

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

ADMINISTRATIVE CIVIL LIABILITY
ORDER NO. R3-2005-0012

Issued to:

Coast Unified School District
Cambria Elementary School
San Luis Obispo County

The California Regional Water Quality Control Board, Central Coast Region, finds:

1. Coast Unified School District (hereafter Discharger) owns the Cambria Elementary School construction site at 3223 Main Street, Cambria, San Luis Obispo County (hereafter Site).
2. On March 12, 2004, the Discharger filed a Notice of Intent to comply with the terms of the General Permit for Storm Water Discharges Associated with Construction Activity (Permit).
3. The Permit requires the Discharger to develop and implement a Storm Water Pollution Prevention Plan (SWPPP) in accordance with Permit Section A, and "implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season."
4. On October 14, 2004 and on October 26, 2004, Regional Board staff inspected the Site and determined the Discharger was in violation of Permit requirements. Based on observations of Site conditions, discussions with Site personnel, and information from the County's inspector, Morro Group, Inc., the period of violation is at least from March 17, 2004 through December 7, 2004 (a total of one hundred and thirty one days within that period of time).
5. Violations observed during the Regional Board staff and Morro Group inspections include discharge without appropriate Best Management Practices (BMPs), inadequate SWPPP, and ineffective and un-maintained BMPs.
6. The following is a list of Permit requirements and violations.
 - a. **Storm Water Discharges** (*Discharge Prohibition A.3*) – Discharge Prohibition A.3 of the Permit states,

"Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance."¹

¹ "Pollution" includes an alteration of water quality to a degree that unreasonably affects beneficial uses. (CWC 13050(l).) "Nuisance" means "anything which meets all of the following requirements: (1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. (2) Affects at the same time an entire community or neighborhood, or any considerable number of persons ... (3) Occurs during, or as a result of, the treatment or disposal of wastes." (CWC 13050(m).)

October 18, 2004 – Morro Group, Inc., acting as San Luis Obispo County's agent on this construction project, documented in their monitoring report that "silt/sediment left the boundaries of the construction site and entered nearby drainages." The contractor reported this non-compliance to the Regional Board office in writing on October 20, 2004.

October 19, 2004 – Morro Group documented in their monitoring report that "Large volumes of sediment left the site boundaries and entered the wetland area to the south, and the three culvert pipes conveying storm flow underneath Main Street resulting in heavy sedimentation in Fiscalini Creek. Fiscalini Creek is a tributary to Santa Rosa Creek located approximately 800 hundred yards downstream. The observed sediment plume from the site extended several hundred yards downstream along Fiscalini Creek."

October 26, 2004 – Regional Board staff witnessed sediment laden storm water being discharged from the site to Fiscalini Creek.

December 7, 2004 – Morro Group documented in their monitoring report that "silt/sediment left the boundaries of the construction site and entered nearby drainages."

The Water Quality Control Plan, Central Coast Basin (Basin Plan) lists the beneficial uses for Santa Rosa Creek as:

- Municipal and Domestic Supply,
- Agricultural Supply,
- Industrial Process Supply,
- Ground Water Recharge,
- Contact and Non-contact Water Recreation,
- Wildlife Habitat,
- Warm and Cold Fresh Water Habitat,
- Migration of Aquatic Organisms,
- Spawning, Reproduction, and/or Early Development,
- Rare, Threatened, or Endangered Species,
- Freshwater Replenishment, and

- Commercial and Sport Fishing.

The Basin Plan assigns the beneficial uses of:

- Municipal and Domestic Supply,
- Contact and Non-contact Water Recreation, and
- Migration of Aquatic Organisms to surface water bodies within the Region that are not listed by name, such as the unnamed blue line creek tributary to Santa Rosa Creek. The discharge of sediment laden storm water to Fiscalini Creek and Santa Rosa Creek threatens the beneficial uses of these water bodies.

The amount of sediment that left the site was such that Regional Board staff and the Department of Fish and Game staff requested the clean up of the deposition in Fiscalini Creek. The area of Fiscalini Creek from which deposited sediment was removed is estimated to be four feet wide by 50 feet long. The depth of sediment removed was measured to be approximately 8-12 inches deep. The estimated amount of sediment removed from Fiscalini Creek was approximately six cubic yards.

