

San Diego Regional Water Quality Control Board

May 31, 2017

Certified Mail – Return Receipt Requested
Article Number: 7016 2140 0000 3904 2898

Mr. Jack Spencer
Modern Stairways, Inc.
3239 Bancroft Street
Spring Valley, CA 91977

In reply refer to: SM-241132:RStewart

Subject: Adoption of Administrative Assessment of Civil Liability Order No. R9-2017-0078 Against Modern Stairways, Inc.

Mr. Spencer:

Please find enclosed the Adopted Final Administrative Assessment of Civil Liability Order No. R9-2017-0078 (Order) issued to Modern Stairways, Inc. This Order, which resolves the allegations in Administrative Civil Liability Complaint No. R9-2017-2016, was adopted by the Executive Officer pursuant to delegated authority from the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) on May 30, 2017.

As required by the Order, and documented by the enclosed Invoice No. R9-2017-0078-CAA, your payment of ninety four thousand seventy eight dollars (\$94,078) is payable to the State Water Resources Control Board's Cleanup and Abatement Account and must be submitted to the State Water Resources Control Board at the following address within thirty days of the date of adoption of the Order, i.e., by June 29, 2017.

State Water Resources Control Board Accounting Office
Attn: ACL Payment
PO Box 1888
Sacramento, CA 95812-1888

Please note that a copy of the check must be sent to the Designated Water Board Representative (Ms. Rebecca Stewart) at the address contained in the letterhead.

In the subject line of any response, please include the reference number **SM-241132:RStewart**. For questions pertaining to this matter, please contact Ms. Lalitha Thotakura by telephone at (619) 521-3002, or by email at lalitha.thotakura@waterboards.ca.gov.

Respectfully,

for DAVID W. GIBSON
Executive Officer

Mr. Jack Spencer

May 31, 2017

DWG:an:dsj:lt

Enclosures:

1. ACL Order No. R9-2017-0078.
2. Invoice No. R9-2017-0078-CAA, State Water Resources Control Board.

cc via email (with enclosures):

Mr. Jack Spencer, Modernstairwaysinc@yahoo.com.
Ms. Adriana Nunez, Adriana.Nunez@waterboards.ca.gov.
Ms. Catherine George Hagan, Catherine.Hagan@waterboards.ca.gov.
Ms. Deborah Jayne, Deborah.Jayne@waterboards.ca.gov.
Ms. Lalitha Thotakura, Lalitha.Thotakura@waterboards.ca.gov.
Mr. James Smith, James.Smith@waterboards.ca.gov.
Mr. Andrew Tauriainen, Andrew.Tauriainen@waterboards.ca.gov.
Mr. Jeremy Haas, Jeremy.Haas@waterboards.ca.gov.
Ms. Chiara Clemente, Chiara.Clemente@waterboards.ca.gov.
Ms. Rebecca Stewart, Rebecca.Stewart@waterboards.ca.gov.
Ms. Kimberly McMurray-Cathcart, Kimberly.McMurray-Cathcart@waterboards.ca.gov.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY ORDER NO. R9-2017-0078
AGAINST**

**MODERN STAIRWAYS, INC.
3239 BANCROFT DRIVE
SPRING VALLEY, CALIFORNIA, 91977**

**FOR
VIOLATIONS OF ORDER NO. 97-03-DWQ
AND
ORDER NO. 2014-0057-DWQ**

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), through the Executive Officer, having held a public hearing on May 30, 2017, to receive evidence and comments on the allegations contained in Administrative Civil Liability Complaint No. R9-2017-0016 (Complaint), dated March 14, 2017, having considered and deliberated on the evidence and comments received, orders Modern Stairways, Inc. (Discharger) to pay civil liability in the amount of \$94,078, and finds as follows:

Background

1. On April 17, 1997, the State Water Resources Control Board (State Water Board) adopted Water Quality Order No. 97-03-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities* (Order 97-03-DWQ). Order 97-03-DWQ authorized discharges of storm water associated with industrial activity so long as the dischargers complied with all requirements, provisions, limitations and prohibitions in the permit.
2. Section A.8 of Order 97-03-DWQ provides, in part, "...BMPs [Best Management Practices¹] shall be developed and implemented to reduce or prevent pollutants in storm water discharges...."

