

State of California  
California Regional Water Quality Control Board  
Santa Ana Region

April 18, 2008

**ITEM:** 14

**SUBJECT:** Order No. R8-2008-0031 Affirming Administrative Civil Liability on Fire Resources, Inc., Fontana, San Bernardino County

**BACKGROUND**

On January 4, 2008, the Assistant Executive Officer issued Administrative Civil Liability (ACL) Complaint No. R8-2008-0011 to Fire Resources, Inc., for alleged violations of the State's General Permit for Storm Water Discharges Associated with Industrial Activity, Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). On March 24, 2008, the Assistant Executive Officer revised the ACL to name Mr. Craig Esterly and Fire Resources, Inc. (jointly referred to as Fire Resources) as individually and jointly responsible parties for the violations, and to add unpaid permit fees to the assessment. In the amended ACL, the Assistant Executive Officer proposed an assessment of \$8,360 for the alleged violations.

**INTRODUCTION**

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to affirm, reject, or modify the proposed administrative civil liability assessment against Fire Resources.

ACL No. R8-2008-0011 (amended) was issued by the Assistant Executive Officer to Fire Resources for violations of the General Permit, including the failure of Fire Resources to submit the 2006-2007 annual report by the July 2, 2007 deadline and for its failure to pay the required annual permit fees for three years.

**DISCUSSION**

The General Permit regulates the discharge of storm water from industrial sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and a fee (annual fee of \$830), with the State Water Resources Control Board.

On June 30, 1995, Fire Resources filed a NOI and obtained coverage under the General Permit, WDID No. 8 36I011699. The General Permit requires submittal of an annual report by July 1 of each year. Fire Resources did not submit the annual report by the July 2, 2007 deadline (July 1, 2007 was a Sunday). As a result, Board staff sent two certified Notices of Noncompliance (NNCs) to Fire

Resources. The first NNC was sent by certified mail on August 7, 2007, but it was returned unclaimed on September 4, 2007. Subsequently, Board staff sent the NNC by regular mail and it was received by the facility (verified during a telephone conversation). On September 5, 2007, Board staff visited the site but observed no one at the site. Later that day, Board staff spoke to Mr. Craig Esterly by telephone regarding the delinquent annual report. Mr. Esterly indicated that the facility is open only a few days a month, hence, there may be difficulties with certified mail and return receipts, but the mailing address is valid and they are still in operation. On September 6, 2007, Board staff called and again spoke to Messrs. Craig and Dennis Esterly and reminded them that the annual report was overdue and of the consequences of non-submittal.

On September 10, 2007, a second NNC was sent to the facility by certified mail. When no response was received to the second NNC, Board staff called Mr. Craig Esterly on October 4, 2007, and left a message indicating that the annual report must be submitted by October 10, 2007, or a penalty would be assessed for the non-submittal of the 2006-2007 annual report. On October 5, 2007, the second NNC was also returned unclaimed. A copy of the second NNC was sent by regular mail and was received by the facility.

In both NNCs, Board staff requested submittal of the completed annual report, a statement explaining why the annual report was not submitted by the July 2 deadline, and the measures that would be taken to ensure that future annual reports are submitted on time. Both NNCs also warned about the mandatory penalty for failure to submit the annual report. In the second NNC, Board staff requested submittal of the completed annual report by October 10, 2007. As of March 28, 2008, the annual report had not been received.

This facility violated the General Permit, the Federal Clean Water Act and the California Water Code by failing to submit the annual report by July 2, 2007. In addition, the facility has not paid its annual permit fees for the last three years.

Fire Resources failed to submit the required annual report to the Regional Board office within 60 days from the date on which the original NNC was sent. Under those circumstances, California Water Code Section 13399.33(c) requires that a mandatory penalty shall be imposed by the Regional Board in an amount that is not less than one thousand dollars (\$1,000). In addition, Water Code Section 13385(c) provides that administrative civil liability may be imposed on any person who violates waste discharge requirements in an amount not to exceed \$10,000 per day of violation.

Based on non-submittal of the 2006-2007 annual report, the facility is alleged to have violated the General Permit for 224 days (from July 3, 2007 to January 4,

2008, the date of issuance of the ACL). The maximum liability for this violation is \$1,860,000.

