

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

**IN THE MATTER OF:**

Industrial Coating, Inc  
2990 East Blue Star Street  
Anaheim, CA 92806  
Attention: Gregory Foster

**Order No. R8-2020-0042  
for  
Mandatory Minimum Penalty  
Complaint**

Pursuant to California Water Code (Water Code) Sections 13323 and 13399.33 and California Government Code Section 11415.60, the California Regional Water Quality Control Board, Santa Ana Region (Santa Ana Water Board) hereby finds:

1. The Assistant Executive Officer of the Santa Ana Water Board issued Administrative Civil Liability Complaint R8-2020-0042 (incorporated into this Order as Attachment 1) to Industrial Coating, Inc. (Discharger) on September 8, 2020, which proposed a mandatory minimum penalty in the amount of \$6,164, pursuant to Water Code section 13399.33, subdivisions (a)(1) and (d).
2. On October 12, 2020, the Discharger submitted a signed Waiver (incorporated into this Order as Attachment 2), electing to waive its right to a hearing before the Santa Ana Water Board and agreeing to pay the proposed penalty amount of \$6,164.
3. The signed Waiver and agreement to pay the proposed penalty constitutes a proposed settlement of the Complaint.
4. The proposed settlement was posted for a 30-day public notice and comment period on October 13, 2020. The public comment period closed on November 11, 2020. The Santa Ana Water Board did not receive any comments on the proposed settlement.
5. The action to adopt this Order approving the settlement proposal, which resolves the Administrative Civil Liability Complaint, is exempt from the provisions of the California Environmental Quality Act, in accordance with Title 14, California Code of Regulations (Enforcement actions by Regulatory Agencies), Section 15321 (a)(2).
6. Any aggrieved person may petition the State Water Resources Control Board (State Water Board) to review this action by the Santa Ana Water Board in accordance with Water Code section 13320 and the State Water Board's regulations. The petition must be received by the State Water Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions are available at the Waterboard's Petition Website and will also be provided upon request.

**IT IS HEREBY ORDERED THAT:**

1. The California Regional Water Quality Control Board, Santa Ana Region, hereby approves the proposed settlement of the Administrative Civil Liability Complaint against the Discharger, as specified herein and including attachments.
2. The Discharger must make payment in the amount specified to the Waste Discharge Permit Fund within 30 days from the date of receipt of the signed Order approving the proposed settlement of the Administrative Civil Liability Complaint against the Discharger, as specified herein and including attachments.
3. If the Discharger fails to make the specified payment to the Waste Discharge Fund within the time limit specified in this Order, the Santa Ana Water Board's Executive Officer is hereby authorized to collect as any other civil judgement the full amount due under the settlement in any manner permitted by California Law, including a referral to the Attorney General's Office.

PURSUANT TO SECTIONS 13323 AND 13399.33 OF THE CALIFORNIA WATER CODE AND SECTION 11415.60 OF THE CALIFORNIA GOVERNMENT CODE, THE EXECUTIVE **OFFICER HEREBY ADOPTS THIS ORDER.**

**Hope Smythe** Digitally signed by Hope Smythe  
Date: 2020.11.30 09:11:42 -08'00'  


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Hope A. Smythe  
Executive Officer  
Santa Ana Regional Water Quality Control Board

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Date

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

IN THE MATTER OF:

Industrial Coating	)	Complaint No. R8-2020-0042
2990 E. Blue Star Street	)	For
Anaheim, CA 92806	)	Mandatory Minimum Penalty
	)	And Staff Costs

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This Complaint is issued to Industrial Coating (hereafter referred to as Industrial Coating or Discharger) pursuant to California Water Code (Water Code) section 13399.33, which authorizes the imposition of civil liability administratively, and Water Code section 13323, which authorizes the Assistant Executive Officer to issue this Compliant. This Compliant is based on allegations that the Discharger failed to submit the required Notice of Intent to obtain coverage in accordance with Water Code section 13399.30, for which the California Regional Water Quality Control Board, Santa Ana Region (Santa Ana Water Board), must impose penalty pursuant to Water Code section 13399.33.

The Assistant Executive Officer of the Santa Ana Water Board alleges the following:

**BACKGROUND:**

1. Industrial facilities that discharge storm water associated with industrial activities are required to obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Industrial Activities Order No. 2014-0057-DWQ, NPDES Permit No. CAS000001 (General Permit). General Permit coverage is required for industrial facilities with Standard Industrial Classification (SIC) codes listed in 40 Code of Federal Regulations section 122.26(b)(14) and in Attachment A of the General Permit.
2. Industrial Coating is located at 2990 E. Blue Star Street (Facility), in the City of Anaheim, and was initially identified as an industrial facility engaged in coating and engraving services. This industrial activity is described in SIC code 3479. Since SIC code 3479 is listed on Attachment A as an industrial activity which requires General Permit coverage, Industrial Coating must obtain coverage under the General Permit.
3. On October 17, 2019, Santa Ana Water Board staff issued a Notice of Non-Compliance (NNC) to the Discharger, via certified mail, for failure to obtain coverage under the General Permit. Per the certified mail receipt and United States Postal Service website, the NNC was received by the Discharger on October 19, 2019. The NNC required that the Discharger submit a Notice of Intent (NOI) to obtain coverage or otherwise enroll in the General Permit by November 15, 2019.