Therefore, the Discharger was in violation of Permit Section A.3 for a total of at least four days.

- b. **Receiving Water Limitations** (*Receiving Water Limitation B.1*) – Receiving Water Limitation B.1 of the Permit states,

"Storm water discharges ... to any surface or ground water shall not adversely impact ... the environment."

The factors stated in paragraph 6.a. (above) demonstrate that the storm water discharges adversely impacted the environment in receiving waters in Fiscalini Creek. The Discharger was in violation of Permit Section B.1 for a total of at least four days.

- c. **Storm Water Pollution Prevention Plan (SWPPP)** (*Special Provisions for Construction Activity C.2; Section A: Storm Water Pollution Prevention Plan, items 1.c and 4.a*) – Special Provisions for Construction Activity C.2 of the Permit states,

“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 (Best Available Technology Economically Achievable) BAT/BCT (Best Conventional Pollutant Control Technology) performance standard.”

Section A: Storm Water Pollution Prevention Plan, item 1.c states,

“A Storm Water Pollution Prevention Plan (SWPPP) shall be developed and implemented to address the specific circumstances for each construction site covered by this General Permit. The SWPPP shall be certified in accordance with the signatory requirements of section C, Standard Provision for Construction Activities (9). The SWPPP shall be developed and amended or revised, when necessary, to meet the following objectives: Identify, construct, implement in accordance with a time schedule, and maintain Best Management Practices (BMPs) to reduce or eliminate pollutants in storm water discharges and authorized nonstorm water discharges from the construction site during construction.”

Section A: Storm Water Pollution Prevention Plan, item 4.a states,

“The discharger shall amend the SWPPP whenever there is a change in construction or operations which may affect the discharge of pollutants to surface waters, ground waters, or a municipal separate storm sewer system (MS4). The SWPPP shall also be amended if the discharger violates any condition of this

General Permit or has not achieved the general objective of reducing or eliminating pollutants in storm water discharges. If the Regional Board determines that the discharger is in violation of the General Permit, the SWPPP shall be amended and implemented in a timely manner, but in no case more than 14-calendar days after notification by the RWQCB. All amendments should be dated and directly attached to the SWPPP.”

October 14, 2004 – Regional Board staff found the SWPPP on site to be outdated and discussed the matter with Site personnel.

October 15, 2004 – Regional Board staff requested that an updated SWPPP be submitted to the Regional Board office on or before October 29, 2004.

October 29, 2004 – A.J. Diani Construction Co., Inc. submitted an amended SWPPP and a letter stating, “this plan was originally designed around the storm water and permanent erosion control measures being complete and installed.”

November 10, 2004 – Regional Board staff sent a Notice of Violation stating, “Our letter requested design calculations for the sediment traps in the amended SWPPP. However, the SWPPP we received on October 29, 2004 does not contain sediment trap design calculations specific to the sediment traps shown on the site plan (revised 10/28/04).” Another amended SWPPP was requested and was received on November 24, 2004. In the amended SWPPP, sediment traps were omitted and retention basins were added. The cover letter states, “we have updated our BMP system based upon the premise of capturing any and all of the water from a storm event, and filtering it before it is discharged off site.”

Therefore, because the Discharger did not have an adequate SWPPP, the Discharger was in violation of Permit Section C.2 for a total of

at least 41 days (October 14, 2004 through November 24, 2004).

d. Sediment Control (*Special Provisions for Construction Activity C.2; Section A: Storm Water Pollution Prevention Plan, items 1.c and 8*) – Section A: Storm Water Pollution Prevention Plan, item 8 states,

“The SWPPP shall include a description or illustration of BMPs which will be implemented to prevent a net increase of sediment load in storm water discharge relative to preconstruction levels. Sediment control BMPs are required at appropriate locations along the site perimeter and at all operational inlets to the storm drain system at all times during the rainy season. Sediment control practices may include filtration devices and barriers (such as fiber rolls, silt fence, straw bale barriers, and gravel inlet filters) and/or settling devices (such as sediment traps or basins). Effective filtration devices, barriers, and settling devices shall be selected, installed and maintained properly. A proposed schedule for deployment of sediment control BMPs shall be included in the SWPPP. These are the most basic measures to prevent sediment from leaving the project site and moving into receiving water...”

