

ERRATA SHEET

I declare under penalty of perjury that I have read the foregoing 85 pages of my testimony, taken on January 22, 2016 (date) at San Diego (city), California (state), and that the same is a true record of the testimony given by me at the time and place herein above set forth, with the following exceptions:

<u>Page</u>	<u>Line</u>	<u>Should read:</u>	<u>Reason for Change:**</u> (See below before completion)
<u>7</u>	<u>16</u>	<u>... documents as at all...</u>	
<u>11</u>	<u>10</u>	<u>... permit issues issuance,</u>	
<u>24</u>	<u>12</u>	<u>... how to do deal</u>	
<u>24</u>	<u>18</u>	<u>... I'm going <u>to</u> ask you</u>	
<u>36</u>	<u>1</u>	<u>... complaint <u>alleged</u></u>	
<u>57</u>	<u>21</u>	<u>... the whole court counsel</u>	
<u>71</u>	<u>21</u>	<u>... addressed <u>my</u> by</u>	
<u>81</u>	<u>4</u>	<u>... overseeing the stormwater</u>	
<u>81</u>	<u>5</u>	<u>... compliance; industrial</u>	
<u>82</u>	<u>11</u>	<u>... "did you <u>allege</u>"</u>	

Date: 1/26/16



Signature of Witness

Chiara Clemente

Name Typed or Printed

** THE "REASON FOR CHANGE" COLUMN SHOULD ONLY BE COMPLETED FOR FEDERAL DISTRICT OR BANKRUPTCY COURT MATTERS (FRCP RULE 30(e)). THIS COLUMN SHOULD NOT BE COMPLETED FOR STATE COURT ACTIONS.

Job No. 601699

Rev. 3/15/14

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

IN THE MATTER OF:)
)
Administrative Civil Liability)
Complaint No. R9-2015-0110)
Against San Altos-Lemon Grove, LLC)
_____)

DEPOSITION OF CHIARA CLEMENTE, witness
herein, noticed by Oppen & Varco, taken at
225 Broadway, Suite 1900, San Diego,
California, on Friday, January 22, 2016, at
9:07 a.m., before Marc Volz, CSR 2863, RPR, CRR

Hutchings Number 601699

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25 Also Present: Josh Rosenbaum, Frank Melbourn

I N D E X

WITNESS: CHIARA CLEMENTE

EXAMINATION BY: PAGE

Ms. Beresford 5

Ms. Drabandt 81

E X H I B I T S

	DESCRIPTION	IDENTIFIED	MARKED
	SAN ALTOS- LEMON GROVE, LLC		

EXHIBIT 1	Page 2 of Water Quality Enforcement Policy	24	84
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EXHIBIT 2	Administrative Civil Liability Complaint against City of Encinitas and USS Cal Builders, Order Number R9-2013-0152, issued November 21, 2013	33	84
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EXHIBIT 3	Page 18 of Water Quality Enforcement Policy	55	84
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EXHIBIT 4	Exhibit No. 8 - California Regional Water Quality Control Board - San Diego Region - Watershed Protection Program, Facility Inspection Report	60	84
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EXHIBIT 5	Exhibit No. 18 - California Regional Water Quality Control Board - San Diego Region - Watershed Protection Program, Facility Inspection Report	64	84
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E X H I B I T S

SAN ALTOS- LEMON GROVE, LLC		DESCRIPTION	IDENTIFIED	MARKED
EXHIBIT 6	Exhibit No. 19 -	California Regional Water Quality Control Board - San Diego Region - Watershed Protection Program, Facility Inspection Report	68	84
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1 CHIARA CLEMENTE,
2 witness herein, having been sworn, testifies as follows:

3 -EXAMINATION-

4 BY MS. BERESFORD:

5 Q. Good morning.

6 A. Good morning.

7 Q. My name is Linda Beresford. I'm one of the
8 counsel for San Altos and I'll be taking your deposition
9 today. Can you please state your name and spell it for
10 the record.

11 A. Chiara Clemente, spelled C-h-i-a-r-a
12 C-l-e-m-e-n-t-e.

13 Q. Thank you, Miss Clemente. Have you had your
14 deposition taken before?

15 A. No.

16 Q. So I know you've heard this from some of the
17 prior depositions but I'm going to go over the ground
18 rules one last time. So, you're here today appearing
19 under oath. We have a court reporter taking down
20 everything that you say. So when I ask questions, if
21 you could please respond verbally: Yes, no, a complete
22 sentence rather than nod your head or say uh-huh. Can
23 you try to do that?

24 A. Yes.

25 Q. Thank you. Additionally, it's easier for the

1 court reporter if we try not to speak at the same time.
2 So I'll ask if you could please try to wait for me to
3 finish my complete question and then answer and then
4 I'll try to do the same. I'll try to let you finish
5 your answer before I start with another question. Will
6 that work?

7 A. Yes.

8 Q. Thank you. To have an accurate transcript it's
9 important to be clear that you understand the questions
10 that I'm asking you. So if you don't understand a
11 question please say so and ask me and I will try to
12 rephrase the question in another way so that it is more
13 clear. Will you do that?

14 A. Okay.

15 Q. So if you answer a question I will assume that
16 you understand that question. Is that fair?

17 A. Yes.

18 Q. Please feel free to take a break at any time.
19 Just ask for it. My only request is that if there is a
20 question pending please answer the question before we go
21 to take a break. Is that fair?

22 A. Yes.

23 Q. Then, finally, I do have to ask. Have you
24 taken any medication today or is there any other reason
25 why you can't provide your best testimony?

1 A. There is no reason I can't provide my best
2 testimony.

3 **Q. Excellent. Thank you. Did you do anything to**
4 **prepare for today's deposition?**

5 A. Yes.

6 **Q. Can you please tell me what that was?**

7 A. I met with counsel.

8 **Q. Did you review any documents?**

9 A. Yes.

10 **Q. What documents did you review?**

11 A. The enforcement policy. And I briefly glanced
12 over the Hall Park penalty. The City of Encinitas.

13 **Q. Excellent. Thank you. Did you bring any**
14 **documents today as part of your deposition?**

15 A. No.

16 **Q. Previously San Altos had asked for documents as**
17 **all the prior subpoenas.**

18 MS. BERESFORD: Do you know if you looked for
19 similar documents with respect to Miss Clemente in the
20 prior production?

21 MS. DRABANDT: Sorry. I thought you were going to
22 ask Chiara a question. I did not look for any
23 additional documents, no.

24 MS. BERESFORD:

25 **Q. Do you know when you were collecting documents**

1 in response to the prior subpoenas, did those include
2 documents of Miss Clemente?

3 MS. DRABANDT: Again, I didn't collect the
4 documents, I reviewed them. So the question would be
5 better suited towards Chiara or Frank Melbourn.

6 MS. BERESFORD:

7 Q. Did you produce any documents in response to
8 the previous subpoenas that were issued to the water
9 board in this case? Did anyone ask you to look through
10 and produce any documents in response to those?

11 A. No.

12 Q. Let's go through your background a little bit,
13 please. When did you graduate from high school?

14 A. 1991.

15 Q. Did you go to college after that?

16 A. Yes.

17 Q. Where did you go?

18 A. Loyola Marymount University.

19 Q. Did you graduate?

20 A. Yes.

21 Q. What year was that?

22 A. 1995.

23 Q. Four years. I like those private colleges.
24 What was your degree?

25 A. I have a bachelor's in science in biology.

1 Q. Do you have any advanced degrees?

2 A. Yes.

3 Q. What are those?

4 A. I have a master's in public health with a
5 specialty in environmental health.

6 Q. Where did you get your master's from?

7 A. San Diego State University.

8 Q. What year did you get that?

9 A. 1998.

10 Q. Do you have any other degrees?

11 A. No.

12 Q. Did you work in between the time that you
13 graduated from Loyola Marymount and worked in between
14 that graduation time and the time you started on your
15 master's?

16 A. Yes.

17 Q. What did you do?

18 A. Oh, sorry.

19 Q. That's okay. Take your time. It's fine.

20 A. I did not work between when I graduated from
21 Loyola Marymount and when I started on my master's.

22 Q. Did you start working before you finished your
23 master's?

24 A. Yes.

25 Q. What were you doing at that time?

1 A. I was an intern at the City of San Diego Metro
2 Wastewater, working at the North City Water Reclamation
3 Plant.

4 **Q. What was the approximate time frame for that?**

5 A. That was approximately 1997. And then I was an
6 intern at the San Diego Regional Water Board.

7 **Q. What time was that?**

8 A. I believe '98. I think the intern at the city
9 might have been '96. And then the Water Board '97, '98.

10 **Q. And then what was your first job after you**
11 **received your master's?**

12 A. I worked for Ogden Environmental, which is now
13 Amec, as an aquatic biologist.

14 **Q. What was the time frame that you were an**
15 **aquatic biologist for Ogden?**

16 A. Sometime between '98 and '99.

17 **Q. What did you do after that?**

18 A. I was hired by the San Diego Regional Water
19 Board.

20 **Q. Approximately when was that?**

21 A. 1999.

22 **Q. What was your first job with the Water Board?**

23 A. Environmental specialist.

24 **Q. What did you do as an environmental specialist?**

25 A. I started out doing NPDES permitting. National

1 Pollutant Discharge Elimination System.

2 **Q. What else did you do as an environmental**
3 **specialist for the Water Board?**

4 A. Then I did waste discharge requirements. And
5 just keep going through the whole chronology?

6 **Q. I'll try to break it up in your job specific**
7 **job titles. We're still talking about the time when you**
8 **were an environmental specialist. Did you have any**
9 **other responsibilities in that position?**

10 A. Responsibilities were permit issues, permit
11 renewals and report reviews.

12 **Q. The permits were all relating to either NPDES**
13 **permits or WDRs.**

14 A. Correct.

15 **Q. How long were you an environmental specialist?**

16 A. Until about 2003.

17 **Q. Did you get a new job title at that point?**

18 A. Sorry. The environmental specialist is a
19 classification but that doesn't necessarily correlate to
20 the work.

21 **Q. Okay. So in 2003 did your work focus change?**

22 A. Yes.

23 **Q. But you were still classified as an**
24 **environmental specialist?**

25 A. No. In 2003 I was promoted to senior

1 environmental scientist.

2 **Q. So before 2003 did your job duties change as an**
3 **environmental specialist between 1999 and 2003?**

4 A. Yes. There was a period of time I worked on
5 the grants program.

6 **Q. Approximately when was that?**

7 A. Okay. Actually -- sorry, I stand corrected. I
8 think in 2003 I started working on the grants program.
9 And then in 2005 I became a senior environmental
10 scientist.

11 **Q. What were the grants programs related to?**

12 A. Prop 13, watershed protection program,
13 watershed management and things like -- and 319.

14 **Q. So in 2005 you became a senior environmental**
15 **specialist; is that correct?**

16 A. I think so.

17 **Q. That's fine. If you remember later, you can**
18 **come back and correct it. That's all right. So what**
19 **did you do as a senior environmental specialist?**

20 A. I was in charge of one of the watershed units.

21 **Q. What does that mean to be in charge of a**
22 **watershed unit?**

23 A. The watershed units do wetland or Clean Water
24 Act, Section 401 certifications. They also manage
25 grants. They do construction, industrial and municipal

1 stormwater for a geographic area.

2 **Q. How long did you do that?**

3 A. 2012.

4 **Q. So from 2005 to 2012 you were essentially in**
5 **charge of a watershed unit.**

6 A. (Witness nods head.)

7 **Q. One watershed unit or multiple?**

8 A. The watershed units changed the geographical
9 boundaries, but at all times was I was in charge of one
10 of the watershed units.

11 **Q. Then did you have a new position starting in**
12 **2012?**

13 A. Yes.

14 **Q. What was that?**

15 A. The supervisor of the compliance assurance
16 unit.

17 **Q. Supervisor of the -- can you please say that**
18 **again.**

19 A. Compliance assurance unit.

20 **Q. What do you do as the supervisor of the**
21 **compliance assurance unit?**

22 A. I oversee enforcement actions done by the
23 compliance assurance unit, and I act as the enforcement
24 coordinator for enforcement actions beyond those done by
25 the compliance assurance unit.

1 **Q. What type of enforcement actions do you handle?**

2 A. The majority are administrative civil
3 liabilities.

4 **Q. Relating to what type of violations?**

5 A. Construction stormwater, industrial stormwater,
6 municipal stormwater and 401 certifications. Again,
7 that's the majority. But we've also done enforcement on
8 waste discharge requirements and NPDES, wastewater
9 treatment plants.

10 **Q. Do you still hold that position today?**

11 A. Correct.

12 **Q. So essentially the duties as you just described**
13 **to me, starting in 2012, you've been doing about the**
14 **same work from 2012 until today.**

15 A. Yes.

16 **Q. How many administrative civil liability**
17 **complaints have you overseen specifically relating to**
18 **alleged violations of the construction stormwater**
19 **permit?**

20 A. Since I was -- could you specify the question.

21 MS. BERESFORD: Can you read it back for me,
22 please.

23 (The question is read by the reporter.)

24 THE WITNESS: I don't recall.

25 MS. BERESFORD:

1 **Q. Can you give me estimate? Let's do it this**
2 **way. Do you think it's been more than five?**

3 A. Yes.

4 **Q. More than ten?**

5 A. I'd estimate about that much.

6 **Q. Approximately ten.**

7 A. Approximately. Or maybe a little less.

8 **Q. Do you know how many of those have proceeded to**
9 **a hearing?**

10 A. I think only two.

11 **Q. Can you tell me which ones those were?**

12 A. North County -- NCTD. Sorry. And I can't
13 recall the name of the other one.

14 **Q. Do you remember what type of project it was**
15 **associated with?**

16 A. It was a school district in the Carroll Canyon
17 area.

18 **Q. Do you recall approximately when the hearing on**
19 **the NCTD matter was?**

20 A. Both of these were prior to my being a
21 supervisor in the compliance assurance unit. So prior
22 to 2012 and prior to the enforcement policy.

23 **Q. Have any of the approximate ten complaints that**
24 **you've been a part of gone to a hearing since you've**
25 **been the supervisor?**

1 A. No. Oh, since I've been a supervisor?

2 Q. Yes.

3 A. Sorry, yes.

4 Q. Do you know which ones?

5 A. NCTD was when I was a supervisor for the
6 watershed unit.

7 Q. I'm sorry. I should have been more specific.
8 Since you were a supervisor of the compliance assurance
9 unit.

10 A. No.

11 Q. So no hearings on administrative civil
12 liability complaints on construction stormwater issues
13 since you have been the supervisor of the compliance
14 assurance unit.

15 A. Correct.

16 Q. Thank you. Did you have any training on
17 stormwater compliance issues before you became the
18 supervisor of the compliance unit?

19 A. I don't recall.

20 Q. Do you have any certifications specific to
21 stormwater issues?

22 A. No.

23 Q. So you're not a QSP; is that correct?

24 A. Correct.

25 Q. You're not a QSD; is that correct?

1 A. Correct.

2 Q. You are not a trainer of record; is that
3 correct?

4 A. Correct.

5 Q. I know that the Water Board or sometimes
6 private organizations put on occasional training related
7 to the construction stormwater permit. Have you
8 attended any of those trainings?

9 A. Yes.

10 Q. Have you attended as a speaker or as an
11 attendee to learn?

12 A. As an attendee.

13 Q. Approximately how many of those have you
14 attended?

15 A. A couple.

16 Q. Do you know when the last one was?

17 A. At about the time that the new construction
18 stormwater permit was issued.

19 Q. That was approximately...

20 A. '99-ish. No. Sorry. Sorry. 2000 -- I don't
21 recall.

22 Q. Maybe 2009?

23 A. That sounds right.

24 Q. Are you familiar with a project called the
25 Valencia Hills construction project on San Altos Place

1 in Lemon Grove?

