California Regional Water Quality Control Board
Santa Ana Region

April 4, 2003

ITEM: 25

Subject: Administrative Civil Liability Complaint No. R8-2003-0036, Taylor Woodrow, Chino Hills, San Bernardino County

BACKGROUND

On March 10, 2003, the Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2003-0036 (copy attached) to Taylor Woodrow for alleged violations of the State's General Permit for Storm Water Runoff Associated with Construction Activity (General Permit). In the ACL, the Executive Officer proposed an assessment of $30,000 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 Taylor Woodrow.

ACL No. R8-2003-0036 was issued by the Executive Officer to Taylor Woodrow for failure to develop and implement an effective Storm Water Pollution Prevention Plan (SWPPP) and failure to maintain Best Management Practices (BMPs). Inadequate BMP implementation and lack of BMP maintenance contributed to the discharge of sediments into the storm drain system and to waters of the United States.

DISCUSSION

The General Permit regulates the discharge of storm water from construction sites as required under Section 402(p) of the Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and fee (annual fee of $700), with the State Water Resources Control Board.

Taylor Woodrow's 48.4-acre construction site, Artisan, located in the City of Chino Hills, is regulated under the General Permit, WDID No. 8 36S318207.

On November 8, 2002, during a rain event, Board staff conducted a routine inspection of the construction site located at Butterfield Ranch Road and Slate Drive in Chino Hills. A significant amount of soil erosion was observed on Fox Hollow Way (at the time of inspection, a mostly unpaved street within the Artisan project) resulting in sediment-laden storm water discharge. The filter fabric installed at the storm drain inlet was punctured at a number of places. The sources of sediment included the graded dirt

road and soil erosion from the graded areas. The best management practices (BMPs) implemented at the site were inadequate and were poorly maintained.

During a re-inspection of the site on November 14, 2002, Board staff spoke to Mr. Wayne Rudolph, site superintendent, about site conditions during the November 8, 2002 storm event. Board staff requested that the site superintendent maintain the BMPs and implement additional BMPs to effectively control erosion and to control sediments from leaving disturbed areas. Staff reviewed the SWPPP and noted that it was inadequate and that there were no inspection records for the November 8, 2002 storm event or any records of employee training.

On November 27, 2002, Board staff re-inspected the site. BMPs had not been maintained, no additional BMPs had been implemented, and the punctured filter fabric had not been replaced or repaired. On December 9, 2002, Board staff spoke with Mr. Wayne Rudolph by phone and discussed the need for additional BMPs and proper BMP maintenance. Staff requested that appropriate BMPs be developed, implemented and maintained, and that the punctured filter fabric be replaced or repaired.

On December 16, 2002, Board staff inspected the site during another storm event. There were no improvements in the BMPs and sediment-laden storm water was flowing into the storm drain system from the graded dirt road, staging area and pads. Erosion control BMPs had not been installed, and sediment control BMPs were inadequate. Sediment-laden storm water was observed entering a catch basin at the northwest corner of the site and was flowing off-site and entering an unprotected catch basin on Butterfield Ranch Road. On December 19, 2002, Board staff spoke with Mr. Rick Bianchi, Project Manager, and discussed site conditions during the December 16, 2002 and prior storm events and the need for appropriate control measures at the site.

On December 26, 2002, Board staff issued Taylor Woodrow a Notice of Violation (NOV) regarding the lack of an effective combination of erosion and sediment control BMPs, poor housekeeping practices and the discharge of sediment-laden storm water from the site into the storm drains.

On January 8, 2002, Board staff met on-site with Mr. Rick Bianchi and Mr. Wayne Rudolph to discuss the NOV and to review the SWPPP. The SWPPP was inadequate and not site-specific. Staff reiterated the need for an effective combination of erosion and sediment control BMPs and the need to revise the SWPPP to bring it into compliance with the General Permit. These requirements were previously conveyed to Taylor Woodrow on a number of occasions.