A review of Fire Resources' permit compliance history reveals that the facility has a long history of non-compliance with timely submittal of the annual reports. During the last twelve reporting years, Fire Resources submitted the annual report by the due date only four times. At least eight Notices of Non-Compliance were issued to Fire Resources for late submittal of the annual reports. On March 12, 1998, Fire Resources was assessed a penalty of \$3,000 for non-submittal of the 1996-1997 annual report. A detailed discussion of the factors under Section 13385(e) is included in Complaint No. R8-2008-0011 (attached). Additionally, Fire Resources has not paid its permit fees for 2002-03, 04-05, and 06-07. The following invoices have not been paid: 0631322 (\$830), 0432028 (\$830), 0231345 (\$700). The total unpaid permit fees = \$2,360. After consideration of these factors, including the history of violations, the Assistant Executive Officer proposes that civil liability be imposed on Fire Resources in the amount of \$8,360.

#### **STATEWIDE ENFORCEMENT POLICY**

On February 19, 2002, the State Water Resources Control Board adopted a State Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are consistent, predictable, and fair. The above-described administrative civil liability complaint is in accordance with the Statewide Enforcement Policy.

#### **RECOMMENDATION**

Board staff recommends that the Board adopt Order No. R8-2008-0031 imposing administrative civil liability on Fire Resources in the amount of \$8,360.

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION**

<b>In the matter of:</b>	)	<b>Order No. R8-2008-0031</b>
	)	<b>for</b>
<b>Mr. Craig Esterly and</b>	)	<b>Administrative Civil Liability</b>
<b>Fire Resources, Inc.</b>	)	
<b>10909 Almond Avenue</b>	)	
<b>Fontana, CA 92337</b>	)	
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The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on April 18, 2008 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2008-0011 (amended) and on the recommendation for the imposition of administrative civil liability pursuant to California Water Code Sections 13385 and 13399.33 in the amount of \$8,360. The Board finds as follows:

1. On April 17, 1997, the State Water Resources Control Board (SWRCB) adopted Waste Discharge Requirements, Order No. 97-03-DWQ, (NPDES No. CAS000001), General Permit for Storm Water Discharges Associated with Industrial Activities (Permit). Fire Resources, Inc., (Fire Resources), located at 10909 Almond Avenue, Fontana, is authorized to discharge storm water under the Permit, WDID 8 36I011699. The Permit requires submittal of an annual report by July 1 of each year. Fire Resources did not submit the annual report by July 2, 2007 (July 1, 2007 was a Sunday). Subsequently, Board staff sent two certified Notices of Non-Compliance (NNCs) to Fire Resources. The first NNC was sent by certified mail on August 7, 2007, but it was returned unclaimed on September 4, 2007. Subsequently Board staff sent the NNC by regular mail and it was received by the facility (verified during a telephone conversation). On September 10, 2007, a second NNC was sent to the facility by certified mail and it was also returned unclaimed on October 5, 2007. A copy of the second NNC was sent by regular mail and was received by the facility.
2. In both NNCs, Board staff requested submittal of the completed annual report, a statement explaining why the annual report was not submitted by the July 2 deadline, and the measures that would be taken to ensure that future annual reports are submitted on time. Both NNCs also warned about the mandatory penalty for failure to submit the annual report. In the second NNC, Board staff requested submittal of the completed annual report by October 10, 2007.

