STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:	)	Complaint No. R8-2004-0082 (revised)
	)	for
City of La Habra	)	Administrative Civil Liability
201 East La Habra Boulevard	)	
La Habra, CA 90631	)	
Attention: Mr. Brad Bridenbecker	)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The City of La Habra (City) 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 ninety days of the date of issuance of this Complaint. The hearing in this matter will be scheduled for the Board's regular meeting on March 4, 2005 at the City Council Chambers of Loma Linda. You or your 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. Urban runoff from the City is regulated under the National Pollutant Discharge Elimination System (NPDES) Permit No. CAS618030, Areawide Urban Storm Water Runoff Permit for Orange County and the Incorporated Cities, Waste Discharge Requirements, Order No. R8-2002-0010 (MS4 Permit). The current MS4 permit is the third term. The first term permit was adopted in 1990, and the second term permit was adopted in 1996.

5. As part of the first term permit, the County of Orange and the incorporated cities (permittees) developed a Drainage Area Management Plan (DAMP) in 1993, which was approved by the Executive Officer, that served as the permittees' primary policy and implementation document during the first two permit terms. As part of the third term renewal process, the permittees submitted an updated DAMP with their Report of Waste Discharge. The revised DAMP (2000 DAMP) was incorporated into the current MS4 Permit when it was adopted on January 19, 2002.

6. Section XIX.2 of the MS4 Permit states, "The DAMP, as included in the Report of Waste Discharge, including any approved amendments thereto, is hereby made an enforceable component of this order."

7. The 2002 MS4 Permit issued by the San Diego Regional Board for the County of Orange and the 11 cities within its jurisdiction, required that each municipality prepare it's own Local Implementation Plan (LIP) detailing the specific implementation plan of the individual municipality, as opposed to the county-wide DAMP. In addition, each municipality would also prepare its own Program Effectiveness Assessment (PEA) to supplement the county-wide Annual Report. To maintain county-wide continuity, each of the Orange County cities within the Santa Ana Region prepared and submitted LIPs and PEAs as part of the permittee's 2002-03 Annual Report submittal.

8. On January 7 and 8, 2004, Board staff conducted an audit of the City's MS4 program as part of an assessment of the overall County-wide program. That audit was designed to examine both the effectiveness of the program, as implemented by the City, as well as the effectiveness of field program execution. On January 30, 2004, an evaluation report, based on the audit, was submitted to the City, and on March 1, 2004, the City provided a response to the evaluation report. This response included a revised LIP and a revised PEA (both dated February 2004).

9. Based on the audit and the subsequent information provided by the City, the City is alleged to have violated the following provisions of the MS4 Permit: **Monitoring & Reporting Program Section IV.2** ("The permittees shall submit an ANNUAL PROGRESS REPORT ... no later than November 15th of each year," and "At a minimum, [the] annual progress report shall include the following: A. A review of the status of program implementation and compliance (or non-compliance) with the schedules contained in this order;..."); **Sections IX.1 and 6** ("Each permittee shall develop by July 1, 2003, an inventory of industrial facilities ... [t]his inventory must be maintained in a computer-based database system ... [a] copy of this database must be provided to the Regional Board with each annual report"); **Section IX.3** ("... All high priority facilities ... shall be inspected and a report on these inspections shall be submitted by November 15, 2003..."); **Section IX.9** ("... Each permittee shall have adequately trained their [industrial] inspection staff by July 1, 2003..."); **Section VIII.3.a** ("During the wet season ... all high priority [construction] sites are to be inspected, in their entirety, once a month. All medium priority sites are to be inspected at least twice during the wet season. All low priority sites are to be inspected at least once during the wet season."); **Section VIII.3.c** ("Information [regarding construction site inspections] ... must be maintained in a database ...[and a] copy of this database must be provided to the Regional Board with each annual report."); **Section XIV.1** ("... By July 1 of each year, the permittees shall review all their activities and facilities to determine the need for any revisions to the Environmental Performance Reports"); **Section II.3** ("[Co-permittees shall p]ursue enforcement actions as necessary to ensure compliance with the storm water .... Ordinances..."); **Section III.3** ("The permittees

shall effectively prohibit the discharge of non-storm water into the MS4..."); **Section VI.2** ("The permittees shall take appropriate enforcement actions against any violators of their Water Quality Ordinance ...[a]ll enforcement actions shall be consistent with the Enforcement Consistency Guide."); and **Section 10.3.2 of the 2000 DAMP** ("Commencing in 99/00 the Permittees report on ... enforcement actions that were taken, the number of repeat violators and the incremental enforcement actions ...").