¹ Best Management Practices are "schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of 'waters of the United States.' BMPs also include treatment requirements, operating procedures, and practices to control plant

3. Section B.14 of Order 97-03-DWQ states, "All facility operators shall submit an annual report by July 1 of each year to the Executive Officer of the Regional Water Board responsible for the area in which the facility is located and to the local agency (if requested)."
4. Section C.1 of Order 97-03-DWQ states, "The facility operator must comply with all of the conditions of this General Permit. Any General Permit noncompliance constitutes a violation of the Clean Water Act (CWA) and the Porter-Cologne Water Quality Control Act and is grounds for ... enforcement action...."
5. Paragraph 3 of Order 97-03-DWQ states, "To obtain coverage for storm water discharges and authorized non-storm water discharges pursuant to this General Permit, operators of facilities (facility operators) must submit a Notice of Intent (NOI), in accordance with the Attachment 3 instructions, and appropriate annual fee to the State Board."
6. On April 1, 2014, the State Water Board adopted Water Quality Order No. 2014-0057-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges of Storm Water Associated with Industrial Activities, NPDES No. CAS000001* (Order 2014-0057-DWQ) which, as of July 1, 2015, superseded Order 97-03-DWQ except for Order 97-03-DWQ's requirement to submit annual reports by July 1, 2015, and except for enforcement purposes.
7. Section II.B.4.b of Order 2014-0057-DWQ requires that "Existing Dischargers with coverage under the previous permit shall register for NOI coverage by July 1, 2015, or NEC coverage by October 1, 2015."
8. Section XXI.A of Order 2014-0057-DWQ states that "Dischargers shall comply with all standard conditions in this General Permit. Permit noncompliance constitutes a violation of the Clean Water Act and the Water Code and is grounds for enforcement action and/or removal from General Permit coverage."
9. Modern Stairways, Inc. (hereafter Discharger) operates a pre-cast concrete production facility at 3239 Bancroft Drive, Spring Valley, California 91977 within the County of San Diego (Site). Discharger began pre-cast concrete production at the

site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage." (40 C.F.R. § 122.2.)

Site on or about 1976. Jack Spencer is the owner, operator, Chief Executive Officer, Secretary, and Chief Financial Officer of Modern Stairways, Inc. (PT Exhibit 17.²)

10. Discharger's activities are characterized as "Concrete Products, Except Block and Brick" (Standard Industrial Classification [SIC] 3272) under the federal regulations. Facilities classified as SIC 3272 must obtain regulatory coverage under the State Water Board's Industrial Storm Water General Permit (Order 97-03-DWQ and Order 2014-0057-DWQ).
11. Discharger enrolled for coverage under Order 97-03-DWQ on February 2, 1998, and the site was assigned Waste Discharge Identification (WDID) No. 9 37I013743. Discharger submitted a Storm Water Pollution Prevention Plan (SWPPP) dated May 26, 2006. (PT Exhibit 1.) To date, Discharger has not re-certified for coverage under Order 2014-0057-DWQ.

Chronology

12. San Diego Water Board staff inspected the Site on May 24, 2012, September 18, 2012, October 12, 2012, January 24, 2014, February 7, 2014, February 20, 2014, and July 2, 2015. (PT Exhibits 2, 3, 4, 5, 7, 8, and 9.) As a result of these inspections, San Diego Water Board staff provided written and/or verbal notifications to Discharger on May 24, 2012, September 18, 2012, October 12, 2012, January 24, 2012, February 7, 2014, and July 2, 2015 that BMPs identified in its SWPPP were not being implemented, and asked Discharger to correct these deficiencies. (PT Exhibits 2, 3, 4, 5, 7, 8, 9, and 10.)
13. The FY 2014-15 annual monitoring report was required to be submitted by July 1, 2015. The Discharger failed to submit the required report. (PT Exhibit 21.)
14. Discharger received verbal notification from San Diego Water Board staff on May 24, 2012, and fifteen written notifications from the State Water Board between February 25, 2010, and May 28, 2015, that annual fee payments for Fiscal Years (FY) 2009-10, 2010-11, 2011-12, and 2014-15 have not been received. (PT Exhibits 2, 13.)

² The San Diego Water Board Prosecution Team submitted evidence organized as Exhibits numbered 1-24. For convenience, most references to Prosecution Team evidence are to their Exhibit numbers and denoted with PT.

