CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

IN THE MATTER OF:	)	
	)	
Pyro Spectaculars, Inc.	)	COMPLAINT NO. R8-2003-0114
3196 North Locust Avenue	)	for
Rialto, CA 92377	)	Administrative Civil Liability
	)	
Attn: Mr. James Souza, President	)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Pyro Spectaculars, Inc. operates two facilities in the City of Rialto, San Bernardino County, California: (1) Pyro Spectaculars, located at 3196 North Locust Avenue, and (2) Astro Pyrotechnics, located at 2298 West Stonehurst Drive. Pyro Spectaculars, Inc. is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose civil liability under Section 13268 of the California Water Code.

2. A hearing in this matter will be scheduled for the Board's regular meeting on November 21, 2003, at the Eastern Municipal Water District, 2270 Trumble Road, Perris, CA. Pyro Spectaculars, Inc. or its 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 will be mailed to Pyro Spectaculars, Inc. 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 administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

4. Pyro Spectaculars, Inc. is alleged to have violated subdivision (a) of Section 13268 of the California Water Code, which states "Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267...is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b)."

5. This Complaint is based on the following facts:

    a) Pyro Spectaculars and Astro Pyrotechnics, Rialto, California, are suspected of having discharged perchlorate waste that has adversely affected water quality. Accordingly, the Executive Officer issued an Investigation Order to Pyro Spectaculars, Inc., dated October 7, 2002, pursuant to subdivision (b) of California Water Code Section 13267.

b) Based on the evidence referenced in the October 7, 2002 Investigation Order, Pyro Spectaculars, Inc. was ordered to submit a work plan by November 7, 2002 for conducting an investigation of perchlorate in the vicinity of the 25-acre Pyro Spectaculars facility at 3196 North Locust Avenue, Rialto. On October 29, 2002, Board staff received a letter from Mr. James Good, attorney for Pyro Spectaculars, Inc., requesting a one-month extension of the compliance deadline for Pyro Spectaculars, Inc. to submit a work plan, in order to retain a qualified consultant and complete the work plan. On November 6, 2002, the Executive Officer approved the extension and directed Pyro Spectaculars, Inc. to expand the scope of the investigation to include the 5-acre Astro Pyrotechnics facility at 2298 West Stonehurst Drive, Rialto. The November 6, 2002 revised Investigation Order also informed Pyro Spectaculars, Inc. that failure to submit the required information by December 9, 2002, would subject Pyro Spectaculars, Inc. to administrative civil liability in the amount of up to $1,000 per day pursuant to Section 13268(a) and (b) of the California Water Code.

c) On December 9, 2002, Mr. Good submitted two work plans, prepared by Kleinfelder, the environmental consultant for Pyro Spectaculars, Inc. The proposed fieldwork for the Astro Pyrotechnics facility consisted of five exploratory trench excavations to collect soil samples for analysis of perchlorate. The proposed fieldwork for the Pyro Spectaculars facility consisted of three exploratory trench excavations and one soil boring to collect soil samples for analysis of perchlorate. In addition, each work plan proposed that, during the initial phase of the perchlorate investigation, Kleinfelder would review additional historical records pertaining to areas of waste disposal, and other areas where releases of perchlorate might have occurred.

d) On February 6, 2003, Board staff met with Mr. Gary Brown of Pyro Spectaculars, Inc., and inspected Storage Bunker B-1 and the adjacent land, where several metal, mobile bins are used for storage of bulk fireworks. On this same day, Board staff visited the Astro Pyrotechnics facility, and inspected the work buildings, including those used for the manufacture of fireworks. Board staff observed concrete pads adjacent to the buildings. These concrete pads are used to collect the wash water and the accumulated liquids and sludge wastes that are generated during the fireworks manufacturing process. These waste materials are stored on the pads, transferred into plastic drums and shipped off-site for disposal.

e) On March 3, 2003, the Executive Officer conditionally approved the work plans for the investigation of both facilities. The Executive Officer's approval letters required that the work plan for the Astro Pyrotechnics facility be revised to include the collection of soil samples from the areas immediately beneath the existing concrete pads, instead of from areas adjacent to the pads as proposed in the work plan. In addition, a plan for temporary containment of the wash

water and waste materials was required to be implemented during the trenching activities at the site. The Executive Officer further required that Pyro Spectaculars, Inc. include a plan for investigation of the former burn pit that historically was used for disposal of waste generated by Pyro Spectaculars, Inc. and other companies. The Executive Officer directed Pyro Spectaculars, Inc. to submit the written plan for temporary containment of the waste at Astro Pyrotechnics, and a detailed time schedule for completing the field work at both facilities, by March 19, 2003.