10. This Complaint is based on the following facts:

    a. The PEA prepared by the City and submitted on behalf of the City by the County on November 17, 2003, did not meet the minimum requirements set forth in Section IV.2 of the Monitoring & Reporting Program portion of the MS4 Permit. That PEA was, for the most part, the template document prepared by the County as Principal Permittee, with some template language still in place (e.g. "Add text discussing increases/decreases in the number of water pollution complaints/incidents received or the sources of the complaints compared to the previous reporting year", page C-10-4) and was missing significant portions of required data. A revised PEA was submitted by the City on March 1, 2004 with the City response to the evaluation report. That new PEA was described by the City as "revised ... to accurately reflect the actions taken during the reporting period." Board staff's review of the revised PEA revealed that the City had addressed the major deficiencies, and while there were still shortcomings in the revised PEA, it met the standard of an 'acceptable' submittal.

    b. Sections IX.1 and IX.6 of the MS4 Permit require the development of a database inventorying industrial facilities within the City and storing inspection data by July 1, 2003. Included in the minimum inspection data required by the MS4 Permit are the Standard Industrial Classification (SIC) code(s) applicable to the industrial processes that occur at the facility, the size of the facility and the inspection dates, the inspectors present and results of the inspection. The database was not submitted to Board staff until August 1, 2004, well after the July 1, 2003 deadline and the November 15, 2003 Annual Report submittal.

    c. Section IX.3 of the MS4 Permit requires that, by November 15, 2003, all high priority industrial facilities be inspected and a report on these inspections be submitted to Board staff. Those inspections must include, at a minimum, a review of material and waste handling and storage practices, pollutant control BMP implementation and maintenance and evidence of past or present unauthorized non-storm water discharges. Based on information gathered at the audit and from the March 1, 2004 and August 1, 2004 responses from the City, all industrial 'inspections' conducted by the November 15, 2003 deadline were either drive-by inspections for the purpose of prioritizing the facility, providing a water quality brochure to the

facility manager, or "verbally educating the facility manager or owner." None of these 'inspections' actually identified or documented the potential for pollutant discharge from the facility. According to information provided by the City on August 1, 2004, all high priority industrial sites were inspected by June 16, 2004.

d. Section IX.9 of the MS4 Permit requires: that all inspection staff be adequately trained by July 1, 2003; that training programs should be coordinated with Board staff and that Board staff receive prior notification of training; and that all new inspection staff be trained within one month of starting inspection duties. Based on the March 1, 2004 City response, training for City inspection staff was to be held on March 25, 2004.

e. Section VIII.1 of the MS4 Permit lists the criteria for inclusion of a construction site in a municipality's inventory. These criteria include issuance of a building or grading permit and at least one of the following activities: soil movement, uncovered storage of materials/wastes such as dirt, sand or fertilizer, and exterior mixing of cementaceous products such as concrete mortar or stucco. Section VIII.3.a sets forth the following inspection frequency for all construction sites that meet the conditions described above, "During the wet season (i.e., October 1 through April 30 of each year), all high priority sites are to be inspected, in their entirety, once a month. All medium priority sites are to be inspected at least twice during the wet season. All low priority sites are to be inspected at least once during the wet season." Based on all information provided by the City, it is clear that all construction projects meeting the aforementioned criteria were not included in the City's construction inspection database and were not inspected, and that those inspections that did take place were not conducted in compliance with the requirements in the MS4 Permit.

f. Section VIII.3.c of the MS4 Permit requires that the construction site inspection database is to include: inspection dates, the inspectors present and results of all inspections conducted by City staff. A copy of the database is to be provided to the Regional Board with each annual report. The information provided with the PEA, submitted on November 17, 2003, and the revised PEA, submitted on March 24, 2004, did not meet the requirements of the MS4 Permit.

