

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:)	Complaint No. R8-2006-0059
)	For
Admar Management Corporation)	Administrative Civil Liability
1678 Arrow Highway, Suite # 141)	(Amended on February 27, 2007)
Upland, CA 91786)	
)	
<u>Attn: Wyn Holmes</u>)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Admar Management Corporation (Admar) 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 in this matter will be scheduled for the Board's regular meeting on March 2, 2007, at the City Council Chambers, 25541 Barton Road, Loma Linda, CA. Admar 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 a staff report pertaining to this item 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. Admar is alleged to have violated Provisions A.3, C.2 and Sections A.3, A. 6, A.12, B.3 and C.7 of the General Permit for Storm Water Discharges Associated with Construction Activity, Order No. 99-08-DWQ (General Permit). Specific violations are identified in Paragraph 6, below.
 - a. Provision A. 3 of the General Permit states:

"Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance."

b. Provision C. 2 states:

"All dischargers shall develop and implement a SWPPP in accordance with Section A: Storm Water Pollution Prevention Plan. The discharger shall implement controls to reduce pollutants in storm water discharges from their construction sites to the BAT/BCT¹ performance standard."

c. Section A.3 states:

"The SWPPP shall remain on the construction site while the site is under construction during working hours, commencing with the initial construction activity and ending with termination of coverage under the General Permit."

d. Section A. 6 states:

"At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season. "

e. Section A. 12 states:

"Individuals responsible for SWPPP preparation, implementation, and permit compliance shall be appropriately trained, and the SWPPP shall document all training."

f. Section B. 3 states:

"Qualified personnel shall conduct inspections of the construction site prior to anticipated storm events, during extended storm events, and after actual storm events to identify areas contributing to a discharge of storm water associated with construction activity."

g. Section C. 7 states:

"The discharger shall furnish the RWQCB, State Water Resources Control Board, or USEPA, within a reasonable time, any requested information to determine compliance with this Permit. The discharger shall also furnish, upon request, copies of records required to be kept by this Permit."

5. Runoff from the Admar construction site (Tract 16289) in the City of Colton is regulated under the General Permit, WDID No. 8 36C340059.

6. This complaint is based on the following facts:

¹ BAT is the acronym for Best Available Technology; BCT is the acronym for Best Conventional Technology.

- a. Admar is the owner/developer named in the Notice of Intent (NOI) for a 99.4-acre construction site, hereinafter referred to as Crystal Ridge, located east of Reche Canyon Road and north of Shadid Drive in the City of Colton. The land generally slopes towards Reche Canyon Road and runoff from the site discharges into Reche Canyon Creek. The entire site has been graded and exposed to storm water. The NOI identifies Mr. Craig Tersigni as the project manager for the site.
- b. On June 9, 2005, Board staff conducted an inspection of the Crystal Ridge construction site. The best management practices (BMPs) implemented at the site included some sandbags and silt fences mostly along the pads. There were no erosion control measures implemented at the site. The SWPPP, inspection records and employee training records were not available for review at the site. These are violations of Sections A.3, A.12, B.3 and Provision C.2 of the General Permit. The site superintendent and construction supervisor were told to develop a site-specific SWPPP and implement an effective combination of erosion and sediment controls.
- c. On June 21, 2005 a Notice of Violation (NOV) was sent to Admar that outlined the violations cited above. Admar was directed to immediately address the problems identified and to provide an action plan to address these problems. On July 20, 2005 Admar responded to this NOV with an unsigned letter. The letter asserted that the SWPPP, training and inspection records were available for review during Regional Board staff's June 9, 2005 inspection. Admar further stated in the letter that temporary BMPs were removed after the rainy season and that permanent erosion control devices would be installed prior to the next rainy season.
- d. On September 28, 2005, Board staff conducted a follow up inspection to evaluate site conditions and compliance with the General Permit. The SWPPP was available at the site. However, there was no improvement observed in the implementation of BMPs at the site. There were a few sandbags along the pads but the slopes were not protected. The site remained in violation of Provision C.2 of the General Permit. There were no erosion control measures to prevent erosion of the slopes and pads. Mr. Tersigni was contacted and informed of the lack of adequate erosion and sediment controls at the site.
- e. On October 25, 2005, Board staff conducted an inspection to evaluate the site conditions. The superintendent was not available at the site. Erosion controls had been applied on some of the finished slopes. Only a few sandbags and a small stretch of silt fence were installed along the pads and the site boundary along Reche Canyon Road. The site remained in violation of Provision C.2 of the General Permit.