Even after repeated requests to improve the site conditions, Taylor Woodrow failed to implement or maintain proper BMPs and continued to discharge sediment-laden water to the storm drains for most of the storm events in January and February 2003. Consequently, the Executive Officer issued ACL No. R8-2003-0027 on March 10, 2003.

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.

Taylor Woodrow is alleged to have violated Provisions C.2 and C.4 of the General Permit . Taylor Woodrow violated C.2 by failing to properly develop and implement an effective SWPPP and violated C.4 by not properly developing and implementing a monitoring program in accordance with Section B: Monitoring Program and Reporting Requirements. Pursuant to Water Code Section 13385(a)(2), civil liability may be imposed for the preceding violations. The maximum potential liability for these violations is $8,199,000 (see the attached ACL for details).

Section 13385(e) of 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 did not develop and implement an effective SWPPP and monitoring program. The SWPPP was not site-specific and the employees at the site were not properly trained. Taylor Woodrow was repeatedly advised to implement corrective measures at the site, but did not do so. Taylor Woodrow's inaction and failure to provide adequate employee training and oversight of its operations led to inadequate BMP implementation and maintenance and caused pollutants to be discharged into the storm drains. The storm drains in the area are tributary to San Antonio Channel that discharges to Prado Basin.

2. Ability to Pay the Proposed Assessment

Taylor Woodrow has not provided any information to indicate that it would not have the ability to pay the proposed assessment.

3. Prior History of Violations

At least three verbal notices and one written notice of violation were issued to the facility for lack of an effective combination of sediment and erosion controls at the site.

4. Degree of Culpability

By submitting the Notice of Intent, the discharger certified that it would comply with the provisions of the General Permit including the development and implementation of a SWPPP and Monitoring Program. The discharger violated the terms of the General Permit by failing to develop and implement a site-specific SWPPP and monitoring program. Taylor Woodrow was not responsive to Regional Board staff's efforts to bring the site into compliance. Despite several requests, Taylor Woodrow was not in compliance during subsequent inspections of the site.

All dischargers, including Taylor Woodrow, are responsible for compliance with the Clean Water Act. Taylor Woodrow is fully culpable for violating the terms and conditions of the General Permit, which implements the Clean Water Act. Taylor Woodrow had been warned about these violations, and failed to correct site conditions.

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

By failing to effectively implement and/or maintain BMPs, Taylor Woodrow gained a significant economic advantage over their competitors. Economic savings from these violations include savings from not implementing appropriate erosion and sediment control measures at the site. These savings have been estimated to be approximately $26,400. (Savings from the construction site, 50% completed, with at least 25% of the area needing erosion sediment control measures ($0.1/sq. ft. x 48.4 acres) = $26,400.)

STATEWIDE ENFORCEMENT POLICY

On February 19, 2002, the State Water Resources Control Board adopted a State Water Quality Enforcement Policy to ensure the enforcement actions throughout the State are fair, firm and consistent. The above-described administrative civil liability complaint is in accordance with the Statewide Enforcement Policy.

RECOMMENDATIONS

After consideration of the above factors, staff recommends that the Board affirm the assessment of $30,000 specified in the Administrative Civil Liability Complaint issued by the Executive Officer on March 10, 2003.

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:	)	**Complaint No. R8-2003-0036**
	)	**for**
Taylor Woodrow	)	**Administrative Civil Liability**
15 Cushing	)	
Irvine, CA 92618	)	
	)	
Attn: Rick Bianchi	)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Taylor Woodrow 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) of the California Water Code.

2. A hearing concerning this Complaint is scheduled for the Board's regular meeting on April 4, 2003, at the Cucamonga County Water District, 10440 Ashford Street, Rancho Cucamonga. Taylor Woodrow 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 and the staff report for 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. Taylor Woodrow is alleged to have violated Special Provisions C.2 and C.4 of the General Permit for Storm Water Discharges Associated with Construction Activity, Order No. 99-08-DWQ (General Permit). Taylor Woodrow failed to develop and implement an effective Storm Water Pollution Prevention Plan (SWPPP) and discharged storm water containing 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.

