

Appendix A - Tentative Order for Administrative Civil Liability

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

TENTATIVE ORDER

ORDER SETTING ADMINISTRATIVE LIABILITY for:

E - D COAT, INC.
715 4TH STREET
OAKLAND, ALAMEDA COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board), finds, with respect to E - D Coat, Inc. (hereinafter also referred to as the Discharger), that:

1. E - D Coat, Inc., is the operator of the facility located at 715 4th Street, Oakland (Facility). The Discharger submitted a Notice of Intent ("NOI") on March 18, 1993, to obtain coverage under State Water Resources Control Board 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 (Industrial Stormwater General Permit). The Discharger's Waste Discharger ID No. is 2 01I009846.
2. The Industrial Stormwater General Permit requires all permittees to submit an annual report by July 1 of each year to the Executive Officer of the Regional Water Board.
3. On July 24, 2012, Regional Water Board staff sent a courtesy reminder to the Discharger stating that its 2011/2012 annual report (covering the July 1, 2011, to June 30, 2012, reporting period) was past due and subject to enforcement. Staff provided the Discharger with an opportunity to submit the report by August 10, 2012, to avoid enforcement. The Discharger did not submit the report.
4. On August 27, 2012, Regional Water Board staff issued a notice of violation to the Discharger for not submitting the 2011/2012 annual report. The Discharger did not submit the report.
5. Regional Water Board staff inspected the Facility on November 8, 2012, and sent the inspection report to the Discharger on February 8, 2013, which report included a second notice of violation for not submitting the 2011/2012 annual report and an offer to settle the matter. The Discharger did not submit the report.
6. On May 17, 2013, the Assistant Executive Officer of the Regional Water Board issued Complaint No. R2-2013-1017 (Complaint) alleging that E - D Coat, Inc., failed to submit its annual report for the 2011 to 2012 reporting period by July 1, 2012, as required by the Industrial Stormwater General Permit. The Complaint proposed an administrative civil liability of \$7,460, which includes \$6,260 in Regional Water Board staff costs. The Complaint was noticed for 30 days.

7. The Regional Water Board held a duly noticed public hearing on August 14, 2013, to consider relevant evidence and testimony regarding the Complaint and whether to issue an administrative civil liability order assessing the liability proposed in the Complaint, or a higher or lower amount, reject the proposed liability, or refer the matter to the Attorney General for judicial enforcement.
8. E-D Coat, Inc., has submitted at least ten annual reports since obtaining coverage under the Industrial Stormwater General Permit. E-D Coat, Inc., has paid a civil liability in the past for not submitting an annual report. The Regional Water Board imposed an administrative civil liability of \$1,750 against E-D Coat, Inc., for failing to submit an annual report for the July 1, 2008, to June 30, 2009, reporting period under Order No. R2-2010-0091.
9. E – D Coat, Inc., has violated the Industrial Stormwater General Permit by failing to submit its 2011/2012 annual report by July 1, 2012. The report is 321 days past due (calculated from July 1, 2012, to date of issuance of the Complaint).
10. The Discharger is therefore subject to civil liability pursuant to Water Code sections 13385(a)(2) and 13323. Administrative civil liability may be imposed up to \$10,000 for each day of violation under Water Code section 13385(c)(1). Pursuant to Water Code section 13399.33(c), the Regional Water Board shall impose civil liability in an amount not less than \$1,000 for failure to submit an annual report, after proper notification to the discharger of the failure to submit the required annual report, pursuant to Water Code section 13399.31.
11. In determining the amount of civil liability, the Regional Water Board has taken into consideration the following factors to be considered in Water Code section 13327 and 13385(e): the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, 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 as justice may require. The Regional Water Board has taken into consideration the discussion of these factors in Exhibit A of the Complaint.
12. A \$7,460 administrative civil liability is appropriate based on the considerations in Finding 11. The liability includes \$6,260 for staff costs.
13. This is an action to enforce the laws and regulations administered by the Regional Water Board and is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with Cal. Code Regs., tit. 14, section 15321 (a)(2).

E-D Coat, Inc.
Administrative Civil Liability Order

IT IS HEREBY ORDERED pursuant to California Water Code sections 13385 and 13323 that E - D Coat, Inc., is civilly liable for the violation of the Industrial Stormwater General Permit as set forth above and shall pay a civil liability in the amount of \$7,460. The liability shall be paid by check payable to the San Francisco Bay Regional Water Quality Control Board within 30 days following the adoption of this Order.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, complete, and correct copy of an Order adopted by the Regional Water Board on August 14, 2013.

Bruce H. Wolfe
Executive Officer

Attachment: Exhibit A - Administrative Civil Liability Complaint No. R2-2013-1017

Appendix B - Administrative Civil Liability Complaint No. R2-2013-1017

(Exhibit A of the Tentative Order)

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

**COMPLAINT NO. R2-2013-1017
ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF**

**E - D COAT, INC.
715 4TH STREET
OAKLAND, CA 94607**

This complaint, to assess administrative civil liability (hereinafter "Complaint") based on California Water Code (Water Code) sections 13399.31 and 13399.33(c), is issued to E – D Coat, Inc. (hereinafter "E – D Coat") for the failure to submit an annual report by July 1, 2012, as required by a general permit for storm water discharges from industrial facilities. The proposed liability for this alleged violation is \$7,460.

**THE ASSISTANT EXECUTIVE OFFICER OF THE REGIONAL WATER BOARD
FINDS THE FOLLOWING:**

1. E – D Coat is the owner/operator of a facility located at 715 4th Street, Oakland (hereinafter "Facility"). The Facility is approximately 40,000 square feet and consists of impermeable paving and roofing materials. There is about 20 inches of average annual precipitation per year in Oakland. E – D Coat is not capturing storm water runoff at the Facility, and storm water generally flows to the surrounding storm drain system, which indirectly discharges to San Francisco Bay (a water of the United States).
2. The State Water Resources Control Board (State Water Board) adopted Water Quality Order No. 97-03-DWQ NPDES General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities (hereafter, the "Industrial Storm Water General Permit"), to regulate storm water discharges and authorized non-storm water discharges associated with industrial activities set forth in the federal regulations. To obtain coverage, facility operators must submit a notice of intent (NOI) and comply with the terms and conditions of the Industrial Storm Water General Permit.
3. E – D Coat discharges storm water associated with industrial activities at its Facility which requires an NPDES permit. The activities are included in the Standard Industrial Classification (SIC), description number 3471 (Electroplating, Plating, Polishing, Anodizing, and Coloring).
4. E – D Coat obtained coverage for its operations under the Industrial Storm Water General Permit on March 18, 1993 (WDID: 2 01I009846). This general permit requires the submittal of an annual report of storm water discharge on July 1 for the prior fiscal year (starting July 1 and ending June 30 the following year).

- a) Regional Water Board records show that E – D Coat has submitted at least 10 annual reports of storm water discharge since obtaining coverage under the Industrial Storm Water General Permit.
 - b) E – D Coat has paid a penalty in the past for not submitting an annual report of storm water discharge. The Regional Water Board issued administrative civil liability Order No. R2-2010-0091 in the amount \$1,750 to E – D Coat for missing the July 1, 2009, deadline for the July 1, 2008, to June 30, 2009, reporting period.
5. On July 24, 2012, Regional Water Board staff sent a courtesy reminder to E – D Coat communicating that the annual report of storm water discharge required by the Industrial Storm Water General Permit for July 1, 2011, to June 30, 2012 (hereinafter “2011-12 Annual Report”), was past due and subject to enforcement. Regional Water Board staff provided E – D Coat with an opportunity to submit the 2011-12 Annual Report by August 10, 2012, to avoid enforcement. Regional Water Board staff did not receive the report.
 6. On August 27, 2012, Regional Water Board staff issued a notice of violation to E – D Coat for not submitting the 2011-12 Annual Report by July 1, 2012, as required by the Industrial Storm Water General Permit.
 7. Regional Water Board staff inspected the Facility on November 8, 2012, and sent the inspection report to E – D Coat on February 8, 2013. Regional Water Board staff included with the report, a second notice of violation for not submitting the 2011-12 Annual Report, and an offer to settle the matter if E – D Coat submitted the annual report by March 11, 2013. Regional Water Board staff did not receive the report.

ALLEGATIONS

8. E - D Coat violated section B.14 of the Industrial Storm Water General Permit by failing to submit the 2011-12 Annual Report.
9. The 2011-12 Annual Report is 321 days past due (Calculated from July 1, 2012, when the annual report was due, to the date of the issuance of this Complaint on May 17, 2013).

STATUTORY LIABILITY

10. Administrative civil liability may be imposed up to \$10,000 for each day of violation pursuant to Water Code sections 13385(a)(2) and (c)(1).
11. Pursuant to Water Code section 13399.33(c), the Regional Water Board shall impose civil liability administratively in an amount that is not less than \$1,000 for failure to submit an annual report, after proper notification to the discharger of the failure to submit the required annual report, pursuant to Water Code 13399.31.

12. There is a discussion of the factors considered to assess administrative civil liability for the violation alleged in this Complaint in Exhibit A (incorporated herein by this reference)

MAXIMUM ADMINISTRATIVE CIVIL LIABILITY

13. Pursuant to Water Code sections 13385(a)(2) and 13385(c)(1), E – D Coat is subject to discretionary administrative civil liabilities of up to a maximum penalty of \$10,000 for each day in which each violation occurs. Discretionary administrative civil liability may be assessed by the Regional Water Board, beginning with the date that the violation(s) first occurred. Alternatively, the Regional Water Board may refer such matters to the Office of the Attorney General for prosecution and seek up to \$25,000 per violation per day pursuant to Water Code section 13385(b)(1).
14. The maximum administrative civil liability that may be assessed by the Regional Water Board for the alleged violation is \$321,000.

YOU ARE HEREBY GIVEN NOTICE THAT:

15. This Complaint is issued pursuant to Water Code section 13323.
16. The Assistant Executive Officer of the Regional Water Board proposes that administrative civil liability be imposed in the amount of \$7,460, of which \$6,260 is for the recovery of staff costs incurred thus far. The proposed liability is based on the statutory minimum penalty (Water Code section 13399.33(c)) with consideration of E – D Coat’s history of the same type of violation and Regional Water Board staff costs for investigating this matter and pursuing compliance. This proposed penalty is consistent with the State Water Board Enforcement Policy, as described in Exhibit A.
17. A Regional Water Board hearing on this matter is scheduled on **August 14, 2013**. If a hearing on this matter is held, the Regional Water Board will consider whether to affirm, reject, or modify (i.e., increase or decrease) the proposed civil liability, or whether to refer the matter to the Attorney General for assessment of judicial civil liability.
18. E – D Coat may waive its right to the scheduled hearing and pay the recommended administrative civil liability.
19. If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including, but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal, and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.
20. There are no statutes of limitation that apply to administrative proceedings. The statutes of limitation that refer to “actions” and “special proceedings” and are contained in the Code of Civil Procedure apply to judicial proceedings, not administrative proceeding.

(See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, Section 405(2), p. 510.)

21. Notwithstanding the issuance of this Complaint, the Regional Water Board and/or the State Water Board shall retain the authority to assess additional penalties against E - D Coat for violations of the Industrial Storm Water General Permit for which a liability has not yet been assessed or for violations that may subsequently occur.
22. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code section 21000 et seq., in accordance with California Code of Regulations, Title 14, section 15321.
23. Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.



Thomas E. Mumley
Assistant Executive Officer

May 17, 2013

Date

Attachments:

Exhibit A: Factors Considered in Determining Administrative Civil Liability

EXHIBIT A

Factors Considered in Determining Administrative Civil Liability

EXHIBIT A

Factors Considered in Determining Administrative Civil Liability

The Regional Water Board's Prosecution Team assessed administrative civil liability based on the violations alleged in Complaint No. R2-2013-1017, requirements of Water Code section 13385(e), and the penalty calculation methodology described in the Water Quality Enforcement Policy (Enforcement Policy), dated November 17, 2009.

- **Water Code section 13385(e)**

This statute requires consideration of the following factors for administrative civil liability assessments: the nature, circumstances, extent, and gravity of the violation or violations; susceptibility of the discharge to cleanup or abatement; degree of toxicity of the discharge; ability of the violator to pay and the effect on the violator's ability to continue its 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.

- **Enforcement Policy**

The State Water Resources Control Board Enforcement Policy addresses factors required by statute (above), and it provides a statewide methodology for calculating administrative civil liabilities. The methodology considers duration of the violation and volume of discharge (if applicable), and it allows for quantitative assessments of the following: (1) potential for harm to beneficial uses; (2) physical, chemical, biological or thermal characteristics of the discharged material; (3) susceptibility of the discharge to cleanup; (4) deviation from regulatory requirements; (5) culpability; (6) cleanup and cooperation; (7) history of violations; (8) ability to pay; (9) economic benefit; and (10) other factors as justice may require.

The Prosecution Team's discussion of how the liability factors were considered in the assessment of the alleged violation is provided below. The Enforcement Policy should be used as a companion document in conjunction with this administrative civil liability assessment since the penalty calculation methodology and definition of terms that are in the policy are not replicated herein. A copy of the Enforcement Policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

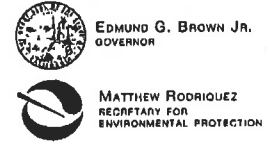
Alleged Violation: E – D Coat violated section B.14 of the Industrial Storm Water General Permit by failing to submit an annual report of storm water discharge to the Regional Water Board by July 1, 2012, for the period July 1, 2011, to June 30, 2012. The factors considered to calculate an administrative civil liability for the alleged violation are discussed in the following table:

PENALTY FACTOR	ASSESSMENT	DISCUSSION
Per-Day Assessment for Non-Discharge Violations	0.3 (multiplier)	<p>An <i>initial penalty factor</i> is calculated for each non-discharge violation, considering</p> <ul style="list-style-type: none"> a) The Potential for Harm and b) The Extent of Deviation from Applicable Requirements. <p>This factor is then multiplied by the maximum per day amount allowed under the Water Code.</p> <p>Potential for Harm: Minor</p> <p>The failure to submit the annual report on time poses a minor threat to water quality. The failure to report storm water discharges to the Regional Water Board adversely impacts staff's ability to determine adequate compliance with requirements of the Industrial Storm Water General Permit. Therefore, Regional Water Board staff inspected the facility on November 8, 2012, to evaluate compliance and did not find significant discharge violations. The potential for harm for the reporting violation is considered minor, and staff costs for the inspection are incorporated into this penalty assessment.</p> <p>Extent of Deviation from Applicable Requirements: Major</p> <p>E - D Coat's failure to submit an annual report of storm water discharge is a major deviation from what is required. Section B.14 of the Industrial Storm Water General Permit requires the submittal of annual reports of storm water discharge by July 1 of each year. Regional Water Board staff use these annual reports to evaluate the quality of stormwater runoff from industrial facilities and ensure that dischargers are implementing appropriate pollution control measures. Additionally, the report is one of the primary tools for dischargers to self-evaluate compliance with the Industrial Storm Water General Permit and identify where improvements, if any, are needed. Not submitting the annual report is a major deviation which has rendered this requirement of the Industrial Storm Water General Permit ineffective.</p>
Adjustment Factor for Multiple Day Violations	16 (decrease days)	<p>From failing to submit its 2011-12 Annual Report by July 1, 2012, to the date of the issuance of this Complaint on May 17, 2013, equals 321 days of violation. Based on the Enforcement Policy's alternate approach for multiple day violations, the actual days of violation is adjusted to 16 days.</p>
Initial Liability	\$48,000	<p>The initial liability is calculated as follows: Per day factor (0.3), multiplied by the maximum per day amount of liability allowed (\$10,000), multiplied by the number of adjusted days of violation (16), which equals \$48,000.</p>

PENALTY FACTOR	ASSESSMENT	DISCUSSION
Adjustment for Culpability (Conduct Factor 1)	1.3 (multiplier)	<p>E – D Coat is culpable for not submitting an annual report of storm water discharge to comply with the Industrial Storm Water General Permit and not being responsive to Regional Water Board staff communications.</p> <ul style="list-style-type: none"> The Industrial Storm Water General Permit explicitly states that the permittee shall submit an annual report by July 1 of each year. E – D Coat has had coverage under the Industrial Storm Water General Permit since March 18, 1993, and our records show that E – D Coat has submitted at least 10 annual reports of storm water discharge since obtaining coverage under the Industrial Storm Water General Permit. Regional Water Board staff notified E – D Coat about the deadline on multiple occasions before issuing the Complaint, including the following: a courtesy reminder on July 24, 2012; a Notice of Violation on August 27, 2012; a site inspection on November 8, 2012; and a second Notice of Violation on February 8, 2013.
Adjustment for Cleanup & Cooperation (Conduct Factor 2)	1.1 (multiplier)	E – D Coat has not cooperated by voluntarily returning to compliance. Representatives of E – D Coat verbally expressed an interest in returning to compliance, but E – D Coat never submitted the annual report or took actions to resolve the alleged violation with Regional Water Board staff.
Adjustment for History of Violations (Conduct Factor 3)	1.2 (multiplier)	E – D Coat has a history of violations. For failing to submit an annual report of storm water discharge for 2008 -09 by July 1, 2009, the Regional Water Board imposed a \$1,750 administrative civil liability on July 1, 2010 (Order No. R2-2010-0091). Because of how recent this order was issued to address the same type of violation, a multiplier of 1.2 is appropriate for this factor.
Total Base Liability	\$82,368	Each applicable factor, relating to the discharger’s conduct, is multiplied by the initial liability amount of \$48,000 for each violation to determine the Total Base Liability Amount .
Adjustment for Ability to Pay and Continue in Business	No Adjustment	The Permittee has not demonstrated an inability to pay the proposed amount. According to Manta.com online business records, E – D Coat, Inc. has annual revenue of approximately \$1 to 2.5 million and employs 10 - 19 employees. The Regional Water Board has no evidence that E – D Coat would be unable to pay the proposed liability set forth in this Complaint or that the amount of the liability would cause undue financial hardship.
Adjustment for Economic Benefit	\$1,000 (\$1,100 minimum penalty)	E – D Coat realized an economic benefit by not preparing and submitting the required annual report. The estimated cost to prepare and submit an annual report is approximately \$1,000 based on the State Water Board’s Division of Water Quality Storm Water Program’s July 16, 2012, draft “Analysis for the Compliance Costs for the Industrial General Permit.” The minimum liability that may be assessed to comply with the Enforcement Policy is the economic benefit gained plus ten percent.

<p>Adjustment for Other Matters as Justice May Require</p>	<p>\$1,000 minimum penalty and \$6,260 in staff costs</p>	<p>The Regional Water Board may assess a minimum penalty of no less than \$1,000 for the failure to submit an annual report, pursuant to Water Code sections 13399.31 and 13399.33(c). E – D Coat received the required notifications about noncompliance on July 24, 2012 (courtesy reminder letter), August 27, 2013 (first Notice of Violation), and February 8, 2013 (second Notice of Violation).</p> <p>Costs incurred by Regional Water Board staff to investigate E – D Coat, send Notices of Violation, and prepare this compliant are estimated to be \$6,260. This estimate is based on approximately 42 hours of staff time and an average labor rate of \$150 per hour for Regional Water Board staff (staff cost + overhead).</p>
<p>Final Liability Amount</p>	<p>\$7,460</p>	<p>The Regional Water Board has the discretion to assess administrative liability based on the above assessment in the amount of \$82,368. The Regional Water Board’s Prosecution Team recommends assessing administrative civil liability based on the minimum penalty and staff costs which may be considered under “Other Factors as Justice May Require” and increasing the minimum penalty based on E – D Coat’s history of the same violation. The final liability the Prosecution Team proposes with this recommendation is \$7,460 (\$1,000 x 1.2 multiplier for history of violations + \$6,260 to recover staff costs).</p>

Appendix C - Prosecution Team Evidentiary Submittal



San Francisco Bay Regional Water Quality Control Board

July 5, 2013

Yuri Won, Senior Staff Counsel
Advisory Team
California Regional Water Board, San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612
YWon@waterboards.ca.gov

BY PERSONAL SERVICE & ELECTRONIC MAIL

Subject: Administrative Civil Liability Complaint No. R2-2013-1017 Against E – D Coat, Inc., Alameda County; Prosecution Team Evidentiary Submittal

Dear Yuri Won,

In accordance with the Hearing Procedure for the above-referenced matter (Hearing Procedure), the Prosecution Team is providing you with one hard copy and one electronic copy of the information required pursuant to Paragraphs 1 through 4 on Page 4, *Submission of Evidence and Policy Statements*, of the Hearing Procedure. The deadline for the Prosecution Team to submit all information required under *Submission of Evidence and Policy Statements* is July 5, 2013.

All Evidence for the Regional Water Board's Consideration:

Enclosed with this letter, please find the Prosecution Team's initial evidence submittal, which includes Exhibits 1 through 22.

Designated Party Members:

The names of the members of the Prosecution Team, their titles and/or roles, and contact information (email addresses, addresses, and phone numbers) are provided on Page 3 of the Hearing Procedure and are repeated below:

Thomas Mumley, Assistant Executive Officer, TMumley@waterboards.ca.gov, 510-622-2395
Dyan C. Whyte, Assistant Executive Officer, DWhyte@waterboards.ca.gov, 510-622-2441
Lila Tang, Division Chief, LTang@waterboards.ca.gov, 510-622-2425
Brian Thompson, Section Leader, BThompson@waterboards.ca.gov, 510-622-2422
Christine Boschen, Section Leader, Boschen.Christine@Waterboards.ca.gov, 510-622-2346
David Williams, Technical Staff, Dwilliams@waterboards.ca.gov, 510-622-2373
Cecil Felix, Technical Staff, Cecil.Felix@waterboards.ca.gov, 510-622-2343
Danny Pham, Technical Staff, Pham.Danny@Waterboards.ca.gov, 510-622-2402
Address: California Regional Water Board, San Francisco Bay Region, 1515 Clay Street, Suite 1400, Oakland, CA 94612

Anna Kathryn Benedict, Staff Counsel III, AnnaKathryn.Benedict@waterboards.ca.gov, (916) 323-6848
Address: State Water Resources Control Board, 1001 I Street, P.O. Box 100, Sacramento,

JOHN MULLER, CHAIR | BRUCE H. WOLFE, EXECUTIVE OFFICER

1515 Clay St., Suite 1400, Oakland, CA 94612 | www.waterboards.ca.gov/sanfranciscobay

Yuri Won
ACL Complaint No. R2-2013-1017

List of Witnesses and Subject of Each Witness's Testimony

The Prosecution Team has provided the names of the witnesses that will testify for the Prosecution Team at the Hearing and the subject of each witness's testimony in Exhibit 1 of the Prosecution Team's Initial Submission of Evidence and Policy Statements, enclosed herewith.

As required by the Hearing Procedure, the Prosecution Team also provided one hard copy and one electronic copy of this letter, including the enclosure, to E - D Coat, Inc.

If you have any questions, please contact David Williams at (510) 622-2373 or Dwilliams@waterboards.ca.gov.

Sincerely,



Anna Kathryn Benedict
Staff Counsel III

Enclosure: Prosecution Team's Initial Submission of Evidence and Policy Statements

Copy to: (by certified mail and electronic mail)

Certified Mail No. 7012 2210 0000 4646 3473
E - D Coat, Inc.
Attn: Lisa Rossi
715 4th Street
Oakland, California 94607
lrossi32@aol.com

Copy to: (by electronic mail)

Thomas Mumley, Regional Water Board, Prosecution Team, TMumley@waterboards.ca.gov
Dyan C. Whyte, Regional Water Board, Prosecution Team, DWhyte@waterboards.ca.gov
Lila Tang, Regional Water Board, Prosecution Team, LTang@waterboards.ca.gov
Brian Thompson, Regional Water Board, Prosecution Team, BThompson@waterboards.ca.gov
Christine Boschen, Regional Water Board, Prosecution Team,
Boschen.Christine@Waterboards.ca.gov
Anna Kathryn Benedict, Regional Water Board, Prosecution Team,
AnnaKathryn.Benedict@waterboards.ca.gov
Derek McDonald, Attorney, Office of General Counsel
East Bay Municipal Utility District
dmcdonal@ebmud.com

E – D Coat, Inc.

List of Prosecution Team Witnesses

List of Prosecution Team Witnesses

Administrative Civil Liability Complaint No. R2-2013-1017

E – D Coat, Inc.

715 4th Street

Oakland, Alameda County

The following witnesses will be available to testify for the Prosecution Team at the Hearing:

1. David Williams, B.S., Environmental Scientist, will be available to testify regarding applicable regulatory requirements, and key monitoring and reporting provisions of State Water Resources Control Board Water Quality Order No. 97-03-DWQ NPDES General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities (General Permit), telephone and electronic mail communications with the Discharger, the General Permit Annual Report enforcement process, the San Francisco Bay Regional Water Board's (Regional Water Board) progressive enforcement process, authenticity of photographs taken during a perimeter inspection of the Discharger's facility, and the Regional Water Board's industrial storm water program, generally.
2. Brian Thompson, CHG, CEG, Senior Engineering Geologist, will be available to testify regarding applicable regulatory requirements, and key monitoring and reporting provisions of the General Permit, the Regional Water Board's progressive enforcement process, and the Regional Water Board's industrial storm water program, generally.
3. Cecil Felix, P.G., Engineering Geologist, will be available to testify regarding site a inspection conducted at the Discharger's facility, applicable regulatory requirements, and key monitoring and reporting provisions of the General Permit.
4. Danny Pham, M.S., Staff Services Analyst, will be available to testify regarding the applicable reporting provisions of the General Permit, and the General Permit Annual Report submittal tracking and follow up process.
5. Christine Boschen, M.S., Senior Environmental Scientist, will be available to testify regarding the applicable reporting provisions of the General Permit, the General Permit Annual Report enforcement process and the Regional Water Board's industrial storm water program, generally.
6. Thomas Mumley, P.E., Ph.D., Assistant Executive Officer, will be available to testify regarding the applicable regulatory requirements, and key monitoring and reporting provisions of the General Permit, the Regional Water Board's progressive enforcement process, and the Regional Water Board's industrial storm water program, generally.

List of Exhibits

Administrative Civil Liability Complaint No. R2-2013-1017 Against E – D Coat, Inc.

Exhibit No.	Description of Exhibit Provided by Reference
1	State Water Resources Control Board Water Quality Order No. 97-03-DWQ NPDES General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities http://www.swrcb.ca.gov/water_issues/programs/stormwater/docs/induspmt.pdf
2	State Water Resources Control Board Porter-Cologne Water Quality Control Act http://www.waterboards.ca.gov/laws_regulations/docs/portercologne.pdf
3	State Water Resources Control Board Water Quality Enforcement Policy http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_finall11709.pdf
4	December 14, 2011, Board Meeting agenda item #8, Enforcement Policy Penalty Methodology - Overview of Methodology November 30, 2011 http://www.waterboards.ca.gov/sanfranciscobay/board_info/agendas/2011/December/8_SSR.pdf
5	California Regional Water Quality Control Board San Francisco Bay Region Complaint No. R2-2013-1017 Administrative Civil Liability in the Matter of E – D Coat, Inc., 715 4 th Street, Oakland, CA 94607 http://www.waterboards.ca.gov/sanfranciscobay/board_info/agendas/2013/August/EDC/ACL.pdf

Exhibit No.	Description of Exhibit Provided by Hard Copy and Electronically
6	E – D Coat, Inc. State Water Resources Control Board Notice of Intent for General Permit to discharge Storm Water Associated with Industrial Activity WDID: 2 01I009846 Processed Date: March 18, 1993
7	Courtesy Reminder Letter for 2011-12 Industrial Storm Water Annual Report sent to E – D Coat, Inc., 715 4 th Street, Oakland, CA 94607 on July 24, 2012
8	Notice of Violation for Late Annual Report for Industrial General Stormwater Permit—Past Due July 1, 2012 sent to E – D Coat, Inc., 715 4 th Street, Oakland, CA 94607 on August 27, 2012
9	USPS Domestic Return Receipt signed by Lisa Rossi for August 27, 2012 Notice of Violation
10	Notice of Violation and Enforcement Settlement Offer to Participate in Expedited Payment Program for Failure to Submit a 2011-12 Annual Report by July 1, 2012, as Required by State Water Resources Control Board General Permit for Stormwater Discharges Associated With Industrial Activities, Order No. 97-DWQ, NPDES No. CAS000001 sent to E – D Coat, Inc., 715 4 th Street, Oakland, CA 94607 on February 8, 2013
11	USPS Domestic Return Receipt signed by Lisa Rossi for February 8, 2013, Notice of Violation and Enforcement Settlement Offer
12	Standard Industrial Classification Description Web Page for 3471
13	Aerial Map of E – D Coat, Inc., 715 4 th Street, Oakland, CA 94607

14	Perimeter Inspection Photos a - d and MSDS Hazard Signs and Meanings
15	Communication Log with E - D Coat, Inc.
16	Emails with E- D Coat, Inc.
17	EBMUD Directors Decision 2.28.13
18	November 08, 2012, E- D Coat, Inc. Industrial Storm Water Inspection Report
19	May 20, 2002, E- D Coat, Inc. Industrial Storm Water Inspection Form and Associated General Permit Documentation
20	Notice of Violation and Enforcement Settlement Offer to Participate in Expedited Payment Program for Failure to Submit a Annual Report by July 1, 2009, as Required by State Water Resources Control Board General Permit for Stormwater Discharges Associated With Industrial Activities, Order No. 97-DWQ, NPDES No. CAS000001 sent to E - D Coat, Inc., 715 4th Street, Oakland, CA 94607 on August 3, 2009 with USPS Domestic Return Receipt signed by Lisa Rossi
21	California Regional Water Quality Control Board, San Francisco Bay Region Complaint No. R2-2010-0016 Administrative Civil Liability in the Matter of E - D Coat, Inc., 715 4 th Street, Oakland, CA 94607
22	California Regional Water Quality Control Board, San Francisco Bay Region Settlement Agreement and Stipulation for Order; Order No. R2-2010-0091

E – D Coat, Inc.

Exhibit Provided by Reference

**State Water Resources Control Board Water Quality Order No. 97-03-DWQ NPDES General
Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water
Associated with Industrial Activities**

http://www.swrcb.ca.gov/water_issues/programs/stormwater/docs/induspmt.pdf

E – D Coat, Inc.

Exhibit Provided by Reference

State Water Resources Control Board Porter-Cologne Water Quality Control Act

http://www.waterboards.ca.gov/laws_regulations/docs/portercologne.pdf

E – D Coat, Inc.

Exhibit Provided by Reference

State Water Resources Control Board Water Quality Enforcement Policy

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

E – D Coat, Inc.

Exhibit Provided by Reference

December 14, 2011, Board Meeting agenda item #8, Enforcement Policy Penalty Methodology -
Overview of Methodology November 30, 2011

http://www.waterboards.ca.gov/sanfranciscobay/board_info/agendas/2011/December/8_SSR.pdf

E – D Coat, Inc.

Exhibit Provided by Reference

California Regional Water Quality Control Board San Francisco Bay Region Complaint No. R2-
2013-1017 Administrative Civil Liability in the Matter of E – D Coat, Inc., 715 4th Street,
Oakland, CA 94607

http://www.waterboards.ca.gov/sanfranciscobay/board_info/agendas/2013/August/EDC/ACL.pdf

E – D Coat, Inc.