- f. During a storm event on February 28, 2006, the construction site was inspected to evaluate the effectiveness of the BMPs implemented at the site. Board staff observed a significant amount of sediment-laden storm water leaving the site. The pads, slopes, parkways and driveways had eroded due to a lack of erosion control measures. The sediment-laden storm water from the site flowed onto Reche Canyon Road and discharged into Reche Canyon Creek at a number of locations including Fern Street, Pepper Street, Bana Street and other areas. There was no effort to prevent such discharges or to control erosion at the site. A site-specific SWPPP was not available for Board staff's review. These are violations of Provision C.2 and Section A.6 of the Permit. Again Mr. Tersigni was contacted by telephone to inform him of the violations and to request implementation of additional BMPs. He assured staff that a crew would be sent to the site to conduct cleanup and to implement additional control measures.
- g. Board staff revisited the construction site later the same day, after the storm event. The sediment discharges to the street were not cleaned up and there was no evidence of a cleanup crew at the site. The discharge of sediment-laden storm water was continuing. There was a substantial quantity of sediment on Reche Canyon Road. The internal streets were covered with dirt and heavy erosion rills were noted at several locations at the site. Ms. Colleen Choisnet, Broker/Attorney, was at the sales office and was notified of the problems at the site.
- h. On March 7, 2006, a second NOV was sent to Admar that outlined the observations during the February 28, 2006 inspection. The NOV noted that the few control measures implemented at the site were not effective as they had failed during each storm event and caused the discharge of sediment-laden storm water into the streets, to the storm drains and to waters of the U.S. Once again, Admar was directed to implement an effective combination of erosion and sediment controls on all exposed areas and to provide a copy of the site-specific SWPPP by March 22, 2006. Admar did not respond to the NOV and failed to provide a copy of the SWPPP as requested (a violation of Section C. 7).
- i. On March 29, 2006, Board staff conducted a drive-by inspection of the site. Staff observed that some additional sandbags had been placed at the site. Erosion controls had been applied on some finished slopes. However, there were still disturbed areas without adequate erosion and sediment controls. Staff observed a significant amount of sediment deposited on Reche Canyon Road that appeared to have originated from the site.

- j. On April 4, 2006, Board staff visited the site to evaluate the BMP implementation at the site prior to a predicted storm event. No additional BMPs beyond those in place on March 29 were observed at the site. All pads along with some sloped areas lacked erosion controls and were exposed to storm water. Some houses were under construction. Mark Claybaugh, site superintendent, stated that 2,000 more sandbags were being delivered to the site. Mr. Claybaugh was informed of the lack of adequate erosion controls at the site. Staff further emphasized the need for an effective combination of erosion and sediment controls at the site.
 - k. A storm event occurred during the early morning of April 5, 2006. When Board staff arrived at the site at about 9:00 a.m., a substantial quantity of sediment was noted on Reche Canyon Road. There was a significant flow of sediment-laden storm water leaving the property and discharging into Reche Canyon Creek. The internal streets were again covered with dirt. A sweeper was cleaning Reche Canyon Road. The silt fences and sandbags had failed due to a lack of erosion control measures. The lack of adequate BMP implementation caused pollutant discharge offsite and onto public roads and a site-specific SWPPP was not available for review at the site. These are violations of Provisions A. 3 and C. 2. The lack of an effective combination of erosion and sediment control BMPs at the site caused massive erosion of the slopes and subsequent failure of the sediment control measures that were implemented at the site. This is a violation of Section A. 6.
 - l. On April 14, 2006, Board staff conducted a drive-by inspection of the site. Staff observed that some additional sandbags had been placed at the site. However, there were still disturbed areas without adequate erosion and sediment controls. Light showers during the previous night had generated some run off. Staff observed evidence of sediment-laden storm water discharge from the site.
 - m. On April 15, 2006, Board staff conducted another drive-by inspection of the site. There was a rain event during the early morning. Staff observed sediment-laden storm water discharge from the site. There were no additional erosion control BMPs implemented at the site. There was evidence of erosion from the slopes and pads. A significant amount of sediment was observed on internal streets. However, the sandbag crew was working to fix sandbags. Sediment-laden storm water discharged from the site entered Reche Canyon Creek.
7. Admar violated the General Permit by failing to properly implement an effective combination of erosion and sediment control BMPs and by failing to develop and implement an effective SWPPP. Admar also violated the General Permit by failing to maintain inspection and training records and failing to provide

information requested by Board staff. Pursuant to Water Code Section 13385(a)(2), civil liability may be imposed for the preceding violations.

