State of California
California Regional Water Quality Control Board
Santa Ana Region

IN THE MATTER OF:	)	
	)	
Robertson's Ready Mix	)	Complaint No. R8-2003-0043
200 South Main Street.	)	for
Corona, CA 92882	)	Administrative Civil Liability
	)	
Attn: Mr. Craig Phillips	)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Robertson's Ready Mix (Robertson's) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose administrative civil liability pursuant to California Water Code Section 13385(c)(2). A hearing concerning this Complaint will be scheduled for the Board's regular meeting on April 4, 2003, at the Cucamonga County Water District, City of Rancho Cucamonga, California.

2. Robertson's 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 announcement for the meeting and the 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. The storm water runoff from Robertson's, a ready-mixed concrete products company located at 16081 Construction Circle West in the City of Irvine, California (hereinafter facility), is currently regulated under the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The facility's WDID Number is 830S013539.

5. Robertson's is alleged to have violated Provisions A.1 ("...materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited."), and B.3 ("...Development and implementation of an SWPPP that complies with the requirements in Section A of the General Permit and that includes BMPs that achieve BAT/BCT constitutes compliance with this requirement.") of the General Permit. As more fully set forth below, Robertson's failed to properly develop and implement an effective Storm Water Pollution Prevention Plan (SWPPP) and Monitoring and Reporting Program, resulting in the discharge of unauthorized, non-storm water containing pollutants to the local storm drain system and subsequently San Diego Creek and Newport Bay.

6. This Complaint is based on the following facts:

   a. On May 4, and May 9, 2001, Regional Board staff observed unauthorized, non-storm water discharges leaving the facility at the eastern exit of this facility and discharging directly to the local storm drain system, which is tributary to San Diego Creek and Newport Bay. The discharges were the result of truck washing activities and had pH levels of 10-12. Staff instructed Greg Edwards, Robertson's Batch Manager at the site, that the General Permit prohibits non-storm water discharges and a Notice of Violation was issued on May 17, 2001.

   b. On January 7, 2003, Regional Board staff observed an unauthorized, non-storm water discharge (originating from the washed sand stock pile) exiting the facility at the facility's east side gate discharging to the street curb and then discharging to the local storm drain system. Again, Greg Edwards was told that unauthorized, non-storm water discharges are strictly prohibited by the General Permit and staff instructed him to control all non-storm water discharges from leaving this facility.

   c. On January 10, 2003, Regional Board staff conducted a follow-up inspection of the facility. As a result of a supply line break at the facility earlier that morning, a large sediment-laden, unauthorized, non-storm water discharge had been allowed to flow out the east side gate and entered the local storm drain system. At the time of the inspection, staff noted that no BMPs had been implemented to prevent this discharge of sediment and wastewater from leaving the facility. Instead, truck traffic was allowed to continue to drive through and track the sediment and wastewater off site. The wastewater was later determined to have a pH of 11. On January 29, 2003, a Notice of Violation was issued for the January 7 and January 10, 2003 discharges.

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 discharge volume for three of the days indicated above was unknown, but estimated to be less than 1,000 gallons. For January 10, 2003, the discharge was estimated to be a minimum of 11,000 gallons of water, commingled with sediment and process wastewater.

8. Pursuant to Section 13385(c), Robertson's is civilly liable for a maximum amount of $140,000 ($10,000 per day for 4 days of violations and an additional $100,000 based on flow (11,000-1,000=10,000 gallons @ $10 per gallon)) for violations cited in Paragraph 5, above.

9. Regional Board staff spent approximately 30 hours investigating all four incidents (@$70.00 per hour, the total cost for staff time is $2,100). Robertson's saved

approximately $7,000 by not implementing adequate BMPs throughout the facility to control the discharge of sediment and unauthorized, non-storm water discharges and by not providing employees with proper training.