**E – D Coat, Inc. State Water Resources Control Board Notice of Intent for General Permit to
discharge Storm Water Associated with Industrial Activity**

WDID: 2 01I009846 Processed Date: March 18, 1993

State of California
 State Water Resources Control Board
NOTICE OF INTENT
 FOR

009846

GENERAL PERMIT TO DISCHARGE STORM WATER
ASSOCIATED WITH INDUSTRIAL ACTIVITY (WQ Order No. 91 - 13 - DWQ)
 (Excluding Construction Activities)

MARK ONLY ONE ITEM
 1. Existing Facility
 2. New Facility
 3. Change of Information
 WDID# _____

I. OWNER/OPERATOR

Name: Jerry Rossi		A. Owner/Operator Type: (Check One)			
Mailing Address: 715 4th Street		1. <input type="checkbox"/> City	2. <input type="checkbox"/> County	3. <input type="checkbox"/> State	4. <input type="checkbox"/> Federal
City: Oakland		5. <input type="checkbox"/> Special District		6. <input type="checkbox"/> Government Combo	7. <input checked="" type="checkbox"/> Private
Contact Person: Jerry Rossi	State: CA	Zip: 94607	Phone: (510) 832-8104		
B. 1. <input type="checkbox"/> Owner 2. <input type="checkbox"/> Operator 3. <input checked="" type="checkbox"/> Owner/Operator					

II. FACILITY/SITE INFORMATION

Facility Name: E-D Cost, Inc.		County: Alameda			
Street Address: 715 4th Street		Contact Person: Jerry Rossi			
City: Oakland		State: CA	Zip: 94607	Phone: (510) 832-8104	
Parcel Number(s) (if more than 4 apply to facility, enter additional numbers in SECTION IX. A):					
A. _____		B. _____		C. _____	
D. _____					

III. BILLING ADDRESS

Send Billing Statements To: A. Owner/Operator B. Facility C. Other (Specify in SECTION IX. B)

IV. RECEIVING WATER INFORMATION

A. Does your facility's storm water discharge directly to: (Check one)

1. Storm drain system
 Owner of storm drain system: (Name) _____

2. Directly to waters of U.S. (e.g., river, lake, creek, ocean)

3. Indirectly to waters of U.S.

B. Name of closest receiving water:
 Oakland Estuary - Oakland Inner Harbor

V. INDUSTRIAL INFORMATION

A. SIC Code(s):
 1. 3471 2. _____ 3. _____ 4. _____

B. Type of Business: _____

C. Industrial activities at facility: (Check all that apply)

1. Manufacturing 2. Vehicle Maintenance 3. Haz. Waste Treatment, Storage or Disposal (RCRA, Subtitle C)
 4. Material Storage 5. Vehicle Storage 6. Material Handling 7. Wastewater Treatment
 8. Power Generation 9. Recycling 10. Landfill 99. Other _____

VI. MATERIAL HANDLING/MANAGEMENT PRACTICES

A. Types of materials handled and/or stored outdoors: (Check all that apply)

1. <input type="checkbox"/> Solvents	2. <input type="checkbox"/> Scrap Metal	3. <input type="checkbox"/> Petroleum Products	4. <input checked="" type="checkbox"/> Plating Products
5. <input type="checkbox"/> Pesticides	6. <input checked="" type="checkbox"/> Hazardous Wastes	7. <input type="checkbox"/> Paints	8. <input type="checkbox"/> Wood Treating Product
99. <input type="checkbox"/> Other (Please List)			

B. Identify existing management practices employed to reduce pollutants in industrial storm water discharges: (Check all that apply)

1. <input type="checkbox"/> Oil/Water Separator	2. <input checked="" type="checkbox"/> Containment	3. <input checked="" type="checkbox"/> Berms	4. <input type="checkbox"/> Leachate Collection
5. <input checked="" type="checkbox"/> Overhead coverage	6. <input type="checkbox"/> Recycling	7. <input checked="" type="checkbox"/> Retention Facilities	8. <input checked="" type="checkbox"/> Chemical Treatment
99. <input type="checkbox"/> Other (Please List)			

VII. FACILITY INFORMATION

A. Total size of site: (Check one) 40,000 <input type="checkbox"/> Acres <input checked="" type="checkbox"/> Sq. ft.	B. Percent of site impervious: (Including rooftops) _____ 100 %
--	---

VIII. REGULATORY STATUS (Check all that apply)

A. <input type="checkbox"/> Regulated by Storm water Effluent Guideline (40 CFR Subchapter N)	B. <input type="checkbox"/> Waste Discharge Requirements Order number _____	C. <input type="checkbox"/> NPDES Permit CA _____
D. <input type="checkbox"/> RCRA Permit Number _____	E. <input type="checkbox"/> Regulated by California Code of Regulations Article 6, Chapter 15 (Feedlots).	

IX. COMMENTS (Enter additional information for SECTIONS II AND III)

A. Additional Parcel Numbers:

B. Billing Information: (Enter Name and Address)

X. CERTIFICATION

I certify under penalty of law that this document and all attachments were prepared under my direction and supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. In addition, I certify that the provisions of the permit, including the development and implementation of a Storm Water Pollution Prevention Plan and a Monitoring Program Plan, will be complied with.

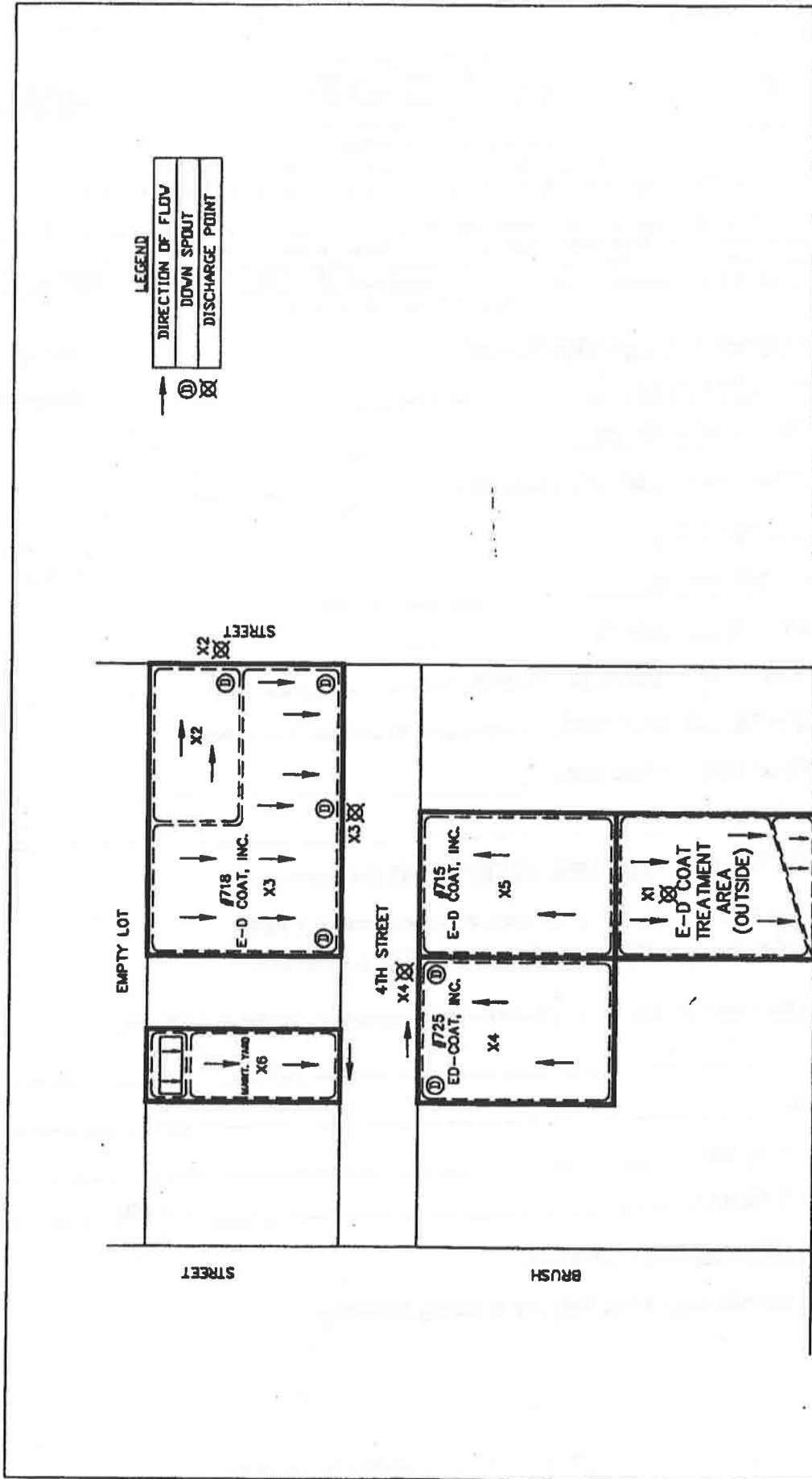
Printed Name Jerry Rossi

Signature *Jerry Rossi* Date 3/15/93

Title Vice President - General Manager

STATE USE ONLY

2 01S009846 REGION:2 ISSUED:11-19-91
 NPDES: CAS000001 ORDER: 91-013 \$250
 DATE: 03/18/93
 CK#: 027949 - \$250.00
 PERMIT ISSUED



LEGEND

	DIRECTION OF FLOW
	DOWN SPOUT
	DISCHARGE POINT

E-D COAT, INC. 715 4TH ST OAKLAND, CA		STORAGE AREAS
DR. BY: G.P.T.	REV. NO:	DRAINAGE/DISCHARGE STRUCT.
DATE: 11-11-92	DATE:	TERRITORY DRAINAGE
CHEMICAL DATA MANAGEMENT SYSTEMS		

0 25
SCALE
(FEET)

RECEIVED

MAY 13 1997

E-D COAT

State of California State
Water Resources Control Board
NOTICE OF INTENT

For Existing Facility Operators



TO COMPLY WITH THE TERMS OF THE
GENERAL PERMIT TO DISCHARGE STORM WATER
ASSOCIATED WITH INDUSTRIAL ACTIVITY (WQ ORDER No. 97-03-DWQ)

4621

This Notice of Intent (NOI) is being sent to all facility operators that were enrolled under the prior Industrial Storm Water General Permit that has now expired. A new General Permit has been adopted to replace the expired one. To enroll under the new General Permit, review this NOI (and make any necessary corrections), sign the CERTIFICATION on the reverse side, and return this original NOI within 45 days of receipt to: STORM WATER NOI PROCESSING UNIT, STATE WATER RESOURCES CONTROL BOARD, PO BOX 1977, SACRAMENTO, CA 95812-1977

FACILITY OPERATOR INFORMATION:

NAME: JERRY ROSSI

STREET: 715 4TH STREET

CITY, STATE, ZIP: OAKLAND, CA 94087

WDID: 201S009846

CONTACT & PHONE

JERRY ROSSI
(510) 832-8104

FACILITY LOCATION:

NAME: E-D COAT INC

STREET: 715 4TH STREET

CITY, STATE, ZIP: OAKLAND, CA 94087

County: Alameda

CONTACT & PHONE

JERRY ROSSI
(510) 832-8104

FACILITY MAILING ADDRESS: (IF DIFFERENT THAN FACILITY LOCATION)

STREET OR POST OFFICE BOX: _____

CITY, STATE, ZIP: _____

ADDRESS FOR CORRESPONDENCE - SEND TO: (CHECK ONE)

Facility Operator Address [] Facility Mailing Address [] Both

BILLING ADDRESS INFORMATION - SEND TO: (CHECK ONE)

Facility Operator Address [] Facility Mailing Address [] Other (enter below)

NAME: _____

STREET: _____

CITY, STATE, ZIP: _____

CONTACT PERSON: _____ PHONE: _____

SIC(S) OF REGULATED ACTIVITY:

3471 Electroplating, Plating, Polishing, Anodizing & Coloring

WDID: 2 01S009846

CERTIFICATION:

"I certify under penalty of law that this document and all attachments were prepared under my direction and supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. In addition, I certify that the provisions of the permit, including the development of and implementation of a Storm Water Pollution Prevention Plan and a Monitoring Program Plan, will be complied with."

Printed Name: Jerry Rossi

Signature: *Jerry Rossi* Date: 5/13/97

Title: Chief Executive Officer

JERRY ROSSI
JERRY ROSSI
715 4TH STREET
OAKLAND, CA 94067

For State Water Board Use

E – D Coat, Inc.

Courtesy Reminder Letter for 2011-12 Industrial Storm Water Annual Report sent to

E – D Coat, Inc., 715 4th Street, Oakland, CA 94607 on July 24, 2012



San Francisco Bay Regional Water Quality Control Board

July 24, 2012

E D Coat Inc
Attn: Lisa Rossi or Legally Responsible Person
715 4th St
Oakland, California 94607

Subject: Courtesy Reminder Letter for 2011-12 Industrial Storm Water Annual Report

Facility: E D Coat Inc
715 4th St
Oakland, California 94607
WDID No.: 2 011009846; PID: 0031
Facility Contact: Lisa Rossi

Dear Lisa Rossi or Legally Responsible Person:

Did you forget something important?

This is a courtesy reminder that your 2011-12 Industrial Storm Water Annual Report¹ for the above named facility was due July 1, 2012. We have received approximately 85% of all 1300+ reports. As of July 20, 2012, you are part of the 15% of facilities that are late without a complete submittal. If we do not receive your complete report by **August 10, 2012**, we will pursue a formal enforcement action for the late submittal.

Please note that enforcement liability amounts are assessed per day beginning July 2, 2012. In the past, the Water Board has assessed facility operators for late annual reports \$25-50 per day with a minimum liability of \$1,000 per report plus staff costs for investigation up to \$150/hr.

Do any of the following situations apply as to why your report is late?

A. You are behind in compiling the report.

Complete your report and submit it to us by August 10, 2012. If you anticipate you will miss this date, please contact us and discuss the specifics of your situation. Please note that we cannot grant any extensions nor guarantee we will not take enforcement for your late report.

¹ Your facility is enrolled under the Industrial Storm Water General Permit (Order 97-03-DWQ), which requires submittal of an Annual Report each July 1. The permit is online at http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/induspmt.pdf

- B. You have closed the facility or no longer operate the facility.**
1. Please submit a completed Notice of Termination (NOT) application with its required supporting documents to us by August 10, 2012. Obtain a blank NOT form online and follow its instructions at http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/indusnot.doc
 2. Make sure that the application is signed by the legally responsible person.²
 3. Your 2011-12 Annual Report is still due; see below on how to submit.

- C. You believe you have already submitted the report by July 1.**
We receive over 1,300 reports. Your report may have been misplaced. Please resubmit the report and confirm we have received it. If you have documentation of your original submittal (i.e. certified mail receipt, copy of email, etc), please include it with your report.

Some common related errors include

- For reports that were e-filed within the SMARTS database, the legally responsible person did not certify the report. Upon completion, the status of the report should read as 'submitted'.
- For hardcopy reports, the legally responsible person may have forgotten to sign the report. We cannot accept reports that are not signed.

- D. You believe your facility should not be permitted, and therefore, you believe you should not need to submit an Annual Report.**
Please contact Danny Pham by email at dapham@waterboards.ca.gov or by phone at (510) 622-2402. Be prepared to explain why you believe the permit does not apply to your facility. We will determine whether the permit applies. If we determine your facility must be permitted, you will be held to the due date of July 1, 2012, and you will need to submit your Annual Report by August 10, 2012 to avoid formal enforcement for a late report.

How to submit the report?

1. Obtain a blank annual report template online at http://www.waterboards.ca.gov/water_issues/programs/stormwater/annualreport.shtml. If you need a paper copy sent to you, please call us at (510) 622-2402.
2. Complete all applicable sections of the annual report; attach supporting documentation as necessary.
3. Make sure that the report is signed by the legally responsible person.²
4. Verify we have your current contact information. Notify us by circling or highlighting new contact information on the first page of the annual report.

² For a full explanation of legally responsible person, please see the permit, Section C.9, Signatory Requirements.

5. Send the report to the correct address (send paper copy or email electronically):

By mail:

SF Bay Water Board
Attn: Industrial Storm Water Staff
1515 Clay Street, Suite 1400
Oakland, CA 94612

By email:

dapham@waterboards.ca.gov
In your subject line, include your
WDID No. and use this phrase:
"2011-12 Industrial Annual Report"

6. Ensure that you have a date receipt that your report was received by us. You can do this by sending your paper copy certified mail with a return receipt requested, or by sending your electronic copy to us by email and we will reply with an email confirmation.

Would you like to sign up for our email notification list?

- We plan on issuing quarterly newsletters that include reminders on important dates and successful permit implementation strategies. Please sign up for the group called "Industrial Stormwater" on our website, here:
http://www.waterboards.ca.gov/resources/email_subscriptions/req2_subscribe.shtml.

Who to contact with questions?

- Danny Pham is the contact person for Industrial Storm Water Annual Reports, Notices of Termination, and related issues. You can reach Danny by email at dapham@waterboards.ca.gov or by phone at (510) 622-2402 and. Due to the high volume of calls, email is preferred and will get quicker responses. Danny or another staff person will get back to you as soon as possible.
- You are welcomed to visit our office at 1515 Clay Street, Suite 1400, Oakland, CA 94612 by first contacting Danny Pham.
- Please note again, if you are submitting your report by email, send it to dapham@waterboards.ca.gov as noted above.

Sincerely,

Industrial Storm Water Staff
Watershed Management Division

E – D Coat, Inc.

**Notice of Violation for Late Annual Report for Industrial General
Stormwater Permit—Past Due July 1, 2012 sent to**

E – D Coat, Inc., 715 4th Street, Oakland, CA 94607 on August 27, 2012



San Francisco Bay Regional Water Quality Control Board

August 27, 2012

E D Coat Inc
Attn: Lisa Rossi
715 4th St
Oakland, California 94607

VIA CERTIFIED MAIL
No. 7011 2000 0001 1335 9643
WDID No: 2 011009846
Project No.: [0031]

Subject: Notice of Violation for Late Annual Report for Industrial General Stormwater Permit—Past Due July 1, 2012, Violation Compounds Daily

Facility Name: E D COAT INC
Facility Address: 715 4TH ST, OAKLAND, CA 94607

Dear Lisa Rossi:

The facility, located at the above address, is regulated under the State Water Resources Control Board's General Permit for Stormwater Discharges Associated with Industrial Activities (hereinafter "Industrial General Stormwater Permit"). The Industrial General Stormwater Permit requires E D Coat Inc to submit an annual report by July 1 of each year. We sent you a courtesy reminder, dated July 24, 2012, urging you to submit your 2011-12 annual report by August 10, 2012, to avoid enforcement. According to our records, as of August 27, 2012, we have not received E D Coat Inc's annual report.

Failure to submit the annual report is a violation of the Industrial General Stormwater Permit, the California Water Code, and the Federal Clean Water Act. Thus, we intend to take a formal enforcement action against E D Coat Inc. Furthermore, E D Coat Inc has been late with annual reports in the past, which we consider in calculating a monetary penalty. Additionally, each day the report is late increases the penalty amount.

Therefore, we urge you to submit a complete annual report to us as soon as possible, 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

Alternatively, you may submit a signed, electronic copy of the report by e-mail to R2Stormwater@waterboards.ca.gov. We will confirm that we received the report.

A blank copy of the annual report form may be downloaded from our website:
http://www.waterboards.ca.gov/water_issues/programs/stormwater/annualreport.shtml

If there were uncontrollable factors that kept E D Coat Inc from submitting the report to us on time, please explain the specifics of the situation, in writing, when you submit the Annual Report.

If you have any questions, please contact Danny Pham at (510) 622-2402 or email Danny.Pham@waterboards.ca.gov.

Sincerely,



Thomas Mumley
Assistant Executive Officer

E – D Coat, Inc.

USPS Domestic Return Receipt signed by Lisa Rossi for August 27, 2012 Notice of Violation

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is elected.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

E D Coat Inc
Attn: Lisa Rossi or Legally
Responsible Person
715 4th St
Oakland, California 94607

COMPLETE THIS SECTION ON DELIVERY

- A. Signature Agent
Lisa Rossi Address
- B. Received by (Printed Name) Date of Delivery
Lisa Rossi
- D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

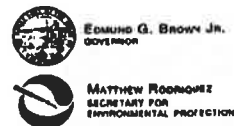
2. Article Number (Transfer from service label) 7011 2000 0001 1335 9643

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

E – D Coat, Inc.

Notice of Violation and Enforcement Settlement Offer to Participate in Expedited Payment Program for Failure to Submit a 2011-12 Annual Report by July 1, 2012, as Required by State Water Resources Control Board General Permit for Stormwater Discharges Associated With Industrial Activities, Order No. 97-DWQ, NPDES No. CAS000001 sent to

E – D Coat, Inc., 715 4th Street, Oakland, CA 94607 on February 8, 2013



San Francisco Bay Regional Water Quality Control Board

Notice of Enforcement for Late Annual Report

You have until **March 11, 2013** to act, or face additional administrative civil liability.

Questions? Contact David Williams at (510) 622-2373 or dwilliams@waterboards.ca.gov.

This is a notice of enforcement for a late report violation with an offer to settle the violation through our Expedited Payment Program by paying a penalty of \$2,600. The late report violation is for the failure to submit a 2011-12 Annual Report by July 1, 2012, as required by the State Water Resources Control Board General Permit for Stormwater Discharges Associated with Industrial Activities, Order No. 97-DWQ, NPDES No. CAS000001 (hereinafter "General Permit").

On July 24, 2012, we sent a courtesy reminder that the annual report required by the General Permit was past due and subject to enforcement. We asked for submittal of the report by August 10, 2012, to avoid enforcement. We did not receive the report. Because we had not received your annual report by August 10, 2012 we inspected your facility (Inspection Report enclosed).

We are still waiting to receive your Annual Report. Since we did not observe other significant violations of the General Permit during our inspection, we are sending this notice of violation and offer to settle the late report violation. **You have three options for responding to the offer:**

- A. **Accept the Enforcement Settlement Offer** by submitting your annual report within 30 days of this notice and agreeing to pay a settlement of \$2,600 through the Expedited Payment Program. This is the fastest and most certain way to get closure on this enforcement action. If you choose this option, submit your annual report within 30 days of this notice and sign and submit the Acceptance and Waiver form attached to the accompanying Enforcement Settlement Offer letter, by March 11, 2013. The Waiver form provides submittal instructions. Do not submit payment until receiving an invoice with payment instructions.
- B. **Contest the annual reporting violation** by submitting in writing the basis for the challenge with supporting evidence. For example, evidence such as a certified mail receipt may show that the Annual Report was submitted on time or evidence such as a Notice of Termination (submitted in accordance with the General Permit) may show that the facility is no longer subject to the requirements of the General Permit. If this option is selected, the challenge contesting the violation must be received by March 11, 2013.

Challenges will be reviewed. If accepted, we will provide a written confirmation that the violation of the General Permit has been retracted and that this enforcement action has been terminated. If we do not agree, we will pursue additional penalties for costs incurred up to \$10,000 per day, as discussed further in the accompanying Early Settlement Offer letter. To avoid the possibility of additional penalties, we urge you to contact David Williams (contact information above) as soon as possible so we can assist if you have a valid challenge.

- C. **Reject the Enforcement Settlement Offer** by not responding or submitting a written rejection to the offer by March 11, 2013. In either case, we will pursue penalties of up to \$10,000 per day, as discussed further in the Early Settlement Offer letter.



San Francisco Bay Regional Water Quality Control Board

February 8, 2013

E D Coat Inc.
Attn: Lisa Rossi
715 4th St
Oakland CA 94607

By Certified Mail
No. 7012 2210 0000 4646 2896
WDID No: 2 01I009846
Project No.: [0031]

Enforcement Settlement Offer to Participate in Expedited Payment Program for Failure to Submit a 2011-12 Annual Report by July 1, 2012, 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: E D Coat Inc
Facility Address: 715 4th St, Oakland CA 94607

Dear Lisa Rossi:

This letter provides notice of a late annual report violation with an offer to settle the matter through our Expedited Payment Program by paying a penalty of \$2,600. It also transmits a report of our inspection of your facility (see enclosed Inspection Report).

- We hereby notify E D Coat Inc. (hereinafter "Permittee") of the alleged violation of the State Water Resources Control Board's General Permit for Stormwater Discharges Associated with Industrial Activities (hereinafter "General Permit"), the California Water Code, and the Federal Clean Water Act, for the failure to submit a 2011-12 Annual Report by July 1, 2012
- The Permittee has an opportunity to settle the alleged violation through expedited payment (hereinafter "Expedited Payment Program"). The Expedited Payment Program addresses liability that may be assessed pursuant to Water Code section 13385.

NOTICE OF VIOLATION

The Permittee has violated section B.14 of the General Permit by failing to submit its 2011-12 Annual Report by July 1, 2012, to the San Francisco Bay Regional Water Quality Control Board's (hereinafter "Regional Water Board").

STATUTORY LIABILITY

Pursuant to Water Code sections 13385(a)(2) and 13385(c)(1), the Permittee is subject to discretionary administrative civil liabilities of up to \$10,000 for each day in which each 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. Alternatively, the Regional Water

JOHN MULLER, CHAIR | BRUCE H. WOLFE, EXECUTIVE OFFICER

1515 Clay St., Suite 1400, Oakland, CA 94612 | www.waterboards.ca.gov/sanfranciscobay

Board may refer such matters to the Office of the Attorney General for prosecution and seek up to \$25,000 per violation per day pursuant to Water Code section 13385(b)(1).

MAXIMUM ADMINISTRATIVE CIVIL LIABILITY

The Regional Water Board has not received the Permittee's 2011-2012 Annual Report by February 8, 2013. The statutory maximum administrative civil liability that may be imposed for the Permittee's failure to file an annual report by July 1, 2012, is \$2,220,000 (222 of days of violation x \$10,000).

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

We are making a proposal to settle the alleged violation through the Expedited Payment Program for the following amount: \$2,600 (hereinafter "Expedited Payment Amount"). This Expedited Payment Amount is based on a statutory minimum penalty of \$1,000 plus Regional Water Board costs to bring about compliance. This proposed amount is further detailed below.

In general, the Regional Water Board must consider the factors set forth in Water Code section 13385(e) when determining the amount of discretionary administrative civil liability. In May 2010, the State Water Resources Control Board (hereinafter "State Water Board") Water Quality Enforcement Policy became effective. This Enforcement Policy establishes a methodology for assessing administrative civil liability consistent with the factors in Water Code section 13385(e).

Using the Enforcement Policy methodology, a formal administrative civil liability for the alleged violation would be approximately \$14,300, plus additional Regional Water Board staff costs to prepare and process the action, which may be as high as \$5,000 - \$7,000. However, the Expedited Payment Program offers the opportunity to settle the alleged violation for \$2,600 based on the following:

- Water Code section 13399.33(c) requires a minimum penalty of \$1,000 for the failure to submit an annual report in accordance with section 13399.31.
- An additional \$100 (ten percent of the minimum penalty) due to history of late submittal of annual reports.
- Regional Water Board has incurred \$1,500 in staff costs to respond to the alleged violation (e.g., preparing and sending notices to the Permittee, verbal and/or written correspondence, site inspection, etc.).

CONDITIONAL OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM

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

The Expedited Payment Program does not address liability for any violation that is not specifically identified in this Enforcement Settlement Offer.

OPTIONS FOR RESPONDING TO THE EXPEDITED PAYMENT PROGRAM OFFER:

Choice A – ACCEPT THE OFFER

If the Permittee accepts this offer, please submit your annual report on or before March 11, 2013 and complete and return the Acceptance and Waiver enclosed herewith on or before March 11, 2013, 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: David Williams

Further, the Permittee must also submit the \$2,600 administrative civil liability by cashier's check or by certified check made payable to the "State Water Resources Control Board" in accordance with an invoice that will be sent for the payment. The invoice will specify the payment due date, which will be within about 60 days after we receive the Permittee's Acceptance and Waiver. Failure to pay the administrative civil liability within the required time period may subject the Permittee to further liability. Note that signing the Acceptance and Waiver will also make this notice and offer a part of the Regional Water Board files and available to the public.

Choice B – CONTEST THE ALLEGED VIOLATION

If the Permittee wishes to contest the annual reporting violation, the challenge must be received on or before March 11, 2013. Please identify, in writing and send by certified mail to the address above with a return receipt requested, the basis for the Permittee's challenge (factual error, affirmative defense, etc.). The Regional Water Board enforcement 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 – REJECT OFFER

If the Permittee chooses to reject the Regional Water Board enforcement staff's offer and/or does not complete and return the Acceptance and Waiver, the Permittee should expect that Regional Water Board enforcement staff will pursue a formal enforcement action and the Permittee 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.

The Permittee should also note that in the event Regional Water Board enforcement staff pursues a formal enforcement action for the annual reporting violation, the Regional Water Board enforcement staff will 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 the requirement. The Regional Water Board enforcement staff will 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 ACCEPTANCE OF RESOLUTION

Should the Permittee participate in the Expedited Payment Program, Regional Water Board enforcement staff will publish the acceptance of proposed settlement in accordance with federal regulations, which entails providing at least 30 days for public comment on any settlements addressing NPDES permit violations (40 C.F.R. section 123.27(d)(2)(iii)).

If we receive no comments within the 30-day notice period, the Regional Water Board's Executive Officer may act to formally endorse the Acceptance and Waiver as a stipulated order assessing the uncontested penalty amount pursuant to 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 violation 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 or State Water Board. For such a liability hearing, the Permittee understands that this Enforcement Settlement Offer, and Acceptance and Waiver endorsed by the Permittee, shall be treated as confidential settlement communication, and the Permittee shall not use them as evidence in that hearing.

Any questions about this Conditional Offer and/or the Acceptance and Waiver, should be directed to David Williams at (510) 622-2373 or by email at dwilliams@waterboards.ca.gov.

Sincerely,



Thomas E. Mumley
Assistant Executive Officer

Enclosures

- Acceptance of Conditional Resolution and Waiver of Right to Hearing
- Inspection Report



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

**ACCEPTANCE OF CONDITIONAL RESOLUTION
AND WAIVER OF RIGHT TO HEARING; ORDER**

**LATE SUBMITTAL OF 2011-12 ANNUAL REPORT IN VIOLATION OF
STATE GENERAL PERMIT FOR STORMWATER DISCHARGES
ASSOCIATED WITH INDUSTRIAL ACTIVITIES**

Facility Name: E D Coat Inc (WDID No. 2 01I009846)

Facility Address: 715 4th St, Oakland CA 94607

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"), E D Coat Inc. (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.

The Permittee agrees that the Enforcement Settlement Offer 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. Permittee agrees to perform the following:

- **Submit a 2011-12 Annual Report by March 11, 2013**
- and
- **Pay discretionary administrative civil liability as authorized by California Water Code section 13385(c)(1), in the sum of \$2,600 (hereinafter "Expedited Payment Amount") by cashier's check or by certified check made payable to the "State Water Resources Control Board" for deposit into 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 Enforcement Settlement Offer.**

The Permittee understands that this Acceptance and Waiver waives its right to contest the allegations in the Enforcement Settlement Offer and the civil liability amount for such violations.