15. Discharger received Notices of Non-Compliance pursuant to Water Code section 13399.30 on November 2, 2015 and December 14, 2015 for failure to obtain permit coverage under Order No. 2014-0057-DWQ. (PT Exhibits 15, 16.)
16. On January 28, 2016, San Diego Water Board staff informed the Discharger that coverage under Order 97-03-DWQ would terminate on February 25, 2016. (PT Exhibit 12.). To date, the State Water Board has not received a Notice of Intent for Discharger's coverage under Order No. 2014-0057-DWQ.
17. On July 15, 2016 the Assistant Executive Officer of the San Diego Water Board extended Discharger an offer to settle the mandatory penalties required under California Water Code section 13399.33(a)(1), provided that Discharger come into compliance. (PT Exhibit 20.) Discharger declined to accept the settlement offer and has not come into compliance prior to the hearing. (PT Exhibit 21.)
18. As of March 1, 2017, the San Diego Water Board invested 223.25 hours to investigate and prepare the Complaint, for a cost of \$13,096. (PT Exhibit 18.)
19. On March 14, 2017, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R9-2017-0016 with an attached Technical Analysis to Modern Stairways, Inc. recommending the imposition of \$94,078 in liability for the failure to implement adequate BMPs, failure to submit the FY 2014-15 annual report, failure to pay the FY 2009-10, 2010-11, 2011-12, and 2014-15 annual fees, and failure to re-certify for coverage under Order 2014-0057-DWQ.

Surface and Ground Water Beneficial Uses

20. The Site lies within the La Nacion Hydrologic Subarea (HSA) of the Sweetwater Hydrologic Unit (909.12). Storm water discharges from the Site enter the Sweetwater River, a "waters of the state" and "navigable waters of the United States". The Water Quality Control Plan for the San Diego Basin (Basin Plan) defines the following existing and potential surface water beneficial uses for the La Nacion HSA: Industrial Service Supply, Contact Water Recreation, Non-Contact Water Recreation, Warm Freshwater Habitat, and Wildlife Habitat. Groundwater in the La Nacion HSA has the following beneficial uses: Municipal and Domestic Supply, Agricultural Supply, and Industrial Service Supply.

Hearing

21. An Evidentiary Hearing was conducted on May 30, 2017. In preparation for the hearing, Parties were offered the opportunity to exchange evidence, submit legal argument, rebuttal evidence and argument, procedural and evidentiary objections and responses. The evidence submitted by the Prosecution Team to support the allegations consists largely of inspection reports, notices of violations, and corresponding photographs, and correspondence. Prosecution Team staff also testified at the hearing.

Violations

22. **Violation No. 1:** The Discharger violated Section A.8 of Order 97-09-DWQ by failing to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges on a total of six days: May 24, 2012, September 18, 2012, January 24, 2014, February 7, 2014, February 20, 2014, and July 2, 2015. This finding is based on the evidence in the record, including but not limited to evidence described above, and evidence identified in the Technical Analysis for the Complaint (which is attached hereto and incorporated herein as Attachment 1).
23. **Violation No. 2:** The Discharger violated Section B.14 of Order 97-03-DWQ by failing to submit the Fiscal Year (FY) 2014-2015 annual report by July 1, 2015. This finding is based on the evidence in the record, including but not limited to evidence described above, and evidence identified in the Technical Analysis for the Complaint. Pursuant to Water Code section 13385, the days of violation from July 2, 2015 through February 25, 2016 (the date of coverage termination under 97-03-DWQ) are 239.
24. **Violation No. 3:** The Discharger violated Paragraph 3 of Order 97-03-DWQ by failing to pay the annual fee for coverage under Order 97-03-DWQ for Fiscal Years 2009-10, 2010-11, 2011-12, and 2014-15. This finding is based on the evidence in the record, including but not limited to evidence described above, and evidence identified in the Technical Analysis for the Complaint. Pursuant to Water Code section 13385 the days of violation are 1,461.

25. **Violation No. 4:** The Discharger violated California Water Code section 13399.30(a)(2) by failing to recertify and enroll under Order 2014-0057-DWQ by July 1, 2015. This finding is based on the evidence in the record, including but not limited to evidence described above, and evidence identified in the Technical Analysis for the Complaint. Pursuant to Water Code section 13385 the days of violation are 622 (July 1, 2015 to March 1, 2017).

Penalties

26. **Maximum Liability:** Pursuant to Water Code section 13385(a), a person that violates Water Code section 13376, a waste discharge requirement, or a requirement of section 301 of the Federal Clean Water Act is subject to administrative civil liability pursuant to Water Code section 13385(c) "in an amount not to exceed the sum of both of the following: (1) ten thousand dollars (\$10,000) for each day in which a violations occurs; (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons". As shown on pages 26-27 of the attached Technical Analysis, the maximum combined liability that the San Diego Water Board may assess pursuant to Water Code section 13385(c) for Violations 1 through 4 is \$23,280,000.