g. Section XIV.1 of the MS4 Permit requires that the City review all of its activities and facilities every year. The revised PEA, submitted on March 1, 2004, identifies 72 municipal facilities and field programs and states that none had fully implemented BMPs and 16 either had no BMPs or "Not Fully Implemented" BMPs and required corrective actions. At a minimum, the City should have inspection documentation for the review of the 72 municipal facilities and field programs and should have completed Environmental Performance Reports (EPRs) for the 16 facilities/activities

that required corrective action. No EPRs were submitted with the November 15, 2003 PEA, and when the PEA was resubmitted on March 1, 2004, only nine (9) facilities/activities had EPRs issued for them, identifying corrective actions that needed to be taken. Finally, of the EPRs submitted, all but one were incomplete.

h. Sections II.3, III.3 and VI.2 of the MS4 Permit require the City to effectively prohibit the discharge of non-storm water (illegal discharges) through enforcement of it's Water Quality Ordinance. Further, those enforcement actions are to be consistent with the County-prepared Enforcement Consistency Guide, and per Section 10.3.2 of the 2000 DAMP, should include progressive enforcement actions for repeat violators. The results of the audit and review of the City's submittals have revealed violations of the aforementioned requirements. First, there were serious discrepancies between the enforcement actions reported in the original PEA (11/17/03), the revised PEA (3/1/04) and the NPDES complaint/response log that was submitted as part of the March 1, 2004 submittal. Second, the City has shown a lack of progressive enforcement and enforcement consistency including repeated verbal warnings to a company discharging plaster to the MS4 and inadequate enforcement imposed on a firm that refused entry to City staff that were investigating an illegal discharge to the MS4 and on a pressure washer who presented a fake permit to City staff.

i. A Notice of Violation was issued to the City on July 23, 2004, for the above program deficiencies.

11. Section 13385(a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385(a)(3) provides that any person who violates monitoring, inspection, reporting and recordkeeping 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 each violation occurs.

12. Pursuant to Section 13385(c), the City is civilly liable for 106 days of violation of Section IV.2 of the MRP portion of the MS4 Permit at $10,000, per day for a maximum amount of $1,060,000. The City is civilly liable for 396 days of violation of Sections IX.1 and IX.6 of the MS4 Permit at $10,000 per day, for a maximum amount of $3,960,000. The City is civilly liable for 213 days of violation of Section IX.3 of the MS4 Permit at $10,000 per day, for a maximum amount of $2,130,000. The City is civilly liable for 267 days of violation of Section IX.9 of the MS4 Permit at $10,000 per day, for a maximum amount of $2,670,000. The City is civilly liable for 211 days of violation of Section VIII.3.a of the MS4 Permit at $10,000 per day, for a maximum amount of $2,110,000. The City is civilly liable for 385 days of violation of Section VIII.3.c of the MS4 Permit at $10,000 per day, for a maximum amount of $3,850,000. This results in the City being civilly liable for a total maximum amount of $15,780,000.

13. Regional Board staff spent a total of 200 hours investigating the City's compliance with the MS4 Permit (@$70/hr, the total cost for staff time is $14,000). The City saved at least $75,000 by not hiring adequate staff to manage the NPDES program under the MS4 Permit during 2002, 2003 and the first part of 2004.

14. 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.

Factor	Comment
A. Nature, Circumstances, Extent and Gravity of Violation	The City has failed to fully implement a number of programs under the MS4 Permit which has resulted in the discharge of pollutants to receiving waters within this region.
B. Culpability	The discharger is entirely culpable for the violations.
C. Economic Benefit or Savings	The discharger saved at least $75,000 by not having adequate staffing to manage and comply with permit requirements during 2002, 2003 and early 2004.
D. Prior History of Violations	There have been no previous violations noted for the City.
E. Staff Costs	Regional Board staff spent approximately 200 hours conducting the audit, reviewing City submittals and preparing this enforcement action (@$70 per hour, the total cost for staff time is $14,000).
F. Ability to pay	The City has not provided any information to indicate that it is unable to pay the proposed amount.

