

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING OF MARCH 24-25, 2005

Prepared on February 17, 2005

ITEM: 18

SUBJECT: Administrative Civil Liability Order No. R3-2005-0012; Coast Unified School District, Cambria Elementary School

KEY INFORMATION

Discharger: Coast Unified School District
Location: 3223 Main Street, Cambria, San Luis Obispo County
Discharge Type: Construction Storm Water
Existing Order: Order No. 99-08-DWQ, NPDES General Permit No. CAS000002

SUMMARY

Coast Unified School District (hereafter Discharger), owner of Cambria Elementary School construction site (hereafter Site) in San Luis Obispo County, was found to be in violation of the General Permit for Storm Water Discharges Associated with Construction Activity (Permit).

Regional Board staff inspected the Site on two occasions during the rainy season and found the Site in violation of the Permit. Regional Board staff discussed violations with Site personnel during the inspections. After each inspection Regional Board staff sent letters to the Discharger detailing staff's concerns, and faxed the letters to Site personnel.

The Regional Board Executive Officer issued a Complaint on January 12, 2005 for the amount of one hundred and fifty thousand dollars (\$150,000). Additional violations occurred after the period of the Complaint.

DISCUSSION

Background

The Discharger owns Cambria Elementary School (Site), currently under construction, located at

3223 Main Street, Cambria, San Luis Obispo County. On March 12, 2004, the Discharger filed a Notice of Intent (NOI) to comply with the terms of the NPDES General Permit for Storm Water Discharges Associated with Construction Activity (Permit). Construction commenced in March 2004.

Storm water runoff from the 22.45-acre site flows into storm drains and drainage ways that discharge to an unnamed, blue- line stream. The stream is sometimes referred to as Fiscalini Creek or Fitzhugh Creek. The unnamed, blue- line stream is tributary to Santa Rosa Creek. Santa Rosa Creek is habitat for the "threatened" California Red-legged frog and Steelhead trout, and the "endangered" Tidewater Goby. Santa Rosa Creek flows to the Pacific Ocean, less than a mile away. The Site is bounded on the north and south by areas of wetland vegetation. There is an approximate 165 foot change in elevation from the west boundary to the east boundary of soil disturbance at the Site.

The attached Environmental Quality Assurance Program (EQAP, May 19, 2004) was drafted for this Site by Morro Group, Inc. Morro Group is the environmental monitor acting as an agent of San Luis Obispo County for this site, and their purpose is to monitor and assess the site for environmental protection measures. The County of San Luis Obispo, through their local coastal program, is

responsible for implementing the requirements of the revised North Coast Area Plan and the wetland protection measures established by the California Coastal Commission (CCC). Since the Site is adjacent to several wetland areas as defined by U.S. Army Corps of Engineers (ACOE) and CCC guidelines, the Site is designed with a minimum 25-foot buffer from these areas, a distance that required a variance of the local coastal plan from the Coastal Commission. The EQAP states,

“The new school site requires extensive grading on slopes greater than 30%, and existing topography and drainage patterns direct stormwater runoff into these sensitive habitat areas. Good construction site housekeeping and perimeter erosion control methods will be necessary to ensure that erosion and subsequent deposition of sediment is contained on site, and not allowed to enter drainage swales bordering the site, which convey stormwater to Santa Rosa Creek, a known waterway for federally listed steelhead trout, California red-legged frog, and southwestern pond turtle.

The County of San Luis Obispo (the County) is the California Environmental Quality Act (CEQA) lead agency for the Coast Unified School District (CUSD) Development. The Applicant’s Project Manager (APM) will be responsible for implementing environmental mitigation measures within the areas affected by the project. The County and the County Monitor (CM) will be responsible for ensuring that the Applicant has adequately implemented all environmental mitigation measures and conditions of approval associated with the project. All involved parties will be committed to maintaining open channels of communication and to working together to optimize mitigation monitoring activities.” (Page 1)

The County certified the Environmental Impact Report (EIR) for the Site. The EIR identified potentially significant impacts to several environmental resources within and adjacent to the Site, and recommended mitigation measures to reduce the potentially significant impacts to levels of insignificance. The EQAP was prepared to

provide a framework for the development of site-specific field monitoring and documentation of compliance measures for the project components that have identified impacts. On page 4 of the EQAP it states,

”The essential goal of this EQAP is to provide guidance to assure that the project is built in compliance with all federal, state, and local environmental and land use requirements.”

