
Santa Ana Regional Water Quality Control Board

September 8, 2020

Industrial Coating
2990 E. Blue Star Street
Anaheim, CA 92806
(Via Regular Mail)

CERTIFIED MAIL
RETURN RECEIPT REQUIRED

Gregory Foster
gfooster@industrialcoatingus.com
gfooster@industrialmotoring.com
industrialcoatingus@gmail.com
(Via Email)

Bruce H. Charles (Agent for Service of Process)
1920 Main Street, Suite 1070
Irvine, CA 92614
(Via Certified Mail)

TRANSMITTAL OF MANDATORY MINIMUM PENALTY COMPLIANT NO. R8-2020-0042, INDUSTRIAL COATING

Dear Mr. Foster:

Enclosed is Mandatory Minimum Penalty Compliant No. R8-2020-0042 (Compliant) issued to Industrial Coating (hereafter referred to as Industrial Coating or Discharger). The Complaint alleges that Industrial Coating 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 the Industrial Coating facility located at 2990 E. Blue Star Street, in the city of Anaheim.

The Complaint proposes that a penalty in the amount of six thousand one hundred and sixty-four dollars (\$6,164) be imposed. The penalty amount is the mandatory minimum penalty including 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 Santa Ana Water Board virtual meeting on December 4, 2020. Pursuant to California Water Code section 13323, the Discharger has the option to waive its right to a hearing. Should Industrial Coating waive its right to a hearing, enroll in the General Permit, and pay the proposed liability, the Santa Ana Water Board may not hold a public hearing on this matter. If Industrial Coating chooses to waive its right to a hearing, please sign and submit the enclosed Waiver Form

by **October 5, 2020**. Please make the check payable to the Waste Discharge Permit Fund for six thousand one hundred and sixty-four dollars (\$6,164) and include the Compliant Number (No. R8-2020-0042) on the memo line. Please send the following information to the appropriate location:

Mail Waiver Form to:
RWQCB
Attn: Kaitlin Diaz
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 Industrial Coating does not wish to waive its rights to a hearing, a pre-hearing meeting with the Prosecution Team is recommended. Should you wish to schedule a pre-hearing meeting, please submit your request to Kaitlin Diaz via phone at (951) 782-4992 or via email to Kaitlin.Diaz@waterboards.ca.gov prior to **October 5, 2020**.

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

Additionally, a Fact Sheet describes the Complaint process is enclosed herein. The Fact Sheet describes the complaint process and explains what Industrial Coating 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 via phone at (951) 782-4433 or via email at Michelle.Beckwith@waterboards.ca.gov. All legal questions should be directed Catherine Hawe, Office of Enforcement, via phone at (916) 322-3538 or via email at Catherine.Hawe@waterboards.ca.gov.

Sincerely,

Jayne  Digitally signed by Jayne Joy
Date: 2020.09.08 13:42:10
Water Boards

Jayne Joy, PE
Assistant Executive Officer
Santa Ana Water Board Prosecution Team

Enclosures: MMP Complaint No. R8-2020-0042

Attachment 1: 1st Notice of Non-Compliance, dated 10/17/2019
Attachment 2: 2nd Notice of Non-Compliance, dated 11/18/2019
Attachment 3: Waiver Form
Hearing Procedure
Fact Sheet

cc: Regional Board
Ms. Hope Smythe, Executive Office, RWQCB, (Santa Ana Water Board Advisory Team)
Ms. Teresita Sablan, Office of Chief Counsel, SWRCB, (Santa Ana Water Board Advisory Team Attorney)
Ms. Catherine Hawe, Office of Enforcement, SWRCB (Santa Ana Water Board Prosecution Team Attorney)
Mr. James Fortuna, Orange County Public Works
Mr. Keith Linker, City of Anaheim NPDES Coordinator

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

IN THE MATTER OF:

Industrial Coating)	Complaint No. R8-2020-0042
2990 E. Blue Star Street)	For
Anaheim, CA 92806)	Mandatory Minimum Penalty
)	And Staff Costs

This Complaint is issued to Industrial Coating (hereafter referred to as Industrial Coating 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 Compliant. This Compliant 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 (Santa Ana Water Board), must impose penalty pursuant to Water Code section 13399.33.