The Permittee understands that this Acceptance and Waiver does not address or resolve liability for any violation not specifically identified in the Enforcement Settlement Offer.

JOHN MULLER, CHAIR | BRUCE H. WOLFE, EXECUTIVE OFFICER

1515 Clay St., Suite 1400, Oakland, CA 94612 | www.waterboards.ca.gov/sanfranciscobay

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

**San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
Attn: David Williams**

The Permittee 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 alleged annual reporting violations by the Regional Water Board will preclude Regional Water Board action for the alleged annual reporting violation in the Enforcement Settlement Offer.

The Permittee 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 Enforcement Settlement Offer may be withdrawn by the Assistant Executive Officer. If the Regional Water Board's offer is withdrawn, the Permittee will be advised of the 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 neither the Permittee nor Regional Water Board staff shall use it as evidence in that hearing.

The Permittee understands that once this Acceptance and Waiver is formally endorsed by the Executive Officer of the Regional Water Board and an order number inserted, 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 by a cashier's check or certified check for the full amount made payable to the "State Water Resources Control Board" for deposit into the State Water Pollution Cleanup and Abatement Account. The payment will be submitted in accordance with an invoice for the payment. Payment will be due on or about 30 days of endorsement of the "Acceptance and Waiver" by the Executive Officer of the Regional Water Board.

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.

(Permittee) *Make corrections as appropriate

By: _____ (Signed Name) _____ (Date)

(Printed or typed name)

(Title)

IT IS SO ORDERED PURSUANT TO CALIFORNIA WATER CODE SECTION 13385

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

E – D Coat, Inc.

**USPS Domestic Return Receipt signed by Lisa Rossi for February 8, 2013, Notice of Violation
and Enforcement Settlement Offer**

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

E D Coat Inc
Lisa Rossi
715 4th St
Oakland, California 94607

COMPLETE THIS SECTION ON DELIVERY

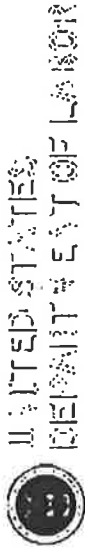
A. Signature Agent
Lisa Rossi Addressee
B. Received by (Printed Name) C. Date of Delivery
Lisa Rossi *2/19/04*
D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.
4. Restricted Delivery? (Extra Fee) Yes

2. Article Number **7012 2210 0000 4646 2896**
(Transfer from service label) Domestic Return Receipt
PS Form 3811, February 2004 102555-99-11-154C

E – D Coat, Inc.

Standard Industrial Classification Description Web Page for 3471



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Division D: Manufacturing

Major Group 34: Fabricated Metal Products, Except Machinery And Transportation Equipment

Industry Group 347: Coating, Engraving, And Allied Services

3471 Electroplating, Plating, Polishing, Anodizing, and Coloring

Establishments primarily engaged in all types of electroplating, plating, anodizing, coloring, and finishing of metals and formed products for the trade. Also included in this industry are establishments which perform these types of activities, on their own account, on purchased metals or formed products. Establishments that both manufacture and finish products are classified according to the products.

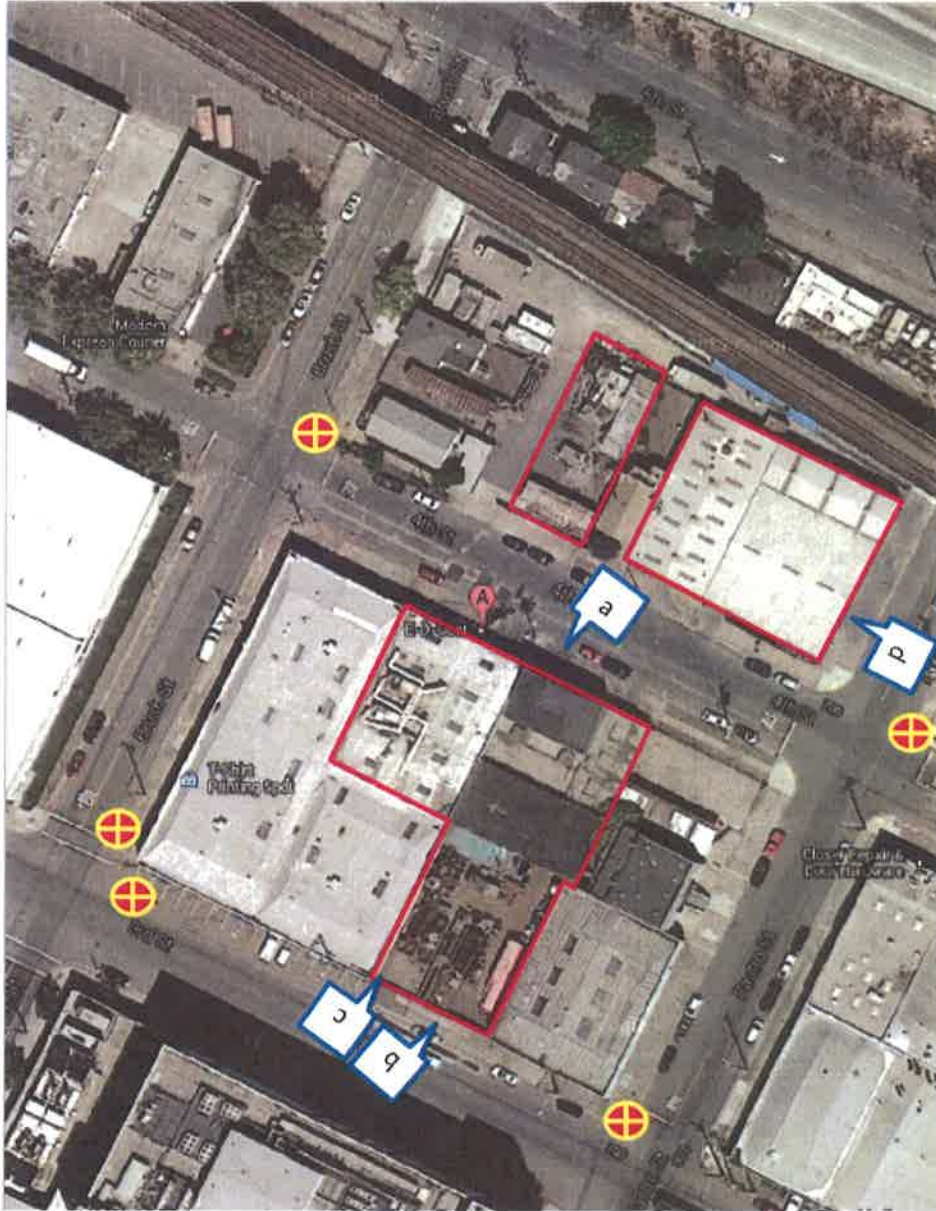
- Anodizing of metals and formed products, for the trade
- Buffing, for the trade
- Chromium plating of metals and formed products, for the trade
- Cleaning and descaling metal products, for the trade
- Coloring and finishing of aluminum and formed products, for the trade
- Decontaminating and cleaning of missile and satellite parts, for the trade
- Decorative plating and finishing of formed products, for the trade
- Depolishing metal, for the trade
- Electroplating steel, for the trade
- Electroplating of metals and formed products, for the trade
- Finishing metal products and formed products, for the trade
- Gold plating, for the trade
- Plating of metals and formed products for the trade
- Polishing of metals and formed products, for the trade
- Rechroming, auto bumpers, for the trade
- Sandblasting of metal parts, for the trade
- Tumbling (cleaning and polishing) of machine parts, for the trade

[[SIC Search](#) | [Division Structure](#) | [Major Group Structure](#) | [OSHA Standards Cited](#)]

E – D Coat, Inc.

Aerial Map of E – D Coat, Inc., 715 4th Street, Oakland, CA 94607


To see all the details that are visible on the screen, use the "Full" link next to the map.



file:///C:/Users/.../GoogleMaps/.../img/.../satellite/1/TTF-85A/1000000-89416_KY_Y0mDadLnd-0CAnC_A110Ag

Aerial Map of E – D Coat, Inc., 715 4th Street, Oakland, CA 94607
(E – D Coat, Inc. facility delineated in red by Regional Water Board staff.)

Photographs a – c labeled

 - Storm Drain to San Francisco Bay

E – D Coat, Inc.

Perimeter Inspection Photos a - d and MSDS Hazard Signs and Meanings



Photograph a – Discoloration of green paint on and around roof drain pipe from E – D Coat, Inc. facility located at 715 4th Street, Oakland, California 94607. Photograph taken by David Williams on June 3, 2013, at 5:15 p.m., looking south at the front of the facility from 4th Street.



Photograph b – Industrial materials and equipment exposed to storm water at E – D Coat, Inc. facility located at 715 4th Street, Oakland, California 94607. Photograph taken by David Williams on June 3, 2013, at 5:21 p.m., looking north at the back of the facility from 3rd Street.














Photograph c – Pipe coming out of the E – D Coat, Inc. facility located at 715 4th Street, Oakland, California 94607. Photograph taken by David Williams on June 3, 2013, at 5:22 p.m., looking north at the back of the facility from 3rd Street.



Photograph d – National Fire Protection Association Fire Diamond above a door of the E – D Coat, Inc. facility located at 715 4th Street, Oakland, California 94607. Photograph taken by David Williams on June 3, 2013, at 5:24 p.m., looking west at the E – D Coat, Inc. warehouse entrance from Castro St.

Hazardous Chemical Information



Hazardous chemical signs*

	Toxic Substance Class 6 Division 6.1		Radioactive Class 7		Corrosive Class 8
	Dangerous when wet Class 4 Division 4.3		Flammable Liquid Class 3		Flammable Solid Class 4 Division 4.1
	Non-Flammable Gas Class 2 Division 2.2		Organic Peroxide Class 5 Division 5.2		Oxidizer Class 5 Division 5.1
	Spontaneously Combustible Class 4 Division 4.2		Miscellaneous Dangerous Goods Class 9		

*A special thanks to [SPL Supplies](#)® for the above information

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MSDS Hazard Signs and Meanings**

	Health Hazard	
	4	Very short exposure could cause death or serious residual injury even though prompt medical attention was given.
	3	Short exposure could cause serious temporary or residual injury even though prompt medical attention was given.
	2	Intense or continued exposure could cause temporary incapacitation or possible residual injury unless prompt medical attention is given.
	1	Exposure could cause irritation but only minor residual injury even if no treatment is given.
	0	Exposure under fire conditions would offer no hazard beyond that of ordinary combustible materials.
	Flammability	
	4	Will rapidly or completely vaporize at normal pressure and temperature, or is readily dispersed in air and will burn readily.
	3	Liquids and solids that can be ignited under almost all ambient conditions.
	2	Must be moderately heated or exposed to relatively high temperature before ignition can occur.
	1	Must be preheated before ignition can occur.
	0	Materials that will not burn.
	Reactivity	
	4	Readily capable of detonation or of explosive decomposition or reaction at normal temperatures and pressures.







3	Capable of detonation or explosive reaction, but requires a strong initiating source or must be heated under confinement before initiation, or reacts explosively with water.
2	Normally unstable and readily undergo violent decomposition but do not detonate. Also: may react violently with water or may form potentially explosive mixtures with water.
1	Normally stable, but can become unstable at elevated temperatures and pressures or may react with water with some release of energy, but not violently.
0	Normally stable, even under fire exposure conditions, and are not reactive with water.



Special Hazards

This section is used to denote special hazards. One of the most common is unusual reactivity with water. The letter **W** with a horizontal line through it (as shown on the left) indicates a potential hazard using water to fight a fire involving this material.

Other symbols, abbreviations or words may appear here to indicate unusual hazards. Some examples include the following (not all of which are necessarily part of the NFPA system):

OX	This denotes an oxidizer, a chemical which can greatly increase the rate of combustion/fire.
ACID	This indicates that the material is an acid, a corrosive material that has a pH lower than 7.0
ALK	This denotes an alkaline material, also called a base. These caustic materials have a pH greater than 7.0
COR	This denotes a material that is corrosive (it could be either an acid or a base).
	This is a another symbol used for corrosive.
	The skull and crossbones is used to denote a poison or highly toxic material.
	The international symbol for radioactivity is used to denote radioactive hazards; radioactive materials are extremely hazardous when inhaled.
	Indicates an explosive material. This symbol is somewhat redundant because explosives are easily recognized by their Reactivity Rating.

**A special thanks to: [National Fire Protection Association](#) for the above information

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This page created, maintained and edited by:
[Joseph Williams](#), [Jennifer Butt](#) and [Carolyn Lewis](#)

E – D Coat, Inc. Communication Log

WDID # 2 01I009846

July, 17 2012 – SFBRWQCB Sent by USPS

“Courtesy Reminder Letter for 2011-12 Industrial Storm Water Annual Report” to:

E D Coat Inc
715 4th St
Oakland, California 94607
Facility Contact: Lisa Rossi

August, 27 2012 – SFBRWQCB Sent by USPS certified mail to E – D Coat, Inc.

1st Notice of Violation (NOV)

“Notice of Violation for Late Annual Report for Industrial General Stormwater Permit—Past Due July 1, 2012, Violation Compounds Daily”

(**August, 29 2012**, Received USPS Return Receipt signed by Lisa Rossi)

February, 8 2013 – SFBRWQCB Sent by USPS certified mail to E – D Coat, Inc.

2nd Notice of Violation

“Enforcement Settlement Offer to Participate in Expedited Payment Program for Failure to Submit a 2011-12 Annual Report by July 1, 2012, as Required by State Water Resources Control Board General Permit for Stormwater Discharges Associated With Industrial Activities, Order No. 97-DWQ, NPDES No. CAS000001”

(**February, 20 2013**, Received USPS Return Receipt signed by Lisa Rossi)

March, 5 2013 – Called Lisa Rossi at E – D Coat, Inc. (510-832-8104) to verify receipt of February 8, 2013 NOV

(No answer, no voice mail message left due to inoperable voice mail service)

March, 8 2013 – Email to Lisa Rossi at 'lrossi32@aol.com', request for verification of receipt of February 8, 2013 NOV. (See exhibit No. 16)

(February 8, 2013 NOV Attached to email)

March, 5 2013 – Called Lisa Rossi to verify receipt of February 8, 2013 NOV. Spoke with Lisa Rossi. She said she had received both the first and second NOV, that she would sign the Acceptance and Waiver form provided with the February 8, 2013 NOV and fax it to the Regional Board in order to accept the Enforcement Settlement Offer, and that she would have the 2011-12 Annual Report read to send to Regional Board by March 20, 2013. She explained that the report was late because her consultant was out of the country.

March, 18 2013 (Monday) – Called Lisa Rossi to ask if she was still planning to send a signed Acceptance and Waiver form. She said she would send signed Acceptance and Waiver form and 2011-12 Annual Report that week.

March, 22 2013 (Friday) – Called Lisa Rossi. She said she would fax Acceptance and Waiver form and submit the 2011-12 Annual Report the following week.

March, 28 2013 (Thursday) – Called Lisa Rossi and she said that she had faxed the Acceptance and Waiver form. I told her we had not received any such fax and asked her to resend the fax. Ms. Rossi said she would fax me the Acceptance and Waiver form in the next few days.

April, 2 2013 – Called Lisa Rossi to ask if she was still planning to send a signed Acceptance and Waiver form. She said she had forgotten and would send signed Acceptance and Waiver form that day.

April, 2 2013 p.m. – Called Lisa Rossi to ask if she was still planning to send a signed Acceptance and Waiver form. There was no answer and the voice mailbox was full.

April, 3 2013 – Called Lisa Rossi to ask if she was still planning to send a signed Acceptance and Waiver form. There was no answer and the voice mailbox was full.

April, 4 2013 – Called Lisa Rossi to ask if she was still planning to send a signed Acceptance and Waiver form. There was no answer and the voice mailbox was full, so I sent Ms. Rossi a text message requesting she contact me.

April, 4 2013 – Sent Lisa Rossi an email explaining that I had not received the Acceptance and Waiver form or the 2011-12 Annual Report and that if she was still interested in accepting the Enforcement Settlement Offer she would need to send the Acceptance and Waiver form and the 2011-12 Annual Report. (See exhibit No. 16)

April, 9 2013 – Called Lisa Rossi. Left message explaining the pending Administrative Civil Liability Complaint issuance if the Regional Board did not receive the Acceptance and Waiver form and the 2011-12 Annual Report.

April, 16 2013 – Called Lisa Rossi and left a message requesting she return the call.

April, 30 2013 – Called Lisa Rossi. There was no answer and the voice mailbox was full.

May, 17 2013 – SFBRWQCB Sent by USPS certified mail and email to E – D Coat, Inc. (See exhibit No. 16)

Complaint No R2- R2-2013-1017

May, 19 2013 – SFBRWQCB Prosecution Team contact received response to Complaint No R2- R2-2013-1017 by email from Lisa Rossi. (See exhibit No. 16)

May, 22 2013 – SFBRWQCB Prosecution team contact sent email to all parties informing of the request and addition of the East Bay Municipal Utility District as an Interested Party.

May, 23 2013 – SFBRWQCB Prosecution Team contact received response to East Bay Municipal Utility District Interested Party designation by email from Lisa Rossi. (See exhibit No. 16)

June, 10 2013 – Prosecution Team contact called Lisa Rossi to ask how she was planning to respond to Complaint No R2- R2-2013-1017 and offer to answer any questions she had. Ms. Rossi said that she was planning to fax the Waiver Form before the deadline of June 17, 2013. Prosecution Team contact also requested an inspection of the E – D Coat, Inc. facility. Mr. Rossi was amenable to the request.

June, 10 2013 - SFBRWQCB Prosecution team contact sent an email to Lisa Rossi summarizing telephone conversation earlier in the day and providing information. (See exhibit No. 16)

June, 12 2013 - SFBRWQCB Prosecution team contact sent an email to Lisa Rossi requesting Industrial Stormwater Inspection of the E – D Coat, Inc. facility. (See exhibit No. 16)

(Ms. Rossi did not respond to this inspection request.)

End Communication Log

E – D Coat, Inc.

Emails with E- D Coat, Inc.

Williams, David@Waterboards

From: Williams, David@Waterboards
Sent: Friday, March 08, 2013 4:01 PM
To: 'lrossi32@aol.com'
Subject: ED Coat Late Industrial Stormwater Annual Report and Conditional Offer Letter Sent February 8th
Attachments: 2 01I009846 - E D Coat Inc - 02.08.2013 Tier 2 ESO for Repeat Offenders with No Report.pdf

Hi Lisa,

I called you at ED Coat but the answering system does not seem to work. I was calling to verify that you have received the letter we sent on February 8th regarding ED Coats Late Annual Industrial Stormwater Report. I have attached the letter here. Please contact me to verify that you have received the letter. The due date to respond is March 11th in order to accept the conditional offer and waive the right to a hearing before the Regional Board.

David Williams

Environmental Scientist

Regional Water Quality Control Board

San Francisco Bay Region

1515 Clay St., Suite 1400

Oakland, Ca. 94612

dwilliams@waterboards.ca.gov

O. (510) 622-2373

Williams, David@Waterboards

From: Williams, David@Waterboards
Sent: Thursday, April 04, 2013 12:49 PM
To: lrossi32@aol.com
Subject: FW: ED Coat Late Industrial Stormwater Annual Report and Conditional Offer Letter Sent February 8th
Attachments: 2 01I009846 - E D Coat Inc - 02.08.2013 Tier 2 ESO for Repeat Offenders with No Report.pdf
Importance: High

Hi Lisa, I have been checking for your fax of the Acceptance and Waiver form you said you would send and I still have not seen anything. I did check to see if anyone else had received the original fax of the Acceptance and Waiver form you said you had sent previously. I need you to contact me to verify you are still interested in accepting the offer as I am required to update my management today. Next Monday we will be deciding on a course of action if you do not accept the offer.

Please call me ASAP 510-622-2373 or try my cell 602-617-2952

Thanks,
David Williams

From: Williams, David@Waterboards
Sent: Friday, March 08, 2013 4:01 PM
To: 'lrossi32@aol.com'
Subject: ED Coat Late Industrial Stormwater Annual Report and Conditional Offer Letter Sent February 8th

Hi Lisa,
I called you at ED Coat but the answering system does not seem to work. I was calling to verify that you have received the letter we sent on February 8th regarding ED Coats Late Annual Industrial Stormwater Report. I Have attached the letter here. Please contact me to verify that you have received the letter. The due date to respond is March 11th in order to accept the conditional offer and waive the right to a hearing before the Regional Board.

David Williams
Environmental Scientist
Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay St., Suite 1400
Oakland, Ca. 94612
dwilliams@waterboards.ca.gov
O. (510) 622-2373

Williams, David@Waterboards

From: Williams, David@Waterboards
Sent: Friday, May 17, 2013 3:00 PM
To: lrossi32@aol.com
Cc: Wolfe, Bruce@Waterboards; Won, Yuri@Waterboards; Whyte, Dyan@Waterboards; Mumley, Thomas@Waterboards; Thompson, Brian@Waterboards; Tang, Lila@Waterboards; Boschen, Christine@Waterboards; Pham, Danny@Waterboards; Felix, Cecil@Waterboards; Benedict, AnnaKathryn@Waterboards; Carrigan, Cris@Waterboards; Austin, Tamarin@Waterboards; dwilliams@waterboards.ca.gov
Subject: Administrative Civil Liability Complaint No. R2-2013-1017 Against E – D Coat, Inc., Alameda County
Attachments: ED Coat Complaint R2-2013-1017 Packet.pdf
Importance: High

Dear Lisa Rossi:

Complaint No R2- R2-2013-1017 ("Complaint") was sent today by certified US mail to your attention at:

E – D Coat, Inc.
715 4th Street
Oakland, California 94607

I have attached all of the documents that were sent by certified US to this email. Please send me email verification that you have received this email.

Please be aware that there are five attachments to this PDF and you need to open them to review them. You should be able to click on the paperclip icon on the left of the screen in Adobe Acrobat in order to see all five attachments. Please call me or send me an email if you have trouble opening the documents that are attached to the PDF packet.

This Complaint issues an administrative civil liability ("ACL") against E – D Coat, Inc. in the amount of \$7,460. This liability is based on Regional Water Board Prosecution Staff allegations that E – D Coat, Inc. violated a general permit for storm water discharges from industrial facilities by failing to submit an annual report of storm water discharge to the Regional Water Board by July 1, 2012, for the period July 1, 2011, to June 30, 2012, and is issued pursuant to California Water Code sections 13385(a)(2) and (c)(1).

E – D Coat, Inc. can respond to the Complaint by appearing before the Regional Water Board at a public hearing to contest the matter or by signing the enclosed Waiver Form to pursue other options.

1. The Complaint can be contested before the Regional Water Board at the following meeting:
Date/Time: August 14, 2013, commencing at 9:00 a.m.
Place: First Floor Auditorium, Elihu Harris State Building
1515 Clay Street, Oakland

At this meeting, the Regional Water Board will consider whether to impose the ACL (as proposed in the Complaint or for a different amount), decline the ACL enforcement, or refer the matter to the Attorney General for judicial enforcement at a public hearing.

Please refer to the attached Notice of Pending Enforcement Action, the Hearing Procedure for ACL Complaint, and the ACL Fact Sheet for additional information about the Regional Water Board's process, hearing procedure, and important deadlines (for submitting comments or evidence, obtaining designated party status, waiving or postponing a hearing, making objections or rebuttals to evidence, etc.).

2. The public hearing that has been scheduled (above) can be waived to pursue one of the following options:
 - a. Pay the liability as proposed in the Complaint;
 - b. Request more time and postpone the date of the public hearing;
 - c. Promptly engage in settlement discussions with the Regional Water Board Prosecution Team.

The enclosed Waiver Form describes these options in further detail. To pursue one of these options, the Waiver Form must be signed, dated, and received by Yuri Won (a representative of the Regional Water Board Advisory Team) with a copy to the Prosecutorial Staff contact listed below no later than 5:00 p.m. on June 17, 2013. It is at the discretion of the Regional Water Board Advisory Team to either accept or deny a waiver request. The Advisory Team members will act as impartial advisors to the Regional Water Board, and has taken no part in developing the Complaint.

David Williams

Environmental Scientist

Regional Water Quality Control Board

San Francisco Bay Region

1515 Clay St., Suite 1400

Oakland, Ca. 94612

dwilliams@waterboards.ca.gov

O. (510) 622-2373

Recipient	Delivery	Read
lrossi32@aol.com		
Wolfe, Bruce@Waterboards	Delivered: 5/17/2013 3:02 PM	
Won, Yuri@Waterboards	Delivered: 5/17/2013 3:02 PM	
Whyte, Dyan@Waterboards	Delivered: 5/17/2013 3:02 PM	Read: 5/20/2013 11:18 AM
Mumley, Thomas@Waterboards	Delivered: 5/17/2013 3:02 PM	Read: 5/20/2013 9:46 AM
Thompson, Brian@Waterboards	Delivered: 5/17/2013 3:02 PM	
Tang, Lila@Waterboards	Delivered: 5/17/2013 3:02 PM	Read: 5/17/2013 4:38 PM
Boschen, Christine@Waterboards	Delivered: 5/17/2013 3:02 PM	Read: 5/17/2013 4:06 PM
Pham, Danny@Waterboards	Delivered: 5/17/2013 3:02 PM	
Felix, Cecil@Waterboards	Delivered: 5/17/2013 3:02 PM	Read: 5/17/2013 4:57 PM
Benedict, AnnaKathryn@Waterboards	Delivered: 5/17/2013 3:02 PM	
Carrigan, Cris@Waterboards	Delivered: 5/17/2013 3:02 PM	Read: 5/17/2013 3:09 PM
Austin, Tamarin@Waterboards	Delivered: 5/17/2013 3:02 PM	Read: 5/20/2013 9:38 AM
dwilliams@waterboards.ca.gov	Delivered: 5/17/2013 3:02 PM	

Williams, David@Waterboards

From: Lisa Rossi <lrossi32@aol.com>
Sent: Sunday, May 19, 2013 4:12 PM
To: Williams, David@Waterboards
Subject: Re: Administrative Civil Liability Complaint No. R2-2013-1017 Against E – D Coat, Inc., Alameda County

Dear David,

I received the email that was sent by you. We are going a really difficult time and do not have the money or resources to comply with this order. The business is still shut down and has been since October 5, 2012. I have mounting legal fees in fighting the EBMUD on the revocation of our permit and the allegations of illegal discharge. It has consumed all my time fighting this battle and I have been doing it all by myself. I have no employees at this time and the man who used to help me and work for me full-time has not been able to assist me in completing the form necessary to satisfy what you are looking for. I don't know what else to do. I am struggling mentally and emotionally at this point.

This email didn't help me any. I will fill out the wavier form and maybe we can discuss on Wednesday. On top of everything else I have lost our home and trying to move out and deal with that drama.

Life right now is very stressful. The only good news is that we were able to prove through hiring Subtronics that we did not illegal discharge or have any illegal connections to the sewer. Hopefully soon we will be able to resume operations and get back on our feet.

Sincerely,

Lisa Rossi
(510)847-0756
E-D Coat Inc.
lrossi32@aol.com

-----Original Message-----

From: Williams, David@Waterboards <David.Williams@waterboards.ca.gov>
To: lrossi32 <lrossi32@aol.com>
Cc: Wolfe, Bruce@Waterboards <Bruce.Wolfe@waterboards.ca.gov>; Won, Yuri@Waterboards <Yuri.Won@waterboards.ca.gov>; Whyte, Dyan@Waterboards <Dyan.Whyte@waterboards.ca.gov>; Mumley, Thomas@Waterboards <Thomas.Mumley@waterboards.ca.gov>; Thompson, Brian@Waterboards <Brian.Thompson@waterboards.ca.gov>; Tang, Lila@Waterboards <Lila.Tang@waterboards.ca.gov>; Boschen, Christine@Waterboards <Christine.Boschen@waterboards.ca.gov>; Pham, Danny@Waterboards <Danny.Pham@waterboards.ca.gov>; Felix, Cecil@Waterboards <Cecil.Felix@waterboards.ca.gov>; Benedict, AnnaKathryn@Waterboards <AnnaKathryn.Benedict@waterboards.ca.gov>; Carrigan, Cris@Waterboards <Cris.Carrigan@waterboards.ca.gov>; Austin, Tamarin@Waterboards <Tamarin.Austin@waterboards.ca.gov>; Williams, David@Waterboards <David.Williams@waterboards.ca.gov>
Sent: Fri, May 17, 2013 3:02 pm
Subject: Administrative Civil Liability Complaint No. R2-2013-1017 Against E – D Coat, Inc., Alameda County

Dear Lisa Rossi:

Complaint No R2- R2-2013-1017 ("Complaint") was sent today by certified US mail to your attention at:

E – D Coat, Inc.
715 4th Street
Oakland, California 94607

I have attached all of the documents that were sent by certified US to this email. Please send me email verification that you have received this email.

Please be aware that there are five attachments to this PDF and you need to open them to review them. You should be able to click on the paperclip icon on the left of the screen in Adobe Acrobat in order to see all five attachments. Please call me or send me an email if you have trouble opening the documents that are attached to the PDF packet.

This Complaint issues an administrative civil liability ("ACL") against E – D Coat, Inc. in the amount of \$7,460. This liability is based on Regional Water Board Prosecution Staff allegations that E – D Coat, Inc. violated a general permit for storm water discharges from industrial facilities by failing to submit an annual report of storm water discharge to the Regional Water Board by July 1, 2012, for the period July 1, 2011, to June 30, 2012, and is issued pursuant to California Water Code sections 13385(a)(2) and (c)(1).

E – D Coat, Inc. can respond to the Complaint by appearing before the Regional Water Board at a public hearing to contest the matter or by signing the enclosed Waiver Form to pursue other options.

1. The Complaint can be contested before the Regional Water Board at the following meeting:
Date/Time: August 14, 2013, commencing at 9:00 a.m.
Place: First Floor Auditorium, Elihu Harris State Building
1515 Clay Street, Oakland

At this meeting, the Regional Water Board will consider whether to impose the ACL (as proposed in the Complaint or for a different amount), decline the ACL enforcement, or refer the matter to the Attorney General for judicial enforcement at a public hearing.

Please refer to the attached Notice of Pending Enforcement Action, the Hearing Procedure for ACL Complaint, and the ACL Fact Sheet for additional information about the Regional Water Board's process, hearing procedure, and important deadlines (for submitting comments or evidence, obtaining designated party status, waiving or postponing a hearing, making objections or rebuttals to evidence, etc.).

2. The public hearing that has been scheduled (above) can be waived to pursue one of the following options:
 - a. Pay the liability as proposed in the Complaint;
 - b. Request more time and postpone the date of the public hearing;
 - c. Promptly engage in settlement discussions with the Regional Water Board Prosecution Team.

The enclosed Waiver Form describes these options in further detail. To pursue one of these options, the Waiver Form must be signed, dated, and received by Yuri Won (a representative of the Regional Water Board Advisory Team) with a copy to the Prosecutorial Staff contact listed below no later than 5:00 p.m. on June 17, 2013. It is at the discretion of the Regional Water Board Advisory Team to either accept or deny a waiver request. The Advisory Team members will act as impartial advisors to the Regional Water Board, and has taken no part in developing the Complaint.