2 A. Yes.

3 Q. So if I refer to something as "the site" will
4 you understand that that is the site that I'm
5 indicating?

6 A. Yes.

7 Q. When did you first hear about the site?

8 A. I don't recall.

9 Q. Do you remember who told you about it?

10 A. Frank Melbourn or Wayne Chiu.

11 Q. Do you recall what they said about it?

12 A. No.

13 Q. Have you ever visited the site?

14 A. No.

15 Q. I'm going to go over a list of people and ask
16 if you ever spoke to them. So please bear with me as I
17 go through those. Have you ever discussed the site with
18 Malik Tamimi?

19 A. No.

20 Q. Have you ever discussed the site with Gary
21 Harper?

22 A. No.

23 Q. Have you ever discussed the site with Leon
24 Firsht?

25 A. No.

1 **Q. Have you ever discussed the site with Tad**
2 **Nakatani?**

3 A. No.

4 **Q. Have you ever discussed the site with John**
5 **Quenzer?**

6 A. No.

7 **Q. Have you ever discussed the site with Brian**
8 **Nemerow?**

9 A. No.

10 **Q. Have you ever discussed the site with John**
11 **Draminski?**

12 A. Nope.

13 **Q. Have you ever discussed the site with Tamara**
14 **O'Neal?**

15 A. No.

16 **Q. Have you discussed the site with Mr. Melbourn?**

17 A. Yes.

18 **Q. You've discussed the site with Mr. Chiu.**

19 A. Yes.

20 **Q. Do you recall approximately how many times you**
21 **talked about the site with Mr. Chiu?**

22 A. I don't.

23 **Q. Would you categorize it as more of a handful of**
24 **times or you walked about it on a daily basis?**

25 A. Probably closer to a handful of times.

1 **Q. How about with Mr. Melbourn? Do you know about**
2 **how many times you've discussed the site with**
3 **Mr. Melbourn?**

4 A. I would say approximately on a weekly basis
5 with Mr. Melbourn.

6 **Q. Let's put a time frame on that. So about when**
7 **would you say you started discussing the site with him**
8 **on a more regular basis?**

9 A. Approximately May.

10 **Q. And so you spoke with him on approximately a**
11 **weekly basis about the site from May through now?**

12 A. Correct.

13 **Q. What did you generally discuss with**
14 **Mr. Melbourn?**

15 MS. DRABANDT: Objection. Vague.

16 MS. BERESFORD:

17 **Q. What did you discuss about the site with**
18 **Mr. Melbourn?**

19 MS. DRABANDT: Objection. Vague.

20 MS. BERESFORD:

21 **Q. You can try to answer.**

22 A. I discussed many different aspects about the
23 site with Mr. Melbourn.

24 **Q. Can you give me one to start with?**

25 A. For example, we discussed the -- is it

1 attorney-client privileged? We discussed
2 attorney-client privileged issues.

3 **Q. Were the attorneys involved in the**
4 **conversations?**

5 A. No.

6 **Q. I think I'm allowed to ask what you discussed**
7 **with him.**

8 MS. DRABANDT: Objection. Vague. Can I ask you to
9 give her a specific question to answer?

10 MS. BERESFORD:

11 **Q. Did you talk about his inspection reports?**

12 A. Yes.

13 **Q. What did you discuss about those inspection**
14 **reports?**

15 A. I believe I am the supervisor who signs his
16 inspection reports. I would have to go back and check
17 those inspection reports. But when I review an
18 inspection report I often have questions about what I'm
19 looking at and ask for clarification.

20 **Q. Did you talk with Mr. Melbourn about drafting**
21 **an administrative civil liability complaint against**
22 **San Altos?**

23 A. Yes.

24 **Q. We'll go back to that. Do you recognize this**
25 **document?**

1 A. It is the site complaint without exhibits.

2 Q. Is it fair to say that this is the
3 administrative civil liability complaint against
4 San Altos with the technical analysis but not the
5 exhibits?

6 A. Correct. Dated October 19, 2015.

7 Q. Did you assist in preparing this document?

8 A. I did.

9 Q. Can you please describe what your role in doing
10 that was?

11 A. I supervised Frank's work in preparing that
12 document.

13 Q. What does that mean to supervisor his work?

14 A. As a supervisor I am required -- or I strive to
15 provide the time, tools and training necessary to
16 succeed at the intended objectives for Frank.

17 Q. So did you read rough drafts?

18 A. I did.

19 Q. You suggested changes?

20 A. I did.

21 Q. Were you involved in deciding the types of
22 violations to allege?

23 A. Can you rephrase the question.

24 Q. Sure. Did you talk to Frank about the types of
25 violations to allege?

1 A. Yes.

2 Q. What were the nature of those conversations?

3 MS. DRABANDT: Objection. Vague.

4 MS. BERESFORD:

5 Q. Did you talk to him about violation number 1?

6 A. Yes.

7 Q. Did you discuss the type of evidence that he
8 had to support that?

9 A. I don't recall.

10 Q. Do you recall, did the first draft from
11 Mr. Melbourn include all 13 violations?

12 MS. DRABANDT: Objection. Calls for
13 attorney-client privileged communication.

14 MS. BERESFORD: I'm asking what she read of the
15 document that Frank gave her. I don't see how an
16 attorney is involved in that.

17 MS. DRABANDT: That document itself is
18 attorney-client privileged.

19 MS. BERESFORD: One of the things I'm trying to
20 figure out is how they came to how many violations they
21 chose to allege.

22 MS. DRABANDT: And I'm going to object:
23 Attorney-client privileged.

24 MS. BERESFORD: We'll go back on that then.

25 Q. Are you familiar with this document?

1 A. Yes.

2 **Q. Can you please state what that is.**

3 A. This is the Water Quality Enforcement Policy
4 from the State Water Resources Control Board. Water
5 Control Enforcement Policy, aka enforcement policy.

6 **Q. Did you rely on that document in preparing the**
7 **administrative civil liability complaint and technical**
8 **report?**

9 A. I did.

10 **Q. How?**

11 A. The Water Quality Enforcement Policy is the
12 bedrock of our -- it's basically our manual on how to do
13 with administrative civil liabilities.

14 **Q. So did you consult it in calculating the**
15 **penalties for issuing the alleged violations?**

16 A. We followed the methodology proposed in the
17 enforcement policy.

18 MS. DRABANDT: I'm going you to speak up a little.

19 THE WITNESS: I've never been accused of being soft
20 spoken before.

21 MS. BERESFORD: Let's mark this as Exhibit 1,
22 please.

23 **Q. Do you recognize that?**

24 A. This is page 2 of the enforcement policy.

25 **Q. Can you please read the sentence under**

1 **section 1: "Fair, Firm, and Consistent Enforcement."**

2 A. "It is the policy of the State Water Board that
3 the Water Boards shall strive to be fair, firm, and
4 consistent in taking enforcement actions throughout the
5 state, while recognizing the unique facts of each case."

6 **Q. So you see the clause that the Water Board**
7 **shall strive to be fair, firm, and consistent. Do you**
8 **see that?**

9 A. I do.

10 **Q. What does that mean to you?**

11 A. That in selecting and carrying through
12 enforcement actions we shall strive for fairness,
13 firmness and consistency while recognizing the unique
14 facts of the case.

15 **Q. How do you accomplish consistency?**

16 A. We do look at other similar situations in other
17 cases and determine whether it was appropriate in those
18 other cases and then we determine whether it's
19 appropriate to continue.

20 **Q. Did you look at other cases to compare for this**
21 **complaint against San Altos?**

22 MS. DRABANDT: Objection. Attorney-client
23 communication privilege.

24 MS. BERESFORD:

25 **Q. So you can't tell me how you went about being**

1 **consistent in this case?**

2 MS. DRABANDT: Objection. Vague.

3 MS. BERESFORD:

4 **Q. How were you consistent in this case?**

5 MS. DRABANDT: Objection. Vague, calls for
6 attorney-client communications.

7 MS. BERESFORD: Let's note for the record that they
8 are not answering questions on how they're interpreting
9 being consistent for this case.

10 MS. DRABANDT: You're welcome to try a more
11 specific question.

12 MS. BERESFORD: I'm asking -- she said to be
13 consistent they look at other cases. I asked what cases
14 she looked at and you say she can't answer that
15 question.

16 MS. DRABANDT: Okay.

17 MS. BERESFORD:

18 **Q. Are there other factors you look at to be**
19 **consistent?**

20 MS. DRABANDT: May I ask: Are you asking about
21 San Altos in particular or the general process?

22 MS. BERESFORD: Let's start with the general
23 process.

24 **Q. When you are doing an administrative civil**
25 **liability complaint you mentioned that you look at other**

1 cases. What other factors do you look at to be
2 consistent?

3 A. I think we look at the enforcement policy and
4 the methodology in the enforcement policy.

5 Q. So you look at the policy and other cases.

6 A. To determine consistency.

7 Q. So for the San Altos case --

8 A. Oh. And the unique facts of each case.

9 Q. So basically you just read the sentence back to
10 me. Thank you. Can you be any more specific about
11 other factors that you look at other than other cases?

12 A. I'm not sure I understand the question.

13 Q. I think it's pretty clear. I'm trying to find
14 out what steps you take to be consistent in your
15 enforcement actions. You've indicated to me you look at
16 the policy and you look at other cases. Is there
17 anything else that you do?

18 A. And the unique situation. Those are the three
19 things.

20 Q. So for the San Altos case you looked at the
21 policy.

22 A. Correct.

23 Q. And you said you looked at other cases; is that
24 correct?

25 A. As the enforcement coordinator I'm supposed to

1 review all the cases. So I didn't look at other cases.
2 Actually I can't say whether I did or didn't but I know
3 them.

4 **Q. In drafting the San Altos complaint did you to**
5 **be consistent, did you consider other cases involving**
6 **ACLs for the construction permit?**

7 A. Yes.

8 **Q. Can you tell me what cases those were?**

9 MS. DRABANDT: Objection. Calls for
10 attorney-client privilege.

11 MS. BERESFORD: Let the record reflect that the
12 Water Board will not identify which cases they looked at
13 to be consistent with the policy.

14 **Q. Were there any other specific factors other**
15 **than the enforcement policy itself and just the facts of**
16 **San Altos that you did to be consistent when drafting**
17 **the San Altos complaint?**

18 MS. DRABANDT: Objection. Vague. She reviewed the
19 complaint, she didn't draft it.

20 MS. BERESFORD:

21 **Q. You can answer the question. I think it's**
22 **pretty clear what I'm trying to ask here.**

23 A. Those are the things I looked at.

24 **Q. Have you ever discussed complaints with staff**
25 **at other regional boards?**

1 A. I have --

2 MS. DRABANDT: Objection. Can you please specify
3 whether in San Altos or general procedure?

4 MS. BERESFORD: Sure.

5 Q. In drafting any administrative civil liability
6 complaints or reviewing them for the purposes of being
7 fair, firm and consistent have you ever discussed those
8 complaints with staff at other boards?

9 A. No.

10 Q. Is there any mechanism within the Water Board
11 itself to assist the nine boards in working together so
12 that the boards are consistent with each other in how
13 they issue administrative civil liability complaints?

14 A. Yes.

15 Q. Can you please describe some of them for me.

16 A. So all the enforcement coordinators sit in on
17 regular enforcement round tables where we discuss
18 things. And we have regular trainings where we discuss
19 closed cases and the interpretation of the enforcement
20 policy.

21 Q. How often are the round tables?

22 A. Every other month.

23 Q. Who conducts the trainings that you just
24 mentioned?

25 A. The office of enforcement.

1 **Q. How often are those?**

2 A. I think they strive for once a year.

3 **Q. Do you know when the last one was?**

4 A. Yeah. Give me a second. It was Lake Tahoe.

5 **Q. That's where it was. Do you remember when it**
6 **was?**

7 A. Within the last year. I didn't answer that one
8 right. The last one I attended was Lake Tahoe. There
9 was another one more recently but I wasn't there. I
10 called in.

11 **Q. Did you say that you called in?**

12 A. Yes.

13 **Q. So you attended at least some of it by phone?**

14 A. Correct.

15 **Q. In reviewing the San Altos complaint did you**
16 **discuss that complaint with the supervisors of the**
17 **enforcement units of any other regional boards?**

18 A. No.

19 **Q. As we continue -- I think I have already**
20 **referred to it, but some of my questions will refer to**
21 **the National Pollutant Discharge Elimination System**
22 **General Permit for Stormwater Discharges Associated with**
23 **Construction and Land Disturbance Activities. Are you**
24 **familiar with that document?**

25 A. Not as much as my staff but yes.

1 Q. If I refer to that as the construction permit
2 will you understand what I am asking?

3 A. Yes.

4 Q. Attachment D, provision B2F, which I admittedly
5 don't have here -- we can get it if you need it, but it
6 discusses stockpile waste materials are to be protected
7 from wind and rain unless actively being used. Are you
8 familiar with that provision?

9 A. Yes.

10 Q. We've heard testimony from Mr. Melbourn that he
11 interprets the phrase actively being used as the
12 stockpile being used at that time. Have you ever been
13 part of an administrative civil liability complaint that
14 applies penalties relying on that interpretation?

15 MS. DRABANDT: Objection. Vague.

16 MS. BERESFORD:

17 Q. Do you understand what I'm asking?

18 A. Have I overseen other administrative penalties
19 that allege that violation? I don't recall. I think
20 so.

21 Q. Do you remember what complaint that might have
22 been?

23 A. I'm going to venture a guess that it was one of
24 either Jacobs or Casa Mira View.

25 Q. Casa --

1 A. Mira View.

2 Q. Have you discussed this interpretation of
3 actively being used with anyone from another regional
4 board, staff from another regional board?

5 A. No.

6 Q. I believe -- and you can state something
7 different if you think I'm stating this incorrectly, but
8 I believe that Mr. Melbourn also testified that he
9 considered graded roads that were not used or driven on
10 on a certain frequent basis should be considered
11 inactive as defined by the permit. Are you familiar
12 with that testimony?

13 A. I am.

14 Q. Have you ever been part of an administrative
15 civil liability complaint that applies penalties based
16 on lack of BMPs for graded roads that were not being
17 used for a certain amount of time?

18 MS. DRABANDT: Objection. Vague. Part of an
19 administrative civil liability is vague.

20 MS. BERESFORD:

21 Q. Do you understand what I'm asking?

22 A. So the allegation made in the complaints are
23 specific to whether it's adequate erosion controls or
24 sediment controls. So we have made those allegations in
25 other cases, but I don't recall whether it was specific

1 to roads or not.

2 Q. Okay. Thank you. Do you know, have you ever
3 discussed the interpretation of a road not being driven
4 on frequently as being inactive? Have you ever
5 discussed that with anyone from another regional board?

6 A. No.

7 Q. Do you recognize this document?

8 A. This is an administrative civil liability
9 complaint against the City of Encinitas and USS
10 Cal Builders, Order Number R9-2013-0152, issued November
11 21, 2013.

12 MS. BERESFORD: We'll mark that as Exhibit 2.

13 Q. Do you recognize that document.

14 A. I do.

15 Q. Did you supervise the preparation of this
16 administrative civil liability complaint?

17 A. I did.

18 Q. Do you know what the project at issue was in
19 the -- I'm going to refer to this as the Encinitas ACL.
20 Is that understandable?

