California Regional Water Quality Control Board
Santa Ana Region

Winston H. Hickox
Secretary for Environmental Protection

Internet Address: http://www.swrcb.ca.gov/rwqcb8
3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (909) 782-4130 - FAX (909) 781-6288

Gray Davis
Governor

January 10, 2003

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Scott Clark
Avalon Homes
26440 La Alameda, Suite 370
Mission Viejo, CA 92691

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8–2003–0021

Dear Mr. Clark:

We are enclosing a certified copy of Complaint No. R8-2003-0021 proposing administrative civil liability of $15,000 for violations of the State's General Permit for Storm Water Discharges Associated with Construction Activity, Order No. 99-08-DWQ, NPDES No. CAS000002, WDID No. 8 30S314874. If necessary, a public hearing on this matter will be scheduled for the Regional Board meeting on February 21, 2003. The staff report regarding this complaint and the meeting agenda will be mailed to you not less than 10 days prior to the Board meeting.

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 will not hold a public hearing on this matter. If you choose to waive your right to a hearing, please sign the enclosed waiver form and submit the form with a check for $15,000. The check should be made payable to the State Water Resources Control Board and should be mailed with the bottom portion of the enclosed invoice in the preprinted envelope to Sacramento.

If you do not wish to waive your right to a hearing, a pre-hearing meeting with Board staff is recommended. Should you wish to schedule a pre-hearing meeting, please call us prior to January 21, 2003. At that time, you may submit information that may not have been previously available to staff regarding this incident. The information should address the following:

1. Nature, circumstances, extent, and gravity of the violation;

2. Your ability to pay the proposed assessment;

3. Any prior history of violations;

State Water Resources Control Board

Winston H. Hickox
Secretary for Environmental Protection

The energy challenge facing California is real.
Every Californian needs to take immediate action to reduce energy consumption.
For a list of simple ways you can reduce demand and cut your energy costs, see our website at http://www.swrcb.ca.gov

Gray Davis
Governor

To:
BRIDLEWOOD 44 LLC
26440 LA ALAMEDA STE 370
MISSION VIEJO, CA 92691
ATTN: SCOTT CLARK

Invoice No: 32332
Invoice Date: 01/10/2003
Enforcement Action ID: 64608
Enforcement Order No: R8-2003-0021

INVOICE

ACLCOMP

Description	Amount	Due Date
38342 LIABILITY AMOUNT	$15,000.00	
TOTAL AMOUNT DUE	**$15,000.00**	

California Environmental Protection Agency

Recycled Paper

Retain above portion for your records

Please return bottom portion with your payment

BRIDLEWOOD 44 LLC
26440 LA ALAMEDA STE 370
MISSION VIEJO, CA 92691
ATTN: SCOTT CLARK

Description	Amount	Due Date
38342 LIABDUE	$15,000.00	
TOTAL AMOUNT DUE	**$15,000.00**	

Make your check payable to:

State Water Resources Control Board

Mail payment to:

SWRCB ACCOUNTING
ATTN: ENFORCEMENT
P. O. Box 100
SACRAMENTO, CA 95812-0100

Amount Enclosed: $_____

PLEASE PRINT THE FOLLOWING INVOICE NUMBER ON YOUR CHECK: **32332**

Invoice Date: 01/10/2003
Enforcement Action ID: 64608
Enforcement Order No.: R8-2003-0021

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:	)	
	)	
Avalon Homes	)	Complaint No. R8-2003-0021
26440 La Alameda, Suite 370	)	for
Mission Viejo, CA 92691	)	Administrative Civil Liability
	)	
Attn: Mr. Scott Clark	)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Avalon Homes 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. 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 February 21, 2003 at the Loma Linda City Council Chambers.

2. Avalon Homes 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 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 storm water runoff from the Bridlewood Estates (owned by Avalon Homes) construction site (site), located near Bastanchury Road and Eureka Avenue in the City of Yorba Linda, 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 30S314874.

5. Avalon Homes is alleged to have violated Provisions A.2 ("Discharges of material other than storm water to the storm sewer system . . . are prohibited".), and B.2 ("The SWPPP . . . shall be designed and implemented such that . . . discharges shall not cause or contribute to an exceedance of . . . water quality standards . . .") of the General Permit. As more fully set forth below, Avalon Homes allowed discharges of sediment-laden storm water, which caused or threatened to cause pollution, contamination, or nuisance. Avalon Homes failed to develop and implement a Storm Water Pollution Prevention Plan (SWPPP) and failed to implement appropriate Best

