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

Ms. Susan Lindquist
Centex Homes
7555 Irvine Center Dr., Suite 100
Irvine, CA 90018

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8–2003–0022

Dear Ms. Lindquist:

We are enclosing a certified copy of Complaint No. R8-2003-0014 proposing administrative civil liability of $120,000 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 30S317017. 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 $120,000. The check should be made payable to the State Water Resources Control Board and should be mailed in the enclosed preprinted envelope, with the bottom portion of the enclosed invoice and the waiver form 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:
CENTEX HOMES
7555 IRVINE CENTER DR STE 100
IRVINE, CA 92618
ATTN: SUSAN LINDQUIST

Invoice No:	32331
Invoice Date:	01/10/2003
Enforcement Action ID:	64604
Enforcement Order No:	R8-2003-0022

INVOICE

ACLCOMP

Description	Amount	Due Date
38340 LIABILITY AMOUNT	$120,000.00	
TOTAL AMOUNT DUE	**$120,000.00**	

California Environmental Protection Agency

Recycled Paper

Retain above portion for your records

Please return bottom portion with your payment

CENTEX HOMES
7555 IRVINE CENTER DR STE 100
IRVINE, CA 92618
ATTN: SUSAN LINDQUIST

Description	Amount	Due Date
38340 LIABDUE	$120,000.00	
TOTAL AMOUNT DUE	**$120,000.00**	

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: **32331**

Invoice Date:	01/10/2003
Enforcement Action ID:	64604
Enforcement Order No.:	R8-2003-0022

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:	)	
	)	
Centex Homes	)	Complaint No. R8-2003-0022
7555 Irvine Center Drive, # 100	)	for
Irvine, CA 90018	)	Administrative Civil Liability
	)	
Attn: Mrs. Susan Lindquist	)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Centex 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) 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. Centex 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 Hawks Pointe construction site (site), located in the City of Fullerton, 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 30S317017.

5. Centex 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 any applicable water quality standards . . .") of the General Permit. As more fully set forth below, Centex Homes allowed discharges of sediment-laden storm water, which caused or threatened to cause pollution, contamination, or nuisance. Centex Homes failed to develop and implement an effective combination of erosion and sediment controls (Section A.6 of the General Permit) and implement appropriate Best Management Practices (BMPs) for the

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 observed volume of the unauthorized, sediment-laden storm water discharge was estimated to be 125,000 gallons.

8. Pursuant to Section 13385(c), Centex Homes is civilly liable for the sum of $10,000 (1 day of violation for the sediment discharges and inadequate erosion/sediment control measures) and an additional $1,240,000 based on the flow (125,000 – 1000 = 124,000 gallons @ $10 per gallon). The total maximum assessment is $1,250,000 for the violations cited in Paragraph 5, above.

9. Board staff spent a total of 20 hours investigating this incident (@ $70 per hour, the total cost for staff time is $1,400). Centex Homes saved approximately $60,000 by not implementing and maintaining an effective combination of erosion and sediment controls at this hillside construction 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	Several large, unauthorized storm water discharges of sediment-laden water left the site and entered the local storm drain system. The discharge was the result of a lack of an effective combination of sediment/erosion and an inadequate monitoring and maintenance of BMPs during the storm event.
B. Culpability	The discharger violated the terms of the General Permit by failing to implement appropriate BMPs and by discharging storm water containing pollutants.
C. Economic Benefit or Savings	Centex Homes saved approximately $60,000 by not properly developing, implementing and maintaining an adequate SWPPP and implementing proper BMPs.
D. Prior History of Violations	Centex Homes has had two previous administrative civil liability actions taken against them at other sites in the past year for similar violations, as well as having several Notices of Violation issued for poor SWPPP preparation and BMP implementation.