The Assistant Executive Officer of the Santa Ana Water Board alleges the following:

BACKGROUND:

1. 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 industrial facilities with Standard Industrial Classification (SIC) codes listed in 40 Code of Federal Regulations section 122.26(b)(14) and in Attachment A of the General Permit.
2. Industrial Coating is located at 2990 E. Blue Star Street (Facility), in the City of Anaheim, and was initially identified as an industrial facility engaged in coating and engraving services. This industrial activity is described in SIC code 3479. Since SIC code 3479 is listed on Attachment A as an industrial activity which requires General Permit coverage, Industrial Coating must obtain coverage under the General Permit.
3. On October 17, 2019, Santa Ana Water Board staff issued a Notice of Non-Compliance (NNC) to the Discharger, via certified mail, for failure to obtain coverage under the General Permit. Per the certified mail receipt and United States Postal Service website, the NNC was received by the Discharger on October 19, 2019. The NNC required that the Discharger submit a Notice of Intent (NOI) to obtain coverage or otherwise enroll in the General Permit by November 15, 2019.

The first NNC and certified return receipt are attached to this Complaint as Attachment 1.

4. On November 18, 2019, since the Discharger had not obtained the necessary permit coverage, Santa Ana Water Board staff issued a second NNC via certified mail. Per the certified mail receipt and United States Postal Service website, the NNC was received by the Discharger on November 26, 2019. The second NNC required that the Discharger submit a NOI to obtain coverage or otherwise enroll in the General Permit by December 13, 2019. The second NNC and certified return receipt are attached to this Complaint as Attachment 2.
5. On December 24, 2019, Santa Ana Water Board staff emailed Mr. Gregory Foster, CEO of Industrial Coating, explaining that the Facility was issued two NNCs and the deadline to obtain General Permit coverage was December 13, 2019. Santa Ana Water Board staff noted that the Discharger had begun an NOI application in the Stormwater Multiple Application and Report Tracking System (SMARTS) for Industrial Coating but was not submitted. Santa Ana Water Board staff explained that a mandatory minimum penalty would be issued to Industrial Coating because of the Discharger's failure to comply with the deadline to obtain coverage laid out in the NNCs. Staff also explained that Industrial Coating was still required to obtain permit coverage.
6. On December 27, 2019, Santa Ana Water Board staff contacted Mr. Foster via phone and left a message with the Facility's receptionist, as Mr. Foster was not at the Facility. Santa Ana Water Board staff explained that Industrial Coating did not obtain General Permit coverage by December 13th and that a mandatory minimum penalty would be issued. Staff also explained that Industrial Coating was still required to obtain permit coverage.
7. On January 3, 2020, Santa Ana Water Board staff contacted Mr. Foster via phone and left a voicemail informing Mr. Foster that Industrial Coating did not obtain General Permit coverage by December 13th and a mandatory minimum penalty would be issued. Santa Ana Water Board staff also explained in the voicemail that Industrial Coating was still required to obtain permit coverage.
8. On January 6, 2020, Santa Ana Water Board staff received a voicemail from Mr. Foster regarding the NOI application for Industrial Coating. Mr. Foster left a call back number to get in touch with him.
9. On January 7, 2020, Santa Ana Water Board staff contacted Mr. Foster via phone and spoke with Mr. Foster regarding the NOI application for Industrial Coating. Santa Ana Water Board staff assisted Mr. Foster in completing the NOI application on SMARTS and Mr. Foster submitted the application. Santa Ana Water Board staff explained to Mr. Foster that Industrial Coating would still be receiving a mandatory minimum penalty as the application was submitted past the December

13th deadline listed on the NNCs. Mr. Foster acknowledged the issuance of the penalty and asked if a payment plan would be available to pay the fine.