9. Board staff spent a total of 30 hours investigating this incident (@$70 per hour, the total cost for staff time is $2,100). Avalon Homes saved approximately $5,000 by not developing, implementing, and maintaining a SWPPP and, effective erosion/sediment controls at this site. 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. 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
A. Nature, Circumstances, Extent and Gravity of Violation	Unauthorized, non-storm water and storm water discharges of sediment-laden water. Removal of BMPs to facilitate the transport of sediment-laden water to the local storm drain system, and inadequate monitoring and maintenance of BMPs during discharge.
B. Culpability	The discharger is fully culpable for the violations of the General Permit.
C. Economic Benefit or Savings	Avalon Homes saved approximately $5,000 by not properly developing, implementing and maintaining an adequate SWPPP and implementing proper BMPs.
D. Prior History of Violations	Several verbal warnings were issued for poor housekeeping and BMP implementation.
E. Staff Costs	Regional Board staff spent approximately 30 hours investigating this incident (@ $70 per hour, the total cost for staff time is $2,100).
F. Ability to pay	The discharger has not provided any information to indicate that it is unable to pay the proposed amount.

After consideration of these factors, the Executive Officer proposes that civil liability be imposed on Avalon Homes in the amount of $15,000 for the violations cited above. An invoice for this amount is enclosed.

In the matter of:	)	Complaint No. R8-2003-0021
	)	for
Avalon Homes	)	Administrative Civil Liability
26440 La Alameda, Ste 300	)	
Mission Viejo, CA 92691	)	
	)	
Attn: Mr. Scott Clark	)	

WAIVER OF HEARING

I agree to waive Avalon Homes' right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2003-0021. I have enclosed a check, made payable to the State Water Resources Control Board, in the amount of $15,000. I understand that I am giving up Avalon Homes' 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 Avalon Homes

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

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Avalon Homes	)	Complaint No. R8-2003-0021
26440 La Alameda, Suite 370	)	for
Mission Viejo, CA 92691	)	Administrative Civil Liability
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Management Practices (BMPs) for the elimination or reduction of pollutants. Appropriate monitoring of the BMPs during the discharge was not performed, and Avalon Homes 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 submitted by Avalon Homes, construction commenced on January 15, 2001 on 16 acres. The currently active portion of the project is on approximately 5 acres;

   b) On November 6, 2002, Board staff (staff) inspected the site. Violations noted by staff included poor housekeeping, inadequate BMP maintenance and an un-authorized, non-storm water discharge. Housekeeping and BMP maintenance issues included excessive sediment in the streets and around catch basins; a white residue leaking from trash bins to the gutter; excessive trash throughout the site; and several catch basin filter fabric BMPs had been cut open, allowing sediment to enter the local storm drain system. Finally, a non-storm water discharge, originating with the testing of an irrigation system, was carrying sediment, trash and other construction related spills as it flowed across the site and into an on-site catch basin inlet.

   c) On November 8, 2002, during a storm event, staff re-inspected the site. During this inspection, staff observed two (2) discharges of sediment-laden storm water. First, site laborers were observed removing sand bags and filter fabric BMPs from catch basin inlets and actively shoveling sediment and sediment-laden runoff into the catch basins. Second, inadequate erosion control and sediment control BMPs had resulted in sediment-laden runoff discharging from the site to Bastanchury Avenue and flowing into an unprotected catch basin.

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 volume of the unauthorized discharge could not be accurately assessed, but was estimated to be less than 1,000 gallons.

8. Pursuant to Section 13385(c), Avalon Homes is civilly liable for the sum of $20,000 for the two (2) days of violation (November 6, 2002 and November 8, 2002). The total maximum assessment is $20,000 for the violations cited in Paragraph 5, above.

9. Board staff spent a total of 30 hours investigating this incident (@$70 per hour, the total cost for staff time is $2,100). Avalon Homes saved approximately $5,000 by not developing, implementing, and maintaining a SWPPP and, effective erosion/sediment controls at this site. These factors were considered in assessing the penalty indicated in Paragraph 10, below.

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F. Ability to pay	The discharger has not provided any information to indicate that it is unable to pay the proposed amount.

After consideration of these factors, the Executive Officer proposes that civil liability be imposed on Avalon Homes in the amount of $15,000 for the violations cited above. An invoice for this amount is enclosed.

WAIVER OF HEARING

Avalon Homes may waive its right to a hearing in this matter. If Avalon Homes chooses to do so, please sign the attached waiver, which is on page 5 of this Complaint, and return it, together with the bottom portion of the invoice and a check for $15,000, to the State Water Resources Control Board in the preprinted enclosed envelope.

If you have any questions, please contact Mark Smythe at (909) 782-4998 or Michael Adackapara at (909) 782-3238, or contact the Board 's staff counsel, Jorge Leon, at (916) 341-5180.

1-10-03
Date

Gerard J. Thibeault
Executive Officer

In the matter of: Avalon Homes 26440 La Alameda, Ste 300 Mission Viejo, CA 92691 Attn: Mr. Scott Clark	)))))))	Complaint No. R8-2003-0021 for Administrative Civil Liability

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_____ _____

Date for Avalon Homes