21 A. Yes.

22 Q. Do you know what the project was for the
23 Encinitas ACL?

24 A. Can you be more specific?

25 Q. Were they building housing? Were they building

1 **a hospital? Do you know what they were building?**

2 A. They were building a park, community area.

3 **Q. Do you recall how big it was?**

4 A. I recall approximately -- no, I don't recall.

5 But I can look it up if you want me to.

6 **Q. That's okay.**

7 A. There it is.

8 **Q. Would you like to state it for the record.**

9 A. It is construction of a 43-acre community park
10 known as the Hall Property Park.

11 **Q. Thank you. Can you please look at page 3 of**
12 **the administrative civil liability complaint. So I**
13 **believe there's a cover letter first. And then we get**
14 **to the complaint itself. If you would look at page 3 of**
15 **the complaint.**

16 A. The alleged violation.

17 **Q. Yes, please. Can you please read paragraph 14.**

18 A. "The dischargers violated Effluent Standard
19 V.A.2 of Order 2009-0009-DWQ by failing to implement
20 adequate controls, structures, and management practices
21 at the project from the commencement of construction
22 activities on October 8, 2012 through December 27, 2012
23 and again from January 8, 2013 through March 8, 2013."

24 **Q. Thank you. Does this allegation distinguish**
25 **between failure to implement adequate controls on active**

1 **areas versus failure to implement adequate controls on**
2 **inactive areas?**

3 MS. DRABANDT: Objection. Calls for legal
4 conclusion.

5 You may answer.

6 THE WITNESS: Does it distinguish?

7 MS. BERESFORD:

8 **Q. Yes.**

9 **A. No.**

10 **Q. So you did not allege separate violations for**
11 **lack of BMPs on active areas versus lack of BMPs on**
12 **inactive areas.**

13 **A. Correct.**

14 **Q. Do you recall if the San Altos complaint**
15 **alleges separate violations for lack of BMPs on inactive**
16 **areas versus lack of BMPs on active areas?**

17 **A. Yes, it does.**

18 **Q. Why was a different approach taken for the**
19 **San Altos complaint?**

20 MS. DRABANDT: Objection. Calls for
21 attorney-client privileged communications.

22 MS. BERESFORD: So the purpose of this inquiry was
23 to try to understand the fair and consistency approach.
24 Let the report reflect that they will not respond as to
25 why the alleged separate violations for the two cases.

1 **Q. Does the Encinitas complaint alleged violations**
2 **for failure to implement perimeter sediment control BMPs**
3 **at the site, a specific violation for that issue?**

4 MS. DRABANDT: May I ask whether the witness is
5 recollecting that or reading from the document?

6 MS. BERESFORD: She can do either.

7 THE WITNESS: Can you rephrase the question?
8 Re-ask the question.

9 MS. BERESFORD:

10 **Q. Sure. Does the Encinitas ACL allege a notice**
11 **of violation for the specific failure to implement**
12 **perimeter sediment control BMPs at the site?**

13 A. The ACL does not allege a notice of violation.
14 It alleges a violation. I'm not sure that's --

15 **Q. Then I apologize if I phrased that -- no, if I**
16 **phrased that incorrectly, that's fine. Does it allege a**
17 **violation? Does the Encinitas ACL allege a violation**
18 **for failure to implement perimeter sediment control**
19 **BMPs?**

20 A. Not specifically.

21 **Q. Does the Encinitas ACL allege specific**
22 **violations for the failure to apply linear sediment**
23 **controls at the site?**

24 A. No.

25 **Q. Does the ACL, the Encinitas ACL allege specific**

1 violations for failure to effectively manage run-on and
2 run-off at the site?

3 A. No.

4 Q. Does the Encinitas ACL allege specific
5 violations for failure to remove sediment from roads?

6 A. No.

7 Q. Does the Encinitas ACL allege specific
8 violations for failure to protect storm drain inlets?

9 A. No.

10 Q. I would like to look at page 6 of the technical
11 analysis for the Encinitas ACL page. Could you please
12 look at the third paragraph below the heading, it says
13 "December 13, 2012 Discharge Event." The first sentence
14 reads, "The City's December 14, 2012 inspection report
15 indicated that a significant sediment discharge occurred
16 from the graded slope at the Project's southern boundary
17 along Warwick Avenue and from the dog park area along
18 the Project's western boundary." Do you see that?

19 A. Yes.

20 Q. Did the Encinitas ACL allege a discharge of
21 sediment from the project for December 14, 2012?

22 A. No.

23 Q. Why did the board not allege a discharge for
24 that date?

25 MS. DRABANDT: Objection. Calls for

1 attorney-client privilege.

2 MS. BERESFORD:

3 **Q. So to be clear, the Board had evidence, or at**
 4 **least a report, an inspection report done by a city, but**
 5 **it chose not to allege a discharge on that date; is that**
 6 **correct?**

7 MS. DRABANDT: May I ask whether the witness is
 8 answering to her own recollection or what the document
 9 says?

10 MS. BERESFORD: First we'll look at what the
 11 document says.

12 THE WITNESS: I am looking at the document on the
 13 alleged violations and the document specifically states
 14 that the discharge violations occurred on -- oh, to
 15 Rossini Creek and San Elijo Lagoon occurred on September
 16 13th 2012 and March 8, 2013.

17 MS. BERESFORD:

18 **Q. But there's no violation for December 14.**

19 MS. DRABANDT: Objection. Are you asking what the
 20 document says or what happened in history?

21 MS. BERESFORD: It doesn't allege a violation. The
 22 document does not allege a violation on December 14.

23 MS. DRABANDT: Thank you for clarifying.

24 THE WITNESS: That is correct.

25 MS. BERESFORD:

1 Q. Are you able to tell me why there's no
2 violation asserted for December 14?

3 A. I don't know.

4 MS. DRABANDT: Objection.

5 MS. BERESFORD:

6 Q. Can you please again go back to page 6 of the
7 Technical Analysis for the Encinitas ACL. I'm at the
8 very bottom paragraph of that page where it says
9 "San Diego Water Board staff inspected the site on
10 December 17, 2012. The inspection revealed that
11 temporary erosion control BMPs identified in the city's
12 SWPPP (soil binders and velocity dissipation devices)
13 were not implemented. The inspection also revealed that
14 most of the sediment control BMPs identified in the
15 SWPPP (sediment traps, fiber rolls, street sweeping,
16 storm drain inlet protection and construction entrance
17 and exit stabilization) were not implemented or were
18 totally ineffective as shown in following paragraphs."
19 Do you see that paragraph?

20 A. Yes.

21 Q. Are things like failure to use fiber rolls and
22 soil binders evidence of failure to apply linear
23 sediment controls?

24 A. Yes.

25 Q. Does the Encinitas ACL allege a specific

1 **violation for failure to apply linear sediment controls?**

2 A. No.

3 **Q. Why not?**

4 MS. DRABANDT: Objection. Attorney-client
5 privilege.

6 MS. BERESFORD:

7 **Q. Was the failure to apply linear sediment**
8 **controls, as described by failure to use soil binders,**
9 **fiber rolls, et cetera, considered one of the basis for**
10 **the violation of failure to implement adequate controls?**

11 A. Yes.

12 **Q. Why did you incorporate it into failure to**
13 **implement adequate controls and not have a separate**
14 **violation?**

15 MS. DRABANDT: Objection. Attorney-client
16 privileged.

17 MS. BERESFORD:

18 **Q. Does the San Altos complaint allege both**
19 **failure to have adequate controls in an active or**
20 **inactive area and a separate violation for failure to**
21 **have linear sediment controls?**

22 A. Yes.

23 **Q. Why was a separate approach taken there?**

24 MS. DRABANDT: Objection. Attorney-client
25 privileged.

1 MS. BERESFORD: Let the record reflect we're trying
2 to determine how the fair and consistent policy is
3 applied into very different complaints and the Water
4 Board will not answer that question.

5 MS. BERESFORD:

6 **Q. Let's look at page 8 of the Technical Analysis**
7 **for the Encinitas ACL.**

8 MS. DRABANDT: Is now a good time for a break or do
9 you want to wait a little?

10 MS. BERESFORD: If you would like to take a break,
11 you can. I leave it up to the witness.

12 THE WITNESS: Sure. Let's take a break.

13 MS. BERESFORD: Okay. Great.

14 (Recess.)

15 MS. BERESFORD:

16 **Q. I'm going to go back to something. We talked**
17 **earlier -- and please state it differently if I'm**
18 **mischaracterizing it -- that the Encinitas ACL alleged**
19 **violations for failure to implement adequate controls,**
20 **structures and management practice at the project; that**
21 **it did not distinguish between inactive and active**
22 **areas.**

23 A. Correct.

24 **Q. The San Altos complaint alleges violations**
25 **specific to active failure to have BMPs on active areas**

1 and failure to have sufficient BMPs on inactive areas;
2 is that correct?

3 A. Correct.

4 Q. Can you describe for me the unique facts of the
5 San Altos case that caused this different approach?

6 MS. DRABANDT: Objection to the point where any
7 attorney-client privileged information regarding
8 strategies.

9 If you can answer, generally speaking, go ahead.

10 THE WITNESS: The unique facts of the San
11 Altos-Lemon Grove case that did what?

12 MS. BERESFORD:

13 Q. That resulted in having separate violations for
14 inactive and active areas versus one allegation overall
15 for lack of BMPs.

16 A. No, I cannot describe them.

17 Q. Did you discuss that issue with Mr. Melbourn?

18 A. No.

19 Q. I'm sorry?

20 A. No.

21 Q. We were also talking about that the Encinitas
22 ACL did not allege specific violations for failure to
23 have linear sediment controls, and the San Altos
24 complaint does allege specific violations for linear
25 sediment controls. Can you describe the unique facts

1 **that resulted in the different approach between the two**
2 **complaints?**

3 MS. DRABANDT: Same objection. Please do not
4 answer anything that is attorney-client privileged that
5 relates to strategy.

6 THE WITNESS: The same answer: No, I cannot
7 describe the unique facts.

8 MS. BERESFORD:

9 **Q. Did you discuss that issue with Mr. Melbourn?**

10 A. I don't think so.

11 **Q. Let's go to page 8 of the Encinitas ACL**
12 **technical report, please. I'm looking at photo 3. And**
13 **it says "Lack of run-on protection from slope drain from**
14 **neighboring residence." Do you see that?**

15 A. Yes.

16 **Q. Photo 4 talks about lack of run-on protection**
17 **from slope drains. Do you see that?**

18 A. Yes.

19 **Q. If we go to the next page of photos on page 9,**
20 **particularly photo 6. Does that show a lack of run-off**
21 **protection?**

22 A. Photo 6 show a what?

23 **Q. Does that show evidence of lack of run-off**
24 **protection?**

25 MS. DRABANDT: Objection. Vague. Are you asking

1 for the witness's opinion or are you asking for what the
2 document says?

3 MS. BERESFORD: I'm asking for her opinion.

4 THE WITNESS: What the photo 6 shows is sediment
5 discharged to the MS4 from erosion in previous photos.

6 MS. BERESFORD:

7 **Q. So would that be the result of lack of run-off**
8 **protection?**

9 A. In part, since it's included in the previous
10 photo.

11 **Q. So in the Encinitas ACL the facts demonstrated**
12 **violations of lack of run-on and run-off protection; is**
13 **that correct?**

14 A. One more time.

15 **Q. In the Encinitas ACL the facts demonstrated**
16 **lack of run-on and run-off protection; is that correct?**

17 A. Yes.

18 MS. DRABANDT: Objection. Vague. When you say the
19 facts are you talking about what's contained in this
20 report?

21 MS. BERESFORD: I'm talking about the facts.

22 MS. DRABANDT: But I'm going to object. Vague.
23 And please strike the witness's answer.

24 MS. BERESFORD:

25 **Q. The facts as you are familiar with them on the**

1 **Encinitas case, and as we have reviewed in the report,**
2 **do the facts support that there was evidence of lack of**
3 **run-on and run-off protection at the site?**

4 A. The report indicates that there was evidence of
5 run-on and run-off protection at the site.

6 **Q. Did you allege specific violations for lack of**
7 **run-on and run-off at the site?**

8 A. No, not specific violations.

9 **Q. Do you know if violations for lack of run-on**
10 **and run-off were alleged at the San Altos site?**

11 A. Yes.

12 **Q. They were; is that correct?**

13 A. I believe so.

14 **Q. What were the unique facts for the San Altos**
15 **case that caused a specific violation for lack of run-on**
16 **and run-off that was different from the Encinitas case?**

17 MS. DRABANDT: Again, attorney-client privileged as
18 to strategy. Please feel free to answer what's already
19 contained in the documents.

20 MS. BERESFORD:

21 **Q. Or facts as you know them separately if you**
22 **have independent knowledge that are not stated in the**
23 **documents. I'm asking for that.**

24 MS. DRABANDT: And that are not attorney-client
25 privileged.

1 THE WITNESS: I don't think I can answer that
2 without disclosing attorney-client privilege.

3 MS. BERESFORD:

4 Q. Did you discuss this issue with Mr. Melbourn?

5 A. Can you be more specific as to this issue.

6 Q. Did you discuss the issue of alleging specific
7 violations for lack of run-on and run-off in the
8 San Altos case with Mr. Melbourn?

9 A. I don't think so.

10 Q. If you could look at photo 6 on page 9 of the
11 Technical Analysis for the Encinitas ACL. Would you say
12 the information that you see in that photo, does that
13 show a failure to implement perimeter sediment control?

14 A. It's hard to say from the photo.

15 Q. If you could look at photo 8 and photo 7.
16 Would you say that those photos demonstrate evidence of
17 failure to implement perimeter sediment control at the
18 Encinitas site?

19 A. Yes. Well, photo 7, yes.

20 Q. Did you allege a specific violation for failure
21 to implement perimeter sediment control in the Encinitas
22 ACL?

23 A. No.

24 Q. Why not?

25 MS. DRABANDT: Objection. Attorney-client

1 privileged.

2 MS. BERESFORD:

3 Q. Do you know whether or not there was a specific
4 violation for failure to implement perimeter sediment
5 control that was alleged in the San Altos complaint?

6 A. Yes.

7 Q. Can you state the specific facts of the
8 San Altos complaint as to why that violation was alleged
9 here as opposed to the Encinitas case?

10 MS. DRABANDT: Objecting. The witness not answer.
11 Asserting Attorney-client privilege. But please feel
12 free to answer anything contained in the analysis in the
13 document.

14 MS. BERESFORD: Please stop saying limiting her to
15 the document. My questions are broader than the
16 document. I'm asking for her information about the
17 unique facts to San Altos. She emphasized earlier that
18 unique facts are part of the enforcement policy. The
19 purpose of this inquiry is to figure out what those
20 unique facts are. Facts are not privileged.

21 MS. DRABANDT: I recommend that you turn your
22 questions towards that better. Thank you.

23 THE WITNESS: I cannot answer your question without
24 disclosing attorney-client privileged information.

25 MS. BERESFORD:

1 Q. So to be clear, there are no facts independent
2 of attorney-client -- you're asserting you have no
3 unique facts independent of information from the
4 attorney-client.

5 A. Related to...

6 Q. For alleging a violation of failure to
7 implement perimeter sediment control at the San Altos
8 site, what are the unique facts that led to that
9 violation when it was not alleged in the Encinitas case?
10 How are they different? What are the unique facts in
11 San Altos that resulted in that violation?

12 A. I think that's still the same question. I
13 still can't answer that without disclosing
14 attorney-client privileged information.

15 Q. If we look at photo 7 on page 10 of the
16 Encinitas ACL, does that picture show a failure to
17 protect storm drain inlets?

18 A. Yes.

19 Q. Did you allege a specific violation for failure
20 to protect storm drain inlets in the Encinitas ACL?

21 A. No -- yes. No, we did not. Sorry.

22 Q. Just to be clear, the Water Board did not
23 allege violations of failure to protect storm drain
24 inlets in the Encinitas ACL.

25 A. Not specifically.

1 **Q. Did the Water Board allege failure to protect**
2 **storm drain inlets, specific violations for that in the**
3 **San Altos --**

4 A. Yes.

5 **Q. -- complaint? What are the unique facts in**
6 **San Altos that resulted in allegations of failure to**
7 **protect storm drain inlets?**

8 MS. DRABANDT: Objection. Attorney-client
9 privileged.

10 THE WITNESS: There are no unique facts that I can
11 specify without disclosing attorney-client privilege.
12 Sorry.

13 MS. BERESFORD:

14 **Q. We'll continue.**

15 MS. BERESFORD: I would like to state for the
16 record an objection that I don't believe that facts are
17 privileged information.

