STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the Matter of:	)	
	)	
El-PLA 75, LLC	)	
9952 South Santa Monica Blvd., Suite 200	)	**COMPLAINT NO. R8-2010-0025**
Beverly Hills, CA 90212	)	**for**
	)	**ADMINISTRATIVE CIVIL LIABILITY**
Attn: Roger Hatch	)	
	)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. El-PLA 75, LLC (hereinafter the Discharger) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board) may impose administrative civil liability under California Water Code (hereinafter "CWC") §13385(c).

2. A hearing concerning this Complaint may be held before the Regional Board within ninety (90) days of the date of issuance of this Complaint, unless, pursuant to CWC §13323, the Discharger waives its right to a hearing. The waiver procedures are specified in the attached Waiver Form. The hearing in this matter is scheduled for the Regional Board's regular meeting on July 23, 2010, at the City Council Chambers of Loma Linda, 25541 Barton Road, City of Loma Linda, California. The Discharger or its designated 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 Regional Board. An agenda for the meeting and the staff report relating to this item will be mailed to you not less than 10 days prior to the hearing date.

3. If a hearing is held on this matter, the Regional 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. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing.

4. The Discharger is alleged to have violated the following sections of the General Permit for Storm Water Discharges Associated with Construction Activity, Order No. 99-08-DWQ (General Permit):

   A) Discharge Prohibition (Provision) A.3:

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

C) Special Provision C.2:

"All dischargers shall develop and implement a SWPPP[1] 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/BCT[2] performance standard."

D) Section A.6:

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

5. THIS COMPLAINT IS BASED ON THE FOLLOWING FACTS:

a) The General Permit regulates storm water discharges from construction activities of one acre or greater to waters of the United States. The Discharger is a land developer with headquarters located at 9952 South Santa Monica Blvd., Suite 200 in Beverly Hills, California. According to the Notice of Intent, filed by the Discharger, construction on the 11.4-acre Crescent Heights development, located on the northeast corner of Richfield Road and Orchard Drive in the city of Placentia, California, began on June 1, 2006. Runoff from the site is regulated under the State's General Permit, WDID No. 8 30C341422. Runoff from the site drains via the City's municipal storm drain system to Atwood Channel which is tributary to the Santa Ana River.

b) The City of Placentia took a number of enforcement actions against the Discharger for violations of its requirements related to the construction activities at the site. Documentation provided by the City of Placentia included an Administrative Compliance Order issued by the City on October 2, 2008 for ineffective erosion controls and tracking of sediment onto City streets. This was followed by two Stop Work Orders, a Cease and Desist Order, a violation notice, a $100 citation and finally a $200 citation on March 4, 2009.

c) On March 10, 2009, Board staff conducted an inspection of the construction site in response to a complaint from the City of Placentia. Staff noted that the Discharger failed to employ the following: an effective combination of erosion and sediment controls, effective tracking controls, perimeter controls, effective trash and waste management, and storm drain protection. Additionally, the SWPPP was incomplete, and there was an active discharge from a fire hydrant that was being used to supply the site with water. The discharge was mobilizing sediment that had been tracked onto the street.

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[1] SWPPP=Storm Water Pollution Prevention Plan
[2] BAT is the acronym for Best Available Technology; BCT is the acronym for Best Conventional Technology.

d) On March 17, 2009, the Discharger was issued a Notice of Violation (NOV) by Board staff, via certified mail that cited the violations observed during the March 10, 2009 inspection. The letter required the Discharger to submit a letter to the Regional Board citing the actions that had been taken to come into compliance and provide a certified updated copy of the site SWPPP. A response date of March 31, 2009 was set in the NOV. No response to the NOV was received by Board staff, nor was a SWPPP submitted as required by the NOV.

e) On March 23, 2009, Board staff received a phone complaint from another developer, stating that the Discharger was "not following runoff/erosion controls" and that sediment-laden discharges were flowing down the street during the previous weekend rains.

f) On March 26, 2009, Board staff conducted a second inspection of the construction site in response to the March 23, 2009 complaint. During the inspection, Board staff noted that site's erosion and sediment control BMPs, entrance and exit tracking BMPs, perimeter BMPs, housekeeping, and inlet protection BMPs were severely inadequate. Further, the City of Placentia advised Board staff that the contractor had washed concrete onto soils since the last inspection, rather than using a concrete washout containment BMP. Site personnel were instructed to use proper concrete washout BMPs for cementitious wastes and to implement adequate site BMPs to control the discharge of sediment and other pollutants from the site.

