STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:	)	
	)	
Emhart Industries, Inc.	)	**Complaint No. R8-2003-0096**
701 E. Joppa Road	)	**for**
Towson, MD 21286	)	**Administrative Civil Liability**
	)	
Attn. Linda Biagioni, Vice President	)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Emhart Industries, Inc. (hereinafter Emhart), is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Section 13268 of the California Water Code.

2. A hearing in this matter will be scheduled for the Board's regular meeting on October 3, 2003, at the City Council Chambers, City of Loma Linda, 25541 Barton Road, Loma Linda, California. Emhart or its representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days prior to the hearing date.

3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

4. Emhart is alleged to have failed or refused to provide technical or monitoring program reports required pursuant to subdivision (b) of Section 13267 of the California Water Code, and therefore to have violated subdivision (a) of Section 13268 of the California Water Code, which states, "Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267...is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b)"

5. This Complaint is based on the following facts:

   a) Emhart Industries, Inc. is a subsidiary of Black & Decker, Inc. Emhart Industries, Inc. is the legal successor to West Coast Loading Corporation (WCLC), which was dissolved in 1957, and accordingly assumes legal responsibility for all WCLC's liabilities.

b) Perchlorate has been detected in municipal water supply wells in the Rialto and Colton Groundwater Subbasins. These water supply wells are located downgradient of the former WCLC, which manufactured explosives and incendiary devices from 1952 until 1957 on the 160-acre parcel at 3196 North Locust Avenue, City of Rialto, San Bernardino County, California. WCLC used perchlorate as a component of its products. WCLC also used and stored products and chemicals, which likely included perchlorate salts, in the former bunker complex (igloos) located at 2170 West Stonehurst, City of Rialto.

c) WCLC is suspected of having discharged perchlorate waste that has adversely affected water quality. Accordingly, the Executive Officer issued Emhart, WCLC's legal successor, an Investigation Order dated October 23, 2002, pursuant to subdivision (b) of California Water Code Section 13267.

d) Based on the evidence referenced in the October 23, 2002 Investigation Order, Emhart was ordered to submit a work plan by November 25, 2002, for conducting a soil and groundwater investigation of perchlorate in the vicinity of the former WCLC facility and the storage bunkers. The October 23, 2002 Investigation Order also informed Emhart that failure to submit the required information by the specified deadline would subject it to administrative civil liability in the amount of up to $1,000 per day, pursuant to Section 13268(a) and (b) of the California Water Code.

e) A Request for Stay and Petition for Review of the Investigation Order by the State Water Resources Control Board (hereinafter State Board) was filed on November 22, 2002, by Emhart. The Request for Stay was denied by the State Board on December 13, 2002 and the Petition for Review was dismissed by the State Board on July 7, 2003.

6. Emhart failed to submit a work plan by November 25, 2002, and, to date, has not submitted a work plan. Therefore, Emhart has not complied with the requirements of the October 23, 2002 Investigation Order. Failure to submit the required work plan by November 25, 2002, pursuant to the October 23, 2002 Investigation Order, is a violation of California Water Code Section 13268(a).

7. Section 13268(b) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed one thousand dollars ($1,000) for each day that a violation of Section 13268(a) occurs.

8. Pursuant to Section 13268, the total maximum assessment for which Emhart is civilly liable is $269,000, based on $1,000 per day for 269 days of violation from November 25, 2002 through the date of this Complaint, August 21, 2003.

9. Board staff costs for all tasks associated with this matter amount to approximately $250,000. These costs were considered in assessing the liability proposed in Paragraph 11, below.

10. Section 13327 specifies factors that the Board shall consider in establishing the amount of civil liability. These factors include: the nature, circumstances, extent, and gravity of the violation, whether the discharge is subject to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the discharger, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require.

11. After consideration of the above factors, the Executive Officer proposes that civil liability be imposed on Emhart in the amount of $269,000. An invoice for this amount is enclosed.

WAIVER OF HEARING

Emhart may waive its right to a hearing. If Emhart chooses to do so, please sign the attached waiver form and return it, together with a check or money order for $269,000, and the bottom portion of the invoice, to the State Water Resources Control Board in the enclosed preprinted envelope.

If you have any questions, please contact Ann Sturdivant at (909) 782-4904, Kurt Berchtold at (909) 782-3286, or contact the Regional Board's legal counsel, Jorge Leon, at (916) 341-5180.

8/21/03
Date

Gerard J. Thibeault
Executive Officer

In the matter of:	)	
	)	
Emhart Industries, Inc.	)	**Complaint No. R8-2003-0096**
701 E. Joppa Road	)	**for**
Towson, MD 21286	)	**Administrative Civil Liability**
	)	
Attn: Linda Biagioni, Vice President	)	

WAIVER OF HEARING

I agree to waive Emhart's right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2003-0096. I have enclosed a check, made payable to the State Water Resources Control Board, in the amount of $269,000. I understand that I am giving up Emhart's right to be heard and to argue against allegations made by the Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

_____ _____

Date for Emhart Industries, Inc.