In the matter of:	)	Complaint No. R8-2003-0014
	)	for
Centex Homes	)	Administrative Civil Liability
7555 Irvine Center Drive, #100	)	
Irvine, CA 90018	)	
	)	
Attn: Mrs. Susan Lindquist	)	

WAIVER OF HEARING

I agree to waive Centex Homes' right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2003-0014. I have enclosed a check, made payable to the State Water Resources Control Board, in the amount of $120,000. I understand that I am giving up Centex 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 Centex Homes

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:	)	
	)	
Centex Homes	)	Complaint No. R8-2003-0022
7555 Irvine Center Drive, # 100	)	for
Irvine, CA 90018	)	Administrative Civil Liability
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Attn: Mrs. Susan Lindquist	)	

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elimination or reduction of pollutants. Appropriate monitoring of the BMPs during the rain event was not performed, and Centex 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 Centex Homes, construction commenced in February of 2001 on the 86-acre hillside project, and is projected to be completed in March 2003;

   b) On November 8, 2002, Board staff (staff) conducted a routine compliance inspection during the first major rain event of this wet season. During this inspection staff observed major BMP failures occurring throughout the site due to an ineffective combination of erosion and sediment controls. Sediment-laden water was flowing off the construction site into two separate unprotected catch basins located on Beach Avenue, as well as causing flooding at the intersection of Beach Avenue and Hawks Pointe Drive. Further, the "water quality inlet" style BMP at the base of the project had been overwhelmed by large, constant flows of sediment-laden water originating from multiple sources within the site, rendering the BMP ineffective;

   c) Upon inspection of Cardinal Crest, the uppermost portion of the site, staff noted major sediment discharges in the developed street flowing down Muir Trail Drive. The two temporary detention/sediment basins had filled completely with sediment and sediment-laden runoff was flowing over or around these BMPs. At this time, staff instructed Centex homes that they must implement and reinforce all BMPs and control all discharges coming from the site;

   d) A follow-up inspection was conducted on November 12, 2002. Signs of severe erosion were noted throughout the Cardinal Crest area. Erosion rills, which had been observed at 1-2 feet deep during the November 8, 2002 inspection, were now 4-6 feet deep; and

   e) The SWPPP, which was submitted to the Regional Board office on November 27, 2002, included an approved erosion control plan from the City of Fullerton that specifically cites BMPs that are to be in place. In addition, the site SWPPP requires that "Erosion control facilities will be placed per the City of Fullerton approved erosion control plans. Sandbags, silt fencing, slope polymer/seeding and temporary desilting basins are the primary erosion control facilities". Adequate implementation of these BMPs had not been accomplished during this storm event.

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 observed volume of the unauthorized, sediment-laden storm water discharge was estimated to be 125,000 gallons.

8. Pursuant to Section 13385(c), Centex Homes is civilly liable for the sum of $10,000 (1 day of violation for the sediment discharges and inadequate erosion/sediment control measures) and an additional $1,240,000 based on the flow (125,000 – 1000 = 124,000 gallons @ $10 per gallon). The total maximum assessment is $1,250,000 for the violations cited in Paragraph 5, above.

9. Board staff spent a total of 20 hours investigating this incident (@ $70 per hour, the total cost for staff time is $1,400). Centex Homes saved approximately $60,000 by not implementing and maintaining an effective combination of erosion and sediment controls at this hillside construction 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.

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A. Nature, Circumstances, Extent and Gravity of Violation	Several large, unauthorized storm water discharges of sediment-laden water left the site and entered the local storm drain system. The discharge was the result of a lack of an effective combination of sediment/erosion and an inadequate monitoring and maintenance of BMPs during the storm event.
B. Culpability	The discharger violated the terms of the General Permit by failing to implement appropriate BMPs and by discharging storm water containing pollutants.
C. Economic Benefit or Savings	Centex Homes saved approximately $60,000 by not properly developing, implementing and maintaining an adequate SWPPP and implementing proper BMPs.
D. Prior History of Violations	Centex Homes has had two previous administrative civil liability actions taken against them at other sites in the past year for similar violations, as well as having several Notices of Violation issued for poor SWPPP preparation and BMP implementation.

E. Staff Costs	Regional Board staff spent approximately 20 hours investigating this incident (@$70 per hour, the total cost for staff time is $1400.00).
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 Centex Homes in the amount of $120,000 for the violations cited above. An invoice for this amount is enclosed.

WAIVER OF HEARING

Centex Homes may waive its right to a hearing in this matter. If Centex 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 $120,000, 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:	)	Complaint No. R8-2003-0014
	)	for
Centex Homes	)	Administrative Civil Liability
7555 Irvine Center Drive, #100	)	
Irvine, CA 90018	)	
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Attn: Mrs. Susan Lindquist	)	

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Date for Centex Homes