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BEFORE THE CALIFORNIA WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

12 In the Matter of:) Administrative Civil Liability
13 EMERALD BAY MARINE) Complaint R5-2013-0525a
14 MANUFACTURING, INC.)
15) PROSECUTION TEAM LEGAL
16) ANALYSIS
17)
18) Submitted 18 April 2013 for the
19) 30/31 May 2013
20) Central Valley Regional Water Quality
21) Control Board Meeting
22)
23) Resubmitted in Agenda Package with
24) typographical corrections

25 This Administrative Civil Liability Complaint comes before the Central Valley
26 Regional Water Board (Central Valley Board) to enforce California Water Code Chapter
27 5.9, the *Storm Water Enforcement Act of 1998* in the *Porter-Cologne Water Quality*
28 *Control Act*. The evidence shows that discharger Emerald Bay Marine Manufacturing,
Inc. (Discharger) engages in industrial boat building and repair activities, requiring permit
coverage under State Water Resources Control Board Order 97-03-DWQ, often referred
to as the Industrial General Permit. Central Valley Board staff has repeatedly contacted
the Discharger and its president, Mr. William Hill, notifying the Discharger that it is
required to obtain permit coverage. Yet, not only has the Discharger failed to comply, Mr.

1 Hill has stated his intention of refusing to enroll in the permit program. For violating Water
2 Code section 13399.30(a)(2), the Prosecution Team respectfully requests that the Central
3 Valley Board fulfill its duty to enforce *Porter-Cologne Water Quality Control Act* by
4 imposing the applicable \$5,000 penalty and recovering staff costs in excess of \$3,450
5 pursuant to Water Code sections 13399.33(a)(1) and (d).

6
7 **I. EMERALD BAY MARINE MANUFACTURING, INC. IS REQUIRED TO ENROLL**
8 **IN THE STATE WATER RESOURCES CONTROL BOARD ORDER 97-03-DWQ**
9 **BECAUSE IT BUILDS AND REPAIRS HOUSEBOATS**

10 The State Water Resources Control Board (State Water Board) Order 97-03-
11 DWQ, *Waste Discharge Requirements for Discharges of Storm Water Associated with*
12 *Industrial Activities* (Industrial General Permit) is a National Pollution Discharge
13 Elimination System (NPDES) permit that the State Water Board uses to implement the
14 federal Clean Water Act to regulate ten broad categories of industrial activities.
15 Attachment 1 to the Industrial General Permit identifies which facilities require permit
16 coverage based on their industrial activities. The second paragraph in Attachment 1
17 identifies manufacturing facilities with Standard Industrial Classification (SIC) section
18 numbers that are required to obtain permit coverage and includes Industry Group 373,
19 which includes classification 3732 for boat building and repairing.

20 In his three letters to Central Valley Board staff, Mr. William Hill questions and
21 protests enrolling in the Industrial General Permit, suggesting the annual fee associated
22 with enrollment is a tax on rainfall. (Emerald Bay Marine Manufacturing, Inc., letter to
23 Scott Zaitz, received 13 Feb. 2012, p. 1-2). Mr. Hill admits that, "we occupy one of the
24 largest buildings in the county, we have been here for 7 years, we build houseboats that
25 can be seen for miles and miles," and that they service houseboats at the location. (*Id.*,
26 p. 2.; Emerald Bay Marine Manufacturing, Inc., letter to Scott Zaitz, 16 Aug. 2013., p. 5.)

27 From the name itself, Emerald Bay Marine Manufacturing, Inc. (Discharger), and
28 its letterhead stating Builder of Emerald Bay Custom Houseboats™, one reasonably
concludes that the Discharger engages in the industrial activity of manufacturing marine

1 vessels, thus requiring permit coverage. Central Valley Board staff's inspections and
2 observations verify that the Discharger engages in houseboat repairing and building
3 activities requiring permit coverage consistent with SIC code 3732. Environmental
4 Scientist Scott Zaitz has observed workers actively painting and welding in the front
5 parking lot where several houseboats and recreational vehicles (RVs) were parked,
6 outdoors and exposed to the elements. The paved back parking lot has storm drain drop
7 inlets that discharge to an unnamed drainage that eventually discharges to the Feather
8 River (which is approximately 3,000 feet from the facility). Mr. Zaitz's 16 February 2012
9 Record of Communication describes that he saw pollutants of concern, rusting metals,
10 evidence painting was done directly on the pavement, cardboard in the storm drain ditch,
11 and stains on the pavement, all of which were exposed to storm water. Mr. Zaitz saw a
12 garden hose next to puddled water indicative of workers washing down the area, which
13 would cause these pollutants to discharge directly to the storm drain system,
14 subsequently to the Feather River, a water of the United States. (Also see the photos
15 attached to the 16 February 2012 Record of Communication.)

16 In his 2 April 2013 letter, Mr. Hill indicated his desire to simply be left alone
17 because he does not see any reason or purpose to pay for permit enrollment because he
18 has absolutely no control over the rain. However, the Central Valley Board is tasked with
19 taking reasonable efforts to identify storm water dischargers that do not have coverage
20 under an appropriate NPDES permit, and the Industrial General Permit requires facility
21 operators to:

- 22 1. Eliminate unauthorized non-storm water discharges;
- 23 2. Develop and implement a storm water pollution prevention plan (SWPPP);
24 and
- 25 3. Perform monitoring of storm water discharges and authorized non-storm
26 water discharges.

27 (Wat. Code. § 13399.30(a)(1); Industrial General Permit, p. ii.) The Discharger is
28 *choosing* to not control the storm water at the facility by refusing to comply with the
Industrial General Permit and its requirements.

