California Regional Water Quality Control Board
Santa Ana Region
Staff Report
April 4, 2003

ITEM: 27

SUBJECT: Administrative Civil Liability Complaint No. R8-2003-0043, Robertson's Ready Mix, Irvine, Orange County

BACKGROUND

On February 27, 2003, the Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2003-0043 (copy attached) to Robertson's Ready Mix (Robertsons) for alleged violations of the State General Permit for Storm Water Runoff Associated with Industrial Activity (General Permit). In the ACL, the Executive Officer proposed an assessment of $25,000 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 Robertsons.

ACL No. R8-2003-0043 was issued by the Executive Officer to Robertsons for failure to develop and implement an effective Storm Water Pollution Prevention Plan (SWPPP) and Monitoring and Reporting Program, resulting in the unauthorized discharge of non-storm water containing pollutants to the local municipal storm sewer system, and subsequently to San Diego Creek and Newport Bay.

DISCUSSION

The General Permit regulates the discharge of storm water from industrial 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 $700), with the State Water Resources Control Board. Robertsons filed a NOI and obtained coverage under the General Permit on November 12, 1997, WDID 8 30S013539. The facility is located on the northern corner of Construction Circle West and Construction North in the City of Irvine.

The site was initially inspected by Board staff (Staff) on November 6, 2000, as part of a multi-agency inspection team investigating repeated occurrences of high pollutant loads in the municipal storm drain system servicing 'Construction Circle' in Irvine. At the time of that inspection, Staff noted that repeated tracking of vehicles through on-site, ponded process water had resulted in an unauthorized, non-storm water discharge from the front (eastern) gate. Further, improper truck washout practices had resulted in the unauthorized

discharge of sediment and wash waters out of the southern gate. At that time, Mr. Greg Edwards, the Plant Manager, was advised as to the prohibition on unauthorized, non-storm water discharges from industrial facilities under the General Permit. No further enforcement action was taken at that time.

On November 8, 2000, County of Orange staff continued the multi-agency inspections and, according to County records, again observed unauthorized, non-storm water discharges resulting from on-site truck washing activities. Mr. Edwards was again advised by County staff that unauthorized, non-storm water discharges were prohibited from entering the local storm drain system or receiving waters and would need to be kept on site. Mr. Edwards said that he would prevent runoff.

On May 4, 2001, Staff conducted a drive-by inspection and observed an unauthorized, non-storm water discharge leaving both the southern and eastern gates. The southern gate discharge flowed eastward in the gutter and the eastern gate discharge flowed southward in the gutter, around the corner, and both discharges entered the same catch basin inlet. The field pH of the discharge leaving the eastern gate was measured by Staff at pH 10. It is assumed that the elevated pH of the discharge was due to contact of the discharge with uncured cement materials, cement wastes or the presence of process or truck/equipment wash waters in the discharge. Again, Mr. Edwards was advised by Staff that unauthorized, non-storm water discharges were prohibited from entering the local storm drain system or receiving waters and would need to be kept on site.

On May 9, 2001, Staff conducted another drive-by inspection and observed an unauthorized, non-storm water discharge leaving the eastern gate and entering the down-gradient catch basin inlet. The field pH of the discharge was measured by Staff at pH 11. A further inspection of the site identified problems with vehicular tracking of sediment and other possible pollutants, which can result in the transport of pollutants into the local storm drain system; inadequate Best Management Practice (BMP) implementation at the bulk oil/chemical storage area that could result in the commingling of pollutants with storm water and authorized, non-storm water discharges, such as landscape runoff; and, poor housekeeping practices, including fuel spills, which could result in the introduction of pollutants in storm water and authorized, non-storm water discharges.

A Notice of Violation (NOV) was sent to Robertsons on May 17, 2001, identifying the above violations and requesting a response, by June 1, 2001, identifying the actions that would be taken by Robertsons to address the above-noted violations. On June 1, 2001, Robertsons submitted a response to the May 17, 2001 NOV. To address the violation of unauthorized, non-storm water discharges, Robertsons stated that new BMPs would be implemented, including the installation of a wash-down station adjacent to the plant with redirection of runoff to the plant for recycling; use of recycled water for rinse-down stations to reduce fresh water usage; installation of a camera and intercom at the exit driveway to regularly monitor drivers; and installation of a plastic liner and concrete curb to redirect runoff from the washed sand stockpile to underground tunnels for recycling. To address the violation of off-site sediment tracking from the east and south gates, Robertsons stated that there were BMPs already in place, but not fully executed, at the time of the violations. These

include the regular training of drivers, moving the neighbors water truck away from the site entrance, and increasing the frequency of sweeping at the gates, especially during high-production days.

On January 7, 2003, Staff inspected the facility and noted the following violations: an unauthorized, non-storm water discharge originating from the adjacent washed sand stock pile was discharging from the east gate and entering the down-gradient catch basin inlet and heavy tracking of sediment was noted migrating off site, from both south and east gates. The BMPs of concrete curbing and plastic, identified in Robertsons letter of June 1, 2001, was inadequate to address the continuous discharge of water from the washed sand stockpile. Mr. Edwards was again informed that unauthorized, non-storm water discharges were strictly prohibited by the General permit and that off-site tracking of sediments results in the introduction of those pollutants into the local storm drain system and any receiving waters.

