

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:)	
)	
Saddleback Church)	Complaint No. R8-2002-0083
1 Saddleback Parkway)	for
Lake Forest, CA 92630-8700)	Administrative Civil Liability
)	
<u>Attn: Mr. Steve Culp</u>)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Saddleback Church 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 13385(c)(2) of the California Water Code. A hearing concerning this Complaint will be held before the Board within sixty days of the date of issuance of this Complaint. The hearing in this matter will be scheduled for the Board's regular meeting on October 25, 2002 at the City Council Chambers of Corona, 815 West 6th Street, Corona, CA 92882.
2. Saddleback Church 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 before 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. The storm water runoff from the Saddleback Church construction site (site), located in the City of Lake Forest, is regulated under the State's General Permit for Storm Water Runoff Associated with Construction Activities, Order No. 99-08-DWQ, NPDES No. CAS000002 (General Permit), WDID No. 8 30S300541.
5. Saddleback Church is alleged to have violated Provisions A.2 ("Discharges of material other than storm water to the storm sewer system . . . are prohibited"), and B.2 ("The SWPPP . . . shall be designed and implemented such that . . . discharges shall not cause or contribute to an exceedance of . . . water quality standards . . .") of the General Permit. As more fully set forth below, Saddleback Church allowed discharges of concrete-laden, non-storm water, which caused or threatened to cause pollution, contamination, or nuisance. Saddleback Church failed to develop and implement a Storm Water Pollution Prevention Plan (SWPPP) and failed to implement appropriate Best Management Practices (BMPs) for the elimination or reduction of

pollutants. Appropriate monitoring of the BMPs during the discharge was not performed, and Saddleback Church discharged pollutants to waters of the United States from the construction site. Pursuant to Water Code Section 13385(a)(2), civil liability may be imposed for the preceding violations.

6. This complaint is based on the following facts:

- a) According to the Site's Notice of Intent submitted by Saddleback Church, construction commenced on July 15, 1991 on 75 acres. The current portion of the project is on 3.9 acres, and is projected to be completed in September 2002;
- b) Board staff initially inspected the site on March 12, 2001. No BMPs were being implemented to prevent discharge of sediment to the local storm drain system and the project SWPPP, the key element for compliance with the General Permit, was not available at the site. During the inspection, Board staff requested that BMPs be implemented and that a copy of the SWPPP be submitted to the Board office. A copy of the Water Quality Management Plan, a local requirement addressing post-construction BMPs, was submitted to the Board office, but no SWPPP was received;
- c) In December 2001, State Board staff suspended permit coverage for the subject site due to lack of fee payment. As a result, Board staff inspected the site on December 28, 2001 and February 26, 2002. Again, no BMPs were being implemented to prevent discharge of sediment from the site and the project SWPPP was not available. A Notice of Violation (NOV) was issued on February 27, 2002 citing the lack of a SWPPP and BMPs. The NOV requested that adequate BMPs be implemented and that the SWPPP be submitted to the Board office by March 15, 2002;
- d) As a result of non-receipt of the site SWPPP, Board staff re-inspected the site on June 21, 2002. The SWPPP was still not at the site and no BMPs had yet been implemented to prevent the discharge of construction pollutants to the local storm drain system. A second NOV was issued on June 26, 2002 again requesting that adequate BMPs be implemented and that the SWPPP be submitted to the Board office by July 8, 2002. In response to the second NOV, an updated copy of the site's Water Quality Management Plan was submitted to the Board office, but again, no SWPPP was received. Based on a phone call with site personnel on July 19, 2002, it was determined that in response to the second NOV, a SWPPP for the project was finally being developed;
- e) A third NOV was issued on July 19, 2002, documenting the past inspections and requesting a copy of the SWPPP by August 6, 2002. A copy of the SWPPP was received at the Board office on July 24, 2002;
- f) Board staff inspected the site on July 29, 2002. On arrival at the site staff attempted to make contact with site supervisory personnel. Unfortunately, none

of these staff were available during this unannounced inspection. As staff inspected the perimeter of the construction area, an unauthorized, non-storm water discharge was observed. A construction worker washed residual wet concrete from a wheelbarrow and tools into the gutter. This concrete-laden water flowed down the gutter, overwhelmed an inadequate sandbag BMP, and entered the storm drain system. The discharge flowed through sediment that had accumulated in the gutter and carried the sediment into the storm drain system as well; and,

- g) The SWPPP submitted on July 25, 2002, includes documentation as part of the employee/subcontractor training section that specifically cites that the BMP for "Washwater from concrete/mortar (etc.) cleanup would be to: 1. Wash onto dirt area, spade in; 2. Pump and remove to appropriate disposal facility; or 3. Settle, pump water to sanitary sewer." Further, the SWPPP states that storm drain inlet protection would be accomplished by "plac(ing) Gravel Bags around each drainage inlet..." The drainage inlet into which the concrete-laden wash water flowed was protected by four, half filled sandbags.
7. Section 13385(a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons. The observed volume of the unauthorized, non-storm water discharge was estimated to be less than 1,000 gallons.
 8. Pursuant to Section 13385(c), Saddleback Church is civilly liable for the sum of \$50,000 (4 days of violation when no SWPPP was available at the site [March 12, 2001, December 28, 2001, February 26, 2002, and June 19, 2002] and \$10,000 for one day of discharge). The unauthorized, non-storm water discharge occurred without adequate or properly maintained BMPs to eliminate/reduce the discharge of sediment-laden water. The total maximum assessment is \$50,000 for the violations cited in Paragraph 6, above.
 9. Board staff spent a total of 40 hours investigating this incident (@\$70 per hour, the total cost for staff time is \$2,800). Saddleback Church saved approximately \$2500 by not developing, implementing, and maintaining a SWPPP and proper concrete washout and catch basin inlet BMPs. These factors were considered in assessing the penalty indicated in Paragraph 10, below.
 10. Section 13385 (e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors include: nature, circumstances, extent, and gravity of the violation, and, with respect to the discharger, the ability to pay, 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. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if

any, derived from the acts that constitute the violation. The factors are evaluated in the table below. After consideration of these factors, the Executive Officer proposes that civil liability be imposed on Saddleback Church in the amount of \$10,000 for the violations cited above. An invoice for this amount is enclosed.

