



California Regional Water Quality Control Board

Santa Ana Region

Alan C. Lloyd Ph.D.
Secretary for
Environmental
Protection

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Arnold
Schwarzenegger
Governor

March 1, 2005

City of Buena Park
6550 Beach Boulevard
Buena Park, CA 90631
Attention : Mr. Greg Beaubien

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2004-0083 (revised)

Dear Mr. Beaubien:

We are enclosing a certified copy of Complaint No. R8-2004-0083 (revised) proposing administrative civil liability of \$90,000 for violations of the Areawide Urban Storm Water Runoff Permit for Orange County and the Incorporated Cities, Order No. R8-2002-0010, NPDES Permit No. CAS618030. If necessary, a public hearing on this matter will be scheduled for the Regional Board meeting on March 4, 2005.

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 verifying agreement to fund an acceptable Supplemental Environmental Project (SEP) and submit the form with a check for \$45,000. The check should be made payable to the State Water Resources Control Board Cleanup and Abatement Account and should be mailed to Sacramento in the enclosed preprinted envelope.

If you have any questions regarding this complaint, you may contact Mark Smythe at 951-782-4998 or Michael Adackapara at 951-782-3238. 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. R8-2004-0083 (revised), Waiver Form, 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) - Kathi Moore
Orange County Resources & Development Management Dept.- Richard Boon
City of Buena Park NPDES Coordinator - Douglas Brodowski

California Environmental Protection Agency

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:)	Complaint No. R8-2004-0083 (revised)
)	for
City of Buena Park)	Administrative Civil Liability
6650 Beach Boulevard)	
Buena Park, CA 90622)	
<u>Attention: Mr. Greg Beaubien</u>)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The City of Buena Park (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 January 28, 2005 at the City Council Chambers of Santa Ana. 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 their 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 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 February 10 and 11, 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 April 15, 2004, an evaluation report, based on the audit, was submitted to the City, and on May 17, 2004, the City provided a response to the evaluation report.
9. The City is alleged to have violated the following provisions of the MS4 Permit: **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 and must include... SIC code(s), General Industrial Permit WDID # (if any), size, location ... [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 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.”); **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 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.”); **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 ...”); **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.”); and **Section XIV.6** (“Each permittee shall inspect, clean and maintain at least 80% of its drainage facilities on an annual basis ...”).

10. This Complaint is based on the following facts:

- a. 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 and the inspection dates, the inspectors present and results of the inspection. The report submitted with the 2002/3 PEA did not contain all required facility information and did not include inspection information or results. The actual database was not submitted to Board staff until September 16, 2004, well after the July 1, 2003 deadline and the November 15, 2003 Annual Report submittal.
- b. 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 PEA and inspection database, only one industrial facility was inspected by the November 15, 2003 deadline. The remainder of the facilities were inspected March 4 - May 12, 2004.
- c. Section IX.4 of the MS4 Permit requires that when an inspection reveals inappropriate storage or handling of materials or wastes, or there is evidence of unauthorized non-storm water discharges to the MS4, an increased inspection frequency must be maintained for that site, for one year. For the inspections conducted by the City, at least 22 facilities were rated a “1 – No BMPs used and storm water pollution likely,” but these facilities were not re-inspected in the required timeframe.
- d. Section VIII.1 of the MS4 Permit lists the criteria for inclusion of a construction site in a municipality’s inventory. Those 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. Based on 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.

- e. 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." It is clear that all construction sites within the City that met the MS4 Permit criteria were not inspected, and 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 with all the required information is to be provided to the Regional Board with each annual report. Based on the City's September 16, 2004 response, the City's construction database was incapable of recording required NPDES inspection data or enforcement data.
- g. 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 their 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.
- h. Section XIV.1 of the MS4 Permit requires that the City review all of its activities and facilities every year, which should include a review of model procedures, documented observations of field activities and documented inspections of fixed facilities. The City has confirmed that there are 17 separate fixed facilities; however, only two Environmental Performance Reports (EPRs) were submitted with the 2002/3 PEA. Further, no documented municipal activity reviews were performed by the City during 2002.
- i. Section XIV.6 of the MS4 Permit requires that permittees "inspect, clean and maintain at least 80% of [their] drainage facilities on an annual basis...." City staff have stated in their September 16, 2004 submittal that only 20 of the approximately 758 catch basins in the City of Buena Park were cleaned during the 2002/3 reporting period, resulting in the removal of approximately one ton of debris and trash. The City's submittal stated that

the remaining 738 catch basins were not cleaned based on the rationale that if “catch basins have not accumulated significant amounts of debris, then cleaning is not mandated by the Permit.” This rationale is not based on any text in the permit and does not meet the Maximum Extent Practicable standard of the MS4 Permit.

- j. A Notice of Violation was issued to the City on August 24, 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 442 days of violation of Sections IX.1 and IX.6 of the MS4 Permit at \$10,000 per day, for a maximum amount of \$4,420,000. The City is civilly liable for 178 days of violation of Section IX.3 of the MS4 Permit at \$10,000 per day, for a maximum amount of \$1,780,000. The City is civilly liable for 365 days of violation of Section IX.4 of the MS4 Permit at \$10,000 per day, for a maximum amount of \$3,650,000. The City is civilly liable for 783 days of violation of Section VIII.1 of the MS4 Permit at \$10,000 per day, for a maximum amount of \$7,830,000. 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. The City is civilly liable for 365 days of violation of Section XIV.6 of the MS4 Permit at \$10,000 per day, for a maximum amount of \$3,650,000. This results in the City being civilly liable for a total maximum amount of \$27,290,000.
 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 \$90,000 by not hiring adequate staff to manage the NPDES program under the new 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 excess discharge of pollutants by others to the City's MS4 system and subsequently 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 \$90,000 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 Buena Park in the total amount of \$90,000 (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 \$45,000, as one-half of the \$90,000 ACL Amount, to the Executive Officer, payable to "State Water Resources Control Board Cleanup and Abatement Account."
- b. The remaining one-half of the \$90,000 ACL amount (\$45,000) 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 \$45,000 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 \$90,000 ACL Amount (\$45,000) 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 will be 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



Gerard J. Thibeault
Executive Officer