



# 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 Stanton  
7800 Katella Avenue  
Stanton, CA 90680  
Attention : Mr. Jake Wager

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2004-0084 (revised)**

Dear Mr. Wager:

We are enclosing a certified copy of Complaint No. R8-2004-0084 (revised) proposing administrative civil liability of \$100,000 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 \$50,000. 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,

Gerald J. Thibeault  
Executive Officer

Enclosures: Complaint No. R8-2004-0084 (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 and Development Management Dept.- Richard Boon  
City of Stanton NPDES Coordinator - Robert Doss

*California Environmental Protection Agency*

STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION

In the matter of:	)	Complaint No. R8-2004-0084 (revised)
	)	for
City of Stanton	)	Administrative Civil Liability
7800 Katella Avenue	)	
Stanton, CA 90680	)	
<u>Attention: Mr. Jake Wager</u>	)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The City of Stanton (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 Santa Ana City Council Chambers. 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 March 9 and 10, 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, and the effectiveness of field program execution. On April 21, 2004, an evaluation report, based on the audit, was submitted to the City, and on May 27, 2004, the City provided a response to the evaluation report. This response consisted of a 7-page letter with two (2) attached task completion timelines.
9. The City is alleged to have violated the following provisions of the MS4 Permit: **Monitoring & Reporting Program Section IV.2** (“The permittees shall submit an ANNUAL PROGRESS REPORT ... no later than November 15<sup>th</sup> of each year.”); **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 ... [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 IX.9** (“... Each permittee shall have adequately trained their [industrial] inspection staff by July 1, 2003...”); **Section X.1** (“Each permittee shall develop by July 1, 2003, an inventory of the following commercial facilities/companies listed below within its jurisdiction.”); **Section VIII.1 and 3c** (“... 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 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.”); **Section III.5**

(“Non-storm water discharges from public agency activities into waters of the U.S. are prohibited ...”); **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.”); and **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 ...”).

10. This Complaint is based on the following facts:

- a. The City's Annual Report for the reporting year 2002/3, which was due by November 15, 2003, was received at the Regional Board office on November 12, 2004.
- b. 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, inspectors present and results of the inspection. According to the City's October 14, 2004 response, the City completed the inventory by June 14, 2004.
- c. 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 provided in the City's October 14, 2004 response, all high priority industrial facilities were inspected by July 20, 2004.
- d. Section IX.9 of the MS4 Permit requires: that all inspection staff be adequately trained by July 1, 2003; that training programs should be coordinated with Board staff and that Board staff receive prior notification of training; and that all new inspection staff be trained within one month of starting inspection duties. Based on the October 14, 2004 City response, training for City inspection staff was held on June 23, 2004.
- e. Section VIII.1 of the MS4 Permit requires that an inventory of construction sites be prepared by the City by October 15, 2002. The criteria for inclusion in the database are that the site has been issued a building or grading permit by the City and at least one of the following activities takes place at

the site: 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 the City's October 14, 2004 response, the City is currently preparing the construction site database.

- f. Section VIII.3.a of the MS4 Permit sets forth the following inspection frequency for construction sites included in the database, "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." Based on information provided by the City, it is clear that most construction projects meeting the aforementioned criteria were not inspected during the 2002-03 reporting year, and those inspections that did take place were not conducted in compliance with the requirements in the MS4 Permit.
- g. 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 is to be provided to the Regional Board with each annual report. The database was not provided with the PEA, submitted on November 17, 2003, and had not been prepared as of October 14, 2004, when the City responded to the Notice of Violation.
- h. Section X.1 of the MS4 Permit requires that the City develop by July 1, 2003, an inventory of commercial companies that provide services or meet criteria as listed in the MS4 Permit in Section X.1.a-k. Based on the October 14, 2004 City response, the inventory was completed by June 16, 2004.
- i. Section XIV.1 of the MS4 Permit requires that the City review all of its activities and facilities every year. Based on information obtained from the 2002/3 Unified Annual Progress Report (submitted by the County of Orange on November 17, 2004), the lack of a submitted 2002/3 Annual Report or PEA by the City, the lack of facility/activity inspection documentation and the lack of familiarity of City staff with pollution prevention inspections, it is clear that the City did not conduct a review of all of its facilities and activities for the 2002/3 reporting year, in accordance with the MS4 Permit.
- j. During the municipal audit on March 10, 2004, Board staff observed two (2) separate unauthorized non-storm water discharges that were flowing from the City yard's driveways and to the local storm drain system. The first discharge was from vehicle washing activities within the yard, and the second discharge was the result of a secondary flow from the pressure washing of the vehicle service bay. It was apparent to Board staff that

these practices, and hence these unauthorized non-storm water discharges, were common prior to this audit.

- k. 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. At the time of the audit, it was determined by the City that only verbal warnings had been given to any violator of the City's water quality ordinance. Further, documented procedures and a violations tracking program have only just been started, according to the October 14, 2004 City response.
  - l. A Notice of Violation was issued to the City on September 9, 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 362 days of violation of Section IV.2 of the MRP portion of the MS4 Permit at \$10,000 per day, for a maximum amount of \$3,620,000. The City is civilly liable for 348 days of violation of Sections IX.1 and IX.6 of the MS4 Permit at \$10,000 per day, for a maximum amount of \$3,480,000. The City is civilly liable for 247 days of violation of Section IX.3 of the MS4 Permit at \$10,000 per day, for a maximum amount of \$2,470,000. The City is civilly liable for 357 days of violation of Section IX.9 of the MS4 Permit at \$10,000 per day, for a maximum amount of \$3,570,000. 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 348 days of violation of Section X.1 of the MS4 Permit at \$10,000 per day, for a maximum amount of \$3,480,000. The City is civilly liable for 1 day of violation of Section III.3 of the MS4 Permit at \$10,000 per day, for a maximum amount of \$10,000. This results in the City being civilly liable for a total maximum amount of \$30,420,000.
  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 \$100,000 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
<b>A. Nature, Circumstances, Extent and Gravity of Violation</b>	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>B. Culpability</b>	The discharger is entirely culpable for the violations.
<b>C. Economic Benefit or Savings</b>	The discharger saved at least \$100,000 by not having adequate staffing to manage and comply with permit requirements during 2002, 2003 and early 2004.
<b>D. Prior History of Violations</b>	The City waived and paid an assessment for a Sanitary Sewer Overflow (SSO) reporting violation during 2004.
<b>E. Staff Costs</b>	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).
<b>F. Ability to pay</b>	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 Stanton in the total amount of \$100,000 (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 \$50,000, as one-half of the \$100,000 ACL Amount, to the Executive Officer, payable to "State Water Resources Control Board Cleanup and Abatement Account."

- b. The remaining one-half of the \$100,000 ACL amount (\$50,000) 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 \$50,000 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 \$100,000 ACL Amount (\$50,000) 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