

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

COMPLAINT NO. R2-2011-0041

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
INDUSTRIAL STORMWATER GENERAL PERMIT VIOLATIONS
FRIENDLY CAB COMPANY, INC.
4849 EAST 12TH STREET, OAKLAND, ALAMEDA COUNTY

This Complaint is issued to Friendly Cab Company, Inc. (the Discharger) under the authority of California Water Code (CWC) Sections 13323 and 13385(a)(2) to assess administrative civil liability pursuant to CWC Section 13385(c). The Complaint addresses the Discharger's violations of Water Quality Order No. 97-03-DWQ, NPDES General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities (General Permit). The Discharger violated the General Permit by not submitting an Annual Report and by storing leaking vehicles in the open, near and adjacent to storm drain inlets, where automotive fluids and polluted stormwater drained directly into the storm drain, and without implementing best management practices (BMPs) consistent with General Permit requirements to prevent such discharges; as described herein.

The Assistant Executive Officer of the California Regional Water Quality Control Board (Regional Water Board) hereby gives notice that:

1. The Discharger operates a taxi cab dispatching and maintenance operation at its 4849 East 12th Street, Oakland, California facility. The operation includes the ongoing dismantling of dozens of used police cars that are parted-out for the purpose of repairing existing and operational vehicles. Some are also converted into taxi cabs. Due to this activity, the facility functions both as a transportation maintenance facility and as an automobile salvage yard with its attendant pollution threats.
2. The Discharger is alleged to have violated provisions of the law for which the Regional Water Board may impose administrative civil liability pursuant to CWC Section 13385. This Complaint proposes to assess \$100,400 in liability for the violations cited based on the considerations described herein.
3. Unless waived, the Regional Water Board will hold a hearing on this matter on September 14, 2011, in the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland, California, 94612. The attached Hearing Procedure provides important information on how those proceedings will be conducted and deadlines by which parties must take specific actions and/or submit information.

STATEMENT OF PROHIBITIONS, PROVISIONS, AND REQUIREMENTS APPLICABLE TO DISCHARGER

4. The Discharger must comply with the following General Permit requirements:
 - a. Section B.14, page 35, Monitoring Program and Reporting Requirements (Annual Report) – *“All facility operators shall submit an Annual Report by July 1 of each year to the Executive Officer of the Regional Water Board responsible for the area in which the facility is located....”*
 - b. Effluent Limitation B.3, page 4 – *“Facility operators covered by this General Permit must reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges through implementation of BAT for toxic and non-conventional pollutants and BCT for conventional pollutants. Development and implementation of an SWPPP that complies with the requirements in Section A of the General Permit [Storm Water Pollution Prevention Plan Requirements] and that includes BMPs that achieve BAT/BCT constitutes compliance with this requirement.”*

ALLEGED VIOLATIONS OF PROHIBITIONS, PROVISIONS, AND REQUIREMENTS APPLICABLE TO THE DISCHARGER

5. **Violation 1:** The Discharger violated Section B.14 of the General permit (see above) by not submitting its 2009/2010 Annual Report, even after seven late report notifications via mail, email, and during site inspections, were given to them by Board staff. As of May 18, 2011, the 2009/2010 Annual Report was 321 days late.
6. **Violation 2:** The Discharger violated Prohibition B.3 of the General Permit (see above) by not implementing BMPs to reduce or prevent pollutants associated with industrial activity in storm water that achieve BAT/BCT (i.e., leaving vehicles leaking automotive fluids exposed to the rain) for a period of 139 days, the amount of time that passed between Regional Water Board staff’s December 22, 2010, inspection and May 4, 2011, the date of Regional Water Board staff’s most recent inspection.

