CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

In the matter of:	)	
	)	
E D Coat	)	**Settlement Agreement and Stipulation for**
Complaint No. R2-2010-0016	)	**Order; Order No. R2-2010-0091**
Administrative Civil Liability	)	
	)	

Section I: Introduction

1. This Settlement Agreement and Stipulation for Order ("Stipulation") and Administrative Civil Liability Order ("Order") are issued in reference to an adjudicative proceeding initiated by the issuance of Administrative Civil Liability Complaint No. R2-2010-0016, dated February 16, 2010 (the "Complaint"). The parties to this proceeding are the San Francisco Bay Regional Water Quality Control Board ("Regional Water Board") Prosecution Team ("Prosecution Team"), and E D Coat (the "Settling Respondent") (collectively hereinafter the "Parties").

Section II: Recitals

2. The Settling Respondent operates the E D Coat facility located at 715 4th Street Oakland, California, Alameda County. The Settling Respondent and its facility are subject to the requirements set forth in the State Water Resources Control Board's Water Quality Order No. 97-03-DWQ National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities ("General Permit").

3. The Complaint recommends imposing an administrative civil liability totaling $13,300 for alleged violations of the General Permit. That amount includes staff costs of $1,800.

4. To resolve by consent and without further administrative proceedings certain alleged violations of the California Water Code ("CWC") for violation of the General Permit as set forth in the Complaint, the Parties have agreed to the imposition of $1,750 against the Settling Respondent. Payment of $1,750 to the State Water Resources Control Board Cleanup and Abatement Account is due no later than 30 days following the Regional Water Board executing this Order.

5. The Complaint alleges that the Settling Respondent violated the General Permit by failing to submit a 2008/2009 annual report by July 1, 2009.

6. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulation to the

Regional Water Board or its delegee, the Executive Officer, for adoption as an Order pursuant to Government Code section 11415.60. The Prosecution Staff believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the specific violations alleged in the Complaint except as provided in this Stipulation and that this Stipulation is in the best interest of the public.

Section III: Stipulations

The Parties stipulate to the following:

7. **Administrative Civil Liability:** The Settling Respondent hereby agrees to pay the administrative civil liability in the amount of $1,750 as set forth in Paragraph 4 of Section II herein.

8. **Compliance with Applicable Laws:** The Settling Respondent understands that payment in accordance with this Order is not a substitute for compliance with applicable laws, and that future violations of the type alleged in the Complaint may subject the Settling Respondent to further enforcement, including additional administrative civil liability.

9. **Bankruptcy:** Should the Settling Respondent enter into bankruptcy proceedings before all payments are paid in full, the Settling Respondent agrees to not seek to discharge any of these penalties in bankruptcy proceedings.

10. **Attorney's Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

11. **Matters Addressed by Stipulation:** Upon adoption by the Regional Water Board as an Order, this Stipulation represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in the Complaint based on the specific facts alleged in the Complaint or this Stipulated Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadline specified in Paragraph 4 of Section II herein.

12. **Public Notice:** The Settling Respondent understands that this Order must be noticed for a 30-day public comment period prior to consideration by the Regional Water Board or its delegee, the Executive Officer. In the event objections are raised during the public comment period for this Order, the Regional Water Board or the Executive Officer may, under certain circumstances, require a public hearing regarding this Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust this Order as necessary or advisable under the circumstances.

13. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting this Order by the Regional Water Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to this Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

14. **Interpretation:** The Stipulation shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.

15. **Modification:** This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board, or its delegee, the Executive Officer.

16. **If the Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Water Board, or its delegee, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

    a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or this Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or

    b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

17. **Waiver of Right to a Hearing:** The Settling Respondent has been informed of the rights provided by CWC section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of this Order.

18. **Waiver of Right to Petition:** The Settling Respondent hereby waives its right to petition the Regional Water Board's adoption of this Order for review by the State

Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

19. **Settling Respondent's Covenant Not to Sue:** The Settling Respondent covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any covered matter.

20. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Order shall be communicated to the Settling Respondent in writing. No oral advice, guidance, suggestions or comments by employees or officials of the Regional Water Board regarding submissions or notices shall be construed to relieve the Settling Respondent of its obligation to obtain any final written approval required by this Order.

21. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

22. **Effective Date**: The obligations under Paragraph 7 of this Stipulation are effective and binding on the Parties only upon the entry of an Order by the Regional Water Board, which incorporates the terms of this Stipulation .

23. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

24. **Counterpart Signatures:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

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IT IS SO STIPULATED.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN FRANCISCO BAY REGION, PROSECUTION TEAM

Date: 5/26/10

By: _____
Thomas Mumley,
Assistant Executive Officer

E D COAT

Date: 5/25/10

By: _____
LISA ROSSI
OPERATIONS MANAGER

Approved as to Form:

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, OFFICE OF ENFORCEMENT

Date: 5/26/10

By: _____
Ann K. B. Carroll,
Staff Counsel

LAW OFFICES OF KARL R. MORTHOLE

Date: 5/25/10

By: _____
Karl R. Morthole,
Attorney for E D Coat

Order of the Regional Water Board

25. This Order incorporates the foregoing Stipulation.

26. In accepting the foregoing Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in CWC section 13385(e). The Regional Water Board's consideration of these factors is based upon information obtained by the Regional Water Board' staff in investigating the allegations in the Complaint or otherwise provided to the Regional Water Board. Considering the "Ability to Pay" factor under CWC sections 13327 and 13385(e), the proposed penalty of $13,300 was reduced to the stipulated administrative civil liability of $1,750.

27. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

Pursuant to CWC section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, San Francisco Bay Region.

Digitally signed by Bruce Wolfe
Date: 2010.07.01 18:37:35 -07'00'

Bruce H. Wolfe
Executive Officer

Date: _____