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 following table:

Factor	Comment
A. Nature, Circumstances, Extent and Gravity of Violation	The discharger has, on several occasions, discharged sediment-laden, unauthorized, non-storm water with elevated pH levels in violation of the General Permit. Those discharges entered the local storm drain system and subsequently San Diego Creek and Newport Bay.
B. Culpability	The discharger failed to implement appropriate BMPs to eliminate the discharge of unauthorized, non-storm water flows as is required by the General Permit. The discharger had been warned a number of times to eliminate non-storm water discharges and to implement appropriate BMPs.
C. Economic Benefit or Savings	Staff has estimated that Robertson's has saved approximately $7,000 by not implementing appropriate BMPs and by not providing employees with proper training.
D. Prior History of Violations	Robertson's Ready Mix has had administrative civil liability actions issued against them at other sites in the past for similar violations, as well as having several Notices of Violations issued for poor SWPPP preparation and inadequate BMP implementation.
E. Staff Costs	Regional Board staff spent at least a total of 30 hours investigating these incidents (@$70.00 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.

11. After consideration of the above factors, the Executive Officer proposes civil liability be imposed on Robertson's Ready Mix by the Board in the amount of $25,000 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 form and return it, together with a check or money order for $25,000 payable to the

State Water Resources Control Board and the bottom portion of the invoice in the enclosed envelope.

If you have any questions concerning this complaint, contact Michael Adackapara at (909) 782-3238, or Mark Smythe at (909) 782-4998. All legal questions should be addressed to Jorge Leon, the Board's Staff Counsel, at (916) 341-5180.

2/27/03
Date

Gerard J. Thibeault
Executive Officer

California Regional Water Quality Control Board
Santa Ana Region

IN THE MATTER OF:	)	
	)	
Robertson's Ready Mix	)	Complaint No. R8-2003-0043
200 South Main Street.	)	for
Corona, California 92882	)	Administrative Civil Liability
	)	
ATTEN: Mr. Craig Phillips	)	

Waiver of Hearing

I agree to waive the right of Robertson's Ready Mix to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2003-0043. I have enclosed the bottom portion of the invoice and a check for $25,000 payable to the State Water Resources Control Board for the proposed liability in Paragraph 11 of Complaint No. R8-2003-0043. I understand that I am giving up the right of Robertson's Ready Mix to be heard and to argue against the allegations made in the Complaint No. R8-2003-0043, and against the imposition of, and amount of, civil liability.

_____ _____

Date Robertson's Ready Mix

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

February 27, 2003

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Craig Phillips
Robertson's Ready Mix
200 South Main Street.
Corona, CA 92882

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8–2003–0043

Dear Mr. Phillips:

We are enclosing a certified copy of Complaint No. R8-2003-0043 proposing administrative civil liability of $25,000 for violations of the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 97-03-DWQ, NPDES No. CAS000001, WDID No. 8 30S013539. If necessary, a public hearing on this matter will be scheduled for the Regional Board meeting on April 4, 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. An invoice and a preprinted envelope are also enclosed.

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 may 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 $25,000. 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 March 10, 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;

4. Your degree of culpability;

5. Economic benefit or saving; and

6. Such other matters as justice may require.

If you have any questions regarding this complaint, you may contact Mark Smythe at 909-782-4998 or Michael Adackapara at 909-782-3238. All legal questions should be referred to our legal counsel, Jorge Leon, at 916-341-5180.

Sincerely,

Gerard J. Thibeault
Executive Officer

Enclosures: Complaint No. R8-2003-0043, Waiver Form, Invoice, Preprinted Envelope

cc with enclosures:

Regional Board
State Water Resources Control Board, Division of Water Quality - Bruce Fujimoto
State Water Resources Control Board, Office of the Chief Counsel – Jorge Leon
U. S. Environmental Protection Agency, Region 9 (WTR-7) – Paul Michel
Orange County Public Facilities & Resources Dept.- Chris Crompton
Orange County Harbors, Beaches and Parks Commission – Don Bankhead
City of Irvine NPDES Coordinator – Mike Loving
State Department of Fish and Game – Terry Dickerson
California Coastal Commission – Teresa Henry
US Fish and Wildlife Service – Will Miller
Orange County CoastKeeper – Garry Brown
Lawyers for Clean Water – Kimberly Lewand
Lawyers for Clean Water – Daniel Cooper