# NOTICE OF PROPOSED SETTLEMENT WITH B&W CUSTOM RESTAURANT EQUIPMENT

On May 7, 2019, the Assistant Executive Office of the Regional Water Board issued an Administrative Civil Liability Complaint (MMP Complaint No. R8-2019-0048) to B&W Custom Restaurant Equipment (Discharger) for mandatory minimum penalties under Water Code section 13399.33. The Discharger waived its right to a hearing under California Water Code Section 13323 to respond to the allegations in MMP Complaint No. R8-2019-0048, and instead has agreed to pay the penalty amount of $7,040 to the Waste Discharge Permit Fund. This proposed settlement is hereby noticed for a 30-day public comment period, which will close on July 16, 2019. If you have any comments on the proposed settlement, please contact Michelle Beckwith by phone at (951) 782-4433 or by e-mail at Michelle.Beckwith@waterboards.ca.gov.

**Santa Ana Regional Water Quality Control Board**

**WAIVER FORM**
**FOR MANDATORY MINIMUM PENALTY COMPLAINT NO. R8-2019-0048**

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

I am duly authorized to represent B&W Custom Restaurant Equipment, Inc. in connection with Mandatory Minimum Penalty Compliant No. R8-2019-0048 (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. The person who has been issued a complaint may waive the right to a hearing."

☑ ***(OPTION 1: Check here if B&W Custom Restaurant Equipment, Inc. waives the hearing requirement and will pay the liability in full.)***

a. I hereby waive any right B&W Custom Restaurant Equipment, Inc. may have to a hearing before the Regional Water Board.

b. I certify that B&W Custom Restaurant Equipment, Inc. will remit payment for the proposed penalty in the full amount of **seven thousand and forty dollars ($7,040)** by submitting a check made payable to the "*Waste Discharge Permit Fund*," that references "Complaint No. R8-2019-0048." Payment must be received by the Regional Water Board by **June 6, 2019**.

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 Water Board's 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 the Regional Board's delegee), 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 B&W Custom Restaurant Equipment, Inc. having waived the right to contest the allegations in the Compliant 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.

☐ ***(OPTION 2: Check here if B&W Custom Restaurant Equipment, Inc. waives the 90-day hearing requirement in order to extent 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 B&W Custom Restaurant Equipment, Inc. may have to a hearing before the Regional Water Board within 90 days after service of the Complaint. By checking this box, B&W Custom Restaurant Equipment, Inc. requests that the Regional Water Board delay the hearing and/or hearing deadlines so that B&W Custom Restaurant Equipment, Inc. may have additional time to prepare for the hearing. It remains within the discretion of the Regional Water Board to approve the extension.

Nathan Bojorquez-President
(Print Name and Title)

(Signature)

6.3.19
(Date)

**Santa Ana Regional Water Quality Control Board**

May 7, 2019

B&W Custom Restaurant Equipment, Inc.
541 East Jamie Avenue
La Habra, CA 90631
(By Regular Mail)

Brett Blazicek, Chief Financial Officer
B&W Custom Restaurant Equipment, Inc.
brett@ci-re.com
(By Email Only)

Nathan E. Bojorouez (Agent of Service for Process)
541 East Jamie Avenue
La Habra, CA 90631
(By Certified Mail)

**CERTIFIED MAIL**
**RETURN RECEIPT REQUIRED**

**TRANSMITTAL OF MANDATORY MINIMUM PENALTY COMPLAINT NO. R8-2019-0048, B&W CUSTOM RESTAURANT EQUIPMENT, INC.**

Dear Mr. Bojorouez:

Enclosed is Mandatory Minimum Penalty Complaint No. R8-2019-0048 (Compliant) against B&W Custom Restaurant Equipment, Inc (hereafter referred to as B&W or Discharger). The Complaint alleges that B&W has violated California Water Code (Water Code) section 13399.30 by failing to obtain coverage under the State's National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ, NPDES No. CAS000001 (General Permit) for B&W Custom Restaurant Equipment Inc. (B&W) facility located at 541 East Jamie Avenue, in the city of La Habra.

The Complaint proposes that a penalty in the amount of seven thousand and forty dollars ($7,040) be imposed. The penalty amount is comprised of mandatory minimum penalties and staff costs as authorized by California Water Code section 13399.33, subsections (a)(1) and (d).

A public hearing on this matter is scheduled for the Regional Board meeting on August 2, 2019 at a to be determined location. Pursuant to California Water Code section 13323, B&W has the option to waive its right to a hearing. Should B&W waive its right to a hearing and pay the proposed liability, the Regional Board may not hold a public hearing on this matter. If B&W chooses to waive its right to a hearing, please sign and submit the enclosed Waiver Form by June 6, 2019. Please make the check payable to the Waste Discharge Permit Fund for seven thousand and forty dollars ($7,040) and include the Complaint Number (No. R8-2019-0048) on the memo line. Please send the following information to the appropriate location:

Mail Waiver Form to:
RWQCB
Attn: Kyle Wright
3737 Main Street, Suite 500
Riverside, CA 92501

Mail Payment to:
SWRCB – Accounting Office
Attn: Sarah Fong
P.O. Box 1888
Sacramento, CA 95812-1888

If B&W does not wish to waive its right to a hearing, a pre-hearing meeting is recommended. Should you wish to schedule a pre-hearing meeting, please submit your request to Kyle Wright by phone at (951) 320-6370 or by email to Kyle.Wright@waterboards.ca.gov prior to May 17, 2019.

A Hearing Procedure pertaining to this Complaint is also enclosed. The Hearing Procedure sets forth important requirements and deadlines for participation in the hearing. Please read the Hearing Procedures carefully. The Board may adopt an Order requiring that you pay a penalty.

Additionally, a Fact Sheet describing the Complaint process is enclosed herein. The Fact Sheet describes the complaint process and explains what B&W can expect and its obligations as the process proceeds.

If you have any questions regarding the Complaint or the enclosed documents, please contact Michelle Beckwith by phone at (951) 782-4433 or by email at Michelle.Beckwith@waterboards.ca.gov. All legal questions should be directed Heather Mapes, Office of Enforcement, by phone at (916) 341-5163 or by email at Heather.Mapes@waterboards.ca.gov.