10. On March 26, 2020, Santa Ana Water Board staff issued an Expedited Payment Letter (EPL) to Industrial Coating for \$5,336 for failure to enroll in the General Permit. The deadline to sign the Acceptance of Conditional Resolution and Waiver of Right to Hearing form was April 24, 2020.
11. On March 30, 2020, Santa Ana Water Board staff contacted Mr. Foster via email to explain that the NOI application submitted on SMARTS, on January 7, 2020, was returned as payment was not received within 60 days. Santa Ana Water Board staff directed Mr. Foster to re-submit the NOI application as soon as possible and to submit payment because the Facility was continuing to operate without the required permit coverage.
12. On April 14, 2020 and April 22, 2020, Santa Ana Water Board staff contacted Mr. Foster via email regarding the EPL and the signed Acceptance of Conditional Resolution and Waiver of Right to Hearing form due on April 24, 2020. Santa Ana Water Board staff explained that if the deadline was missed or Mr. Foster chose not to sign the waiver form, an administrative civil liability complaint would be issued to assess the mandatory minimum penalty.
13. On April 24, 2020, Santa Ana Water Board staff contacted Mr. Foster again via email regarding the EPL and the signed Acceptance of Conditional Resolution and Waiver of Right to Hearing form due on April 24, 2020. Santa Ana Water Board staff explained that if the deadline was missed or Mr. Foster chose not to sign the waiver form, a mandatory minimum penalty would be assessed. Santa Ana Water Board staff also contacted Mr. Foster via phone and spoke to him regarding the deadline for the signed Acceptance of Conditional Resolution and Waiver of Right to Hearing form. Santa Ana Water Board staff explained to Mr. Foster that by signing the form he agrees to pay the settlement amount of \$5,336 for not obtaining General Permit coverage by the deadline outlined in the NNCs. Mr. Foster indicated he had not received Santa Ana Water Board reminder emails and to forward the emails to his other business email account. The Discharger did not accept the settlement offer contained in the EPL.
14. To date, the Discharger has not obtained General Permit coverage and continues to operate without the required General Permit coverage.

LEGAL AUTHORITY

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

16. Pursuant to Water Code section 13399.30(a)(2), the Santa Ana Water Board provides a Notice of Non-Compliance (NNC) to any person that discharges, proposes to discharge, or is suspected of discharging storm water associated with industrial activity without coverage under the General Permit. The first NNC directs the facility within 30 days from the date on which the Santa Ana Water Board provided notice, to submit a Notice of Intent to obtain coverage.¹
17. Pursuant to Water Code section 13399.30, subdivision (b), regional boards shall send a second NNC to a discharger for failing to submit the appropriate Notice of Intent within 30 days from the date on which the first notice was sent pursuant to 13399.30(a).
18. Pursuant to Water Code section 13399.30, subdivision (c)(2), if a discharger fails to submit the required Notice of Intent within 60 days from the date on which the first NNC was sent, after receiving a second NNC, the regional boards shall impose the penalties described in section 13399.33(a).

PROPOSED MANDATORY MINIMUM PENALTIES AND ASSESSMENT OF COSTS

19. Pursuant to Water Code section 13399.33, subdivision (a)(1), the Santa Ana Water 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 Santa Ana Water 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).
20. Water Code section 13399.33(d) further requires the recovery of costs incurred by the Santa Ana Water 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 eleven (11) hours for this enforcement action resulting in total staff costs of one thousand one hundred and sixty-four dollars (\$1,164).
21. Therefore, the total liability for the violation alleged herein, including staff costs, is six thousand one hundred and sixty-four dollars (\$6,164).

REGULATORY CONSIDERATIONS

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

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

23. 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 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.
24. 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).

