



California Regional Water Quality Control Board San Diego Region



Alan C. Lloyd, Ph.D.
Agency Secretary

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4340
(858) 467-2952 • Fax (858) 571-6972
[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

October 20, 2005

CERTIFIED MAIL

7003 1680 0000 7393 5899

Mr. Raymond R. Patchett
City Manager
City of Carlsbad
1200 Carlsbad Village Drive
Carlsbad, California 92008

In reply refer to: CAU:10-3037203:melbf

Dear Mr. Patchett:

**COMPLAINT NO. R9-2005-0264 FOR ADMINISTRATIVE CIVIL LIABILITY
AGAINST CITY OF CARLSBAD FOR VIOLATION OF WATER CODE § 13376 AND
STATE BOARD ORDER NO. 99-08-DWQ, MUNICIPAL GOLF COURSE,
WDID NO. 9 37C337203**

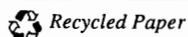
Enclosed find Administrative Civil Liability Complaint No. R9-2005-0264 against the City of Carlsbad (City) for the Municipal Golf Course construction site located at 5800 Hidden Valley Road, WDID No. 9 37C337203. The Complaint in the amount of \$23,900 is for violations of Water Code section 13376 and California State Water Resources Control Board (State Board) Order No. 99-08-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity* (General Permit).

Be aware that the City of Carlsbad may waive its right to a hearing before the California Regional Water Quality Control Board, San Diego Region (Regional Board). Waiver of the hearing constitutes admission of the validity of the allegation of violations in the Complaint and acceptance of the assessment of civil liability in the amount of \$23,900 as set forth in the Complaint. Please note that any waiver will not be effective until reasonable opportunity for public participation has been provided for pursuant to federal NPDES regulations (40 Code of Federal Regulations [CFR] Parts 122, 123, and 124). In order for the Regional Board to accept the waiver of the City's right to a public hearing, the City must submit the following by 5 P.M., Friday November 18, 2005:

1. The enclosed waiver form signed by an authorized agent of the City of Carlsbad; and
2. A check for the full amount of civil liability of \$23,900 made out to the California State Water Resources Control Board.

Waivers submitted after November 18, 2005 will not be accepted.

California Environmental Protection Agency



October 20, 2005

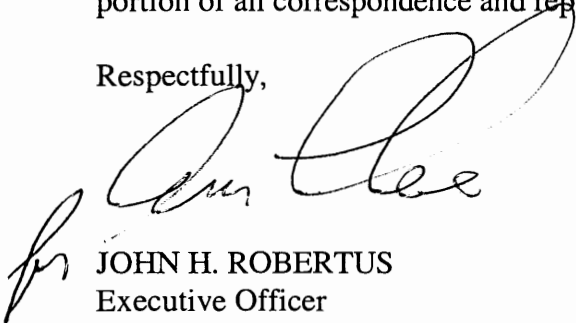
If the City does not elect to waive its right to a public hearing, a hearing is tentatively scheduled to be held at the Regional Board meeting on December 14, 2005 at the Regional Board. An agenda, with procedures for the hearing will be mailed to the City not less than ten days before the hearing date. The meeting is scheduled to begin at 9 A.M.

If the City of Carlsbad intends to present any written exculpatory evidence, or written evidence in mitigation at the hearing in response to Complaint No. R9-2005-0264, it must be received by 5 P.M. Tuesday November 29, 2005 in order to be considered by the Regional Board at the public hearing. Please submit twenty (20) copies of any response, including evidentiary exhibits. Copies of material submitted will be forwarded to the Regional Board Members prior to the public hearing.

The Regional Board has established a public comment period to solicit input on the Complaint. This includes publishing a notice in the local newspaper. The public comment period for the Complaint begins October 26, 2005 and will end on November 25, 2005. If the City does not waive its right to a public hearing by November 18, 2005, the written comment period will be extended to November 29, 2005. Oral comments can be made during the tentatively scheduled December 14, 2005 public hearing.