“During the non-rainy season, the discharger is responsible for ensuring that adequate sediment control materials are available to control sediment discharges at the downgrade perimeter and operational inlets in the event of a predicted storm. The discharger shall consider a full range of sediment controls, in addition to the controls listed above, such as straw bale dikes, earth dikes, brush barriers, drainage swales, check dams, subsurface drain, sandbag dikes, fiber rolls, or other controls. At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season....”

The rainy season is commonly defined as October 1 through April 15.

March 17, 2004 - Morro Group documented in their monitoring report that, “Grading activities began before installation of erosion (and sediment) control measures was complete.”

April 9, 2004 - Morro Group documented in their monitoring report that, “Exposed loose stockpile areas in top northwest corner of site have no erosion/sediment controls in place.”

April 16, 2004 - Morro Group again documented in their monitoring report that, “Exposed loose stockpile areas in top northwest corner of site have no erosion/sediment controls in place.”

April 29, 2004 - Morro Group documented in their monitoring report for the third time that, “Exposed loose stockpile areas in top northwest corner of site have no erosion/sediment controls in place.”

October 14, 2004 – Regional Board staff inspected the Site with the Discharger and discussed concerns about unprotected stockpiles on Site.

October 15, 2004 – Regional Board staff sent a letter stating, “Regional Board staff found many unprotected stockpiles located throughout the site. Staff are concerned that, although there are sediment control Best Management Practices (BMPs) stockpiled on site for use, due to the size of some of the stockpiles, sediment control measures may be overwhelmed.”

October 18, 2004 – Morro Group documented in their monitoring report that, “Soil stockpile areas are not adequately protected.”

October 26, 2004 – During an inspection, Regional Board staff photo-documented stockpiles without adequate sediment control measures.

Permit Section C.2 and Section A: Storm Water Pollution Prevention Plan, items 1.c and 8 require the Discharger to include adequate BMPs in the SWPPP and to implement BMPs to the BAT/BCT performance standard. The Discharger failed to implement adequate BMPs. Therefore, the Discharger was in violation of Permit Section C.2 for a total of at least 41 days during the rainy season (only the days of violation within the rainy season period were counted; March 17, 2004 through April 15, 2004 and October 14, 2004 through October 26, 2004).

e. BMP Maintenance, Inspections, and Repair (Special Provisions for Construction Activity C.2; Section A: Storm Water Pollution Prevention Plan items, 1.c and 11) – Section A: Storm Water Pollution Prevention Plan, item 11 states,

“The SWPPP shall include a discussion of the program to inspect and maintain all BMPs as identified in the site plan or other narrative documents throughout the entire duration of the project. A qualified person will be assigned the responsibility to conduct inspections. The name and telephone number of that person shall be listed in the SWPPP document. Inspections will be performed before and after storm events and once each 24-hour period during extended storm events to identify BMP effectiveness and implement repairs or design changes as soon as feasible depending upon field conditions. Equipment, materials, and workers must be available for rapid response to failures and emergencies. All corrective maintenance to BMPs shall be performed as soon as possible after the conclusion of each storm depending on worker safety...”

March 19, 2004 - Morro Group documented in their monitoring report that, “Straw wattles placed at the toe of construction site slope were not installed properly.”

March 22, 2004 - Morro Group again documented in their monitoring report that, “Straw wattles placed at the toe of

construction site slope were not installed properly.”

March 25, 2004 - Morro Group documented in their monitoring report for the third time that, “Straw wattles placed at the toe of construction site slope were not installed properly.”

April 9, 2004 - Morro Group documented in their monitoring report that silt fence along the boundary of the Site “has large dirt boulders that have breached the perimeter control.” “Silt fence is damaged and needs to be repaired.”

April 16, 2004 - Morro Group documented again in their monitoring report that silt fence along the boundary of the Site had large dirt boulders that had breached the perimeter control. “Silt fence is damaged and needs to be repaired.”