On January 10, 2003, Staff conducted a drive-by inspection of the facility. It was immediately noted that a large, sediment-laden, non-storm water discharge had occurred during the last few hours. Staff interviewed an employee of a neighboring facility who stated that water was flowing off Robertsons when the employee had arrived to work at 7:30 that morning. The employee had also taken photographs of the discharge and later provided digital copies of those photographs to Staff. Staff then questioned the night manager of Robertsons who stated that during the night of January 9, 2003, one of the drivers had accidentally backed the truck into a water supply pipe and that no one had been aware of the damage to the pipe and the resulting discharge. When asked for an accident report, the Robertsons night manager could not produce one. In inspecting the site and the surrounding area, Staff noted that the discharge within the facility itself had mobilized a significant amount of sediment. While evidence of track-out from the facility was apparent, pooled water in the gutters indicated that a significant volume of water had flowed out of the facility, into the local storm drain system. This conclusion was supported by the digital photographs provided by the neighboring facility. The field pH of the discharge was measured by Staff at pH 11.

On January 15, 2003, Robertsons faxed an Incident Report (signed on January 13, 2003) and a letter (dated January 14, 2003) to the Regional Board office. The incident report initially states, "The water filled the plant but was never discharged to the outside property." An addendum also notes, "Also we are aware that a small amount of water and/or sand might be tracked outside of the plant by our trucks, so we have deployed a team with brooms and wheel barrels to stop any water/sand that might leave the plant." The January 14, 2003 letter states, "As noted on the Plant Managers incident report water was contained within the plant location except some moisture being tracked out the driveway."

On January 29, 2003 an NOV was sent to Robertsons regarding the unauthorized, non-storm water discharges noted on January 7 and January 10, 2003. The NOV requested that Robertsons immediately address the problems identified in the NOV and submit a description of the actions taken to the Board office by February 1, 2003. No response to the NOV was received from Robertsons.

Robertsons 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. Pursuant to Water Code Section 13385(c)(2), civil liability may be administratively imposed for the preceding violations by a regional board in an amount not to exceed ten thousand dollars ($10,000) for each day of violation. Additional liability, not to exceed $10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons. This action is based on four (4) days of violation, where unauthorized, non-storm water discharges were observed by Staff after Robertsons personnel had been reminded of the General Permit's strict prohibition on unauthorized, non-storm water discharges. The volume of discharge for the first three incidents is unknown, but estimated to be less than 1,000 gallons. For the January 10, 2003 incident, the discharge was estimated to be a minimum of 11,000 gallons of water, commingled with sediment and process wastewater. Therefore the maximum civil liability that can be imposed is $140,000 ($40,000 for three days of violation and an additional $100,000 based on the discharge volume).

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

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

The discharger was fully aware of the prohibition against unauthorized, non-storm water discharges and the requirements of the General Permit to develop and implement a Storm Water Pollution Prevention Plan to prevent those discharges. As a result of inadequate BMP implementation, non-storm water commingled with sediment and high pH process wastewater was discharged to the local storm sewer system and subsequently to San Diego Creek and Newport Bay.

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

Robertsons has had Administrative Civil Liability Actions issued against them at other sites for similar violations in the past. Numerous NOVs and verbal enforcement actions have also been taken for poor BMP implementation, especially tracking and unauthorized, non-storm water, high pH discharges.

4. Degree of Culpability

Robertsons submitted a Notice of Intent and agreed to comply with the terms and conditions of the General Permit. Robertsons is therefore fully culpable for violating the General Permit, which implements the Clean Water Act. In addition, County and Board staff had verbally warned Robertsons personnel to control unauthorized, non-storm water discharges and the off-site tracking of pollutants on at least five (5) occasions at this facility alone, prior to the January 10, 2003 discharge, as well as in the Notice of Violation on May 17, 2001.

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

By failing to implement effective BMPs throughout the facility to control the discharge of sediment and unauthorized, non-storm water discharges and by not providing employees with proper training, Robertsons gained an economic advantage of an estimated $7,000.

STATEWIDE ENFORCEMENT POLICY

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

RECOMMENDATION

After consideration of the above factors, staff recommends that the Board affirm the assessment of $25,000 specified in the Administrative Civil Liability Complaint issued by the Executive Officer on February 27, 2003.

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

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:
ROBERTSON'S READY MIX
200 S. MAIN ST. #200
CORONA, CA 92882

Invoice No: 32911
Invoice Date: 02/27/2003
Enforcement Action ID: 68147
Enforcement Order No: R8-2003-0043

INVOICE

ACLCOMP

Description	Amount	Due Date
41151 LIABILITY AMOUNT	$25,000.00	
TOTAL AMOUNT DUE	**$25,000.00**	

California Environmental Protection Agency

Retain above portion for your records

Recycled Paper

Please return bottom portion with your payment

ROBERTSON'S READY MIX
200 S. MAIN ST. #200
CORONA, CA 92882

Description	Amount	Due Date
41151 LIABDUE	$25,000.00	
TOTAL AMOUNT DUE	**$25,000.00**	

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: **32911**

Invoice Date: 02/27/2003
Enforcement Action ID: 68147
Enforcement Order No.: R8-2003-0043