effective BMPs, pursuant to CWC Section 13385 (e). These include structural and non-structural BMP violations; oily spills and paint on the ground, lack of secondary containment or cover

for a storage drums, poor housekeeping practices and rusted, oily metal parts and equipment exposure to storm water.

- An assessment of \$1,500 for avoided cost (\$500 x 3 years) for non-compliance with a SWPPP.
- An assessment of \$7,450 for avoided cost for non-compliance with effective BMPs.
- An assessment of \$3,500 for staff cost recovery (50 hours at \$70 per hour).

**RECOMMENDED CIVIL LIABILITY**

PENALTY CATEGORY	CALCULATION	TOTAL
CWC § 13385(c)(1)	4 days for not implementing effective BMPs (May 19, 2006, May 22, 2006, July 18, 2006 and January 18, 2007) \$5,000 per day x 4 days =\$20,000	\$20,000
Incomplete SWPPP and lack of MP General Permit Section A and B resulted in economic benefit	\$500 per year for 3 years (2004/05, 2005/06, 2006/07) \$500 x 3 =\$1,500	\$1,500
Non-existent or ineffective BMPs resulted in economic benefit (A.8.a) (A.8.b)	Drum spill pallet \$250 each x 2 = \$500 Storage of chemicals cabinet - \$650 Housekeeping/sweeping - \$6,000 Weather resistant trap -\$200 Spill adsorbent -\$100	\$7,450
Recovery of Staff Costs	\$70 per hour x 50 hours	\$3,500
Total Recommended Penalty		\$32,450

- This matter will be heard before the Regional Board or Hearing Panel pursuant to CWC section 13323 unless the Permittee waives the hearing and pays the penalty of \$32,450 in full by October 24, 2007. The Permittee will be notified of the date, time, and location of the hearing.
- Notwithstanding the issuance of this Complaint, the Regional Board shall retain the authority to assess additional penalties for violations of the requirements of the General Permit including but not limited to implementation of a SWPPP.
- The Permittee may waive the right to a hearing. Should the Permittee decide to waive the right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return the executed waiver form to the Regional Board (320 West 4<sup>th</sup> Street, Suite 200, Los Angeles, CA 90013) by the close of business October 24, 2007. The Permittee must submit a check in the amount of \$32,450 (payable to the State Water Resources Control Board-Cleanup and Abatement Account) with the signed waiver.

37. Federal regulations require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act including NPDES permit violations. Accordingly, interested persons will be given 30 days from the date of issuance of the Complaint to comment on the Complaint in the event the Permittee executes the waiver, and/or 30 days to comment on any proposal settlement of this Complaint.

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Deborah J. Smith  
Interim Executive Officer

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Date