5. Runoff from the Taylor Woodrow construction site (Artisan) in the City of Chino Hills is regulated under the State's General Permit, WDID No. 8 36S318207.

6. This complaint is based on the following facts:

   a) Taylor Woodrow is a developer/construction company with offices at 15 Cushing, Irvine, California. It is named in the Notice of Intent (NOI) as the owner and responsible party for Artisan, the construction site located at the southwest corner of Butterfield Ranch Road and Picasso Drive in Chino Hills. Mr. Rick Bianchi is the Project Manager for the site.

b) During a storm event on November 8, 2002, Board staff conducted a routine inspection of the construction site located at Butterfield Ranch Road and Slate Drive in Chino Hills. A significant amount of soil erosion was observed on Fox Hollow Way (at the inspection time, an unpaved street within the Artisan project) resulting in sediment-laden storm water discharge. The filter fabric installed at the storm drain inlet was punctured at a number of places. The sources of sediment included the graded dirt road and soil erosion from the graded areas. The best management practices (BMP) implemented at the site were inadequate and were poorly maintained.

c) On November 14, 2002, Board staff re-inspected the site and spoke to Mr. Wayne Rudolph, site superintendent, about site conditions during the November 8, 2002 storm event. Board staff requested the site superintendent to maintain the BMPs and to implement additional BMPs to effectively control erosion and sedimentation. Staff reviewed the SWPPP and noted that it was inadequate and there were no inspection records for the November 8, 2002 storm event or any records of employee training.

d) On November 27, 2002, Board staff re-inspected the site. BMPs had not been maintained, no additional BMPs were implemented and the punctured filter fabric had not been replaced or repaired.

e) On December 9, 2002, Board staff spoke with Mr. Wayne Rudolph by phone and discussed the need for additional BMPs and proper BMP maintenance. Staff requested that appropriate BMPs be developed, implemented and maintained, and that the punctured filter fabric be replaced or repaired.

f) On December 16, 2002, Board staff inspected the site during another storm event. There were no improvements in the BMPs and sediment-laden storm water was flowing from the graded dirt road, staging area and pads into the storm drain system. Erosion control BMPs had not been installed and sediment control BMPs were inadequate. Sediment-laden storm water was observed entering a catch basin at the northwest corner of the site and was flowing off-site and entering an unprotected catch basin on Butterfield Ranch Road.

g) On December 19, 2002, Board staff spoke with Mr. Rick Bianchi, Project Manager, and discussed site conditions during the December 16, 2002 and prior storm events and the need for appropriate control measures at the site.

h) On December 26, 2002, Board staff issued Taylor Woodrow a Notice of Violation (NOV) regarding the lack of an effective combination of erosion and sediment control BMPs, housekeeping, and pollutant-laden discharge from the site into waters of the United States.

i) On January 8, 2002, Board staff met on-site with Mr. Rick Bianchi and Mr. Wayne Rudolph to discuss the NOV and review the SWPPP. The SWPPP was inadequate and not site-specific. Staff reiterated the need for an effective combination of erosion and sediment control BMPs and the need to revise the

SWPPP to bring it into compliance with the General Permit. These requirements were previously conveyed to Taylor Woodrow on a number of occasions.

7. Taylor Woodrow is alleged to have violated Special Provisions C.2 and C.4.

A) The General Permit Special Provision C.2 provides:

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

Taylor Woodrow violated this provision by not developing and implementing an effective SWPPP.

B) The General Permit Provision C.4 provides:

"All dischargers shall develop and implement a monitoring program and reporting plan in accordance with Section B: Monitoring Program and Reporting Requirements."

Taylor Woodrow violated this provision by not conducting pre and post-storm inspection/monitoring to determine the effectiveness of BMPs and by not keeping inspection records.