California Regional Water Quality Control Board
Santa Ana Region

Winston H. Hickox
Secretary for Environmental Protection

Internet Address: http://www.swrcb.ca.gov/rwqcb8
3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (909) 782-4130 - FAX (909) 781-6288

Gray Davis
Governor

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.swrcb.ca.gov/rwqcb8.

August 21, 2003

Linda Biagioni, Vice President
Emhart Industries, Inc.
701 E. Joppa Road
Towson, MD 21286

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2003-0096

Dear Ms. Biagioni:

Enclosed is Complaint No. R8-2003-0096 assessing administrative civil liability against Emhart Industries, Inc. (hereinafter Emhart) for failing to submit the required work plan for an investigation of soil and groundwater at the site of the former West Coast Loading Corporation and its storage bunkers in Rialto, California. Unless Emhart waives its right to a hearing, a public hearing on this matter will be held at the Santa Ana Regional Water Quality Control Board's meeting on October 3, 2003. This Board meeting will be held at the Loma Linda City Council Chambers, 25541 Barton Road, Loma Linda, California. An agenda and a staff report will be provided to you at least 10 days prior to the meeting.

If Emhart chooses to waive its right to a hearing, please complete the enclosed waiver form and submit it to this office prior to the hearing, with a check for the proposed amount of civil liability ($269,000). The check should be made payable to the State Water Resources Control Board.

If Emhart does not wish to waive its right to a hearing, you should contact this office to schedule a pre-hearing meeting. At that time, you may submit information that may not have been previously available to staff regarding this matter. The information should address the following items:

1. Nature, circumstance, extent and gravity of the violation;
2. Susceptibility of discharge to cleanup or abatement;
3. Your ability to pay the proposed assessment;
4. Any prior history of violation;
5. Your degree of culpability;
6. Economic benefit, or savings, resulting from the discharge;
7. Such matters as justice may require.

If you have any questions, or wish to schedule a pre-hearing meeting, please call Kurt Berchtold, Assistant Executive Officer, at (909) 782-3286, or Ann Sturdivant, Chief of our SLIC/DoD Section, at (909) 782-4904.

Sincerely,

Gerard J. Thibeault
Executive Officer

Enclosures: 1. Administrative Civil Liability Complaint No. R8-2003-0096
2. Waiver of Hearing
3. Mailing List

cc w/enclosures:
Regional Board
Jorge Leon, SWRCB, OCC
Robert Wyatt, Allen Matkins Leck Gamble & Mallory, LLP

cc w/o enclosures:
Inland Empire Perchlorate Regulatory Task Force (mailing list enclosed)

AES/data/SLIC/2001-03 rialto perchlorate/13267/Emhart ACLC transmittal

State Water Resources Control Board

Winston H. Hickox
Secretary for Environmental Protection

The energy challenge facing California is real.
Every Californian needs to take immediate action to reduce energy consumption.
For a list of simple ways you can reduce demand and cut your energy costs, see our website at http://www.swrcb.ca.gov

Gray Davis
Governor

SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD

Instructions:

You may waive the right to a hearing. Waiver of the hearing constitutes admission of the validity of the allegation of violations in the referenced Complaint and acceptance of the assessment of civil liability in the amount set forth within the Complaint. If you wish to waive the hearing, an authorized person must sign the waiver form below, and send it with a cashier's check for the amount of the civil liability assessment, made payable to the California State Water Resources Control Board and mailed, using the return envelope, to the address below.

SWRCB Accounting
Attn: Enforcement
P.O. Box 100
1001 I Street
Sacramento, CA 95812-0100

_____ _____
Executive Officer Date

California Environmental Protection Agency

Recycled Paper

Retain above portion for your records

Please return bottom portion with your payment

WAIVER OF THE RIGHT TO A HEARING

In the Matter of:
EMHART INDUSTRIES, INC.
701 E. JOPPA ROAD
TOWSON, MD 21286

Administrative Civil Liability
Enforcement Action Id: 76757
Invoice Number: 35990

By signing below, I agree to waive my right to a hearing before the SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD with regard to the violations alleged in the above referenced Complaint and to remit payment for the civil liability imposed. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, civil liability proposed. I have enclosed a cashier's check or money order made payable to the State Water Resources Control Board for the civil liability imposed and/or attached a signed statement committing to the preparation of a Pollution Prevention Plan or a Supplemental Environmental Project, subject to Executive Officer approval.

_____ _____ _____
Signature Title Date

_____ _____ _____
Signature Title Date

[ ] Payment Is Enclosed
CC: Ann Sturdivant, Bob Holub

California Department of Health Services
Division of Drinking Water
464 W. Fourth St., Ste. 437
San Bernardino, CA 92402

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