

**California Regional Water Quality Control Board  
Santa Ana Region**

**October 26, 2001**

**ITEM: 13**

**Subject:** Administrative Civil Liability Complaint No.01-81, Master Development Corporation, San Bernardino County

**BACKGROUND**

On August 16, 2001, the Executive officer issued Administrative Civil Liability Complaint (ACL) No. 01-81 (copy attached) to Master Development Corporation (MDC) for alleged violations of the State's General Permit for Storm Water Runoff Associated with Construction Activity (General Permit). In the ACL, the Executive Officer proposed an assessment of \$40,000 for the alleged violations.

**INTRODUCTION**

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to affirm, reject, or modify the proposed administrative civil liability assessment against MDC.

ACL No. 01-81 was issued by the Executive Officer to MDC for failing to properly implement an effective Storm Water Pollution Prevention Plan (SWPPP) and maintain Best Management Practices (BMPs). Inadequate BMP implementation and lack of BMP maintenance resulted in the discharge of sediments into the storm drain system.

**DISCUSSION**

The General Permit regulates the discharge of storm water from construction sites as required under Section 402(p) of the Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and fee (annual fee of \$250), with the State Water Resources Control Board.

MDC's construction sites, Crossroads Collection Projects, Lot 9 and Lot 12, located in the City of Ontario, are regulated under the General Permit with WDID Nos. 836S313034 and 836S313033, respectively.

On October 31, 2000, Board staff conducted a routine inspection of the two construction sites and observed sediments on the streets with no BMPs implemented to control discharge of pollutants into the storm drain. Concrete wash water stains were evident around one of the storm drain catch basin inlets at Lot 12. The site superintendent stated that the streets were being flushed

three days a week. Board staff advised the site superintendent that flushing down sediments into the storm drain is not an acceptable practice and appropriate BMPs must be implemented. Re-inspection of the two sites on November 2, 2000 revealed that the streets had been swept and the catch basins were cleaned up.

On June 6, 2001, Board staff re-inspected the two construction sites in response to Notices of Termination (NOTs) filed by MDC in May 2001. Board staff observed that neither of the two sites had been fully stabilized and activities at the two sites were causing discharges of significant amount of sediment onto the streets and pavements. Tracking of sediments was observed along the two driveways at Lot 9. Excess irrigation water from the partially landscaped areas was transporting sediments into the adjacent storm drains. The only BMP implemented at either site was a sandbag barrier around the storm drain inlet located on Barrington Avenue, downstream of Lots 9 and 12. Heavy accumulation of sediment was observed behind this sandbag barrier and it had become ineffective in controlling sediments from entering the storm drain. Heavy accumulation of sediment was also observed around and leading to an unprotected catch basin within Lot 12 and three unprotected catch basins in Lot 9. Significant amounts of sediments were observed inside the catch basins. A considerable amount of trash was also observed in the catch basins located within Lot 9. All these observations indicate that MDC had failed to properly implement an effective SWPPP. MDC also failed to maintain BMPs at either site.

On June 7, 2001, Board staff spoke with the contact person at MDC's headquarters to inform him of the violations and the need for immediate corrective action. A written Notice of Violation for each site, dated June 8, 2001, outlining the General Permit violations observed, followed the phone notification.

On July 10, 2001, Board staff re-inspected the sites and observed that sandbag barriers were placed to protect the storm drain inlets located within the two sites. However, heavy accumulation of sediments observed behind the sandbag barriers at Lot 12 indicated that the BMP was ineffective in preventing sediments from entering the storm drain. Additionally, some of the sandbags around the storm drain inlets within Lot 9 had deteriorated, creating an additional source of pollutants. Gaps existed between these sandbags, leaving the storm drain inlets unprotected. A large pile of soil was observed adjacent to one of these inadequately protected storm drain inlets. Significant amounts of sediments were again observed on the streets and the pavement at both sites. The site superintendent was notified of the violations observed.

On July 12, 2001, Board staff returned to the site and found that the deteriorated sandbags at two of the three storm drain inlets located within Lot 9 had been replaced and the gaps filled. However, the deteriorated sandbags around the third storm drain inlet located near the loading dock of the newly constructed building had not been replaced. There was a heavy accumulation of sediments around the

Barrington Avenue and Lot 12 storm drain inlets. Past discharge of sediments into the Barrington Avenue storm drain catch basin inlet was evident, and a significant amount of sediment was observed in this catch basin. The drainage pipe within this catch basin was more than  $\frac{3}{4}$  filled with sediments. The site superintendent was not present at either of the two sites at the time of this inspection.