g) On April 1, 2009, Board staff conducted a third inspection of the site. No improvement to the site's erosion and sediment control BMPs, entrance/exit tracking BMPs, perimeter BMPs, housekeeping, and inlet protection BMPs had been implemented. Further, Board staff had been informed that the site personnel had washed concrete onto the ground after they were instructed by Board staff and the City not to do so. The use of a proper concrete washout was again discussed with the Discharger. The Discharger had not updated the SWPPP as was required by the March 17, 2009 NOV.

h) On April 9, 2009, Board Staff conducted a fourth inspection of the site. While some improvement had been made to the erosion and sediment control BMPs, as well as the perimeter and inlet protection BMPs, the entrance/exit tracking BMPs were still inadequate, as evidenced by sediment tracking onto City streets and housekeeping (trash) continued to be a problem. Finally, the site SWPPP had not been revised, as was required by the March 17, 2009 NOV.

i) On May 5, 2009, Board Staff conducted a fifth inspection of the site with the new site superintendent. Housekeeping had been improved, but tracking remained an issue. Stucco operations were taking place with inadequate BMPs. Stucco waste and water were discharged directly to soils. A worker was observed washing his tools directly onto the soils. The site superintendent agreed to address these concerns and provided an emailed response to Board staff regarding improved BMP implementation.

j) On December 29, 2009, Board staff conducted a compliance inspection of the site. While the northern 3 acres of the site consisted of occupied housing, active construction (grading) was taking place on the southern 7-8 acres. Erosion controls applied during the 2008-9 rainy season had been disturbed or degraded and were no longer functional. Perimeter controls, where installed, were generally not installed properly or were not maintained. There was evidence that sediment had flowed over the retaining wall and left the site. On-site storm drain inlets were not adequately protected. Tracking controls were not implemented. Stained soil was observed around several open buckets and five-gallon pails which were filled with used paint, form oil, stain and used motor oil. There was evidence of paint rinsing on to unprotected soil. The SWPPP was not available on site.

k) On January 7, 2010, the Discharger was issued an NOV via certified mail that cited the violations observed during the December 29, 2009 inspection. The letter required the Discharger to submit a letter to Regional Board staff citing the actions that had been taken to come into compliance with the General Permit and to provide a copy of the SWPPP. A response date of January 19, 2010 was set in the NOV.

l) On January 19, 2010, Board staff conducted an inspection of the construction site during a rain event. Sediment-laden water was observed cascading over the site's retaining wall and entering an unprotected storm drain inlet at the street level. Sediment and debris flowed from the site at several discharge points and entered unprotected storm drain inlets. Sediment-laden water was entering an unprotected drop inlet on site. Perimeter controls, where applied, were failing throughout the site and no erosion controls were observed on site. Material and buckets of fluids were stored on unprotected soil. There was evidence of concrete washing directly on to soil. Mr. Rick Leyva, site superintendent, arrived during the inspection and took no corrective actions while Board staff were present.

m) On January 21, 2010, an email was received from the Discharger stating that on January 4, 2010, the Discharger's field staff had addressed all of the concerns listed in the January 7, 2010 NOV. However the copy of the site SWPPP was not provided as requested in the NOV.

n) On March 11, 2010, after 17 email correspondence, a copy of the site SWPPP was received by Board staff, 51 days after the date required by the January 7 NOV.

6. The Discharger violated the General Permit by discharging storm water containing pollutants to waters of the United States from the construction site and by causing or threatening to cause a condition of pollution or nuisance. The Discharger also violated the General Permit by failing to develop and properly implement an effective SWPPP and by failing to maintain adequate pollution control measures. Pursuant to Water Code Section 13385(a)(2), civil liability may be imposed for the preceding violations.

7. Pursuant to CWC §13385(c), the Regional Board may impose civil liability administratively for the above violations on a daily basis at a maximum of ten thousand dollars ($10,000) for each day in which the violation occurs in accordance with CWC §13385(c)(1); or where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars ($10) multiplied by the number of gallons by which the volume discharge but not cleaned up exceeds 1,000 gallons in accordance with CWC §13385(c)(2); or both.