Please contact Frank Melbourn of my staff at (858) 467-2973 or fmelbourn@waterboards.ca.gov if you have any questions concerning this matter. The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

Respectfully,



JOHN H. ROBERTUS
Executive Officer

JHR:mpm:mja:ftm

- Attachments:
1. ACL Complaint No. R9-2005-0264
 2. Waiver of Hearing Form
 3. Regional Board Inspection Report, October 14, 2005
 4. Regional Board Inspection Report, October 18, 2005

- Copy with Enclosures to:
1. Ellen Blake, US EPA Region IX
 2. John Cahill, City of Carlsbad
 3. Conrad "Skip" Hammond, City of Carlsbad

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

IN THE MATTER OF:)	
)	COMPLAINT NO. R9-2005-0264
CITY OF CARLSBAD)	FOR
MUNICIPAL GOLF COURSE)	ADMINISTRATIVE CIVIL LIABILITY
NONCOMPLIANCE WITH WATER CODE)	
§ 13376, AND STATE BOARD ORDER)	October 20, 2005
<u>NO. 99-08-DWQ</u>)	

CITY OF CARLSBAD IS HEREBY GIVEN NOTICE THAT:

1. The City of Carlsbad (City) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (Regional Board) may impose civil liability under section 13385 of the Water Code.
2. On September 8, 2005, the City of Carlsbad commenced construction activity for a municipal golf course disturbing 200 acres of the 400-acre site located at 5800 Hidden Valley Road, Carlsbad, California. On October 14, 2005, the Regional Board inspected the site and was informed by the City's contractor that a Notice of Intent (NOI) had not been filed for the site, and that Best Management Practices (BMPs) specified in the Storm Water Pollution Prevention Plan (SWPPP) had not been implemented on site. On October 17, 2005, the City of Carlsbad filed a NOI for the site with the State Water Resources Control Board and received WDID No. 9 37C337203. The Regional Board conducted a follow-up inspection of the site on October 18, 2005 and noted that the site still lacked the necessary BMPs required by the SWPPP to protect the site from discharging pollutants to an unnamed tributary to Aqua Hedionda Creek.

ALLEGATIONS

3. **Failure to Implement Storm Water Pollution Prevention Plan**

The City failed to implement its SWPPP by failing to implement adequate BMPs at the site in violation of California State Water Resources Control Board (State Board) Order No. 99-08-DWQ section C.2 on at least 20 days: October 1, 2005 to present (the days of violation are ongoing).

4. **Failure to File Notice of Intent**

The City failed to file a NOI for coverage under State Board Order No. 99-08-DWQ, *NPDES General Permit No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity* prior to the commencement of construction activity at the site on September 8, 2005 as required by Water Code section 13376, and Order No. 99-08-DWQ section C.1. The State Board received a NOI for the site on October 17, 2005, 39 days late. The Municipal Golf Course site will continue to be

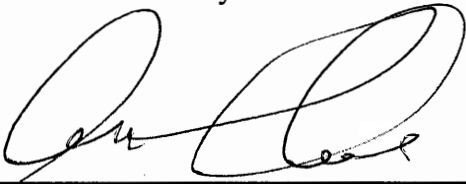
regulated under State Board Order No. 99-08-DWQ until it's expected completion in summer 2007.


5. Pursuant to Water Code section 13385, the maximum liability for failure to implement the SWPPP is \$10,000 per day of violation. Since the failure to implement the SWPPP continues, the maximum liability presently is \$200,000.
6. Pursuant to Water Code section 13385, the maximum liability for failure to file a NOI is \$10,000 per day of violation. The City failed to file a NOI for 39 days; therefore the maximum liability is \$390,000.

PROPOSED CIVIL LIABILITY

7. Based on consideration of the factors listed in section 13385 of the Water Code, civil liability should be imposed on the City by the Regional Board in the amount of \$20,000 for the violations described in paragraph No. 3; and \$3,900 for the violations described in paragraph No. 4 resulting in a total liability for all violations of \$23,900.