On July 31, 2001, Board staff drove by the two sites and found that landscaping had been completed but evidence of past and potential sediment discharges was noted. Some of the sandbags around the Lot 9 storm drain inlets were again deteriorated. The sandbags around the storm drain drop inlet structure near the loading dock at Lot 9 were crushed and sediments were observed directly on the grates. Board staff also observed that nothing appeared to have been done with the heavy accumulation of sediments behind the sandbag barriers around the Lot 12 storm drain inlets. A long trail of sediments was observed in the drainage swale within Lot 12. Patches of sediments remained on the pavement within Lot 9.

On August 1, 2001, Board staff returned to the sites in an attempt to get the site superintendent to correct the recurring violations. He could not be located but Board staff was able to discuss the violations with the Lot 9 building occupant. The building occupant indicated that he had requested the site superintendent to remove the remaining patches of sediments from the pavement and was assured that a water truck will flush the sediments into the storm drain. This statement suggested willful violation of the General Permit requirements by the site superintendent especially since he had been advised a number of times by Board staff that flushing of sediments into the storm drain is a violation of the General Permit.

Pursuant to Water Code Section 13385 (a)(2), 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.

The Executive Officer issued ACL No. 01-81 because of these repeated violations of the General Permit and MDC's failure to correct these violations.

The Water Code specifies factors the Board shall consider in establishing the amount of civil liability. These factors are discussed below.

1. Nature, Circumstances, Extent and Gravity of the violations

By submitting the Notice of Intent, the discharger certified that they would comply with the provisions of the General Permit including the development and

implementation of a SWPPP and a Monitoring Program. They were also aware of the prohibition on discharge of unauthorized, non-storm water and storm water containing pollutants from the subject sites.

2. Ability to pay the Proposed Assessment

MDC has not provided any information to indicate that it would have difficulty paying the proposed assessment.

3. Prior History of Violations

MDC had been informed on numerous occasions by Board staff to correct the violations through verbal communications and through a Notices of Violation. Their failure to correct the violations resulted in the discharge of unauthorized non-storm water and storm water containing pollutants to the storm drain system. MDC also had two other construction sites within the City of Ontario, regulated under the General Permit that have been cited for similar violations within the last year.

4. Degree of Culpability

The storm water regulations are applicable to all construction activities on five or more acres and to all smaller projects that are part of a larger common plan of development encompassing 5 or more acres. All dischargers including MDC are responsible for compliance with the Clean Water Act. MDC is fully culpable for violating the terms and conditions of the General Permit, which implement the Clean Water Act. MDC had been repeatedly warned about these violations, and failed to correct them.

One of the construction sites, Lot 12, is less than five acres. MDC indicated that the site did not require coverage under the General Permit. However, MDC obtained coverage under the General Permit and violated the terms and conditions of the Permit. In case MDC had not obtained coverage under the General Permit, it would still be in violation of the California Water Code and the federal Clean Water Act for discharging pollutants into waters of the United States.

MDC has indicated that some of the sediment discharges into the Barrington Avenue storm drain was caused by a fire hydrant blow out on the opposite side of the street. Staff's investigations indicated that there was a fire hydrant blow out on June 18, 2001 and on June 20, 2001, the City/Water District cleaned up the streets. This incident had minimal impacts on the violations observed within and around the two construction sites.

5. Economic Benefit or Savings, if any Resulting from the Violations

By failing to effectively implement and/or maintain BMPs, MDC gained a significant economic advantage over their competitors. Economic savings from these violations include savings from not implementing appropriate erosion control measures, not sweeping the streets prior to wash down, not monitoring the BMPs, and not replacing the deteriorated sandbags. These savings have been estimated to be around \$800 per acre. The combined size of the two MDC construction sites is 8.36 acres.

Savings from the two construction sites ( $\$800 \times 8.36$  acres) = \$ 6,688

### STATEWIDE ENFORCEMENT POLICY

On April 18, 1996, the State Water Resources Control Board adopted a State Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are consistent, predicable, and fair. The above-described administrative civil liability complaint is in accordance with the Statewide Enforcement Policy.

