STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:	)	
	)	
PCH Beach Resort, LLC.	)	Complaint No. R8-2003-0024
660 Newport Center Drive	)	for
Suite 1050	)	Administrative Civil Liability
Newport Beach, CA 92658-8680	)	
	)	
Attn: Mr. Riley Robinson	)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. PCH Beach Resort, LLC, (Beach Resort) 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 scheduled for the Board's regular meeting on July 1, 2003 at the City Council Chambers of Loma Linda located at 25541 Barton Road, Loma Linda, CA 92354. Beach Resort 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 and the staff report pertaining to item will be mailed to you not less than 10 days prior the hearing date. 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.

2. The storm water runoff from the Beach Resort construction site located in the City of Huntington Beach 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 30S309665.

3. Beach Resort is alleged to have violated Provisions B.1 ("Storm water discharges and authorized nonstorm water discharges to any surface or ground water shall not adversely impact human health or the environment") and B.2 ("The SWPPP developed for the construction activity covered by this General Permit shall be designed and implemented such that storm water discharges and authorized nonstorm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards . . .") of the General Permit. As more fully set forth below, Beach Resort allowed discharges of sediment-laden storm water, which caused or threatened to cause pollution, contamination, or nuisance. Beach Resort 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. Beach Resort 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.

4. This complaint is based on the following facts:

   a. According to the Notice of Intent, Beach Resort (formerly Waterfront Development, Inc.) is the owner and developer for the 45-acre construction site in the City of Huntington Beach located on the corner of Pacific Coast Highway and Beach Boulevard. According to the Site's Notice of Intent, construction commenced on April 21, 2002.

   b. On December 17, 2002, Board staff (staff) received a complaint following a rain event of one to two inches, on Dec. 15th and 16th. The complaint was that sediment-laden water had entered the storm drain system from the construction site. The complainant had taken photographs and obtained a sample of sediment-laden runoff for laboratory analysis. The photographs provided by the complainant included examples of soil eroding from slopes with no erosion control BMPs and discharges of sediment-laden runoff entering storm drain catch basin inlets where the sediment control BMPs had been removed during the storm. This sediment-laden storm water was analyzed and found to contain 1300 mg/l of Total Suspended Solids. The EPA benchmark for this discharge is 100 mg/l of TSS. The volume of water was calculated to be 86,000 gallons. The sediment-laden water discharged into the storm drain system. This crosses underneath Beach Boulevard and then empties directly into Huntington Beach Wetlands. The Water Quality Control Plan for the Santa Ana Region states that settleable solids are harmful to benthic organisms, can clog fish gills, and can interfere with respiration of aquatic fauna. Settleable solids also screen out light, hindering photosynthesis and normal aquatic plant growth and development.

   c. On December 18, 2002, staff inspected the site, and made the following determinations: 1) A review of the site SWPPP revealed that the plan was inadequate and did not identify an effective combination of erosion and sediment controls for the site; 2) The minimal BMPs identified in the SWPPP had not been completely implemented. Several steep slopes (3.3 acres) adjacent to Pacific Coast Highway and Beach Boulevard contained <u>no erosion controls</u> and only minimal sediment controls, which resulted in heavy erosion (as evidenced by erosion rills) during the previous storm event; and 3) Throughout the site, very poor housekeeping practices were observed, including sediment spilling out into the sidewalk and street, broken sandbags and dirt ramps built in the gutter to enable site entry by construction vehicles. Staff advised site personnel of the violations observed and requested site personnel address these issues immediately and bring the site into compliance with the General Permit.

d. On December 20, 2002, a follow up inspection was conducted by staff following a one inch rain event the previous night. The following violations were observed: 1) Site housekeeping was still in very poor condition. Sediment had been shoveled off of Beach Boulevard and Pacific Coast Highway, but remaining fines had not been swept. BMPs designed to protect catch basin inlets were still missing or had again been removed; 2) A milky white liquid was discharging from an uncovered onsite roll-off bin. The pollutants discharging from the bin had commingled with storm water runoff and migrated to an area near the protected wetland, north of the hotel site; 3) Some of the slopes and stockpiles identified during the December 18, 2002 inspection had been partially covered with visqueen plastic. However, the bases of those slopes as well as the entirety of other slopes were still not protected by erosion controls. As a consequence, further erosion had occurred on the exposed slopes, which had caused discharges of sediment to the street and local storm drain system at several points along the site perimeter. The volume of water discharged was calculated to be 43,000 gallons; 4) Part of the site perimeter had been protected with silt fence, a sediment control BMP, but the combination of improper installation, inadequate upgradient erosion controls and inadequate flow control had resulted in sections of the silt fence being undercut, causing discharges of sediment to the streets and the local storm drain system. In addition, sediment discharges to the street were noted in areas where silt fence had not been installed. As a consequence of the discharge of sediment and sediment-laden storm water runoff, catch basins within the site as well as on Beach Boulevard and PCH were filled with sediment; and 5) During the inspection, site workers were observed pumping sediment-laden storm water into a storm drain manhole. The sediment-laden storm water had previously flowed into and been retained in a set of tennis courts. No BMPs had been implemented to reduce the amount of sediment. This sediment-laden storm water was analyzed and found to contain 2400 mg/l of Total Suspended Solids. The EPA benchmark for this discharge is 100 mg/l of TSS. The amount of water was measured at 18,000 gallons. Both the storm water from the rain and the stored storm water from the tennis courts were discharged into the storm drain system. This crosses underneath Beach Boulevard and then empties directly into Talbert Marsh, a wetlands area. The environmental impact was the same as in section 4a. above, violating the Water Quality Objectives in the Water Quality Control Plan

5. 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 volume of the polluted storm water discharges was estimated to be a maximum of 147,000 gallons (based on area, storm intensity and runoff coefficient).