27. **Minimum Liability**

- a. **Violations 1 through 3:** Water Code section 13385(c) requires that, at a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation(s). The State Water Board's 2009 Water Quality Enforcement Policy (Enforcement Policy) further instructs the Regional Water Boards to assess liability against a violator at least ten percent higher than the economic benefit realized from the violation(s). As shown on page 27 of the attached Technical Analysis, based on economic benefits, the minimum liability for Violation 1 (failure to implement BMPs) is \$56,859, the minimum liability for Violation 2 (Failure to submit FY 2014-15 Annual Report) is \$724, the minimum liability for Violation 3 (failure to pay FY 2009, 2010, 2011 and 2014 Annual Fees) is \$1,077, for a total of \$58,660.

- b. **Violation 4:** The Storm Water Enforcement Act of 1998 (Act), specifically Water Code sections 13399.30(c)(2) and 13399.33(a)(1), require the imposition of an administrative civil liability in an amount that is not less than five thousand dollars (\$5,000) per year of noncompliance or portion thereof for failure to respond to a Notice of Non-Compliance by obtaining permit coverage. As shown on page 27 of the Technical Analysis, the minimum liability for Violation 4 (failure to recertify for coverage under Order 2014-0057-DWQ) is \$10,000 under the Storm Water Enforcement Act, which is higher than the calculated economic benefit (\$8,445). Therefore, the minimum liability for Violation 4 is \$10,000.
- c. **Staff Costs:** Section 13399.33(a)(2)(d) addresses the recovery of staff costs incurred for the purposes of enforcement pursuant to Section 13399.33. Because the staff costs were not tracked specific to each individual violation, the minimum liability does not include staff costs. The San Diego Water Board may discretionarily recover incurred staff costs, which are \$13,096 for all violations (PT Exhibit 19.).
- d. **Total Minimum Liability:** The total minimum liability amount based on economic benefit for failure to implement BMPs, failure to submit the FY 2014-15 annual report, and failure to pay the FY 2009-10, 2010-11, 2011-12 and 2014-15 annual fees is \$58,660 and the minimum liability amount for failure to re-certify for coverage under Order No. 2014-0057-DWQ is \$10,000, for a total of \$68,660.

28. Water Code sections 13327, and 13385 subdivision (e), specify the factors that the San Diego Water Board is required to consider in establishing the amount of discretionary liability for violations. The Enforcement Policy establishes a methodology for assessing administrative civil liability the use of which is intended to “create a fair and consistent statewide approach to liability assessment.” (Enforcement Policy, p. 1.). The use of this methodology addresses the factors that are required to be considered when a regional water board imposes a civil liability as outlined in Water Code section 13385, subdivision (e). The civil liability ordered in this matter was derived from the use of the penalty calculation methodology as explained in Attachment 1.

29. The penalty calculation methodology analysis described in Attachment 1 and incorporated in full in this Order is consistent with the evidence received and the circumstances of this case, as independently evaluated by the Board, and supports the administrative civil liability in the amount of \$94,078 imposed against Discharger.

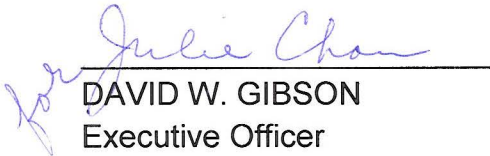
Regulatory Considerations

30. Notwithstanding issuance of this Order, the San Diego Water Board retains the authority to assess additional penalties for violations of the requirements of the Permits for which penalties have not yet been assessed or for violations that may subsequently occur.
31. This is an action to enforce the laws and regulations administered by the San Diego Water Board. The method of compliance with this enforcement action consists entirely of payment of an administrative penalty. The San Diego Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) pursuant to 15321(a)(2); chapter 3, title 14 of the California Code of Regulations exempting actions to enforce or a permit prescribed by a regulatory agency. This action is also exempt from the provisions of CEQA in accordance with Water Code section 13389 because it only serves to enforce compliance with an NDPES permit (Pacific Water Conditioning Association, Inc. v. City Council of City of Riverside (1977) 73 Cal.App.3d 546, 555-556).
32. Any person aggrieved by this action of the San Diego Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order. Copies of the law and regulations applicable to filing petitions may be found on the internet at:
http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.
33. Fulfillment of Discharger's obligations under this Order constitutes full and final satisfaction of Administrative Liability Complaint No. R9-2017-0016. The Discharger remains subject to additional violations and penalties unless and until it enrolls as required under Order 2014-0057-DWQ, and pays the required fees.
34. The Executive Officer is authorized to refer this matter to the Office of the Attorney General for collection or other enforcement if Discharger fails to comply with payment of the liability as detailed below.