FACTUAL BASIS FOR THE ALLEGED VIOLATIONS

7. The Discharger operates a local and suburban passenger transportation facility that has vehicle and equipment maintenance shops and/or equipment cleaning operations (Standard Industrial Classification (SIC Code 4111) and an automobile salvage yard (SIC Code 5015) located at 4849 East 12th Street, Oakland, California. Facilities conducting these activities are required to obtain permit coverage under the General Permit. The Discharger submitted a Notice of Intent (NOI) to obtain such coverage on April 1, 2008 and the Regional Water Board assigned the Discharger Waste Discharge Identification No. 2 01I021583. Upon

obtaining coverage by the General Permit, the Discharger is required to comply with the General Permit requirements, which include, but are not limited to, the submittal of an Annual Report and the implementation of BMPs to prevent polluted discharges. .

8. The Discharger has a history of late submittals of Annual Reports. The Discharger submitted its 2008/2009 Annual Report over two months late on September 8, 2009. Consequently, the Discharger resolved this late reporting violation through settlement by submitting the late report and paying \$1,000 in administrative civil liability.
9. The Discharger failed to submit its 2009/2010 Annual Report by July 1, 2010, the deadline to submit the Annual Report pursuant to the General Permit. On July 16, 2010, Regional Water Board staff prepared and mailed a reminder letter to notify the Discharger that it had not submitted its report. On November 24, 2010, Regional Water Board staff sent an email, including a digital copy of the reminder letter, to Ekundayo Sowunmi, the Discharger's consultant, to further ensure the Discharger received the reminder letter.
10. On December 22, 2010, Regional Water Board staff conducted an inspection of the facility to assess whether the Discharger was out of compliance with any permit requirements in addition to its failure to submit the Annual Report. The inspection revealed that the Discharger was likely discharging automotive fluids to the storm drain from numerous leaking vehicles, used for automobile salvage. The Discharger had failed to appropriately prepare the vehicles to avoid leaking automotive fluids, and the fluids had not been cleaned up after they had been discharged to the ground. During the inspection, the Regional Water Board staff inspector again notified the Discharger that its 2009/2010 Annual Report had not been submitted. The inspection report for this inspection includes photos of vehicles leaking automotive fluids that were also exposed to rainfall.
11. On February 15, 2011, Regional Water Board staff sent a Notice of Violation to the Discharger regarding the violations noted during the December 22, 2010, inspection. The Notice of Violation included documentation of the numerous SWPPP and BMP violations discovered during the December inspection, including photos of vehicles leaking automotive fluids to the ground without appropriate controls.
12. On May 4, 2011, Regional Water Board staff conducted another inspection of the facility to assess whether the Discharger had corrected the violations communicated in the December 22, 2010 inspection report and the February 15, 2011 Notice of Violation. During the May inspection, Regional Water Board staff observed once again that numerous automobile salvage vehicles were still leaking automotive fluids to the ground. Many of the leaking vehicles were not stored under cover, such that the discharged fluids were exposed to stormwater and stormwater runoff. During the inspection, Regional Water Board staff communicated to Mr. Sowunmi, the Discharger's consultant, who accompanied Water Board staff during the inspection, that the Discharger still had not submitted a 2009/2010 Annual Report and discussed the additional violations noted during the inspection. The inspection report for the May 4, 2011 inspection documents the observed violations and was transmitted to the Discharger and to Mr. Sowunmi, the Discharger's consultant on June 9, 2011.

WATER CODE SECTIONS UPON WHICH LIABILITY IS BEING ASSESSED DUE TO NONCOMPLIANCE WITH APPLICABLE REQUIREMENTS

13. **CWC section 13385(a)(2):** Any person who violates any waste discharge requirement set forth in an NPDES permit shall be subject to administrative civil liability pursuant to CWC section 13385(c).
14. **CWC section 13385(c):** The Regional Water Board may impose an administrative civil liability in an amount not to exceed the sum of both of the following: (1) ten thousand dollars (\$10,000) for each day in which the violation occurs; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

MAXIMUM ADMINISTRATIVE CIVIL LIABILITY THAT MAY BE IMPOSED

15. **Maximum Liability:** Pursuant to CWC section 13385(c) the total maximum potential liability for the identified violations is \$4,600,000, as described below:
 - a. **Violation 1:** The Discharger violated Section B.14 of the General Permit by failing to submit its 2009/2010 Annual Report by July 1, 2010. As of May 18, 2011, the date used to assess the proposed liability for Violation 1, the report was 321 days late (as of June 28 2011, the date this complaint was finalized, the report still had not been submitted and violations continue to accrue). The maximum civil liability the Regional Water Board may impose for a non-discharge violation is ten thousand dollars (\$10,000) for each day in which the violation occurred.