David Williams
Environmental Scientist
Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay St., Suite 1400
Oakland, Ca. 94612
dwilliams@waterboards.ca.gov
O. (510) 622-2373

Williams, David@Waterboards

From: lrossi32@aol.com
Sent: Thursday, May 23, 2013 5:59 AM
To: Williams, David@Waterboards
Subject: Re: EBMUD Request to be added as an Interested Party for E-D Coat Complaint (R2-2013-1017)

Dear David,

Figured they would be contacting you as they are the reason that I have no one here able to help me complete this report as they removed my permit and took away my ability to pay for employees or to preform any production since last year.

Trying to have someone help me complete this form to the best of my ability. Hopefully can have something next week for you.

Lisa Rossi
(510)847-0756
E-D Coat Inc

Sent from my Verizon Wireless 4G LTE DROID

"Williams, David@Waterboards" <David.Williams@waterboards.ca.gov> wrote:

Hello,

This is to inform the Advisory Team of an interested party request. This morning, May 22, 2013, I received a voice mail message from Derek McDonald with EBMUD requesting EBMUD be added as an Interested Party for the Complaint (R2-2013-1017).

We have added EBMUD to our contact/distribution list for this matter.

David Williams

Environmental Scientist
Regional Water Quality Control Board

San Francisco Bay Region
1515 Clay St., Suite 1400
Oakland, Ca. 94612

dwilliams@waterboards.ca.gov

Williams, David@Waterboards

From: Williams, David@Waterboards
Sent: Monday, June 10, 2013 4:29 PM
To: lrossi32@aol.com
Cc: Thompson, Brian@Waterboards; Boschen, Christine@Waterboards; Tang, Lila@Waterboards; Mumley, Thomas@Waterboards; Benedict, AnnaKathryn@Waterboards; Pham, Danny@Waterboards
Subject: E-D Coat Complaint (R2-2013-1017)

Hello Lisa,

Thank you for taking the time to speak with me today regarding this matter. According to our conversation you are planning to fax me the Waiver Form before the deadline of June 17, 2013. Please contact me if you need help locating this form. The Waiver Form is the second attachment to the PDF titled "ED Coat Complaint R2-2013-1017 Packet (5)" I sent to you by email on May 17, 2013, with the subject "Administrative Civil Liability Complaint No. R2-2013-1017 Against E – D Coat, Inc., Alameda County." In order to view attachments to this PDF, click the paperclip symbol on the left of the screen in Adobe Acrobat once you have the ACL Complaint Packet open. The Waiver Form was also included in the ACL Complaint package sent to your attention at E-D Coat, Inc. by USPS on May 17, 2013, so you should have a hard copy as well. If you would like I can send you an additional copy.

As you indicated, please call me once you are ready to fax the waiver so I can be expecting it.

The fax number here is 510-622-2460.

Please be aware that by checking option three ("Engage in Settlement Discussions") on the waiver, if you so choose, you are certifying that you will contact the Regional Water Board Prosecution Team within five business days of submittal of the waiver to request that the Prosecution Team engage in settlement discussions to attempt to resolve the outstanding violation.

I am the Prosecution Team's main contact.

David Williams

Environmental Scientist

Regional Water Quality Control Board

San Francisco Bay Region

1515 Clay St., Suite 1400

Oakland, Ca. 94612

dwilliams@waterboards.ca.gov

O. (510) 622-2373

Williams, David@Waterboards

From: Williams, David@Waterboards
Sent: Wednesday, June 12, 2013 4:13 PM
To: 'lrossi32@aol.com'
Cc: Thompson, Brian@Waterboards; Boschen, Christine@Waterboards; Tang, Lila@Waterboards; Mumley, Thomas@Waterboards; Pham, Danny@Waterboards; Benedict, AnnaKathryn@Waterboards
Subject: RE: E-D Coat Complaint (R2-2013-1017)
Attachments: 2 R2-2013-1017 ED Coat WAIVER.pdf; 4 ED Coat Hearing Procedure R2-2013-1017.pdf; 5 ACL Fact_Sheet.pdf

Hello Lisa,

I would like to stop by ED Coat for an industrial stormwater inspection next Monday or Tuesday (June 17th or 18th). Would one of these days work for you? If not we can try to meet at the facility this Friday. It should take no more than a few hours.

Please remember that the deadline for submitting the Waiver Form is **June 17, 2013**, next Monday.

Please review the Waiver Form for details.

I have attached a copy of the Waiver Form to this email. I have also attached the hearing procedures document and the ACL fact sheet. All three of these documents, plus additional documents, were included in the ACL Complaint packet send by USPS, and were also attached to the ACL Complaint PDF I sent by email.

Thanks,

David Williams

Environmental Scientist

Regional Water Quality Control Board

San Francisco Bay Region

1515 Clay St., Suite 1400

Oakland, Ca. 94612

dwilliams@waterboards.ca.gov

O. (510) 622-2373

From: lrossi32@aol.com [mailto:lrossi32@aol.com]

Sent: Monday, June 10, 2013 4:48 PM

To: Williams, David@Waterboards

Subject: Re: E-D Coat Complaint (R2-2013-1017)

Okay thanks!

Sent from my Verizon Wireless 4G LTE DROID

"Williams, David@Waterboards" <David.Williams@waterboards.ca.gov>; wrote:

Hello Lisa,

Thank you for taking the time to speak with me today regarding this matter. According to our conversation you are planning to fax me the Waiver Form before the deadline of June 17, 2013. Please contact me if you need help locating this form. The Waiver Form is the second attachment to the PDF titled "ED Coat Complaint R2-2013-1017 Packet (5)" I sent to you by email on May 17, 2013, with the subject "Administrative Civil Liability Complaint No. R2-2013-1017 Against E – D Coat, Inc., Alameda County." In order to view attachments to this PDF, click the paperclip symbol on the left of the screen in Adobe Acrobat once you have the ACL Complaint Packet open. The Waiver Form was also included in the ACL Complaint package sent to your attention at E-D Coat, Inc. by USPS on May 17, 2013, so you should have a hard copy as well. If you would like I can send you an additional copy.

As you indicated, please call me once you are ready to fax the waiver so I can be expecting it.

The fax number here is 510-622-2460.

Please be aware that by checking option three ("Engage in Settlement Discussions") on the waiver, if you so choose, you are certifying that you will contact the Regional Water Board Prosecution Team within five business days of submittal of the waiver to request that the Prosecution Team engage in settlement discussions to attempt to resolve the outstanding violation.

I am the Prosecution Team's main contact.

David Williams

Environmental Scientist
Regional Water Quality Control Board

San Francisco Bay Region
1515 Clay St., Suite 1400
Oakland, Ca. 94612

dwilliams@waterboards.ca.gov

O. (510) 622-2373

E – D Coat, Inc.

EBMUD Directors Decision 2.28.13

**Director's Decision on E-D Coat, Inc's Request for Reconsideration of
Director's Decision to Revoke Wastewater Discharge Permit No. 03300871**

On June 4, 2012, David R. Williams, Director of Wastewater at the East Bay Municipal Utility District (the "Director") revoked Wastewater Discharge Permit No. 03300871 of E-D Coat, Inc. ("Permit"). E-D Coat, Inc. ("E-D Coat") requested that the Director reconsider the Permit revocation. This is the Director's decision upon reconsideration in accordance with Section 1(e) of Title VI of the East Bay Municipal Utility District Ordinance No. 311 ("Ordinance").¹

For the reasons discussed below, E-D Coat's request for reconsideration is denied and the Director's June 4, 2012 decision to revoke the Permit remains in effect.

I. Background

A. Events Leading Up To Director's Order 09-01.

E-D Coat is an industrial discharger that operates an electroplating facility located at 715 4th Street in Oakland. E-D Coat electroplates and finishes various metal products in baths containing cadmium, chromium, copper, lead, acids, alkalines, cyanides and zinc. As an industrial discharger, E-D Coat is required to comply with the federal Clean Water Act and the Ordinance, including the requirement to properly treat and discharge its wastewater in compliance with the terms and conditions of its wastewater discharge permit issued by the District. E-D Coat obtained its first such wastewater permit in 1975 and has obtained a variety of subsequent permits in the intervening 27 years. E-D Coat's current permit – Permit No. 03300871 – became effective as of November 17, 2008 and was scheduled to expire on November 16, 2013. However, as set forth below, the Director revoked the Permit on June 4, 2012, which is the subject of E-D Coat's request for reconsideration herein. The Permit lists E-D Coat's business activity as "Zinc, Cadmium and Tin plating." It describes the approved wastewater pre-treatment system and sets forth the discharge limits for a variety of metals used in the electroplating process, including Cadmium, Chromium, Copper, Nickel and Zinc. Under the terms of the permit, E-D Coat is to discharge to only one location, Side Sewer No. 3 on 3rd Street, at which District monitoring equipment is installed.

E-D Coat has an extensive history of violations – including felony convictions for Federal environmental crimes – which is a matter of public record and will not be repeated at length here. Of specific relevance to the Permit revocation decision, however, is the fact that E-D Coat has operated under a Cease and Desist Order from the District since 1993 for repeated violations of Federal discharge requirements for zinc and cyanide limits, which the District amended in 1995 for ongoing cyanide violations. The EPA also issued criminal and civil penalties to E-D Coat in 2002 for permit violations, which included bypass of the E-D Coat treatment unit and unauthorized plumbing connections into the city sewer on 4th Street. At that time, the District issued a new permit with increased monitoring to detect noncompliant discharges.

In August 2008, E-D Coat had another zinc discharge violation. The August 2008 zinc discharge violation, together with the prior history of violations, prompted the District to conduct sampling of city sewers in the block around E-D Coat in December 2008. Samples taken between December 2008 and April 2009 from the location at 4th and Brush Street were contaminated with zinc, a heavy metal used in metal plating at E-D Coat at concentrations indicating possible unauthorized discharge activities. These sampling results, along with the District's inspection at the E-D Coat facility on April 23, 2009, indicated that illicit discharges were occurring. The District participated in a multiple-agency inspection of E-D Coat on April 30, 2009 led by the Alameda County District Attorney's Office, which confirmed the illicit discharges.

Following the discovery of E-D Coat's illicit discharges to the city sewer in 2009, the Director issued Complaint and Director's Order No. 09-01 to E-D Coat on September 8, 2009. Order No. 09-01 found E-D Coat to be in violation of the 1993 Cease and Desist Order's zinc limitations, and determined that E-D Coat had illegally bypassed its pretreatment system through illicit community sewer connections and had discharged untreated wastewater into the 4th and Brush Street sewer, and the 4th and Castro Street sewer in violation of the Ordinance and the Permit. Order No. 09-01 required E-D Coat to take a series of steps to update and improve its facilities, including the retention of a licensed professional engineer to develop and implement a construction plan under which every plant line and sump would be mapped and all unauthorized connections sealed by a licensed contractor to ensure that all unauthorized connections to the city sewer are identified and fully secured. Order No. 09-01 also revised the Permit to increase monitoring from monthly to weekly to determine if E-D Coat's discharges were in compliance with the Permit, and imposed an Administrative Civil Liability fine in the amount of \$7500.

E-D Coat appealed Order No. 09-01 and on March 8, 2010, E-D Coat entered into a settlement agreement with the District. Under the settlement agreement E-D Coat agreed to perform the remediation work required by Order No. 09-01 using its own personnel under the supervision of a licensed plumber, in exchange for a reduction of the fine, a reduction in monitoring frequency and a waiver of a significant amount of the accumulated monitoring fees, all contingent upon E-D Coat's performance of specified technical work to be completed within six months. Despite numerous warnings from the District, E-D Coat failed to take any action to fulfill the terms of the settlement agreement. As a result, E-D Coat's accumulated and uncollected monitoring fees became due and payable to the District along with payment of the Administrative Civil Liability fine of \$7500. E-D Coat has no further appeal rights with the District with respect to Order No. 09-01 and is under an ongoing obligation to fully comply with its requirements.

B. Events Leading Up To the Director's June 4, 2012 Permit Revocation Decision.

During this same period of time, E-D Coat also became delinquent in payment of several of its water accounts. On November 8, 2010, the District terminated E-D Coat's water service to its main building for nonpayment. In July 2011, the District terminated water service to E-D Coat's second plating facility across the street for nonpayment. Thus, as of July 2011, both water meters assigned to the E-D Coat account had been terminated due to non-payment. Though E-D Coat had no authorized EBMUD water service to any of its plating facilities it continued to remain in

operation. The following year, during a March 2, 2012 multi-agency inspection of E-D Coat led by the Alameda County District Attorney's Office, a water main tap supplying an illicit water connection on the E-D Coat premises was discovered and sealed.

Without any known water supply, E-D Coat continued to conduct metal plating operations at its facility without discharging to its permitted discharge location on 3rd Street. E-D Coat's principal representative, Ms. Lisa Rossi, claimed that E-D Coat recycled all of its process wastewater as a "zero discharge" facility and, therefore, had no need for potable water for metal plating operations or sewer discharge needs for the process waste. Since E-D Coat continued to operate its plating business, the Permit and Director's Order 09-01 remained in force and effect. Despite repeated requests for technical reports about its metal plating process, E-D Coat failed to provide information about its water sources or how it was able to operate as a zero discharge facility. The District also continued weekly monitoring. Through monitoring, zinc violations were detected at an unauthorized discharge location at the 4th and Castro Street city sewer in 2011. Notices of Violation ("NOV") were sent to E-D Coat for these discharges during this period.

On June 4, 2012, the Director notified E-D Coat that "[a]s outlined in numerous violation notices sent via certified mail over the past year (letters dated 4/8/11, 6/16/11, 8/5/11, 10/6/11, 12/16/11, 3/22/12, 5/31/12), E-D Coat, Inc. has and continues to violate the terms and conditions of Wastewater Discharge Permit No. 03300871 (Permit) as well as Director's Order No. 09-01. To date, the East Bay Municipal Utility District (EBMUD) has not received any written response to its many requests for information. At this time and in accordance with EBMUD Ordinance No. 311, Title IV, Section 6, EBMUD is terminating the Permit issued to E-D Coat, Inc., thus prohibiting the discharge of any process wastewater into the sanitary sewer system." The Director advised E-D Coat to file for a new permit within 30 days, within which time the June 4, 2012 Permit revocation decision would be effectively stayed and E-D Coat would be allowed to operate.ⁱⁱ Any new permit would require E-D Coat to comply with Director's Order No. 09-01 and payment of all outstanding fines and delinquent fees and charges.

C. E-D Coat's Request for Reconsideration of the Permit Revocation Decision and Application for a New Permit.

Under Section 1(e) of Title VI of the Ordinance, E-D Coat was required to request reconsideration of the Director's decision to revoke the Permit within 10 days of the Director's June 4, 2012 notice. Pursuant to a District-granted extension of time, E-D Coat submitted its request for reconsideration of the Director's permit revocation on June 22, 2012. It also requested and received an extension of time to file an application for a new wastewater discharge permit on July 13, 2012. E-D Coat was advised on August 17, 2012 that additional information was needed in support of its application, and that no new permit would be granted in absence of E-D Coat's compliance with the requirements specified in Order No. 09-01 and payment of outstanding amounts in arrears. Also on August 17, 2012 the Director provided to E-D Coat a copy of the May 31, 2012 report from the District's metal plating pretreatment system expert who accompanied the District on the March 2, 2012 multi-agency inspection. The report concluded that E-D Coat was not equipped to be a zero discharge facility and that sampling of E-D Coat's process waters showed that E-D Coat was both using fresh water in its operations and

disposing of process wastewater somewhere. On September 20, 2012 E-D Coat was reminded that its failure to submit a completed permit application containing all of the requested information would result in denial of the permit application, reinstate the Director's June 4, 2012 Permit revocation decision and require E-D Coat to cease its metal plating operations.

E-D Coat's hearing on its request for reconsideration of the Director's June 4, 2012 Permit revocation decision was originally scheduled for August 27, 2012, but was continued to September 14 and then again to October 11, 2012 at E-D Coat's request. During this period of time, the District issued additional Notices of Violation based on Lisa Rossi's conduct in either refusing to allow District staff to inspect E-D Coat's facilities, or in curtailing their inspections before completion, which required legal action on the part of the District for a court order compelling access for inspection purposes.

E-D Coat was granted several additional requests to extend the time to submitted requested information in support of its permit application, but ultimately failed to provide all of the requested information by the final extended deadline of September 27, 2012. What limited information E-D Coat did provide supported the Director's position that E-D Coat cannot operate as a "zero discharge" facility as claimed but had been discharging untreated metal plating wastes to the city sewer without a permit in excess of the legal limits. The District so advised E-D Coat in an October 4, 2012 "Final Decision on Request for a New Wastewater Discharge Permit," which denied the permit application on both procedural and substantive grounds. That notice also advised E-D Coat that the Director's June 4, 2012 decision to revoke the Permit was now in effect and E-D Coat must immediately cease all operations.

On October 8, 2012, E-D Coat advised the District that it had retained legal counsel and requested a continuance of the October 11, 2012 hearing on its request for reconsideration of the Director's permit revocation decision to allow its new attorney time to prepare. The Director denied that request but accommodated E-D Coat by requiring District staff to present the evidence in support of the Permit revocation decision to E-D Coat's principal representative (Lisa Rossi), its attorney and its expert consultant. Accordingly, no questions were asked of E-D Coat's representatives at the hearing. The witnesses were not sworn but a certified court reporter was present to create a transcript of the hearing and maintain a record of all written evidence that was submitted to the Director. E-D Coat made no presentation of its own but was allowed to question District staff and the District's consultant. At the end of the day, E-D Coat asked for the hearing to be held open through December 7, 2012 to evaluate and respond to the record of evidence presented by District staff on October 8, 2012. The Director agreed to the request. Subsequently, E-D Coat retained new legal counsel and the Director scheduled the second day of hearings on E-D Coat's request for reconsideration of the Director's June 4, 2012 Permit revocation decision to November 30, 2012.

Meanwhile, E-D Coat filed an application for a "zero discharge" wastewater discharge permit on November 1, 2012. On November 9, the District informed E-D Coat that before its application would be considered it would need to provide additional listed documents and information in support of its application, complete a series of remedial steps in line with Order No. 09-01 and pay the outstanding amounts in arrears. To date, none of the remedial steps have occurred, with

the exception of some video inspection work performed by Subtronics Corporation, and E-D Coat has paid no part of the balance in arrears.

At the second day of hearings on November 30, 2012, E-D Coat presented its narrative to the Director as to why the Permit should not be revoked, through the presentation of documentary evidence and non-sworn testimony. A certified court reporter transcribed the hearing and a record was created of all documents submitted to the Director. Both E-D Coat and District staff were allowed to ask questions of the other, and the District again made its consultant available for E-D Coat's questions at the hearing. At the conclusion, the Director elected to keep the hearing open.

Following the November 30 hearing, District staff prepared a report summarizing the basis of the June 4, 2012 Permit revocation and responded to the non-sworn testimony and evidence presented by E-D Coat at the hearing. The report was provided to the Director and E-D Coat on January 22, 2013. E-D Coat provided a response to the District staff report on February 8, 2013. The Director closed the hearing on February 21, 2013 upon notification to E-D Coat.

II. Issues Presented and Findings

As stated above, the Director revoked the Permit due to E-D Coat's failure to comply with the terms of Order No. 09-01 and for violation of the terms and conditions of Permit No. 03300871, including the discharge of process wastewater to an unauthorized location, the discharge of wastewater containing metals exceeding discharge limits, and E-D Coat's failure to provide required technical reports.

A. Noncompliance with Order No. 09-01

Order No. 09-01 was issued to E-D Coat on September 8, 2009 and has been in effect ever since.ⁱⁱⁱ E-D Coat exhausted its administrative challenges to Order No. 09-01 in 2009 and agreed to abide by its terms in the March 8, 2010 settlement agreement.^{iv} E-D Coat cannot now challenge Order 09-01 or its factual basis in this administrative process. Order No. 09-01 was issued based on District investigations that revealed zinc discharge violations between August 2008 and April 2009, as well as an unplugged sump connection to the community sewer (which was not plugged until July of 2011).^v Order No. 09-01 directed E-D Coat ensure that all process wastewater discharges flowed to E-D Coat's pretreatment unit, and clearly spelled out the technical requirements for compliance with this direction, including that E-D Coat retain a licensed engineer to develop remedial work plans to be submitted to the District for approval and retain a licensed contractor to implement the work under the approved plans.^{vi} It revised E-D Coat's permit to include a weekly monitoring requirement until such time that all technical actions required under the order were complete and E-D Coat was able to show compliance for six months.^{vii} Order No. 09-01 also required E-D Coat to pay an Administrative Civil Liability fine of \$7500.^{viii}

Findings

The Director finds that it is undisputed, uncontroverted and undeniable that following the issuance of Order No. 09-01 on September 8, 2009, E-D Coat continued its business operations until at least October 4, 2012 in violation of the technical requirements imposed under Order No. 09-01. E-D Coat has not submitted to the District for approval a draft plan of work prepared by a licensed professional engineer for identifying all connections to the community sewer or bypasses to the pretreatment system. E-D Coat has not retained a licensed contractor and conducted the field investigation required by Order No. 09-01. E-D Coat has not submitted to the District for approval a draft remedial construction plan of work prepared by a licensed professional engineer. E-D Coat has not retained a licensed contractor to perform the remedial work required by Order No. 09-01. Additionally, E-D Coat has not paid the \$7,500 Administrative Civil Liability fine imposed by Order No. 09-01.^{ix}

For noncompliance with the technical requirements of Order No. 09-01 alone, the Director finds that E-D Coat's request for reconsideration can be and is denied.

Moreover, the Director rejects E-D Coat's justification for noncompliance offered as part of its request for reconsideration of the Permit revocation. E-D Coat has had ample opportunity to avoid any claimed financial hardship resulting from compliance with Order No. 09-01, such as fulfillment of its obligations under the 2010 Settlement Agreement and retention of a private monitoring laboratory, yet has failed to take any action to mitigate its financial difficulties.^x The Director rejects E-D Coat's assertion that there is no need to submit certain documents required by Order No. 09-01 or that documents it has submitted in support of its permit applications and this administrative process are sufficient to comply with the work plan requirements of Order No. 09-01.^{xi} The Director rejects Lisa Rossi's assertion that E-D Coat did not comply with Order No. 09-01 or the terms of the Settlement Agreement because she did not understand what was required of E-D Coat under these documents or could not find the technical resources necessary to complete the work required under those documents.^{xii} The technical requirements of Order No. 09-01 and the Settlement Agreement were clearly stated, and it is implausible that a company that has been in existence for decades lacks the technical understanding or capacity to access the technical resources required under Order No. 09-01 or the Settlement Agreement.

Because it is undisputed that E-D Coat has failed to comply with Director's Order 09-01, E-D Coat has mainly concentrated in its request for reconsideration on two additional grounds for revocation of the Permit – the discharge of process wastewater to an authorized location on 4th Street and the discharge of wastewater containing metals exceeding discharge limits. These additional grounds are addressed in the next section.

B. Discharge of Wastewater Containing Metals Exceeding Discharge Limits and Discharge of Wastewater to an Unauthorized Location

The District has performed extensive sampling of the 4th Street sewer line at the manhole at 4th and Castro Street since March 2011, testing for metals concentrations.^{xiii} Between April 8, 2011

and May 31, 2012, the District's testing showed high concentrations of metals such as zinc, cadmium, copper, chromium, iron and lead.^{xiv} The types and levels of metals in the District's sampling were consistent with the metals concentrations found in E-D Coat's process plating tanks.^{xv} The sampling indicated that E-D Coat was bypassing its pretreatment system and discharging to a location other than Side Sewer No. 3 on 3rd Street, E-D Coat's only authorized discharge location.^{xvi} Many of the samples also exceeded the categorical and average daily maximum limits set by the Ordinance.^{xvii} Between April 8, 2011 and May 31, 2012, the District issued seven NOV's to E-D Coat based on the discharge of process wastewater to an unauthorized location and the discharge of wastewater containing metals exceeding regulatory discharge limits.^{xviii}

The District also performed flow monitoring of the 4th Street sewer starting in June of 2012 and continuing to the present.^{xix} Flow monitoring showed continuous low-volume discharges from the 4th Street sewer line, which stopped soon after E-D Coat ceased operations in October 2012.^{xx}

E-D Coat asserts that the District's flow monitoring and sampling data was erroneous and unreliable. It contends that its November 8 and 9, 2012 video inspection of the 4th Street sewer line and Castro Street sewer line shows that the 4th Street line is dry and contains sediments, and that water from the Castro Street line was infiltrating the District's sampling location at the 4th and Castro Street manhole.^{xxi} Based on the video inspection and E-D Coat's own sampling data, E-D Coat asserts that legacy solids in the 4th Street line and at the sampling location are the source of the metals found in the District's sampling.^{xxii} E-D Coat also contends that because the 4th Street line was dry, and because water from the Castro Street line was infiltrating the District's sampling location at the 4th and Castro Street manhole, the Castro Street line could be the source of the metals concentrations found in the District's sampling – and E-D Coat does not discharge to the Castro Street line.^{xxiii} E-D Coat also posits that other industrial facilities or groundwater contamination may be the source of the metals found in the District's sampling.^{xxiv} E-D Coat also asserts that the District's own inspection reports always have the "no discharge observed" box checked for observations at 4th and Castro Street manhole, proving that District inspectors did not observe any discharges to the 4th Street line.^{xxv}

E-D Coat also denies that it has been discharging to the 4th Street line because it has been operating as a "zero discharge" facility since April 2011.^{xxvi} During the District's sampling period between April 8, 2011 and May 31, 2012, E-D Coat operated at 50% production capacity.^{xxvii}

E-D Coat had no EBMUD-authorized source of water since July 2011.^{xxviii} E-D Coat asserts that it was able to meet its water needs by supplementing rinse water with rainwater collected from the pretreatment system area and the roof and storing in open-top tanks, drums, sumps and a Baker tank.^{xxix} It states that water is recycled by circulating it from the sumps through the pretreatment system sand filter and used it to fill the boilers and top off the process tanks.^{xxx} It claims that though it is unable to turn out an "excellent product" through its current system, it can create a functional product through the addition of brighteners, zinc dust and salts to the plating baths, which has allowed it to operate at 50% of production capacity since 2011.^{xxxi}

During inspections, District staff observed no water recycling facilities onsite that are typically utilized by "zero discharge" facilities.^{xxxii} The District's retained expert also concluded that E-D Coat does not have the capacity to collect and store sufficient rainwater to meet its operational needs, that it does not have the capacity to recycling sufficient process wastewater to meet its needs, and that it has not been recycling wastewater in the manner in which it claims.^{xxxiii}

Findings

The Director has reviewed the record of this matter and finds that the weight of the evidence supports the conclusion that E-D Coat has discharged wastewater to an unauthorized location and has discharged to this unauthorized location wastewater containing metals exceeding local and federal regulatory discharge limits, in violation of the Permit, the directive set forth in Order No. 09-01 and regulatory categorical discharge limits.

The Director finds that the sampling and flow data collected and analyzed by the District, HDR Engineering and Reed Engineering is sufficient to prove more likely than not that E-D Coat has discharged to the 4th Street sewer line when viewed in conjunction with the evidence related to E-D Coat's ability to operate as a zero discharge facility, discussed below. The metal sampling values at the 4th Street line appear to be consistent with the values taken from E-D Coat's process tanks.^{xxxiv} It is significant that the 4th Street sampling values "trended," as stated in Dr. Larry Russell's report, with flow rates at the 4th Street line.^{xxxv} It is significant that those values dropped considerably when the flow stopped after E-D Coat ceased operations in October of 2012.^{xxxvi} Taken together, the sampling and flow data indicates that there is a single source of the metals found in the discharges from the 4th Street sewer line and that E-D Coat is that source.

The Director finds that E-D Coat's assertion that it is able to operate at 50% capacity while using only 250 gallons per day of water by capturing and storing rainwater and recycling its process wastewater is contradicted by the evidence in the record. E-D Coat has not demonstrated that it has the capacity to collect and store the amount of rainwater that would have been needed to make up for operational and evaporative losses during the 18-month period it operated without an EBMUD water supply.^{xxxvii} The evidence in the record, including statements by E-D Coat, shows that E-D Coat obtained water from sources other than its authorized EBMUD meters during this 18 month period, demonstrating a need to supplement its water supply.^{xxxviii} E-D Coat's principal representative, Ms. Lisa Rossi, testified that E-D Coat only obtained a Baker tank for water storage in March of 2012.^{xxxix} The Director finds convincing EBMUD staff observations and the opinion of HDR Engineering as to E-D Coat's capacity for rainwater collection.^{xl}

The Director finds that E-D Coat has not demonstrated that it has the means to recycle and reuse its process wastewater in sufficient capacity to meet its operational needs. E-D Coat states that it is recycling over 6,000 gallons per day of process water.^{xli} E-D Coat does not have the water recycling infrastructure typically seen in industrial operations that recycle wastewater. E-D Coat claims to recycle its process wastewater and other water through its sand filter system. Both EBMUD staff and HDR Engineering observed that E-D Coat's sand filter system has not been

operated for the purpose recycling wastewater. E-D Coat's own operational staff stated that the pretreatment system had not been operated for some time because E-D Coat could not afford the chemicals to operate it.^{xliii} The evidence in the record, and specifically the HDR Engineering analysis of sampling data from E-D Coat's tanks, shows that E-D Coat has not been "topping off" the water in its process tanks, but has been removing wastewater from the tanks and replenishing that water from a supply that was cleaner than its available apparent water supply. This would necessitate the discharge of wastewater from the tanks.^{xliii}

The Director finds the evidence offered by E-D Coat in explanation of its rainwater collection and process water recycling systems unpersuasive in that it has been incomplete, confusing and contradictory.^{xliiv} The Director also notes for the record that E-D Coat has failed to provide sufficient information to the District in support of its application for a "zero discharge" permit and is not, in fact, legally permitted to operate a "zero discharge" facility.

The Director finds that there is dispute in the record as to whether there are solids in the 4th Street sewer line and sampling location, and E-D Coat's investigation indicates that such solids do exist.^{xliiv} Even assuming there were solids in the 4th Street line that contain concentrations of metals, the Director finds that the variability of the zinc discharge concentrations as reflected in the sampling data indicates that the source of the metals is not the "sloughing off" of solids in the sewer line in a manner that would effect the District's sampling data.^{xlivi}

The Director finds that the evidence does not support E-D Coat's contention that flows from the Castro Street sewer line have infiltrated the District's sampling location at 4th and Castro Street and are the source of the metals in the District's sampling. The data in the record shows that had flows from the Castro Street sewer line contaminated the District's sampling location at 4th and Castro Street, that "contamination" would only have served to reduce the values of metals concentrations found in the sampling at 4th and Castro Street.^{xlvii}

At numerous places in the record E-D Coat has claimed that there may be other sources of the metals in the 4th and Castro sampling data, including groundwater infiltration, other industrial facilities such as Safety-Kleen and various other potential sources. The Director finds that these claims are speculative and unsupported by the evidence in the record.^{xlviii}

III. Decision

For all of the reasons above, the Director finds that the June 4, 2012 decision to revoke the Wastewater Discharge Permit No. 03300871 is supported by the weight of the evidence in the record, and E-D Coat's request for reconsideration is therefore denied.