IT IS HEREBY ORDERED, that pursuant to Water Code section 13385 that:

1. Civil liability is imposed on Modern Stairways, Inc. in the amount of ninety four thousand seventy eight dollars (\$94,078).
2. Modern Stairways, Inc. shall remit payment for the administrative civil liability imposed in the amount of \$94,078 by check that references "ACL Order No. 2017-0078" made payable to the "State Water Resources Control Board" for deposit in the Cleanup and Abatement Account within 30 days of the adoption of this Order. The check shall be sent to ACL Payment, State Water Resources Control Board, P.O. Box 1888, Sacramento, CA 95812-1888. A copy of the check must also be received by the San Diego Water Board at 2375 Northside Drive, Suite 100, San Diego, California 92108-0002 within 30 days of adoption of this Order.

I, David W. Gibson, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by delegated authority granted to me from the California Regional Water Quality Control Board, San Diego Region.


for Julie Chan
DAVID W. GIBSON
Executive Officer

Place ID: SM-241132



INVOICE

Administrative Civil Liability Imposed Pursuant to Section 13323 of the California Water Code

FACILITY ID (WDID): 9 371013743
FACILITY NAME: MODERN STAIRWAYS
3239 BANCROFT DRIVE
SPRING VALLEY, CA
91977

INVOICE NO: R9-2017-0078-CAA
ENFORCEMENT DATE: 03/14/2017
INVOICE DATE: 05/30/2017
INDEX NO: 017-003
ORDER NO: R9-2017-0078

MODERN STAIRWAYS
3239 BANCROFT DRIVE
SPRING VALLEY, CA 91977



Total Amount Due by
Thursday, 06/29/2017

\$ 94,078.00

Invoice details are shown on the back

STATE WATER RESOURCES CONTROL BOARD Administrative Civil Liability

PLEASE REMIT YOUR PAYMENT ON OR BEFORE THE DUE DATE SHOWN ABOVE. LATE PAYMENT WILL RESULT IN MATTER BEING REFERRED TO A COLLECTION AGENCY, OR TO THE ATTORNEY GENERAL'S OFFICE FOR PROSECUTION RESULTING IN A JUDGMENT TO COLLECT FROM THE APPROPRIATE SUPERIOR COURT. ALTERNATIVELY, THE REGIONAL WATER QUALITY CONTROL BOARD WITH JURISDICTION OF THIS MATTER MAY OBTAIN A JUDGMENT DIRECTLY FROM THE SUPERIOR COURT PURSUANT TO WATER CODE SECTION 13328.

Make your check payable to State Water Resources Control Board

If you have any questions about this invoice, please call the Water Board at 619-521-3919.

For other questions, please contact the Water Board staff person noted in the Administrative Civil Liability.



Retain this portion for your records

Please detach and return this portion with your payment

CHECK HERE FOR ADDRESS CORRECTION ON THE BACK

INVOICE NO: R9-2017-0078-CAA

INDEX NO: 17-003

(Please print the above number on check or money order)

ORDER NO: R9-2017-0078

MODERN STAIRWAYS
3239 BANCROFT DRIVE
SPRING VALLEY, CA 91977

SWRCB
PO BOX 1888
SACRAMENTO, CA 95812-1888

AMOUNT DUE: \$ 94,078.00
ENFORCEMENT DATE: 03/14/2017
DUE BY: 06/29/2017
FACILITY ID (WDID): 9 371013743
FACILITY NAME: MODERN STAIRWAYS
3239 BANCROFT DRIVE
SPRING VALLEY, CA 91977

STATE WATER RESOURCES CONTROL BOARD INVOICE DETAILS

FACILITY ID (WDID): 9 371013743
ORDER NO: R9-2017-0078

INVOICE NO: R9-2017-0078-CAA
ENFORCEMENT DATE: 03/14/2017
REGION: 9

DESCRIPTION	AMOUNT
Administrative Civil Liability 13399.33 and 13385 Failure to comply with 97-03-DWQ and 2014-0057-DWQ	94,078.00
TOTAL AMOUNT DUE	\$ 94,078.00

If you have any questions about this invoice, please call
the Water Board at 619-521-3919

For payment status of your invoice, please go to the "Administrative Civil Liability Invoice Information" link at
<http://infofees.waterboards.ca.gov/FeeInfo/DischargerInvoice.aspx>

For other questions, please contact the Water Board staff person noted in the Administrative Civil Liability.

Please allow 15 business days after mailing for your payment to be posted to the database.

BILLING ADDRESS CORRECTIONS

Please print the new billing address information in the space provided below

Please check box if the facility has changed ownership.

FACILITY ID (WDID): 9 371013743

MODERN STAIRWAYS

BILLING NAME:

CONTACT PERSON:

STREET:

CITY:

STATE: **ZIP:** -

PHONE: () -

EMAIL ADDRESS: