

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
October 11, 2006

ITEM: 10

SUBJECT: **PUBLIC HEARING:** Excellent Coatings, Inc. 1285 Distribution Way, Vista: Administrative Assessment of Civil Liability for Failure to Submit the Fiscal Year 2004-05 annual storm water monitoring report required by Order No. 97-03-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities (General Permit). (Tentative Order No. R9-2006-0099) (Rebecca Stewart)

PURPOSE: Excellent Coatings, Inc. has requested a public hearing. The Regional Board will hear testimony regarding the violation alleged in Complaint No. R9-2006-0077 and consider the imposition of administrative civil liability.

PUBLIC NOTICE: On July 17, 2006 a notice was published in the San Diego Union-Tribune and on the Regional Board website soliciting public input on the violation alleged and the proposed liability contained in Complaint No. R9-2006-0077. The public comment period ended on August 16, 2006.

DISCUSSION: Excellent Coating, Inc. submitted a Notice of Intent for coverage under Order No. 97-03-DWQ on October 26, 2004. The first annual storm water monitoring report required by Excellent Coatings, Inc. was due on July 1, 2005. When the report was not received, the Regional Board issued a Notice of Violation on August 5, 2005, notifying the discharger that the violation could subject them to administrative civil liability (Supporting Document No. 3). An additional Notice of Violation was issued on September 19, 2005 (Supporting Document No. 4). The discharger

did not contact the Regional Board regarding the Notices of Violation.

On June 6, 2006 the Executive Officer issued Administrative Civil Liability Complaint No. R9-2006-0077 recommending civil liability totaling \$3,500 for failure to submit the Fiscal Year 2004-05 annual storm water monitoring report (Supporting Document No. 5).

On July 21, 2006 Excellent Coatings, Inc. submitted a written response to the Complaint (Supporting Document No. 6). In the response the discharger acknowledged that the report was not submitted. They requested a public hearing to plea for a reduced penalty based on personal hardships experienced by several key personnel and an extreme negative cash flow which will be exacerbated by a monetary penalty.

In a letter dated August 1, 2006 (Supporting Document No. 7) the Regional Board explained to Excellent Coating, Inc. that in order for the Regional Board to fully understand the facts of the case and the merits of its defense, it is necessary to request specific information regarding their defense. This included information about effects of employee hardships on the compliance with storm water regulations, and documentation to support the financial hardship to support the inability to pay the civil liability. Excellent Coatings, Inc. submitted a portion of the requested documentation on August 15, 2006. The financial documentation submitted included Federal Withholding Summary of Deposits and Filings, Accounts Payable Aged Invoice Reports, bank statements, credit card statements, and home equity loan statements. Due to the personal nature of the documents submitted, they will be transmitted to the Regional Board under separate cover and will not be included in the public record.

The Regional Board requested that the State Water Resources Control Board's Office of Statewide Initiatives review the information and assist in the determination of whether the proposed civil liability would be a financial hardship.

The State Board determined the information submitted by Excellent Coatings, Inc. was inadequate to conduct a conclusive investigation. Specifically, the information lacked income tax records for the last three years which are necessary to compare income to debt. Subsequently, on August 29, 2006, the Regional Board requested that Excellent Coatings, Inc. provide additional information (Supporting Document No. 8). To date, Excellent Coatings, Inc. has not provided additional information to support their defense.

The Regional Board staff has left several messages for Mr. Lackritz to determine if additional information is forthcoming and if there are any questions he has regarding the hearing process. Neither Mr. Lackritz nor any representative have returned calls or responded to the Regional Board request for information. Therefore, at this time, Regional Board staff cannot support the discharger's defense of personal hardships experienced by several key personnel or the claim of financial hardship if the proposed liability was assessed.

No comments concerning this matter have been received to date.

LEGAL CONCERNS: None.

SUPPORTING
DOCUMENTS:

- (1) Location Map
- (2) Tentative Order No. R9-2006-0099
- (3) August 5, 2005 Notice of Violation
- (4) September 19, 2005 Notice of Violation
- (5) Complaint No. R9-2006-0077
- (6) Excellent Coatings, Inc. Letter July 21, 2006
- (7) Regional Board Letter August 1, 2006
- (8) Excellent Coatings, Inc. Letter August 10, 2006
(without attachments)
- (9) Regional Board Letter August 29, 2006.
- (10) City of Vista Inspection Report March 13, 2006

COMPLIANCE
RECORD:

The City of Vista conducted an industrial storm water inspection on March 13, 2006 and identified several violations of the General Permit. The violations

include no Storm Water Pollution Prevention Plan, no monitoring plan, extensive staining from spills in the work area, exposed drums, and a large tank with no secondary containment. Follow-up information received from the City indicates that compliance has been attained.

RECOMMENDATION: Absent receipt and review of financial documentation, adoption of tentative Order No. R9-2006-0099 is recommended.