California Regional Water Quality Control Board
San Francisco Bay Region

Linda Adams
Acting Secretary for
Environmental Protection

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • Fax (510) 622-2460
http://www.waterboards.ca.gov/sanfranciscobay

Edmund G. Brown, Jr.
Governor

Enforcement for Late Annual Report

You have until February 28, 2011, to act or face more penalties.

Questions? Contact Danny Pham at (510) 622-2402 or dapham@waterboards.ca.gov.

This is a plain language summary of the attached **Notice of Violation and Enforcement Settlement Offer To Participate In Expedited Payment Program For The Failure To Submit An Annual Report As Required By State Water Resources Control Board General Permit For Stormwater Discharges Associated With Industrial Activities** dated **January 31, 2011**.

The Industrial Stormwater Permit Annual Report was due July 1, 2010. We sent you a courtesy reminder, dated July 16, 2010, urging you to submit your report by August 2, 2010 to avoid enforcement. **We did not received your report by August 2, 2010.** Consequently, we are taking a monetary penalty enforcement action. However, instead of pursuing a formal enforcement complaint with higher penalties, we our offering you the opportunity to participate in an Expedited Payment Program to resolve the reporting violation.

You have three options to respond:

A. **Accept the Expedited Payment Program offer** by submitting your Annual Report and agreeing to pay a settlement of $1,000. This is the fastest and most certain way to get closure on this enforcement action. If you choose this option, you must **submit your Annual Report by February 28, 2011**, and **sign and submit the Acceptance and Waiver form**, attached to the Notice of Violation and Enforcement Settlement Offer letter, **by February 28, 2011**. The form provides submittal instructions.

B. **Contest the annual reporting violation** by submitting in writing the basis of your challenge with supporting evidence. For example, you have evidence, such as a certified mail receipt, that you submitted your Annual Report, or you are no longer in business and you have evidence that you submitted a Notice of Termination in accordance with the permit. If you choose this option, you must **submit your challenge by February 28, 2011**.

   We will review your challenge, and if we agree with you, we will notify you in writing that you are no longer considered in violation of the permit and our enforcement action has been terminated. However, if we do not agree with you, we will prepare a formal enforcement complaint at a much higher dollar amount than the settlement offer of $1,000. To avoid the latter, we urge you to contact Danny Pham (see above) as soon as possible so we can assist you if you have a valid challenge.

C. **Reject the Expedited Payment Program offer** by not responding or submitting your rejection in writing **by February 28, 2011**. In either case, we will prepare a formal enforcement complaint at a much higher dollar amount than the settlement offer of $1,000. You must also submit your Annual Report, and the date of submittal or failure to submit the report will affect the penalty amount.

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Edmund G. Brown, Jr.
Governor

January 31, 2011

Hammon Plating
Attn: Glen Phinney
890 Commercial St
Palo Alto, CA 94303

VIA CERTIFIED MAIL
No. 7009 1410 0002 4300 8863
WDID No: 2 43I010827

NOTICE OF VIOLATION AND OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM FOR THE FAILURE TO SUBMIT AN ANNUAL REPORT AS REQUIRED BY STATE WATER RESOURCES CONTROL BOARD GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITIES, ORDER NO. 97-DWQ, NPDES NO. CAS000001

Facility Name: HAMMON PLATING
Facility Address: 890 COMMERCIAL ST, PALO ALTO, CA 94303

Dear Glen Phinney:

This letter is to notify Hammon Plating (hereinafter "Permittee") of an alleged violation of the California Water Code regarding the failure to submit an annual report to the San Francisco Bay Regional Water Quality Control Board (hereinafter "Regional Water Board"), as required by the State Water Resources Control Board's General Permit for Stormwater Discharges Associated with Industrial Activities (hereinafter "General Permit"). This letter also notifies the Permittee of the opportunity to participate in the Regional Water Board's Expedited Payment Program for Annual Reporting Violations (hereinafter "Expedited Payment Program"). The Expedited Payment Program addresses liability that may be assessed pursuant to California Water Code section 13385.

NOTICE OF VIOLATION:

Based on the Regional Water Board's records, it is alleged that as of August 2, 2010, the Permittee has failed to submit an annual report, which was due by July 1, 2010, to the Regional Water Board as required under Section B.14 of the General Permit. Failure to submit such an annual report violates the requirements of the General Permit, the California Water Code, and the Federal Clean Water Act.

