STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:	)	Complaint No. R8-2007-0054
	)	for
City of Cypress	)	Administrative Civil Liability
5275 Orange Avenue	)	
Cypress, CA 90630	)	
Attention: Mr. John Bahorski	)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The City of Cypress (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 is scheduled for the Board's regular meeting of September 7, 2007 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. The City is a co-permittee 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 of this permit, having been originally adopted in 1990, and renewed 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 its 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 was required to prepare its own Program Effectiveness Assessment (PEA) to supplement the county-wide Annual Report. To maintain county-wide consistency, 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 September 20 and 21, 2005, 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 October 25, 2005, an evaluation report, based on the audit, was submitted to the City, and on November 22, 2005, the City provided a response to the evaluation report. While the City's response addressed some of the concerns identified in the audit evaluation report, there remained extensive shortcomings in the City's storm water program that could not be justified. Based upon the audit's findings and the City's response, a subsequent Notice of Violation, dated March 29, 2006, was issued to the City of Cypress for alleged violations of provisions of the MS4 Permit.

9. The City is alleged to have violated the following provisions of the MS4 Permit:

    a. **Section II.3** [Co-permittees shall p]ursue enforcement actions as necessary to ensure compliance with the storm water .... ordinances...";

    b. **Section III.3** "The permittees shall effectively prohibit the discharge of non-storm water into the MS4...";

    c. **Section VI.2** "The permittees shall take appropriate enforcement actions against any violators of their Water Quality Ordinance ... [and a]ll enforcement actions shall be consistent with the Enforcement Consistency Guide.";

    d. **Section 10.3.2 of the 2000 DAMP** "Commencing in 99/00 the Permittees shall report on ... enforcement actions that were taken, the number of repeat violators and the incremental enforcement actions ...";

    e. **Section VIII.1** "Each permittee shall develop by October 15, 2002, an inventory of all construction sites ... for which ... permits are issued and activities at the site include: soil movement; ... storage of ... dirt, sand or fertilizer; or exterior mixing of ... concrete, mortar or stucco.";

    f. **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.";

g. **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.";

h. **Section IX.1** "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 [described in Section IX.I] and must include... SIC code(s), General Industrial Permit WDID # (if any), size, location, etc.";

i. **Section IX.3** "All high priority facilities ... shall be inspected and a report on these inspections shall be submitted by November 15, 2003...";

j. **Section IX.4** "[A]ll medium priority [industrial] sites are to be inspected at least once every two years; and all low priority sites are to be inspected at least once per permit cycle.";

k. **Section IX.6** "A copy of this database must be provided to the Regional Board with each annual report.";

l. **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.";

m. **Section XIV.6** "Each permittee shall inspect, clean and maintain at least 80% of its drainage facilities on an annual basis ..."; and

n. **Section XIV.7** "By July 1, 2004 the Permittees shall develop and submit for approval by the Executive Officer, a more aggressive program for the cleaning of drainage facilities ...".

10. This Complaint is based on the following facts:

a. Sections II.3, III.3 and VI.2 of the MS4 Permit require that the City effectively prohibit the discharge of non-storm water (illegal discharges) through the enforcement of their Water Quality Ordinance. Further, those enforcement actions are to be consistent with the County-prepared Enforcement Consistency Guide, and Section 10.3.2 of the 2000 DAMP, which specifies progressive enforcement actions for repeat violators. A review of the City's records, provided both during the audit and in the PEAs submitted by the City, demonstrated a repeated lack of follow-up inspections and/or progressive enforcement actions for sites that were identified as violating the City's Water Quality Ordinance.

b. Section VIII.1 of the MS4 Permit requires that each permittee develop by October 15, 2002, an inventory of all construction sites for which permits are issued and for which activities at the sites include: soil movement; storage of dirt, sand or fertilizer; or exterior mixing of concrete, mortar or stucco. This inventory

information was required to be compiled into a database system by this deadline and be maintained on a regular basis. The database was not completed nor maintained according to requirements within this Section of the MS4 Permit.

c. Section VIII.3(a) of the MS4 Permit requires permittees to inspect all high priority construction sites, in their entirety, once a month during the wet season. Further, all medium priority sites are to be inspected at least twice during the wet season and all low priority construction sites are to be inspected at least once during the wet season. The report submitted with the 2003/4 PEA did not contain the required construction site information and did not include inspection information or findings.

d. Section VIII.3(c) of the MS4 Permit requires that 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. The report submitted with the 2003/4 PEA identified 173 construction sites within the City's jurisdiction. This report, as well as other reports submitted with the 2002/03 PEA, did not contain the required construction site information and did not include the required inspection information or results in an electronic database format, or otherwise.

e. Sections IX.1 and IX.6 of the MS4 Permit require the development of a database by July 1, 2003, inventorying industrial facilities within the City and storing inspection data. 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, the inspection dates, the inspectors present and findings of the inspection. The report submitted with the 2003/4 PEA did not contain all required facility information and did not include inspection information or results.

f. 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 during the audit, from the PEA and from the inspection database, only three (3) of the 10 industrial facilities required to be inspected by the November 15, 2003 deadline, had been inspected.

g. Section IX.4 of the MS4 Permit requires that, after July 1, 2003, all medium priority industrial facilities must be inspected at least once every two years, and a report on these inspections be submitted to Board staff. Based on information gathered at the audit and from the 2003/4 PEA, only two (2) of the 36 facilities listed in the City's inventory were inspected during the 2003/04 reporting period, and three (3) of these facilities were inspected during the 2004/05 reporting period.