The maximum potential liability for Violation 1 is:
 $\$10,000 \text{ per day} * 321 \text{ days of violation} = \$3,210,000.$

- b. **Violation 2:** The Discharger violated Prohibition B.3 of the General Permit by not implementing BMPs to reduce or prevent pollutants associated with industrial activity in storm water that achieve BAT/BCT (i.e., leaving vehicles leaking automotive fluids exposed to rain) for a period of 139 days, the amount of time that passed between Regional Water Board staff's December 22, 2010, inspection and May 4, 2011, the date of Regional Water Board staff's most recent inspection. The maximum civil liability the Regional Water Board may impose for a non-discharge violation is ten thousand dollars (\$10,000) for each day in which the violation occurred.

The maximum potential liability for Violation 3 is:
 $\$10,000 \text{ per day} * 139 \text{ days of violation} = \$1,390,000.$

FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

16. On November 17, 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Officer of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in CWC section 13385(e). The entire Enforcement Policy can be found at:

www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf.

The specific required factors in CWC section 13385(e) are the nature, circumstances, extent, and gravity of the violations or violations, whether the discharge is susceptible to cleanup or abatement, and the degree of toxicity of the discharge. With respect to the violator, the required factors are the ability to pay, the effect on the violator's ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of the violations, the degree of culpability, economic benefit or saving, if any, resulting from the violation(s), and other matters that justice may require.

The Enforcement Policy sets forth an approach to determine liability using a penalty calculation methodology that considers the following: the potential harm to beneficial uses; the physical, chemical, biological or thermal characteristics of the discharge; the discharge's susceptibility to cleanup; the violation's deviation from requirements; the Discharger's culpability; cleanup and the Discharger's cooperation; the history of violations; the Discharger's ability to pay; other factors as justice may require; and economic benefit from the avoidance or delay of implementing requirements. These factors address the statute-required factors and are used to calculate penalties consistent with both the CWC and the Enforcement Policy.

The penalty methodology was used to calculate the proposed administrative civil liability as detailed in Attachment A.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

17. Based on the consideration of the above facts and the penalty methodology, the Assistant Executive Officer of the Regional Water Board proposes that an administrative civil liability be imposed in the amount of \$100,400 (this amount was rounded down from a total of \$100,410. The Regional Water Board Prosecution Team's practice is to round the final liability to the nearest \$100.).

This amount was determined as follows:

Violation 1 (late Annual Report):	\$63,360
Violation 2 (inadequate BMPs):	\$24,000
<u>Recovery of staff costs:</u>	<u>\$13,050</u>
Total	\$100,410

18. If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this complaint through completion of the hearing.
19. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code 21000 et seq.) in accordance with Section 15321 of Title 14, California Code of Regulations.

Thomas E. Mumley
Assistant Executive Officer

June 28, 2011
Date

Attachment A Specific Factors Considered to Determine Administrative Civil Liability

Attachment A – Administrative Civil Liability Complaint No. R2-2011-0041
Friendly Cab Company
Specific Administrative Civil Liability Factors Considered

Each factor of the Enforcement Policy and its corresponding score for each violation are presented below:

The total proposed Administrative Civil Liability (ACL) amount is \$100,400.