E-D Coat's requests to resume operations pending further consideration of its appeal and its request that the District be required to participate in mediation are denied.

E-D Coat's request to keep the hearing open beyond February 21, 2013 to provide additional evidence into the record is denied based on E-D Coat's failure to demonstrate to the Director that

new information has been discovered which did not exist or could not have been discovered prior to the time the Director closed the hearing on E-D Coat's request for reconsideration.

E-D Coat's request for evidentiary sanctions for alleged "spoliation" of evidence due to District staff's lawful engagement of its federally-mandated investigatory and enforcement role is denied.

E-D Coat's request to conduct a joint investigation with EBMUD of the source of discharges to unauthorized discharge locations is denied.

Signed: David R. Williams
David R. Williams, Director of Wastewater

Date: 2/28/2013

Endnotes

- ⁱ The full title of EBMUD Ordinance No. 355-11 is "An Ordinance Amending Ordinance No. 311, Establishing Regulations for the Interception, Treatment, and Disposal of Wastewater and Industrial Wastes and the Control of Wastewater Requiring Charges to be made therefore, and Fixing Penalties for the Violation of said Regulations."
- ⁱⁱ The Director's June 4, 2012 notice advised E-D Coat that it could apply for either a new wastewater discharge permit or a "zero discharge" permit.
- ⁱⁱⁱ See Staff Report dated January 22, 2013, *Termination of Wastewater Permit No. 03300871* ("Staff Report"), p. 3 & Exhibit 5.
- ^{iv} See Staff Report, Exhibit 6.
- ^v See Staff Report, p. 3 & Exhibit 5; Transcript, "Permit Termination Appeal Hearing," dated November 30, 2012 ("November Transcript") at 35:10 – 36:10, Exhibit 19, p. 3; February 8, 2013 *Response to Staff Report dated January 22, 2013* ("E-D Coat Report"), Exhibit 2, pps. 1 & 3.
- ^{vi} See Staff Report, p. 3 & Exhibit 5.
- ^{vii} See Staff Report, p. 3 n. 6 & Exhibit 5.
- ^{viii} See *id.*
- ^{ix} See Staff Report, p. 3; Staff Report, p. 19; November Transcript at 57:25 – 58:22.
- ^x See Staff Report, Exhibit 6; Staff Report, p. 3; Staff Report, p. 3 n. 6 & Exhibit 7; Staff Report, p. 3, n. 5; November Transcript at 27:5 – 29:20; E-D Coat Report, Exhibit 2, p. 2; November Transcript at 26:20 – 27:8, 29:18 – 30:21 & Exhibit 19, p. 2.
- ^{xi} See E-D Coat Report, Exhibit 6, p. 24, Comment 6. The NOV's upon which E-D Coat's permit termination was based included violations for failure to submit two different required technical reports, the Total Toxic Organics Compliance Reports and reports on any changes to E-D Coat's operations and facilities. E-D Coat has responded to only one of these violations, claiming that it has not needed to provide the District with any technical reports on alterations to its facilities or operations because it has not changed any of its operations other than to stop discharging to the community sewer. See E-D Coat Report, Exhibit 6, p. 23, Comment 1. This change itself represents the most significant change in E-D Coat's operations in the time that the District has regulated it. In support of this operational change, E-D Coat claims to have routed water through its pretreatment system and back to its processing lines, and acquired a Baker tank with which to store rainwater. Neither of these changes was explained in a technical report to the District. October Transcript at 13:1 – 14:6; Staff Report, pps. 19 – 20.
- ^{xii} See November Transcript at 57:25 – 58:22; E-D Coat Report, Exhibit 6, p. 6, Comment 7; November Transcript at 27:5 – 29:20; E-D Coat Report, Exhibit 2, p. 2.
- ^{xiii} See Transcript, "Permit Termination Appeal Hearing," dated October 11, 2012 ("October Transcript") at 18:10 – 20:17; Staff Report, pps. 6 – 7.
- ^{xiv} See October Transcript at 19:5-20; Staff Report, pps. 6 – 7.
- ^{xv} See October Transcript at 24:14 – 25:19; Staff Report, pps. 6 – 7.
- ^{xvi} See October Transcript at 15:17 – 23; Staff Report, pps. 3 – 4; Staff Report, pps. 6 – 7.
- ^{xvii} See October Transcript, Exhibits 3 through 9.
- ^{xviii} See *id.*
- ^{xix} See October Transcript at 20:15 – 21:17; Staff report, p. 7.
- ^{xx} See October Transcript at 20:18-24; Staff Report, p. 7; November Transcript at 47:6-18, 95:13 – 98:13; Staff Report, pps. 12 – 13.
- ^{xxi} See November Transcript at 48:14 – 49:10 & Exhibit 20; E-D Coat Report, p. 3; November Transcript at 49:20 – 50:4 & Exhibits 20 & 21; November Transcript at 50:18 – 53:12 & Exhibits 20 & 21; November Transcript at 52:24 – 53:12; E-D Coat Report, p. 3; November Transcript at 53:9 – 56:19.
- ^{xxii} See November Transcript at 49:20 – 50:4, 53:9 – 56:19 & Exhibits 20 & 21; E-D Coat Report, p. 2, Exhibit 3 & Exhibit 2, p. 10; E-D Coat Report, Exhibit 2, pps. 4 & 6.
- ^{xxiii} See November Transcript at 49:20 – 50:4 & Exhibits 20 & 21; November Transcript at 50:18 – 53:12; November Transcript at 52:24 – 53:12; E-D Coat Report, p. 3.
- ^{xxiv} See November Transcript at 53:9 – 56:19 & Exhibits 22 – 24.
- ^{xxv} See E-D Coat Report, p. 2 & Exhibit 4.
- ^{xxvi} See November Transcript at 31:22-24; E-D Coat Report, pps. 5 – 6 & Exhibit 2, p. 3.
- ^{xxvii} See Staff Report, p. 7; November Transcript at 18:19 – 20:20, 45:13 – 46:3 & Exhibit 18.

- xxviii See October Transcript at 10:21 – 11:23; Staff Report, pps. 3 – 4.
- xxix See November Transcript at 13:10 – 14:13, 17:6 – 18:18, 75:23 – 77:1 & Exhibit 18; E-D Coat Report, Exhibit 5, (email from Florencio Gonzalez dated December 24, 2012) & Exhibit 6, p. 11, Comment 3.
- xxx See November Transcript at 9:24 – 11:5, 32:23 – 33:11, 43:24 – 46:3 & 73:20 – 75:12.
- xxxi See November Transcript at 18:19 – 20:20, 45:13 – 46:3 & Exhibit 18.
- xxxii See October Transcript at 13:17-22; Staff Report, pps. 4, 7, 9 & 16.
- xxxiii See Staff Report, Exhibits 3 & 29.
- xxxiv See October Transcript at 24:14 – 25:19; Staff Report, pps. 6 – 7.
- xxxv For example, when levels of zinc fell, so did levels of copper. See Staff Report, p. 12.
- xxxvi See November Transcript at 47:6-18 & 95:13 – 98:13; Staff Report, pps. 12 – 13.
- xxxvii See Staff Report, Exhibits 3 & 29.
- xxxviii See October Transcript at 13:7-11; Staff Report, pps. 8 – 10.
- xxxix See November Transcript at 33:12-22.
- xl See October Transcript at 13:17-22; Staff Report, pps. 4, 7, 9 & 16; Staff Report, Exhibits 3 & 29.
- xli See Staff Report, p. 15.
- xlii See October Transcript at 13:17-22; Staff Report, pps. 4, 7, 9 & 16; November Transcript at 9:24 – 11:5, 32:23 – 33:11, 43:24 – 46:3 & 73:20 – 75:12.
- xliiii See October Transcript at 18:6-9 & 35:1 – 36:24; Staff Report, pps. 7 – 8 & 16 – 17.
- xliiv See Staff Report, pps. 15-16; November Transcript at 79:13 – 18:17.
- xlv See November Transcript at 49:20 – 50:4, 53:9 – 56:19 & Exhibits 20 & 21; E-D Coat Report, p. 2, Exhibit 3 & Exhibit 2, p. 10; E-D Coat Report, Exhibit 2, pps. 4 & 6; October Transcript at 29:2 – 31:12; Staff Report, p. 12.
- xlvi See Staff Report, p. 12 & Exhibit 22.
- xlvii See November Transcript at 49:20 – 50:4 & Exhibits 20 & 21; November Transcript at 50:18 – 53:12 & Exhibits 20 & 21; November Transcript at 52:24 – 53:12; E-D Coat Report, p. 3; October Transcript at 19:5 – 20:4; Staff Report, p. 11; October Transcript at 27:9 – 28:1; Staff Report, pps. 11 – 12.
- xlviii See November Transcript at 53:9 – 56:19 & Exhibits 22 – 24; E-D Coat Report, Exhibit 2, pps. 4 & 6; E-D Coat Report, Exhibit 2, p. 9; October Transcript at 24:14-21; Staff Report, pps. 13 – 14; October Transcript at 24:2-13; Staff Report, p. 5.

E – D Coat, Inc.

November 08, 2012, E- D Coat, Inc. Industrial Storm Water Inspection Report

**State of California – Environmental Protection Agency
California Regional Water Quality Control Board – San Francisco Bay Region**

INDUSTRIAL STORM WATER INSPECTION REPORT

FACILITY INFORMATION					
2 011009846	03/18/1993	3471	Electroplating, plating, polishing, anodizing, and coloring		
<small>WDID NUMBER</small>	<small>NOI PROCESSING DATE</small>	<small>SIC CODE(S)</small>	<small>TYPE(S) OF INDUSTRIAL ACTIVITY</small>		
E D Coat	715 4 th St.		Oakland	94607	4000 sqft
<small>FACILITY NAME</small>	<small>ADDRESS</small>		<small>CITY</small>	<small>ZIP</small>	<small>FACILITY SIZE</small>
Lisa Rossi			510-847-0756	Lrossi32@aol.com	
<small>OWNER OF SITE REPRESENTATIVE PRESENT DURING INSPECTION & TITLE</small>			<small>PHONE NUMBER</small>	<small>EMAIL</small>	

INSPECTION LOGISTICS			
11/08/12	3:55 PM	4:45 PM	Clear
<small>DATE</small>	<small>ARRIVAL TIME</small>	<small>DEPARTURE TIME</small>	<small>WEATHER CONDITIONS</small>
INSPECTION PRE-ANNOUNCED: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO PICTURES TAKEN: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO SAMPLES COLLECTED: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			

PURPOSE OF INSPECTION	
<input type="checkbox"/> ROUTINE COMPLIANCE ASSESSMENT	<input type="checkbox"/> COMPLAINT/REFERRAL FOLLOW-UP
<input type="checkbox"/> NOTICE OF TERMINATION REQUESTED <input type="checkbox"/> Facility Closed (date _____) and completely cleaned <input type="checkbox"/> Light industry (SIC code(s) _____) and no exposure (see checklist in Attachment A) <input type="checkbox"/> No stormwater discharge because site <input type="checkbox"/> drains to sanitary <input type="checkbox"/> drains to treatment/etc. <input type="checkbox"/> Permit not required for this industry (SIC code(s) _____) <input type="checkbox"/> Regulated by another NPDES permit that covers Stormwater discharge <input type="checkbox"/> New Facility Operator	<input type="checkbox"/> MONITORING REDUCTION REQUESTED <input type="checkbox"/> No Exposure Certification <input type="checkbox"/> Sampling and Analysis Reduction <input type="checkbox"/> PREVIOUS INSPECTION/ENFORCEMENT FOLLOW-UP Compliance due date _____ <input checked="" type="checkbox"/> OTHER REASON (PLEASE SPECIFY): Enforcement inspection – no/late annual report submittal

INSPECTOR'S FINDINGS	
Outcome of inspection <input type="checkbox"/> ISSUE NOTICE TO COMPLY <input type="checkbox"/> ISSUE NOTICE OF VIOLATION <input type="checkbox"/> APPROVE NOTICE OF TERMINATION <input type="checkbox"/> APPROVE MONITORING REDUCTION <input type="checkbox"/> SITE IN COMPLIANCE Recommendation for follow up or reinspection <input type="checkbox"/> REINSPECT ON: date _____ <input type="checkbox"/> REFER TO LOCAL AGENCY FOR FOLLOW UP <input checked="" type="checkbox"/> OTHER (describe in notes section)	NOTES: No pictures (memory card missing from camera). Site has been shut down. No employees or activities on-site. Shut-down due to EBMUD denial of process water discharges. EBMUD audit underway. SWPPP is missing from site; Ms. Rossi indicated that EBMUD took possession due to their site audit. Outdoor areas entirely paved; materials stored throughout. Outdoor site graded toward sumps which drain into sanitary sewer. No evidence of discharges; no other violations of permit observed. We need to revisit the site to review the SWPPP or require submittal.

Cecilio Felix		11/30/2012
<small>INSPECTOR NAME</small>	<small>SIGNATURE</small>	<small>REPORT DATE</small>

State of California - Environmental Protection Agency
California Regional Water Quality Control Board - San Francisco Bay Region

INDUSTRIAL STORM WATER INSPECTION REPORT

COMMUNICATION SUMMARY

WDID: 3015009846 Date: 11/8/12

Water Board Staff (WB) Present

Name: CECILIO FELIX Signed: [Signature]

Facility Representative (FR) Present

Name: LISA ROSSI Signed: [Signature]

Title: CHIEF OPERATING OFFICER

Phone: (510) 847-0756

Email: lrossi32@aol.com

CSF WB WB left contact information with Facility Representative.

CSF WB WB provided copies of previously sent enforcement documents.
List items: _____

CSF WB WB explained purpose of inspection and enforcement documents.

CSF WB WB verified responsible party and/or duly authorized representative.
(WB) (FR)

Send Follow-up Correspondence to:

- Above Named Facility Representative, and/or
- Other Responsible Party or Duly Authorized Representative Listed Below:

Name: _____

Title: _____

Phone: _____

Email: _____

Address, if different than facility address:

715 4th ST. OAKLAND 94607
ED COAT

State of California - Environmental Protection Agency
California Regional Water Quality Control Board - San Francisco Bay Region

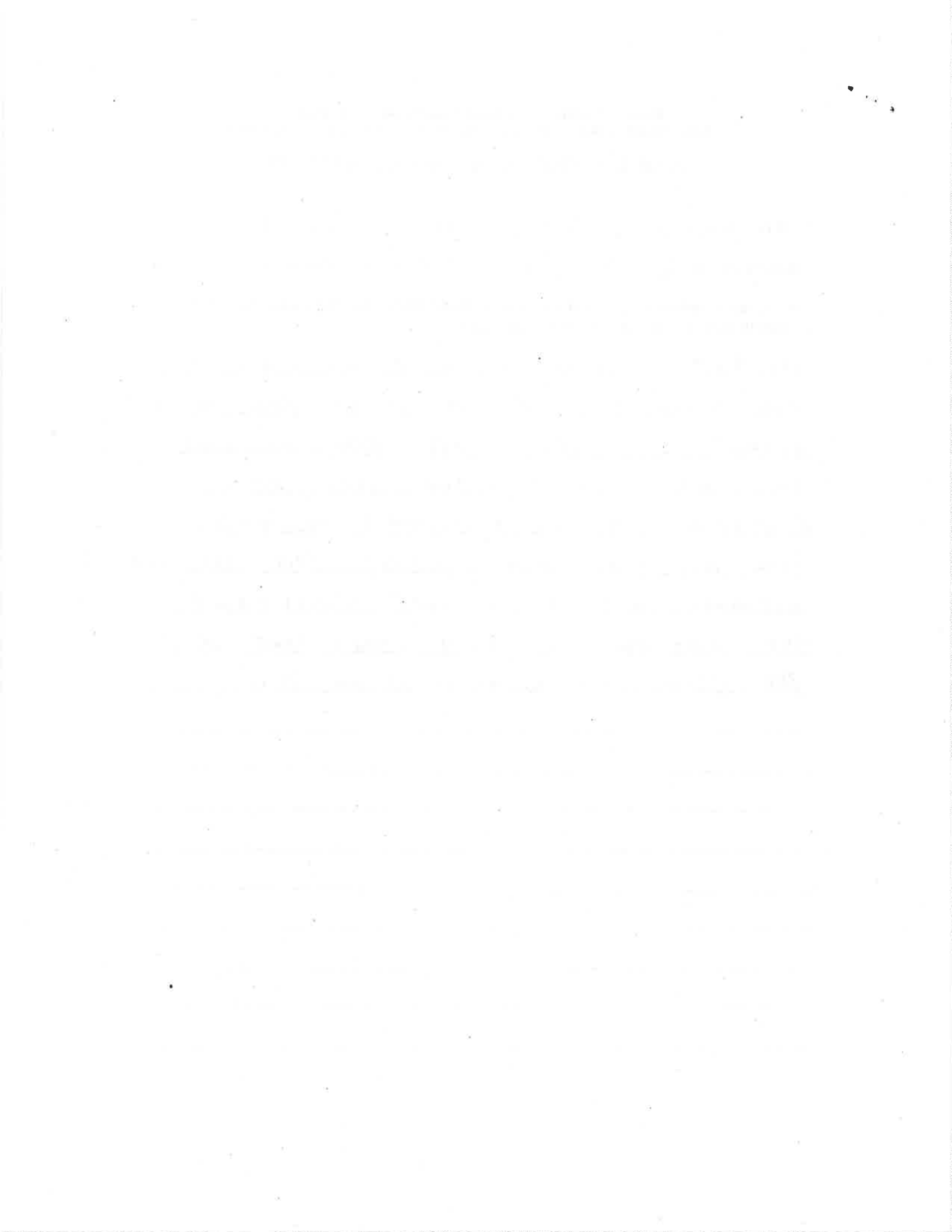
INDUSTRIAL STORM WATER INSPECTION REPORT

Facility Name ED COAT Date 11/14/12

Inspector Name CECILIA FELIX Facility Contact Name LISA ROSSI

Facility representative's explanation for why the Annual Report was late/not submitted;
person to contact if rep did not know explanation:

MS. ROSSI'S CONSULTANT MADE AN OVERSIGHT
AND FAILED TO ALERT MS. ROSSI THAT THE ANNUAL
REPORT WAS DUE. MS. ROSSI INDICATED
THAT HER FACILITY STAFF HAS BEEN
REDUCED TO 10 EMPLOYEES FROM 30
OVER THE LAST FEW YEARS; THIS NECESSITATED
RELIANCE ON THE OUTSIDE CONSULTANT,
THE CONSULTANT NORMALLY TAKES CARE OF
THE REPORT AND SUBMITS IT ON TIME.



E – D Coat, Inc.

May 20, 2002, E- D Coat, Inc. Industrial Storm Water Inspection Form and Associated General
Permit Documentation



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

Inspector: Guylen Pereira
 Signature: [Signature]
 Date: 5/20/02 Phone Number (510) 622-2107

INSPECTION FORM

I. SITE INFORMATION

Site Status: <input type="checkbox"/> Active <input type="checkbox"/> Existing but Inactive <input type="checkbox"/> No Longer Existing	WDID No. <u>2 015009846</u>
Site Name: <u>E-D Coat Inc</u>	Contact: <u>Ole Nordhavn</u>
Site Address: <u>715 4th St, Oakland</u>	Phone No.: <u>(510) 832-8104</u>
Location: Lat/Long: _____	SIC Code: _____
Corporation Name: _____	
Corp Contact: _____ Title: _____	Phone No.: _____
Corp Address: _____	FAX No.: _____

II. STANDARD OBSERVATIONS

AREAS OF ACTIVITY	REMARKS: Describe recommendations to correct, requirements, and time to implement. Check box if remark is a requirement
A. Stormwater Pollution Prevention Plan	<input checked="" type="checkbox"/>
B. Outdoor Process/Manufacturing Areas	<input checked="" type="checkbox"/> <u>None</u>
C. Outdoor Material Storage Areas	<input type="checkbox"/> <u>None</u>
D. Outdoor Waste Storage/Disposal Areas	<input type="checkbox"/> <u>Open bins - requested keep closed</u>
E. Outdoor Vehicle and Heavy Equipment Storage, Maintenance Areas	<input checked="" type="checkbox"/> <u>None</u>
F. Outdoor Parking Areas and Access Roads	<input type="checkbox"/> <u>None</u>
G. Outdoor Wash Areas	<input checked="" type="checkbox"/> <u>None</u>
H. Rooftop Equipment	<input type="checkbox"/> <u>Zinc Plating waste sucked through vents - probably</u>
I. Outdoor Drainage from Indoor Areas	<input type="checkbox"/> <u>particulate cleaned to alkaline or chloride since higher quality product.</u>
J. Other (describe):	<input type="checkbox"/> <u>precipitate numbers reduced significantly.</u>

OTHER COMMENTS/REMARKS
2000-2001 Report not in file: 9-00 Sample 1/16 pH 4.43 TSS 14 SC83 PpG 1.7 TOC 9
Sample 2 pH 7.25 TSS 25 SC 81 PpG ND TOC 6
(1) (0.015) 0.053 (2) (0.086) 0.025 (with 417) 0.074
(2) (0.027) 0.027 0.0254
 See attached for more comments.

III. SIGNATURE SECTION

I have received a copy of this Inspection Form. The Recommendations to Correct, Section II, will be considered and acted upon within 5 days of the inspection or unless otherwise noted above. I will also submit a report within 30 days of the inspection, detailing what was done to correct inadequacies noted or explain why no action was taken to satisfy the inadequacies identified above.

Signature: Ole Nordhavn Date: 5-20-02
 Print Name: OLE NORDHAVN Title: PROCESS MGR. Phone No. (510) 832-8104

IV. RESOLUTION (for RWQCB office use only)

Data entry	Site Status Satisfactory: <input type="checkbox"/> Yes <input type="checkbox"/> No	Inter-office cc:
Date:	Recommend N.O.V. <input type="checkbox"/> Yes <input type="checkbox"/> No	
	Recommend Other Enforcement <input type="checkbox"/> Yes <input type="checkbox"/> No	



1. *Handwritten notes in the left margin, including the word "Adverse" and other illegible scribbles.*

[The remainder of the page contains extremely faint, illegible text, likely bleed-through from the reverse side of the document.]

Submission #: 2002-01-0360



Metals

E-D Coat, Inc.
Attn: Ole Nordhavn

Test Method: 6010B
Prep Method: 3010A

STL San Francisco
1220 Quarry Lane
Pleasanton, CA 94566

Sample ID: STORMWATER #1 LOC #1	Lab Sample ID: 2002-01-0360-001
Project: Stormwater #1	Received: 01/22/2002 15:10
Sampled: 01/21/2002 13:55	Extracted: 01/23/2002 05:03
Matrix: Water	QC-Batch: 2002/01/23-02.15

Tel 925 484 1919
Fax 925 484 1098
www.stl-inc.com
www.chromalab.com

CA DHS ELAP#1094

Compound	Result	Rep.Limit	Units	Dilution	Analyzed	Flag
Cadmium	0.022	0.0020	mg/L	1.00	01/23/2002 14:05	
Chromium	0.015	0.0050	mg/L	1.00	01/23/2002 14:05	
Lead	ND	0.0050	mg/L	1.00	01/23/2002 14:05	
Nickel	ND	0.0050	mg/L	1.00	01/23/2002 14:05	
Zinc	0.75	0.010	mg/L	1.00	01/23/2002 14:05	
Iron	ND	0.20	mg/L	1.00	01/23/2002 14:05	
Aluminum	0.20	0.20	mg/L	1.00	01/23/2002 14:05	

Submission #: 2002-01-0360



Metals

E-D Coat, Inc.
Attn: Ole Nordhavn

Test Method: 6010B
Prep Method: 3010A

STL San Francisco
1220 Quarry Lane
Pleasanton, CA 94566

Tel 925 484 1919
Fax 925 484 1086
www.stl-inc.com
www.chromalab.com

CA DHS ELAP#1094

Sample ID: STORMWATER #1 LOC #2	Lab Sample ID: 2002-01-0360-002
Project: Stormwater #1	Received: 01/22/2002 15:10
Sampled: 01/21/2002 14:05	Extracted: 01/23/2002 05:03
Matrix: Water	QC-Batch: 2002/01/23-02.15

Compound	Result	Rep.Limit	Units	Dilution	Analyzed	Flag
Cadmium	0.0022	0.0020	mg/L	1.00	01/23/2002 14:09	
Chromium	ND	0.0050	mg/L	1.00	01/23/2002 14:09	
Lead	ND	0.0050	mg/L	1.00	01/23/2002 14:09	
Nickel	ND	0.0050	mg/L	1.00	01/23/2002 14:09	
Zinc	0.54	0.010	mg/L	1.00	01/23/2002 14:09	
Iron	ND	0.20	mg/L	1.00	01/23/2002 14:09	
Aluminum	ND	0.20	mg/L	1.00	01/23/2002 14:09	



Sta - 832 - 8821

April 7, 2008

FAXED
APR 06 2008
BY: _____

Report #8010E

Ole Nordhavn
ED Coat
715 4th Street
Oakland, CA

Re: Storm water sample from 1-3-08

Following are the test results and documentation from the sample that you took on 1-3-08.

I have summarized the results onto a Storm Event Form. You should be able to copy that information directly onto your forms.

Please sign the Chain of Custody form at the arrow.

We trust this information is useful to you and look forward to working with you in the future.

Best regards,

Tim Lundell, PE, CIH
Datalab

Attachments: test results

Detailed Report # 8010

Datalab
 1503 Concession Drive, San Jose, CA 95131
 (408) 943-1288 ext. 4089 (408) 943-4100 fax
 datalab.com

#1

Client Info				Analyte Requested												Number of Containers											
Client	Company	Address	City, State, Zip	Sample Id	Comp/Grab	Date	Time	Matrix	Cadmium	Chromium, Total	Copper	Lead	Nickel	Silver	Zinc	pH	Cyanide, Total	Conductivity	Oil And Grease	TSS	TiV	TOC			Date	Time	
Old Oregon	EO COAT	715 4th Street	DAK LA-0 CA 94607	PH/Conduct #1	6	1-3-08	1 PM	-								X		X									
				TSS #1	6			H ₂ NO ₃							X							X					
				META #1	6			H ₂ SO ₄		X																	
				TOC #1	6																						
				PH/Conduct #2	6			-								X											
				TSS #2	6			-																			
				META #2	6			HNO ₃		X					X							X					
				TOC #2	6			H ₂ SO ₄																			
								1-3-08		1:30 PM															1-3-08	1:30 PM	

S.R.L.M.

McArdhan

SIDE B

2007 - 2008
ANNUAL REPORT

FORM - SAMPLING & ANALYSIS RESULTS

STORM EVENT

When analysis is done using portable analyzers (such as portable pH meters, SC meters, etc.), indicate "PA" in the appropriate test method used box.

- If analytical results are less than the detection limit (or non detectable), show the value as less than the numerical value of the detection limit (example: <.05)
- If you did not analyze for a required parameter, do not report "0". Instead, leave the appropriate box blank

SIGNATURE: _____

TITLE: _____

NAME OF PERSON COLLECTING SAMPLE(S): _____

ANALYTICAL RESULTS
For Second Storm Event

DESCRIBE DISCHARGE LOCATION Example: NW Out Fall	DATE/TIME OF SAMPLE COLLECTION	TIME DISCHARGE STARTED	BASIC PARAMETERS					OTHER PARAMETERS									
			PH	TSS	SC	O&G	TOC	CD	CR	ZN	SN						
			mg/L	units	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L						
#1	1/3/08 1:00 AM	AM PM	6.2	5	16	-	1.6	0.009	ND	0.43	ND						
#2	1/3/08 1:00 AM	AM PM	6.3	7	15	-	ND	ND	ND	0.31	ND						
TEST REPORTING UNITS:			mg/L	mg/L	units	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L
TEST METHOD DETECTION LIMIT:			0.1	5	1	-	1	0.002	0.005	0.01	0.05						
TEST METHOD USED:			LAB	LAD	LAD	LAD	LAD	LAD	LAD	LAD	LAD	LAD	LAD	LAD	LAD	LAD	LAD

ANALYZED BY (SELF/LAB): _____
 TSS - Total Suspended Solids
 SC - Specific Conductance
 O&G - Oil & Grease
 TOC - Total Organic Carbon



Datalab

ED Coal
 Attention: Ole Nordheven
 716 4th Street
 Oakland, CA 94607

January 10, 2008
 Report No. 8010E

Subject: Chemical Analysis of Water Sample
 Samples Received: January 3, 2008
 Sample Date: January 3, 2008
 Sample Time: 2:00 PM
 Sample Collected by: Client
 Sealed: No
 Sample Type: Grab

Sample ID	Analysis	Results	Units	Analysis Date	Analysis Time	Method Detection Limit	Method	QC Patch	Qual
pH/Conduct #1	pH	6.2	pH	1/4/2008	11:00 AM	0.1	SM 4500-H+B	PH010408	
pH/Conduct #1	conductivity	16	uS/cm	1/4/2008	11:00 AM	1	EPA 120.1	CY010408	
pH/Conduct #2	pH	6.3	pH	1/4/2008	11:00 AM	0.1	SM 4500-H+B	PH010408	
pH/Conduct #2	conductivity	15	uS/cm	1/4/2008	11:00 AM	1	EPA 120.1	CY010408	

Analyzed by: H. Hem
 Reviewed by: T. Lundell

ND = Not Detected at or above the Detection Limit
 Qual = Data Qualifier



QC Batch ID CY010408
QC/Prep Date 1/4/2008

Analysis	Pt One	Pt Two	Units	QC Type	Method
Conductivity	2	1409	uS/cm	Standard	EPA 120.1

platinum electrode; automatic temperature adjustment

Analyzed by: H. Ham
Reviewed by: T. Lundell

RPD: Relative Percent Difference



QC Batch ID PH010408
QC/Prep Date 1/4/2008

Analysis	Pt One	Pt Two	Pt Three	Units	QC Type	Method
pH	4.00	7.00	10.00	pH Units	Buffers	SM 4500-H+B

automatic temperature adjustment

Analyzed by: H. Ham
Reviewed by: T. Lundell

RPD: Relative Percent Difference

8010 ED COAT
1-3-08

Quantity
1000 Commercial Drive, San Jose, CA 95128
(408) 943-0190 ext. 1999 943-0193 fax
www.datalab.com

1-3-08
L.T.

