

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

IN THE MATTER OF:

EBTA Architects)
17871 Mitchell North STE 150)
Irvine, CA 92614)
Attn: Pawan Seth)

**Affirming Order No. R8-2016-0045
for
Mandatory Minimum Penalty**

INTRODUCTION

This Affirming Order No. R8-2016-0045 (Order) is entered into by and between the Division Chief of the California Regional Water Quality Control Board, Santa Ana Region (Regional Board) on behalf of the Regional Board Prosecution Team and the Westminster School District (Discharger) (the Regional Board and the Discharger are collectively referred to as the Parties) and is presented to the Regional Board or its delegee, for adoption as an Order by settlement, pursuant to Government Code 11415.60. This Order accepts the penalties assessed to the Discharger for violations subject to administrative civil liability pursuant to California Water Code (hereinafter Water Code) sections 13399.33, subdivisions (c) and (d).

RECITALS

1. The Discharger is engaged in construction activity located at 62 Golden Eagle, in the city of Irvine. The Discharger is regulated under the State's General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ as amended by Order No. 2010-0014-DWQ as amended by Order No. 2012-0006-DWQ, NPDES No. CAS000002 (General Permit) under WDID Number 8 30C368833. The General Permit requires submittal of an annual report by September 1 of each year.
2. EBTA Architects' 2014-2015 annual report was not received by Regional Board staff by the September 1, 2015 deadline. Therefore a Notice of Non-Compliance (NNC) was issued to EBTA Architects, by certified mail, on October 1, 2015. The NNC requested that EBTA Architects submit the 2014-2015 annual report by October 30, 2015 to the Regional Board. The individual who received the NNC did not identify the date of delivery on the return receipt; however, the United States Postal Service website identifies that it was delivered on October 5, 2015.
3. On November 2, 2015, Regional Board staff received no response to the first NNC, therefore a second NNC was issued. The second NNC requested that EBTA Architects submit the 2014-2015 annual report by November 29, 2015. The individual who received the NNC did not identify the date of delivery on the return receipt; however, the United States Postal Service website identifies that it was delivered on November 5, 2015.

4. On November 23, 2015, Board staff called the phone number for Pawan Seth, EBTA Architects' contact on file. Board staff was transferred to Carlos Elenes at EBTA Architects, who stated that all information pertaining to the 2014-2015 annual report was given to the developer, but that he would contact Mr. Seth.
5. On November 24, 2015, at 3:40pm, Board staff left a voice mail for Mr. Elenes offering assistance with submitting the 2014-2015 annual report. At 4:39pm, Mr. Elenes contacted Board staff, stating that because Mr. Seth was believed to be on vacation, he would visit the site on November 25, 2015 and speak with the superintendent. Mr. Elenes informed Board staff that he had copies of the NNCs dated October 1, 2015 and November 2, 2015.
6. On November 25, 2015, Board staff spoke to Mr. Elenes, who reported that he was unable to contact site personnel, but that he would try again on November 27, 2015. Mr. Elenes inquired about the monetary penalty for not submitting the 2014-2015 annual report by the November 29, 2015 deadline. Board staff stated that a \$1,000 minimum mandatory fine plus approximately \$750 in Board staff costs to date would be assessed.
7. No further correspondence with Board staff was received from the discharger.
8. The Santa Ana Regional Water Quality Control Board received the 2014-2015 annual report from EBTA Architects via the Water Board's Storm Water Multiple Application and Report Tracking System (SMARTS) on December 18, 2015.

LEGAL AUTHORITY

9. Pursuant to California Water Code section 13399.33(c), the Regional Board is required to impose a minimum mandatory penalty of \$1,000 for any person who fails to submit an annual report in accordance with section 13399.31 of the Water Code. Section 13399.33(d) of the Water Code further requires that the Regional Board recover the costs incurred by the Regional Board with regard to those persons (\$900 in staff costs).

SETTLEMENT

10. The Discharger waived its rights to a hearing and has paid the total assessment of \$1,900.
11. The Regional Board Prosecution Team believes that the resolution of the alleged violation is fair and reasonable and fulfills its enforcement objectives and that no further action is warranted concerning the violation.

STIPULATIONS

This Affirming Order is entered into by the Parties to resolve by consent and without further administrative proceedings alleged violations of Complaint No. R8-2016-0020. The Parties

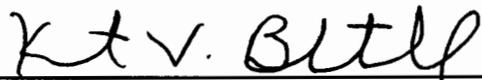
incorporate Paragraphs 1 through 11 by this reference, as set forth fully herein and recommend that the Regional Board issue this Affirming Order:

12. **Public Notice:** The Parties acknowledge that the Affirming Order, as signed by the Parties, was noticed for a 30-day public comment period prior to being presented to the Regional Board, or its delegee, for adoption in the Order.
13. **Appeals:** Upon adoption of this Affirming Order, the Discharger waived their right to appeal this Order to the State Board, a California Superior Court and/or any California appellate level court. Nothing in this Order, however, shall be construed to prevent the Discharger from participating as parties or interveners in any appeal of this Order brought by a third party before any California court of law or the State Board.
14. **Water Boards not Liable:** Neither the Regional Board members nor the Regional Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from the negligent or intentional acts or omissions by the Discharger or their respective directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Order.
15. **Authority to Enter Stipulated Order:** Each person executing this Affirming Order in a representative capacity represents and warrants that he or she is authorized to execute this Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
16. **Third Party Claims:** Nothing in this Affirming Order shall be deemed to create any rights in favor of, or to inure to the benefit of, any third party or parties, or to waive or release any defense or limitation against third party claims.
17. **Effective Date:** The effective date of the Affirming Order shall be the date on which it is adopted by the Executive Officer

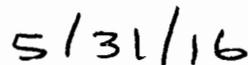
HAVING CONSIDERED THE PARTIES' STIPULATIONS, THE SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

18. In adopting this Order, the Santa Ana Regional Water Quality Control Board or its Delegee has assessed a penalty in accordance with Water Code section 13385(c) and the Enforcement Policy.
19. The Affirming Order resolves an action brought to enforce the laws and regulations administered by the Santa Ana Regional Water Quality Control Board. The Santa Ana Regional Water Quality Control Board, acting through its Executive Officer, finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.

PURSUANT TO SECTION 13385 OF THE CALIFORNIA WATER CODE AND SECTION 11415.60 OF THE CALIFORNIA GOVERNMENT CODE, THE EXECUTIVE OFFICER HEREBY ADOPTS THIS ORDER.



Kurt V. Berchtold
Executive Officer
Santa Ana Regional Water Quality Control Board


Date