1. **Violation One (this is a non-discharge violation):** The Discharger failed to submit its 2009/2010 Annual Report for 321 days, from July 1, 2010 through May 18, 2011, the date used to assess the proposed liability for Violation 1 (the report was still not submitted as of June 28, 2011, the date this complaint was finalized, and violations continue to accrue)

- a) **Specific Factor:** Potential Harm to Beneficial Uses

Category: Minor

Discussion: Lack of reporting can be an indication that a facility is not implementing the General Permit requirements. This was confirmed during both the December 2010 and the May 2011 inspections. The lack of implementation likely led to a discharge of storm water polluted by automotive fluids. These types of discharges would be considered to pose a minor threat to beneficial uses under the Enforcement Policy, because they are not likely to result in acute impacts to human health or the environment.

- b) **Specific Factor:** Deviation from Requirement

Category: Major

Discussion: The General Permit requires that the Annual Report be submitted by July 1 of each year. As of June 28, 2011, the Discharger still had not submitted the report that was due July 1, 2010, despite numerous written and verbal reminders throughout the year.

- c) **Specific Factor:** Alternative Approach – Multiple Day Violations

Days Violated: 321

Alternative Days Violated: 16

Discussion: The Enforcement Policy allows for a reduction in violation days when it can be determined that the Discharger's on-going violation did not result in economic benefit that can be measured on a daily basis. The requirement to prepare and submit an Annual Report does not require work on a daily basis, but rather requires work periodically throughout the year and then prior to submittal. Therefore, the Discharger did not receive a daily economic benefit and it is appropriate to apply the Alternative Approach – Multiple Day Violations factor to this violation.

- d) **Civil Liability:** Initial Amount of Administrative Civil Liability for this violation

Amount: \$48,000

Adjustments to Determination of Initial Liability for this Violation

- e) **Specific Factor:** Culpability

Adjustment: 1.2

Discussion: The Discharger's culpability is high due to the repeated and negligent nature of its behavior. The Discharger is a permittee under the General Permit and submitted a signed NOI stating it would comply with the General Permit's requirements, including the requirement to submit the Annual Report by July 1 of each year. The Discharger was further aware of the requirement because it was notified the previous year of the requirement to timely submit the report after not having done so. Additionally, the Discharger was again made aware of the requirement following its failure to submit the 2009/2010 Annual Report, via letters, telephone calls, email, and during two inspections of the Discharger's facility by Regional Water Board staff.

- f) **Specific Factor:** Cleanup and Cooperation

Adjustment: 1

Discussion: This factor is only applied to discharge violations where rapid, aggressive, and cooperative cleanup efforts (or lack thereof) have a significant positive or negative impact on the environmental harm caused by the illicit discharge.

- g) **Specific Factor:** History of Violations

Adjustment: 1.1

Discussion: The Discharger has previously failed to timely submit its Annual Report and been enforced against by the Regional Water Board for that violation. The Discharger submitted its 2008/2009 report 69 days late, and ultimately resolved that violation through settlement.

- h) **Civil Liability:** Adjusted Amount of Administrative Civil Liability for this violation

Amount: \$63,360

2. **Violation Two (this is a non-discharge violation):** The Discharger violated the General Permit by failing to implement appropriate BMPs to reduce or prevent pollutants associated with industrial activity in storm water that achieve BAT/BCT (i.e., leaving vehicles leaking automotive fluids exposed to rain). The alleged period of violation is 139 days, the amount of time that passed between the December 22, 2010, inspection completed by Regional Water Board staff and May 4, 2011, the date of staff's most recent inspection.

a) **Specific Factor:** Potential Harm to Beneficial Uses

Category: Minor

Discussion: The discharge of automotive fluids in small quantities mixed with stormwater from this 1.86-acre site has a minor potential for harm and presents a minor threat to beneficial uses.

b) **Specific Factor:** Deviation from Requirement

Category: Moderate

c) **Discussion:** The intended effectiveness of the requirement has been rendered moderately ineffective. A portion of the vehicles on-site were stored under cover and there was evidence of the placement of drip pans and absorbent beneath some of the leaking vehicles, which were acceptable BMPs. However, the inspections also showed evidence of inadequate BMP implementation, including stained pavement under leaking vehicles where no BMPs had been implemented and absorbent that appeared to have been left in place without being cleaned up, such that it would discharge into the storm drain during a rain event.