### RECOMMENDATIONS

After consideration of the above factors, staff recommends that the Board affirm the assessment of \$40,000 specified in the Administrative Civil Liability Complaint issued by the Executive Officer on August 16, 2001.

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION**

<b>In the matter of:</b>	)	<b>Complaint No. 01-81</b>
	)	<b>for</b>
<b>Master Development Corporation</b>	)	<b>Administrative Civil Liability</b>
<b>1401 Quail Street, Suite 100</b>	)	
<b>Newport Beach, CA 92660</b>	)	
	)	
<b>Attn: Mr. Dave Walker</b>	)	

**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. Master Development Corporation (MDC) 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) of the California Water Code.
2. 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 September 14, 2001 at the Orange County Water District, 10500 Ellis Avenue, in the City of Fountain Valley. MDC 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. MDC's construction sites, Crossroads Collection Project - Lot 9 and Lot 12, in the City of Ontario, are regulated under the State's General Permit for Storm Water Discharges Associated with Construction Activities, Order No. 99-08-DWQ, NPDES No. CAS000002 (General Permit), WDID Nos. 836S313033 and 836S313034.
5. MDC is alleged to have violated Provisions A.2, C.2, and C.3 of the General Permit. MDC failed to properly implement an effective Storm Water Pollution Prevention Plan and maintain Best Management Practices (BMPs), and discharged non- storm water containing pollutants to waters of the United States from the construction sites.
6. This complaint is based on the following facts:
  - a) On October 31, 2000, Board staff conducted a routine inspection of the two construction sites and observed sediments on the streets with no BMPs

implemented to control discharge of pollutants into the storm drain. Concrete wash water stains were evident around one of the storm drain catch basin inlets in Lot 12. The site superintendent stated that the streets were being flushed three days a week. Board staff advised the site superintendent that flushing down sediments into the storm drain is not an acceptable practice. Re-inspection of the two sites on November 2, 2000 revealed that the streets had been swept and the catch basins cleaned up.

- b) On June 6, 2001, Board staff re-inspected the two construction sites in response to Notices of Termination (NOTs) filed by MDC in May 2001. Board staff observed that neither of the two sites had been fully stabilized, which resulted in the denial of the NOTs. Landscaping activities at the sites were causing displacement of significant amounts of sediments onto the adjacent streets and pavements. Tracking of sediments was observed along the two driveways at Lot 9. Excess irrigation water from the partially landscaped areas was transporting sediments into the adjacent storm drains. The only BMP implemented at either site was a sandbag barrier placed around the storm drain inlet located on Barrington Avenue, downstream of Lot 9 and Lot 12. Heavy accumulation of sediments was observed behind this sandbag barrier, indicating that it had become ineffective in controlling sediments from entering the storm drain. Heavy accumulation of sediments was also observed around and leading to an unprotected catch basin within Lot 12 and three unprotected catch basins in Lot 9. Significant amounts of sediments were observed inside the catch basins themselves. A considerable amount of trash was also observed in the catch basins located within Lot 9. All these observations show that MDC had failed to properly implement an effective SWPPP and maintain BMPs at either site. As this was a late afternoon inspection, no one was present at the site to address the observed violations.
- c) On June 7, 2001, Board staff spoke with the contact person at MDC's headquarters to inform him of the violations and the need for immediate corrective action. The phone notification was followed by a written Notice of Violation for each site, dated June 8, 2001, outlining the General Permit violations observed.
- d) On July 10, 2001, Board staff re-inspected the sites and observed that sandbag barriers were placed to protect the storm drain inlets located within the two sites. However, heavy accumulation of sediments observed behind the sandbag barriers at Lot 12 indicated that the BMP was ineffective in preventing sediments from entering the storm drain. Additionally, some of the sandbags around the storm drain inlets within Lot 9 had deteriorated, creating an additional source of pollutants. Gaps existed between these sandbags, leaving the storm drain inlets not fully protected. A large pile of soil was placed adjacent to one of these inadequately protected storm drain inlets. Significant amounts of sediments were again observed on the streets and the pavement at both sites, continuing to pose a potential threat to water quality. All of these conditions indicated inadequate BMPs and a lack of proper maintenance of the BMPs at the two construction sites. The site superintendent was informed of the violations observed.