<i>Jim Luudell</i>																			
<i>Drinks</i>																			
<i>Sam Jose</i>																			
<i>5/9/08</i>																			
Sample Id	Comp Grade	Date	Time	Mark	Cadmium	Chromium, Total	Copper	Lead	Nickel	Silver	Zinc	pH	Cyanide, Total	Conductivity	Oil And Grease	TSS	TOC	TIM	Number of Containers
<i>TSS # 2</i>	<i>X</i>	<i>1-3-08</i>	<i>1:00</i>	<i>(002)</i>												<i>X</i>			<i>1</i>
<i>Metals # 2</i>	<i>X</i>	<i>1-3</i>	<i>1pm</i>		<i>X</i>	<i>X</i>					<i>X</i>								<i>1</i>
<i>TOC # 2</i>	<i>X</i>	<i>1-3</i>	<i>1pm</i>														<i>X</i>		
<i>TSS # 1</i>																			
<i>Metals # 1</i>											<i>X</i>								
<i>TOC # 1</i>											<i>X</i>								
<i>TSS R200</i>		<i>1-3</i>	<i>14:30</i>																
<i>Jim Luudell</i>																			

*1-3-08 1:00
2 water tech (all 3/day)*

Chain of Custody Details 1/4/07

#1
pH 6.15
PH 010408
15.95 µS/cm

#2
pH 6.32
PH 010408
15.42 µS/cm

ED Cont

Entech Analytical Labs, Inc.

3334 Victor Court, Santa Clara, CA 95054

Phone: (408) 588-0200

Fax: (408) 588-0201

Tim Lundell
Datalab, Inc.
1893 Concourse Drive
San Jose, CA 95131

Lab Certificate Number: 59013
Issued: 01/15/2008

P.O. Number: Verbal

Certificate of Analysis - Final Report

On January 07, 2008, samples were received under chain of custody for analysis.
Entech analyzes samples "as received" unless otherwise noted. The following results are included:

Matrix	Test / Comments
Liquid	Metals by ICP: EPA 3010A / EPA 6010B for Groundwater and Water - EPA 200.7 for Wastewater Organic Carbon: Standard Methods (18th Ed.) 5310C Total Suspended Solids (TSS): EPA 150.2/Std. Methods (18th Ed.) 2540D

Entech Analytical Labs, Inc. is certified for environmental analyses by the State of California (#2346).
Subcontracted work is the responsibility of the subcontract laboratory, this includes turn-around-time and data quality.
If you have any questions regarding this report, please call us at 408-588-0200 ext. 225.

Sincerely,



C. L. Thorn
Laboratory Director

Entech Analytical Labs, Inc.

3334 Victor Court, Santa Clara, CA 95054

Phone: (408) 588-0200

Fax: (408) 588-0201

Datalab, Inc.
1893 Concourse Drive
San Jose, CA 95131
Attn: Tim Lundell

Certificate of Analysis - Data Report

P.O. Number: Verbal
Samples Received: 01/07/2008
Sample Collected by: Client

Lab #: 59013-001 Sample ID: Sample #1 Matrix: Liquid Sample Date: 1/3/2008 1:00 PM

Metals by ICP: EPA 9010A / EPA 6010B for Groundwater and Water - EPA 200.7 for Wastewater

Parameter	Result	Qual	D/P-F	Detection Limit	Units	Prep Date	Prep Batch	Analysis Date	QC Batch
Cadmium	0.0090		1.0	0.0020	mg/L	1/8/2008	WM080108	1/9/2008	WM080108
Chromium	ND		1.0	0.0050	mg/L	1/8/2008	WM080108	1/9/2008	WM080108
Zinc	0.43		1.0	0.010	mg/L	1/8/2008	WM080108	1/9/2008	WM080108
Tin	ND		1.0	0.050	mg/L	1/8/2008	WM080108	1/9/2008	WM080108

Analyzed by: CTan
Reviewed by: HDINH

Organic Carbon: Standard Methods (18th Ed.) 5310C

Parameter	Result	Qual	D/P-F	Detection Limit	Units	Prep Date	Prep Batch	Analysis Date	QC Batch
Total Organic Carbon	1.6		1.0	1.0	mg/L	N/A	N/A	1/11/2008	WT0C080111

Analyzed by: Rlanaro
Reviewed by: HDINH

Total Suspended Solids (TSS): EPA 160.2/514 Methods (18th Ed.) 2540D

Parameter	Result	Qual	D/P-F	Detection Limit	Units	Prep Date	Prep Batch	Analysis Date	QC Batch
Total Suspended Solids	5.0		1.0	5.0	mg/L	N/A	N/A	1/10/2008	WTSS080110

Analyzed by: Eblanoo
Reviewed by: HDINH

Lab #: 59013-002 Sample ID: Sample #2

Matrix: Liquid Sample Date: 1/3/2008 1:00 PM

Metals by ICP: EPA 9010A / EPA 6010B for Groundwater and Water - EPA 200.7 for Wastewater

Parameter	Result	Qual	D/P-F	Detection Limit	Units	Prep Date	Prep Batch	Analysis Date	QC Batch
Cadmium	ND		1.0	0.0020	mg/L	1/8/2008	WM080108	1/9/2008	WM080108
Chromium	ND		1.0	0.0050	mg/L	1/8/2008	WM080108	1/9/2008	WM080108
Zinc	0.31		1.0	0.010	mg/L	1/8/2008	WM080108	1/9/2008	WM080108
Tin	ND		1.0	0.050	mg/L	1/8/2008	WM080108	1/9/2008	WM080108

Analyzed by: CTan
Reviewed by: HDINH

Organic Carbon: Standard Methods (18th Ed.) 5310C

Parameter	Result	Qual	D/P-F	Detection Limit	Units	Prep Date	Prep Batch	Analysis Date	QC Batch
Total Organic Carbon	ND		1.0	1.0	mg/L	N/A	N/A	1/11/2008	WT0C080111

Analyzed by: Rlanaro
Reviewed by: HDINH

Total Suspended Solids (TSS): EPA 160.2/514 Methods (18th Ed.) 2540D

Parameter	Result	Qual	D/P-F	Detection Limit	Units	Prep Date	Prep Batch	Analysis Date	QC Batch
Total Suspended Solids	7.0		1.0	5.0	mg/L	N/A	N/A	1/10/2008	WTSS080110

Analyzed by: Eblanoo
Reviewed by: HDINH

Detection Limit = Detection Limit for Reporting.

D/P-F = Dilution and/or Prep Factor includes sample volume adjustments.

ND = Not Detected at or above the Detection Limit.

Qual = Data Qualifier

Entech Analytical Labs, Inc.

3334 Victor Court, Santa Clara, CA 95054 Phone: (408) 588-0200 Fax: (408) 588-0201

Replicate - Liquid - Total Suspended Solids (TSS): EPA 160.2/Std. Methods (18th Ed.) 2540D

QC Batch ID: WT99080110

QC Batch Analysis Date: 1/10/2008

Validated by: HDNH - 01/11/08

Parameter	Sample Result	Replicate Result	Units	RPD	QC Type	RPD Limits
Total Suspended Solids	59015-001	ND	mg/L	8.8	Replicate	25.0

Entech Analytical Labs, Inc.

3334 Victor Court, Santa Clara, CA 95054 Phone: (408) 588-0200 Fax: (408) 588-0201

LCS / LCSD - Liquid - Metals by ICP: EPA 3010A / EPA 8010B for Groundwater and Water - EPA 200.7 for Wastewater

QC Batch ID: WM080108

QC/Prep Date: 1/5/2008

Reviewed by: HDNH - 01/08/08

LCS

Parameter	Method Blank	Spike Amt	Spike/Result	Units	% Recovery	Recovery Limits
Aluminum	<0.060	0.50	0.538	mg/L	107	85 - 115
Antimony	<0.010	0.50	0.511	mg/L	102	85 - 115
Arsenic	<0.010	0.50	0.502	mg/L	100	85 - 115
Barium	<0.0050	0.50	0.518	mg/L	104	85 - 115
Beryllium	<0.0050	0.50	0.465	mg/L	93.0	85 - 115
Cadmium	<0.0020	0.50	0.503	mg/L	101	85 - 115
Chromium	<0.0050	0.50	0.519	mg/L	104	85 - 115
Cobalt	<0.0050	0.50	0.518	mg/L	104	85 - 115
Copper	<0.0050	0.50	0.508	mg/L	102	85 - 115
Iron	<0.050	0.50	0.530	mg/L	106	85 - 115
Lead	<0.0050	0.50	0.523	mg/L	105	85 - 115
Manganese	<0.0050	0.50	0.520	mg/L	104	85 - 115
Molybdenum	<0.0050	0.50	0.524	mg/L	106	85 - 115
Nickel	<0.0050	0.50	0.519	mg/L	104	85 - 115
Selenium	<0.020	0.50	0.488	mg/L	97.6	85 - 115
Silver	<0.0050	0.50	0.502	mg/L	100	85 - 115
Sodium	<0.10	0.50	0.521	mg/L	104	85 - 115
Thallium	<0.020	0.50	0.483	mg/L	96.7	85 - 115
Ti	<0.050	1.0	1.03	mg/L	103	85 - 115
Titanium	<0.0020	0.50	0.524	mg/L	105	85 - 115
Vanadium	<0.0050	0.50	0.518	mg/L	104	85 - 115
Zinc	<0.010	0.50	0.504	mg/L	101	85 - 115

Entech Analytical Labs, Inc.

3334 Victor Court, Santa Clara, CA 95054 Phone: (408) 588-0200 Fax: (408) 588-0201

LCS / LCSD - Liquid - Metals by ICP: EPA 3010A / EPA 8010B for Groundwater and Water - EPA 200.7 for Wastewater

QC Batch ID: WM080108

QC/Prep Date: 1/8/2008

Reviewed by: HDINH - 01/08/08

Parameter	Method Blank	Spike Amt	Spike Result	Units	% Recovery	RPD	RPD Limits	Recovery Limits
Aluminum	<0.050	0.50	0.535	mg/L	107	0.45	25.0	85 - 115
Antimony	<0.010	0.50	0.504	mg/L	101	1.3	25.0	85 - 115
Arsenic	<0.010	0.50	0.499	mg/L	99.7	0.58	25.0	85 - 115
Barium	<0.0050	0.50	0.518	mg/L	104	0.15	25.0	85 - 115
Beryllium	<0.0050	0.50	0.500	mg/L	100	1.1	25.0	85 - 115
Cadmium	<0.0020	0.50	0.506	mg/L	101	0.44	25.0	85 - 115
Chromium	<0.0050	0.50	0.523	mg/L	105	0.79	25.0	85 - 115
Cobalt	<0.0050	0.50	0.523	mg/L	105	1.0	25.0	85 - 115
Copper	<0.0050	0.50	0.515	mg/L	103	1.3	25.0	85 - 115
Iron	<0.050	0.50	0.532	mg/L	106	0.32	25.0	85 - 115
Lead	<0.0050	0.50	0.516	mg/L	103	1.6	25.0	85 - 115
Manganese	<0.0050	0.50	0.523	mg/L	105	1.6	25.0	85 - 115
Molybdenum	<0.0050	0.50	0.519	mg/L	104	0.81	25.0	85 - 115
Nickel	<0.0050	0.50	0.522	mg/L	104	0.48	25.0	85 - 115
Selenium	<0.020	0.50	0.460	mg/L	92.1	1.9	25.0	85 - 115
Silver	<0.0050	0.50	0.509	mg/L	102	1.3	25.0	85 - 115
Sodium	<0.10	0.50	0.523	mg/L	105	0.44	25.0	85 - 115
Thallium	<0.020	0.50	0.496	mg/L	97.3	1.4	25.0	85 - 115
Tin	<0.050	1.0	1.02	mg/L	102	0.60	25.0	85 - 115
Titanium	<0.0020	0.50	0.532	mg/L	106	1.5	25.0	85 - 115
Vanadium	<0.0050	0.50	0.524	mg/L	105	1.1	25.0	85 - 115
Zinc	<0.010	0.50	0.507	mg/L	101	0.61	25.0	85 - 115

Entech Analytical Labs, Inc.

3334 Victor Court, Santa Clara, CA 95054 Phone: (408) 588-0200 Fax: (408) 588-0201

LCS / LCSD - Liquid - Organic Carbon:: Standard Methods (18th Ed.) 5310C

QC Batch ID: WTQC080111

QC Batch ID Analysis Date: 1/11/2008

Reviewed by: HDNH - 01/15/08

LCS

Parameter	Method Blank	Spike Amt	Spike/Result	Units	% Recovery	Recovery Limits
Total Organic Carbon	<1.0	25	23.5	mg/L	94.1	75 - 125

LCSD

Parameter	Method Blank	Spike Amt	Spike/Result	Units	% Recovery	RPD	RPD Limits	Recovery Limits
Total Organic Carbon	<1.0	25	23.5	mg/L	94.2	0.16	25.0	75 - 125

E – D Coat, Inc.

**Notice of Violation and Enforcement Settlement Offer to Participate in Expedited Payment Program for Failure to Submit a Annual Report by July 1, 2009, as Required by State Water Resources Control Board General Permit for Stormwater Discharges Associated With Industrial Activities, Order No. 97-DWQ, NPDES No. CAS000001 sent to E – D Coat, Inc., 715 4th Street, Oakland, CA 94607 on August 3, 2009 with USPS Domestic Return Receipt signed by
Lisa Rossi**



Linda Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board

San Francisco Bay Region

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



Arnold Schwarzenegger
Governor

August 3, 2009

Rossi, Jerry
Attn: Ole Nordhavn
715 4th St
Oakland, CA 94607

VIA CERTIFIED MAIL
No. 7006 0810 0005 1432 9552
CIWQS Place ID: 221756
Project Tracking ID: 21

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: E D COAT (WDID No. 2 011009846)
Facility Address: 715 4TH ST, OAKLAND, CA 94607

Dear Ole Nordhavn:

This letter is to notify Rossi, Jerry (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 July 31, 2009, the Permittee has failed to submit an annual report by July 1, 2009, 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. This failure is identified in the Notice of Noncompliance (hereinafter "NON").

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, 2009.

In addition, pursuant to California Water Code sections 13399.31(c) and 13399.33(c), the Permittee shall also be subject to a *minimum* penalty of *not less than* ONE THOUSAND DOLLARS (\$1,000.00) to be assessed by the Regional Water Board if the Permittee fails to submit an annual report within sixty (60) days after the first notice of such failure was sent. The statute requires that the Regional Water Board provide the Permittee with two separate notices of noncompliance (each at least thirty [30] days apart) outlining the Permittee's failure to submit an annual report. A copy of the first NON issued to the Permittee is attached. California Water Code section 13399.33(d) also allows the Regional Water Board to recover the enforcement costs it incurred regarding the Permittee's failure to submit an annual report.

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 identified in the NON 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 September 4, 2009, and pay a ONE THOUSAND DOLLARS (\$1,000.00) administrative civil liability for the annual reporting violation identified in the NON. 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 identified in the NON. 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 identified in the NON.

The Expedited Payment Program does not address liability for any violation that is not specifically identified in the NON.

PERMITTEE'S OPTIONS AND INSTRUCTIONS FOR RESPONDING TO OFFER:

ACCEPTING OFFER:

If the Permittee accepts this offer, please complete and return the Acceptance and Waiver enclosed herewith on or before September 4, 2009, 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 September 4, 2009, 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/annualreport.shtml

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 ten (10) 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.

CONTESTING THE ALLEGED VIOLATION:

If the Permittee wishes to contest the annual reporting violation alleged in the NON, the challenge must be received on or by September 4, 2009. 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.

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 alleged in the NON attached hereto as Exhibit "A," 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 September 4, 2009. If the Permittee chooses not to, or fails to submit, an annual report on or before September 4, 2009, 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 September 4, 2009, the Regional Water Board staff will publish a notice of the proposed resolution of the annual reporting violation alleged in the NON.

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 the Notice of Noncompliance, this 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,

Dyan C. Whyte
Assistant Executive Officer

Enclosures:

- Exhibit "A"—Notice of Noncompliance
- Acceptance of Conditional Resolution and Waiver of Right to Hearing; (Proposed) Order

cc: Ann Carroll, Office of Enforcement, State Water Resources Control Board



Linda Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board San Francisco Bay Region

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



Arnold Schwarzenegger
Governor

August 3, 2009

Rossi, Jerry
Attn: Ole Nordhavn
715 4th St
Oakland, CA 94607

VIA CERTIFIED MAIL
No. 7006 0810 0005 1432 9552
CIWQS Place ID: 221756
Project Tracking ID: 21

Exhibit "A"

NOTICE OF NONCOMPLIANCE

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: E D COAT (WDID No. 2 011009846)
Facility Address: 715 4TH ST, OAKLAND, CA 94607**

Dear Ole Nordhavn:

Your facility, located at the above address, is regulated under the State Water Resources Control Board's General Permit for Stormwater Discharges Associated with Industrial Activities (hereinafter "General Permit), which requires you to submit an annual report by July 1 of each year. According to our office's records, as of July 31, 2009, we have not received your facility's annual report. Please submit a complete annual report to this office by **September 4, 2009**, 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. 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/annualreport.shtml

Failure to submit your annual report violates the requirements of the General Permit, the California Water Code, and the Federal Clean Water Act. Thus, we are considering taking formal enforcement action against you.

If you have any questions, please contact Danny Pham at (510) 622-2402 or email dapham@waterboards.ca.gov.

Sincerely,

Dyan C. Whyte
Assistant Executive Officer

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

Rossi, Jerry

Facility Name: E D COAT (WDID No. 2 011009846)

Facility Address: 715 4TH ST, OAKLAND, CA 94607

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"), Rossi, Jerry (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 allegations of violations described in the Notice of Noncompliance (hereinafter "NON") and incorporated herein by reference.

Rossi, Jerry agrees that the NON 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 Executive Officer. Rossi, Jerry 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 September 4, 2009, 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 or California Water Code section 13399.33 that otherwise might be assessed for the violations described in the NON.

Rossi, Jerry understands that this Acceptance and Waiver waives the Permittee's right to contest the allegations in the NON and the civil liability amount for such violations.

Rossi, Jerry 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.

Rossi, Jerry understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the NON.

Upon execution by Rossi, Jerry, 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

Rossi, Jerry 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 NON and incorporated by reference herein.

Rossi, Jerry 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 NON 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.

Rossi, Jerry 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 ten (10) 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.

(Permittee)

By: _____
(Signed Name)

(Date)

(Printed or typed name)

(Title)

IT IS SO ORDERED PURSUANT TO CALIFORNIA WATER CODE SECTION 13385

Date: _____

By: _____

Bruce H. Wolfe
EXECUTIVE OFFICER
San Francisco Bay Regional Water Quality Control Board

SENDER COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Rossi, Jerry
Attn: Ole Nordhavn
715 4th St
Oakland, CA 94607

2. Article Number
(Transfer from service label)

7006 0810 0009 1432 7552

21

PS Form 3811, February 2004

Domestic Return Receipt

102905-02-M-1840

ADDRESSEE COMPLETE THIS SECTION

A. Signature X <i>Jerry Rossi</i>		<input type="checkbox"/> Agent
		<input type="checkbox"/> Addressee
B. Received by (Printed Name)	C. Date of Delivery	

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

<input checked="" type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail
<input type="checkbox"/> Registered	<input checked="" type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

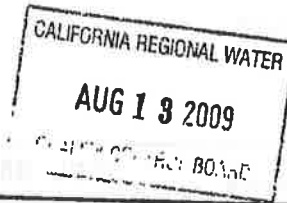
UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

SF Bay Regional Water Quality Control Board
1515 Clay St, Ste 1400
Oakland, CA 94612
Attn: Storm Water Unit



E – D Coat, Inc.

California Regional Water Quality Control Board, San Francisco Bay Region Complaint No. R2-
2010-0016 Administrative Civil Liability in the Matter of E – D Coat, Inc., 715 4th Street,
Oakland, CA 94607



Linda S. Adams
Agency Secretary

California Regional Water Quality Control Board

San Francisco Bay Region

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



Arnold Schwarzenegger
Governor

Via Certified Mail – Return Receipt Requested

February 16, 2010
WDID No.: 2 01I009846
CIWQS Place ID: 221756

E D Coat
Attn: Mr. Jerry Rossi
715 4th Street
Oakland, CA 94607

Subject: Administrative Civil Liability Complaint No. R2-2010-0016

Dear Mr. Rossi:

Enclosed is Complaint No. R2-2010-0016 for Administrative Civil Liability in the amount of \$13,300. The Complaint alleges that E D Coat has violated the requirements of the NPDES General Permit for Discharges of Storm Water Associated with Industrial Activities by failing to submit a 2008/2009 annual report by July 1, 2009.

E D Coat can respond to the Complaint by appearing before the Regional Water Board at a public hearing to contest the matter or by signing a waiver to pursue other options.

1. The Complaint can be contested before the Regional Water Board at the following meeting:

Date/Time: May 12, 2010, commencing at 9 a.m.
Place: First Floor Auditorium, State of California Building
1515 Clay Street, Oakland

At this meeting, the Regional Water Board will consider whether to impose administrative civil liability (as proposed in the Complaint or for a different amount), decline the administrative civil liability, or refer the matter to the Attorney General for judicial enforcement at a public hearing.

Please refer to the enclosed Public Notice and Hearing Procedure for the Complaint and the ACL Fact Sheet for additional information about the Regional Water Board's process, hearing procedures, and important deadlines (for submitting comments or evidence, obtaining designated party status, waiving or postponing a hearing, making objections or rebuttals to evidence, etc.).

Preserving, enhancing, and restoring the San Francisco Bay Area's waters for over 50 years



2. The public hearing that has been scheduled (above) can be waived to pursue one of the following options:
 - a. Pay the liability as proposed in the Complaint;
 - b. Request more time and postpone the date of the public hearing;
 - c. Promptly engage in settlement discussions with the Regional Water Board Prosecution Team.

The Waiver, attached to the Complaint, describes these options in further detail. To pursue one of these options, **the Waiver must be signed, dated, and received by the contacts listed below no later than 5:00 pm on March 18, 2010. It is at the discretion of the Regional Water Board Advisory Team to either accept or deny a waiver request.**

If you wish to communicate directly with the Prosecution Team regarding the Complaint, please contact Laurent Meillier of the Prosecution Team at (510) 622-3277 or LMeillier@waterboards.ca.gov.

Please refer to the letterhead for our mailing address and fax number.

Sincerely,



Thomas Mumley
Assistant Executive Officer

Enclosures:

Complaint No. R2-2010-0016
Public Notice for ACL Complaint No. R2-2010-0016
Hearing Procedure for ACL Complaint No. R2-2010-0016
Administrative Civil Liability Fact Sheet

cc (all via email):

Bruce H. Wolfe, Water Board
SWRCB, Office of the Chief Counsel – Dorothy Dickey
SWRCB, Division of Water Quality – Bruce Fujimoto
SWRCB, Office of Enforcement – Ann Carroll
Water Board Lyris Enforcement Email List

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

COMPLAINT NO. R2-2010-0016

**ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
E D COAT
715 4TH STREET
OAKLAND, ALAMEDA COUNTY**

This Complaint is issued to E D Coat ("Discharger") to assess administrative civil liability pursuant to California Water Code ("CWC") Section 13385. The Complaint addresses the Discharger's failure to submit a required annual report by July 1, 2009, as required by the State Water Resources Control Board's ("State Water 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"). The violations cited herein occurred from July 2, 2009, through February 16, 2010).

The Assistant Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Water Board") hereby gives notice that:

1. The Discharger is alleged to have violated provisions of the law for which the Regional Water Board may impose civil liability pursuant to CWC Section 13385. This Complaint proposes to assess \$13,300 in penalties for the violations cited based on the considerations described herein. The deadline for comments on this Complaint is February 26, 2010, at 5 p.m.
2. Unless waived, the Regional Water Board will hold a hearing on this matter on May 12, 2010, in the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland, California, 94612. The Discharger or its representative(s) will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Water Board. The Discharger will be mailed an agenda approximately ten days before the hearing date. The Discharger must submit any written evidence concerning this complaint to the Regional Water Board not later than 5 pm on March 18, 2010, so that such comments may be considered. Any written evidence submitted to the Regional Water Board after this date and time will not be accepted or responded to in writing.
3. At the hearing the Regional Water 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.

If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing. The Discharger can waive its right to a hearing to contest the allegations contained in this Complaint by submitting a signed waiver and paying the civil liability in full as described in the attached waiver form.

4. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code 21000 et seq.) in accordance with Section 15321 of Title 14, California Code of Regulations.

STATEMENT OF WATER CODE SECTIONS UPON WHICH LIABILITY IS BEING ASSESSED:

5. Pursuant to CWC Section 13385(a)(3), any person who violates any requirements established pursuant to CWC Section 13383 (reporting requirements established by the State Water Board), shall be civilly liable. CWC Section 13385(c)(1) states that civil liability may be imposed administratively by the Regional Water Board in an amount not to exceed ten thousand dollars (\$10,000) for each day in which the violation occurs.
6. In determining the amount of any liability imposed under CWC Section 13385, the Regional Water Board shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its 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.

FACTUAL BASIS OF THE ALLEGED VIOLATIONS IN THIS MATTER:

7. Provision E(1) of the General Permit requires that all facility operators seeking coverage under the General Permit file a Notice of Intent (NOI) for each of the facilities they operate. The Discharger submitted a Notice of Intent (NOI) to the State Water Board to obtain coverage under the General Permit. The Discharger's Waste Discharge Identification Number is 2 01I009846.
8. Section B—Monitoring and Reporting Requirements, Number 14 of the General Permit requires all facility operators to submit an annual report documenting its sampling and analyses, observations, and an annual comprehensive site compliance evaluation, by July 1 of each year.
9. The Discharger violated the General Permit by failing to submit its 2008/2009 annual report by the July 1, 2009, deadline. This is a violation of a reporting requirement established by the State Water Board pursuant to CWC Section 13383 for which administrative civil liability may be imposed pursuant to CWC Section 13385(a)(3).

10. On August 3, 2009, the Assistant Executive Officer issued a Notice of Noncompliance letter to the Discharger by certified mail, return receipt requested. This letter informed the Discharger that it was in violation of the General Permit and that the Executive Officer would recommend enforcement actions, including imposition of administrative civil liability up to \$10,000 per day, if an annual report was not submitted. The Regional Water Board received the return receipt for this notice, which indicates the Discharger received the notice on August 13, 2009.
11. Regional Water Board staff did not receive any comment from the Discharger on the August 3, 2009, Notice of Non-compliance.
12. Board staff confirmed that the facility was still in business at the above address via telephone/ mail on January 13, 2010.
13. As of February 16, 2010, the Discharger has not submitted its annual report. The Discharger has been in violation of the General Permit for a total of 230 days (July 2, 2009, through February 16, 2010).

FACTORS CONSIDERED

14. Under CWC Section 13385(e), the Regional Water Board's Assistant Executive Officer considered the following factors in determining the amount of civil liability to be imposed:

- a. The Nature, Circumstances, Extent, and Gravity of the Violation:

These annual reports are a key means of determining the quality of stormwater runoff from the Discharger's site and ensuring the Discharger is implementing appropriate control measures at the site. Additionally, they are one of the Discharger's primary tools to self-evaluate site compliance with the permit and to identify any needed improvements.

The Discharger was sent a Notice of Noncompliance letter and was contacted via telephone.

- b. Toxicity of Discharge and Susceptibility to Cleanup

The violation for which liability is proposed is a failure to submit a required report. The report is required to include quantitative and qualitative information on the amounts and/or presence of certain pollutants in discharges from the subject facility, as well as information on remedial actions taken by the Discharger to halt or minimize polluted discharges from its facility. In the absence of this information, it is not possible to make a more specific determination on this factor, and civil liability is not proposed for a specific discharge.

c. Discharger's Ability to Pay:

It is believed that the Discharger will be able to pay the proposed civil liability. According to Manta.com online business records, E D Coat has an annual revenue of \$1 to 2.5 million and employs a staff ranging from 10 to 19 employees.

d. Prior History of Violations:

The Regional Water Board does not have any records of permit violations from previous years for the Discharger.

e. Degree of Culpability:

The Discharger is fully culpable for violating the terms and conditions of the General Permit, which implements the Clean Water Act. Section 402(p) of the Federal Water Pollution Control Act ("Clean Water Act") establishes a framework for regulating municipal and industrial storm water discharges under the NPDES Program that is applicable to all specified industrial sites on a nationwide basis. The U.S. Environmental Protection Agency regulations allow authorized states, such as California, to issue general permits to regulate storm water discharges (e.g., the General Permit). By filing an NOI, the Discharger demonstrated its knowledge of and intent to comply with the General Permit requirements.

f. Savings Resulting from the Violation:

The Discharger has realized cost savings by failing to timely submit an annual report. The minimum savings for submitting a late report are estimated at \$1,000. The proposed liability of \$13,300 is greater than the economic benefit obtained from the delayed compliance.

g. Other Matters That Justice May Require:

Staff time to prepare this Complaint and supporting information is estimated to be 10 hours. Additionally, issuance of the Complaint requires publication of a Public Notice in a newspaper of general circulation at a cost of approximately \$300. Based on an average cost to the State of \$150 per hour, the total staff cost is estimated to be \$1,800.

PROPOSED CIVIL LIABILITY

15. Based on the consideration of the above facts, the Assistant Executive Officer of the Regional Water Board proposes that an administrative civil liability be imposed in the amount of \$13,300. Of this amount, \$1,800 is for recovery of staff costs.

16. Further failure to comply with the General Permit or amendments thereof beyond the date of this Complaint may subject the Discharger to further administrative civil liability, and/or other appropriate enforcement action(s), including referral to the Attorney General.



Thomas Mumley
Assistant Executive Officer

February 16, 2010
Date

Complaint No. R2-2010-0016
E D Coat

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
NO. R2-2010-0016**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent E D Coat ("Discharger") in connection with Administrative Civil Liability Complaint No. R2-2010-0016 ("Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

OPTION 1: PAY THE CIVIL LIABILITY

(Check here if the Discharger waives the hearing requirement and will pay the civil liability in full.)

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of \$13,300 by check that references "ACL Complaint No. R2-2010-0016" made payable to the "San Francisco Bay Regional Water Quality Control Board." Payment must be received by the Regional Water Board by not later than 30 days from the date the Complaint was issued or the Regional Water Board may adopt an Administrative Civil Liability Order requiring payment.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Water Board receive significant new information or comments from any source (excluding the Regional Water Board Prosecution Team) during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board or its Executive Officer, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

Complaint No. R2-2010-0016
E D Coat

OPTION 2: REQUEST A TIME EXTENSION

(Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)

I hereby waive any right the Discharger may have to a hearing before the Regional Water Board within 90 days after service of the Complaint. By checking this box, the Discharger requests that the Regional Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Regional Water Board Advisory Team to approve the extension.

OPTION 3: ENGAGE IN SETTLEMENT DISCUSSIONS

(Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)

I hereby waive any right the Discharger may have to a hearing before the Regional Water Board within 90 days after service of the Complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will contact the Regional Water Board Prosecution Team within five business days of submittal of this waiver to request that the Prosecution Team engage in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional Water Board Advisory Team delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Water Board Advisory Team to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1c and d."

(Print Name and Title)

(Signature)

(Date)

HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

NO. R2-2010-0016
ISSUED TO
E D COAT
INDUSTRIAL STORMWATER PERMITTEE
715 4TH STREET
OAKLAND, ALAMEDA COUNTY

HEARING SCHEDULED FOR MAY 12, 2010

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Background

The Assistant Executive Officer of the San Francisco Bay Regional Water Quality Control Board ("Regional Water Board") has issued an Administrative Civil Liability Complaint ("Complaint") pursuant to California Water Code Section 13385 against E D Coat ("Discharger") alleging that it has violated Water Code Section 13383 by failing to submit its 2008/2009 annual report by the July 1, 2009, deadline. The Complaint proposes that a civil liability in the amount of \$13,300 be imposed as authorized by Water Code Section 13385(a)(3).

