

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:)	Complaint No. R8-2002-0063
)	for
City of Buena Park)	Administrative Civil Liability
P.O. Box 5009)	
Buena Park, CA 90622-5009)	
)	
Attn: Mr. Nabil Henein)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The City of Buena Park 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 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 July 19, 2002 at the Orange County Water District located at 10500 Ellis Avenue, Fountain Valley, CA 92708.
2. The City of Buena Park 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 before 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 storm water runoff from the City of Buena Park construction site for the new City Hall (site), located in the City of Buena Park, 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 30S317587.
5. The City of Buena Park is alleged to have violated Provisions A.2 ("Discharges of material other than storm water to the storm sewer system . . . are prohibited"), 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 . . . shall be designed and implemented such that . . . discharges shall not cause or contribute to an exceedance of . . . water quality standards . . .") of the General Permit. As more fully set forth below, the City of Buena Park allowed discharges of non-storm water, which caused or threatened to cause pollution, contamination, or nuisance. The City of Buena Park failed to implement appropriate

Best Management Practices (BMPs) for the elimination or reduction of pollutants. Appropriate monitoring of the BMPs during the discharge was not performed, and the City of Buena Park 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.

6. This complaint is based on the following facts:

- a) According to the Site's Notice of Intent submitted by the City, construction commenced on February 2, 2002 on 9.4 acres and is projected to be completed in March, 2003.
- b) Board staff inspected the site on May 28, 2002. On arrival at the site, there was evidence that a sediment-laden, unauthorized, non-storm water discharge threatened to enter the storm drain on Beach Boulevard, as a result of maintenance crews washing down sidewalks within the city hall complex. The discharge flowed through sediment that had accumulated in the parking lot area and was tributary to the local storm drain system. The storm drain inlets were not protected (sandbags or other kind of protection) and the sidewalks and parking lots were not cleaned (by sweeping or other means) prior to washing;
- c) The construction superintendent, Rick Espinosa, was immediately notified of the violations and the potential, un-authorized, non-storm water discharge and was advised by Board staff to immediately shovel and then sweep all sediment off the parking lot back onto the construction site, within the sandbagged, construction activity perimeter. Further, the superintendent was informed that the sediment was not to be washed into the gutter. The superintendent was reminded that such discharges were strictly prohibited by the General Permit;
- d) The SWPPP was not kept in the immediate area of the construction activity, nor did the construction superintendent know of its location. It was only after Board staff noted that the Deputy City Engineer had signed off on the Notice of Intent that the SWPPP was located in the City Engineer's office. The SWPPP was not readily available to construction personnel, making it unlikely that BMPs would be properly implemented as developed in the SWPPP;
- e) After reviewing the SWPPP, Board staff returned to the construction site and noted that construction staff were washing down the sediment, which had accumulated on the parking lot area, into the gutter that discharges into the catch basin inlet on Beach Boulevard, causing a sediment-laden, unauthorized, non-storm water discharge. Board staff again told the permittees to cease this prohibited activity and clean up the accumulated sediment in an appropriate manner. The superintendent was not available and Board staff explained to the Deputy City Engineer that such discharges were strictly prohibited by the General Permit;

7. 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 observed volume of the unauthorized, non-storm water discharge was estimated to be less than 1,000 gallons.
8. Pursuant to Section 13385(c), the City of Buena Park is civilly liable for the sum of \$10,000 (\$10,000 for one day of discharge). This unauthorized, non-storm water discharge occurred without adequate or properly maintained BMPs to eliminate/reduce the discharge of sediment-laden water. The total maximum assessment is \$10,000 for the violations cited in Paragraph 6, above.
9. Board staff spent a total of 2 hours investigating this incident (@\$70.00 per hour, the total cost for staff time is \$140.00). The City of Buena Park saved approximately \$500.00 by not developing, implementing, and maintaining adequate erosion and sediment control BMPs. These factors were considered in assessing the penalty indicated in Paragraph 10, below.
10. 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 on the following page. After consideration of these factors, the Executive Officer proposes civil liability be imposed on the City of Buena Park in the amount of \$5,000 for the violations cited above. An invoice for this amount is enclosed.

Factor	Comment
A. Nature, Circumstances, Extent and Gravity of Violation	The site superintendent was informed that sediment-laden non-storm water discharges are prohibited and he was instructed to implement appropriate best management practices to eliminate such discharges. A short time later, employees at the site were discharging sediment-laden non-storm water to the street and thence into the storm drain system.
B. Culpability	The discharger violated the terms of the General Permit by failing to implement appropriate BMPs and by discharging non-storm water containing pollutants.
C. Economic Benefit or Savings	The City saved approximately \$500.00 by not properly developing and implementing proper BMPs.
D. Prior History of Violations	No prior history of violations, except that the site superintendent was warned about such violations before they occurred.
E. Staff Costs	Regional Board staff spent approximately 2 hours investigating this incident (@\$70.00 per hour, the total cost for staff time is \$140.00).
F. Ability to pay	The discharger has not provided any information to indicate that it is unable to pay the proposed amount.

WAIVER OF HEARING

The City may waive its right to a hearing in this matter. If the City chooses to do so, please sign the attached waiver, which is on page 6 of this Complaint, and return it, together with the bottom portion of the invoice and a check for \$5,000, 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.

6-17-02
Date



Gerard J. Thibeault
Executive Officer

In the matter of:)	Complaint No. R8-2002-0063
)	for
City of Buena Park)	Administrative Civil Liability
P.O. Box 5009)	
Buena Park, CA 90622-5009)	
)	
<u>Attn: Mr. Nabil Henein</u>)	

WAIVER OF HEARING

I agree to waive the City of Buena Park's right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2002-0063. I have enclosed a check, made payable to the State Water Resources Control Board, in the amount of \$5,000. I understand that I am giving up the City of Buena Park'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 the City of Buena Park