18 **Q. Let's look at page 10. Does the photo on**
19 **page 7 show sediment in the street?**

20 A. Page 10, photo number 7?

21 **Q. Yes. For the Encinitas ACL.**

22 A. Photo number 7.

23 **Q. Yes.**

24 A. Okay.

25 **Q. Does that photo show sediment in the street?**

1 A. No. Am I looking at the right photo?

2 Q. I'm sorry. I'm on page 10, photo number 7.

3 A. Uh-huh.

4 Q. And to me it looks like there's a street that
5 continues up in the left-hand corner of the photo.

6 A. No.

7 Q. That's not a street?

8 A. No.

9 Q. What is that?

10 A. That is part of their project area.

11 Q. Can you please look at photo 6 on page 9. Do
12 you know if there is any sediment in the street
13 associated with that discharge?

14 A. Hard to tell from the picture.

15 Q. Do you have any independent knowledge of it?

16 A. I don't recall.

17 Q. For the Encinitas ACL they have violations of
18 approximately 141 days; is that correct? We'll go to
19 page 3 of the complaint where it discusses in paragraph
20 number 14 failure to implement adequate controls,
21 structures and management practices from October 8, 2012
22 through December 27, 2012, and then again January 8 of
23 2013 through March 8, 2013. Do you see that?

24 A. Yes.

25 Q. Does that seem like approximately 141 days?

1 A. I won't do the math but that sounds fair.

2 Q. For the allegation of failure to implement
3 adequate controls October 8, 2012 through December 27,
4 2012. Those are alleged with what we call continuous
5 violations; is that correct?

6 A. Can you restate the question.

7 Q. Would you categorize it as a continuous
8 violation between those dates?

9 A. Yes.

10 Q. Do you recall, do you have specific evidence of
11 a violation on each day between October 8 and
12 December 27?

13 A. No.

14 Q. What were you relying on for your continued
15 violations?

16 A. The inspection report -- well, to be honest
17 with you, I'd have to look back at the report to be
18 specific. But generally speaking, we would rely on the
19 inspection reports and photographic evidence for the
20 period that we have.

21 Q. Do you know if you had inspection reports and
22 photographs for every day between October 8 and
23 December 27?

24 A. We probably did not.

25 Q. How about for January 8 through March 8? Do

1 you know if you had specific information for each day?

2 A. Probably not.

3 Q. For the San Altos ACL they had violations of
4 44 days; is that correct?

5 A. For what violation?

6 Q. For San Altos. Total. The total number of
7 days alleged came to 44. Does that sound approximately
8 correct?

9 A. Yes.

10 Q. In the Encinitas ACL the prosecution sought
11 penalties of \$430,851; is that correct?

12 A. It sounds right.

13 Q. In the San Altos complaint the prosecution is
14 seeking penalties of \$848,374; is that correct?

15 A. Yes.

16 Q. What are the unique facts for the San Altos
17 complaint that resulted in almost twice as much in
18 penalties for a third of the days?

19 MS. DRABANDT: Objection. Attorney-client
20 privileged.

21 MS. BERESFORD: I'll restate for the record that I
22 don't think facts -- we're asking for facts -- are
23 privileged.

24 Q. Can you describe for me how, looking at the two
25 complaints, that the complaints are fair and consistent?

1 MS. DRABANDT: Can you please reread the question
2 or...

3 MS. BERESFORD: Sure.

4 **Q. Looking at the San Altos complaint where the**
5 **penalties sought are almost \$850,000 for 44 days, and in**
6 **Encinitas where the prosecution sought \$430,000 in**
7 **penalties for 141 days, can you please describe for me**
8 **how that difference is fair and consistent?**

9 A. I think both penalties were consistent with the
10 penalty calculation methodology and enforcement policy.

11 **Q. Can you please be more specific.**

12 A. Both of them applied the penalty calculation
13 methodology in accordance with the enforcement policy.

14 **Q. In Encinitas ACL, in the Encinitas complaint**
15 **did you have the discretion to allege specific**
16 **violations for things like linear sediment controls,**
17 **perimeter sediment controls?**

18 A. Yes.

19 MS. DRABANDT: I was going to say objection, calls
20 for legal conclusion but please answer.

21 THE WITNESS: Yes.

22 MS. BERESFORD:

23 **Q. Why did you not?**

24 MS. DRABANDT: Objection. Attorney-client
25 privileged.

1 MS. BERESFORD:

2 Q. So the answer I'm getting is the penalties are
3 fair and consistent with the methodology but I can't
4 tell you how.

5 MS. DRABANDT: Objection. Argumentative.

6 MS. BERESFORD: I'm trying to find out how. I'm
7 trying to find out how. I would love to know.

8 Q. Do you interpret fair and consistent, that
9 complaints should be fair and consistent with each
10 other?

11 A. So, first of all, you're skipping one word
12 which is fair, firm and consistent. Sorry.

13 Q. I will rephrase. Does your interpretation of
14 the enforcement policy that the policy enforcement be
15 fair, firm and consistent, does that mean that
16 complaints for the same type of penalties be fair, firm
17 and consistent with each other?

18 A. That is something the Water Boards strive for,
19 but recognizing the unique cases and -- yes.

20 Q. So what are the unique facts in San Altos that
21 resulted in 13 different violations where in Encinitas
22 there was only two?

23 MS. DRABANDT: Objection. Attorney-client
24 privileged.

25 MS. BERESFORD: I will restate that I don't think

1 facts are privileged.

2 MS. BERESFORD: I would like to mark this as
3 Exhibit 3, please.

4 **Q. Can you tell me what this document is?**

5 A. It is page 18 of the enforcement policy.

6 **Q. It says "Multiple Day Violations"; is that**
7 **correct?**

8 A. Correct.

9 **Q. Are you familiar with the multiple day**
10 **violations policy in the enforcement policy?**

11 A. Yes.

12 **Q. Was this policy used in the Encinitas ACL?**

13 A. It was applied.

14 **Q. Was this policy applied on the San Altos ACL?**

15 A. No.

16 **Q. Why was that?**

17 A. Because it states here that for violations that
18 are assessed a civil liability on a per day basis, the
19 initial liability shall not be assessed for each day up
20 to 30 days. So I guess it was applied.

21 **Q. But continuing, "For violations that last more**
22 **than 30 days, the daily assessment can be less than the**
23 **calculated daily assessment."**

24 A. Are you suggesting that each violation lasted
25 more than 30 days?

1 **Q. I'm just asking you if it was applied.**

2 A. So the multiple day violations language was
3 considered in the developments of the calculations.

4 **Q. Did you have the discretion in the San Altos**
5 **complaint to allege a violation of lack of failure to**
6 **implement BMPs from December 1 through December 31?**

7 A. I don't believe I had that discretion because
8 each violation lasted less than 30 days, or was alleged
9 to have lasted less than 30 days.

10 **Q. What were the unique facts that were different**
11 **here than what occurred in Encinitas?**

12 MS. DRABANDT: Objection. Attorney-client
13 privileged.

14 MS. BERESFORD: I'm asking for facts.

15 THE WITNESS: I think I can answer this one without
16 disclosing confidential information.

17 MS. DRABANDT: Please do.

18 THE WITNESS: The Encinitas one alleges a longer
19 period of noncompliance.

20 MS. BERESFORD:

21 **Q. Well, in this case, the San Altos, we had**
22 **allegations of noncompliance starting on December 1 and**
23 **at least multiple days through December and into**
24 **January. Could you have alleged that there were lack of**
25 **failure to implement BMPs during that time?**

1 MS. DRABANDT: Objection. Calls for legal
2 conclusion. Please answer.

3 THE WITNESS: I would be speculating without
4 knowing the case details that support the entire period
5 of noncompliance.

6 MS. BERESFORD:

7 Q. But in Encinitas you didn't have reports for
8 every single day; isn't that correct?

9 A. Correct.

10 Q. Did you have reports for every single day in
11 San Altos?

12 A. No.

13 Q. So why are they different?

14 MS. DRABANDT: Objection. Vague. Please don't
15 answer anything that's attorney-client privileged.

16 THE WITNESS: Sorry.

17 MS. BERESFORD:

18 Q. So sorry, what does that mean?

19 A. I cannot answer it without disclosing
20 attorney-client privileged information.

21 Q. Let's go back to -- was the whole council
22 involved in the drafting of the Encinitas ACL?

23 A. Yes.

24 Q. I would like to go back to the complaint and
25 Technical Analysis for the San Altos complaint, please.

1 I would like to look at page 30 of the Technical
2 Analysis. Going back to 29, this talks about violation
3 number 3 for the San Altos site: Failure to implement
4 vehicle fluid leak BMPs. Do you see that?

5 A. Uh-huh.

6 Q. Then going to page 30 it talks about the
7 potential for harm.

8 A. Uh-huh.

9 Q. And that the selection of potential for harm
10 was characterized as moderate; is that correct?

11 A. Uh-huh. Yes. Sorry.

12 Q. Mr. Melbourn testified that there was no
13 discharge from the vehicles on the two days alleged. Do
14 you recall that testimony?

15 A. Yes.

16 Q. Can you please describe for me why the
17 selection of potential for harm was moderate, that there
18 was a substantial threat to beneficial uses?

19 A. Say that last question again.

20 Q. Uh-huh. Can you please explain to me why the
21 potential for harm was identified as moderate, which is
22 defined in the enforcement policy as the characteristics
23 of the violation present a substantial threat to
24 beneficial uses.

25 MS. DRABANDT: I'm objecting. Vague because I

1 don't know if you're asking for the witness's
2 recollection or if she's recalling Frank's testimony.

3 MS. BERESFORD: I'm asking for her knowledge. I'm
4 asking for her -- why was this chosen, based on her
5 knowledge.

6 MS. DRABANDT: I'd object to anything that may be
7 attorney-client privileged.

8 THE WITNESS: So you're saying the potential for
9 harm for the site was moderate. And the enforcement
10 policy reads: "The characteristics of the violation
11 present a substantial threat to beneficial uses and/or
12 the circumstances of the violation indicate a
13 substantial potential for harm. Most instances would be
14 considered to present a moderate potential for harm."
15 So I would defer to Frank as to the specific details as
16 to why he selected moderate for that particular
17 violation. I can answer some of the factors in general
18 terms that go into selecting a moderate.

19 MS. BERESFORD:

20 **Q. Did you discuss this particular selection**
21 **with him for this violation?**

22 A. I don't know if I did or not.

23 **Q. Did you discuss any of the specific selections,**
24 **penalty selections characterization?**

25 A. Yes. So in my draft review I would discuss

1 areas that I considered either unsubstantiated or that
2 raised questions and I would discuss those, but I don't
3 specifically recall what areas we discussed.

4 MS. BERESFORD: Let's mark this, please, as
5 Exhibit number 4.

6 **Q. Can you please identify this document.**

7 A. This is Exhibit Number 8 to the site's
8 complaint -- or to the site's technical report, which is
9 the December 15, 2014 Facility Inspection Report written
10 by Wayne Chiu.

11 **Q. Have you seen this document before?**

12 A. Yes, I believe so.

13 **Q. If you could please turn to page 7 and look at**
14 **photo 4. Then down in the right-hand corner there's**
15 **text that says "Photos 4 through 7 show completed**
16 **building pads and adjacent slopes without any erosion**
17 **controls." Do you see that?**

18 A. Uh-huh.

19 **Q. And then about six lines up from the bottom,**
20 **part of the sentence reads "Photos 4 through 7 --" I'll**
21 **start at the beginning. "Sediment from completed lots**
22 **and slopes in photos 4 through 7 transported to road in**
23 **photo 8 lacking any erosion control measures during**
24 **storm events, and inadequate runoff controls to reduce**
25 **and prevent transport of sediment through site." Do you**

1 **see that?**

2 A. Uh-huh.

3 **Q. I'd like to then go to the findings on page 3.**

4 A. Uh-huh.

5 **Q. The findings say "Several areas were observed**
6 **to be inactive without effective soil control. See**
7 **photos 4 through 7." Do you see that?**

8 A. I see "Several areas were observed to be
9 inactive, or could be scheduled to be inactive, without
10 effective soil cover to control potential erosion," dot,
11 dot, dot.

12 **Q. So is photo 4 the basis for violation number 4:**
13 **"Failure to have, implement erosion control BMPs in**
14 **inactive areas"?**

15 A. I'm sure it was part of the evidence that was
16 put into the allegations of violation for failure to
17 have adequate erosion control.

18 **Q. Is photo 4 also used -- and I'm looking at the**
19 **language now at the bottom of page 7, to have inadequate**
20 **run-off controls?**

21 A. So that's interesting. I'm not quite sure I
22 understand that sentence very well because -- let me
23 read the sentence. "Sediment from completed lots and
24 slopes in photos 4 through 7 transported to road in
25 photo 8 lacking any erosion control measures during

1 storm events, and inadequate runoff controls to reduce
2 and prevent transport of sediment." So I would have to
3 look and see whether photo 8 refers to inadequate
4 run-off controls.

5 **Q. Photo 8 is right there on page 7. Would you**
6 **look at that?**

7 A. I would defer to the technical staff on this.

8 **Q. Let's go back to page 3.**

9 A. Of the inspection report?

10 **Q. Yes, please. Going to finding number 3, in**
11 **reading that text would you agree that photo 4 was one**
12 **of the basis to allege a violation of failure to have**
13 **sufficient BMPs in an inactive area?**

14 A. What I read from this is that -- let me finish
15 reading it first, sorry. So the only thing I can say
16 with certainty is that photo 4 is evidence of
17 effective -- of lacking effective soil cover for erosion
18 control.

19 **Q. Does the first sentence of finding 3 specify**
20 **that it was for areas observed to be inactive?**

21 A. Yes. It says several areas were observed to be
22 inactive. And then the next sentence says "Several
23 completed building pads and several inactive slopes
24 lacked any effective soil cover."

25 **Q. Then going to finding number 5, can you please**

1 read that first sentence?

2 A. "Several slopes throughout the site were
3 observed to lack linear sediment controls along the toe
4 and grade breaks of exposed slopes. See photos 4
5 through 7."

6 Q. So were photos 4 through 7 used as evidence to
7 allege violations of failure to have linear sediment
8 controls?

9 A. Yes.

10 Q. Were photos 4 through 7 used to support the
11 alleged violation of failure to have effective soil
12 cover for inactive areas? Going back up to number 3.

13 A. Possibly.

14 Q. If you could please turn to page 4. Finding
15 number 7 says "Lack of effective run-on and run-off
16 controls observed within and around the site which
17 contributed to sediment discharges from the site. See
18 photos 4 and 14." Do you see that?

19 A. Uh-huh.

20 Q. So was photo 4 used as evidence for the
21 allegation of failure to have effective run-on and
22 run-off controls?

23 A. Yes.

24 Q. If you go to number 6 above, please. It says
25 "Lack of effective perimeter sediment controls observed

1 which resulted in unauthorized sediment discharges from
2 the site. See photos 9 through 14."

3 A. I'm sorry, where are we?

4 Q. I'm sorry. Page 4 of the exhibit.

5 A. Number 6?

6 Q. Number 6. It says "Lack of effective perimeter
7 sediment controls observed which resulted in
8 unauthorized sediment discharges from the site. See
9 photos 9 through 14." You see that?

10 A. Yes.

11 Q. So was photo 14 used as evidence to allege
12 failure to have effective perimeter sediment controls?

13 A. Yes.

14 Q. And then going to number 7, photo 14, was that
15 used to establish lack of effective run-on and run-off
16 controls?