15. After consideration of these factors, and following discussions with the City, the Executive Officer proposes that this matter be resolved on the terms and conditions set forth below. Accordingly, the Executive Officer proposes that civil liability be assessed and imposed, pursuant to Water Code §13385, on the City of La Habra in the total amount of $75,000 (ACL Amount) for the violations alleged herein, to be paid as follows:

    a. By March 4, 2005, the City shall submit a cashier's check in the amount of $37,500, as one-half of the $75,000 ACL Amount, to the Executive

Officer, payable to "State Water Resources Control Board Cleanup and Abatement Account."

b. The remaining one-half of the $75,000 ACL amount ($37,500) will be suspended and used to fund a Supplemental Environmental Project (SEP) as follows:

(1) By March 4, 2005, the City shall provide a letter to the Executive Officer confirming that the City will utilize the remaining $37,500 of the ACL Amount to fund an SEP for his approval.

(2) By April 6, 2005, the City shall provide a letter to the Executive Officer describing in detail the proposed SEP, and providing a proposed timeline for full implementation.

(3) Upon notification from the Executive Officer that the SEP has been approved, the City shall proceed to implement the approved SEP.

(4) Upon implementation and funding of the SEP by the City, the suspended one-half of the $75,000 ACL Amount ($37,500) will be deemed to have been paid and satisfied and the City shall have no further obligation to pay such amount.

c. In the event the City fails to fund the SEP, as provided herein, the remaining unpaid portion of ACL Amount shall become immediately due to the State Water Resources Control Board Cleanup and Abatement Account.

16. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code § 21000 et seq., in accordance with California Code of Regulations, title 14, § 15321.

17. You may waive your right to a hearing. If you waive your right to a hearing, please sign the attached waiver form and mail it, together with a check or money order payable to the State Water Resources Control Board, for the amount of mandatory penalties, as specified on the waiver. These documents should be mailed to Sacramento in the enclosed envelope.

If you have any questions, please contact Aaron Buck, at (951) 782-4469 or Mark Smythe at (951) 782-4998. For legal questions, contact the Regional Board's staff counsel, Jorge Leon at (916) 341-5180.

3/1/05
Date

for Gerard J. Thibeault
Executive Officer

In the matter of: City of La Habra 201 East La Habra Boulevard La Habra, CA 90631 Attention: Mr. Brad Bridenbecker	))))))	Complaint No. R8-2004-0082 (revised) for Administrative Civil Liability

WAIVER OF HEARING

I agree to waive the right of the City of La Habra to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2004-0082 (revised).

The City of La Habra agrees to pay the proposed liability amount of $75,000, as presented in Paragraph 15 of Complaint No. R8-2004-0082 (revised), and as described herein. The City of La Habra agrees to fund a Supplemental Environmental Project, acceptable to the Executive Officer, in the amount of $37,500, to satisfy a portion of the proposed liability. The balance of the remaining liability, $37,500, will be paid to the State Water Resources Control Board. I have enclosed a check or money order, made payable to the State Water Resources Control Board Cleanup and Abatement Account, in the amount of $37,500. I understand that I am giving up the right of the City of La Habra 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.

In signing this waiver, the City understands that (a) the City's payment of the ACL Amount; (b) the City's funding and implementation of the SEP; and (c) its waiver of a hearing shall *not* be treated as nor constitute an admission for any purpose of any fault or liability by the City, whether or not alleged in this ACL Complaint, and such actions by the City in resolution of the alleged violations set forth in this ACL Complaint are in compromise and settlement of disputed claims, and that the City disputes the allegations set forth in this ACL Complaint or that the City has violated the MS4 Permit.

The City further understands that the City's funding and implementation of the SEP and payment of the $37,500 to the State Water Resources Control Board Cleanup and Abatement Account, as provided in this ACL Complaint (a) shall be in full satisfaction of the liability alleged in this ACL Complaint and all penalties relating to such alleged violations, (b) shall be in full payment and satisfaction of all Board investigation, enforcement and other costs associated with this ACL Complaint and the violations alleged herein. Upon payment by the City of the ACL Amount, as provided herein, the Board will seek no further administrative, civil or criminal liability remedies nor will it pursue any judicial remedies against the City for the violations of the MS4 Permit alleged in this ACL Complaint

_____ Date

_____ City of La Habra