STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:

City of Norco **2870 Clark Avenue** **Norco, CA 92860-1903** Attn: Mr. Jeff Allred

Complaint No. R8-2007-0056
For
Administrative Civil Liability

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The City of Norco (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 may be held before the Board within ninety (90) days of the date of issuance of this Complaint. The hearing in this matter is scheduled for the Board's regular meeting on November 30, 2007, at the Irvine Ranch Water District, 15600 Sand Canyon Avenue, Irvine. 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 and staff report relating to this item will be mailed to you not less than ten (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. CAS618033, Waste Discharge Requirements for the Riverside County Flood Control and Water Conservation District, the County of Riverside, and the Incorporated Cities of Riverside County within the Santa Ana Region, Areawide Urban Runoff, Order No. R8-2002-0011 (MS4 Permit). The current MS4 Permit is the third term of this permit, having been originally adopted in 1990 and renewed in 1996 and 2002.

5. The County of Riverside and the incorporated cities (permittees) developed a Drainage Area Management Plan (DAMP) that included programs and policies that the permittees were required to implement in order to reduce the discharge

of pollutants to receiving waters from urban runoff. Permittees submitted a Report of Waste Discharge (ROWD, permit renewal application), in which they made certain performance commitments. The City was a signatory to the ROWD and is bound by the commitments in the DAMP, ROWD and the terms and conditions of the MS4 Permit.

6. Section X.V(3) of the MS4 Permit states, "The DAMP and amendments thereto are hereby made an enforceable part of this Order.

7. Evaluation of compliance with the MS4 Permit is through information provided to Board staff by the City in the annual reports and through audits of the MS4 program. On August 2-3, 2006, Board staff conducted an audit of the City's MS4 program to determine the City's overall compliance with the MS4 Permit. At the conclusion of the audit, Board staff discussed the findings with representatives of the City. On February 23, 2007, the City was issued a Notice of Violation (NOV), and an evaluation report was included with the NOV. The City's March 20, 2007 response to the NOV was reviewed and considered prior to issuing this Complaint.

8. This Complaint is based on the allegation that the City has violated a number of provisions of the MS4 Permit. The violations noted are based on the program evaluation conducted by Board staff on August 2-3, 2006, an ongoing review of different elements of the City's storm water program, and/or the annual reports. The City has been under the MS4 Permit since 1990, and the audit indicated that the City has failed to implement provisions of the MS4 Permit and has done very little to control the discharge of pollutants to surface waters. The City is an equestrian community with approximately 20,000 horses (the City indicated that this number has not been substantiated; however, the City has not provided any other number). Horse excreta are a major source of pollutants. At the time of the audit, the City was still in the process of formulating a comprehensive manure control policy. Only a few of the violations noted during these review processes are cited below.

   This complaint is based on the following:

   a. ***Failure to Develop a Commercial Facilities Database:*** Section IX.C.1 of the MS4 Permit required the City to develop a computerized database of commercial sites within 18 months of the Permit adoption date. The City had not developed the required database at the time of the audit.
   b. ***Failure to Identify Significant Pollutant Sources:*** Section IX.C.2 of the MS4 Permit required the City to add additional categories of commercial facilities to the above list within 24 months of Permit adoption. These additional categories should have included facilities which are determined to be significant sources pollutants, such as horse stables. The City did not develop a list of commercial facilities and did not update it as required by the Permit.

c. ***Failure to Revise Compliance Assistance Program (CAP):*** Section IX.C.3 of the MS4 Permit required the City to revise the CAP to include certain additional inspection parameters for restaurant inspections. The City did not revise the CAP to include these parameters.

d. ***Failure to Prioritize Commercial Facilities for Inspection:*** Section IX.C.4 of the MS4 Permit required the City to prioritize the commercial sites and Section IX.C.5 required the City to conduct inspections based on the priority ranking. The City did not prepare a computerized database of commercial facilities, did not prioritize them and did not conduct inspections based on a priority ranking. The City's Fire Department conducts inspections of commercial facilities to determine compliance with fire safety requirements. In 2005, the City assigned commercial storm water inspection responsibilities to the Fire Department. Fire Department staff indicated that 2007 was the first year that inspections were conducted as part of the storm water inspection program.