17 A. Yes.

18 MS. BERESFORD: Can we please mark this exhibit as
19 number 5.

20 Q. Can you please state what Exhibit 5 is?

21 A. This is Exhibit Number 18 to the Valencia
22 technical report for the administrative civil liability
23 complaint, which is a May 8, 2015 Facility Inspection
24 Report conducted by Frank Melbourn.

25 Q. Are you familiar with this document?

1 A. Yes.

2 MS. BERESFORD: I apologize. Can we go off the
3 record for a moment, please.

4 (Recess.)

5 MS. BERESFORD:

6 Q. I would like to go back to -- is Exhibit 5 to
7 the deposition Exhibit Number 18 to the ACL Technical
8 Analysis?

9 A. Yes.

10 Q. Yes, please. Look at that. I would like to
11 look at page 6 which has photograph number 1.

12 A. Uh-huh.

13 Q. Was this photograph used as evidence to show
14 the violation of failure to have sufficient linear
15 sediment controls?

16 A. I don't know.

17 Q. Looking at the third sentence underneath
18 photograph number 1, it says "Displayed slopes in the
19 photograph show signs of erosion, and were lacking
20 erosion and sediment control BMPs at their base." Is
21 that discussing lack of linear sediment controls?

22 A. Yes. But the question was, was it used in the
23 violation.

24 Q. Okay. So you believe it shows evidence of lack
25 of linear sediment controls, but you don't know if that

1 was the basis for the violation for this day.

2 A. Correct.

3 Q. The second to the last sentence also says
4 "There was an absence of run-on/run-off control BMPs."
5 Do you see that?

6 A. Yes.

7 Q. Do you know if these facts were used for the
8 basis of alleging failure to have sufficient run-on and
9 run-off control BMPs?

10 A. I do not know.

11 Q. Let's look at photograph number 2. The second
12 sentence says "The photograph also displays unprotected
13 (absent erosion control BMPs) disturbed soil and a lack
14 of sediment controls above street gutters." Do you see
15 that?

16 A. Yes.

17 Q. Do you think this photograph was used to
18 establish lack of perimeter sediment controls at the
19 site?

20 A. I do not know but I suspect so.

21 Q. If you can look at photograph number 3. The
22 second sentence says "The photograph displays a sediment
23 discharge from disturbed construction areas into the
24 street." Does this show a failure to have sufficient
25 linear sediment controls?

1 A. I do not know.

2 Q. The next sentence says "Except the area with
3 plastic sheeting, displayed slopes in the photograph
4 show sign of erosion, and were lacking erosion and
5 sediment control BMPs at their base."

6 A. So I believe the photo provides evidence of
7 lacking erosion and sediment control BMPs at the base.
8 I do not know if it was used in the allegations.

9 Q. The language is not always precise, so I didn't
10 hear. Do you think it shows failure to have sufficient
11 linear sediment controls?

12 A. I would defer to technical staff.

13 Q. I have the same question for photograph
14 number 4. It says "The photograph displays disturbed
15 soil without erosion control BMPs and sediment control
16 BMPs." Does that mean linear sediment control BMPs?

17 A. I would defer to technical staff.

18 Q. What other sediment control BMPs are there?

19 A. I would defer to technical staff.

20 Q. I'm just saying in general. If you call
21 sediment controls, is there something different between
22 sediment control BMPs and linear sediment control BMPs?

23 A. I don't know.

24 Q. Then I would have the same question about
25 photograph number 6. It says "The photograph displays

1 **disturbed soil without erosion control BMPs and sediment**
2 **control BMPs." Does that mean linear sediment control**
3 **BMPs?**

4 A. I would, once again, defer to technical staff.
5 I do not know the answer.

6 MS. BERESFORD: Let's please mark this as Exhibit
7 Number 6.

8 **Q. Can you please identify exhibit number 6 for**
9 **me.**

10 A. This is Exhibit Number 19 to the technical
11 report for the San Altos-Lemon Grove complaint. It is a
12 Facility Inspection Report for the site on May 13, 2015,
13 conducted by -- or written by Wayne Chiu.

14 **Q. Are you familiar with this document?**

15 A. I am.

16 **Q. Can you please look at page 3?**

17 A. Page what?

18 **Q. 3. Looking at finding number 3, at the bottom**
19 **of page 3 it says "Several areas were observed to be**
20 **inactive, or could be scheduled to be inactive, without**
21 **effective soil cover to control potential erosion."**

22 A. Uh-huh.

23 **Q. "Several completed building pads and several**
24 **inactive slopes (See photos 4 through 6) lacked any**
25 **effective soil cover for erosion control."**

1 A. Uh-huh.

2 Q. Then if you go and look at pages -- page 7,
3 photos 4 through 6. And particularly photo 5 through 6.

4 A. Uh-huh.

5 Q. Were these photographs used to establish
6 failure to have sufficient BMPs in inactive areas?

7 A. I would presume so but I do not know for sure.

8 Q. And then going back to page 4 up in the
9 findings, paragraph number 5 says "Several slopes
10 throughout the site were observed to lack linear
11 sediment controls along the toe and grade breaks of
12 exposed slopes (See photos 1, 5, 6, 8, 9, 11, and 12).
13 So were photos 5 and 6 also used to establish failure to
14 have sufficient linear sediment controls?

15 A. Yes. Or it appears so.

16 Q. Paragraph 4 says "Active areas were observed to
17 lack appropriate control BMPs (run-off control and soil
18 stabilization) to prevent erosion during storm events.
19 See photos 7 through 12." You can look at photos 7
20 through 12 on page 8. Were those photos used to
21 establish the violation of failure to have sufficient
22 BMPs in active areas?

23 A. Sufficient erosion control BMPs?

24 Q. Yes.

25 A. Yes, I would presume so.

1 Q. Does finding number 4 also say that those
2 photos were used to establish failure to have sufficient
3 run-off control?

4 A. If those same photo numbers were alleged, can
5 we just say that for all of them?

6 Q. Well, I'd like to but, unfortunately, I think
7 we have to go through this process. So were photos 7
8 through 12 also used to establish failure to effectively
9 manage run-off control?

10 A. Yes. Run-on and run-off controls.

11 Q. And that's discussed in finding number 7 below;
12 is that correct?

13 A. Correct.

14 Q. Then going to finding number 6 states that
15 "Lack of effective perimeter sediment controls observed
16 (See photos 13 and 14)." So was photo 14 also used to
17 establish lack of effective perimeter sediment control?

18 A. Yes.

19 Q. And in finding number 7 below it says photo 14
20 was also used to establish lack of effective run-on and
21 run-off controls; is that correct?

22 A. Yes.

23 MS. BERESFORD: Can we please mark this as our next
24 exhibit.

25 THE WITNESS: Number 7.

1 MS. BERESFORD:

2 Q. Are you familiar with this document?

3 A. I am.

4 Q. Can you please say what it is?

5 A. Exhibit 7 is pages 17 and 18 from the
6 enforcement policy.

7 Q. I'd like to talk about the section that starts
8 at the bottom of page 7 that says "Multiple Violations
9 Resulting From the Same Incident." It talks about
10 where -- can you please describe for me this policy
11 specific to Subsection C where it says the violation
12 continues for more than one day. Can you please explain
13 how this enforcement policy works for that fact.

14 A. It's the one I'm most unclear about so I'm not
15 sure I would be good to explain it.

16 Q. Who would be able to explain it then?

17 A. So it would be my counsel. Whenever we have
18 questions regarding the interpretation of the
19 enforcement policy we would defer to our counsel. But
20 basically, for the record, what the language is, is "For
21 situations not addressed my statute, a single base
22 liability amount can also be assessed for multiple
23 violations at the discretion of the Water Boards, under
24 the following circumstances." And it lists multiple
25 circumstances going on into page 18. And number C is

1 "The violation continues for more than one day." So
2 that means under these circumstances, if the violations
3 continue for more than one day, it's implying that the
4 Water Board has the discretion to assign a single base
5 liability amount.

6 **Q. Did San Altos have violations that continued**
7 **for more than one day?**

8 A. They did.

9 **Q. Do you have the discretion to assign a single**
10 **base liability amount to those violations?**

11 MS. DRABANDT: Calls for a legal conclusion. You
12 can answer.

13 THE WITNESS: I can answer?

14 MS. DRABANDT: I'm not asking you to not answer.

15 THE WITNESS: So what you're referring to -- and
16 this is why I find that "C" language confusing is
17 because this is for multiple violations, but what you're
18 really asking me to do is refer to the multiple day
19 violations which is page 18.

20 MS. BERESFORD:

21 **Q. No. I'm asking you to interpret this specific**
22 **section.**

23 A. Yeah. And I've never applied the "C" to the
24 multiple day violations. And I would ask counsel, if
25 they thought it was appropriate, if the Water Board

1 wanted to use its discretion on this situation.

2 Q. Did you discuss this issue put together,
3 subsection C, with Mr. Melbourn?

4 A. No.

5 Q. How about subsection D? It says "When
6 violations are not independent of one another or are not
7 substantially distinguishable." Is it your
8 understanding that this policy that we have multiple
9 violations that are not substantially distinguishable
10 that you can establish a single base liability?

11 A. Yes.

12 Q. In your opinion were there violations in the
13 San Altos case that were not substantially
14 distinguishable?

15 MS. DRABANDT: Objection. Calls for legal
16 conclusion. Attorney-client privileged.

17 MS. BERESFORD: Are you directing her not to
18 answer?

19 MS. DRABANDT: Yeah.

20 MS. BERESFORD: Just to be clear for the record,
21 you've stated a lot of attorney-client privileged
22 objections. I have interpreted those to mean that
23 you're directing her not to answer. Is that a correct
24 interpretation of your objection?

25 MS. DRABANDT: Correct.

1 MS. BERESFORD:

2 Q. Then going on to "E," it says "A single act may
3 violate multiple requirements, and therefore constitute
4 multiple violations." There's some language in the
5 middle of the paragraph. And the final sentence of that
6 paragraph says "Such an act would constitute three
7 distinct violations that may be addressed with a single
8 base liability amount." Do you see that?

9 A. Yes.

10 Q. In your opinion, were there individual acts in
11 the San Altos case that constituted multiple violations?

12 MS. DRABANDT: Objection. Calls for legal
13 conclusion.

14 Please answer anything that is not attorney-client
15 privileged.

16 THE WITNESS: Can you restate the question.

17 MS. BERESFORD:

18 Q. Yes.

19 MS. BERESFORD: Can you please read it back for me.
20 (The question is read by the reporter.)

21 THE WITNESS: Yes.

22 MS. BERESFORD:

23 Q. Can you please state what those were?

24 A. I think you gave examples of some of them with
25 the prior pictures.

1 **Q. Did you assign a single base liability amount**
2 **for the single acts?**

3 A. Yes.

4 **Q. Can you please state what those were?**

5 A. Which ones that we assigned single liabilities
6 for single acts?

7 **Q. Right.**

8 A. I defer to technical staff. But I think you're
9 referring to some overlap between a perimeter control
10 and was it linear --

11 **Q. Linear sediment control. And please correct**
12 **me. I read this policy to say if you're a single act**
13 **that rolls out multiple violations, you have the**
14 **discretion to just allege one violation or one penalty**
15 **for all of them. Do you interpret that the same way?**

16 MS. DRABANDT: Objection. Calls for legal
17 conclusion.

18 Please continue.

19 THE WITNESS: Except where each of those violations
20 result in a distinguishable economic benefit to the
21 violator, just for clarification.

22 MS. BERESFORD:

23 **Q. Where does that say that that's a**
24 **differentiation for this subsection D?**

25 A. That's the second paragraph after "E."

1 **Q. So I want to be clear on your testimony. You**
 2 **indicated that you felt there were single acts that**
 3 **resulted in multiple violations in the San Altos case;**
 4 **is that correct?**

5 A. Correct.

6 **Q. You did not consolidate them for one penalty**
 7 **because they each resulted in a distinguishable economic**
 8 **benefit?**

9 A. Sorry. I'm glad you clarified.

10 MS. DRABANDT: Objection. Misstates testimony.
 11 Can you please rephrase the question.

12 MS. BERESFORD: I'm trying to get a better
 13 understanding of her testimony.

14 THE WITNESS: Sorry. What I heard the question to
 15 be was did we have the discretion, and my answer was
 16 yes, except in instances where the multiple violations
 17 each result in a distinguishable economic benefits to
 18 the violator. Not specific to the individual case
 19 here.

20 MS. BERESFORD:

21 **Q. Very good. Let's go back to the case here. I**
 22 **think you said -- and please correct me, I don't want to**
 23 **misstate your testimony -- that did you think in the**
 24 **San Altos matter that there were single acts that**
 25 **resulted in multiple violations; is that correct?**

1 A. Yes. And to clarify, what we're referring to
2 is there are pictures that refer to multiple violations,
3 but the record may allude to other acts as well.

4 **Q. In the San Altos case did you consolidate any**
5 **violations to one penalty based on a single act?**

6 MS. DRABANDT: Objection. Please answer anything
7 that is not attorney-client privileged.

8 THE WITNESS: So you could interpret it that way
9 according to the enforcement policy. So for example, if
10 the facility has violated the same requirement at one or
11 more locations within the facility, you could say that
12 we did consolidate all those acts into a single
13 violation for that day.

14 MS. BERESFORD:

15 **Q. Going to "E," we were talking specifically**
16 **about that the photographs showed facts that were**
17 **alleged to demonstrate lack of perimeter control, lack**
18 **of linear sediment control; that there were some overlap**
19 **in some of the violations; is that correct?**

20 A. Yeah. But just again for clarification, the
21 example in section E refers to a situation where a
22 failure resulted in multiple violations of presumably
23 different permits. Just a distinction.

24 **Q. So you think subsection E only applies to**
25 **different permits?**

1 A. Not necessarily. But the example alludes to
2 that.

3 Q. Okay. But can subsection E be used to
4 consolidate violations with one permit?

5 A. Yes.

6 Q. So going back to the San Altos case, were there
7 individual acts that resulted in multiple violations?

8 MS. DRABANDT: Objection. Calls for legal
9 conclusion.

10 Please answer.

11 THE WITNESS: There appears to have been photos
12 cited where we are able to determine that there were
13 multiple violations that were not counted as the same
14 incident.

15 MS. BERESFORD:

16 Q. But under subsection E you had the discretion
17 to consolidate those to one violation; is that correct?

18 A. We do have that discretion.

19 Q. Did you do that for the San Altos case?

20 A. No.

21 Q. Can you tell me why not?

22 MS. DRABANDT: Objection.

23 In your answer please don't disclose anything that
24 is attorney-client privileged.

25 THE WITNESS: I cannot disclose anything.

1 MS. BERESFORD:

2 Q. So you can't tell me any facts as to why you
3 did not consolidate those.

4 A. Correct.

5 Q. Did you consolidate multiple violations in the
6 Encinitas ACL into one ongoing violation?

7 A. Yes.

8 Q. Can you state the unique facts of San Altos
9 where that did not occur in the San Altos case?

10 A. No. Sorry. I cannot state it without
11 disclosing attorney-client privileged information.

12 MS. DRABANDT: Thank you for clarifying.

13 MS. BERESFORD: I think we are nearing the end. I
14 apologize, but if you give me another five minutes we
15 will talk and hopefully wrap up shortly.

16 (Recess.)

17 MS. BERESFORD: Back on the record. Just a couple
18 of final questions.

19 Q. You mentioned earlier that the supervisors of
20 the compliance assurance unit participated in round
21 tables to discuss various issues, including the
22 enforcement policy?

23 A. So the enforcement coordinators participate in
24 round tables and have done like an enforcement
25 conference or trainings to discuss implementation of the

1 enforcement policy.