3. On September 5, 2007, Board staff visited the site but observed no one at the site. Staff later spoke to Mr. Craig Esterly by telephone regarding the delinquent annual report. Mr. Esterly indicated that the facility is open only a few days a month, hence, there may be difficulties with certified mail and return receipts, but the mailing address is valid and they are still in operation. On September 6, 2007, Board staff spoke to Messrs. Craig and Dennis Esterly and reminded them that the annual report was overdue and of the consequences of non-submittal. On October 4, 2007, Board staff called Mr. Craig Esterly and left a message reminding him to submit the annual report by October 10, 2007, or a penalty would be assessed. As of March 28, 2008, the annual report had not been received. In addition, the facility has not paid the annual permit fees for 2002-03, 2004-05, and 2006-07.
  4. The facility violated the General Permit, the Federal Clean Water Act and the California Water Code by failing to submit the annual report by July 2, 2007.
  5. Water Code Section 13399.33(c) requires the Board to assess a mandatory penalty of one thousand dollars (\$1,000) for failure to submit the annual report. Additionally, Water Code Section 13385(a)(2) provides that any person who violates waste discharge requirements issued pursuant to 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 \$10,000 per day of violation. The total maximum liability for failure to submit the annual report is \$1,860,000.
  6. Water Code Section 13385(e) specifies factors that the Board shall consider in establishing an amount of civil liability, including prior history of violations. Fire Resources has a long history of non-compliance with timely submittal of the annual reports including a penalty assessment of \$3,000 for non-submittal of the 1996-1997 annual report. In addition, Fire Resources received a number of NNCs for late submittal of annual reports. These and other factors were considered by the Assistant Executive Officer in establishing the amount of civil liability.
  7. On January 4, 2008, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R8-2007-0011 to Fire Resources proposing that the Board impose civil liability in the amount of \$6,000 on Fire Resources for failure to submit the annual report by the due date.
  8. Further, Fire Resources has not paid its permit fees for 2002-03, 2004-05, and 2006-07. The following invoices have not been paid: 0631322 (\$830), 0432028 (\$830), 0231345 (\$700). The total unpaid permit fees = \$2,360. On March 24, 2008, the Assistant Executive Officer amended ACL No. R8-2008-0011 to hold Mr. Craig Esterly and Fire Resources, Inc. individually and jointly responsible for the violations and to add the unpaid permit fees to the assessment.
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9. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

**IT IS HEREBY ORDERED** that, pursuant to California Water Code Sections 13385 and 13399.33, an administrative civil liability shall be imposed on Mr. Craig Esterly and Fire Resources, Inc., in the amount of \$8,360 as proposed in Complaint No. R8-2008-0011 (first issued on January 4, 2008 and as amended on March 24, 200) for the violations cited.

1. Mr. Craig Esterly or Fire Resources, Inc., shall pay \$8,360 to the State Water Resources Control Board by May 19, 2008.

The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

Pursuant to Water Code Section 13320, Mr. Craig Esterly and/or Fire Resources may petition the State Water Resources Control Board for a review of this Order. If you choose to do so, you must submit the petition to the State Board within 30 days of the Regional Board's adoption of this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on April 18, 2008.

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Gerard J. Thibeault  
Executive Officer

**STATE OF CALIFORNIA  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION**

<b>In the matter of:</b>	)	<b>Complaint No. R8-2008-0011</b>
<b>Mr. Craig Esterly and</b>	)	<b>for</b>
<b>Fire Resources, Inc.</b>	)	<b>Administrative Civil Liability</b>
<b>10909 Almond Avenue</b>	)	<b>(first issued on: January 4, 2008)</b>
<b>Fontana, CA 92337</b>	)	<b>(amended on: March 24, 2008)</b>

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**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. You are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Sections 13385 and 13399.33 of the California Water Code.
2. A hearing concerning this Complaint will be held before the Board within ninety days of the date of issuance of this Complaint. The hearing in this matter is scheduled for the Board's regular meeting on April 18, 2008 at the City Council Chambers, 25541 Barton Road, Loma Linda, CA 92354. You or your representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting and the staff report pertaining to this item will be mailed to you not less than 10 days prior to the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed penalty or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Fire Resources, Inc. (Fire Resources), 10909 Almond Ave., Fontana, is currently regulated under the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The facility's WDID Number is 8 36I011699. The General Permit requires submittal of an annual report by July 1 of each year.
5. The 2006-2007 annual report, which was due on July 2, 2007 (July 1 being a Sunday), was not received from Fire Resources. A Notice of Non-Compliance (NNC) was issued to Fire Resources by certified mail, on August 7, 2007. The first NNC was returned unclaimed on September 4, 2007. Subsequently Board staff sent the NNC by regular mail and it was received by the facility (verified during a telephone conversation). On September 10, 2007, a second NNC was sent to the facility by certified mail and it was also returned unclaimed on October 5, 2007. A

copy of the second NNC was sent by regular mail and was received by the facility. In both NNCs, Board staff requested submittal of the completed annual report, a statement explaining why the annual report was not submitted by the July 1 deadline, and the measures that would be taken to ensure that future annual reports are submitted on time. Both NNCs identified the mandatory minimum penalty for failure to submit the annual report. In the second NNC, Board staff requested submittal of the completed annual report by October 10, 2007.