INDUSTRIAL COATING IS HEREBY GIVEN NOTICE THAT:

25. The Assistant Executive Officer of the Santa Ana Water Board proposes an administrative civil liability in the amount of six thousand one hundred and sixty-four dollars (\$6,164). The amount of the proposed liability is based on the mandatory minimum penalties authorized to be imposed under Water Code section 13399.33, subdivisions (a)(1) and (d).
26. A virtual hearing on this matter will be conducted at the Santa Ana Water Board meeting scheduled on December 4, 2020, unless one of the following options occurs before October 5, 2020.
- 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 Santa Ana Water Board, along with payment for the proposed liability of six thousand one hundred and sixty-four dollars (\$6,164).
 - 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 Santa Ana Water Board, along with rationale for the extension.

September 8, 2020

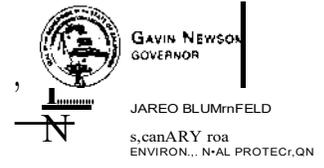
Date

Jayne Joy Digitally signed by Jayne Joy
Date: 2020.09.08 13:43:14
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Water Boards

Jayne Joy, PE
Assistant Executive Officer
Santa Ana Water Board Prosecution Team

Attachments:

- 1st Notice of Non-Compliance, dated 10/17/2019
- 2nd Notice of Non-Compliance, dated 11/18/2019
- Waiver Form



Santa Ana Regional Water Quality Control Board

October 17, 2019

Nutec Powder Coating
2990 E. Blue Star Street
Anaheim, CA 92806

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 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 here.

The Santa Ana Regional Water Quality Control Board identified that Nutec Powder Coating is operating at 2990 E. Blue Star Street, in the city of Anaheim and is engaged in industrial activities involving coating and engraving. This industrial activity is best described by Standard Industrial Classification (SIC) code 3479. Activities described by SIC code 3479 are among those requiring coverage under Attachment A of the General Permit. Since this coverage has not been obtained, Nutec Powder Coating 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 by SMARTS. 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 11.8.1);
 - b. A copy of a current Site Map from the Storm Water Pollution Prevention Plan (SWPPP) (Section X.E);

WILLIAM RUH, CHAIR | Hon SMVH, EXECUTIVE OFFICER

3737 Main St. Suite 500, Riverside, CA 92501 | www.waterboards.ca.gov/santaana

- 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, it 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 November 15, 2019, Nutec Powder Coating must complete either an NOI or NEC through SMARTS. A SMARTS help guide can be found here.

Please be advised that violations of 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 Kaitlin Diaz via email at Kaitlin.Diaz@waterboards.ca.gov or via phone at (951) 782-4992.

Sincerely,



Michelle R. Beckwith, Chief
Coastal Storm Water Unit

cc: QC Public Works - James Fortuna
City of Anaheim, NPDES Coordinator - Keith Linker

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CJ 2990 E. Blue Star Street
I'- Anaheim, CA 92806



SENDER: COMPLETE THIS SECTION

- Complete Items 1 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:

Nutec Powder Coating
2990 E. Blue Star Street
Anaheim, CA 92806



9590 9402 50539092 6371 51

2. Article Number (Transfer from service label)

7D18 3D90 DDD1 D92D 116 4

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

- | | |
|--|---|
| <input type="checkbox"/> Adult Signature | <input type="checkbox"/> Priority Mail Express® |
| <input type="checkbox"/> Adult Signature Restricted Delivery | <input type="checkbox"/> Registered Mail™ |
| <input type="checkbox"/> Certified Mail | <input type="checkbox"/> Registered Mail Restricted Delivery |
| <input type="checkbox"/> Certified Mail Restricted Delivery | <input type="checkbox"/> Return Receipt™ |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery | <input type="checkbox"/> Signature Confirmation™ |
| <input type="checkbox"/> Insured Mail | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) | |

Santa Ana Regional Water Quality Control Board

November 18, 2019

Nutec Powder Coating
2990 E. Blue Star Street
Anaheim, CA 92806.