e. ***Failure to Bring Facilities into Compliance:*** Section IX.C.5 of the MS4 Permit required the City to conduct frequent inspections of facilities found to be in violation of the City's ordinance to cause the facility to come into compliance. The City received a complaint regarding the TLC Horse Stables (TLC) in early May 2006. The complainant indicated that excessive amount of horse manure was being deposited within the TLC facility. TLC has 65 horse stables and routinely spreads horse manure on the horse tracks within the facility. On May 5, 2006, City's Animal Control Division inspected the facility and issued an "Order to Comply with City Ordinance". On May 22, 2006, when Regional Board staff responded to a complaint regarding the same facility, it was determined that the facility had not done anything to correct the situation, and the City had not followed up to assure compliance by the facility. Furthermore, this manure spreading operation at the facility had been going on for a number of years.

f. ***Lack of Enforcement:*** Section I.B(1)(f) of the MS4 Permit requires the City to continue to pursue enforcement actions as necessary for violations of Storm Water Ordinances, and other elements of its urban runoff management program. TLC staff indicated that, for at least the last ten years, TLC had been spreading manure on its horse tracks. The City did not take any enforcement actions against TLC, except for the "Order to Comply with City Ordinance," issued in 2006. Municipal Code, Chapter 15.80, provides legal authority for the City to take enforcement actions against violators. The City has development standards to mitigate erosion from sloped horse trails. However, there is no indication that the City has enforced its ordinances and standards. Even for repeated violations, the City typically issues oral warnings. Manure and eroded horse trails resulting in sediment deposition to the street were observed at a number of locations within the City. Both erosion and manure were observed on Valley Drive, Friesian Street, Red Rock Way, Gunsmoke Road, Harness Lane, and Hillside Avenue.

g. ***Inadequate Programs and Policies to Address Problems Associated with Horse Manure:*** The February 23, 2007 NOV to the City alleged that the

City failed to implement a number of provisions of the Permit, including not establishing a mechanism to adequately address pollutants from horse manure. In the City's March 20, 2007 response to the NOV, the City indicated that it has had a curbside manure collection service through its waste hauler for over a decade, and that the City is in the process of developing a comprehensive Manure Management Strategy. The City is also considering a "Mandatory Manure Collection" ordinance. The existing programs do not seem to be adequate to control the discharge of pollutants from residential and agricultural properties within the City. Section II. B of the Permit requires the City to reduce the discharge of pollutants, including trash and debris to Receiving Waters to the maximum extent practicable. The City has been slow in enacting appropriate programs and ordinances to address the horse manure problems.

h. ***Lack of Oversight of Industrial Facilities:*** Section IX.B of the MS4 Permit required the City to develop a computerized database of all industrial facilities, rank them according to their threat to water quality and conduct inspections based on their priority ranking. In its March 20, 2007 response to the NOV, the City indicated that it only has one industrial facility (Norco Ranch) and that the facility is routinely inspected by the City. However, on August 22, 2007, Regional Board's Executive Officer issued a Notice of Non-Compliance to Quick Crete, a concrete-casting facility. This industrial facility has been in operation within the City for the last three decades and did not have the necessary storm water permits. Sections IX.A.9 and IX.B.8 of the MS4 Permit require the City to provide information to the Regional Board regarding facilities operating without proper coverage under the State's General Permits.

i. ***Failure to Prepare and Implement a Site-specific Urban Runoff Pollution Prevention Plan for Municipal Facilities and Activities:*** Section XI.N of the MS4 Permit required the City to maintain an updated site-specific Urban Runoff Pollution Prevention Plan. At the time of the audit, the City had not developed a site-specific Urban Runoff Pollution Prevention Plan.

j. ***Failure to File a Notice of Intent and to Develop and Implement a Storm Water Pollution Prevention Plan for Municipal Construction Activities:*** Sections XII. D and F of the MS4 Permit require the City to file a Notice of Intent and to develop and implement a storm water pollution prevention plan. At least for one of the municipal construction sites inspected by Board staff during the audit, the City had not filed a Notice of Intent and had not prepared a storm water pollution prevention plan.

k. ***Lack of City's Oversight:*** Section VIII.B of the MS4 Permit requires the City to ensure that the provisions of the approved Water Quality Management Plan (WQMP) are properly implemented. The Engineer of Record for a project within the City, with an approved WQMP, had falsely certified that the control measures specified in the WQMP were constructed. These control measures were not constructed at the time of the program audit and field inspection by Board staff. The March 20, 2007 response to the NOV indicates that this problem has been rectified since then.

l. ***Failure to Properly Implement Provisions of the WQMP:*** A review of the WQMP approved by the City for the Hampton Inn project at 1530 Hamner Avenue indicated that the City had not properly implemented the approved County of Riverside WQMP. The project design included sub-surface infiltration vaults that the City had not ensured were designed according to the approved County of Riverside WQMP. On July 27, 2007, Board staff requested the City to implement corrective actions to remedy this situation.