Sincerely,

Jayne Joy
Assistant Executive Officer
Regional Board Prosecution Team

Enclosures: MMP Complaint No. R8-2019-0048
Attachment 1: 1st Notice of Non-Compliance, dated 12/19/2018
Attachment 2: 2nd Notice of Non-Compliance, dated 1/17/2019
Attachment 3: Waiver Form
Hearing Procedure
Fact Sheet

cc: Regional Board
Ms. Hope Smythe, Executive Office, RWQCB, (Regional Board Advisory Team)
Ms. Teresita Sablan, Office of Chief Counsel, SWRCB, (Regional Board Advisory Team Attorney)
Ms. Heather Mapes, Office of Enforcement, SWRCB (Regional Board Prosecution Team Attorney)
Mr. James Fortuna, Orange County Public Works
Ms. Jillian Brickey, City of La Habra NPDES Coordinator

7017 3040 0000 8553 8182

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- ☐ Adult Signature Required $
- ☐ Adult Signature Restricted Delivery $

Postage
$

Total Postage
$

Postmark Here

Sent To

Nathan Bojorouez

Street and Apt.

541 E Jamie Ave

City, State, ZIP

La Habra, CA 90631

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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

IN THE MATTER OF:

| | | |
|---|---|---|
| B&W Custom Restaurant Equipment, Inc.<br>541 East Jamie Avenue<br>La Habra, CA 90631 | ) | Complaint No. R8-2019-0048<br>For<br>Mandatory Minimum Penalty and Staff Costs |

This Complaint is issued to B&W Custom Restaurant Equipment, Inc. (hereafter referred to as B&W or Discharger) pursuant to California Water Code (Water Code) section 13399.33, which authorizes the imposition of civil liability administratively, and Water Code section 13323, which authorizes the Assistant Executive Officer to issue this Complaint. This Complaint is based on allegations that the Discharger failed to submit the required notice of intent to obtain coverage in accordance with Water Code section 13399.30, for which the California Regional Water Quality Control Board, Santa Ana Region (Regional Board), must impose a mandatory minimum penalty under Water Code section 13399.33.

The Assistant Executive Officer of the Regional Board alleges the following:

**BACKGROUND:**

1. Most industrial facilities that discharge storm water associated with industrial activities are required to obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Industrial Activities Order No. 2014-0057-DWQ, NPDES Permit No. CAS000001 (General Permit). General Permit coverage is required for facilities listed by industrial category and by Standard Industrial Classification (SIC) codes in 40 Code of Federal Regulations section 122.26(b)(14) and in Attachment A of the General Permit.

2. B&W, located at 541 East Jamie Avenue, in the City of La Habra, was initially identified as an industrial facility engaged in manufacturing iron and steel forgings. This industrial activity is described in Standard Industrial Classification (SIC) code 3462. However, through communications with B&W staff, the appropriate SIC code is 3444 – sheet metal work for buildings and manufacturing stovepipes, light tanks, and other products of sheet metal. Therefore, B&W must obtain coverage under the General Permit.

3. On December 19, 2018, Regional Board staff issued a Notice of Non-Compliance (NNC) to B&W, via certified mail, for failure to obtain coverage under the General Permit. Per the certified return receipt, the NNC was received on December 21, 2018. The NNC required that B&W obtain permit coverage by January 17, 2019. The NNC and certified return receipt are attached to this complaint as Attachment 1.

4. On January 16, 2019, Regional Board staff received an email from Mr. Brett Blazicek, the Discharger's Chief Financial Officer, regarding the NNC issued on December 19, 2018. Mr. Blazicek stated that the facility does not engage in any iron or steel forging and does not utilize water in any processes, such that the company should not be classified under SIC code 3462. Mr. Blazicek requested that the record be corrected.

5. On January 17, 2019, since B&W had not obtained permit coverage, staff issued a second NNC via certified mail. Per the certified return receipt, the second NNC was received January 22, 2019. The second NNC required that B&W Custom obtain permit coverage by February 15, 2019. The second NNC and certified return receipt are attached to this complaint as Attachment 2.

6. On January 18, 2019, Regional Board staff contacted Mr. Blazicek via email to explain why B&W had received the NNC and request that he provide the appropriate industrial classification for the facility.

7. On February 5, 2019, Regional Board staff contacted Mr. Blazicek again via email to reiterate the final deadline of February 15, 2019, and the potential for mandatory minimum penalties if the facility did not obtain coverage by the specified deadline. Copies of the issued NNCs as well as guidance documents were included as attachments in the February 5 email. Later that day, Regional Board staff received an emailed response from Ms. Geovanna Escamilla, the facility's Office Manager, requesting information regarding permit coverage. According to Ms. Escamilla, the facility conducts metal fabrication industrial activities. Regional Board staff responded to Ms. Escamilla via email reiterating the necessity to review all NNCs, help guides, and permit language to determine which type of permit coverage would be appropriate.

8. On February 6, 2019, Regional Board staff spoke with Mr. Blazicek via phone regarding the NNCs and the ramifications of failing to obtain permit coverage. Mr. Blazicek stated that the facility's industrial activity is that of a metal fabricator, at which point Regional Board staff reiterated the permit requirements.

9. On February 11, 2019, Regional Board staff contacted Mr. Blazicek via email with another reminder of the final deadline and potential mandatory minimum penalty. Staff again attached a copy of the General Permit, SMARTS help guide, NEC Brochure, and the 1st and 2nd NNCs. That same day, staff followed up their email with a phone call to Mr. Blazicek, who was unavailable; however, staff left a message with the receptionist.

10. On February 13, 2019, Regional Board staff left a voicemail for Mr. Blazicek to again reiterate the final deadline and impending mandatory minimum penalty.

11. On February 15, 2019, Regional Board staff spoke with Mr. Blazicek via phone regarding the need to obtain permit coverage. Mr. Blazicek stated he believed the facility does require coverage; however, he was attempting to complete the No Exposure Certification (NEC) application but was having technical issues. Staff instructed Mr. Blazicek to contact the SMARTS Help Desk to address the technical issues.

12. On February 20, 2019, Regional Board staff contacted Mr. Blazicek via email to identify that the facility failed to obtain permit coverage by the final deadline of February 15, 2019, and in doing so, would be issued a mandatory minimum penalty. Mr. Blazicek contacted staff via phone to express his frustration on the amount of time given to respond; however, Mr. Blazicek did admit that he failed to read the SMARTS Help Desk email until after the final filing date.

13. To date, B&W has not obtained General Permit coverage and Regional Board staff is not aware of any subsequent efforts from the Discharger to obtain coverage.