The first NNC and certified return receipt are attached to this Complaint as Attachment 1.

4. On November 18, 2019, since the Discharger had not obtained the necessary permit coverage, Santa Ana Water Board staff issued a second NNC via certified mail. Per the certified mail receipt and United States Postal Service website, the NNC was received by the Discharger on November 26, 2019. The second NNC required that the Discharger submit a NOI to obtain coverage or otherwise enroll in the General Permit by December 13, 2019. The second NNC and certified return receipt are attached to this Complaint as Attachment 2.
5. On December 24, 2019, Santa Ana Water Board staff emailed Mr. Gregory Foster, CEO of Industrial Coating, explaining that the Facility was issued two NNCs and the deadline to obtain General Permit coverage was December 13, 2019. Santa Ana Water Board staff noted that the Discharger had begun an NOI application in the Stormwater Multiple Application and Report Tracking System (SMARTS) for Industrial Coating but was not submitted. Santa Ana Water Board staff explained that a mandatory minimum penalty would be issued to Industrial Coating because of the Discharger's failure to comply with the deadline to obtain coverage laid out in the NNCs. Staff also explained that Industrial Coating was still required to obtain permit coverage.
6. On December 27, 2019, Santa Ana Water Board staff contacted Mr. Foster via phone and left a message with the Facility's receptionist, as Mr. Foster was not at the Facility. Santa Ana Water Board staff explained that Industrial Coating did not obtain General Permit coverage by December 13<sup>th</sup> and that a mandatory minimum penalty would be issued. Staff also explained that Industrial Coating was still required to obtain permit coverage.
7. On January 3, 2020, Santa Ana Water Board staff contacted Mr. Foster via phone and left a voicemail informing Mr. Foster that Industrial Coating did not obtain General Permit coverage by December 13<sup>th</sup> and a mandatory minimum penalty would be issued. Santa Ana Water Board staff also explained in the voicemail that Industrial Coating was still required to obtain permit coverage.
8. On January 6, 2020, Santa Ana Water Board staff received a voicemail from Mr. Foster regarding the NOI application for Industrial Coating. Mr. Foster left a call back number to get in touch with him.
9. On January 7, 2020, Santa Ana Water Board staff contacted Mr. Foster via phone and spoke with Mr. Foster regarding the NOI application for Industrial Coating. Santa Ana Water Board staff assisted Mr. Foster in completing the NOI application on SMARTS and Mr. Foster submitted the application. Santa Ana Water Board staff explained to Mr. Foster that Industrial Coating would still be receiving a mandatory minimum penalty as the application was submitted past the December

13<sup>th</sup> deadline listed on the NNCs. Mr. Foster acknowledged the issuance of the penalty and asked if a payment plan would be available to pay the fine.

10. On March 26, 2020, Santa Ana Water Board staff issued an Expedited Payment Letter (EPL) to Industrial Coating for \$5,336 for failure to enroll in the General Permit. The deadline to sign the Acceptance of Conditional Resolution and Waiver of Right to Hearing form was April 24, 2020.
11. On March 30, 2020, Santa Ana Water Board staff contacted Mr. Foster via email to explain that the NOI application submitted on SMARTS, on January 7, 2020, was returned as payment was not received within 60 days. Santa Ana Water Board staff directed Mr. Foster to re-submit the NOI application as soon as possible and to submit payment because the Facility was continuing to operate without the required permit coverage.
12. On April 14, 2020 and April 22, 2020, Santa Ana Water Board staff contacted Mr. Foster via email regarding the EPL and the signed Acceptance of Conditional Resolution and Waiver of Right to Hearing form due on April 24, 2020. Santa Ana Water Board staff explained that if the deadline was missed or Mr. Foster chose not to sign the waiver form, an administrative civil liability complaint would be issued to assess the mandatory minimum penalty.
13. On April 24, 2020, Santa Ana Water Board staff contacted Mr. Foster again via email regarding the EPL and the signed Acceptance of Conditional Resolution and Waiver of Right to Hearing form due on April 24, 2020. Santa Ana Water Board staff explained that if the deadline was missed or Mr. Foster chose not to sign the waiver form, a mandatory minimum penalty would be assessed. Santa Ana Water Board staff also contacted Mr. Foster via phone and spoke to him regarding the deadline for the signed Acceptance of Conditional Resolution and Waiver of Right to Hearing form. Santa Ana Water Board staff explained to Mr. Foster that by signing the form he agrees to pay the settlement amount of \$5,336 for not obtaining General Permit coverage by the deadline outlined in the NNCs. Mr. Foster indicated he had not received Santa Ana Water Board reminder emails and to forward the emails to his other business email account. The Discharger did not accept the settlement offer contained in the EPL.
14. To date, the Discharger has not obtained General Permit coverage and continues to operate without the required General Permit coverage.