9. Section 13385(a)(2) of the Water Code 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 ($10,000.00) for each day each violation occurs.

10. Pursuant to Section 13385(c), the maximum penalty that can be assessed for the violations cited above is shown in the table below. Some of the violations that could have been remedied by a single action (e.g., developing a computerized database for construction, industrial and commercial facilities) are grouped together and only significant violations were considered in calculating the maximum penalties in the table below.

Maximum Penalties for Significant Violations

Serial #	Permit Provisions Violated	Number of Days of Violation	Maximum Penalty @ $10,000/day of Violation	Remarks
1	Section I.B(1)(f)	72	$720,000	From 5/22/06 to 8/3/2006
2	Section VIII.B	1	$10,000	From 8/2/04 to 8/03/06
3	Section IX.B	818	$8,180,000	From 4/26/04 to 8/3/2006
4	Sections IX. C.1 & 2	818	$8,180,000	From 4/26/04 to 8/3/2006
5	Sections IX.C.3, 4 & 5	997	$9,970,000	From10/27/2003 to 8/3/2006
6	Section XI.N	1359	$13,590,000	From 10/25/2002 to 8/3/2006
7	Sections XII. D & F	1088	$10,880,000	From 6/1/2004 to 6/8/2007
		Total Maximum	$40,650,000	

As indicated in the table above, the maximum penalty for the significant violations cited above is $ $40,650,000.

11. Board staff spent a total of 159 hours investigating the City's compliance with the MS4 Permit, for a total expenditure of $16,593. The City saved at least $61,901 by

not hiring adequate staff to manage the NPDES program under the MS4 Permit from the issuance of the MS4 Permit on October 25, 2002 to July 31, 2007.

12. 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 economic benefits, if any, derived from the acts that constitute the violation. These factors are evaluated in the table below.

Factor	Comment
A. Nature, Circumstances, Extent, and Gravity of Violation	The City had been under the MS4 program for the last 17 years. The City has failed to fully implement a number of programs under the MS4 Permit that would have reduced the discharge of pollutants from the City's MS4 systems to waters of the U.S.
B. Culpability	The discharger was a signatory to the Report of Waste Discharge and has been a permittee under the municipal storm water program since 1990. The discharger is required to comply with the terms and conditions of the MS4 Permit.
C. Economic Benefit or Savings	The discharger saved at least $61,901 by not having adequate staffing to manage the storm water program.
D. Prior History of Violations	On July 29, 1997, Board staff audited the City's storm water program, and it was determined that the City was in violation of its permit (Order No. 96-30). On December 11, 1997, an NOV was issued to the City citing the permit violations.
E. Other Factors	Board staff spent approximately 159 hours conducting the audit and reviewing the City submittals and other submittals.
F. Ability to Pay	The City has not provided any information to indicate that it is unable to pay the proposed amount.

13. After consideration of these factors, the Executive Officer proposes that civil liability be imposed on the City of Norco in the amount of $78,494 for the violations cited above ($61,901 in cost savings + $16,593 for Regional Board staff costs = $78,494).

WAIVER OF HEARING

The City may waive its right to a hearing. If the City wishes to do so, please sign the attached waiver form and return it, together with a check payable to the State Water Resources Control Board, for the amount of civil liability proposed under Paragraph 13, above, to Regional Board's office in the enclosed preprinted envelope.

If you have any questions, please contact Mary Bartholomew at (951) 321-4586 or Milasol Gaslan at (951) 782-4419. For legal questions, contact Reed Sato, Chief of Enforcement at the State Water Resources Control Board, at (916) 341-5889.

10-1-07
Date

Gerard J. Thibeault
Executive Officer

In the matter of:

City of Norco
2870 Clark Avenue
Norco, CA 92860-1903

Atten: Mr. Jeff Allred

Complaint No. R8-2007-0056
for
Administrative Civil Liability

WAIVER OF HEARING

I agree to waive the right of the City of Norco to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2007-0056. I have enclosed a check for $78,494 made payable to the State Water Resources Control Board. I understand that I am giving up the right of the City of Norco 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 the City of Norco