## LEGAL AUTHORITY

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

15. Pursuant to Water Code section 13399.30(a)(2), the Regional Board provides a notice to any person that discharges, proposes to discharge, or is suspected by the Regional Board of discharging storm water associated with industrial activity without coverage under the General Permit. Within 30 days from the date on which the Regional Board sent notice, the discharger shall submit a notice of intent to obtain coverage to the Regional Board.[1]

16. Pursuant to Water Code section 13399.30(b), the Regional Board shall send a second notice to a discharger for failing to submit the appropriate notice of intent to the Regional Board within 30 days from the date on which the first notice was sent pursuant to 13399.30(a).

17. Pursuant to Water Code section 13399.30(c)(2), if a discharger fails to submit the required notice of intent to the Regional Board within 60 days from the date on which the first NNC was sent, the Regional Board shall impose the penalties described in section 13399.33(a).

## PROPOSED MANDATORY MINIMUM PENALTIES AND ASSESSMENT OF COSTS

18. Pursuant to Water Code section 13399.33(a)(1), the Regional Board shall administratively impose a penalty in an amount that is not less than five thousand dollars ($5,000) per year of noncompliance or fraction thereof against a discharger who fails to submit the required notice of intent in accordance with Water Code section 13399.30. The Regional Board shall impose this mandatory minimum penalty unless it makes express findings setting forth the reasons for its failure to do so, based on specific factors required to be considered pursuant to 13399.33(a)(2).

19. Water Code section 13399.33(d) further requires the recovery of costs incurred by the Regional Board for enforcement actions against dischargers who fail to submit the required Notice of Intent in accordance with Water Code section 13399.30. Staff spent approximately seventeen (17) hours on this enforcement action, resulting in total staff costs of two thousand and forty dollars ($2,040).

20. Therefore, the total liability for the violation alleged herein, including staff costs, is seven thousand and forty dollars ($7,040).

## REGULATORY CONSIDERATIONS

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

22. An administrative civil liability may be imposed pursuant to the procedures described in Water Code section 13323. An administrative civil liability complaint alleges the act or

[1]The General Permit instructs dischargers of storm water to submit the required notice of intent to the State Water Resources Control Board, not the Regional Board.

failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.

23. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code Section 21000 et seq.) pursuant to title 14, California Code of Regulations Sections 15308 and 15321, subdivision (a), paragraph (2).

**B&W IS HEREBY GIVEN NOTICE THAT:**

24. The Assistant Executive Officer of the Regional Board proposes an administrative civil liability in the amount of seven thousand and forty dollars ($7,040). The amount of the proposed liability is based on the mandatory minimum penalties authorized to be imposed under Water Code section 13399.33, subsections (a)(1) and (d).

25. A hearing on this matter will be conducted at the Regional Board meeting scheduled on August 2, 2019, unless one of the following options occurs before June 6, 2019.

    a) The Discharger waives the hearing by completing the Waiver Form (checking off the box next to Option 1), attached herein as Attachment 3, and returning it to the Regional Board, along with payment for the proposed liability of seven thousand and forty dollars ($7,040).

    b) The Discharger waives the 90-day hearing requirement in order to extend the hearing date (checking off the box next to Option 2) and returning it to the Regional Board, along with rationale for the extension.

5/7/19
Date

Jayne Joy
Assistant Executive Officer
Regional Board Prosecution Team

Attachments:
1st Notice of Non-Compliance, dated 12/19/2018
2nd Notice of Non-Compliance, dated 1/17/2019
Waiver Form

**Santa Ana Regional Water Quality Control Board**

California Regional Water Quality Control Board
Santa Ana Region

PROPOSED HEARING PROCEDURE
FOR MANDATORY MINIMUM PENALTY COMPLAINT
NO. R8-2019-0048
ISSUED TO
B&W CUSTOM RESTAURANT EQUIPMENT, INC.
541 EAST JAMIE AVENUE
LA HABRA, CA 90631
ORANGE COUNTY

SCHEDULED FOR AUGUST 2, 2019

**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**

## Overview

The Assistant Executive Officer of the California Regional Water Quality Control Board, Santa Ana Region (Regional Board), issued a Mandatory Minimum Penalty Complaint (Complaint) pursuant to California Water Code (Water Code) section 13323 against B&W Custom Restaurant Equipment, Inc. (B&W or Discharger) alleging that it violated Water Code section 13399.30(a)(2) and the State's National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Industrial Activity, Order No. 2014-0057-DWQ, NPDES No. CAS000001 (General Permit) by failing to obtain coverage under the General Permit to discharge storm water associated with industrial activity.

The Complaint proposes that the Regional Board impose a mandatory minimum penalty and staff costs in the amount of **seven thousand and forty dollars ($7,040)** pursuant to Water Code section 13399.33, subsections (a)(1) and (d). Unless B&W pays the proposed liability, a hearing will be held before the Regional Board during the August 2, 2019 meeting at a to be determined location.

The purpose of the hearing is to receive relevant evidence and testimony regarding the proposed Complaint. An agenda for this hearing will be issued at least ten (10) days before the hearing and will be posted on the Regional Board's web page at: www.waterboards.ca.gov/santaana/

## Hearing Procedure

The hearing will be a formal adjudicative proceeding conducted in accordance with these Hearing Procedures. This proposed hearing procedure has been prepared by the Prosecution Team and is subject to revision and approval by the Regional Board's Advisory Team. A copy of the

procedures governing adjudicatory hearings before the Regional Board may be found at Title 23 of the California Code of Regulations, section 648 et seq., and is available at http://www.waterboards.ca.gov or upon request. In accordance with section 648(d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Title 23 of the California Code of Regulations (CCR), section 648(b), Chapter 5 of the Administrative Procedures Act (commencing with section 11500 of the Government Code) does not apply to adjudicatory hearings before the Regional Board. This Notice provides additional requirements and deadlines related to the proceeding.

THE PROCEDURE AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM AT ITS DISCRETION. **ANY OBJECTIONS TO THE PROPOSED PROCEDURE MUST BE RECEIVED BY TERESITA SABLAN, STAFF COUNSEL, NO LATER THAN MAY 17, 2019, OR THEY WILL BE WAIVED.** FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

## Hearing Participants

Participants in this proceeding are designed as either "Designated Parties" or "Interested Persons." Designated Parties may present evidence and cross-examine witnesses and are subject to cross-examination. Interested Persons may present non-evidentiary policy statements but may not cross-examine witnesses and are not subject to cross-examination. Interested Persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). At the hearing, both Designated Parties and Interested Persons may be asked to respond to clarifying questions from the Regional Board, staff, or others, at the discretion of the Board Chair.