1 The Discharger is required to enroll in the Industrial General Permit because its
2 workers are repairing houseboats on a parking lot, exposed to the elements, and where
3 the pollutants are discharging to the storm drain, and eventually off-site and to the
4 Feather River. Dischargers with storm water discharges associated with industrial
5 activities such as what the Discharger engages in are required to enroll in the permit.

6 **II. THE DISCHARGER VIOLATED WATER CODE SECTION 133909.30(a)(2) BY**
7 **REFUSING TO ENROLL IN THE INDUSTRIAL GENERAL PERMIT**

8 Water Code section 13399.30(a)(1)-(2) requires the Central Valley Board to
9 identify storm water dischargers that have failed to file for permit coverage, and to send
10 notice to the non-filer to submit a Notice of Intent (NOI) to obtain coverage within 30 days.
11 If the discharger fails to file the NOI, Water Code section 13399.30(b) requires the Board
12 to send a second notice to the discharger to file within 60 days of the first notice.

13 Central Valley Board staff complied with the obligations under Water Code section
14 13399.30(a) and (b) by issuing four letters to the Discharger providing notice of its
15 requirement to file for coverage under the Industrial General Permit. Mr. Scott Zaitz sent
16 the Discharger three letters explaining the need for permit coverage and the procedure on
17 18 August 2011, 10 January 2012, and 16 March 2012. Mr. George Day, Chief of the
18 Storm Water Unit, issued the forth notice to the Discharger on 9 August 2012.¹

19 Mr. William Hill, on behalf of the Discharger, had actual notice of these letters,
20 evidenced in his reply letters received 13 February 2011, dated 16 August 2012, and
21 dated 2 April 2013, and in various communications with Mr. Zaitz. (See Records of
22 Communication from 22 Sept. 2011 through 16 Aug. 2012.) Therefore, the Discharger
23 was fully aware of its obligation to file a Notice of Intent to comply with the Industrial
24 General Permit, yet failed to obtain coverage.

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27 ¹ Water Code section 13399.33(b) requires the Executive Officer to issue the second notice. Executive Officer Pamela
28 Creedon delegated her authority to act on her behalf for all routine actions to Mr. Day for his division on 28 January
2011.

1 Mr. Hill, in fact, refused to enroll the Discharger in the permit program. In his letter
2 to Mr. Zaitz dated 16 August 2012 on page 6, Mr. Hill stated, "I intend on fighting this fee
3 with every bit of my existence as I believe it to be wrong and a worthwhile cause." On
4 page 2 of Mr. Hill's 2 April 2013 letter following the issuance of the Administrative Civil
5 Liability Complaint at issue, Mr. Hill reiterated his position by stating, "My position has not
6 changed, I am absolutely opposed to this form of government self financing [sic] itself at
7 the expense of its citizenry that I am willing and able to fight this as a matter of principle
8 and protest."

9 The Discharger has violated Water Code section 133909.33(a)(1) by refusing to
10 enroll in the Industrial General Permit and is therefore subject to civil liability pursuant to
11 Water Code section 133909.33(d).

12 **III. THE DISCHARGER IS SUBJECT TO A MINIMUM \$5,000 CIVIL LIABILITY,**
13 **PLUS STAFF COSTS PURSUANT TO WATER CODE SECTION 133909.33(a)(1)**

14 Water Code section 13390.33 states that "the regional board *shall* do all of the
15 following . . ." (emphasis added), imposing penalties in subdivisions (a) through (d).
16 Thus, the Central Valley Board is required to impose the relevant penalties if it finds
17 there has been a violation.

18 Section 13399.33(a)(1) requires the Board to impose civil liability in an amount not
19 less than \$5,000 for each portion of a year that the Discharger is not in compliance. The
20 Complaint alleges that the Discharger has been out of compliance with enrolling in the
21 Industrial General Permit since 10 September 2012. Therefore, the Discharger is
22 subject to a minimum of \$5,000 in civil liability.

23 Section 13399.33(d) requires the Central Valley Board to recover the costs that the
24 Board incurred in trying to get the Discharger to comply and enroll in the permit program
25 as required.

26 In this case, the Board staff has incurred \$3,450 up to the time of issuing the
27 Complaint. A description of these costs is in Attachment A to the Complaint. Since
28 issuing the Complaint, staff has incurred additional costs and will provide a breakdown to

1 the Board at the hearing. The Prosecution Team will request that the Central Valley
2 Board order the Discharger to pay for all of the costs incurred.

3 Pursuant to the civil liability structure provide for in Water Code section 13399.33
4 and its subdivisions, the Central Valley Board should order the Discharger to pay a
5 minimum of \$5,000 as a penalty, and \$3,450 plus additional staff costs incurred since
6 the Complaint was issued.

7 **IV. Conclusion**

8 The Discharger has continuously to violated Water Code section 13399.30, and
9 after extensive compliance attempts and due diligence by Central Valley Board staff, the
10 Discharger has repeatedly refused to comply. The Prosecution Team respectfully
11 requests that the Central Valley Board enforce the Storm Water Enforcement Act of
12 1998 and impose the necessary \$5,000 penalty and the entire amount of staff costs
13 incurred in its efforts to assist the Discharger in complying with the law.

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15 Dated: ~~April 18~~ May 13, 2013

Respectfully submitted,
CHRISTIAN CARRIGAN, DIRECTOR
OFFICE OF ENFORCEMENT

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Laura J. Drabandt, Attorney
Office of Enforcement

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