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the Complaint. At the hearing, the Regional Water Board will consider whether to issue an administrative civil liability (ACL) order assessing the liability proposed in the Complaint, or a higher or lower amount, reject the proposed liability, or refer the matter to the Attorney General for judicial enforcement. An agenda for the Regional Water Board meeting where the hearing will be held will be issued at least ten days before the meeting and posted on the Regional Water Board's web site (<http://www.waterboards.ca.gov/sanfranciscobay/>).

Hearing Procedure

The hearing will be conducted in accordance with this Hearing Procedure. This Hearing Procedure has been pre-approved by the Regional Water Board Advisory Team in model format. A copy of the general procedures governing adjudicatory hearings before the Regional Water Board may be found at Title 23 of the California Code of Regulations (CCR), Section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648 and herein, subdivision (b), Chapter 5 of the

Administrative Procedures Act (commencing with Section 11500 of the Government Code) does not apply to the hearing.

The procedures and deadlines herein may be amended by the Advisory Team at its discretion. **Any objections to this Hearing Procedure must be received by Sandia Potter (SMPotter@waterboards.ca.gov) by February 26, 2010 or they will be waived.**

Hearing Participants

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons generally may not submit evidence, cross-examine witnesses, or be subject to cross-examination, but may present policy statements. Policy statements may include comments on any aspect of the proceeding, but may not include evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the Regional Water Board, its staff or others, at the discretion of the Regional Water Board.

The following participants are hereby designated as parties in this proceeding:

- (1) The Regional Water Board Prosecution Team
- (2) E D Coat, referred to as the Discharger

E D Coat
715 4th Street
Oakland, CA 94607

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party (who have not been designated as parties above) must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received by 5 p.m. on February 26, 2010 to Sandia Potter (SMPotter@waterboards.ca.gov). The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Water Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be received by the Advisory Team, the person requesting party status, and all parties by 5 p.m. on March 3, 2010. The parties will be notified by 5 p.m. on March 8, 2010 in writing whether the request has been granted or denied.

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Regional Water Board (Prosecution Team) have been separated from those who will provide advice to the Regional Water Board (Advisory Team). Members of the Advisory Team and the Prosecution Team are:

Advisory Team:

Bruce Wolfe, Executive Officer, BWolfe@waterboards.ca.gov, 510-622-2314

Yuri Won, Attorney, YWon@waterboards.ca.gov, 510-622-2491

Sandia Potter, Technical Staff, SMPotter@waterboards.ca.gov, 510-622-2426

Address: 1515 Clay Street, Suite 1400, Oakland, CA 94612

Primary Contact: Sandia Potter

Prosecution Team:

Thomas Mumley, Assistant Executive Officer, TMumley@waterboards.ca.gov, 510-622-2395

Dyan Whyte, Assistant Executive Officer, DWhyte@waterboards.ca.gov, 510-622-2441

Terry Seward, Groundwater Protection Division Chief, TSeward@waterboards.ca.gov, 510-622-2416

Keith Lichten, Section Leader, KLichten@waterboards.ca.gov, 510-622-2380

Habte Kifle, Technical Staff, HKifle@waterboards.ca.gov, 510-622-2371

Laurent Meillier, Technical Staff, LMeillier@waterboards.ca.gov, 510-622-3277

Ann Carroll, Staff Counsel, ACaroll@waterboards.ca.gov, 916-322-3227

Address: 1515 Clay Street, Suite 1400, Oakland, CA 94612

Primary Contact: Laurent Meillier

Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Members of the Prosecution Team may have acted as advisors to the Regional Water Board in other, unrelated matters, but they are not advising the Regional Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Regional Water Board or the Advisory Team regarding this proceeding.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Regional Water Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the Complaint between a member of a designated party or interested person on the one hand, and a Regional Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if verbal). Communications regarding non-controversial procedural matters are not ex parte

contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined 30 minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have three minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than April 22, 2010, by 5 p.m. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Regional Water Board Chair (at the hearing) upon a showing that additional time is necessary.

Submission of Evidence and Policy Statements

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the designated party would like the Regional Water Board to consider. Evidence and exhibits already in the public files of the Regional Water Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, CCR, Section 648.3.
2. All legal and technical arguments or analysis.
3. The name of designated party members, title and/or role, and contact information (email addresses, addresses, and phone numbers).
4. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the qualifications of each expert witness.
5. (Discharger only) If the Discharger intends to argue an inability to pay the civil liability proposed in the Complaint (or an increased or decreased amount as may be imposed by the Regional Water Board), the Discharger should submit supporting evidence as set forth in the "ACL Fact Sheet" under "Factors that must be considered by the Board."

The Prosecution Team shall submit one hard copy and one electronic copy of the above information not already included in or with the Complaint to Sandia Potter (SMPotter@waterboards.ca.gov) and other designated parties no later than April 2, 2010, by 5 p.m.

The remaining designated parties shall submit one hard copy and one electronic copy of the above information to Sandia Potter (SMPotter@waterboards.ca.gov) and other designated parties no later than April 12, 2010, by 5 p.m.

Any designated party that would like to submit information that rebuts the information previously submitted by other designated parties shall submit one hard copy and one electronic copy to Sandia Potter (SMPotter@waterboards.ca.gov) and the other designated parties no later than April 22, 2010, by 5 p.m. Rebuttal information shall be limited to the scope of the information previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team to Sandia Potter (SMPotter@waterboards.ca.gov) and each designated party no later than March 18, 2010, by 5 p.m. Interested persons do not need to submit written non-evidentiary policy statements in order to speak at the hearing.

For all submissions, the Advisory Team may require additional hard copies for those submittals that are either lengthy or difficult and expensive to reproduce.

In accordance with Title 23, CCR, Section 648.4, the Regional Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Regional Water Board may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will not be considered by the Regional Water Board and will not be included in the administrative record for this proceeding. PowerPoint and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team at or before the hearing for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Request for Pre-hearing Conference

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code Section 13228.15. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, as early as practicable.

Evidentiary Objections

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection to Sandia Potter (SMPotter@waterboards.ca.gov) and all other designated parties no later than April 22, 2010, by 5 p.m. The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Regional Water Board's office. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Regional Water Board Chair. Many of these documents are also posted on the Regional Water Board's web site. Although the web page is updated regularly, to assure access to the latest information, you may contact Mr. Laurent Meillier (LMeillier@waterboards.ca.gov).

Questions

Questions concerning this proceeding may be addressed to Sandia Potter (SMPotter@waterboards.ca.gov).

IMPORTANT DEADLINES

Note: the Regional Water Board is required to provide a hearing within 90 days of issuance of the Complaint (Water Code Section 13323). The Advisory Team will generally adhere to this schedule unless the Discharger waives that requirement.

These deadlines apply to all cases upon issuance of the Complaint whether or not the 90-day hearing requirement is waived.

February 16, 2010	Prosecution Team issues the Complaint to Discharger
February 26, 2010	Deadline for objections, if any, to this Hearing Procedure
February 26, 2010	Deadline for requests for designated party status
March 3, 2010	Deadline for oppositions to requests for designated party status
March 8, 2010	Advisory Team issues decision on requests for designated party status, if any
March 18, 2010	Discharger's deadline for waiving right to hearing
March 18, 2010	Interested persons deadline for submission of written non-evidentiary policy statements

These deadlines apply to cases scheduled to be heard by the Regional Water Board (actual dates are subject to change if the 90-day hearing requirement is waived).

April 2, 2010	Prosecution Team's deadline for all information required under "Submission of Evidence and Policy Statements"
April 12, 2010	Remaining designated parties' deadline for all information required under "Submission of Evidence and Policy Statements"
April 22, 2010	All designated parties' deadline for rebuttal information, evidentiary objections, and requests for additional time, if any
May 12, 2010:	Regional Water Board Hearing

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

NOTICE OF PENDING ENFORCEMENT ACTION
E D COAT

The California Regional Water Quality Control Board, San Francisco Bay Region (Water Board) Prosecution Team issued a Complaint for Administrative Civil Liability (ACL) on February 16, 2010. The Complaint alleges that E D Coat (Discharger) is responsible for not submitting an NPDES Industrial Stormwater Permit annual report by the July 1, 2009, reporting deadline, and proposes that the Discharger pay \$13,300.

The Complaint and related documents, including the procedure for Water Board hearings (with deadlines for submitting comments), are available at http://www.waterboards.ca.gov/sanfranciscobay/public_notices/pending_enforcement.shtml. The Prosecution Team may amend and re-notice its Complaint in response to comments from the Discharger and the public.

The Water Board will hold a hearing on May 12, 2010 to consider adoption of the ACL and/or referral of the matter to the Attorney General, unless the Discharger waives its right to a hearing within 90 days. The 90-day hearing requirement may be waived to pay the penalty as proposed, extend deadlines, or pursue settlement and/or a supplemental environmental project.

For additional information and updates, please contact Laurent Meillier at (510) 622-3277 or LMeillier@waterboards.ca.gov or check the Water Board's website link cited above.

E – D Coat, Inc.

California Regional Water Quality Control Board, San Francisco Bay Region Settlement
Agreement and Stipulation for Order; Order No. R2-2010-0091

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

In the matter of:

E D Coat)	
Complaint No. R2-2010-0016)	Settlement Agreement and Stipulation for
Administrative Civil Liability)	Order; Order No. R2-2010-0091
)	

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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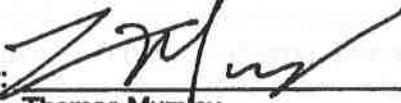
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IT IS SO STIPULATED.

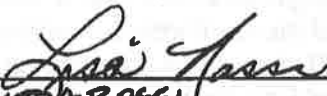
**CALIFORNIA REGIONAL WATER QUALITY
CONTROL BOARD, SAN FRANCISCO BAY
REGION, PROSECUTION TEAM**

Date: 5/26/10

By: 
Thomas Mumley,
Assistant Executive Officer

E D COAT

Date: 5/25/10

By: 
LISA ROSSI
KRM 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

HR

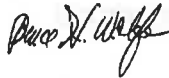
Order of the Regional Water Board

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: _____

Appendix D - Executive Officer Summary to Board, Enforcement Policy Penalty

Methodology, December 14, 2011

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

**EXECUTIVE OFFICER SUMMARY REPORT
MEETING DATE: DECEMBER 14, 2011**

ITEM: 8

SUBJECT: **Enforcement Policy Penalty Methodology - Overview of the Methodology**

DISCUSSION: This item provides the Board with an overview of the penalty methodology included in the State Board's Water Quality Enforcement Policy and some insights from the Board's advisory staff about the methodology. The Enforcement Policy requires a prescriptive methodology for calculating the amount of penalties to assess in Administrative Civil Liabilities (ACL) actions. Since the Policy's approval in 2010, there has not been a hearing on an ACL action before the Board. The purpose of this item is to prepare the Board for hearings on ACL actions that may occur in the near future, both to ensure that the Board understands how a penalty was calculated, but also so that if the Board decides to change a proposed penalty, the change will be consistent with the Enforcement Policy.

Having served as the Board's advisor on nearly all ACL actions, I will be providing this overview. As you may recall, ACL actions must adhere to a "separation of functions" process where a team of Board staff who has not been involved in investigating and prosecuting an enforcement case provides unbiased technical and legal advice to the Board, while a separate team of Board staff prosecutes the case by advocating for the proposed enforcement action. The Assistant Executive Officers have generally led the prosecution teams.

The accompanying Staff Report (Appendix A) summarizes the mechanics of the penalty methodology and provides supplemental information about its use including excerpts of the penalty methodology from the Enforcement Policy.

RECOMMEN-
DATION: No action is necessary, as this is an information item.

APPENDIX A: Staff Report on the Enforcement Policy Penalty Methodology

APPENDIX A



Matthew Rodriguez
Secretary for
Environmental Protection

California Regional Water Quality Control Board San Francisco Bay Region

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

TO: Bruce H. Wolfe
Executive Office

FROM: Brian Thompson
Enforcement Coordinator

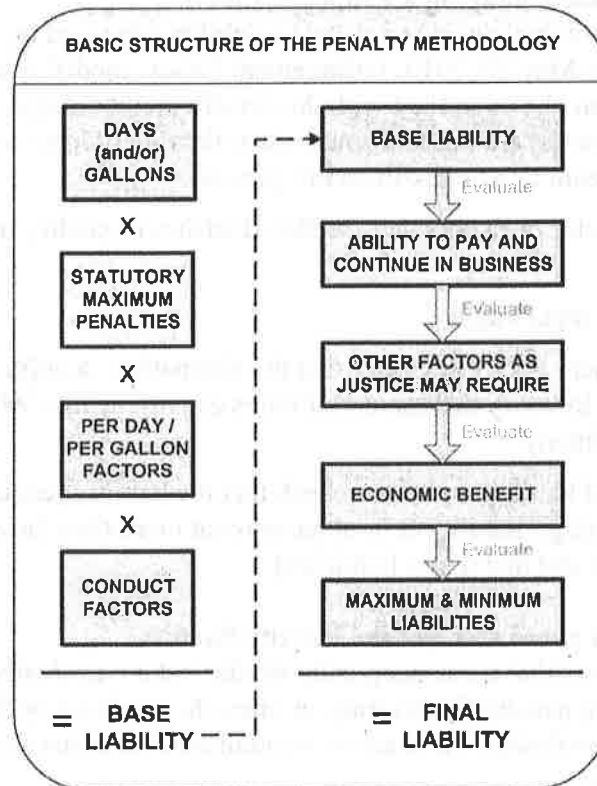
DATE: November 30, 2011

SUBJECT: **Enforcement Policy Penalty Methodology** – Summary of penalty methodology calculations and discussion of penalty factor assessments.

This staff report reviews how Administrative Civil Liabilities (ACLs) are calculated under the May 20, 2010, Water Quality Enforcement Policy (Enforcement Policy), it recommends an approach for changing a proposed ACL at a hearing, and it provides insight into some of the subjective penalty factors which may be contested during a hearing.

Basic Structure to the Penalty Methodology

There is a basic structure to the penalty methodology which shows the general “equation” for calculating an ACL. There are two parts to the calculation: (1) the steps taken to calculate a Base Liability; and (2) the steps taken to calculate the Final Liability (as illustrated below).



In general, the steps for calculating a Base Liability are based on factors associated with the violation (i.e., factors required by statute such as the nature, extent, gravity, and circumstances of the violation, toxicity of a discharge and its susceptibility to cleanup and abatement, discharger conduct, history of violations, etc.), and the steps for calculating the Final Liability consider other factors associated with the case (i.e., factors required by statute such as the discharger's ability to pay and continue in business, economic benefit, maximum and minimum penalties, etc.).

Penalty Factors Input into the Methodology

The functional part of the penalty methodology is the evaluation of penalty factors and the assessment of values which are input into the methodology to calculate an ACL. Within each step (or main factor) of the methodology, there are more specific penalty factors and sub-factors that are assessed to calculate the Base and Final Liabilities. For Base Liabilities, these factors are illustrated in the first two charts of Attachment A. The first chart is for non-discharge violations, which involve administrative- or procedural-type violations such as not obtaining a permit or submitting a report late, and the second chart is for discharge violations. For Final Liabilities, the factors are illustrated in the third chart. The factors input into the methodology are highlighted in these illustrations and, when applicable, there are page and table references to where the factor is discussed in the Enforcement Policy. For your convenience, a copy of the penalty methodology section of the Enforcement Policy (Section VI) is provided in Attachment B.

A Recommended Process for Changing a Proposed Liability

At an ACL hearing, the Board may decide to change a liability proposed by its Prosecution Team. Since adoption of the May 20, 2010, Enforcement Policy, modifications to a proposed liability must be explained and be compliant with the penalty methodology. Assuming that all facts surrounding the violation(s) are not in dispute, the following process is recommended for the Board and its advisory team to help facilitate this process.

- 1) Identify a penalty factor or factors that the Board wishes to modify based on hearing testimony.
- 2) Select an alternative input value.
- 3) Check the Enforcement Policy to ensure that the alternative value(s) remains within the allowable range and to verify that the definition is consistent with what was learned through hearing testimony.
- 4) Re-calculate the final liability and cross-check that the liability remains compliant with the Policy or statute (e.g., liability at least ten percent more than the economic benefit, and within minimum and maximum liabilities).

Supplemental Information about some of the Penalty Factors

There are some penalty factors that are conceptually similar but are evaluated separately in the methodology. The following penalty factors may, at times, be confused with another factor when discussing an alleged violation. Here are some additional thoughts about these penalty factors for your consideration.

“Potential for Harm” for Discharge Violations

The Potential for Harm factor for a discharge violation is the sum of three factors: Factors 1 + Factor 2 + Factor 3 (second chart, Attachment A).

Factors 1 and 2 both address harm associated with the discharge. For Factor 1, harm is evaluated by assessing the end result of the discharge (i.e., observed impacts or threat to the receiving water and beneficial uses). For Factor 2, harm is evaluated by assessing the risk associated with the material itself (i.e., the material poses an inherent risk based on the physical, chemical, biological, and thermal characteristics of the discharge). The main difference between these two harm factors is that Factor 1 considers where, when, and how the discharge occurred, Factor 2 does not.

Factor 3 is an evaluation of how much of the discharge is susceptible to cleanup or abatement. The factor is assessed regardless of whether the discharge was actually cleaned up. The evaluation is based on whether 50 percent or more of the discharged material could be cleaned up or the effects abated. Credit for any actual cleanup is given in other steps of the methodology. These steps include the amount of gallons assessed in the Base Liability calculation, and the consideration of cleanup activities under the “Cleanup and Cooperation” conduct factor.

“Culpability”

Culpability is a penalty factor which considers fault of the discharger (e.g., if the was an intentional, negligent, or accidental violation). It is an evaluation of actions taken (or not taken) to cause a violation and the amount of responsibility the discharger bears. To help determine culpability, conduct may be compared to what a reasonable or prudent person would have done under similar circumstances, and it may compare operational procedures at a discharger’s facility to professional standards or industry practices. The evaluation also considers extenuating circumstances or circumstances beyond the discharger’s control which may have contributed to or caused the violation.

“Deviation from Requirement”

The Deviation from Requirement penalty factor is an evaluation of the effect of the violation on a legal requirement. For example, deviation may be considered minor when a discharger complies with most but not all of a permit provision and there is little difference between the noncompliance and what was intended by the legal requirement (i.e., effectiveness of the legal requirement remains generally intact). Deviation may be considered major when a discharger violates most or all of a requirement, such as when a discharge occurs in violation of a discharge prohibition, and there is a significant difference between the noncompliance and what was intended by the legal requirement (i.e., the legal requirement is rendered ineffective).

It should be noted that the Policy’s description of Deviation from Requirement includes parenthetical consideration of a discharger’s intent to help explain the requirement. We recommend that discharger intent be evaluated separately under the Culpability factor so as to not weigh this consideration twice.

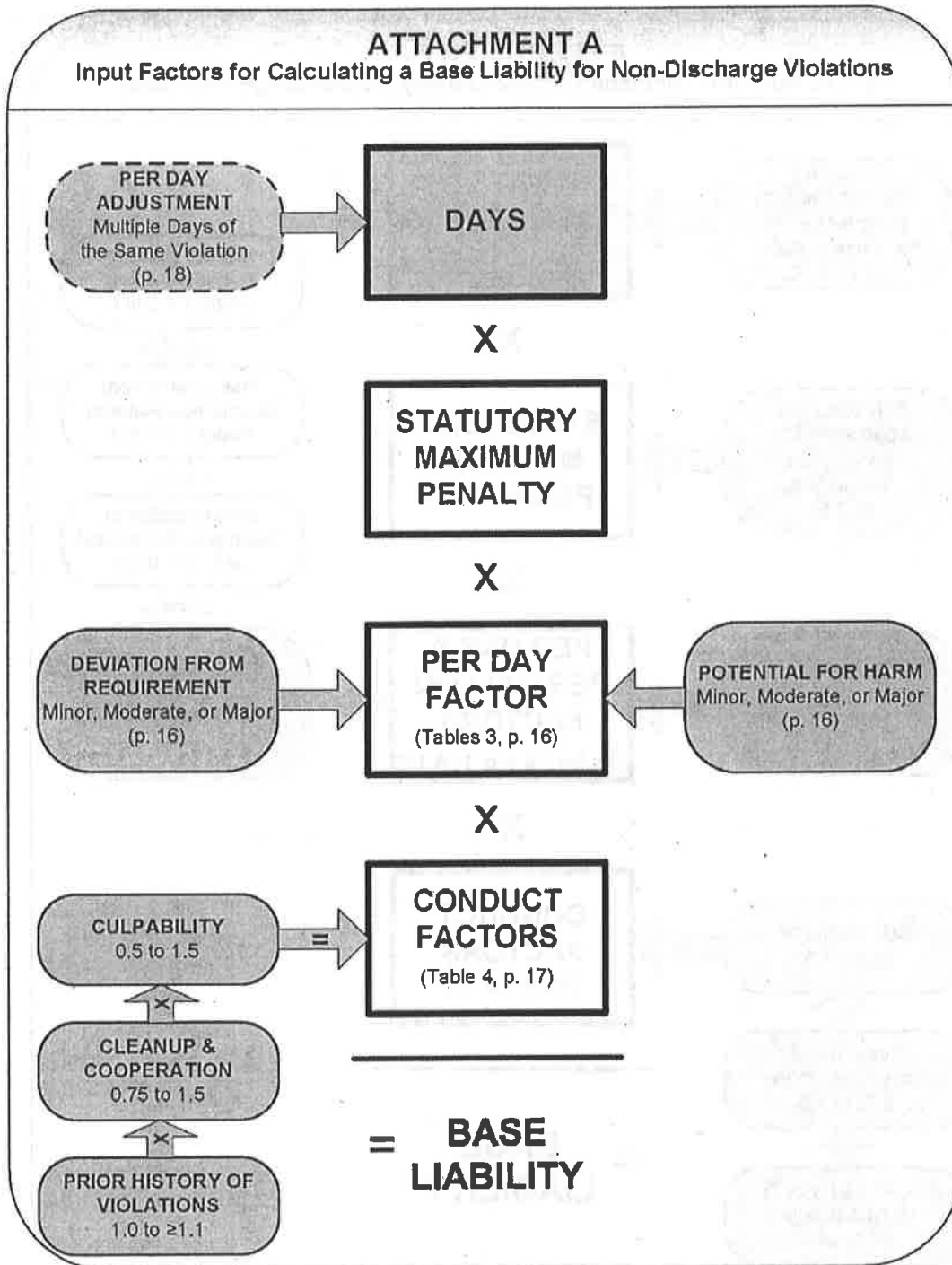
Final Thoughts

The Enforcement Policy requires that penalty assessments be derived through the penalty methodology. We hope this discussion of the methodology and its penalty factors is helpful to the Board and its advisory team. The attached information, in particular, may be useful tools to aid penalty methodology discussions during an ACL hearing by helping to quickly identify the primary adjustment dials in the methodology with a reference to where these dials are discussed in the Enforcement Policy.

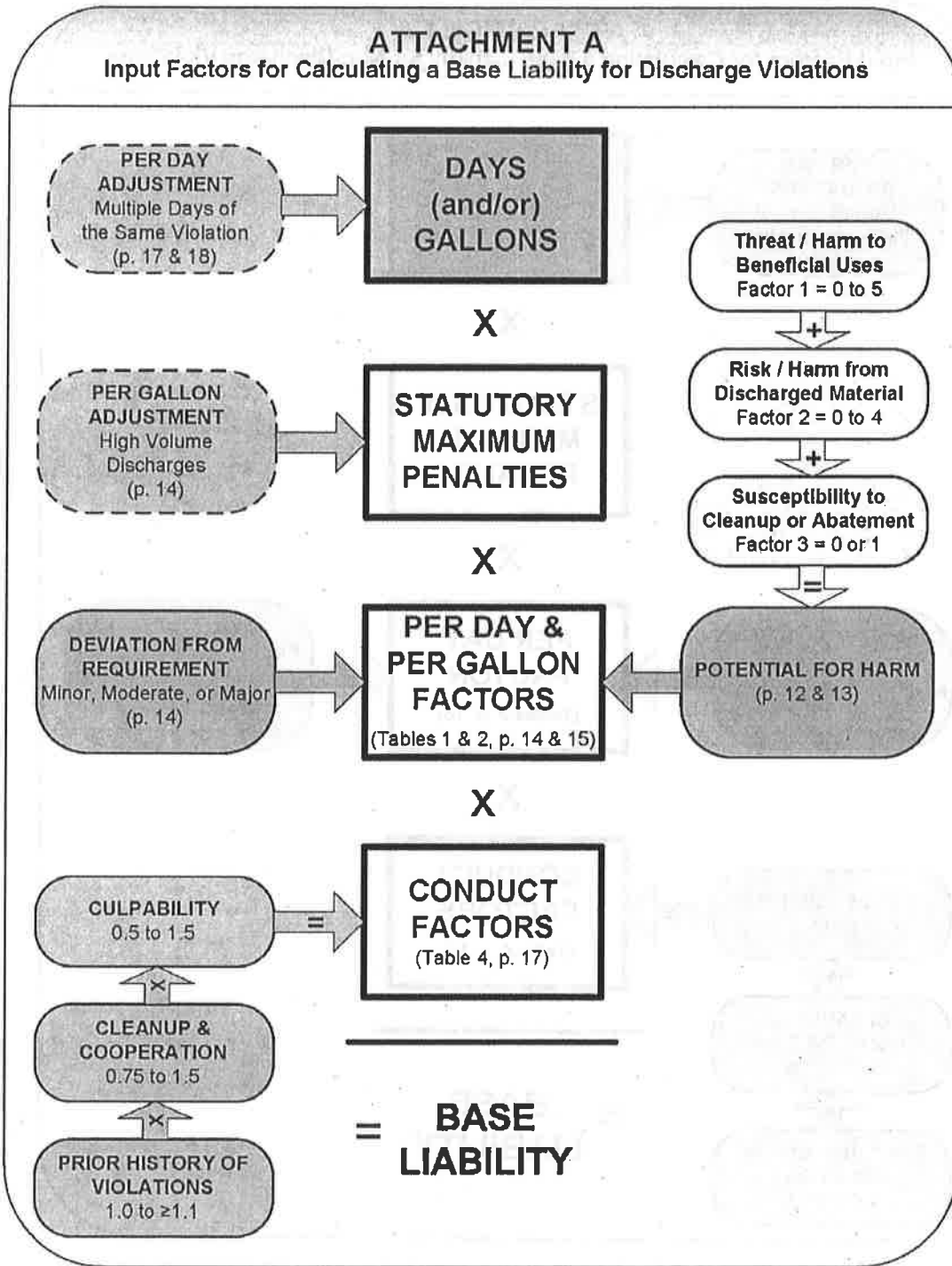
- Attachment A: - Input Factors for Calculating a Base Liability for Non-Discharge Violations
- Input Factors for Calculating a Base Liability for Discharge Violations
 - Factors to be Considered for the Final Liability Calculation

- Attachment B: - Enforcement Policy (Section VI), effective date May 20, 2010

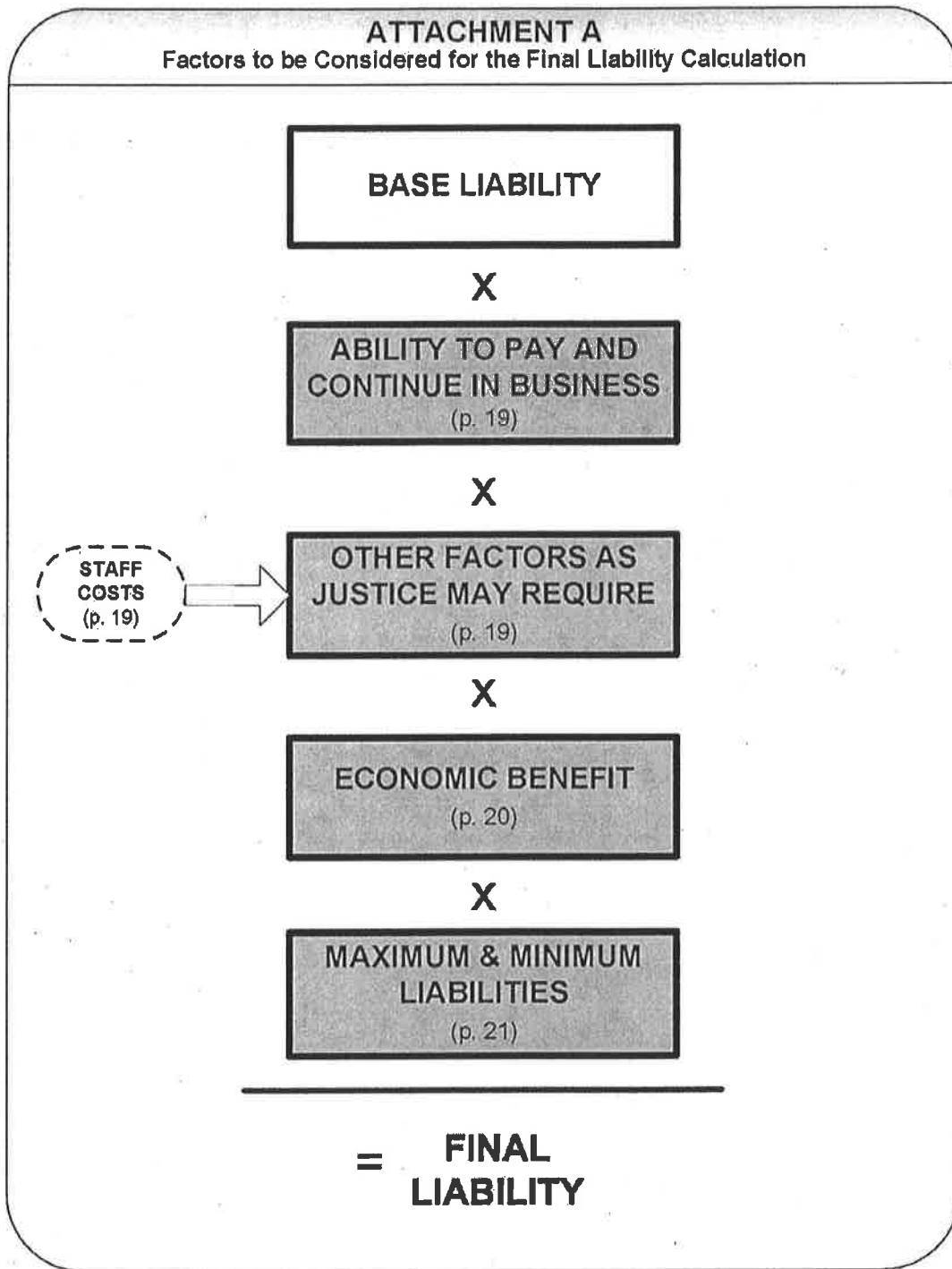
ATTACHMENT A



- Thick Border: Calculation step in methodology
 - Solid Border: Required factor to be assessed
 - Dashed Border: Optional factor to be assessed
 - Orange Fill: Penalty factor assessed in the methodology
 - Directional arrow showing inputs to methodology steps
 - Reference to location of factor in Enforcement Policy
- + , x , = Math symbols indicating type of calculation



- Thick Border: Calculation step in methodology
- Orange Fill: Penalty factor assessed in the methodology
- Solid Border: Required factor to be assessed
- Pink Fill: Sub-factor assessment for a penalty factor
- Dashed Border: Optional factor to be assessed
- Directional arrow showing inputs to methodology steps
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- Thick Border: Calculation step in methodology
- Orange Fill: Penalty factor assessed in the methodology
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- () Reference to location of factor in Enforcement Policy

ATTACHMENT B

STATE WATER RESOURCES CONTROL BOARD

**WATER QUALITY
ENFORCEMENT POLICY**

Effective May 20, 2010

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

any investigation and the Office of Enforcement will seek input from the Regional Water Board enforcement staff in the development of any resulting enforcement action. Such action may be brought before the State Water Board or the Regional Water Board, as may be deemed appropriate for the particular action. The decision as to where to bring the enforcement action will be discussed with the affected Regional Water Board enforcement staff. Enforcement actions requiring compliance monitoring or long-term regulatory follow-up will generally be brought before the appropriate Regional Water Board.