Factor	Comment
A. Nature, Circumstances, Extent and Gravity of Violation	Unauthorized non-storm water discharge of concrete and sediment-laden water. Inadequate monitoring and maintenance of BMPs during discharge. Lack of an adequate SWPPP for four days in which inspections occurred.
B. Culpability	The discharger violated the terms of the General Permit by failing to develop a SWPPP, failing to implement appropriate BMPs and by discharging non-storm water containing pollutants.
C. Economic Benefit or Savings	Saddleback Church saved approximately \$2500 by not properly developing, implementing and maintaining an adequate SWPPP and implementing proper BMPs.
D. Prior History of Violations	Three NOVs were issued for failure to develop a SWPPP. The SWPPP was not written for the project until July 2002.
E. Staff Costs	Regional Board staff spent approximately 40 hours investigating this incident (@\$70 per hour, the total cost for staff time is \$2800.00).
F. Ability to pay	The discharger has not provided any information to indicate that it is unable to pay the proposed amount.

WAIVER OF HEARING

Saddleback Church may waive its right to a hearing in this matter. If Saddleback Church chooses to do so, please sign the attached waiver, which is on page 6 of this Complaint, and return it, together with the bottom portion of the invoice and a check for \$10,000, to the State Water Resources Control Board in the preprinted enclosed envelope.

If you have any questions, please contact Mark Smythe at (909) 782-4998 or Michael Adackapara at (909) 782-3238, or contact the Board 's staff counsel, Jorge Leon, at (916) 341-5180.

Date

Gerard J. Thibeault
Executive Officer

In the matter of:)	Complaint No. R8-2002-0083
)	for
Saddleback Church)	Administrative Civil Liability
1 Saddleback Parkway)	
Lake Forest, CA 92630-8700)	
)	
<u>Attn: Mr. Steve Culp</u>)	

WAIVER OF HEARING

I agree to waive Saddleback Church's right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2002-0083. I have enclosed a check, made payable to the State Water Resources Control Board, in the amount of \$10,000. I understand that I am giving up Saddleback Church'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 Saddleback Church



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

September 26, 2002

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Steve Culp
Saddleback Church
1 Saddleback Parkway
Lake Forest, CA 92630-8700

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2002-0083

Dear Mr. Culp:

We are enclosing a certified copy of Complaint No. R8-2002-0083 proposing administrative civil liability of \$10,000 for violations of the State's General Permit for Storm Water Discharges Associated with Construction Activity, Order No. 99-08-DWQ, NPDES No. CAS000002, WDID No. 8 30S300541. An invoice for this amount and a preprinted envelope are also enclosed.

If necessary, a public hearing on this matter will be scheduled for the Regional Board meeting on October 25, 2002. The staff report regarding this complaint and the meeting agenda will be mailed to you not less than 10 days prior to the Board meeting.

You have the option to waive your right to a hearing. Should you waive your right to a hearing and pay the proposed assessment, the Regional Board will not hold a public hearing on this matter. If you choose to waive your right to a hearing, please sign the enclosed waiver form and submit the form and the bottom portion of the invoice with a check for \$10,000. The check should be made payable to the State Water Resources Control Board. The waiver form, the bottom portion of the invoice and the check should be mailed to Sacramento using the enclosed envelope. All other correspondence regarding this Complaint should be sent to the address on this letterhead.

If you do not wish to waive your right to a hearing, a pre-hearing meeting with Board staff is recommended. Should you wish to schedule a pre-hearing meeting, please call us prior to October 4, 2001. At that time, you may submit information that may not have been previously available to staff regarding this incident. The information should address the following:

1. Nature, circumstances, extent, and gravity of the violation;

California Environmental Protection Agency



Saddleback Church
Mr. Steve Culp

- 2 -

September 26, 2002
ACL No. R8-2002-0083

2. Your ability to pay the proposed assessment;
3. Any prior history of violations;
4. Your degree of culpability;
5. Economic benefit or saving; and
6. Such other matters as justice may require.

If you have any questions regarding this complaint, you may contact Mark Smythe at 909-782-4998 or Michael Adackapara at 909-782-3238. All legal questions should be referred to our legal counsel, Jorge Leon, at 916-341-5180.

Sincerely,

Gerard J. Thibeault
Executive Officer

Enclosures: Complaint No. R8-2002-0083, Waiver Form, Invoice and Preprinted Envelope

cc with enclosures:

Regional Board
State Water Resources Control Board, Division of Water Quality - Bruce Fujimoto
State Water Resources Control Board, Office of the Chief Counsel – Jorge Leon
U. S. Environmental Protection Agency, Region 9 (WTR-7) – Tom Huetteman
Orange County Public Facilities & Resources Dept.- Chris Crompton
City of Lake Forest NPDES Coordinator, Ted Simon
State Department of Fish and Game – Terry Dickerson
California Coastal Commission – Teresa Henry
US Fish and Wildlife Service – Will Miller
Orange County Coast Keeper – Garry Brown
Lawyers for Clean Water – Kim Lewand
Lawyers for Clean Water – Daniel Cooper