April 29, 2004 - Morro Group documented in their monitoring report a third time that the silt fence along the boundary of the Site had large dirt boulders that had breached the perimeter control. “Silt fence is damaged and needs to be repaired.”

June 10, 2004 - Morro Group documented in their monitoring report that one of the gravel bag barriers around a storm drain inlet had “ruptured and needs to be cleaned up and replaced with a new gravel bag.”

June 18, 2004 - Morro Group documented in their monitoring report that several of the gravel bag barriers around a storm drain inlet had “ruptured and needs to be cleaned up and replaced with a new gravel bag.”

June 29, 2004 - Morro Group again documented in their monitoring report that several of the gravel bag barriers around a storm drain inlet had “ruptured and needs to be cleaned up and replaced with a new gravel bag.”

October 19, 2004 - Morro Group documented in their monitoring report that, “Erosion and sediment control

measures were already overburdened as a result of the weekend's rain event. As a result, major failures occurred throughout the site..."

November 4, 2004 - Morro Group documented in their monitoring report that, "The site still requires concentrated efforts in general clean-up of deposited material on and off-site, and repair and clean-up of on-site erosion control measures and/or structures."

November 9, 2004 - Morro Group documented in their monitoring report that, "The toe of the fill slopes along Main Street still contain deposited material on the outside of the silt fence, hay bale, and straw wattle control measures."

November 16 and 17, 2004 - Morro Group documented in their monitoring report that: "Several of the temporary small culverts on the upper portions of the site that convey stormwater to the large detention basin are plugged and/or buried underneath excess material."

Permit Section C.2 and Section A: Storm Water Pollution Prevention Plan items 1.c and 11 require the Discharger to construct, implement and maintain BMPs and to perform corrective maintenance as soon as possible. The Discharger was in violation of Permit Section C.2 for a total of at least 41 days during the rainy season (only the days of violation during the rainy season period were counted; March 19, 2004 through March 25, 2004 and April 9, 2004 through April 15, 2004 and October 19, 2004 through November 17, 2004).

7. Regional Board staff discussed potential violations and current violations with Site personnel during the October 14, 2004 and October 26, 2004 inspections, and documented potential violations in a letter dated October 15, 2004, and issued a Notice of Violation letter on November 10, 2004.
8. California Water Code Section 13385 states that any person who violates waste discharge requirements shall be civilly liable. The Regional Board may impose administrative civil liability not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.
9. The Discharger was in violation of the Permit for at least one hundred and thirty one days, as described in the Complaint. Pursuant to California Water Code Section 13385, the Regional Board may impose a maximum civil liability of one million three hundred and ten thousand dollars (\$1,310,000).
10. As required by California Water Code Section 13385, the Regional Board considered:
 - a. nature, circumstances, extent, and gravity of the violations
 - b. discharge susceptibility to cleanup or abatement
 - c. discharge toxicity
 - d. ability to pay and the effect on ability to continue in business
 - e. voluntary cleanup efforts undertaken
 - f. violation history
 - g. degree of culpability
 - h. economic benefit or savings (if any), and
 - i. other matters as justice may require (including Regional Board staff time for preparing this enforcement action).
11. After consideration of the above-listed factors, the Executive Officer issued the Complaint in the amount of one hundred and fifty thousand dollars (\$150,000), including staff costs of five thousand five hundred fifty dollars (\$5,550). The Regional Board has considered the analysis of these factors as set forth in the Complaint, and all comments and testimony and other evidence received, and agrees with and adopts that analysis as findings of the Regional Board.
12. This enforcement action is taken for the protection of the environment and as such is exempt from provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) in accordance with California Code of Regulations, Title 14, Sections 15307 and 15308.

IT IS HEREBY ORDERED, pursuant to California Water Code Section 13385, Coast Unified School District is assessed a total civil liability of one hundred and fifty thousand dollars (\$150,000) to be delivered to the Regional Water Quality Control Board at the letterhead address by April 25, 2005. The check is to be made payable to the State Water Resources Control Board.

I, Roger W. Briggs, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the Regional Water Quality Control Board on March 25, 2005.

Roger W. Briggs, Executive Officer

Date