2 **Q. Does legal counsel always participate in those**
3 **round tables?**

4 A. Our enforcement legal counsel does. They put
5 it on.

6 **Q. Who is Eric Becker?**

7 A. Eric Becker is the -- could you be more
8 specific with the question? Sorry. I know it's a
9 simple question.

10 **Q. Sure. If you review -- I apologize for the**
11 **exhibit numbers but I believe he signed --**

12 A. The inspection report for Wayne Chiu.

13 **Q. For the record, let me finish. I know you know**
14 **what I'm talking about, but it's better for the record**
15 **if I have a clear question. So if you refer to Exhibit**
16 **Number 19 of the technical ACL, which I believe is**
17 **Exhibit Number 6 to the deposition, Mr. Chiu's**
18 **inspection report was signed by Eric Becker.**

19 A. Yes.

20 **Q. Additionally, I believe the December 15**
21 **inspection report by Mr. Chiu, which is also an exhibit**
22 **to the deposition, was signed by Mr. Becker. So that's**
23 **how we see Mr. Becker. Can you tell us who Mr. Becker**
24 **is?**

25 A. At the time that these inspection reports were

1 written -- at the time that these inspection reports
2 were written Mr. Chiu was Mr. Becker's direct report.
3 And at that time, Mr. Becker was the supervisor of one
4 of the watershed units overseeing the stormwater
5 compliance industrial, construction, municipal.

6 **Q. Did you also review Mr. Chiu's inspection**
7 **reports before they went out?**

8 A. I might have. I don't know.

9 **Q. But you have since reviewed them after the**
10 **fact.**

11 A. Yes.

12 **Q. Was Mr. Becker involved in drafting the**
13 **complaint against San Altos?**

14 A. I don't think so.

15 MS. BERESFORD: I don't have any other questions at
16 this time. Do you have any questions, Laura?

17 MS. DRABANDT: I do. Can we please have a few
18 minutes?

19 MS. BERESFORD: Sure.

20 MS. DRABANDT: Thank you.

21 (Recess.)

22 MS. DRABANDT: We are back on the record.

23 -EXAMINATION-

24 BY MS. DRABANDT:

25 **Q. I have a few questions for you, Chiara. Are**

1 you familiar with the subpoenas requiring document
2 production issued to Wayne Chiu and Frank Melbourn?

3 A. I am.

4 Q. Are you familiar with the documents that were
5 produced?

6 A. Yes.

7 Q. Do you believe there are any documents related
8 to inspecting this site that are not contained in that
9 document production?

10 A. No.

11 Q. Earlier questions referenced did you allege. I
12 wanted to ask you, in your mind how did you interpret
13 that? Did you personally allege violations in the
14 Valencia Hills complaint?

15 A. No. When I refer to allegations I refer on
16 behalf of the prosecution team.

17 MS. BERESFORD: For clarification, when I said you
18 I meant the prosecution team. And I apologize for that
19 confusion.

20 MS. DRABANDT: That's what we thought. Just
21 clarifying. Thank you.

22 Q. There were also mentions of unique facts,
23 particularly in regards to the methodology used,
24 generally speaking, in enforcement cases, and I wanted
25 to find out: For the Encinitas matter you reviewed the

1 **complaint methodology, correct?**

2 A. Correct.

3 **Q. Did you see any specific facts that were**
4 **contained in the methodology?**

5 A. I think the specific facts are identified in
6 the technical report.

7 **Q. Similar question for San Altos, Valencia Hills.**
8 **Did you review the methodology?**

9 A. Yes.

10 **Q. Do you have a similar statement regarding facts**
11 **for that matter?**

12 A. Yes. The facts are alleged in the technical
13 report.

14 MS. DRABANDT: That concludes my questions.

15 MS. BERESFORD: Let's follow up and state on the
16 record how we're going to proceed in getting the
17 transcript to the deponent, reviewed, et cetera. So the
18 court reporter is going to complete the transcript. The
19 court reporter company will mail it directly to
20 Miss Clemente for arrival Tuesday morning. Hopefully in
21 the 10 a.m. to noontime range will be their goal.

22 Miss Clemente has agreed to review the transcript
23 and make any changes to the extent there are any and
24 sign the verification page. She will send a copy of
25 that verification page to counsel for San Altos. She'll

1 attempt to do that by close of business on next
2 Thursday, which I believe is January 28th. And then put
3 the original in the mail so that the original transcript
4 with the verification page, errata page arrives at the
5 offices of Opper & Varco by close of business on Friday,
6 next Friday. In a week.

7 Does counsel stipulate that the original transcript
8 can be held in the possession of Opper & Varco, and if
9 for some reason is lost or destroyed that a copy can be
10 used?

11 MS. DRABANDT: Yes.

12 MS. BERESFORD: Are we clear on the review process.
13 I just want to say one more thing also on the record.
14 Mr. Melbourn returned to our offices the deposition
15 transcripts for Mr. Melbourn's deposition and Mr. Chiu's
16 deposition, and he returned those errata pages,
17 verification pages. Opper & Varco is not expected to
18 provide those copies to Water Board counsel.
19 Mr. Melbourn is going to provide copies of those two
20 pages to Water Board counsel; is that correct?

21 MR. MELBOURN: Correct.

22 MS. BERESFORD: I think we're concluded. Thank you
23 very much.

24 (The proceedings concluded at 12:02 p.m.)

25 ***

1 I declare under penalty of perjury under the laws
2 of the State of California that the foregoing is true
3 and correct.
4

5 Executed at San Diego, California,
6 on January 26, 2016.
7

8 

9 CHIARA CLEMENTE
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1 STATE OF CALIFORNIA) ss
2

3 I, Marc Volz, CSR 2863, RPR, CRR, do hereby
4 declare:

5 That, prior to being examined, the witness named in
6 the foregoing deposition was by me duly sworn pursuant
7 to Section 2093(b) and 2094 of the Code of Civil
8 Procedure;

9 That said deposition was taken down by me in
10 shorthand at the time and place therein named and
11 thereafter reduced to text under my direction.

12 I further declare that I have no interest in the
13 event of the action.

14 I declare under penalty of perjury under the laws
15 of the State of California that the foregoing is true
16 and correct.

17
18
19 WITNESS my hand this _____ day of

20 _____, _____.
21
22

23 _____
24 MARC VOLZ, CSR NO. 2863, RPR, CRR
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ERRATA SHEET

I declare under penalty of perjury that I have read the
foregoing _____ pages of my testimony, taken
on _____ (date) at
_____(city), _____(state),

and that the same is a true record of the testimony given
by me at the time and place herein
above set forth, with the following exceptions:

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ERRATA SHEET

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Date: _____
Signature of _____
Witness _____
Name Typed or Printed _____

**THE "REASON FOR CHANGE" COLUMN SHOULD ONLY BE COMPLETED FOR FEDERAL DISTRICT OR BANKRUPTCY COURT MATTERS (FRCP RULE 30(e)). THIS COLUMN SHOULD NOT BE COMPLETED FOR STATE COURT ACTIONS.

**WORD
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EXHIBITS

- Identifies circumstances in which the State Water Board will take action, even though the Regional Water Boards have primary jurisdiction;
- Addresses the eligibility requirements for small communities to qualify for carrying out compliance projects, in lieu of paying mandatory minimum penalties pursuant to California Water Code section 13385;
- Emphasizes the recording of enforcement data and the communication of enforcement information to the public and the regulated community; and
- Establishes annual enforcement reporting and planning requirements for the Water Boards.

The State's water quality requirements are not solely the purview of the Water Boards and their staffs. Other agencies, such as, the California Department of Fish and Game have the ability to enforce certain water quality provisions in state law. State law also allows members of the public to bring enforcement matters to the attention of the Water Boards and authorizes aggrieved persons to petition the State Water Board to review most actions or failures to act of the Regional Water Boards. In addition, state and federal statutes provide for public participation in the issuance of orders, policies, and water quality control plans. Finally, the federal Clean Water Act (CWA) authorizes citizens to bring suit against dischargers for certain types of CWA violations.

I. FAIR, FIRM, AND CONSISTENT ENFORCEMENT

It is the policy of the State Water Board that the Water Boards shall strive to be fair, firm, and consistent in taking enforcement actions throughout the State, while recognizing the unique facts of each case.

A. Standard and Enforceable Orders

The Water Board orders shall be consistent except as appropriate for the specific circumstances related to the discharge and to accommodate differences in applicable water quality control plans.

B. Determining Compliance

The Water Boards shall implement a consistent and valid approach to determine compliance with enforceable orders.

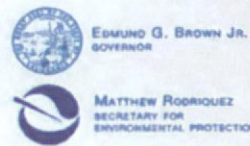
C. Suitable Enforcement

The Water Boards' enforcement actions shall be suitable for each type of violation, providing consistent treatment for violations that are similar in nature and have similar water quality impacts. Where necessary, enforcement actions shall also ensure a timely return to compliance.

EXHIBIT 1
 REPORTER M. Lopez
 WITNESS C. Clemente
 DATE 1-22-16



EXHIBIT 2
REPORTER M. 1/6/12
WITNESS C. Clemente
DATE 1-22-16



California Regional Water Quality Control Board, San Diego Region

November 21, 2013

Mr. Glenn Pruim
Director of Public Works
and Engineering
City of Encinitas
505 South Vulcan Avenue
Encinitas, CA 92024

CERTIFIED-RETURN RECEIPT REQUESTED
7011 0470 0002 8952 5522

Mr. Mohammad Qahoush
Regional Operations Manager
USS Cal Builders, Inc.
402 West Broadway, Suite 400
San Diego, CA 92101

CERTIFIED-RETURN RECEIPT REQUESTED
7011 0470 0002 8952 5539

In reply refer to/attention:
SM-802594/CW-222765:rstewart

NOTICE OF HEARING AND ISSUANCE OF COMPLAINT NO. R9-2013-0152 FOR ADMINISTRATIVE CIVIL LIABILITY AGAINST THE CITY OF ENCINITAS AND USS CAL BUILDERS, INC. FOR VIOLATIONS OF ORDER NOS. 2009-0009-DWQ AND R9-2007-0001, AND BASIN PLAN WASTE DISCHARGE PROHIBITION 14

Mr. Pruim, Mr. Qahoush:

Enclosed find Complaint No. R9-2013-0152 (Complaint) for Administrative Civil Liability against the City of Encinitas and USS Cal Builders, Inc. (collectively, Dischargers) for \$430,851 for violations of State Water Resources Control Board Order No. 2009-0009-DWQ, NPDES No. CAS000002, *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities* and California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) Order No. R9-2007-0001, NPDES No. CAS0108758, *Waste Discharge Requirements for Urban Runoff From the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority*, and the Water Quality Control Plan for the San Diego Basin (9) (Basin Plan) Waste Discharge Prohibition 14. The alleged violations are described in the Complaint and the attached Technical Analysis to the Complaint. Pursuant to Water Code section 13323, the San Diego Water Board shall hold a hearing on the Complaint no later than ninety (90) days after it is issued.

November 21, 2013

Waiver of Hearing

You may elect to waive your right to a hearing before the San Diego Water Board. Waiver of the hearing constitutes admission of the violations alleged in the Complaint and acceptance of the assessment of civil liability in the amount of \$430,851 as set forth in the Complaint. For the San Diego Water Board to accept the waiver of your right to a public hearing, you must submit the following to the San Diego Water Board by 5 p.m., **December 23, 2013**:

1. The enclosed waiver forms signed by an authorized agent of the City of Encinitas and USS Cal Builders, Inc. with Option 1 selected; and
2. A check for the full amount of civil liability of \$430,851 made out to the "State Water Resources Control Board Cleanup and Abatement Account."

Settlement Discussions

You may also waive your right to a hearing conducted within ninety (90) days of issuance of the Complaint in order to engage in settlement discussions. For the San Diego Water Board to accept your request to enter into settlement discussions, you must submit the following to the San Diego Water Board no later than 5 p.m., **December 23, 2013**:

1. The enclosed waiver forms signed by an authorized agent of the City of Encinitas and USS Cal Builders, Inc. with Option 2 selected; and
2. A proposed settlement offer.

Public Hearing

Alternatively, if you elect to proceed to a public hearing, a hearing is tentatively scheduled to be held at the San Diego Water Board meeting on **February 12, 2014**. The meeting is scheduled to convene at the San Diego Water Board, 2375 Northside Drive, Suite 100, San Diego, California at 9:00 a.m. At that time, the San Diego Water Board will accept testimony, public comment, and decide whether to affirm, reject, or modify the proposed liability, or whether to refer the matter for judicial civil action.

Enclosed are recommended procedures for the San Diego Water Board to follow in conducting the hearing. Please note that comments on the proposed procedures are due by **December 2, 2013** to the San Diego Water Board's advisory attorney, Catherine Hagan, at the address indicated in the hearing procedures.

In the subject line of any response, please include the reference number SM-802594/CW-222765:rstewart. For questions or comments, please contact Rebecca Stewart by phone at 619-521-3004, or by email at rstewart@waterboards.ca.gov.

Mr. Glenn Pruim, City of Encinitas - 3 -
Mr. Mohammad Qahoush, USS Cal Builders, Inc.

November 21, 2013

Respectfully,



JAMES G. SMITH
Assistant Executive Officer

JGS:jh:cmc:rls

- Enclosures:
1. ACL Complaint R9-2013-0152
 2. Technical Analysis
 3. Administrative Civil Liability Complaint Fact Sheet
 4. Proposed Hearing Procedure
 5. Waiver of Public Hearing Forms
 6. Technical Analysis Exhibits A - X

cc: (with enclosures)

David Gibson, Executive Officer, San Diego Water Board, 2375 Northside Drive, Suite 100, San Diego, CA 92108, dgibson@waterboards.ca.gov

Catherine Hagan, Senior Staff Counsel, Office of Chief Counsel, State Water Board, 2375 Northside Drive, Suite 100, San Diego, CA 92108, chagan@waterboards.ca.gov

Julie Macedo, Staff Counsel, Office of Enforcement, State Water Board, P.O. Box 100, Sacramento, CA 95812-0100, jmacedo@waterboards.ca.gov

(without enclosure 6, available upon request)

Erik Steenblock, Storm Water Program Manager, City of Encinitas, 505 South Vulcan, Encinitas, CA 92024, esteenblock@encinitasca.gov

Mike Emerson, Environmental Specialist, City of Encinitas, 505 South Vulcan, Encinitas, CA 92024, memerson@encinitasca.gov

Edward Deane, Capital Improvement Division Manager, City of Encinitas, 505 South Vulcan, Encinitas, CA 92024, edeane@encinitasca.gov

Stephanie Kellar, Associate Civil Engineer, City of Encinitas, 505 South Vulcan, Encinitas, CA 92024, skellar@encinitasca.gov

Larry Sobolewski, Sr., Project Superintendent, USS Cal Builders, Inc., 402 West Broadway, Unit #6, San Diego, CA 92101, larrysr@usscalbuilders.com

November 21, 2013

Louai Jalabi, Project Engineer, USS Cal Builders, Inc., 402 West Broadway, Unit #6, San Diego, CA 92101, louai@usscalbuilders.com

Yolanda Leal, Brian Thomas Consulting, Inc., P.O. Box 876, Oceanside, CA 92049, Yolanda@brianthomasconsulting.com

Doug Gibson, Executive Director, San Elijo Lagoon Conservancy, doug@sanelijo.org

Megan Baehrens, San Diego Coastkeeper, MeganB@sdcoastkeeper.org

Tech Staff Info & Use	
Order No.	R9-2013-0152
Party (GT/CIWQS) ID	CW-11079
WDID	9 000510S16
	9 37C357837
NPDES No.	CAS0108758
	CAS000002
Reg. Measure ID	SM-414258
Place ID	CW-222765
	SM-802594

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

In the matter of:

**City of Encinitas
USS Cal Builders, Inc.
Hall Property Park**

**COMPLAINT NO. R9-2013-0152
FOR
ADMINISTRATIVE CIVIL LIABILITY**

**Violations of Order Nos.
2009-0009-DWQ and
R9-2007-0001 and
Basin Plan Prohibition 14**

Place ID: SM-802594, CW-222765

November 21, 2013

**THE CITY OF ENCINITAS AND USS CAL BUILDERS, INC. ARE HEREBY
GIVEN NOTICE THAT:**

1. The City of Encinitas (City) and USS Cal Builders, Inc. (collectively Dischargers) have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) may impose civil liability pursuant to section 13385 of the California Water Code (CWC).
2. This Administrative Civil Liability Complaint is issued under authority of CWC section 13323.
3. The City submitted a Notice of Intent for coverage under State Water Resources Control Board Order No. 2009-0009-DWQ, NPDES No. CAS000002, *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities* for the construction of a 43-acre community park known as Hall Property Park (Project) in San Diego County, California. The City, as the Legally Responsible Party identified USS Cal Builders, Inc. as the developer responsible for all land disturbance and construction activities. The Dischargers are required to construct the project in compliance with the requirements of Order No. 2009-0009-DWQ by using the Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT).