STATUTORY LIABILITY:

Pursuant to California Water Code sections 13385(a)(2) and 13385(c)(1), the Permittee is subject to discretionary administrative civil liabilities of up to TEN THOUSAND DOLLARS ($10,000.00) for each day in which a violation occurs (i.e., each day the Permittee fails to submit an annual report after July 1 of each year). These discretionary administrative civil liabilities may be assessed by the Regional Water Board, beginning with the date that the violation(s) first occurred. In this matter, and as set forth above, the days in violation will be calculated from July 2, 2010.

The formal enforcement action that the Regional Water Board uses to assess such civil liabilities is an administrative civil liability complaint, although the Regional Water Board may instead refer such matters to the Office of the Attorney General for prosecution. If referred to the Attorney General for prosecution, the Superior Court may assess civil liability up to TWENTY-FIVE THOUSAND DOLLARS ($25,000.00) per violation, as set forth in California Water Code section 13385(b)(1).

CONDITIONAL OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM:

The Permittee can avoid a formal enforcement action and settle the alleged annual reporting violation by participating in the Regional Water Board's Expedited Payment Program. Details of the proposed settlement are described in detail below, as well as in the "Acceptance of Conditional Resolution and Waiver of Right to Hearing, [Proposed] Order" (hereinafter "Acceptance and Waiver") enclosed herewith.

To promote resolution of the alleged annual reporting violation, the Regional Water Board makes the following conditional offer. The Permittee may accept this offer, waive its right to a hearing, submit its overdue annual report on or before February 28, 2011, and pay a ONE THOUSAND DOLLARS ($1,000.00) administrative civil liability for the annual reporting violation. If the Permittee elects to do so, subject to the conditions set forth herein, the Regional Water Board will accept the Permittee's overdue annual report and the payment of the administrative civil liability in settlement of any enforcement action that would otherwise arise out of the annual reporting violation.

After timely receipt of the Permittee's overdue annual report and payment of the administrative civil liability, the Regional Water Board will forego issuance of a formal administrative civil liability complaint, will not refer said violations to the Attorney General, and will waive its right to seek any additional penalties or liabilities, including the Regional Water Board's costs of enforcement, for the annual reporting violation.

The Expedited Payment Program does not address liability for any violation that is not specifically identified in this Notice of Violation.

PERMITTEE'S OPTIONS AND INSTRUCTIONS FOR RESPONDING TO OFFER:

<u>Choice A – ACCEPTING OFFER</u>

If the Permittee accepts this offer, **please complete and return the Acceptance and Waiver enclosed herewith on or before February 28, 2011, by certified mail**, return receipt requested addressed as follows:

San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
Attn: Danny Pham

Additionally, submit an annual report as required under the General Permit on or before February 28, 2011, by certified mail, return receipt requested to the address referenced above or by submitting a signed, electronic copy of the report by e-mail to Danny Pham at dapham@waterboards.ca.gov.

A blank copy of the annual report form may be downloaded from the State Water Resources Control Board web site:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/annual_reports/annrpt09_00.pdf

Further, the Permittee must also submit the ONE THOUSAND DOLLARS ($1,000.00) administrative civil liability by cashier's check or by certified check made payable to the "State Water Pollution Cleanup and Abatement Account" to the Regional Water Board, at the address referenced above, no later than sixty (60) calendar days after the date the Permittee receives written notice that the Executive Officer of the Regional Water Board has formally endorsed the "Acceptance and Waiver." Failure to pay the penalty within the required time period may subject the Permittee to further liability.

Choice B – CONTESTING THE ALLEGED VIOLATION

If the Permittee wishes to contest the annual reporting violation, the challenge must be received on or by February 28, 2011. Please identify, in writing and sent by certified mail, return receipt requested to the address above, the basis for the Permittee's challenge (factual error, affirmative defense, etc.). The Regional Water Board staff will evaluate that basis and make one of the following determinations: If the Regional Water Board staff determines that the alleged annual reporting violation is not supported, no further action will be taken against the Permittee for that violation, and the Permittee will be notified of that determination.

If the Regional Water Board staff determines that the contested violation as alleged is meritorious, the Permittee should expect that a formal enforcement action will be pursued and that the Permittee will receive notice of any deadlines associated with that action. In a formal enforcement action, the liability amount sought and/or imposed may significantly exceed the liability amount set forth in this Conditional Offer. Moreover, the cost of enforcement is a factor that can be considered in assessing the liability amount.

