CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER No. R2-2013-0030

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).

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. The total base liability set forth therein exceeds civil liabilities imposed for similar violations in the recent past. The Regional Water Board finds it is appropriate to deviate from it under the "other matters as justice may require" and "ability to pay" factors and impose a civil liability as follows: [($1,750 [the Discharger's previous civil liability under Order No. R2-2010-0091]) x (culpability factor of 1.3) x (cleanup and cooperation factor of 1.1) x (history of violations factor of 1.2)] + [staff costs of $6,260] = $9,263. With respect to the adjustment factor for multiple day violations in Exhibit A of the Complaint, the Regional Water Board agrees 16 days is the appropriate adjustment because the violation is not causing daily detrimental impacts to the environment.

12. A $9,263 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).

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 $9,263. 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.

Digitally signed
by Bruce H. Wolfe
Date: 2013.08.20
10:13:17 -07'00'

Bruce H. Wolfe
Executive Officer

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

Exhibit A of Order R2-2013-0030 –

Administrative Civil Liability Complaint No. R2-2013-1017

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).

STATUATORY 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.

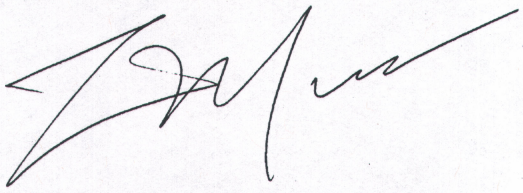
20. There are no statutes of limitation that apply to administrative proceedings. The statutes of limitation that refer to "actions" and "special proceedings" and are contained in the Code of Civil Procedure apply to judicial proceedings, not administrative proceeding.

(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.



May 17, 2013

Thomas E. Mumley
Assistant Executive Officer

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)	An ***initial penalty factor*** is calculated for each non-discharge violation, considering a) The Potential for Harm and b) The Extent of Deviation from Applicable Requirements. This factor is then multiplied by the maximum per day amount allowed under the Water Code. **Potential for Harm**: Minor 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. **Extent of Deviation from Applicable Requirements**: Major 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.
Adjustment Factor for Multiple Day Violations	16 (decrease days)	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.
Initial Liability	**$48,000**	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**.

PENALTY FACTOR	ASSESSMENT	DISCUSSION
Adjustment for Culpability (Conduct Factor 1)	1.3 (multiplier)	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. • 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.

Adjustment for Other Matters as Justice May Require	**$1,000 minimum penalty and $6,260 in staff costs**	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). 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).
Final Liability Amount	**$7,460**	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).