The following participants are hereby designated as Designated Parties in this proceeding:

1. Regional Board Prosecution Team
2. B&W Custom Restaurant Equipment, Inc.

## Requesting Designated Party Status

Persons who wish to participate in the hearing as a Designated Party, and are not already listed above, must request designated party status by submitting a request in writing (with copies to the existing Designated Parties) so that it is received no later than the deadline listed under "Important Deadlines" below. The request shall include an explanation of the basis for status as a Designated Party (i.e., how the issues to be addressed at the hearing affect the person, the need to present evidence or cross-examine witnesses), along with a statement explaining why the parties listed above do not adequately represent the person's interest. Any objections to these requests for designated party status must be submitted so that they are received no later than the deadline listed under "Important Deadlines" below.

**Primary Contact**

**Advisory Team[1]:**

Teresita Sablan, Staff Counsel
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812
Phone: (916) 341-5174
Teresita.Sablan@waterboards.ca.gov

**Prosecution Team:**

Michelle Beckwith, Senior Environmental Scientist
Regional Water Quality Control Board – Santa Ana Region
3737 Main Street, Suite 500, Riverside, CA 92501
Phone: (951) 782-4433
Michelle.Beckwith@waterboards.ca.gov

**Discharger:**

B&W Custom Restaurant Equipment, Inc.
Attn: Brett Blazicek
541 East Jamie Avenue
La Habra, CA 90631
brett@ci-re.com

**Separation of Prosecutorial and Advisory 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 Board (the Prosecution Team) have been separated from those who will provide legal and technical advice to the Board (the Advisory Team). Members of the Advisory Team are: Hope Smythe, Executive Officer and Teresita Sablan, Staff Counsel. Members of the Prosecution Team are: Jayne Joy, Assistant Executive Officer, Michelle Beckwith, Senior Environmental Scientist, Kyle Wright, Engineering Geologist, and Heather Mapes, Staff Counsel.

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. Other members of the Prosecution Team act or have acted as advisors to the Regional Board in other, unrelated matters, but they are not advising the Regional Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Regional Board or the Advisory Team regarding proceeding.

**Ex Parte Communications**

Designated Parties and Interested Persons are forbidden from engaging in ex parte communications regarding this matter. An ex parte communication is a written or verbal

[1] Additional staff may be designated as advisory staff with the Final Hearing Procedures.

communication related to the investigation, preparation, or prosecution of the Complaint between a Designated Party or an Interested Person and a Board Member or a member of the Board's Advisory Team (see Gov. Code, § 11430.10 et seq.). However, if the communication is copied to all persons (if written) or is made in a manner open to all other persons (if verbal), then the communication is not considered an ex parte communication. Communications regarding non-controversial procedural matters are also not considered ex parte communications and are not restricted.

**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 (including evidence presented by witnesses called by the Designated Party), to cross-examine witnesses (if warranted), and to provide a closing statement. Each Interested Person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interested 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 if is received no later than the deadline listed under "Important Deadlines" below. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Board Chair (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments, or legal argument requires extra time, and why it could not have been provided in writing by the applicable deadline.

A timer will be used but will not run during Board questions or the responses to such questions, or during discussion of procedural issues.

**Submission of Evidence and Policy Statements**

The Prosecution Team and all other Designated Parties (including B&W) must submit the following information in advance of the hearing:

1. All documentary evidence and exhibits to be offered at the hearing. Evidence and exhibits already in the public files of the Regional Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, California Code of Regulations, section 648.3.

2. All legal and technical arguments or analysis.

3. 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 estimated time required by each witness to present direct testimony. Alternatively, the testimony of any witness may be presented by declaration, so long as that witness will be available for cross-examination at the hearing.

4. The qualifications of each expert witness, if any.

The Prosecution Team shall submit one (1) electronic copy of the information to Teresita Sablan, Staff Counsel, so that it is received no later than 5:00 p.m. on **June 18, 2019**. The remaining designated parties shall submit one (1) electronic copy of the information to Teresita Sablan, Staff Counsel, so that they are received no later than 5:00 p.m. on **July 9, 2019**.

In addition to the foregoing, each designated party shall send one (1) copy of the above information to each of the other designated parties by 5:00 p.m. on the deadline specified above. Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to Teresita Sablan, Staff Counsel, as early as possible, but they must be received by **July 9, 2019**. Interested persons do not need to submit written comments in order to speak at the hearing.

In accordance with Title 23, California Code of Regulations, section 648.4, the Regional Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Regional Board may exclude evidence and testimony that is not submitted in accordance with the hearing procedure. Excluded evidence and testimony will not be considered by the Regional 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. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code section 11511 .5. 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, no later than 5:00 p.m. on **May 17, 2019**.

**Evidentiary Objections**

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection so that it is received by 5:00 p.m. on **July 9, 2019**, to the Advisory Team with a copy to all other designated parties. 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 Board office at 3737 Main Street, Suite 500, Riverside, California· 92501. 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 Board. Many of these documents are also posted online at www.waterboards.ca.gov/santaana. Although the web page is updated regularly, to ensure access to the latest information, you may contact Teresita Sablan, Staff Counsel.

**Questions**

Questions concerning this proceeding may be addressed to the Advisory Team attorney (contact information above).

## IMPORTANT DEADLINES

All required submissions must be received by 5:00 p.m. on the respective due date.

| | |
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| May 7, 2019 | ▪ Prosecution Team issues Complaint and Hearing Procedure on B&W and other parties. |
| May 17, 2019 | ▪ B&W deadline to request a pre-hearing meeting.<br>▪ Objections due on Hearing Procedures<br>▪ Deadline to request "Designated Party" status.<br>Electronic *or* Hard Copies to: All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney.<br>▪ Electronic *or* Hard Copies to: Prosecution Team Primary Contact, Advisory Team Primary Contact. |
| May 23, 2019 | ▪ Deadline to submit opposition to requests for Designated Party status.<br>Electronic *or* Hard Copies to: All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney.<br>Electronic *or* Hard Copies to: Prosecution Team Primary Contact, Advisory Team Primary Contact. |
| May 29, 2019 | ▪ Advisory Team issues decision on requests for designated party status. |
| June 6, 2019 | ▪ B&W deadline to submit 90-Day Hearing Waiver Form and payment.<br>▪ Advisory Team issues decision on Hearing Procedure Objections<br>Electronic *or* Hard Copies to: All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney.<br>Electronic *or* Hard Copies to: Prosecution Team Primary Contact, Advisory Team Primary Contact. |
| June 18, 2019* | ▪ Prosecution Team's deadline for submission of information required under "Submission of Evidence and Policy Statements", above.<br>Electronic *or* Hard Copies to: All other Designated Parties, All known Interested Persons.<br>Electronic *or* Hard Copies to: Advisory Team Primary Contact, Advisory Team Attorney. |
| July 9, 2019* | ▪ Remaining Designated Parties' (including B&W's) deadline to submit all information required under "Submission of Evidence and Policy Statements" above. This includes all written comments regarding the Order, and any rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections.<br>▪ Interested Persons' comments are due.<br>Electronic *or* Hard Copies to: All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney.<br>Electronic *or* Hard Copies to: Prosecution Team Primary Contact, Advisory Team Primary Contact. |