City of Encinitas

USS Cal Builders, Inc.

Violation of Order Nos. 2009-0009-DWQ and
R9-2007-0001

4. The City owns and operates a municipal separate storm sewer system (MS4) in San Diego County, California. The City is required to prohibit discharges into and from its MS4 that cause, or threaten to cause, a condition of pollution, contamination, or nuisance (as defined in CWC section 13050) in waters of the state, prohibit discharges from its MS4 that contain pollutants which have not been reduced to the maximum extent practicable (MEP), and prohibit discharges from its MS4 that cause or contribute to the violation of water quality standards, in compliance with requirements of San Diego Water Board Order No. R9-2007-0001, NPDES No. CAS0108758, *Waste Discharge Requirements for Urban Runoff From the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority.*
5. California Regional Water Quality Control Plan, San Diego Region (Basin Plan) Waste Discharge Prohibition 14 states, "The discharge of sand, silt, clay, or other earthen materials from any activity including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the state or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited."
6. Discharge Prohibition III.A of Order No. 2009-0009-DWQ states, "Dischargers shall not violate any discharge prohibitions contained in the applicable Basin Plans or statewide water quality control plans..."
7. Discharge Prohibition III.B of Order No. 2009-0009-DWQ states, "All discharges are prohibited except for the storm water and non-storm water discharges specifically authorized by this General Permit or another NPDES permit."
8. Prohibitions and Receiving Water Limitations A.1 of Order No. R9-2007-0001 states, "Discharges into and from municipal separate storm sewer systems (MS4s) in a manner causing, or threatening to cause, a condition of pollution, contamination, or nuisance (as defined in CWC section 13050), in waters of the state are prohibited."
9. Prohibitions and Receiving Water Limitations A.2. of Order No. R9-2007-0001 states, "Discharges from MS4s containing pollutants which have not been reduced to the maximum extent practicable (MEP) are prohibited."

10. Prohibitions and Receiving Water Limitations A.3 of Order No. R9-2007-0001 states, "Discharges from MS4s that cause or contribute to the violation of water quality standards (designated beneficial uses and water quality objectives developed to protect beneficial use) are prohibited."
11. Effluent Standard V.A.2 of Order No. 2009-0009-DWQ states, "dischargers shall minimize or prevent pollutants in storm water discharges and authorized non-storm water discharges through the use of controls, structures, and management practices that achieve the BAT for toxic and non-conventional pollutants and BCT for conventional pollutants."
12. Section D.2 of the Jurisdictional Urban Runoff Management Program Construction Component of Order No. R9-2007-0001 states, "Each Copermitttee shall implement a construction program which meets the requirements of this section, reduces construction site discharges of pollutants from the MS4 to the MEP, and prevents construction site discharges from the MS4 from causing or contributing to a violation of water quality standards."

ALLEGED VIOLATIONS

13. The Dischargers violated Basin Plan Prohibition 14 and Discharge Prohibitions III.A and III.B of Order No. 2009-0009-DWQ, by discharging sediment from the Project to Rossini Creek upstream of San Elijo Lagoon on December 13, 2012 and March 8, 2013.
14. The Dischargers violated Effluent Standard V.A.2 of Order No. 2009-0009-DWQ by failing to implement adequate controls, structures, and management practices at the Project from the commencement of construction activities on October 8, 2012 through December 27, 2012 and again from January 8, 2013 through March 8, 2013.
15. The City violated Prohibitions and Receiving Water Limitations A.1, A.2, and A.3 of Order No. R9-2007-0001 by allowing the discharge of sediment from the Project into the MS4, Rossini Creek and San Elijo Lagoon on December 13, 2012 and March 8, 2013.
16. The City violated section D.2 of Order No. R9-2007-0001 by failing to require the Project to comply with the requirements of Order No. 2009-0009-DWQ from October 8, 2012 through December 13, 2012 and again from January 8, 2013 through March 8, 2013.

City of Encinitas

USS Cal Builders, Inc.

Violation of Order Nos. 2009-0009-DWQ and
R9-2007-0001

17. The City is jointly and severally liable for all of the violations in this Complaint as a result of obtaining the permits described herein to complete the Project. USS Cal Builders, Inc. is jointly and severally liable for all of the violations in the Complaint as a result of its day-to-day control over decisions that directly affected water quality during the Project and its contractual relationship with the City, except for the violations related to the City's failure to comply with Order No. R9-2007-0001.
18. The details of these violations are set forth in full in the accompanying Technical Analysis, which is incorporated herein by this reference as if set forth in full.

MAXIMUM LIABILITY

19. Pursuant to CWC section 13385, subdivision (a), any person who violates Water Code section 13376 is subject to administrative civil liability pursuant to Water Code section 13385, subdivision (c), in an amount not to exceed the sum of both of the following: (1) ten thousand dollars (\$10,000) for each day in which the violation occurs and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
20. The alleged violations, set forth in full in the accompanying Technical Analysis, constitute violations subject to Water Code section 13385. The maximum liability that the San Diego Water Board may assess pursuant to Water Code section 13385, subdivision (c) is \$2,700,000.

MINIMUM LIABILITY

21. CWC section 13385, subdivision (e) requires that, at a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation(s). The State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy) further instructs the Regional Water Boards to assess liability against a violator at least ten percent higher than the economic benefit realized from the violation so that liabilities are not construed as the cost of doing business and so that the assessed liability provides a meaningful deterrent to future violators.
22. As detailed in the incorporated Technical Analysis, and based on an economic benefit amount of \$58,794, the minimum liability amount the San Diego Water Board should assess the Dischargers is \$64,673.

City of Encinitas

USS Cal Builders, Inc.

Violation of Order Nos. 2009-0009-DWQ and

R9-2007-0001

PROPOSED LIABILITY

23. Pursuant to CWC section 13385, subdivision (e), in determining the amount of any civil liability, the San Diego Water Board shall consider the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges; and with respect to the Dischargers, the ability to pay, the effect on the Dischargers' ability to continue in business, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters as justice may require.
24. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13385, subdivision (e). The required factors have been considered for the violations alleged herein using the methodology in the Enforcement Policy, as explained in detail in the Technical Analysis and summarized in Attachment 1.
25. Based on consideration of the above facts, the applicable law, and after applying the penalty calculation methodology in section VI of the Enforcement Policy, it is recommended that the San Diego Water Board impose civil liability against the Dischargers in the amount of **\$430,851** for the violations alleged herein and set forth in full in the accompanying Technical Analysis.

Dated this 21st day of November, 2013.


JAMES G. SMITH

Assistant Executive Officer

Signed pursuant to the authority delegated
by the Executive Officer to the Assistant
Executive Officer.

Attachment 1: Penalty Methodology Decisions

SMARTS: Place ID: SM-802594,

Violation ID: 850270

WDID: 9 37C357837

Reg. Measure ID: SM-414258

CIWQS: Place ID: CW-222765

Violation ID: 956776

WDID: 9 000510S16

Order No.: R9-2013-0152

Step 1: Potential Harm Factor

Violations	Harm/Potential Harm to Beneficial Uses [0 - 5]	Physical, Chemical, Biological or Thermal Characteristics [0 - 4]	Susceptibility to Cleanup or Abatement [0 or 1]	Total Potential for Harm [0 - 10]
Violation 1	4	2	1	7

Step 2: Assessments for Discharge Violations

Violations	Per Gallon Factor					Statutory or Policy Max per Gallon [\$]
	Potential for Harm [0 - 10]	Deviation from Requirement [minor, moderate, major]	High Volume Discharges [yes / no]	Gallons Discharged	Total Per Gallon Factor	

No Per Gallon Discharge Violations

Violations	Per Day Factor				Statutory Max per Day [section 13xxx]
	Potential for Harm [0 - 10]	Deviation from Requirement [minor, moderate, major]	Total Per Day Factor	Days of Violation	
Violation 1	7	Major	0.31	2	\$10,000

Step 3: Per Day Assessments for Non-Discharge Violations

Violations	Per Day Factor				Statutory/ Adjusted Max [section 13xxx]
	Potential for Harm [minor, moderate, major]	Deviation from Requirement [minor, moderate, major]	Total Per Day Factor	Days of Violation	
Violation 2	Major	Major	0.85	142	\$10,000
Violation 3	Major	Major	0.85	128	\$10,000

Initial Liability From Steps 1 - 3

Violation 1: $(.31) \times (2) \times (10,000) = \$6,200$

Violation 2: $(0.85) \times (142) \times (10,000) = \$1,207,000$

Violation 3: $(0.85) \times (128) \times (10,000) = \$1,088,000$

Step 4: Adjustments

Violations	Culpability [0.5 - 1.5]	Cleanup and Cooperation [0.75 - 1.5]	History of Violations	Multiple Violations (Same Incident)	Adjusted Days of Violation
Violation 1	1.3	1.1	1	n/a	n/a
Violation 2	1.3	1.1	1	n/a	16
Violation 3	1.4	1.1	1	n/a	16

Step 5: Total Base Liability Amount

(Per day Factor x statutory maximum) x (Step 4 Adjustments)

Violation 1: $(0.31) \times (10,000) \times (1.3) \times (1.1) \times (1) \times (2) = \$8,886$

Violation 2: $(0.85) \times (10,000) \times (1.3) \times (1.1) \times (1) \times (16) = \$194,480$

Violation 3: $(0.85) \times (10,000) \times (1.4) \times (1.1) \times (1) \times (16) = \$209,440$

Step 6: Ability to Pay / Continue in Business

[Yes, No, Partly, Unknown]

Yes

Step 7: Other Factors as Justice May Require

Costs of Investigation and Enforcement	Other
\$18,065	n/a

Step 8: Economic Benefit

Violation 1: \$0

Violation 2: \$58,794

Violation 3: \$0

Step 9: Maximum and Minimum Liability Amounts

	Minimum	Maximum
Violation 1	\$0	\$20,000
Violation 2	\$84,673	\$1,410,000
Violation 3	\$0	\$1,270,000

Step 10: Final Liability Amount

(total base liability) + (other factors)

\$430,851

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

TECHNICAL ANALYSIS

**Proposed Administrative Civil Liability
Contained in Complaint No. R9-2013-0152**

Against

**City of Encinitas
and
USS Cal Builders, Inc.**

Hall Property Park

Noncompliance with

**State Water Board
Order No. 2009-0009-DWQ, NPDES No. CAS000002**

**San Diego Water Board
Order No. R9-2007-0001, NPDES No. CAS0108758**

And

***Water Quality Control Plan, San Diego Basin, Region 9
Waste Discharge Prohibition 14***

November 21, 2013

By

**Rebecca Stewart
Sanitary Engineering Associate**

A. INTRODUCTION

This technical analysis provides a summary of factual and analytical evidence that supports the findings in Administrative Civil Liability (ACL) Complaint No. R9-2013-0152 (Complaint) and the recommended assessment of administrative liability in the amount of **four hundred thirty thousand eight hundred fifty one dollars (\$430,851)** against the City of Encinitas (City) and USS Cal Builders, Inc. (USS Cal Builders) (collectively, Dischargers) for violations of State Water Resources Control Board (State Water Board) Order No. 2009-0009-DWQ, NPDES No. CAS000002, *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities*, California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) Order No. R9-2007-0001, NPDES No. CAS0108758, *Waste Discharge Requirements for Urban Runoff From the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority*, and the Water Quality Control Plan for the San Diego Basin (9) (Basin Plan) Waste Discharge Prohibition 14.

The Complaint was issued because the Dischargers failed to implement the requirements of Order No. 2009-0009-DWQ and because the City failed to implement the requirements of Order No. R9-2007-0001 during construction of a municipal capital improvement project, Hall Property Park (Project). The Dischargers' failure to comply with the requirements of Order No. 2009-0009-DWQ resulted in at least two discharges of sediment to the MS4, Rossini Creek, and San Elijo Lagoon, on December 13, 2012 and March 8, 2013.

State Water Board Order No. 2009-0009-DWQ

Order No. 2009-0009-DWQ authorizes discharges of storm water associated with construction activity as long as the Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) is implemented to reduce or eliminate pollutants in storm water runoff. BAT/BCT technologies include passive systems such as erosion and sediment control best management practices (BMPs) as well as structural controls, as necessary, to achieve compliance with water quality standards.

Order No. 2009-0009-DWQ identifies effective erosion control measures such as preserving existing vegetation where feasible, limiting disturbance, and stabilizing and re-vegetating disturbed areas as soon as possible after grading or construction activities. Order No. 2009-0009-DWQ further identifies erosion control BMPs as the primary means of preventing storm water contamination. Order No. 2009-0009-DWQ identifies sediment controls as the secondary means of preventing storm water contamination. Order No. 2009-0009-DWQ further states that when erosion control techniques are ineffective, sediment control techniques should be used to capture any soil that becomes eroded.

Storm Water Pollution Prevention Plan

Order No. 2009-0009-DWQ requires the creation of a Storm Water Pollution Prevention Plan (SWPPP) developed by a Qualified SWPPP Developer (QSD). SWPPPs are required to detail the types of BMPs that will be implemented at a construction site based on the site characteristics, proximity to, and sensitivity of, receiving waters, and the associated risk level.

Order No. 2009-0009-DWQ also requires dischargers to ensure all BMPs identified in the SWPPP are implemented by a Qualified SWPPP Practitioner (QSP).

Risk-Based Permitting Approach

Order No. 2009-0009-DWQ requires dischargers to determine the sediment and receiving water risk associated with each construction site. Order No. 2009-0009-DWQ identifies three risk levels, (1, 2 or 3) based on a project's sediment risk (the relative amount of sediment that can be discharged, given the project location and details), and receiving water risk (the risk that sediment discharges pose to the receiving waters).

Order No. 2009-0009-DWQ further states that because Risk Level 2 and 3 construction sites pose a higher risk to water quality, additional requirements for the application of sediment controls are imposed on these types of projects. Order No. 2009-0009-DWQ prescribes effluent standards, site management, non-storm water management, erosion control, sediment control, run-on and run-off control, inspection, maintenance and repair, and rain event action plan (REAP) requirements for each risk level. The City calculated the risk level for the Project as a Risk Level 2 due to a low threat of sediment loss and San Elijo Lagoon being a sediment-sensitive waterbody.

Risk Level 2 projects are required to minimize or prevent pollutants in storm water discharges through the use of controls, structures, and management practices that achieve BAT for toxic and non-conventional pollutants and BCT for conventional pollutants. Risk Level 2 projects must implement effective soil cover for inactive¹ areas, effective perimeter controls to sufficiently control erosion and sediment discharges, and appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active² construction.

Risk Level 2 projects are also required to effectively manage all run-on, all runoff within the site, and all runoff that discharges off the site, conduct weekly BMP inspections, develop a REAP, conduct visual inspections during qualifying rain events,³ and perform sampling and analysis of storm water discharges.

