

California Regional Water Quality Control Board
Santa Ana Region

July 20, 2001

ITEM: 13

SUBJECT: Administrative Civil Liability Complaint No. 01-73, Guthrie Development Company, Anaheim, Orange County

BACKGROUND

On June 19, 2001, the Executive Officer issued Administrative Civil Liability Complaint (ACL) No. 01-73 (copy attached) to Guthrie Development Company (Guthrie Development) for alleged violations of State's General Permit for Storm Water Runoff Associated with Construction Activities (General Permit). In the ACL, the Executive Officer proposed an assessment of \$21,280 for the alleged violations.

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board) is whether to affirm, reject, or modify the proposed administrative civil liability assessment against Guthrie Development.

ACL No. 01-73 was issued by the Executive Officer to Guthrie Development for the discharge of storm water containing pollutants to waters of the United States. The discharger failed to develop, implement and keep on site, an adequate Storm Water Pollution Prevention Plan (SWPPP) and failed to implement an effective combination of erosion and sediment control Best Management Practices (BMPs) sufficient to prevent the discharge of sediment-laden storm water from its construction site to waters of the U.S.

DISCUSSION

The General Permit regulates the discharge of storm water from construction sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and fee (annual fee of \$250), with the State Water Resources Control Board. Guthrie Development filed an NOI and obtained coverage under the General Permit (WDID No. 8 30S313839). The project is located at 1500 N. Lakeview Avenue in the City of Anaheim.

On March 21, 2001 Regional Board staff (staff) conducted a routine inspection of the subject construction site. A combination of soil erosion from graded areas and tracking due to construction equipment traffic had resulted in deposition of sediment on the surrounding public streets and inadequate erosion and sediment control BMPs had allowed sediment, waste concrete and construction debris to enter the storm drain system and Atwood Channel. During

the inspection, staff noted several on-site drop structures at this redevelopment project which directly discharge into Atwood Channel. Based on site topography and the elevation and location of these drop structures, it was evident that during the 2000-01 rainy season, runoff-producing storm events would have discharged sediment-laden runoff to Atwood Channel through these drop structures. Upon examination of the channel, waste concrete, as well as, other construction debris was observed directly below and downstream of these drop structure outlets. Finally, when asked to provide the site SWPPP for review, site personnel were unable to produce the document.

The site superintendent was apprised of the lack of an on-site SWPPP and the inadequate BMPs observed during the site inspection and he assured staff that effective BMPs would be implemented immediately at the site to prevent further discharge of pollutant-containing storm water and that the existing SWPPP would be kept at the site.

On March 26, 2001, staff conducted a follow-up compliance inspection and again observed sediment being tracked and eroding onto Lakeview Avenue. Further, staff found no apparent changes in the implementation of erosion and sediment control BMPs.

VIOLATIONS

By failing to develop, implement and keep on site, an effective SWPPP, by not implementing an effective combination of erosion and sediment control BMPs and by discharging pollutants to waters of the United States, the discharger violated Provisions A.3, C.2 and C.4 of the General Permit. Pursuant to Water Code Section 13385 (a) (2), civil liability may be imposed for the preceding violations.

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. Based on evidence that mass grading had occurred at the site prior to January 2001 and on rainfall records maintained by the County of Orange for the nearby Villa Park Dam, staff concluded that eight days of significant rain events (greater than 0.36") had occurred during January/February 2001 and an estimated total of 800,000 gallons of sediment-laden runoff was discharged from the site to the local storm drain system and Atwood Channel. Therefore, based on an estimated discharge of 800,000 gallons and eight days of violation, the total maximum liability for these violations is \$8,070,000.

The Water Code specifies factors the Board shall consider in establishing the amount of civil liability. These factors are discussed below.

1. Nature, Circumstances, Extent and Gravity of the Violations

The discharger certified in their Notice of Intent, that a SWPPP had been prepared and that an effective combination of erosion and sediment control BMPs would be implemented at the site.

Further, the discharger certified that a monitoring program would be established to insure the effectiveness of the implemented BMPs.

The implementation of an adequate monitoring plan would have demonstrated the ineffectiveness of the minimal BMPs implemented at the site in time to prevent the majority of these sediment-laden discharges.

2. Ability to Pay the Proposed Assessment

The discharger has not provided any information to indicate that it would have difficulty paying the proposed assessment.

3. Prior History of Violations

Staff is not aware of violations by Guthrie Development, other than the discharges that are the subject of this complaint.

4. Degree of Culpability

The storm water regulations are applicable to all construction sites of five acres or more on a nationwide basis. All dischargers, including Guthrie Development, are responsible for compliance with the Clean Water Act. Guthrie Development is fully culpable for violating the terms and conditions of the General Permit, which implements the Clean Water Act.

5. Economic Benefit or Savings, if any, Resulting from the Violations

By failing to develop and implement effective combination of erosion and sediment control measures, the discharger realized monetary savings. The approximate amount of these savings is \$8,000. This amount is based on the site size, the location of the on site drop structures, and the number of vehicular access points requiring protection.

STATEWIDE ENFORCEMENT POLICY

On April 18, 1996, the State Water Resources Control Board adopted a State Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are consistent, predictable, and fair. The above-described administrative civil liability complaint is in accordance with the Statewide Enforcement Policy.