Choice C – REJECTING OFFER

If the Permittee chooses to reject the Regional Water Board's offer and/or chooses not to complete and return the Acceptance and Waiver, the Permittee should expect that a formal enforcement action will be pursued and that it will receive notice of any deadlines associated with that action. As previously stated, in such an action, the liability amount sought and/or imposed may significantly exceed the liability amount set forth in this Conditional Offer. Moreover, the Regional Water Board's cost of enforcement is a factor that can be considered in assessing the Permittee's liability amount.

The Permittee should also note that in the event the Regional Water Board pursues a formal enforcement action for the annual reporting violation, the Regional Water Board shall review its records to determine whether the Permittee has previously failed to submit an annual report as required by the General Permit, and whether the Permittee has repeatedly failed to comply with that requirement. The Regional Water Board shall consider any such previous failures when assessing the Permittee's liability amount. This consideration may result in the liability amount being sought and/or imposed to significantly exceed the liability amount set forth in this Conditional Offer.

CONDITIONS FOR REGIONAL WATER BOARD'S ACCEPTANCE OF RESOLUTION:

This offer to participate in the Regional Water Board's Expedited Payment Program is conditioned upon the Regional Water Board's receipt of the Permittee's annual report, as required by the General Permit, on or before February 28, 2011. If the Permittee chooses not to, or fails to submit, an annual report on or before February 28, 2011, this offer will be deemed withdrawn and a formal enforcement action will be pursued. After the offer is deemed withdrawn, the Regional Water Board will notify the Permittee of the impending enforcement action and any associated deadlines.

Should the Permittee participate in the Expedited Payment Program, the settlement will be published in the following manner: Federal regulations require the Regional Water Board to publish notice of and to provide at least thirty (30) days for public comment on any settlement of an enforcement action addressing NPDES permit violations (40 C.F.R. section 123.27(d)(2)(iii)). Upon the receipt of the Permittee's Acceptance and Waiver and annual report on or before February 28, 2011, the Regional Water Board staff will publish a notice of the proposed resolution of the annual reporting violation.

If no comments are received within the notice period, the Regional Water Board's Executive Officer will formally endorse the Acceptance and Waiver as a stipulated order assessing the uncontested penalty amount pursuant to California Water Code section 13385(c)(1), as described under the heading "Statutory Liability" herein.

If, however, significant comments are received in opposition to the settlement, this offer may be withdrawn. If the Regional Water Board's offer is withdrawn, the Permittee will be advised of that withdrawal, and the Permittee's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. After the Regional Water Board's offer and the Permittee's waiver are deemed withdrawn, the unresolved violations will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued and the matter may be set for a hearing before the Regional Water Board or the State Water Board. For such a liability hearing, the Permittee understands that this Acceptance and Waiver endorsed by the Permittee shall be treated as a settlement communication and shall not be used as evidence in that hearing.

Any questions about this Notice of Violation and Conditional Offer and/or the Acceptance and Waiver, should be directed to Danny Pham at (510) 622-2402 or by email at dapham@waterboards.ca.gov.

Sincerely,

Thomas E. Mumley
Assistant Executive Officer

Enclosure:
Acceptance and Waiver

California Regional Water Quality Control Board
San Francisco Bay Region

Linda Adams
Acting Secretary for Environmental Protection

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Edmund G. Brown, Jr.
Governor

ACCEPTANCE OF CONDITIONAL RESOLUTION
AND WAIVER OF RIGHT TO HEARING; (Proposed) ORDER

Hammon Plating
Facility Name: HAMMON PLATING (WDID No. 2 43I010827)
Facility Address: 890 COMMERCIAL ST, PALO ALTO, CA 94303

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (hereinafter "Acceptance and Waiver") to the San Francisco Bay Regional Water Quality Control Board ("Regional Water Board"), Hammon Plating (hereinafter "Permittee") hereby accepts the "Offer to Participate in the Regional Water Board's Expedited Payment Program for Annual Reporting Violations" (hereinafter "Conditional Offer") and waives the right to a hearing before the Regional Water Board to dispute the allegation of violation .