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, NPDES NO. CAS000001

SECOND NOTICE

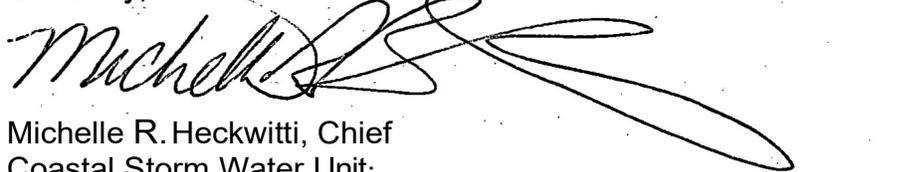
A Notice of Non-Compliance (NNC) was sent to Nutec Powder Coating on October 17, 2019, via certified mail; requesting that Nutec Powder Coating obtain coverage under the General Permit by November 15, 2019. To date, permit coverage has not been obtained.

NPDES Permit No. CAS00000J (General Permit), authorizes discharges associated with industrial activity subject to certain conditions and limitations. Dischargers may qualify for a conditional exclusion from specific requirements if they submit a No Exposure Certification (NEC). The General Permit is available here.

You are required to immediately obtain coverage under the General Permit. Failure to obtain coverage by December 13, 2019, will result in a minimum mandatory penalty of at least \$5,000. Failure to submit the requested information may result in further enforcement action, including civil monetary penalties of up to \$10,000 for each day of violation.

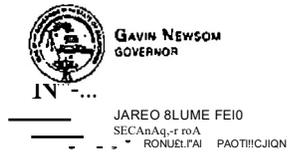
If you have any questions regarding this matter, please contact Kaitlin Diaz via email at Kaitlin.Diaz@waterboard.ca.gov or via phone at (951) 782-4992.

Sincerely,



Michelle R. Heckwitti, Chief
Coastal Storm Water Unit

cc: QC Public Works James Fortuna
City of Anaheim, NPDES Coordinator - Keith Linker



Santa Ana Regional Water Quality Control Board

October 17, 2019

Nutec Powder Coating
2990 E. Blue Star Street
Anaheim, CA 92806

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, NPOES 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 Pennit No. CAS000001 (General Permit), authorizes discharges associated with industrial activity subject to certain conditions and limitations. The General Permit is available here.

The Santa Ana Regional Water Quality Control Board identified that Nutec Powder Coating is operating at 2990 E. Blue Star Street, in the city of Anaheim and is engaged in industrial activities involving coating and engraving. This industrial activity is best described by Standard Industrial Classification (SIC) code 3479. Activities described by SIC code 3479 are among those requiring coverage under Attachment A of the General Permit. Since this coverage has not been obtained, Nutec Powder Coating is in violation of the General Permit.

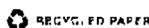
This letter is to notify you that this facility requires coverage under the General Permit.

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 by SMARTS. 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 11.8.1);
 - b. A copy of a current Site Map from the Storm Water Pollution Prevention Plan (SWPPP) (Section X.E);

W:\L1.1.1 RuH, CHA1A \ HoPi. Si.,Wf.i.;, exEcvtVE oFPCER

3737 Main St., Suite 00, Riverside, CA 92501 | www.waterboards.ca.gov/santsana



- 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 **November 15, 2019**, Nutec Powder Coating must complete either an NOI or NEC through SMARTS. A SMARTS help guide can be found [here](#).

Please be advised that violations of 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 Kaitlin Diaz via email at Kaitlin.Diaz@waterboards.ca.gov or via phone at (951) 782-4992.

Sincerely,



Michelle R. Beckwith, Chief
Coastal Storm Water Unit

cc: OC Public Works - James Fortuna
City of Anaheim, NPDES Coordinator - Keith Linker

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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:

Nut ec Powder Coating
2990 E. Blue Star Street
Anaheim, CA 92806



9590940250539092639131

2. Article Number (Transfer from service label) ---1

7018 309 0001 092 2925

PS Form 38 1 L July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

- D Agent
- Addressee
- C. Date of Delivery

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 **ffil!**
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- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt

USPS TRACKING#

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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

Santa Ana Regional Water Quality Control Board

WAIVER FORM

FOR MANDATORY MINIMUM PENALTY COMPLAINT NO. R8-2020-0042

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

I am duly authorized to represent Industrial Coating (Discharger) in connection with Mandatory Minimum Penalty Complaint No. R8-2020-0042 (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 have been issued a complaint may waive the right to a hearing."