| | |
|---|---|
| July 16, 2019* | ▪ Prosecution Team's deadline to submit any rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections.<br>▪ Deadline to submit requests for additional time.<br>▪ If rebuttal evidence is submitted, all requests are additional time (to respond to the rebuttal at the hearing) must be made within 3 working days of *this* deadline.<br>Electronic *or* Hard Copies to: All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney.<br>Electronic *or* Hard Copies to: Prosecution Team Primary Contact, Advisory Team Primary Contact. |
| July 23, 2019*[1] | ▪ Prosecution Team submits Hearing binder on the parties and Board.<br>Electronic *or* Hard Copies to: All other Designated Parties, All known Interested Persons.<br>Electronic *or* Hard Copies to: Advisory Team Primary Contact, Advisory Team Attorney. |
| August 2, 2019* | Hearing |

* B&W has the right to a hearing before the Board within 90 days of receiving the Complaint, but this right can be waived (to facilitate settlement discussions, for example). By submitting the waiver form, B&W is not waiving the right to a hearing; unless a settlement is reached, the Board will hold a hearing prior to imposing civil liability. However, if the Board accepts the waiver, all deadlines marked with an "*" will be revised if a settlement cannot be reached.

[1] This deadline is set based on the date that the Board compiles the Board Members' agenda packages. Any material received after this deadline will not be included in the Board Members' agenda packages.

**Santa Ana Regional Water Quality Control Board**

## WAIVER FORM
## FOR MANDATORY MINIMUM PENALTY COMPLAINT NO. R8-2019-0048

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

I am duly authorized to represent B&W Custom Restaurant Equipment, Inc. in connection with Mandatory Minimum Penalty Compliant No. R8-2019-0048 (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. The person who has been issued a complaint may waive the right to a hearing."

☐ ***(OPTION 1: Check here if B&W Custom Restaurant Equipment, Inc. waives the hearing requirement and will pay the liability in full.)***

a. I hereby waive any right B&W Custom Restaurant Equipment, Inc. may have to a hearing before the Regional Water Board.

b. I certify that B&W Custom Restaurant Equipment, Inc. will remit payment for the proposed penalty in the full amount of **seven thousand and forty dollars ($7,040)** by submitting a check made payable to the "*Waste Discharge Permit Fund*," that references "Complaint No. R8-2019-0048." Payment must be received by the Regional Water Board by **June 6, 2019**.

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 Water Board's 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 the Regional Board's delegee), 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 B&W Custom Restaurant Equipment, Inc. having waived the right to contest the allegations in the Compliant 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.

☐ ***(OPTION 2: Check here if B&W Custom Restaurant Equipment, Inc. waives the 90-day hearing requirement in order to extent 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 B&W Custom Restaurant Equipment, Inc. may have to a hearing before the Regional Water Board within 90 days after service of the Complaint. By checking this box, B&W Custom Restaurant Equipment, Inc. requests that the Regional Water Board delay the hearing and/or hearing deadlines so that B&W Custom Restaurant Equipment, Inc. may have additional time to prepare for the hearing. It remains within the discretion of the Regional Water Board to approve the extension.

_____
(Print Name and Title)

_____
(Signature)

_____
(Date)

**Santa Ana Regional Water Quality Control Board**

December 19, 2018

B & W Custom Restaurant Equipment
541 East Jamie Avenue
La Habra, CA 90631

**CERTIFIED MAIL**
**RETURN RECEIPT REQUIRED**

**NOTICE OF NON-COMPLIANCE WITH THE GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITIES, ORDER NO. 2014-0057-DWQ, NPDES PERMIT NO. CAS000001**

The Federal Clean Water Act (Clean Water Act) prohibits certain discharges of storm water containing pollutants except where such discharges occur in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. In the state of California, Order No. 2014-0057-DWQ, NPDES Permit No. CAS000001 (General Permit), authorizes discharges associated with industrial activity subject to certain conditions and limitations. The General Permit is available at the web site address below:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/industrial.shtml

It has come to the attention of the Santa Ana Regional Water Quality Control Board that B & W Custom Restaurant Equipment is operating at 541 East Jamie Avenue in the city of La Habra and is engaged in iron and steel forging. These activities are best described by Standard Industrial Classification (SIC) code 3462. Activities described by SIC code 3462 are among those requiring coverage under Attachment A of the General Permit. Since this coverage has not been obtained *B & W Custom Restaurant Equipment is in violation of the General Permit.*

**This letter is to notify you that this facility requires coverage under the General Permit.**

The General Permit provides for two types of coverage that are differentiated by whether or not a *facility has exposure of certain industrial materials, products, wastes, or processes to storm water.* To apply for permit coverage all documents must be submitted via SMARTS (https://smarts.waterboards.ca.gov/). The two types of coverage are as follows:

1. Notice of Intent (NOI coverage): This coverage is for dischargers that discharge storm *water associated with industrial activity to waters of the United States.* All applicable requirements of the General Permit must be met. To obtain NOI coverage the following documents must be submitted:
   a. A completed NOI and signed certification statement (Section II.B.1)
   b. A copy of a current Site Map from the Storm Water Pollution Prevention Plan (SWPPP) (Section X.E);
   c. A SWPPP (Section X); and,
   d. An application fee.

2. No Exposure Certification (NEC Coverage): Dischargers that certify their facility has no exposure of industrial activities or materials to storm water in accordance with Section

XVII of the General Permit may qualify for NEC coverage and are not required to comply with the SWPPP or monitoring requirements of this General Permit. To obtain NEC coverage the following documents must be submitted:

a. A completed NEC Form (Section XVII.F.1) and signed certification statement (Section XVII.H);
b. A completed NEC Checklist (Section XVII.F.2);
c. A current Site Map (Section X.E); and,
d. An application fee.