Dated this 20th day of October 2005





JOHN H. ROBERTUS
Executive Officer



California Regional Water Quality Control Board San Diego Region



Alan C. Lloyd, Ph.D.
Secretary for
Environmental
Protection

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WAIVER OF RIGHT TO A PUBLIC HEARING

Mr. Raymond R. Patchett
City of Carlsbad
1200 Carlsbad Village Drive
Carlsbad, California 92008

Complaint No. R9-2005-0264
For
Administrative Civil Liability
\$23,900

WDID No. 9 37S337203
Municipal Golf Course Construction Site

By signing below, I agree to waive the City of Carlsbad's right to a public hearing before the California Regional Water Quality Control Board, San Diego Region with regards to the violations alleged in the above referenced Complaint and to remit payment for the civil liability imposed. I understand that I am authorized to give up the City of Carlsbad's right to be heard, and to argue against the allegations made by the Executive Officer in the Complaint, and against the imposition of, or the amount of, civil liability proposed. I have enclosed a check or money order made payable to the State Water Resources Control Board for the civil liability imposed.

Signature

Title

Date

Print your name

Send this signed form to:
John H. Robertus, Executive Officer
C/O Compliance Assurance Unit
California Regional Water Quality Control Board – San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD - SAN DIEGO REGION
WATERSHED MANAGEMENT PROGRAM**

FACILITY INSPECTION REPORT

INSPECTION DATE: **10/14/05**

Time: **1030**

WDID/File No. **937C337203**

FACILITY: Carlsbad Municipal Golf Course

FACILITY REPRESENTATIVE(S) PRESENT DURING INSPECTION: Eric Becker (SDRWQCB) Chris Means (SDRWQCB), John Pryzybysewski (Heinbuch Golf LLC)

The City of Carlsbad

Mr. John Cahill (760) 602-2726

NAME OF OWNER, AGENCY OR PARTY RESPONSIBLE FOR DISCHARGE

OWNER CONTACT NAME AND PHONE #

Heinbuch Golf LLC

Mr. John Pryzybysewski (714) 815-1799

FACILITY OR DEVELOPER NAME (if different from owner)

FACILITY OR DEVELOPER CONTACT NAME AND PHONE #

5800 Hidden Valley Road

Carlsbad, CA 92009

FACILITY STREET ADDRESS

FACILITY CITY AND STATE

APPLICABLE WATER QUALITY LICENSING REQUIREMENTS

- MS4 URBAN RUNOFF REQUIREMENTS NPDES NOS. CAS0108758, CAS0108740 or CAS0108766
- GENERAL PERMIT ORDER NO. 99-08-DWQ, NPDES NO. CAS000002 - CONSTRUCTION
- GENERAL PERMIT ORDER NO. 99-06-DWQ, NPDES NO. CAS000003 - CALTRANS
- GENERAL OR INDIVIDUAL WASTE DISCHARGE REQUIREMENTS
- GENERAL OR INDIVIDUAL WAIVER OF WASTE DISCHARGE REQUIREMENTS
- SECTION 401 WATER QUALITY CERTIFICATION
- CWC SECTION 13264

INSPECTION TYPE (Check One)

- A1 _____ "A" type compliance--Comprehensive inspection in which samples are taken. (EPA Type S)
- B1 X "B" type compliance--A routine nonsampling inspection. (EPA Type C)
- 02 _____ Noncompliance follow-up--Inspection made to verify correction of a previously identified violation.
- 03 _____ Enforcement follow-up--Inspection made to verify that conditions of an enforcement action are being met.
- 04 _____ Complaint--Inspection made in response to a complaint.
- 05 _____ Pre-requirement--Inspection made to gather info. relative to preparing, modifying, or rescinding requirements.
- 06 _____ No Exposure Certification (NEC) - verification that there is no exposure of industrial activities to storm water.
- 07 _____ Notice of termination request for industrial facilities or construction sites - verification that the facility or construction site is not subject to permit requirements (**Type, NOT I or NOT C - circle one**).
- 08 _____ Compliance Assistance Inspection - Outreach inspection due to discharger's request for compliance assistance.