V. COORDINATION WITH OTHER REGULATORY AGENCIES

A. Hazardous Waste Facilities

At hazardous waste facilities where the Regional Water Board is the lead agency for corrective action oversight, the Regional Water Board shall consult with Department of Toxic Substances Control (DTSC) to ensure, among other things, that corrective action is at least equivalent to the requirements of the Federal Resource, Conservation, and Recovery Act (RCRA).

B. Oil Spills

The Water Boards will consult and cooperate with the Office of Spill Prevention and Response at the Department of Fish and Game (OSPR) for any oil spill involving waters under the jurisdiction of OSPR.

C. General

The Water Boards will work cooperatively with other local, state, regional, and federal agencies when violations, for which the agency itself is not responsible, occur on lands owned or managed by the agency. Where appropriate, the Water Boards will also coordinate enforcement actions with other agencies that have concurrent enforcement authority.

VI. MONETARY ASSESSMENTS IN ADMINISTRATIVE CIVIL LIABILITY (ACL) ACTIONS

A. Penalty Calculation Methodology

As a general matter, where, as in the California Water Code, a civil penalty structure has been devised to address environmental violations, civil penalties do not depend on proof of actual damages to the environment. Courts in reviewing similar environmental protection statutes have held that a plaintiff need not prove a loss before recovering a penalty; instead, the defendant must demonstrate that the penalty should be less than the statutory maximum. In certain cases, a strong argument can be made that consideration of the statutory factors can support the statutory maximum as an appropriate penalty for water quality violations, in the absence of any other mitigating evidence. Moreover, as discussed below, the Porter-Cologne Act requires that certain civil liabilities be set at a level that accounts for any "economic benefit or savings" violators gained through their violations. (Wat. Code, § 13385, subd. (e).) Economic benefit or savings is a factor to be considered in determining the amount of other civil liabilities. (Wat. Code, § 13327.) The Water Boards have powerful liability provisions at their disposal which the Legislature and the public expect them to fairly and consistently implement for maximum enforcement impact to address, correct, and deter water quality violations.

While it is a goal of this Policy to establish broad consistency in the Water Boards' approach to enforcement, the Policy recognizes that, with respect to liability determinations, each Regional Water Board, and each specific case, is somewhat unique. The goal of this section is to provide a consistent approach and analysis of factors to determine administrative civil liability. Where violations are standard and routine, a consistent outcome can be reasonably expected using this Policy. In more complex matters, however, the need to assess all of the applicable factors in liability determinations may yield different outcomes in cases that may have many similar facts.

Liabilities imposed by the Water Boards are an important part of the Water Boards' enforcement authority. Accordingly, any assessment of administrative civil liability, whether negotiated pursuant to a settlement agreement or imposed after an administrative adjudication, should:

- Be assessed in a fair and consistent manner;
- Fully eliminate any economic advantage obtained from noncompliance;¹
- Fully eliminate any unfair competitive advantage obtained from noncompliance;
- Bear a reasonable relationship to the gravity of the violation and the harm to beneficial uses or regulatory program resulting from the violation;
- Deter the specific person(s) identified in the ACL from committing further violations; and
- Deter similarly situated person(s) in the regulated community from committing the same or similar violations.

The liability calculation process set forth in this chapter provides the decision-maker with a methodology for arriving at a liability amount consistent with these objectives. This process is applicable to determining administratively-adjudicated assessments as well as those obtained through settlement. In reviewing a petition challenging the use of this methodology by a Regional Water Board, the State Water Board will generally defer to the decisions made by the Regional Water Boards in calculating the liability amount unless it is demonstrated that the Regional Water Board made a clear factual mistake or error of law, or that it abused its discretion.

The following provisions apply to all discretionary administrative civil liabilities (ACLs). Mandatory Minimum Penalties (MMPs) required pursuant to California Water Code section 13385, subdivisions (h) and (i), are discussed in Chapter VII.

General Approach

A brief summary of each step is provided immediately below. A more complete discussion of each step is presented later in this section.

Step 1. *Potential for Harm for Discharge Violations* – Calculate Potential for Harm considering: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) the discharge's susceptibility to cleanup or abatement.

¹ When liability is imposed under California Water Code § 13385, Water Boards are statutorily obligated to recover, at a minimum, all economic benefit to the violator as a result of the violation.

Step 2. *Per Gallon and Per Day Assessments for Discharge Violations* – For discharges resulting in violations, use Table 1 and/or Table 2 to determine Per Gallon and/or Per Day Assessments. Depending on the particular language of the ACL statute being used, either or both tables may be used. Multiply these factors by per gallon and/or per day amounts as described below. Where allowed by code, both amounts should be determined and added together. This becomes the initial amount of the ACL for the discharge violations.

Step 3. *Per Day Assessments for non-Discharge Violations* – For non-discharge violations, use Table 3 to determine per day assessments. Multiply these factors by the per day amount as described below. Where allowed by the California Water Code, amounts for these violations should be added to amounts (if any) for discharge violations from Step 2, above. This becomes the initial amount of the ACL for the non-discharge violations.

Step 4. *Adjustment Factors* – Adjust the initial amounts for each violation by factors addressing the violator's conduct, multiple instances of the same violation, and multiple day violations.

Step 5. *Total Base Liability Amount* – Add the adjusted amounts for each violation from Step 4.

Thereafter, the Total Base Liability amount may be adjusted, based on consideration of the following:

Step 6. *Ability to Pay and Ability to Continue in Business* – If the ACL exceeds these amounts, it may be adjusted downward provided express findings are made to justify this.

Step 7. *Other Factors as Justice May Require* – Determine if there are additional factors that should be considered that would justify an increase or a reduction in the Total Base Liability amount. These factors must be documented in the ACL Complaint. One of these factors is the staff costs of investigating the violations and issuing the ACL. The staff costs should be added to the amount of the ACL.

Step 8. *Economic Benefit* – The economic benefit of the violations must be determined based on the best available information, and the amount of the ACL should exceed this amount. (Note that the Economic Benefit is a statutory minimum for ACLs issued pursuant to California Water Code section 13385.)

Step 9. *Maximum and Minimum Liability Amounts* - Determine the statutory maximum and minimum amounts of the ACL, if any. Adjust the ACL to ensure it is within these limits.

Step 10. *Final Liability Amount* – The final liability amount will be assessed after consideration of the above factors. The final liability amount and significant considerations regarding the liability amount must be discussed in the ACL Complaint and in any order imposing liability.

STEP 1 - Potential for Harm for Discharge Violations

Calculating this factor is the initial step for discharge violations. Begin by determining the actual or threatened impact to beneficial uses caused by the violation using a three-factor scoring

system to quantify: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) the discharge's susceptibility to cleanup or abatement for each violation or group of violations.

Factor 1: Harm or Potential Harm to Beneficial Uses

The evaluation of the potential harm to beneficial uses factor considers the harm that may result from exposure to the pollutants or contaminants in the illegal discharge, in light of the statutory factors of the nature, circumstances, extent and gravity of the violation or violations. The score evaluates direct or indirect harm or potential for harm from the violation. A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm is negligible (0), minor (1), below moderate (2), moderate (3), above moderate (4), or major (5).

0 = Negligible - no actual or potential harm to beneficial uses.

1 = Minor - low threat to beneficial uses (i.e., no observed impacts but potential impacts to beneficial uses with no appreciable harm).

2 = Below moderate – less than moderate threat to beneficial uses (i.e., impacts are observed or reasonably expected, harm to beneficial uses is minor).

3 = Moderate - moderate threat to beneficial uses (i.e., impacts are observed or reasonably expected and impacts to beneficial uses are moderate and likely to attenuate without appreciable acute or chronic effects).

4 = Above moderate – more than moderate threat to beneficial uses (i.e., impacts are observed or likely substantial, temporary restrictions on beneficial uses (e.g., less than 5 days), and human or ecological health concerns).

5 = Major - high threat to beneficial uses (i.e., significant impacts to aquatic life or human health, long term restrictions on beneficial uses (e.g., more than five days), high potential for chronic effects to human or ecological health).

Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge

The characteristics of this discharge factor are scored based on the physical, chemical, biological, and/or thermal nature of the discharge, waste, fill, or material involved in the violation or violations. A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material, as outlined below. For purposes of this Policy, "potential receptors" are those identified considering human, environmental and ecosystem health exposure pathways.

0 = Discharged material poses a negligible risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material are benign and will not impact potential receptors).

1 = Discharged material poses only minor risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material are relatively benign or are not likely to harm potential receptors).

- 2 = Discharged material poses a moderate risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material have some level of toxicity or pose a moderate level of concern regarding receptor protection).
- 3 = Discharged material poses an above-moderate risk or a direct threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material exceed known risk factors and /or there is substantial concern regarding receptor protection).
- 4 = Discharged material poses a significant risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material far exceed risk factors or receptor harm is considered imminent).

Factor 3: Susceptibility to Cleanup or Abatement

A score of 0 is assigned for this factor if 50% or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned for this factor if less than 50% of the discharge is susceptible to cleanup or abatement. This factor is evaluated regardless of whether the discharge was actually cleaned up or abated by the violator.

Final Score – “Potential for Harm”

The scores for the factors are then added to provide a Potential for Harm score for each violation or group of violations. The total score is used in the “Potential for Harm” axis for the Penalty Factor in Tables 1 and 2. The maximum score is 10 and the minimum score is 0.

STEP 2 - Assessments for Discharge Violations

For violations of NPDES permit effluent limitations, the base liability should be established by calculating the mandatory penalty required under Water Code section 13385(h) and (i). The mandatory penalty should be adjusted upward where the facts and circumstances of the violation warrant a higher liability.

This step addresses per gallon and per day assessments for discharge violations. Generally, it is intended that effluent limit violations be addressed on a per day basis only. Where deemed appropriate, such as for a large scale spill or release, both per gallon and per day assessments may be considered.

Per Gallon Assessments for Discharge Violations

Where there is a discharge, the Water Boards shall determine an initial liability amount on a per gallon basis using on the Potential for Harm score and the extent of Deviation from Requirement of the violation. These factors will be used in Table 1 below to determine a Per Gallon Factor for the discharge. Except for certain high-volume discharges discussed below, the per gallon assessment would then be the Per Gallon Factor multiplied by the number of gallons subject to penalty multiplied by the maximum per gallon penalty amount allowed under the California Water Code.

TABLE 1 - Per Gallon Factor for Discharges

Deviation from Requirement	Potential for Harm									
	1	2	3	4	5	6	7	8	9	10
Minor	0.005	0.007	0.009	0.011	0.060	0.080	0.100	0.250	0.300	0.350
Moderate	0.007	0.010	0.013	0.016	0.100	0.150	0.200	0.400	0.500	0.600
Major	0.010	0.015	0.020	0.025	0.150	0.220	0.310	0.600	0.800	1.000

The Deviation from Requirement reflects the extent to which the violation deviates from the specific requirement (effluent limitation, prohibition, monitoring requirement, construction deadline, etc.) that was violated. The categories for **Deviation from Requirement** in Table 1 are defined as follows:

Minor – The intended effectiveness of the requirement remains generally intact (e.g., while the requirement was not met, there is general intent by the discharger to follow the requirement).

Moderate – The intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved).

Major – The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).

For requirements with more than one part, the Water Boards shall consider the extent of the violation in terms of its adverse impact on the effectiveness of the most significant requirement.

High Volume Discharges

The Water Boards shall apply the above per gallon factor to the maximum per gallon amounts allowed under statute for the violations involved. Since the volume of sewage spills and releases of stormwater from construction sites and municipalities can be very large for sewage spills and releases of municipal stormwater or stormwater from construction sites, a maximum amount of \$2.00 per gallon should be used with the above factor to determine the per gallon amount for sewage spills and stormwater. Similarly, for releases of recycled water that has been treated for reuse, a maximum amount of \$1.00 per gallon should be used with the above factor. Where reducing these maximum amounts results in an inappropriately small penalty, such as dry weather discharges or small volume discharges that impact beneficial uses, a higher amount, up to the maximum per gallon amount, may be used.

Per Day Assessments for Discharge Violations

Where there is a discharge, the Water Boards shall determine an initial liability factor per day based on the Potential for Harm score and the extent of Deviation from Requirement of the violation. These factors will be used in Table 2, below, to determine a Per Day Factor for the violation. The per day assessment would then be the Per Day Factor multiplied by the maximum per day amount allowed under the California Water Code. Generally, it is intended that effluent limit violations be addressed on a per day basis. Where deemed appropriate, such

as for a large scale spill or release, it is intended that Table 2 be used in conjunction with Table 1, so that both per gallon and per day amounts be considered under Water Code section 13385. Where there is a violation of the permit not related to a discharge incident, Step 3/Table 3 below should be used instead.

TABLE 2 - Per Day Factor for Discharges

Deviation from Requirement	Potential for Harm									
	1	2	3	4	5	6	7	8	9	10
Minor	0.005	0.007	0.009	0.011	0.060	0.080	0.100	0.250	0.300	0.350
Moderate	0.007	0.010	0.013	0.016	0.100	0.150	0.200	0.400	0.500	0.600
Major	0.010	0.015	0.020	0.025	0.150	0.220	0.310	0.600	0.800	1.000

The categories for **Deviation from Requirement** in Table 2 are defined as follows:

Minor – The intended effectiveness of the requirement remains generally intact (e.g., while the requirement was not met, there is general intent by the discharger to follow the requirement).

Moderate – The intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved).

Major – The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).

For requirements with more than one part, the Water Boards shall consider the extent of the violation in terms of the adverse impact on the effectiveness of the most significant requirement.

The Water Boards shall apply the above per day factor to the maximum per day amounts allowed under statute for the violations involved. Where allowed by code, both the per gallon and the per day amounts should be determined and added together. This becomes the initial amount of the ACL for the discharge violations.

STEP 3 - Per Day Assessments for Non-Discharge Violations

The Water Boards shall calculate an initial liability factor for each non-discharge violation, considering Potential for Harm and the extent of deviation from applicable requirements. These violations include, but are not limited to, the failure to conduct routine monitoring and reporting, the failure to provide required information, and the failure to prepare required plans. While these violations may not directly or immediately impact beneficial uses, they harm or undermine the regulatory program. The Water Boards shall use the matrix set forth below to determine the initial liability factor for each violation. The per day assessment would then be the Per Day Factor multiplied by the maximum per day amount allowed under the California Water Code. For multiple day violations, please refer to the Adjustment Factors in Step 4, below.

Table 3 shall be used to determine the initial penalty factor for a violation. The Water Boards should select a penalty factor from the range provided in the matrix cell that corresponds to the appropriate Potential for Harm and the Deviation from Requirement categories. The numbers in parenthesis in each cell of the matrix are the midpoints of the range.

TABLE 3 - Per Day Factor

Deviation from Requirement	Potential for Harm		
	Minor	Moderate	Major
Minor	0.1	0.2	0.3
	(0.15)	(0.25)	(0.35)
	0.2	0.3	0.4
Moderate	0.2	0.3	0.4
	(0.25)	(0.35)	(0.55)
	0.3	0.4	0.7
Major	0.3	0.4	0.7
	(0.35)	(0.55)	(0.85)
	0.4	0.7	1

The categories for **Potential for Harm** in Table 3 are:

Minor – The characteristics of the violation present a minor threat to beneficial uses, and/or the circumstances of the violation indicate a minor potential for harm.

Moderate – The characteristics of the violation present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most incidents would be considered to present a moderate potential for harm.

Major – The characteristics of the violation present a particularly egregious threat to beneficial uses, and/or the circumstances of the violation indicate a very high potential for harm. Additionally, non-discharge violations involving particularly sensitive habitats should be considered major.

The categories for **Deviation from Requirement** in Table 3 are:

Minor – The intended effectiveness of the requirement remains generally intact (e.g., while the requirement was not met, there is general intent by the discharger to follow the requirement).

Moderate – The intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved).

Major – The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).

For requirements with more than one part, the Water Boards shall consider the extent of the violation in terms of the adverse impact on the effectiveness of the most significant requirement.

For any given requirement, the Deviation from Requirements may vary. For example, if a facility does not have a required response plan or has not submitted a required monitoring report, the deviation would be major. If a facility has a prepared a required plan or submitted the required monitoring report, but significant elements are omitted or missing, the deviation would be moderate. If a facility has a required plan or submitted the required monitoring report with only minor elements missing, the deviation would be minor.

STEP 4 – Adjustment Factors

Violator’s Conduct Factors

There are three additional factors that should be considered for modification of the amount of the initial liability: the violator’s culpability, the violator’s efforts to cleanup or cooperate with regulatory authorities after the violation, and the violator’s compliance history. Not all factors will apply in every liability assessment.

TABLE 4 – Violator’s Conduct Factors

Factor	Adjustment
Culpability	<p>Discharger’s degree of culpability regarding the violation. Higher liabilities should result from intentional or negligent violations than for accidental, non-negligent violations. A first step is to identify any performance standards (or, in their absence, prevailing industry practices) in the context of the violation. The test is what a reasonable and prudent person would have done or not done under similar circumstances.</p> <p>Adjustment should result in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and higher multiplier for intentional or negligent behavior.</p>
Cleanup and Cooperation	<p>Extent to which the discharger voluntarily cooperated in returning to compliance and correcting environmental damage, including any voluntary cleanup efforts undertaken. Adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation, and higher multiplier where this is absent.</p>
History of Violations	<p>Prior history of violations. Where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this.</p>

After each of the above factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

Multiple Violations Resulting From the Same Incident

By statute, certain situations that involve multiple violations are treated as a single violation per day, such as a single operational upset that leads to simultaneous violations of more than one pollutant parameter. (Water Code § 13385, sub. (f)(1).) For situations not addressed by statute, a single base liability amount can also be assessed for multiple violations at the discretion of the Water Boards, under the following circumstances:

- a. The facility has violated the same requirement at one or more locations within the facility;
- b. A single operational upset where violations occur on multiple days;
- c. The violation continues for more than one day;

- d. When violations are not independent of one another or are not substantially distinguishable. For such violations, the Water Boards may consider the extent of the violation in terms of the most egregious violation;
- e. A single act may violate multiple requirements, and therefore constitute multiple violations. For example, a construction dewatering discharge to a dewatering basin located on a gravel bar next to stream may violate a requirement that mandates the use of best management practices (BMPs) for sediment and turbidity control, a requirement prohibiting the discharge of soil silt or other organic matter to waters of the State, and a requirement that temporary sedimentation basins be located at least 100 feet from a stream channel. Such an act would constitute three distinct violations that may be addressed with a single base liability amount.

If the violations do not fit the above categories, each instance of the same violation shall be calculated as a separate violation.

Except where statutorily required, multiple violations shall not be grouped and considered as a single base liability amount when those multiple violations each result in a distinguishable economic benefit to the violator.

Multiple Day Violations

For violations that are assessed a civil liability on a per day basis, the initial liability amount should be assessed for each day up to thirty (30) days. For violations that last more than thirty (30) days, the daily assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if any, resulting from the violation. For these cases, the Water Board must make express findings that the violation:

- a. Is not causing daily detrimental impacts to the environment or the regulatory program;
- b. Results in no economic benefit from the illegal conduct that can be measured on a daily basis; or,
- c. Occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation.

If one of the above findings is made, an alternate approach to penalty calculation for multiple day violations may be used. In these cases, the liability shall not be less than an amount that is calculated based on an assessment of the initial Total Base Liability Amount for the first day of the violation, plus an assessment for each five day period of violation until the 30th day, plus an assessment for each thirty (30) days of violation. For example, a violation lasting sixty-two (62) days would accrue a total of 8 day's worth of violations, based on a per day assessment for day 1, 5, 10, 15, 20, 25, 30, and 60. Similarly, a violation lasting ninety-nine (99) days would accrue a total of 9 day's worth of violations, based on a per day assessment for day 1, 5, 10, 15, 20, 25, 30, 60, and 90.

STEP 5 – Determination of Total Base Liability Amount

The Total Base Liability Amount will be determined by adding the amounts above for each violation, though this may be adjusted for multiple day violations as noted above. Depending on the statute controlling the liability assessment for a violation, the liability can be assessed as either a per day penalty, a per gallon penalty, or both.

STEP 6 – Ability to Pay and Ability to Continue in Business

If the Water Boards have sufficient financial information necessary to assess the violator's ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on the violator's ability to continue in business, the Total Base Liability Amount may be adjusted to address the ability to pay or to continue in business.

The ability of a discharger to pay an ACL is determined by its revenues and assets. In most cases, it is in the public interest for the discharger to continue in business and bring its operations into compliance. If there is strong evidence that an ACL would result in widespread hardship to the service population or undue hardship to the discharger, the amount of the assessment may be reduced on the grounds of ability to pay. For a violation addressed pursuant to California Water Code section 13385, the adjustment for ability to pay and ability to continue in business can not reduce the liability to less than the economic benefit amount.

If staff anticipates that the discharger's ability to pay or ability to continue in business will be a contested issue in the proceeding, staff should conduct a simple preliminary asset search prior to issuing the ACL complaint. Staff should submit a summary of the results (typically as a finding in the Complaint or as part of staff's initial transmittal of evidence to the discharger), in order to put some evidence about these factors into the record for the proceeding and to give the discharger an opportunity to submit additional financial evidence if it chooses. If staff does not put any financial evidence into the record initially and the discharger later contests the issue, staff may then either choose to rebut any financial evidence submitted by the discharger, or submit some financial evidence and provide an opportunity for the discharger to submit its own rebuttal evidence. In some cases, this may necessitate a continuance of the proceeding to provide the discharger with a reasonable opportunity to rebut the staff's evidence. As a general practice, in order to maintain the transparency and legitimacy of the Water Boards' enforcement programs, any financial evidence that the discharger chooses to submit in an enforcement proceeding will generally be treated as a public record.

STEP 7 – Other Factors As Justice May Require

If the Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for "other factors as justice may require," but only if express findings are made to justify this. Examples of circumstances warranting an adjustment under this step are:

- a. The discharger has provided, or Water Board staff has identified, other pertinent information not previously considered that indicates a higher or lower amount is justified.
- b. A consideration of issues of environmental justice indicates that the amount would have a disproportionate impact on a particular disadvantaged group.
- c. The calculated amount is entirely disproportionate to assessments for similar conduct made in the recent past using the same Enforcement Policy.

Costs of Investigation and Enforcement Adjustment

The costs of investigation and enforcement are "other factors as justice may require", and should be added to the liability amount. These costs may include the cost of investigating the violation, preparing the enforcement action, participating in settlement negotiations, and putting on a hearing, including any expert witness expenses. Such costs are the total costs incurred by

the Water Boards enforcement or prosecution staff, including legal costs that are reasonably attributable to the enforcement action. Costs include the total financial impact on the staff of the Water Board, not just wages, and should include benefits and other indirect overhead costs.

STEP 8 – Economic Benefit

The Economic Benefit Amount shall be estimated for every violation. Economic benefit is any savings or monetary gain derived from the act or omission that constitutes the violation. In cases where the violation occurred because the discharger postponed improvements to a treatment system, failed to implement adequate control measures (such as BMPs), or did not take other measures needed to prevent the violations, the economic benefit may be substantial. Economic benefit should be calculated as follows:

- a. Determine those actions required to comply with a permit or order of the Water Boards, an enforcement order, or an approved facility plan, or that were necessary in the exercise of reasonable care, to prevent a violation of the Water Code. Needed actions may have been such things as capital improvements to the discharger's treatment system, implementation of adequate BMPs, or the introduction of procedures to improve management of the treatment system.
- b. Determine when and/or how often these actions should have been taken as specified in the order or approved facility plan, or as necessary to exercise reasonable care, in order to prevent the violation.
- c. Estimate the type and cost of these actions. There are two types of costs that should be considered; delayed costs and avoided costs. Delayed costs include expenditures that should have been made sooner (e.g., for capital improvements such as plant upgrades and collection system improvements, training, development of procedures and practices) but that the discharger is still obligated to perform. Avoided costs include expenditures for equipment or services that the discharger should have incurred to avoid the incident of noncompliance, but that are no longer required. Avoided costs also include ongoing costs such as needed additional staffing from the time determined under step "b" to the present, treatment or disposal costs for waste that cannot be cleaned up, and the cost of effective erosion control measures that were not implemented as required.
- d. Calculate the present value of the economic benefit. The economic benefit is equal to the present value of the avoided costs plus the "interest" on delayed costs. This calculation reflects the fact that the discharger has had the use of the money that should have been used to avoid the instance of noncompliance. This calculation should be done using the USEPA's BEN² computer program (the most recent

² USEPA developed the BEN model to calculate the economic benefit a violator derives from delaying and/or avoiding compliance with environmental statutes. Funds not spent on environmental compliance are available for other profit-making activities or, alternatively, a defendant avoids the costs associated with obtaining additional funds for environmental compliance. BEN calculates the economic benefits gained from delaying and avoiding required environmental expenditures such as capital investments, one-time non-depreciable expenditures, and annual operation and maintenance costs.

BEN uses standard financial cash flow and net present value analysis techniques based on generally accepted financial principles. First, BEN calculates the costs of complying on time and of complying late adjusted for inflation and tax deductibility. To compare the on time and delayed compliance costs in a common measure, BEN calculates the present value of both streams of costs, or "cash flows," as of the date of initial noncompliance. BEN derives these values by discounting the annual cash flows at an
(Continued)

version is accessible at <http://www.waterboards.ca.gov/plnspols/docs/wqplans/benmanual.pdf>) unless the Water Board determines, or the discharger demonstrates to the satisfaction of the Water Board, that, based on case-specific factors, an alternate method is more appropriate for a particular situation. However, in more complex cases, such as where the economic benefit may include revenues from continuing production when equipment used to treat discharges should have been shut down for repair or replacement, the total economic benefit should be determined by experts available from the Office of Research Planning and Performance or outside experts retained by the enforcement staff.

- e. Determine whether the discharger has gained any other economic benefits. These may include income from continuing production when equipment used to treat discharges should have been shut down for repair or replacement.

The Water Boards should not adjust the economic benefit for expenditures by the discharger to abate the effects of the unauthorized conduct or discharge, or the costs to come into or return to compliance. In fact, the costs of abatement may be a factor that demonstrates the economic extent of the harm from the violation and, therefore, may be a factor in upwardly adjusting any monetary liability as a benefit from noncompliance. The discharger's conduct relating to abatement is appropriately considered under "cleanup and cooperation" liability factor.

The Economic Benefit Amount should be compared to the adjusted Total Base Liability Amount. The adjusted Total Base Liability Amount shall be at least 10 percent higher than the Economic Benefit Amount so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations.

STEP 9 – Maximum and Minimum Liability Amounts

For all violations, the statute sets a maximum liability amount that may be assessed for each violation. For some violations, the statute also requires the assessment of a liability at no less than a specified amount. The maximum and minimum amounts for each violation must be determined for comparison to the amounts being proposed, and shall be described in any ACL complaint and in any order imposing liability. Where the amount proposed for a particular violation exceeds to statutory maximum, the amount must be reduced to that maximum. Similarly, the minimum statutory amount may require raising the amount being proposed unless there is a specific provision that allows assessment below the minimum. In such cases, the reasons for assigning a liability amount below this minimum must be documented in the resolution adopting the ACL.

STEP 10 – Final Liability Amount

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts.

The administrative record must reflect how the Water Board arrived at the final liability amount. In particular, where adjustments are made to the initial amount proposed in the ACL complaint, the record should clearly reflect the Water Board's considerations, as the staff report or complaint may not reflect those considerations, or for any adjustments that are made at hearing

average of the cost of capital throughout this time period. BEN can then subtract the delayed-case present value from the on-time-case present value to determine the initial economic benefit as of the noncompliance date. Finally, BEN compounds this initial economic benefit forward to the penalty payment date at the same cost of capital to determine the final economic benefit of noncompliance.

that are different from those recommended in the ACL complaint or that further support the final liability amount in the administrative civil liability order.

B. Settlement Considerations

The liabilities resulting from the above methodology are for adoption by the Water Boards after formal administrative proceedings. The calculated liabilities may be adjusted as a result of settlement negotiations with a violator. It is not the goal of the Enforcement Policy to address the full range of considerations that should be entertained as part of a settlement. It is appropriate to adjust the administrative civil liabilities calculated pursuant to the methodology in consideration of hearing and/or litigation risks including: equitable factors, mitigating circumstances, evidentiary issues, or other weaknesses in the enforcement action that the prosecution reasonably believes may adversely affect the team's ability to obtain the calculated liability from the administrative hearing body. Ordinarily, these factors will not be fully known until after the issuance of an administrative civil liability complaint or through pre-filing settlement negotiations with an alleged violator. These factors shall be generally identified in any settlement of an administrative civil liability that seeks approval by a Water Board or its designated representative.

Factors that should not affect the amount of the calculated civil liability sought from a violator in settlement include, but are not limited to, the following:

1. A general desire to avoid hearing or minimize enforcement costs;
2. A belief that members of a Water Board will not support a proposed liability before that Water Board has considered the specific merits of the enforcement case or a similar case;
3. A desire to avoid controversial matters;
4. The fact that the initiation of the enforcement action is not as timely as it might have been under ideal circumstances (timeliness of the action as it affects the ability to present evidence or other timeliness considerations are properly considered); or
5. The fact that a water body affected by the violation is already polluted or impaired.

Except as specifically addressed in this Policy, nothing in this Policy is intended to limit the use of Government Code 11415.60

C. Other Administrative Civil Liability Settlement Components

In addition to a reduction of administrative civil liabilities, a settlement can result in the permanent suspension of a portion of the liability in exchange for the performance of a Supplemental Environmental Project (see the State Water Board's Water Quality Control Policy on Supplemental Environmental Projects) or an Enhanced Compliance Action (see Section IX).

As far as the scope of the settlement is involved, the settlement resolves only the claims that are made or could have been made based on the specific facts alleged in the ACL complaint. A settlement shall never include the release of any unknown claims or a waiver of rights under Civil Code section 1542.