8. Taylor Woodrow violated the General Permit by discharging storm water containing pollutants to waters of the United States from the construction site. Taylor Woodrow also violated the General Permit by failing to develop and properly implement an effective SWPPP and monitoring program which includes BMP maintenance, inspection and repair. Pursuant to Water Code Section 13385(a)(2), civil liability may be imposed for the preceding violations.

9. 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.

10. The sediment-laden storm water discharged to the storm drain system from the site was estimated to be 817,900 gallons based on rainfall intensity and runoff coefficient of impacted area.

11. Pursuant to Section 13385(c), the total maximum assessment for which Taylor Woodrow is civilly liable is $8,199,000 ($30,000 for three days of violation and an

[1] BAT is the acronym for Best Available Technology; BCT is the acronym for Best Conventional Technology

additional $8,169,030 based on the total estimated discharge) for the violations cited in Paragraph 8, above.

12. Taylor Woodrow saved approximately $26,400 by not implementing adequate BMPs at the site (total acreage of 48.4 acres; 50% project completed; at least 25% of the area needed erosion /sediment control measures @ 0.1/sq. ft.). Board staff costs for investigating this incident were approximately $1,750 (25 hours at $70/hour). These factors were considered in assessing the penalty proposed in Paragraph 14, below.

13. 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	A site-specific SWPPP and monitoring program were not developed and implemented. Due to facility's lack of adequate best management practices (BMPs) implementation, storm water containing pollutants was discharged and entered the storm drain system. Photos taken and a sample collected at the site indicated sediment-laden water discharge. The storm drain discharges into San Antonio Channel before entering Prado Basin. Taylor Woodrow was repeatedly advised to implement corrective measures at the site, but did not do so. Taylor Woodrow's inaction and failure to provide adequate employee training and oversight of its operations led to inadequate BMP implementation and caused pollutants to be discharged into the waters of the US.
B. Culpability	The discharger did not implement adequate BMPs and discharged storm water containing pollutants. The discharger violated the terms of the General Permit by failing to develop and implement a site-specific SWPPP and monitoring program. Taylor Woodrow was not responsive to Regional Board staff's efforts to bring the site into compliance. Despite several requests, Taylor Woodrow was not in compliance during subsequent inspections of the site.

C. Economic Benefit or Savings	Taylor Woodrow saved approximately $26,400 by not implementing adequate BMPs at the site during the period of construction.
D. Prior History of Violations	At least three verbal notices and one written notice of violation were issued to the facility for lack of an effective combination of sediment and erosion controls at the site.
E. Staff Costs	Regional Board staff spent approximately 25 hours investigating this incident (@$70.00 per hour, the total cost for staff time is $1750).
F. Ability to pay	The discharger has not provided any information to indicate that it is unable to pay the proposed amount.

14. The total maximum liability for the violations of the General Permit is $8,199,030. After consideration of the above factors, the Executive Officer proposes civil liability be imposed on Taylor Woodrow in the amount of $30,000 for the violations cited above. An invoice for this amount is enclosed.

WAIVER OF HEARING

Taylor Woodrow may waive its 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 for $30,000 and the bottom portion of the invoice to the State Water Resources Control Board in the enclosed preprinted envelope.

If you have any questions, please contact Ms. Milasol C. Gaslan at (909) 782-4419 or Mr. Michael Adackapara at (909) 782-3238, or contact the Regional Board's staff counsel, Jorge Leon, at (916) 341-5180.

3/10/03
Date

Gerard J. Thibeault
Executive Officer

In the matter of:	)	Complaint No. R8-2003-0036
	)	for
Taylor Woodrow	)	Administrative Civil Liability
15 Cushing	)	
Irvine, CA 92618	)	
Attn: Rick Bianchi	)	

WAIVER OF HEARING

I agree to waive the right of Taylor Woodrow to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2003-0036. I have enclosed a check, made payable to the State Water Resources Control Board, in the amount of $30,000. I understand that I am giving up the right of Taylor Woodrow 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 Taylor Woodrow