h. Section XIV.1 requires that the permittees review all municipal activities and facilities by July 1 of each year, to determine the need for any revisions to the Environmental Program Reviews (EPRs) for those municipal activities and facilities. The City's municipal fixed facilities inventory lists 23 locations in Sections C-5.2 and C-5.3 in the City's 2003/04 PEA, however no EPRs were submitted for municipal activities. The inspections for the facility EPRs submitted as part of the 2003/04 PEA, were all reportedly conducted on September 30, 2004, which is beyond the July 1 deadline and therefore falls outside the reporting period of the 2003/4 PEA. Further, of the 23 facility EPRs, only one (1) contained any inspection/findings information beyond the name and address of the facility and the date the EPR was filled out. Failure to conduct annual inspections of all fixed facilities and field activities and submit findings in EPRs is a violation of Section XIV.1 of the MS4 Permit.

i. Section XIV.6 of the MS4 Permit requires permittees to inspect, clean and maintain at least 80% of its drainage facilities on an annual basis, with 100% of the facilities included in a two-year period. The City reported cleaning only 48 of its inventory of 567 catch basins in the 2003/04 PEA. This report shows that less than 12% of City's catch basin inventory was cleaned during this reporting period, which constitutes a violation of the MS4 Permit.

j. Section XIV.7 of the MS4 Permit requires that permittees develop a more aggressive program for the cleaning of drainage facilities and submit that plan for approval by the Executive Officer by July 1, 2004. The City's *Maintenance Procedure DF-1 Drainage Facility Operation and Maintenance* (included in Exhibit A-5-III of the City's June, 2003 LIP) include the following: "annually inspect and clean drainage facilities as needed," "maintain appropriate records," "conduct annual visual inspections during the dry season to determine if there are problem inlets where sediment/trash or other pollutants accumulate" and "train crews in proper maintenance activities, including record keeping and disposal." During the municipal audit performed on September 20-21, 2005, City staff stated that the City implements a 100% per year catch basin inspection and clean-out program. However, during the audit City personnel stated that no formal records were kept by the City and no inspection schedule was found to be maintained, both of which constitutes violations of the MS4 Permit, and the claim of a 100% inspection program was contradicted by PEA submittals for 2002/03, 2003/04 and 2004/05.

k. A Notice of Violation was issued to the City on March 29, 2006, for the above program deficiencies. The City of Cypress responded to the Notice of Violation in an April 20, 2006 correspondence, however the City's response failed to provide sufficient information to justify the elimination of any of the permit violations noted in the Notice of Violation.

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):

    a. For violations associated with failure to develop and maintain the construction site database, the City is civilly liable for 1060 days of violation of Section VIII.1 of the MS4 Permit at $10,000 per day, for a maximum amount of $10,600,000;

    b. For violations associated with failure to conduct construction inspections, the City is civilly liable for 1060 days of violation of Section VIII.3.a of the MS4 Permit at $10,000 per day, for a maximum amount of $10,600,000.

    c. For violations associated with failure to maintain construction inspection data in a database and submit that database as part of the annual report, the City is civilly liable for 776 days of violation of Section VIII.3.c of the MS4 Permit at $10,000 per day, for a maximum amount of $7,760,000.

    d. For violations associated with failure to develop and maintain the industrial inspection database, the City is civilly liable for 789 days of violation of Sections IX.1 and IX.6 of the MS4 Permit at $10,000 per day, for a maximum amount of $7,890,000;

    e. For violations associated with failure to conduct industrial inspections of high priority sites, the City is civilly liable for 309 days of violation of Section IX.3 of the MS4 Permit at $10,000 per day, for a maximum amount of $3,090,000. For failure to conduct industrial inspections of medium and low priority sites, the City is civilly liable for 812 days of violation of Section IX.4 of the MS4 Permit at $10,000 per day, for a maximum amount of $8,120,000;

    f. For violations associated with failure to clean and maintain 80% of the municipality's catch basins on an annual basis, the City is civilly liable for 994 days of violation of Section XIV.6 of the MS4 Permit at $10,000 per day, for a maximum amount of $9,940,000.

    g. The maximum amount for which the City is civilly liable is the total of the above, or $58,000,000.

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). Regional Board staff estimated the cost savings realized by the City by having insufficient staffing to: fully

conduct construction, industrial inspections and the data input/analysis associated with those inspections; fully comply with the catch basin cleaning requirements; and, initiate enforcement activities to support compliance by dischargers to the City's MS4. Based on the minimum of 3 years that additional positions would have been required by the City, Regional Board staff estimate that the City saved at least $126,480 by not devoting adequate staffing levels to manage and implement the NPDES program under the MS4 Permit during 2002, 2003 and 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 by others to the City's MS4 system and 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 $126,480 by not having adequate staffing to manage and comply with permit requirements during 2002, 2003 and 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.

After consideration of these factors, the Executive Officer proposes that civil liability be imposed on the City of Cypress in the amount of $126,480 for the violations cited above.

WAIVER OF HEARING

The City may waive its right to a hearing. If the City waives its 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 penalties, as specified on the waiver. These documents should be mailed to this office in the enclosed envelope.

If you have any questions, please contact Marc Brown at (951) 321-4584 or Mark Smythe at (951) 782-4998. For legal questions, contact the Regional Board's legal counsel, Eric Spiess at (916) 341-5167.

7-17-07
Date

Gerard J. Thibeault
Executive Officer

In the matter of:	)	Complaint No. R8-2007-0054
	)	for
City of Cypress	)	Administrative Civil Liability
5275 Orange Avenue	)	
Cypress, CA 90630	)	
Attention: Mr. Dave Norman	)	

WAIVER OF HEARING

I agree to waive the right of the City of Cypress to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2007-0054. I have enclosed a check or money order, made payable to the State Water Resources Control Board, in the amount of $126,480. I understand that I am giving up the right of the City of Cypress 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 City of Cypress