6. Pursuant to Section 13385(c), Beach Resort is civilly liable for a maximum of $1,470,000, based on $10,000 each for 2 days of violation and $1,450,000 for the discharge of sediment–laden runoff (147,000 gallons – 2,000 gallons = 145,000 gallons at $10 per gallon) without adequate or properly maintained BMPs to eliminate/reduce the discharge of sediment-laden water.

7. Board staff spent a total of 30 hours investigating this incident (@$70 per hour, the total cost for staff time is $2,100). Beach Resort saved approximately $35,000 by not developing, implementing, and maintaining proper erosion and sediment control BMPs. These factors were considered in assessing the penalty indicated in Paragraph 12, below.

8. 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	Three unauthorized discharges of sediment-laden storm water. Inadequate implementation, monitoring and maintenance of BMPs causing subsequent discharges.
B. Culpability	The discharger violated the terms of the General Permit by failing to implement appropriate erosion control BMPs and by discharging storm water containing pollutants.
C. Economic Benefit or Savings	Beach Resort saved approximately $35,000 by not properly developing, implementing and maintaining proper BMPs.
D. Prior History of Violations	None.
E. Staff Costs	Regional Board staff spent approximately 30 hours investigating this incident (@$70 per hour, the total cost for staff time is $2100.00).
F. Ability to pay	The discharger has not provided any information to indicate that it is unable to pay the proposed amount.

12. After consideration of these factors, the Executive Officer proposes that civil liability be imposed on PCH Beach Resort, LLC. in the amount of $55,000 for the violations cited above. An invoice for this amount is enclosed.

WAIVER OF HEARING

Beach Resort may waive its right to a hearing in this matter. If Beach Resort chooses to do so, please sign the attached waivers Complaint, and return it, together with the bottom portion of the invoice and a check for $55,000, 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.

6/3/03
Date

Gerard J. Thibeault
Executive Officer

In the matter of:	)	Complaint No. R8-2003-0024
	)	for
PCH Beach Resort, LLC.	)	Administrative Civil Liability
660 Newport Center Drive,	)	
Suite 1050	)	
Newport Beach, CA 92658-8680	)	
	)	
Attn: Mr. Riley Robinson	)	

WAIVER OF HEARING

I agree to waive PCH Beach Resort, LLC.'s right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2003-0024. I have enclosed a check, made payable to the State Water Resources Control Board, in the amount of $55,000. I understand that I am giving up PCH Beach Resort, LLC.'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 PCH Beach Resort, LLC.

State Water Resources Control Board

Winston H. Hickox
Secretary for Environmental Protection

The energy challenge facing California is real.
Every Californian needs to take immediate action to reduce energy consumption.
For a list of simple ways you can reduce demand and cut your energy costs, see our website at http://www.swrcb.ca.gov

Gray Davis
Governor

To:
WATERFRONT DEVELOPMENT INC
660 NEWPORT CENTER DR. #1050
NEWPORT BEACH, CA 92658--8680
ATTN: MR. RILEY ROBINSON

Invoice No: 33980
Invoice Date: 06/03/2003
Enforcement Action ID: 72507
Enforcement Order No: R8-2003-0024

INVOICE

ACLCOMP

Description	Amount	Due Date
44990 LIABILITY AMOUNT	$55,000.00	
TOTAL AMOUNT DUE	**$55,000.00**	

California Environmental Protection Agency

Recycled Paper

Retain above portion for your records

Please return bottom portion with your payment

WATERFRONT DEVELOPMENT INC
660 NEWPORT CENTER DR. #1050
NEWPORT BEACH, CA 92658--8680
ATTN: MR. RILEY ROBINSON

Description	Amount	Due Date
44990 LIABDUE	$55,000.00	
TOTAL AMOUNT DUE	**$55,000.00**	

Make your check payable to:

State Water Resources Control Board

Mail payment to:

SWRCB ACCOUNTING
ATTN: ENFORCEMENT
P. O. Box 100
SACRAMENTO, CA 95812-0100

Amount Enclosed: $_____

PLEASE PRINT THE FOLLOWING INVOICE NUMBER ON YOUR CHECK: **33980**

Invoice Date: 06/03/2003
Enforcement Action ID: 72507
Enforcement Order No.: R8-2003-0024

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

June 3, 2003

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Riley Robinson
PCH Beach Resort, LLC.
660 Newport Center Drive, Suite 1050
Newport Beach, CA 92658-8680

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2003-0024

Dear Mr. Robinson:

We are enclosing a certified copy of Complaint No. R8-2003-0024 proposing administrative civil liability of $55,000 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 30S309665. 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 July 1, 2003. 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 may 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 $55,000. 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 Board staff prior to April 30, 2003. At that time, you may submit information that may not have been previously available regarding this incident. The information should address the following:

1. Nature, circumstances, extent, and gravity of the violation;
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. R8-2003-0024, 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) – Paul Michel
Orange County Public Facilities & Resources Dept.- Chris Crompton
City of Huntington Beach NPDES Coordinator, Geraldine Lucas
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