INSPECTION FINDINGS

- Y Were violations noted during this inspection? (Yes/No/Pending Sample Results)
- N Were samples taken? (N=no) If YES then, G= grab or C= Composite and attach a copy of the sample results/chain of custody form

I. COMPLIANCE HISTORY:

- **1st inspection on 10/14/2005**

FACILITY: Carlsbad Municipal Golf

WDID/File #: 337203

INSPECTION DATE: 10/14/05

II. FINDINGS:

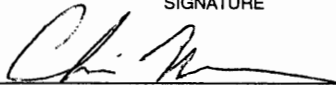
- After an article on the Golf Course appeared in the September 30, 2005 Union Tribune, the Executive Officer of the Regional Board requested that Northern Watershed Unit staff conduct an inspection of the subject site.
- Prior to the inspection, I searched the State's Construction Stormwater database, and was unable to determine if the project had obtained coverage under the Statewide General Construction Stormwater Permit (Order No. 99-08-DWQ).
- The inspection took place on a Friday prior to a forecasted rain event for the weekend.
- Staff met with John P. onsite and he was unable to provide proof of coverage under the State permit. A fax received later in the day from the Cities consultant (Dudek & Associates) confirmed that coverage under the permit had not been obtained, and stated that the City would hand deliver a check and NOI application to Sacramento on Monday Oct. 17.
- Construction had commenced on the Golf Course on September 8, 2005.
- Approximately 200 acres of the 400 acre site have been disturbed by grading activities.
- Staff drove around the entire perimeter of the project and observed that only sediment perimeter controls (silt fence) were in place.
- A stormwater management plan on the wall of the trailer showed a series of sediment basins, but John P. stated that none of the basins had yet to be constructed. A SWPPP had been prepared for the project, but seemed to be fairly generic and not detailed enough for a construction site of this size (400 acres).
- The site did not seem ready for the upcoming rain event due to a lack of adequate erosion and sediment control BMPs being in place.

III. RECOMMENDATIONS AND ADDITIONAL COMMENTS:

- The City should immediately obtain coverage under Order No. 99-08-DWQ.
- A detailed SWPPP should be prepared and implemented immediately which complies with the construction permit requirements.
- Additional inspections are warranted to assure that the site comes into compliance with the permit.
- This case will be forwarded to the Enforcement Unit for possible further enforcement action.
- Fax from Dudek & Associates dated 10/14/2005 is attached.

IV. SIGNATURE SECTION

Inspection Report received by :

FACILITY REPRESENTATIVE	SIGNATURE	TITLE	DATE
Christopher Means			10/14/2005
STAFF INSPECTOR	SIGNATURE	INSPECTION DATE	

VI. (For internal use only)

Reviewed by Supervisor: <u>Robert Marrus</u>	Date: <u>10-19-05</u>
CC:	
Inter-office Referral: 1) _____ 2) _____ 3) _____ 4) _____ 5) _____	



FAX/LETTER OF TRANSMITTAL

City of Carlsbad Field Office
Rancho Santa Fe Road Project
1645 S. Rancho Santa Fe Road, #202
San Marcos, CA 92078
(760) 744-457 FAX (760) 744-4570

DATE 10/14/2005	CONTRACT NO. 39721
ATTENTION Chris Means	
RE: Municipal Golf Course Project	
2 pages faxed	

TO:
CA Regional Water Quality Control Board-SD Region
9179 Sky Park Court, Suite 100
San Diego, CA 92123-4340
FAX: 858-571-6972

WE ARE SENDING YOU Attached Under separate cover via the following items:

Shop Drawings Prints Plans Samples Specifications

Copy of letter Dated _____ Change Order _____

COPIES	DATE	NO.	DESCRIPTION

THESE ARE TRANSMITTED AS CHECKED BELOW:

- For approval
- For checking
- For your use
- Approved as submitted
- Approved as noted
- As requested
- For review and comment
- Returned for corrections
- For your action
- Return _____ copies for approval
- Design only, not for construction
- Return _____ corrected prints

REMARKS Hello Chris,
Please see the attached email I sent to you that came back under review.
Thank you,
Deb

COPY TO: File

SIGNED: Deb Maher
Deb Maher

If enclosures are not as noted, kindly notify us at once.

Deb Maher

From: Deb Maher
Sent: Friday, October 14, 2005 2:50 PM
To: 'meanc@rb9.swrcb.ca.gov'
Cc: George Litzinger; 'Skip Hammann'; 'John Cahill'; John Przybyszewski (John@HeinbuchGolf.com); Don Moore
Subject: City of Carlsbad Municipal Golf Course Project

This is an email from George Litzinger, Dudek & Associates, Inc.

Chris,

I'm the Construction Manager for the Golf Course Project, working with Skip Hammann. Apparently, you met John Przybyszewski at the site this morning and consequently I wasn't there.