6. Board staff visited the site on September 5, 2007 and spoke with Mr. Craig Esterly. He stated that no one is at the site most of the time, hence, there may be difficulties with certified mail and return receipts, although the mailing address is valid. On September 6, 2007, Board staff spoke to Messrs. Craig and Dennis Esterly and reminded them that the annual report was overdue and of the consequences of non-submittal. On October 4, 2007, Board staff again called Mr. Craig Esterly and left a message indicating that the annual report must be submitted to the Board by October 10, 2007, or a penalty would be assessed for the non-submittal of the 2006-2007 annual report. As of the date of this complaint, the annual report has not been received.
7. This facility violated the General Permit, the federal Clean Water Act and the California Water Code by failing to submit the annual report by July 2, 2007.
8. Section 13385(a)(2) of the California Water Code 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) for each day the violation occurs.
9. Based on non-submittal of the 2006-2007 annual report, the facility is alleged to have violated the General Permit for 186 days (from July 2, 2007 to January 4, 2008). The maximum liability for this violation is \$1,860,000.
10. Section 13399.33(c) of the California Water Code requires that the Board impose a mandatory minimum penalty of \$1,000 for any person who fails to submit an annual report in accordance with Section 13399.31 of the Water Code.
11. Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors are addressed in the following table:

Factor	Comment
<b>A. Nature, Circumstance, Extent, and Gravity of Violation</b>	Fire Resources did not submit its annual report in a timely manner. The facility is currently regulated under the General Permit, which requires them to submit the annual report and all related sampling results by July 1 of each year.
<b>B. Culpability</b>	Fire Resources failed to submit its annual report as required by the General Permit. Fire Resources received two NNCs and a number of phone calls reminding them that the annual report was overdue and of the consequences of non-submittal.
<b>C. Economic Benefit or Savings</b>	Staff estimates that Fire Resources saved approximately \$1,000 during the 2006-2007 reporting year by not submitting its annual report (assuming that the facility did not collect and analyze storm water samples). The savings due to delaying the submittal of the annual report itself are negligible.
<b>D. Prior History of Violations</b>	Fire Resources has a long history of non-compliance with timely submittal of the annual reports. The facility obtained coverage under the General Permit on June 30, 1995. During the last twelve reporting years, Fire Resources submitted the annual report by the due date only four times. At least eight notices of Non-Compliance were issued to Fire Resources for late submittal of the annual reports. On March 12, 1998, Fire Resources was assessed a penalty of \$3,000 for non-submittal of the 1996-97 annual report. In addition, the facility has not paid its annual permit fees for three years.
<b>E. Other Factors</b>	Board staff spent at least 15 hours of staff time in its efforts to bring this facility into compliance (average rate @\$115.00 per hour, the total cost for staff time is \$1,725).
<b>F. Ability to pay</b>	Fire Resources has not provided any information to indicate that it is unable to pay the proposed assessment.

14. After consideration of these factors, the Assistant Executive Officer proposes that civil liability be imposed on Mr. Craig Esterly and Fire Resources, Inc., in the amount of \$8,360. This amount includes \$1,000 of mandatory penalty under Section 13399.33; \$5,000 assessment under Section 13385 of the Water Code and \$2,360 in unpaid annual fees).

### WAIVER OF HEARING

You may waive your right to a hearing. If you choose to do so, please sign the attached waiver form and mail it, together with a check payable to the State Water Resources Control Board for \$8,360. The waiver form and the check should be mailed to this office in the enclosed preprinted envelope.

If you have any questions, please contact Kathleen Fong at (951)774-0114 or Milasol C. Gaslan at (951) 782-4419.

First issued on: January 24, 2008  
Amended on:

  
Kurt V. Berchtold  
Assistant Executive Officer

In the matter of: )  
Mr. Craig Esterly and )  
Fire Resources, Inc. )  
10909 Almond Avenue )  
Fontana, CA 92337 )  
\_\_\_\_\_ )

Complaint No. R8-2008-0011  
for  
Administrative Civil Liability  
(first issued on: January 4, 2008)  
(amended on: March 24, 2008)

### WAIVER OF HEARING

I agree to waive my right and the right of Fire Resources, Inc., to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2008-0011.

I have enclosed a check, payable to the State Water Resources Control Board, in the amount of \$8,360. I understand that I am giving up my right as well as the the right of Fire Resources, Inc., to be heard and to argue against allegations made by the Assistant Executive Officer in this Complaint, and against the imposition of, and the amount of, the liability proposed.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mr. Craig Esterly/Fire Resources, Inc.