(OPTION 1: Check here if Industrial Coating waives the hearing requirement and will pay the liability in full.)

- a. I hereby waive any right Industrial Coating may have to a hearing before the Santa Ana Water Board.
- b. I certify that Industrial Coating will remit payment for the proposed penalty in the full amount of **six thousand one hundred and sixty-four dollars (\$6,164)** by submitting a check made payable to the "Waste Discharge Permit Fund," that references "Complaint No. R8-2020-0042." Payment must be received by the Santa Ana Water Board by **October 5, 2020**.
- 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 Santa Ana Water Board receive significant new information or comments from any source (excluding the Santa Ana Water Board's Prosecution Team) during this comment period the Santa Ana 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 Santa Ana Water Board (or the Santa Ana Water Board's delegee), and that the Santa Ana Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in Industrial Coating having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type

alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

- (OPTION 2: Check here if Industrial Coating waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)***

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

(Print Name and Title)

(Signature)

(Date)



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. R8-2020-0042
ISSUED TO
INDUSTRIAL COATING
2990 E. BLUE STAR STREET
ANAHEIM, CA 92806
ORANGE COUNTY

SCHEDULED FOR DECEMBER 4, 2020

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 (Santa Ana Water Board), issued a Mandatory Minimum Penalty Complaint (Complaint) pursuant to California Water Code (Water Code) section 13323 to Industrial Coating (Industrial Coating or Discharger) alleging that it violated Water Code section 13399.30, subdivision (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 an industrial activity.

The Complaint proposes that the Santa Ana Water Board impose a mandatory minimum penalty in the amount of **six thousand one hundred and sixty-four dollars (\$6,164)** pursuant to Water Code section 13399.33, subsections (a)(1) and (d). Unless Industrial Coating waives its right to a hearing within 90 days, a hearing will be held before the Santa Ana Water Board during the December 4, 2020 virtual meeting.

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 Santa Ana Water Board's web page at: www.waterboards.ca.gov/santaana/

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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 Santa Ana Water Board's Advisory Team. A copy of the procedures governing adjudicatory hearings before the Santa Ana Water 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 Santa Ana Water 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 SEPTEMBER 15, 2020, AS DESCRIBED BELOW, OR THEY WILL BE WAIVED.**

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 Santa Ana Water Board, staff, or others, at the discretion of the Board Chair.

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

1. Santa Ana Water Board Prosecution Team
2. Industrial Coating

Requesting Designated Party Status

Persons who wish to participate in the hearing as a Designated Party 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,

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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 Team¹:

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:

Gregory Foster
Industrial Coating
2990 E. Blue Star Street
Anaheim, CA 92806
gfooster@industrialcoatingus.com
gfooster@industrialmotoring.com
industrialcoatingus@gmail.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, Attorney III. Members of the Prosecution Team are: Jayne Joy, Assistant Executive Officer, Michelle Beckwith, Senior Environmental Scientist, Kaitlin Diaz, Environmental Scientist, and Catherine Hawe, Attorney I.

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

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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 Santa Ana Water Board in other, unrelated matters, but they are not advising the Santa Ana Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Santa Ana Water 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 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 total of **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 Industrial Coating) must submit the following information in advance of the hearing:

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1. All documentary evidence and exhibits to be offered at the hearing. Evidence and exhibits already in the public files of the Santa Ana Water 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, so that it is received no later than 5:00 p.m. on **October 14, 2020**. The remaining designated parties shall submit one (1) electronic copy of the information to Teresita Sablan so that they are received no later than 5:00 p.m. on **November 5, 2020**.