## **LEGAL AUTHORITY**

15. Section 13399.30 of the Water Code requires the regional boards to identify, on an annual basis, dischargers of storm water that have not obtained coverage under the General Permit.

16. Pursuant to Water Code section 13399.30(a)(2), the Santa Ana Water Board provides a Notice of Non-Compliance (NNC) to any person that discharges, proposes to discharge, or is suspected of discharging storm water associated with industrial activity without coverage under the General Permit. The first NNC directs the facility within 30 days from the date on which the Santa Ana Water Board provided notice, to submit a Notice of Intent to obtain coverage.<sup>1</sup>
17. Pursuant to Water Code section 13399.30, subdivision (b), regional boards shall send a second NNC to a discharger for failing to submit the appropriate Notice of Intent within 30 days from the date on which the first notice was sent pursuant to 13399.30(a).
18. Pursuant to Water Code section 13399.30, subdivision (c)(2), if a discharger fails to submit the required Notice of Intent within 60 days from the date on which the first NNC was sent, after receiving a second NNC, the regional boards shall impose the penalties described in section 13399.33(a).

## **PROPOSED MANDATORY MINIMUM PENALTIES AND ASSESSMENT OF COSTS**

19. Pursuant to Water Code section 13399.33, subdivision (a)(1), the Santa Ana Water Board shall administratively impose a penalty in an amount that is not less than five thousand dollars (\$5,000) per year of noncompliance or fraction thereof against a discharger who fails to submit the required Notice of Intent in accordance with Water Code section 13399.30. The Santa Ana Water Board shall impose this mandatory minimum penalty unless it makes express findings setting forth the reasons for its failure to do so, based on specific factors required to be considered pursuant to 13399.33(a)(2).
20. Water Code section 13399.33(d) further requires the recovery of costs incurred by the Santa Ana Water Board for enforcement actions against dischargers who fail to submit the required Notice of Intent in accordance with Water Code section 13399.30. Staff spent eleven (11) hours for this enforcement action resulting in total staff costs of one thousand one hundred and sixty-four dollars (\$1,164).
21. Therefore, the total liability for the violation alleged herein, including staff costs, is six thousand one hundred and sixty-four dollars (\$6,164).

## **REGULATORY CONSIDERATIONS**

22. Notwithstanding issuance of this Complaint, the Santa Ana Water Board retains the authority to assess additional penalties for any violations that have not yet been assessed or for violations that may subsequently occur.

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<sup>1</sup>The General Permit instructs dischargers of storm water to submit the required notice of intent to the State Water Resources Control Board, not the Santa Ana Water Board.

23. An administrative civil liability may be imposed pursuant to the procedures described in Water Code section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.
24. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code section 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321, subdivision (a), paragraph (2).

**INDUSTRIAL COATING IS HEREBY GIVEN NOTICE THAT:**

25. The Assistant Executive Officer of the Santa Ana Water Board proposes an administrative civil liability in the amount of six thousand one hundred and sixty-four dollars (\$6,164). The amount of the proposed liability is based on the mandatory minimum penalties authorized to be imposed under Water Code section 13399.33, subdivisions (a)(1) and (d).
26. A virtual hearing on this matter will be conducted at the Santa Ana Water Board meeting scheduled on December 4, 2020, unless one of the following options occurs before October 5, 2020.
- a. The Discharger waives the hearing by completing the Waiver Form (checking off the box next to Option 1), attached herein as Attachment 3, and returning it to the Santa Ana Water Board, along with payment for the proposed liability of six thousand one hundred and sixty-four dollars (\$6,164).
  - b. The Discharger waives the 90-day hearing requirement in order to extend the hearing date (checking off the box next to Option 2) and returning it to the Santa Ana Water Board, along with rationale for the extension.

September 8, 2020

Date

**Jayne Joy** Digitally signed by Jayne Joy  
Date: 2020.09.08 13:43:14  
-07'00'  
Water Boards

Jayne Joy, PE  
Assistant Executive Officer  
Santa Ana Water Board Prosecution Team

**Attachments:**

- 1<sup>st</sup> Notice of Non-Compliance, dated 10/17/2019
- 2<sup>nd</sup> Notice of Non-Compliance, dated 11/18/2019
- Waiver Form