f) On March 19, 2003, Board staff met with Mr. Good, who indicated that Pyro Spectaculars, Inc. had been unable to revise and implement the work plans as required by the Executive Officer. Mr. Good further indicated that Pyro Spectaculars and Astro Pyrotechnics were facing severe operational and financial constraints pending completion of their summer "high" season for developing and conducting fireworks displays.

g) On April 1, 2003, Mr. Good submitted schedules for the perchlorate investigations at the Pyro Spectaculars and Astro Pyrotechnics facilities. Board staff informed Mr. Good and Mr. Brown, by telephone, that the time schedule for investigation and additional research was not satisfactory. Mr. Good and Mr. Brown subsequently proposed a July 21, 2003 start date for the first phase of work, which was acceptable to Board staff.

h) By letter dated July 3, 2003, the Executive Officer directed Pyro Spectaculars, Inc. to implement the on-site investigation activities in areas of the Pyro Spectaculars facility with an approved starting date of July 21, 2003. In addition, the Executive Officer directed Pyro Spectaculars, Inc. to submit the required work plan for investigation of the former burn pit by July 21, 2003. The schedule for field work at Astro Pyrotechnics was to be addressed in a separate letter, after the initial field investigation of the Pyro Spectaculars facility had commenced.

i) On July 18, 2003, Mr. Good informed the Board's Assistant Executive Officer that he was attempting to negotiate a settlement between Pyro Spectaculars, Inc. and the local water purveyors, in lieu of implementing the work plans. Mr. Good requested a 45 to 60-day extension of the start date for the investigation. The extension was not granted. To date, Pyro Spectaculars, Inc. has not negotiated a settlement, nor commenced the required investigations at the Pyro Spectaculars facility, the Astro Pyrotechnics facility, Bunker B-1 and the former burn pit.

6. Pyro Spectaculars, Inc. failed to implement the required work plan for the Pyro Spectaculars facility by the approved start date of July 21, 2003. Pyro Spectaculars, Inc. also failed to submit a work plan for the former burn pit by the July 21, 2003 deadline. Failure to comply with the approved time schedule for the required

investigation, pursuant to the October 7, 2002 Investigation Order, as revised on November 6, 2002, is a violation of California Water Code Section 13268(a).

7. Section 13268(b) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed one thousand dollars ($1,000) for each day that a violation of Section 13268(a) occurs.

8. Pursuant to Section 13268, the total maximum assessment for which Pyro Spectaculars, Inc. is civilly liable is $100,000, based on $1,000 per day for 100 days of violation from July 21, 2003, through the date of this Complaint, October 28, 2003.

9. Board staff costs for all tasks associated with this matter amount to approximately $20,000. These costs were considered in assessing the liability proposed in Paragraph 11, below.

10. Section 13327 specifies factors that the Board shall consider in establishing the amount of civil liability. These factors include: the nature, circumstances, extent, and gravity of the violation, whether the discharge is subject to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the discharger, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require.

11. After consideration of the above factors, the Executive Officer proposes that civil liability be imposed on Pyro Spectaculars, Inc. in the amount of $95,000, with $75,000 of that amount suspended provided that:

    a) The final reports for the investigations at the Pyro Spectaculars facility and the Astro Pyrotechnics facility are submitted to Board staff by December 15, 2003, and
    b) The burn pit investigation work plan is submitted to Board staff by November 26, 2003.

12. You may waive your right to a hearing. If you waive the right to a hearing, please sign the waiver form that is Page 6 of this complaint, and submit it, with a cashier's check made payable to the State Water Resources Control Board in the amount of civil liability as described in the waiver form, to:

    Santa Ana Regional Water Quality Control Board
    3737 Main Street, Suite 500
    Riverside, CA 92501-3339

Any questions regarding this complaint should be directed to Ann Sturdivant at (909) 782-4904, Kurt Berchtold at (909) 782-3286, or the Regional Board's legal counsel, Jorge Leon, at (916) 341-5180.