8. 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 of discharge, may be imposed for each gallon discharged in excess of 1,000 gallons.
9. The total estimated discharge from the site for the four days that staff observed discharges is estimated to be 6.76 million gallons based on the storm intensity and the disturbed area.
10. Pursuant to Section 13385(c), the total maximum assessment for which Admar is civilly liable is \$6.763 million based on \$40,000 (\$10,000 per day for 4 days of violations) and \$67,590,000 based on estimated discharge (6,760,00 gallons - 1,000 gallons = 6,759,000 gallons @ \$10 per gallon) for the violations cited in Paragraph 7, above.
11. Admar saved approximately \$94,908 by not implementing adequate control measures at the site {this is based on: additional cost of properly designing and maintaining one detention basin=\$1,500/basin, cost of erosion controls on the slopes and pads [approximately 60 acres out of the 99.4 acres disturbed needed erosion controls=60 acres x 43,560 square feet/acre x\$0.03/square feet (= \$78,408)] and cost of additional sandbags, visqueen, silt fences, etc., including labor for proper installation and maintenance=\$15,000}. Board staff costs for investigating this incident were approximately \$3,500 (50 hours at \$70/hour). These factors were considered in assessing the penalty proposed in Paragraph 14, below.
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 the 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	<p>Erosion control BMPs were neither identified in the SWPPP nor implemented at the site. Due to the facility's lack of adequate best management practices (BMPs), sediment-laden storm water discharges occurred periodically and entered the storm drain system. Photos taken and a sample collected at the site indicated excessive sediments in the discharge. Sediment-laden storm water was observed entering the storm drains on multiple occasions. The storm drains are tributary to Reche Canyon Creek. Despite repeated failure of the BMPs, Admar failed to implement an effective combination of erosion and sediment control BMPs to prevent those failures. Admar ignored repeated written and oral requests for corrective actions at the site.</p> <p>Despite repeated requests, Admar did not provide staff a copy of a revised SWPPP or corrective action plan requested in the NOV.</p>
B. Culpability	<p>The discharger violated the terms of the General Permit by failing to develop and implement an adequate SWPPP and by failing to properly implement an inspection program to monitor the effectiveness of the BMPs. Despite repeated requests to upgrade erosion control measures at the site, the discharger did not implement adequate erosion control BMPs and continued to discharge polluted storm water into the storm drain system and into receiving waters. Admar failed to adequately respond to Board staff's efforts to bring the site into compliance. Board staff gave several oral warnings and written Notices of Violation on June 21, 2005 and March 7, 2006 for violations of the General Permit including an outdated SWPPP and inadequate implementation of BMPs.</p> <p>Admar's inaction and failure to upgrade the BMPs at the site, and failure to provide adequate employee training and oversight of its operations, caused pollutants to be repeatedly discharged into waters of the U.S.</p>
C. Economic Benefit or Savings	<p>Admar saved approximately \$94,908 by not implementing adequate BMPs.</p>

D. Prior History of Violations	Since initiation of the project, the City of Colton inspected the construction site several times and issued at least six notices of correction for lack of erosion and sediment control measures at the site. The City also issued a stop work order due to the discharge of sediment-laden storm water. Regional Board staff inspected the site on at least seven occasions and issued two NOVs. Despite the City's and Board staff's repeated oral and written instructions, the discharger did not implement an effective combination of erosion and sediment control measures at the site. The discharger relied only on minimal sediment control measures.
E. Other matters as justice may require	Regional Board staff spent approximately 50 hours investigating this incident (@\$70.00 per hour, the total cost for staff time is \$3,500).
F. Ability to pay	The discharger has not provided any information to indicate that it is unable to pay the proposed assessment.

13. After consideration of the above factors, the Assistant Executive Officer proposes that civil liability be imposed on Admar in the amount of \$148,708 for the violations cited above. This amount is based on cost savings of \$94,908 + \$20,000 for 4 days of violations observed during site inspections @\$5,000/day, \$33,800 @ \$.005/gal for the 6,759,948 gallons discharge (subtracting the first 1,000 gallons) during the rain events on February 28, April 5, April 14, and April 15, 2006. No additional per gallon assessment has been made for discharges during other storm events. Additionally, Admar shall reimburse \$12,269.40 to San Bernardino County for the cost of cleanup necessitated by the discharges from Admar construction site.

WAIVER OF HEARING

Admar has agreed to waive its right to a hearing and pay the assessment and the County costs described in Paragraph 13, above in two installments. These installments are payable as indicated in the February 27, 2007 transmittal letter for the amended ACL.

If you have any questions, please contact Ms. Milasol C. Gaslan at (951) 782-4419, or Mr. Michael J. Adackapara at (951) 782-3238 or contact the Board's legal counsel, Erik Spiess, at (916) 341-5167.

2/27/07
Date

Kurt V. Berchtold
Kurt V. Berchtold
Assistant Executive Officer

In the matter of:)
)
Admar Management Corporation)
1678 Arrow Highway, # 141)
Upland, CA 91786)
)
Attn: Wyn Holmes)

Complaint No. R8-2006-0059
for
Administrative Civil Liability
(Amended on February 26, 2007)

WAIVER OF HEARING

I agree to waive the right of Admar Management Corporation to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2006-0059. I will forward a check for \$12,269.40 made payable to San Bernardino County Flood Control District and a second check payable to the State Water Resources Control Board for \$68,219 by March 27, 2007. The second installment of \$80,489 will be made payable to the State Water Resources Control Board and will be submitted by February 27, 2008. I also understand that I am giving up the right of Admar Management Corporation to be heard and to argue against allegations made by the Assistant Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

Date

for Admar Management Corporation