Hammon Plating agrees that the Notice of Violation shall serve as a complaint pursuant to Article 2.5 of the California Water Code and that no separate complaint is required for the Regional Water Board to assert jurisdiction over the alleged violations through its Assistant Executive Officer. Hammon Plating agrees to perform the following:

(1) **Submit an annual report** as required under Section B.14 of the General Permit for Stormwater Discharges Associated with Industrial Activities (hereinafter "General Permit") on or before February 28, 2011, by certified mail, return receipt requested addressed as follows:

San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
Attn: Danny Pham

or by submitting a signed, electronic copy of the report by e-mail to Danny Pham at dapham@waterboards.ca.gov; and

(2) **Pay discretionary penalties** authorized by California Water Code section 13385(c)(1), **in the sum of ONE THOUSAND DOLLARS ($1,000.00)** (hereinafter "Expedited Payment Amount") by cashier's check or by certified check made payable to the "State Water Pollution Cleanup and Abatement Account," which shall be deemed payment in full of any civil liability pursuant to California Water Code section 13385 that otherwise might be assessed for the violations described in the Notice of Violation.

Hammon Plating understands that this Acceptance and Waiver waives the Permittee's right to contest the allegations in the Notice of Violation and the civil liability amount for such violations.

Hammon Plating understands that the failure to submit an annual report, as identified and described above, shall cause the Regional Water Board's Conditional Offer and the Permittee's waiver pursuant to this Acceptance and Waiver to be withdrawn. After the Regional Water Board's Conditional Offer and the Permittee's waiver are deemed withdrawn, the Permittee will be advised of the withdrawals, an administrative civil liability complaint may be issued, and the matter may be set for a hearing before the Regional Water Board or the State Water Board. For such a liability hearing, the Permittee understands that this Acceptance and Waiver executed by the Permittee will be treated as a settlement communication and will not be used as evidence in that hearing.

Hammon Plating understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the Notice of Violation.

Upon execution by Hammon Plating, the Acceptance and Waiver shall be returned to the following:

Expedited Payment Program
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
Attn: Danny Pham

Hammon Plating understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Regional Water Board to publish notice of and provide at least thirty (30) days for public comment on any proposed resolution of an enforcement action. Accordingly, this Acceptance and Waiver, prior to being formally endorsed by the Executive Officer of the Regional Water Board, will be published as required by law for public comment.

If no comments are received within the notice period that cause the Executive Officer of the Regional Water Board to reconsider the Expedited Payment Amount, the Executive Officer will formally endorse this Acceptance and Waiver. Resolution of these violations by the Regional Water Board will preclude Regional Water Board action for the annual reporting violation alleged in the Notice of Violation.

Hammon Plating understands that if significant comments are received in opposition to the Expedited Payment Amount, the offer on behalf of the Regional Water Board to resolve the violations set forth in the Notice of Violation may be withdrawn. If the Regional Water Board's offer is withdrawn, the Permittee will be advised of that withdrawal, and the Permittee's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. After the Regional Water Board's offer and the Permittee's waiver are deemed withdrawn, the unresolved violations will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued and the matter may be set for a hearing before the Regional Water Board or the State Water Board. For such a liability hearing, the Permittee understands that this Acceptance and Waiver endorsed by the Permittee shall be treated as a settlement communication and shall not be used as evidence in that hearing.

Hammon Plating understands that once this Acceptance and Waiver is formally endorsed by the Executive Officer of the Regional Water Board, the full payment required by the deadline set forth below is a condition of this Acceptance and Waiver. The Permittee shall pay the Expedited Payment Amount of ONE THOUSAND DOLLARS ($1,000.00) by a cashier's check or certified check for the full amount made payable to the "State Water Resources Control Board Waste Discharge Permit Fund". The payment will be submitted to the Regional Water Board's Expedited Payment Program, at the address listed above no later than sixty (60) calendar days after the date the Permittee receives written notice of that the Executive Officer of the Regional Water Board has formally endorsed this "Acceptance and Waiver."

I hereby affirm that I am duly authorized to act on behalf of and to bind the Permittee in the making and giving of this Acceptance and Waiver.

Hammon Plating_____
(Permittee)

By: _____ _____
(Signed Name) (Date)

_____
(Printed or typed name)

_____
(Title)

IT IS SO ORDERED PURSUANT TO CALIFORNIA WATER CODE SECTION 13385

By: _____ _____
Bruce H. Wolfe (Date)
Executive Officer
San Francisco Bay Regional Water Quality Control Board