10-28-03
Date

Gerard J. Thibeault
Executive Officer

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

IN THE MATTER OF:	)	
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Pyro Spectaculars, Inc.	)	COMPLAINT NO. R8-2003-0114
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Rialto, CA 92377	)	Administrative Civil Liability
	)	
Attn: Mr. James Souza, President	)	

WAIVER OF HEARING

Pyro Spectaculars, Inc. agrees to waive its right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2003-0114. Pyro Spectaculars, Inc. has enclosed a check in the amount indicated below. Pyro Spectaculars, Inc. understands that it is giving up its right to be heard and to argue against allegations made by the Executive Officer in Complaint No. R8-2003-0114, and against the imposition of, and amount of, the civil liability.

(check one)

☐ Enclosed is a check in the amount of $95,000.

☐ Enclosed is a check in the amount of $20,000. Pyro Spectaculars, Inc. will: submit the final reports for the investigations at the Pyro Spectaculars facility and the Astro Pyrotechnics facility by December 15, 2003; and submit a work plan by November 26, 2003 for investigation of the burn pit. Pyro Spectaculars, Inc. understands that the remainder of the assessed liability ($75,000) will become due and payable unless these provisions are met.

_____ _____
Date for Pyro Spectaculars, Inc.

California Regional Water Quality Control Board
Santa Ana Region

Winston H. Hickox
Secretary for Environmental Protection

Internet Address: http://www.swrcb.ca.gov/rwqcb8
3737 Main Street, Suite 500,
Riverside, California 92501-3348
Phone (909) 782-4130 - FAX (909) 781-6288

Gray Davis
Governor

A
AES

October 28, 2003

Mr. James E. Good
Gresham, Savage, Nolan & Tilden, LLP
600 North Arrowhead Avenue, Suite 300
San Bernardino, CA 92401-1148

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2003-0114

Dear Mr. Good:

Enclosed is Complaint No. R8-2003-0114 assessing administrative civil liability against Pyro Spectaculars, Inc. for failing to implement the required work plans for the Pyro Spectaculars and Astro Pyrotechnics facilities in Rialto, California. Pyro Spectaculars Inc. also failed to submit a work plan for the former burn pit by the July 21, 2003 deadline. Unless Pyro Spectaculars, Inc. waives its right to a hearing, a public hearing on this matter will be held at the Santa Ana Regional Water Quality Control Board's meeting on November 21, 2003. This Board meeting will be held at the office of the Eastern Municipal Water District, 2270 Trumble Road, Perris, California. An Agenda and a staff report will be provided to you at least 10 days prior to the meeting.

If Pyro Spectaculars, Inc. chooses to waive its right to a hearing, please complete the enclosed waiver form and submit it to this office prior to the hearing, with a check for the amount of civil liability as indicated on the form. The check should be made payable to the State Water Resources Control Board.

If Pyro Spectaculars, Inc. does not wish to waive its right to a hearing, you should contact this office to schedule a pre-hearing meeting. At that time, you may submit information that may not have been previously available to staff regarding this matter. The information should address the following items:

1. Nature, circumstance, extent and gravity of the violation;
2. Susceptibility of the discharge to cleanup or abatement;
3. Your ability to pay the proposed assessment;
4. Effect on ability to continue in business;
5. Any prior history of violation;
6. Your degree of culpability;
7. Economic benefit, or savings, resulting from the discharge;
8. Such matters as justice may require.

If you have any questions, or wish to schedule a pre-hearing meeting, please call Kurt Berchtold, Assistant Executive Officer, at (909) 782-3286, or Ann Sturdivant, Chief of our SLIC/DoD Section, at (909) 782-4904.

Sincerely,

Kurt V. Berchtold

for Gerard J. Thibeault
Executive Officer

Enclosures: 1. Administrative Civil Liability Complaint No. R8-2003-0114
2. Waiver of Hearing
3. Mailing List

cc w/enclosures:
Regional Board
Jorge Leon, SWRCB, OCC
James Souza, Rialto, California

cc w/o enclosures:
Inland Empire Perchlorate Regulatory Task Force (mailing list enclosed)

AES/data/SLIC2001-03 rialto perchlorate/13267/pyro ACLC transmittal