In addition to the foregoing, each designated party shall send one (1) electronic 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 as early as possible, but they must be received by **November 5, 2020**. 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 Santa Ana Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Santa Ana Water 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 Santa Ana Water Board and will not be included in the administrative record for this proceeding. PowerPoint and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team at or before the hearing for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct and shall be available for cross-examination.

Request for Pre-hearing Conference

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code section 13228.15. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code section 11511 .5.

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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 **September 15, 2020**.

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 **November 5, 2020**, 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 Santa Ana Water 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 Santa Ana Water 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.

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.

September 8, 2020	<ul style="list-style-type: none">Prosecution Team issues Complaint and Proposed Hearing Procedure on Industrial Coating and other parties.
September 15, 2020	<ul style="list-style-type: none">Industrial Coating deadline to request a pre-hearing meeting with the Prosecution Team.Objections due on Hearing Procedures to Advisory Team.
October 5, 2020	<ul style="list-style-type: none">Industrial Coating deadline to submit 90-Day Hearing Waiver Form and payment.Advisory Team issues decision on Hearing Procedure Objections and adopts Hearing Procedure. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney.</p> <p><u>Electronic or Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact.</p>
October 14, 2020	<ul style="list-style-type: none">Prosecution Team's deadline for submission of information required under "Submission of Evidence and Policy Statements", above. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons.</p> <p><u>Electronic or Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney.</p>
October 16, 2020	<ul style="list-style-type: none">Deadline to request "Designated Party" status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney.</p> <p><u>Electronic or Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact.</p>
October 20, 2020*	<ul style="list-style-type: none">Deadline to submit opposition to requests for Designated Party status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney.</p> <p><u>Electronic or Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact.</p>
October 28, 2020	<ul style="list-style-type: none">Advisory Team issues decision on requests for designated party status.
November 5, 2020*	<ul style="list-style-type: none">Remaining Designated Parties' (including Industrial Coating'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

	<p>arguments and/or policy statements, and all evidentiary objections.</p> <ul style="list-style-type: none"> ▪ Interested Persons' comments are due. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney.</p> <p><u>Electronic or Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact.</p>
November 13, 2020*	<ul style="list-style-type: none"> ▪ Prosecution Team's deadline to submit any rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections. ▪ Deadline to submit requests for additional time. ▪ 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 <i>this</i> deadline. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney.</p> <p><u>Electronic or Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact.</p>
November 24, 2020* ¹	<ul style="list-style-type: none"> ▪ Prosecution Team submits Hearing Binder to the Board. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons.</p> <p><u>Electronic or Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney.</p>
December 4, 2020*	Hearing

Industrial Coating 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, Industrial Coating 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.

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 (Santa Ana Water 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 Santa Ana Water Board Prosecution Team and the person(s) named in the complaint, referred to as the “Discharger(s).” The Prosecution Team is comprised of Santa Ana Water 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 Santa Ana Water 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 Santa Ana Water 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 Santa Ana Water 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.

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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 Procedure. Executive Order N-63-20 has suspended section 11440.30 of the Government Code, which prohibits a presiding officer to conduct hearings by electronic means if a party objects, provided the following conditions are met:

1. Each participant in the hearing has an opportunity to participate and to hear the entire proceeding while it is taking place and to observe exhibits;
2. A member of the public who is otherwise entitled to observe the hearing may observe the hearing using electronic means;
3. The presiding officer satisfies all requirements of the American with Disabilities Act (ADA) and the Unruh Civil Rights Act.

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 other's 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 Santa Ana Water Board will deliberate to decide the outcome. The Santa Ana Water 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.

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Factors That Must Be Considered By the Board

Except for Mandatory Minimum Penalties under Water Code Section 13385 (i) and (h), the Santa Ana Water Board considers several factors specified in the Water Code and the State Water Board's Water Quality Enforcement Policy, 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 (a)(2)). 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.

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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

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that all evidence regarding this case, including financial information, will be made public.

Petitions

If the Santa Ana Water 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/wqpetition_instr.shtml.

An order of the State Water Board, including its ruling on a petition from a Santa Ana Water 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 Santa Ana Water 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.