In order to address this violation, by **January 17, 2019, B & W Custom Restaurant Equipment** must complete either an NOI or an NEC through SMARTS. A SMARTS help guide can be found here: http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/dischargers_guide_smarts.pdf.

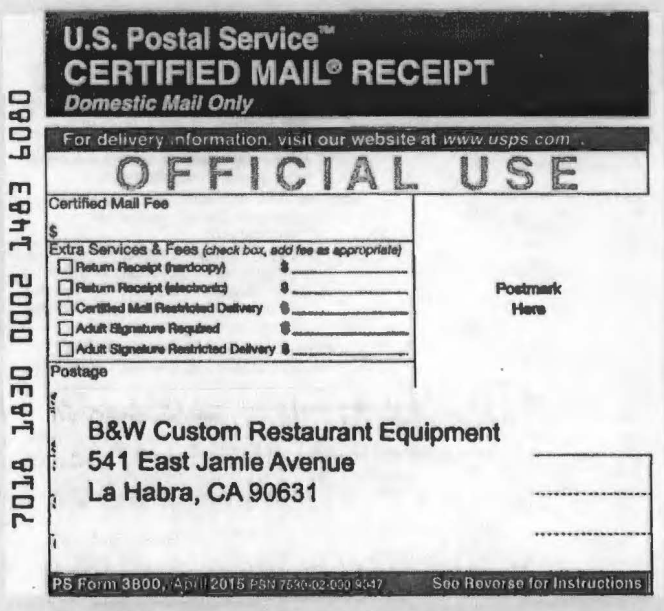
Please be advised that the failure to obtain coverage under the General Permit, as requested, will result in a mandatory minimum penalty of $5,000 under Section 13399.33(a)(1) of the California Water Code. Furthermore, continued violations of the General Permit may result in the imposition of administrative civil liability in an amount of up to $10,000 for each day of violation under Section 13385 of the California Water Code.

If you have any questions regarding this matter, please contact Kyle Wright via email at Kyle.Wright@waterboards.ca.gov via phone at (951) 320-6370.

Sincerely,

Michelle R. Beckwith, Chief
Coastal Storm Water Unit

cc: OC Public Works – James Fortuna
City of La Habra, NPDES Coordinator – Jillian Brickey



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Extra Services & Fees *(check box, add fee as appropriate)*
- ☐ Return Receipt (hardcopy) $
- ☐ Return Receipt (electronic) $
- ☐ Certified Mail Restricted Delivery $
- ☐ Adult Signature Required $
- ☐ Adult Signature Restricted Delivery $

Postage

Postmark Here

7018 1830 0002 1483 6080

B&W Custom Restaurant Equipment
541 East Jamie Avenue
La Habra, CA 90631

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- 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:

B&W Custom Restaurant Equipment
541 East Jamie Avenue
La Habra, CA 90631

9590 9402 4592 8278 6125 45

2. Article Number *(Transfer from service label)*

7018 1830 0002 1483 6080

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X [signature] ☐ Agent ☐ Addressee

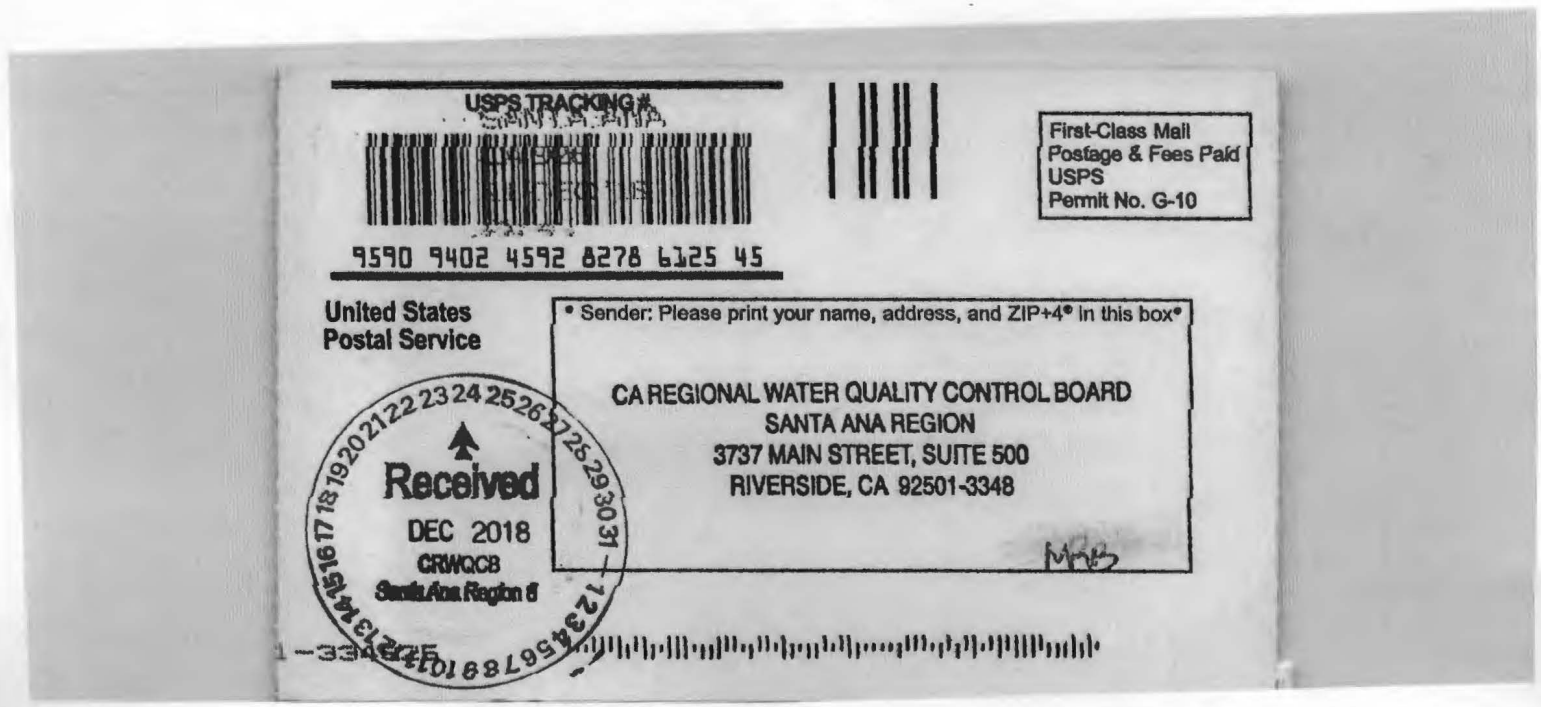
B. Received by *(Printed Name)* C. Date of Delivery 12-07-18