The Morro Group, Inc., acting as the County’s agent, began inspecting the Site on March 17, 2004, the day of the groundbreaking. They continue to inspect the site 2 to 8 times a month, as necessary, documenting violations and issuing Stop Work Orders when necessary.

In August, Morro Group met with the Discharger to discuss concerns they had about the Site not being prepared for the rainy season. Areas of concern, recommended temporary measures, and potential consequences were described in a Memo dated August 26, 2004 (attached).

Regional Board staff first inspected the Site on October 14, 2004. Staff found that the Storm Water Pollution Prevention Plan (SWPPP) on site had not been updated, drainage inlets were not protected as specified by the SWPPP, and stockpiles were either unprotected or stored adjacent to Fiscalini Creek. Regional Board staff sent a letter dated October 15, 2004, describing concerns about sediment leaving the Site (attached).

On October 19, 2004, Morro Group issued a Stop Work Order due to discharges of sediment laden water from the Site.

On October 20, 2004, A.J. Diani Construction Company, Inc., the contractor for this Site, faxed a Notice of Discharge to the Regional Board office for discharges from the Site on October 19, 2004.

Regional Board staff inspected the Site again on October 26, 2004. This inspection included the Department of Fish and Game Warden, Morro Group staff, and A.J. Diani staff. Sediment laden water was flowing off Site in more than one location. Regional Board staff discussed possible solutions and faxed a list of vendors that had

attended our last Erosion and Sediment Control Workshop to A.J. Diani staff on October 27, 2004.

On November 1, 2004, representatives from the Department of Fish and Game (DFG), Morro Group, Coast Unified School District, and the Regional Water Quality Control Board met to discuss the condition of the Site.

On November 3, 2004, Regional Board staff faxed the Basin Plan standards for turbidity to A.J. Diani staff.

On November 10, 2004, Regional Board staff both mailed and faxed a Notice of Violation letter for the sediment discharges observed during the October 26, 2004 inspection and for not providing the information requested in our October 15, 2004 letter (attached).

According to Morro Group monitoring reports, the Discharger conducted a clean up of Fiscalini Creek on November 16 and 17, 2004. On November 17, 2004, the Stop Work Order issued on October 19, 2004, was rescinded.

Violations

Below is a list of Permit requirements and alleged 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.”

“Pollution” includes an alteration of water quality to a degree that unreasonably affects beneficial uses. (CWC 13050(I).) “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.

Regional Board staff and Department of Fish and Game staff requested removal of the sediment deposited in Fiscalini Creek. The area of Fiscalini Creek in 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 (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).” Regional Board staff requested that another amended SWPPP be submitted by November 24, 2004. A.J. Diani Construction Co. submitted the amended SWPPP on schedule, however, 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, 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 nonrainy 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 (sic) 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 and discussed concerns about unprotected stockpiles on site with Site personnel.

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 the 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 the 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 29, 2004 - Morro Group documented in their monitoring report a third time that the 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.”

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 needed “to be cleaned up and replaced...”

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 needed “to be cleaned up and replaced...”

October 19, 2004 – Morro Group documented in their monitoring report that, “Erosion and sediment control measures were already overburdened as a result of the weekends (sic) 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).

This ACL is issued to address the Discharger’s failure to comply with Permit requirements despite sufficient discussion with and notification from County (Morro Group) and Regional Board staff. Since self-monitoring and voluntary compliance with Permit requirements are important aspects of the Storm Water Program, the Discharger’s continued defiance of local, state, and federal regulations despite inspections, Stop Work Orders,

and violation letters, warrants formal enforcement action.

After the period of the Complaint

The following violations are not included in the Complaint:

On December 27, 2004, Regional Board staff inspected the Site and observed sediment laden water leaving the Site.

On December 29, 2004, Walter Fitzhugh, a neighbor to the Site, submitted historic and current data for sediment levels in Fiscalini Creek, downstream of the Site.

On January 6, 2005, Regional Board staff received a formal complaint letter from Walter Fitzhugh for the release of mud, sediment, and gravel onto his ranch property and into the creek. He requested the Regional Board require clean up of the sediment.