8. Pursuant to Section 13385(c), the total maximum assessment for which the Discharger is civilly liable is $1,086,310 [$70,000 for 7 days of violation that staff observed @ $10,000/day; and, $1,016,310 for the January 19, 2010 discharge [102,631 gallons – first 1,000 gallons) x $10/gallon]] for the violations cited in Paragraph 5, above.

9. CWC §13385(e) specifies factors that the Regional Board shall consider in establishing the amount of civil liability. The Water Quality Enforcement Policy (Policy) adopted by the State Water Resources Control Board on November 19, 2009, establishes a methodology for assessing administrative civil liability pursuant to this statute. Use of methodology addresses the factors in CWC section 13385. The policy can be found at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

10. Attachment A presents the administrative civil liability derived from the use of the penalty methodology in the Policy. In summary this penalty assessment is based on a consideration of the potential for harm from the excessive discharge of sediment-laden storm water and the repeated failure to implement adequate control measures in a timely manner. After use of the penalty methodology, the Division Chief proposes that civil liability be imposed administratively on the Discharger in the amount of one hundred ninety-seven thousand dollars ($197,000) for the violations cited above. This amount includes: (1) $37,000 for seven days of violations at $5,290 per day; (2) $142,000 for the discharge of 101,631 gallons at approximately $1.40 per gallon; and (3) staff costs of $18,000.

WAIVER OF HEARING

The Discharger may waive its right to a hearing. If the Discharger chooses to do so, please sign the attached waiver form and return it, together with a check for $197,000 payable to the State Water Pollution Cleanup and Abatement Account, in the enclosed preprinted envelope. If you waive your right to a hearing and pay the assessed amount, the Regional Board may not hold a hearing regarding this Complaint.

If you have any questions, please contact Mike Kashak at (951) 782-4469, Mark Smythe at (951) 782-4998, or me at (951) 782-3238.

May 27, 2010
Date

Michael J. Adackapara
Division Chief
Regional Board Prosecution Team

ORDER NO. R8-2010-0023
ATTACHMENT A

Potential Harm Factor
3 = Moderate
2 = Discharged material poses moderate risk
< 50% of Discharge Susceptible to Cleanup or Abatement
Major

Discharger Name/ID: 8 30C341422 - El-PLA 75, LLC (Crescent Heights, Placentia)

			Inadequate BMPs - no discharge		Inadequate BMPs - with discharge - Jan 19, 2010	
Discharge Violations	Step 1	Potential Harm Factor (Generated from Button)			6	[illegible] sediment were observed
	Step 2	Per Gallon Factor (Generated from Button)			0.22	
		Gallons			101,631	
		Statutory / Adjusted Max per Gallon ($)			3.00	includes 2/27/10 event
		Total		$ -		$ 67,076
		Per Day Factor (Generated from Button)			0.22	
		Days			1	
		Statutory Max per Day			10000.00	
		Total		$ -		$ 2,200
Non-Discharge Violations	Step 3	Per Day Factor	0.4	Major deviation [illegible]		
		Days	6			
		Statutory Max per Day	$ 10,000		$ 10,000	
		Total		$ 24,000.00		$ -
		Initial Amount of the ACL		$ 24,000.00		$ 69,276.46
Additional Factors	Step 4	Culpability	1.35	$ 32,400.00	1.5	$ 103,914.69
		Cleanup and Cooperation	1	$ 32,400.00	1.35	$ 128,161.45
		History of Violations	1.2	$ 37,200.00	1.2	$ 142,016.74
	Step 5	Total Base Liability Amount		$ 179,216.74		
	Step 6	Ability to Pay & to Continue in Business	1	$ 179,216.74		
	Step 7	Other Factors as Justice May Require	1	$ 179,216.74		
		Staff Costs	$ 18,150	$ 197,366.74		
	Step 8	Economic Benefit	$ 25,235	$ 197,366.74		
	Step 9	Minimum Liability Amount				
		Maximum Liability Amount	$ 4,967,890			
	Step 10	Final Liability Amount		$ 197,366.74		

Final (rounded to the nearest thousand)=$197,000