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

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☑ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over $500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☑ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt


USPS TRACKING #
9590 9402 4592 8278 6125 45
First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10
United States
Postal Service
* Sender: Please print your name, address, and ZIP+4® in this box*
CA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION
3737 MAIN STREET, SUITE 500
RIVERSIDE, CA 92501-3348
Received
DEC 2018
CRWQCB
Santa Ana Region 8

CALIFORNIA
Water Boards

GAVIN NEWSOM
GOVERNOR

JARED BLUMENFELD
SECRETARY FOR
ENVIRONMENTAL PROTECTION

**State Water Resources Control Board**

January 17, 2019

B & W Custom Restaurant Equipment
541 East Jamie Avenue
La Habra, CA 90631

**CERTIFIED MAIL**
**RETURN RECEIPT REQUIRED**

**NOTICE OF NON-COMPLIANCE WITH THE GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITIES, ORDER NO. 2014-0057-DWQ, NPDES PERMIT NO. CAS000001**

**SECOND NOTICE**

A Notice of Non-Compliance was sent to B & W Custom Restaurant Equipment on December 19, 2018 via certified mail, requesting that B & W Custom Restaurant Equipment obtain coverage under the General Permit by January 17, 2018. Per the United States Postal Service, the letter was delivered on December 21, 2018. To date, permit coverage has not been obtained.

NPDES Permit No. CAS000001, General Permit for Storm Water Discharges Associated with Industrial Activities (General Permit), authorizes discharges associated with industrial activity which is subject to certain conditions and limitations. Attachment A of the General Permit lists the types of facilities that require coverage. To view the General Permit, visit the website address below:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/industrial.shtml

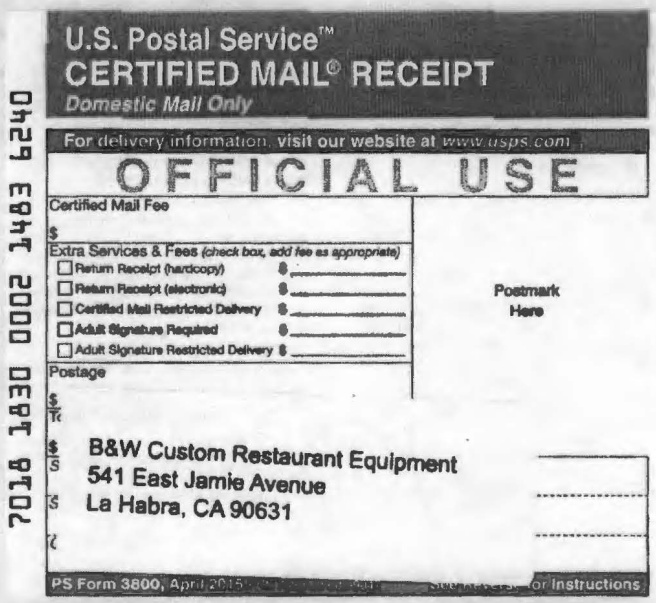
**You are required to immediately obtain coverage under the General Permit. Failure to obtain coverage by February 15, 2019, will result in a minimum mandatory penalty of $5,000.** Failure to submit the requested information may result in further enforcement, including civil monetary penalties of up to $10,000 for each day of violation and $10 per gallon for discharges over 1,000 gallons. If you have any questions regarding this matter, please contact Kyle Wright via email at Kyle.Wright@waterboards.ca.gov or via phone at (951) 320-6370.

Sincerely,

Michelle R. Beckwith, Chief
Coastal Storm Water Unit

enclosure: Notice of Non-Compliance, dated December 19, 2018

cc (w/o encl): OC Public Works – James Fortuna
City of La Habra, NPDES Coordinator – Jillian Brickey



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- ☐ Certified Mail Restricted Delivery $
- ☐ Adult Signature Required $
- ☐ Adult Signature Restricted Delivery $

Postage
$

Postmark Here

$
B&W Custom Restaurant Equipment
541 East Jamie Avenue
La Habra, CA 90631

PS Form 3800, April 2015 ... for Instructions

7018 1830 0002 1483 6240

**SENDER: *COMPLETE THIS SECTION***

- Complete items 1, 2, and 3.
- 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:

B&W Custom Restaurant Equipment
541 East Jamie Avenue
La Habra, CA 90631

9590 9402 4592 8278 6130 09

2. Article Number *(Transfer from service label)*

7018 1830 0002 1483 6240

***COMPLETE THIS SECTION ON DELIVERY***

A. Signature

X [signature] ☐ Agent ☐ Addressee

B. Received by *(Printed Name)* Mllodyn medina

C. Date of Delivery 1/22/19

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

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☑ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over $500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☑ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

USPS TRACKING #

9590 9402 4592 6278 6130 09

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

**United States Postal Service**

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

CA REGIONAL WATER QUALITY CONTROL BOARD
*SANTA ANA REGION*
3737 MAIN STREET, SUITE 500
RIVERSIDE, CA 92501-3348

KTW

# Administrative Civil Liability Complaint

# Fact Sheet

The California State Water Resources Control Board (State Water Board) and the California Regional Water Quality Control Board, Santa Ana Region (Regional Board) are authorized to issue complaints for civil liabilities under California Water Code (Water Code) section 13323 for violations of the Water Code. This document describes generally the process that follows the issuance of a complaint.

The issuance of a complaint is the first step in the possible imposition of an order requiring payment of penalties. The complaint details the alleged violations including the appropriate Water Code citations, and it summarizes the evidence that supports the allegations. **If you receive a complaint, you must respond timely as directed. If you fail to respond, a default order may be issued against you.** The complaint is accompanied by a transmittal letter, a waiver options form, and a Hearing Procedure. Each document contains important information and deadlines. You should read each document carefully. A person issued a complaint is allowed to represent him or herself. However, legal advice may be desirable to assist in responding to the complaint.