There was a question regarding a waste discharge permit and NOI for the Project. The NOI No. listed in the Construction Specification is 9375318017. However, after further investigation this is the NOI No.

for the Aviara Park Project. The city is in the process of filling out the "Notice of Intent" form, paying the fees, and plan to hand deliver the check to Sacramento on Monday so we can get our WQD as soon as possible. In the meantime, we will continue to install and implement our BMPs for this weekend's forecasted rain.

Please contact me on my Cell phone 619-980-7048 if you have any questions.

Thank you,

George Litzinger

Deb Maher
Dudek & Associates, Inc.
 CM Division
 Field Office: 760-744-4578
 Nextel: 760-802-4717

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD - SAN DIEGO REGION
WATERSHED MANAGEMENT PROGRAM**

FACILITY INSPECTION REPORT

INSPECTION DATE: **10/18/05**

Time: **1330**

WDID/File No. **937C337203**

FACILITY: Carlsbad Municipal Golf Course

FACILITY REPRESENTATIVE(S) PRESENT DURING INSPECTION: Eric Becker (SDRWQCB) Frank Melbourn (SDRWQCB), John Pryzbysewski (Heinbuch Golf LLC) Conrad Hammond (City of Carlsbad)

The City of Carlsbad

Mr. John Cahill (760) 602-2726

NAME OF OWNER, AGENCY OR PARTY RESPONSIBLE FOR DISCHARGE

OWNER CONTACT NAME AND PHONE #

Heinbuch Golf LLC

Mr. John Pryzbysewski (714) 815-1799

FACILITY OR DEVELOPER NAME (if different from owner)

FACILITY OR DEVELOPER CONTACT NAME AND PHONE #

5800 Hidden Valley Road

Carlsbad, CA 92009

FACILITY STREET ADDRESS

FACILITY CITY AND STATE

APPLICABLE WATER QUALITY LICENSING REQUIREMENTS

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INSPECTION FINDINGS

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N Were samples taken? (N=no) If YES then, G= grab or C= Composite and attach a copy of the sample results/chain of custody form

I. COMPLIANCE HISTORY:

- **1st inspection on 10/14/2005**

FACILITY: Carlsbad Municipal Golf

WDID/File #: 337203

INSPECTION DATE: 10/18/05

II. FINDINGS:


- Approximately 200 acres of the site have been mass graded. (Photo 1)
- Observed uncovered areas throughout the project without adequate BMPs and evidence of sediment discharges onto College Avenue (Photo 2).
- Site lacks any erosion control BMPs including uncovered, exterior slopes throughout the project (Photos 2-4).
- City or Carlsbad and construction management personnel indicated that sediment basins/traps had been installed at the site. However during the inspection, the location and drainage areas of these sediment basins/traps was not clearly evident. Plastic spillways had been installed at some locations (Photo 5).
- The site appeared to be relying on silt fence as the main sediment control BMP. The silt fence was installed incorrectly on most of the site perimeter and not trenched into the ground, making it susceptible to undermining (Photo 6).
- City of Carlsbad personnel indicated that their grading contractor has had difficulty implementing the erosion and sediment control BMPs. The City has recently requested its environmental consultant Dudek & Associates to assist the grading contractor in proper BMP implementation.
- Site lacks effective combination of erosion and sediment control BMPs.

III. RECOMMENDATIONS AND ADDITIONAL COMMENTS:

- The site needs to implement sediment and erosion control BMPs on the site to prevent the additional discharges of sediment.
- Silt fence installation needs to be corrected.
- Use of sediment basins should meet the sizing requirements of the General Construction Permit and drainage areas to the basins should be clearly defined.
- The SWPPP needs to be amended to address the deficiencies noted and additional BMP requirements.

IV. SIGNATURE SECTION

Inspection Report received by :

FACILITY REPRESENTATIVE	SIGNATURE	TITLE	DATE
Eric Becker			10/18/2005
STAFF INSPECTOR	SIGNATURE		INSPECTION DATE

VI. (For internal use only)

Reviewed by Supervisor: <u>Ralph Martin</u>	Date: <u>10-20-05</u>
cc:	
Inter-office Referral: 1) _____ 2) _____ 3) _____ 4) _____ 5) _____	