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CENTRAL VALLEY EDEN ENVIRONMENTAL DEFENDERS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CENTRAL VALLEY EDEN
ENVIRONMENTAL DEFENDERS, LLC, a
California limited liability company,

Plaintiff,

vs.

BUILDING MATERIAL DISTRIBUTORS,
INC., a California corporation; and DOES 1-
10, inclusive,

Defendants.

) Case No.:

) **COMPLAINT FOR INJUNCTIVE AND**
) **DECLARATORY RELIEF, CIVIL**
) **PENALTIES AND REMEDIATION**

) **(Federal Water Pollution Control Act, 33**
) **U.S.C. §§1251 et seq.)**

Plaintiff CENTRAL VALLEY EDEN ENVIRONMENTAL DEFENDERS, LLC

("EDEN") hereby brings this civil action pursuant to the Federal Water Pollution Control Act,
also known as the Clean Water Act ("CWA"), 33 U.S.C. §§ 1251 *et seq.*

INTRODUCTION

1
2 1. This action is a citizen suit for injunctive relief, declaratory relief, civil
3 penalties, and remediation against Defendant BUILDING MATERIAL DISTRIBUTORS for
4 current and ongoing violations of the National Pollutant Discharge Elimination System
5 (“NPDES”) permit requirements of the CWA.
6

7 2. On or about September 4, 2021, EDEN provided a Notice of Defendant’s
8 violations of the CWA to the (1) Administrator of the United States Environmental Protection
9 Agency (“EPA”), (2) EPA’s Regional Administrator for Region Nine, (3) Executive Director
10 of the State Water Resources Control Board (“State Board”) and (4) to Defendant, including a
11 copy delivered to the Facility Manager of Defendant Building Material Distributors, by
12 certified mail, at 225 Elm Avenue, Galt, California (“the Facility”), as required by the CWA.
13
14 33 U.S.C. § 1365(b)(1)(A).

15 3. A copy of EDEN’s Notice of Intent to Sue is attached hereto as Exhibit “A”
16 and incorporated herein by reference.
17

18 4. More than sixty days have passed since EDEN’s Notice was properly and
19 lawfully served on Defendant, the State Board, and the Regional and National EPA
20 Administrators. EDEN is informed and believes, and thereupon alleges, that neither the
21 National EPA, nor the State of California has commenced or is diligently prosecuting a court
22 action to redress the violations alleged in this complaint. This action’s claim for civil penalties
23 is not barred by any prior administrative penalty under section 309(g) of the CWA, 33 U.S.C.
24 § 1319(g).
25
26
27
28

JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT

1
2 5. This Court has subject matter jurisdiction over this action pursuant to 28
3 U.S.C. section 1331 (federal question), and 33 U.S.C. section 1365(a) (CWA citizen suit
4 jurisdiction). The relief requested is authorized pursuant to 28 U.S.C. sections 2201-2202
5 (declaratory relief), 33 U.S.C. sections 1319(b), 1365(a) (injunctive relief), and 33 U.S.C.
6 sections 1319(d), 1365(a) (civil penalties).
7

8 6. The Permit under which this case arises is a Federally required permit based
9 upon California state substantive law. (*Southern California Alliance of Publicly Owned*
10 *Treatment Works v. U.S. Environmental Protection Agency* (9th Cir. 2017), 853 F.3d 1076;
11 *Dept. of Finance v. Commission on State Mandates*, 1 Cal.5th 749 (2016))
12

13 7. By its express language, a violation of the State permit constitutes a per se
14 violation of the Federal Clean Water Act. (California’s Industrial General Permit Order 2014-
15 0057 DWQ, NPDES Order No. CAS000001, Section XXI.A)
16

17 8. Venue is proper because Defendant resides in and the events or omissions
18 giving rise to EDEN’s claims occurred in this District. 28 U.S.C. §1391(b)(1), (2). Venue is
19 also proper because the Facility’s CWA violations have occurred and are occurring within the
20 District. 33 U.S.C. § 1365(c)(1).
21

PARTIES

22 9. Plaintiff CENTRAL VALLEY EDEN ENVIRONMENTAL DEFENDERS,
23 LLC (“EDEN”) is an environmental membership group organized under the laws of the State
24 of California as a limited liability company.
25

26 10. EDEN’s organizational purpose is the protection, preservation and
27 enhancement of California’s waterways. Its mission is implemented by enforcing the
28

1 provisions of the Federal Clean Water Act and California's Industrial General Permit by
2 seeking redress from environmental harms caused by Industrial Dischargers who pollute the
3 Waters of the United States, through community education and citizen suit enforcement when
4 necessary.

5
6 11. EDEN's members donate their time and money resources to protect, enhance,
7 and assist in the preservation and restoration of rivers, creeks, streams, wetlands, vernal pools,
8 and their tributaries located in California.

9
10 12. EDEN has members throughout Northern California. Some of EDEN's
11 members reside and work near the Consumnes River, a tributary of the Sacramento-San
12 Joaquin River Delta Waterways (the "Receiving Waters" for Defendant Building Material
13 Distributors' Facility storm water run-off), and use those waters and their watersheds for
14 surfing, kayaking, camping, cycling, recreation, sports, fishing, swimming, hiking,
15 photography, nature walks and scientific study. Their use and enjoyment of these natural
16 resources have been and continue to be adversely impaired by Defendant's failure to comply
17 with the procedural and substantive requirements of the California Industrial General Permit
18 and Federal Clean Water Act.

19
20 13. EDEN has standing as an association to bring this suit against Defendant, as at
21 least one of EDEN's current members is experiencing ongoing and continuing harm particular
22 to him or her as a specific result of Defendant's violations of the CWA, and the resulting
23 adverse effects to the environment and the Receiving Waters downstream from the Facility
24 and has experienced such harm since at least the date that EDEN provided to Defendant a 60-
25 day Notice of Intent to Sue.
26
27
28

1 14. Specifically, the individual member(s) who are experiencing harm from
2 Defendant's violations of the CWA are reluctant to utilize the Receiving Waters downstream
3 from the Facility as specified in Paragraph 12, above, due to the pollution caused by
4 Defendant's environmental violations that EDEN's members believe has entered into the
5 Facility's Receiving Waters; and the aesthetic and recreational interests of these members has
6 been adversely impacted.
7

8 15. Defendant's ongoing violations of the General Permit and the CWA have and
9 will continue to cause irreparable harm to EDEN and certain of its current members. The
10 relief requested will redress the ongoing injury in fact to EDEN and its members. Litigation
11 of the claims asserted and the relief requested in this Complaint will not require the
12 participation in this lawsuit of individual members of EDEN.
13

14 16. EDEN is informed and believes, and on such information and belief alleges,
15 that Defendant BUILDING MATERIAL DISTRIBUTORS, INC., located at 225 Elm Avenue
16 in Galt, California, was formed on or about July 2, 1984, as a California corporation, and is
17 identified in the Regional Water Board's records as the Industrial General Permit applicant
18 and operator of the Facility.
19

20 **STATUTORY BACKGROUND**

21 17. Congress declared that the Federal Clean Water Act was designed to "restore
22 and maintain the chemical, physical, and biological integrity of the Nation's waters" through
23 federal and state cooperation to develop and implement "programs for preventing, reducing,
24 or eliminating the pollution of navigable waters and ground waters." 33 U.S.C. §§ 1251(a),
25 1252(a).
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