On January 7, 2005, Regional Board staff met with Coast Unified School District representatives, DFG, and Morro Group to discuss the violations that had occurred on Site and the clean up of the sediment deposited onto Fitzhugh Ranch and into the creek. After the meeting, DFG, Morro Group and Regional Board staff inspected the Site. Samples of the discharge were taken as well as upstream samples for comparison. Morro Group issued a Stop Work Order as a result of the discharges of sediment laden water from the Site.

On January 12, 2005, the Executive Officer issued a complaint for 131 days of violations occurring between March 17, 2004 and December 7, 2004.

On January 20, 2005, A.J. Diani crews cleaned up sediments discharged into three drainageways. The sediments were removed by hand. Approximately one cubic yard of sediment was removed from each drainage.

On January 21, 2005, A.J. Diani crews cleaned up sediments discharged onto neighboring properties. The sediments were removed by hand. Approximately two cubic yards were removed from each drainage.

On January 24, 2005, A.J. Diani crews partially cleaned up additional sediments discharged onto neighboring properties. Clean up was halted to prepare the Site for rain.

On February 3, 2005, A.J. Diani crews cleaned up sediment discharged from the Site into Fiscalini Creek. The sediments were removed by hand from three places within the creek. One area was 40 feet long, and 2 to 4 inches deep, other areas were a few square feet and 4 to 6 inches deep.

Newspaper articles have been published in the Telegram-Tribune, a newspaper serving the San Luis Obispo County area.

- January 20, 2005 “Silt from Cambria school site brings construction to a halt”
- January 31, 2005 “School district cited over silt”

Newspaper articles have also been published in the Cambrian, a newspaper serving the Cambria area.

- January 20, 2005 “Work at new grammar school stopped”
- January 27, 2005 “School faces fine”

February 15th through the 21st, over 5 inches of rain fell. On February 22, 2005, the Morro Group inspected the Site and determined that the BMPs effectively contained sediment runoff on-site.

CIVIL LIABILITY

Recommended Liability

After considering factors specified in California Water Code Section 13385, maximum and minimum penalties, and staff time, Regional Board staff and the Executive Officer recommend liability of one hundred and fifty thousand dollars (\$150,000).

Maximum Liability

Pursuant to California Water Code Section 13385, the Regional Board can impose civil liability up to ten thousand dollars (\$10,000) per day of violation of waste discharge requirements. Waste discharge requirements include NPDES permits (California Water Code Section 13374). The Discharger was in violation of the Permit for at least one hundred and thirty days. Maximum liability that may be imposed by the Regional Board is one million

three hundred and ten thousand dollars (\$1,310,000).

Minimum Liability

In accordance with California Water Code Section 13385, the minimum liability that may be imposed is recovery of economic benefit or savings (if any) derived from the violations. Although the Discharger likely realized some cost savings from noncompliance (not updating the SWPPP, not implementing the SWPPP, not implementing appropriate BMPs, not maintaining BMPs), Regional Board staff does not have sufficient information to determine the actual economic benefit derived by not complying with the Permit. The proposed liability of one hundred and fifty thousand dollars (\$150,000) is likely greater than economic savings realized by the Discharger during the period of violation, and would therefore meet California Water Code Section 13385 specifications for assessing at least the minimum liability. In addition, the Discharger recently installed BMPs that appear to be effective, so the only potential cost savings was the time value from delaying the installation of effective BMPs.

Staff Time

Regional Board staff spent time responding to and inspecting the Site, and preparing and reviewing enforcement documents. Estimated staff costs (including Regional Board technical staff, administrative staff, supervisors, and legal counsel) are five thousand five hundred fifty dollars (\$5,550), or seventy-four hours at seventy-five dollars (\$75) per hour.

RECOMMENDATION

Regional Board staff recommends assessment of one hundred and fifty thousand dollars (\$150,000) in administrative civil liability against Coast Unified School District for Permit violations occurring March 17, 2004 through December 7, 2004.

ATTACHMENTS

1. Regional Board Correspondence
2. Rainfall data for the Cambria area
3. Coast Unified School District Environmental Quality Assurance Plan
4. *CUSD Erosion Control Issues 8/26/04* prepared by Morro Group for the Discharger and the Discharger's Contractor.
5. Administrative Civil Liability Order No. R3-2005-0012

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