



California Regional Water Quality Control Board

San Diego Region



Alan C. Lloyd, Ph.D.
Agency Secretary

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[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

October 20, 2005

CERTIFIED MAIL

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Mr. Raymond R. Patchett
City Manager
City of Carlsbad
1200 Carlsbad Village Drive
Carlsbad, California 92008

In reply refer to: CAU:10-3037203:melbf

Dear Mr. Patchett:

**COMPLAINT NO. R9-2005-0264 FOR ADMINISTRATIVE CIVIL LIABILITY
AGAINST CITY OF CARLSBAD FOR VIOLATION OF WATER CODE § 13376 AND
STATE BOARD ORDER NO. 99-08-DWQ, MUNICIPAL GOLF COURSE,
WDID NO. 9 37C337203**

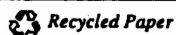
Enclosed find Administrative Civil Liability Complaint No. R9-2005-0264 against the City of Carlsbad (City) for the Municipal Golf Course construction site located at 5800 Hidden Valley Road, WDID No. 9 37C337203. The Complaint in the amount of \$23,900 is for violations of Water Code section 13376 and California State Water Resources Control Board (State Board) Order No. 99-08-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity* (General Permit).

Be aware that the City of Carlsbad may waive its right to a hearing before the California Regional Water Quality Control Board, San Diego Region (Regional Board). Waiver of the hearing constitutes admission of the validity of the allegation of violations in the Complaint and acceptance of the assessment of civil liability in the amount of \$23,900 as set forth in the Complaint. Please note that any waiver will not be effective until reasonable opportunity for public participation has been provided for pursuant to federal NPDES regulations (40 Code of Federal Regulations [CFR] Parts 122, 123, and 124). In order for the Regional Board to accept the waiver of the City's right to a public hearing, the City must submit the following by 5 P.M., Friday November 18, 2005:

1. The enclosed waiver form signed by an authorized agent of the City of Carlsbad; and
2. A check for the full amount of civil liability of \$23,900 made out to the California State Water Resources Control Board.

Waivers submitted after November 18, 2005 will not be accepted.

California Environmental Protection Agency



Raymond R. Patchett, City Manager
City of Carlsbad
ACL Complaint No. R9-2005-0264

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October 20, 2005

If the City does not elect to waive its right to a public hearing, a hearing is tentatively scheduled to be held at the Regional Board meeting on December 14, 2005 at the Regional Board. An agenda, with procedures for the hearing will be mailed to the City not less than ten days before the hearing date. The meeting is scheduled to begin at 9 A.M.

If the City of Carlsbad intends to present any written exculpatory evidence, or written evidence in mitigation at the hearing in response to Complaint No. R9-2005-0264, it must be received by 5 P.M. Tuesday November 29, 2005 in order to be considered by the Regional Board at the public hearing. Please submit twenty (20) copies of any response, including evidentiary exhibits. Copies of material submitted will be forwarded to the Regional Board Members prior to the public hearing.

The Regional Board has established a public comment period to solicit input on the Complaint. This includes publishing a notice in the local newspaper. The public comment period for the Complaint begins October 26, 2005 and will end on November 25, 2005. If the City does not waive its right to a public hearing by November 18, 2005, the written comment period will be extended to November 29, 2005. Oral comments can be made during the tentatively scheduled December 14, 2005 public hearing.

Please contact Frank Melbourn of my staff at (858) 467-2973 or fmelbourn@waterboards.ca.gov if you have any questions concerning this matter. The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

Respectfully,



JOHN H. ROBERTUS
Executive Officer

JHR:mpm:mja:ftm

- Attachments:
1. ACL Complaint No. R9-2005-0264
 2. Waiver of Hearing Form
 3. Regional Board Inspection Report, October 14, 2005
 4. Regional Board Inspection Report, October 18, 2005

- Copy with Enclosures to:
1. Ellen Blake, US EPA Region IX
 2. John Cahill, City of Carlsbad
 3. Conrad "Skip" Hammond, City of Carlsbad

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California Environmental Protection Agency

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**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

IN THE MATTER OF:)	
)	COMPLAINT NO. R9-2005-0264
CITY OF CARLSBAD)	FOR
MUNICIPAL GOLF COURSE)	ADMINISTRATIVE CIVIL LIABILITY
NONCOMPLIANCE WITH WATER CODE)	
§ 13376, AND STATE BOARD ORDER)	October 20, 2005
NO. 99-08-DWQ)	

CITY OF CARLSBAD IS HEREBY GIVEN NOTICE THAT:

1. The City of Carlsbad (City) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (Regional Board) may impose civil liability under section 13385 of the Water Code.
2. On September 8, 2005, the City of Carlsbad commenced construction activity for a municipal golf course disturbing 200 acres of the 400-acre site located at 5800 Hidden Valley Road, Carlsbad, California. On October 14, 2005, the Regional Board inspected the site and was informed by the City's contractor that a Notice of Intent (NOI) had not been filed for the site, and that Best Management Practices (BMPs) specified in the Storm Water Pollution Prevention Plan (SWPPP) had not been implemented on site. On October 17, 2005, the City of Carlsbad filed a NOI for the site with the State Water Resources Control Board and received WDID No. 9 37C337203. The Regional Board conducted a follow-up inspection of the site on October 18, 2005 and noted that the site still lacked the necessary BMPs required by the SWPPP to protect the site from discharging pollutants to an unnamed tributary to Aqua Hedionda Creek.

ALLEGATIONS

3. **Failure to Implement Storm Water Pollution Prevention Plan**
The City failed to implement its SWPPP by failing to implement adequate BMPs at the site in violation of California State Water Resources Control Board (State Board) Order No. 99-08-DWQ section C.2 on at least 20 days: October 1, 2005 to present (the days of violation are ongoing).
4. **Failure to File Notice of Intent**
The City failed to file a NOI for coverage under State Board Order No. 99-08-DWQ, *NPDES General Permit No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity* prior to the commencement of construction activity at the site on September 8, 2005 as required by Water Code section 13376, and Order No. 99-08-DWQ section C.1. The State Board received a NOI for the site on October 17, 2005, 39 days late. The Municipal Golf Course site will continue to be

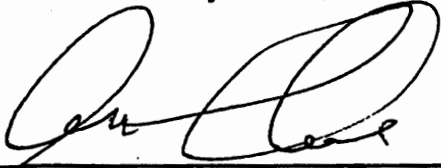
regulated under State Board Order No. 99-08-DWQ until it's expected completion in summer 2007.

5. Pursuant to Water Code section 13385, the maximum liability for failure to implement the SWPPP is \$10,000 per day of violation. Since the failure to implement the SWPPP continues, the maximum liability presently is \$200,000.
6. Pursuant to Water Code section 13385, the maximum liability for failure to file a NOI is \$10,000 per day of violation. The City failed to file a NOI for 39 days; therefore the maximum liability is \$390,000.

PROPOSED CIVIL LIABILITY

7. Based on consideration of the factors listed in section 13385 of the Water Code, civil liability should be imposed on the City by the Regional Board in the amount of \$20,000 for the violations described in paragraph No. 3; and \$3,900 for the violations described in paragraph No. 4 resulting in a total liability for all violations of \$23,900.

Dated this 20th day of October 2005



JOHN H. ROBERTUS
Executive Officer