RECOMMENDATION

After consideration of the above factors, staff recommends that the Board affirm the assessment of \$21,280 specified in the Administrative Civil Liability Complaint issued by the Executive Officer on June 19, 2001.

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:)	Complaint No. 01-73
)	for
Guthrie Development Company)	Administrative Civil Liability
25200 La Paz Road, Suite 210)	
Laguna Hills, CA 92653)	
)	
<u>Attn: Robert Guthrie</u>)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Guthrie Development Company 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.
2. 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 20, 2001 at the City Council Chambers of Corona, 815 West 6th Street, Corona, California. Guthrie Development Company 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 Guthrie Development Company construction site named Lakeview and Orangethorpe Business Center, located at 1500 N. Lakeview Ave. in Anaheim, 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 30S313839.
5. Guthrie Development Company is alleged to have violated Provisions A.3, C.2, and C.4 of the General Permit. Guthrie Development Company failed to properly develop, implement, and keep on site, an effective Storm Water Pollution Prevention Plan (SWPPP). Guthrie Development Company allowed discharges of storm water, which caused or threatened to cause pollution, contamination, or nuisance. Guthrie Development Company failed to implement an effective combination of erosion and sediment control for the site. Monitoring and Reporting Requirements were not met, and Guthrie Development Company 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, grading commenced on 9/1/00 and 100% of the 7.7 acres was to be mass graded. In addition it was certified in the Notice of Intent that a SWPPP had been prepared as of 8/16/00.
- b) On March 21, 2001, Board staff conducted a routine inspection of Guthrie Development Company's construction site located 1500 N. Lakeview Avenue in Anaheim and determined that the site did not have a SWPPP. As a result, the best management practices (BMPs) implemented at the site were not adequate to eliminate/reduce the transport of sediment, waste concrete, and construction debris to the storm drain system and Atwood Channel, the receiving water. Staff contacted the site's superintendent, Greg Morrison of Dan Miller Construction, and notified him that the lack of the SWPPP and the failure to implement pollution control measures constituted violations of the General Permit.
- c) During the March 21, 2001 inspection, staff noted several on-site, unprotected catch basin inlet structures at this redevelopment project. Based on the site topography and the elevation and location of these inlet structures, it was evident that during runoff-producing rain events of the preceding rainy season, sediment-laden runoff would have entered Atwood Channel through these structures. Furthermore, staff observed waste concrete that had been disposed of directly into Atwood Channel.
- d) On March 26, 2001, Board staff conducted a follow-up inspection of the Guthrie Development Company construction site. No improvements had been made. Staff again contacted the site's Superintendent, Greg Morrison, and informed him of the violations and the need to develop and implement a SWPPP.

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 flow from the site was based on 8 days of significant rainfall between the project start date of September 1, 2000 and the first inspection, on March 21, 2001. Recorded rainfall at the Orange County Public Facilities and Resources Department's station at Villa Park Dam indicated rain events in excess of 0.36 inches on January 11th, 12th, and 27th 2001 and February 12th, 13th, 14th, 26th, and 28th 2001. Based on a runoff coefficient of 40%, runoff from the site was estimated to be 800,000 gallons.

8. Pursuant to Section 13385(c), Guthrie Development Company is civilly liable for the sum of \$80,000 (\$10,000 for each of 8 days). There were 8 days of significant storm events that would have caused runoff due to the size of the storm in combination with the soil previously being saturated. This occurred without adequate BMPs implemented to eliminate/reduce the discharge of sediment, concrete waste and debris from the site. In addition, the civil liability is \$7,990,000 (\$10 per gallon after the first 1,000 gallons for 800,000 gallons) for the violations cited in Paragraph 6, above. The total maximum assessment is \$8,070,000.
9. Regional Board staff spent a total of 4 hours investigating this incident (@\$70.00 per hour, the total cost for staff time is \$280.00). Guthrie Development Company saved approximately \$8000.00 by not developing and implementing an appropriate SWPPP, by not developing, implementing, and maintaining adequate erosion and sediment control BMPs, and by not properly training site personnel. 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. After consideration of those factors, the Executive Officer proposes civil liability be imposed on Guthrie Development Company by the Board in the amount of \$21,280 for the violations cited above.

WAIVER OF HEARING

You may waive your right to a hearing. If you choose to do so, please sign the attached waiver and return it, together with a check or money order payable to the State Water Resources Control Board for the amount of civil liability proposed in Paragraph 10, above, to:

Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3339

If you have any questions, please contact Jeff Hageman (909) 321-4574, Mark Smythe at (909) 782-4998, or Michael Adackapara at (909) 782-3238, or contact the Regional Board's staff counsel, Ted Cobb, at (916) 341-5171.

6/19/01
Date


Gerard J. Thibeault
Executive Officer

In the matter of:)
)
Guthrie Development Company)
25200 La Paz Road, Suite 210)
Laguna Hills, CA 92653)
)
Attn: Robert Guthrie

Complaint No. 01-73
for
Administrative Civil Liability

WAIVER OF HEARING

I agree to waive Guthrie Development Company's right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. 01-73. I have enclosed a check, made payable to the State Water Resources Control Board, in the amount of \$21,280. I understand that I am giving up Guthrie Development Company'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 Guthrie Development Company