## Parties

The parties to a complaint proceeding are the Regional Board Prosecution Team and the person(s) named in the complaint, referred to as the "Discharger(s)." The Prosecution Team is comprised of Regional Board staff and management. Other interested persons may become involved and may become "designated parties." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit comments. If the matter proceeds to a hearing, the hearing will be held before the Regional Board (either the seven Governor appointed board members or the Executive Officer). Those who hear the evidence and rule on the matter act as judges. The Regional Board is assisted by an Advisory Team, who provide advice on technical and legal issues. Both the Prosecution Team and the Advisory Team have their own attorney. Neither the Prosecution Team nor the Discharger or his/her representatives are permitted to communicate with the Regional Board, or the Advisory Team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Notice.

## Complaint Resolution Options

Once issued, a complaint can lead to (1) withdrawal of the complaint; (2) withdrawal and reissuance; (3) payment and waiver; (4) settlement; or (5) hearing.

Withdrawal may result if the Discharger provides information to the Prosecution Team that clearly and unmistakably demonstrates that a fundamental error exists in the information set forth in the complaint.

Withdrawal and Reissuance may result if the Prosecution Team becomes aware of information contained in the complaint that can be corrected.

Payment and waiver may result when the Discharger elects to pay the amount of the complaint rather than to contest it. The Discharger makes a payment for the full amount and the matter is

ended, subject to public comment.

Settlement results when the Parties negotiate a resolution of the complaint. The settlement can be payment of an amount less than the proposed penalty or partial payment and suspension of the remainder pending implementation by the Discharger(s) of identified activities, such as making improvements that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project (CP). Qualifying criteria for CPs and SEPs are contained in the State Water Board's Enforcement Policy, which is available at the State Water Board's enforcement website at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/policy.shtml

Hearing: If the matter proceeds to hearing, the Parties will be allowed time to present evidence and testimony in support of their respective positions. The hearing must be held within ninety (90) days of the issuance of the Complaint, unless the Discharger waives that requirement by signing and submitting the Waiver Form included in this package. The hearing will be conducted under rules set forth in the Hearing Notice. The Prosecution Team has the burden of proving the allegations and must present competent evidence to the Board regarding the allegations. Following the Prosecution Team's presentation, the Discharger and other parties are given an opportunity to present evidence, testimony and argument challenging the allegations. The parties may cross-examine each others' witnesses. Interested persons may provide comments, but may generally not submit evidence or testimony. At the end of the presentations by the Designated Parties, the Regional Board will deliberate to decide the outcome. The Regional Board may issue an order requiring payment of the full amount recommended in the complaint; it may issue an order requiring payment of a reduced amount; it may order the payment of a higher amount; decide not to impose an assessment; or it may refer the matter to the Attorney General's Office.

## Factors That Must Be Considered By the Board

Except for Mandatory Minimum Penalties under Water Code Section 13385 (i) and (h), the Regional Board is required to consider several factors specified in the Water Code, including 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 violations, and other matters as justice may require (Water Code sections 13327, 13385(e), and 13399). During the period provided to submit evidence (set forth in the Hearing Notice) and at the hearing, the Discharger may submit information that it believes supports its position regarding the complaint.

If the Discharger intends to present arguments about its ability to pay it must provide reliable documentation to establish that ability or inability. The kinds of information that may be used for this purpose include:

For an individual:

1. Last three (3) years of signed federal Internal Revenue Service (IRS) income tax returns (IRS Form 1040) including schedules;
2. Members of household, including relationship, age, employment, and income;
3. Current living expenses;
4. Bank account statements;
5. Investment statements;

6. Retirement account statements;
7. Life insurance policies;
8. Vehicle ownership documentation;
9. Real property ownership documentation;
10. Credit card and line of credit statements;
11. Mortgage loan statements; and
12. Other debt documentation.

For a business:

1. Copies of last three (3) years of company IRS tax returns, signed and dated;
2. Copies of last three (3) years of company financial audits;
3. Copies of last three (3) years of IRS tax returns of business principals, signed and dated; and
4. Any documentation that explains special circumstances regarding past, current, or future financial conditions.

For larger firms:

1. Federal income tax returns for the last three (3) years, specifically:
    a. IRS Form 1120-C for C Corporations;
    b. IRS Form 1120-S for S Corporations; or
    c. IRS Form 1065 for partnerships.
2. A completed and signed IRS Form 8821. This allows the IRS to provide the State Water Board with a summary of the firm's tax returns that will be compared to the submitted income tax returns. This prevents the submission of fraudulent tax returns;
3. The following information can be substituted if income tax returns cannot be made available:
    a. Audited Financial Statements for last three (3) years;
    b. A list of major accounts receivable with names and amounts;
    c. A list of major accounts payable with names and amounts;
    d. A list of equipment acquisition cost and year purchased;
    e. Ownership in other companies and percent of ownership for the last three (3) years; and
    f. Income from other companies and amounts for the last three (3) years.

For a municipality, county, or district:

1. Type of entity:
    a. City/Town/Village;
    b. County;
    c. Municipality with enterprise fund; or
    d. Independent or publicly owned utility.
2. The following 1990 and 2000 United States Census data:
    a. Population;
    b. Number of persons age eighteen (18) years and above;
    c. Number of persons age sixty-five (65) years and above;
    d. Number of Individuals below one hundred and twenty-five percent (125%) of poverty level;

   e. Median home value; and
   f. Median household income.
3. Current or most recent estimates of:
   a. Population;
   b. Median home value;
   c. Median household income;
   d. Market value of taxable property; and
   e. Property tax collection rate.
4. Unreserved general fund ending balance;
5. Total principal and interest payments for all governmental funds;
6. Total revenues for all governmental funds;
7. Direct net debt;
8. Overall net debt;
9. General obligation debt rating;
10. General obligation debt level; and
11. Next year's budgeted/anticipated general fund expenditures plus net transfers out.

This list is provided for information only. The Discharger remains responsible for providing all relevant and reliable information regarding its financial situation, which may include items in the above lists, but could include other documents not listed. Please note that all evidence regarding this case, including financial information, will be made public.

## Petitions

If the Regional Board issues an order requiring payment, the Discharger may challenge that order by filing a petition for review with the State Water Board pursuant to Water Code section 13320. More information on the petition process is available at http://www.waterboards.ca.gov/public_notices/petitions/water_quality/wqpetition_instr.shtml. An order of the State Water Board, including its ruling on a petition from a Regional Board order, can be challenged by filing a petition for writ of mandate in Superior Court pursuant to Water Code section 13330.

Once an order for payment of penalties becomes final, the Regional Board or State Water Board may seek an order of the Superior Court under Water Code section 13328, if necessary, in order to collect payment of the penalty amount.