- e) On July 12, 2001, Board staff returned to the site and found that the deteriorated sandbags at two of the three storm drain inlets located within Lot 9 had been replaced and the gaps filled. However, the deteriorated sandbags around the third storm drain inlet located near the loading dock of the newly constructed building had not been replaced. There was a heavy accumulation of sediments around the Barrington Avenue and Lot 12 storm drain inlets. Past discharge of sediments into the Barrington Avenue storm drain catch basin inlet was evident, and a significant amount of sediments was observed in this catch basin. The drainage pipe within this catch basin was more than  $\frac{3}{4}$  filled with sediments. The site superintendent was not present at either of the two sites at the time of this inspection.
  - f) On July 31, 2001, Board staff drove by the two sites and found that landscaping had been completed but evidence of past and potential sediment discharges were noted. Some of the sandbags around the Lot 9 storm drain inlets were again deteriorated. The sandbags around the storm drain drop inlet structure near the loading dock at Lot 9 were crushed and sediments were observed directly on the grates. Board staff also observed that nothing appeared to have been done with the heavy accumulation of sediments behind the sandbag barriers around the Lot 12 storm drain inlets. A long trail of sediments was observed in the drainage swale within Lot 12. Patches of sediments remained on the pavement within Lot 9.
  - g) On August 1, 2001, Board staff returned to the sites in an attempt to get the site superintendent to correct the recurring violations. He could not be located but Board staff was able to discuss the violations with the Lot 9 building occupant. The building occupant indicated that he had requested the site superintendent to remove the remaining patches of sediments from the pavement and was assured that a water truck will flush the sediments into the storm drain. This statement suggested willful violation of the General Permit requirements by the site superintendent especially since he had been advised a number of times by Board staff that flushing of sediments into the storm drain is a violation of the General Permit.
7. MDC is alleged to have violated Provisions A.2, C.2 and C.3 of the General Permit. MDC violated Provision C.2 by failing to properly develop and implement an effective SWPPP and violated Provisions A.2 and C.3 by discharging pollutants to waters of the United States from the construction sites. Pursuant to Water Code Section 13385 (a)(2), civil liability may be imposed for the preceding violations.
  8. 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.
  9. Pursuant to Section 13385(c), MDC is civilly liable in the amount of \$100,000 (\$10,000 per day for five days of violation for two sites). The five days when the violations were

observed by Board staff are: 6/6/01, 7/10/01, 7/12/01, 7/31/01, and 8/1/01. The total maximum assessment is \$100,000.

10. Regional Board staff spent a total of 12 hours investigating this incident (@\$70.00 per hour), for a total staff time cost of \$840. Master Development Corporation saved approximately \$6,500 (8.36 acres for two sites at \$800/acre) by not implementing appropriate BMPs, including not sweeping the streets, and not properly maintaining the BMPs. These factors were considered in assessing the penalty indicated in Paragraph 11, below.

11. Section 13385 (e) specifies factors that the Board shall consider in establishing the amount of civil liability. After consideration of those factors, the Executive Officer proposes civil liability be imposed on MDC by the Board in the amount of \$40,000 for the violations cited above.

### **WAIVER OF HEARING**

Master Development Corporation may waive its right to a hearing. If Master Development Corporation chooses to do so, please sign the attached waiver and return it, together with a check or money order, payable to the State Water Resources Control Board, for the amount of civil liability proposed in Paragraph 11, above, to:

Santa Ana Regional Water Quality Control Board  
3737 Main Street, Suite 500  
Riverside, CA 92501-3348

If you have any questions, please contact Ms. Milasol Gaslan at (909) 782-4419 or Mr. Michael Adackapara at (909) 782-3238. All legal questions should be referred to the Regional Board's staff counsel, Mr. Ted Cobb, at (916) 341-5171.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Gerard J. Thibeault  
Executive Officer

In the matter of: ) Complaint No. 01-81  
 )  
Master Development Corporation ) for  
1401 Quail Street, Suite 100 ) Administrative Civil Liability  
Newport Beach, CA 92660-3028 )

## WAIVER OF HEARING

I agree to waive Master Development Corporation's right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. 01-81. Enclosed is a check, made payable to the State Water Resources Control Board, in the amount of \$40,000. I understand that I am giving up Master Development Corporation'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 Master Development Corporation