d) **Specific Factor:** Alternative Approach – Multiple Day Violations

Days Violated: 139

Alternative Days Violated: 10

Discussion: The Enforcement Policy allows for a reduction in violation days when it can be determined that the ongoing violation is not causing daily detrimental impacts to the environment or the regulatory program. This determination is appropriate for this non-discharge violation because the detrimental impacts were likely associated with days when pollutants discharged to the storm drain, and thus occurred on rainy days, and on those days when spills and leaks may have reached the storm drain in the absence of rainfall.

e) **Civil Liability:** Initial Amount of Administrative Civil Liability for this Violation

Amount: \$20,000

Adjustments to Determination of Initial Liability for this Violation

f) *Specific Factor:* Culpability

Adjustment: 1.2

Discussion: The Discharger's culpability is high due to the repeated and negligent nature of its behavior and its violation of a specific permit requirement. As of May 4, 2011, the leaking vehicles were still exposed to the weather after the Discharger had received an inspection on December 22, 2010, during which the violation was noted, and a Notice of Violation on February 15, 2011.

g) *Specific Factor:* Cleanup and Cooperation

Adjustment: 1

Discussion: This factor is only applied to discharge violations where rapid, aggressive, and cooperative cleanup efforts (or lack thereof) have a significant positive or negative impact on the environmental harm caused by the illicit discharge.

h) *Specific Factor:* History of Violations

Adjustment: 1

Discussion: The Regional Water Board has not yet pursued formal enforcement against the Discharger for this type of violation.

i) *Civil Liability:* Adjusted Amount of Administrative Civil Liability for this Violation

Amount: \$24,000

FACTORS APPLIED TO ALL THREE VIOLATIONS

3. The following factors apply to all three of the violations discussed above.

a) *Specific Factor:* Ability to Pay and Continue in Business

Discussion: The Discharger is the owner on record of the facility and the facility property, which are valued at about \$1,000,000. Based on information presented on the Friendly Cab Company website and news articles regarding the Discharger's cab leasing business, the Discharger generates over \$2,000,000 of revenue each year. The Regional Water Board Prosecution Team believes that the Discharger would be able to pay the proposed liability set forth in this Complaint and/or that the amount of the liability would not cause undue financial hardship.

- b) **Specific Factor:** Other factors as justice may require

Discussion: The staff time to prepare this Complaint and supporting information, complete the historical inspections, and prepare the NOV is estimated to be 87 hours. Based on an average cost to the State of \$150 per hour, and a total of 87 hours of staff time, the total staff cost is estimated to be \$13,050.

- b) **Specific Factor:** Economic Benefit

Amount: \$20,000

Discussion: During the period of violation, the Discharger received an economic benefit by not training staff to complete the required stormwater inspections, monitoring, BMP implementation, and BMP maintenance. It also received an economic benefit by not conducting that work. The Regional Water Board Prosecution Team estimates that the Discharger realized an economic benefit in the amount of \$20,000 from the violations alleged.

As required by the Enforcement Policy, the proposed liability of \$100,410 (\$100,400 when rounded to nearest \$100) calculated by using the penalty methodology is greater than the economic benefit plus 10% obtained from the avoided compliance, which is \$22,000.

- c) **Civil Liability:** Minimum Liability Amount

Amount: \$22,000

Discussion: The Enforcement Policy requires that the minimum liability amount imposed not be below the economic benefit plus ten percent. The above-referenced number is the Regional Water Board Prosecution Team's estimate of the Discharger's economic benefit obtained from the violations cited in this Complaint.

- d) **Civil Liability:** Maximum Liability Amount

Amount: \$4,600,000

Discussion: The maximum liability amount for a non-discharge violation is the maximum amount allowed by CWC Section 13385: \$10,000 for each day in which the violation occurs. The total number of violation days for the three non-discharge violations alleged in the Complaint is 460 days.

The proposed liability is above the minimum and below the maximum liability amounts.