San Diego Water Board Order No. R9-2007-0001

Order No. R9-2007-0001⁴ prohibits discharges into and from MS4s in a manner causing, or threatening to cause, a condition of pollution, contamination, or nuisance (as defined in California Water Code (CWC) section 13050), in waters of the state, prohibits discharges from MS4s containing pollutants which have not been reduced to the maximum extent practicable (MEP), and prohibits discharges from MS4s that cause or contribute to the violation of water quality standards.

Order No. R9-2007-0001 requires municipalities to establish, maintain, and enforce adequate legal authority to control pollutant discharges into and from its MS4 through ordinance, statute, permit, contract or similar means. Grading ordinances must be in place and enforced to achieve compliance with the requirements of the Order.

¹ Inactive areas of construction are areas that have been disturbed and are not scheduled to be re-disturbed for at least 14 days.

² Active areas of construction are areas undergoing land surface disturbance. This includes construction activity during the preliminary stage, mass grading stage, streets and utilities stage and the vertical construction stage.

³ A qualifying rain event is any event that produces 0.5 inches or more precipitation within a 48 hour or greater period between rain events.

⁴ On May 8, 2013, the San Diego Water Board adopted Order No. R9-2013-0001, which supersedes Order No. R9-2007-0001. Order No. R9-2013-0001 became effective June 26, 2013. The requirements of Order No. R9-2007-0001 referenced in this Order remain unchanged. The dates of noncompliance referenced in this Order are during the effective period of Order No. R9-2007-0001.

Section 23.24.370 of the City's Municipal Code addresses wet season work at construction sites. It states that "Grading shall be minimized during the wet season to the extent feasible. Grading operations shall be phased as necessary to allow minimal exposure of disturbed soils during grading operation. If grading does occur during the wet season, the City Engineer may require the applicant to implement additional best management practices for any rain event that may occur. No grading permit shall be issued for work occurring from October 1 to April 30 unless the plans include details of protective measures, including de-silting basins or other temporary drainage control measures, or both, as may be deemed necessary by the City Engineer to protect adjoining public and private property or the Waters of the State from damage by erosion, flooding, or the deposit of mud or debris which may originate from the site or result from grading operations."

Section 23.24.390 of the City's Municipal Code addresses erosion control maintenance. It states that, "After each rainstorm exceeding ¼-inch in a 24-hour period, silt and debris shall be removed from all temporary check berms and desilting basins and the basins pumped dry."

On September 24, 2012 the City sent all the construction entities within its jurisdiction a notification with the City's municipal code requirements for construction sites (**Appendix A**).

Order No. R9-2007-0001 also requires municipalities to create and implement a Jurisdictional Urban Runoff Management Program (JURMP). JURMPs must contain a construction component that requires inspections of construction sites every other week, at a minimum, during the wet season if the construction site is 1 acre or more and tributary to a Clean Water Act section 303(d) listed water body impaired for sediment. The inspections are to ensure that construction projects are complying with the requirements of Order No. 2009-0009-DWQ and the local ordinances required by R9-2007-0001. The City employed a contractor, Geopacifica, to conduct its inspections at the Project.

Hall Property Park Construction Project

On March 29, 2010 the City submitted a Notice of Intent (NOI) for coverage under Order No. 2009-0009-DWQ for the construction of the 43-acre Project located immediately west of Interstate 5, between Santa Fe Drive to the north, and Warwick Avenue to the south (**Appendix B**). In its SWPPP, the City identified Rossini Creek as a sensitive wetland habitat, and San Elijo Lagoon as a sensitive receiving water body. Rossini Creek is located adjacent to the park at its western boundary. Rossini Creek discharges into San Elijo Lagoon approximately two miles to the south (Figure 1).



Figure 1: Location Map. Rossini Creek undergounds at Birmingham Dr. surfacing east of Highway 101 into a concrete sided channel prior to discharging into San Elijo Lagoon.

The NOI identified the City as the Legally Responsible Party (LRP) and the City contracted with USS Cal Builders to develop the Project. According to the Contract between the City and USS Cal Builders, the City was responsible for development of the SWPPP, and USS Cal Builders was responsible for obtaining the QSP (**Appendix C**). A SWPPP developed by the City's QSD, MCE Consultants, dated August 19, 2011 was uploaded into the Stormwater Multiple Application and Report Tracking System (SMARTS) database (**Appendix D**). According to the City, land disturbance activities began on October 8, 2012.

City inspections, conducted by Geopacifica, began on October 4, 2012 and occurred on a daily basis (Monday through Friday). The inspections conducted through the first reported discharge on December 13, 2012 failed to address compliance with City storm water and grading ordinances or compliance with Order No. 2009-0009-DWQ, thereby violating Order No. R9-2007-0001 (**Appendix E**).

USS Cal Builders' QSP, Scott Environmental, began conducting inspections on November 7, 2012, one month after the commencement of construction. The first QSP inspection report indicates that the site was already completely disturbed with 100 percent exposed soil. The inspection report identified the need to improve sediment controls for a drain inlet and to empty vehicle storage spill pans prior to a rain event forecasted for November 9, 2012, but did not identify any erosion control BMPs that were required or deficient even though the site was 100 percent graded. Subsequent QSP inspections on November 20, 2012, November 26, 2012, December 3, 2012, and December 10, 2012 again identified sediment control BMP deficiencies but did not identify any erosion control BMPs that were required or deficient (**Appendix F**).

December 13, 2012 Discharge Event

On December 13, 2012 the City reported that sediment had discharged from the Project to Rossini Creek during a storm event. The National Weather Service rain gauge located in Solana Beach, reported 1.07-inches of rain on that date. The QSP December 13, 2012 inspection report had a rain gauge reading of 0.73-inches.

The City issued a Stop Work Order to USS Cal Builders, on December 13, 2012 prohibiting all construction activity except for the installation of erosion and sediment control BMPs (**Appendix G**). The City also issued an Administrative Citation for violations of the Encinitas Municipal Code (**Appendix H**).

The City's December 14, 2012 inspection report indicated that a significant sediment discharge occurred from the graded slopes at the Project's southern boundary along Warwick Avenue and from the dog park area along the Project's western boundary (**Appendix I**). The discharges were caused by the failure to control run-on to the Project at the south boundary and in the dog park area, and the failure to implement erosion and sediment control BMPs that would prevent the discharge of pollutants (sediment) in storm water. Both discharges entered the MS4 and Rossini Creek upstream of San Elijo Lagoon.

San Diego Water Board staff inspected the site on December 17, 2012 (**Appendix J**). The inspection revealed that temporary erosion control BMPs identified in the City's SWPPP (soil binders and velocity dissipation devices) **were not implemented**. The inspection also revealed that most of the sediment control BMPs identified in the SWPPP (sediment traps, fiber rolls, street sweeping, storm drain inlet protection and construction entrance and exit stabilization) **were not implemented or were totally ineffective**, as shown in the following photographs:



Photo 1: Large graded area with no erosion or sediment controls. Looking south towards Caretta Way.



Photo 2: Dog park area located along Santa Fe Drive tributary to Rossini Creek with no erosion control BMPs.

Drain pipes from neighboring properties along the dog park area that were identified in a December 4, 2012 City inspection report resulted in run-on carrying sediment from unprotected areas directly into Rossini Creek as shown in the following photographs:



Photo 3: Lack of run-on protection from slope drain from neighboring residence that discharged to dog park area.



Photo 4: Lack of run-on protection from slope drain from neighboring residence that discharged to dog park area.

The lack of erosion control BMPs on graded slopes resulted in perimeter sediment controls being overwhelmed, and subsequent discharges to the MS4 as shown in the photographs below:



Photo 5: Significant erosion rills leading toward property boundary along Carretta Way.



Photo 6: Sediment discharged to MS4 from erosion in previous photo.

The limited sediment controls that were in place prior to the December 13, 2012 storm event were ineffective evidenced by the amount of sediment leaving disturbed areas and lack of erosion control BMPs as shown in the photograph below:



Photo 7: Inundated storm drain inlet. Green gravel bags and two outer silt fences were installed after the December 13, 2012 discharges.

The San Diego Water Board received complaints of sediment discharges from downstream residents. The following photograph of sediment laden storm water in Rossini Creek was taken by a complainant after the discharge event:



Photo 8: Sediment in Rossini Creek downstream of Hall Property Park.

On December 20, 2012 the City brought in a third party QSP, Summit Erosion Control, to inspect the Project (**Appendix K**). The third party QSP inspection revealed that USS Cal Builders' QSP (Scott Environmental) failed to identify non-functioning BMPs and failed to effectively communicate with the QSD (MCE Consultants) when additional BMPs were needed. The inspection also revealed that previous QSP inspection reports were not in the jobsite trailer, the SWPPP Wall Map did not reflect the conditions that existed at the jobsite, and that all parties lacked familiarity with Risk Level 2 requirements. Summit Erosion Control's inspection also identified numerous BMP corrections that needed to be implemented prior to construction activities continuing. The City's Stop Work Order was terminated at the end of the day on December 20, 2012.

The San Diego Water Board issued the City Notice of Violation No. R9-2013-0008 on January 24, 2013 (**Appendix L**). The City responded to the Notice of Violation on February 15, 2013 (**Appendix M**). In its response the City provided a detailed chronology of the corrective actions taken to bring the site into compliance with Order No. 2009-0009-DWQ including the construction of three sediment basins which the SWPPP indicates were required to reduce sediment discharges from active construction areas.

Post-December 2012 Discharge Activities

After construction activities resumed, City staff took over storm water inspections required by Order No. 2007-0001 from its contractor (Geopacifica). From December 20, 2012 through December 27, 2012, City staff noted various BMPs that needed installation and maintenance (**Appendix N**). From December 31, 2012 through January 4, 2013, City inspection reports indicate that no corrective action was required (**Appendix O**).

On January 10, 2013, Geopacifica inspected the site for the City. The inspection report referenced the need for USS Cal Builders to address run-on conditions along Warwick Street that were identified in a December 28, 2012 email from the City's QSD (MCE Consultants) (**Appendix P**). The January 10, 2013 inspection report also addressed the need for USS Cal Builders to provide slope stabilization with erosion control BMPs also referenced in the QSD's December 28, 2012 email (**Appendix Q**). The erosion control deficiencies outlined in the December 28, 2012 QSD email were referenced in four subsequent inspection reports through January 16, 2013 (**Appendix R**) before USS Cal Builders made the necessary corrections.

Geopacifica's inspection report on January 18, 2013 referenced the need for USS Cal Builders to again address an email from the City's QSD requiring stabilization of exposed slopes (**Appendix S**). The January 18, 2013 email was referenced again during seven subsequent inspections through January 30, 2013 (**Appendix T**). USS Cal Builders did not address the deficiencies until City staff inspected the site, and required corrections (**Appendix U**). City inspection reports indicate that corrections were made on or about February 4, 2013. Subsequent City inspection reports indicate that no additional corrective action was required until March 7, 2013 when BMP maintenance was required prior to a forecasted storm event.

March 8, 2013 Discharge Event

On March 8, 2013, the City notified the San Diego Water Board that the sediment basins at the Project had reached capacity and overflowed during a storm event. Because the basins were not constructed with overflow pipes, the discharged storm water came into contact with on-site sediment that discharged into the City's MS4, tributary to Rossini Creek and San Elijo Lagoon.

The discharge occurred because the Dischargers failed to pump the basins dry prior to the March 8, 2013 storm event to ensure adequate freeboard to capture rainfall from the storm. Prior to the discharge, QSP and City inspections failed to identify the need to maintain the sediment basin BMPs, thereby violating Order No. 2009-0009-DWQ. The inspections also failed to require compliance with the City's ordinance requiring basins to be pumped dry after each rain storm exceeding ¼-inch. National Weather Service rainfall data indicates that there were three rain events (January 7, 2013, 0.40-inches, January 25, 2013, 0.39-inches and February 20, 2013, 0.33-inches) after which the basins should have been pumped dry, prior to the March 8, 2013 1.30-inch rain event that resulted in a sediment discharge.

The City issued a Notice of Violation to Cal USS Builders for the March 8, 2013 discharge, but issued a warning rather than a monetary penalty in its Administrative Citation (**Appendix V**).

Beneficial Uses of Affected Waters

The Basin Plan designates beneficial uses for all surface and ground waters in the San Diego Region. These beneficial uses "form the cornerstone of water quality protection under the Basin Plan" (Basin Plan, Chapter 2). Beneficial uses are defined in the Basin Plan as "the uses of the water necessary for the survival or well-being of man, plants and wildlife."

The Basin Plan also designates water quality objectives to protect the designated beneficial uses. CWC section 13350(h) defines "water quality objectives" as "the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area."

Water quality objectives are numerical values for water quality constituents or narrative descriptions based on sound water quality criteria needed to protect the most sensitive beneficial uses designated for a water body.

The Basin Plan has designated the following beneficial uses for San Elijo Lagoon:

- Contact Water Recreation (REC-1)
- Non-contact Water Recreation (REC-2)
- Preservation of Biological Habitats of Special Significance (BIOL)
- Estuarine Habitat (EST)
- Wildlife Habitat (WILD)
- Rare, Threatened, or Endangered Species (RARE)
- Marine Habitat (MAR)
- Migration of Aquatic Organisms (MIGR).

Impaired Water Bodies

Section 303(d) of the Clean Water Act requires Regional Water Boards to identify waters that do not meet, or are not expected to meet, water quality standards after the implementation of certain technology based controls, and schedule them for development of Total Maximum Daily Loads (TMDLs). A TMDL determines the amount of pollutants that can be discharged to receiving waters without the water quality objectives being exceeded. The sediment discharge to Rossini Creek entered San Elijo Lagoon, an impaired water body for eutrophication, indicator bacteria, and sedimentation/siltation. Currently it is estimated that approximately 150 acres of the 590-acre Lagoon are impaired for sedimentation/siltation. A TMDL addressing the sedimentation impairment in the lagoon is scheduled to be completed before 2020.

The discharge of sediment from the Project has contributed to the further impairment of San Elijo Lagoon for sedimentation/siltation. Excessive sedimentation around the mouth of the lagoon results in decreased circulation and tidal flushing. This can, in turn, trigger the need for increased anthropogenic management of the lagoon mouth opening, or absent such management, can result in anoxic conditions, and subsequent fish kills. Sedimentation also proliferates invasive plant and animal species within the lagoon.

B. ALLEGED VIOLATIONS

The Dischargers are required to ensure that the Project is in compliance with the requirements of State Water Board Order No. 2009-0009-DWQ. The City is required to conduct the necessary oversight of construction projects within its jurisdiction in compliance with the requirements of Order No. R9-2007-0001. The Complaint alleges the following violations:

1. Discharges of Sediment to the MS4, and Rossini Creek, Tributary to San Elijo Lagoon – Against Both Dischargers

The Dischargers violated Basin Plan Prohibition 14 which states, "The discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the state or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited."

The Dischargers violated Discharge Prohibition III.A of Order No. 2009-0009-DWQ which states, "Dischargers shall not violate any discharge prohibitions contained in the applicable Basin Plans or statewide water quality control plans..."

The Dischargers violated Discharge Prohibition III.B of Order No. 2009-0009-DWQ which states, "All discharges are prohibited except for the storm water and non-storm water discharges specifically authorized by this General Permit or another NPDES permit."

The City violated Prohibitions and Receiving Water Limitations A.1 of Order No. R9-2007-0001 which states, "Discharges into and from municipal separate storm sewer systems (MS4s) in a manner causing, or threatening to cause, a condition of pollution, contamination, or nuisance (as defined in CWC section 13050), in waters of the state are prohibited."

The City violated Prohibitions and Receiving Water Limitations A.2. of Order No. R9-2007-0001 which states, "Discharges from MS4s containing pollutants which have not been reduced to the maximum extent practicable (MEP) are prohibited."

The City violated Prohibitions and Receiving Water Limitations A.3 of Order No. R9-2007-0001 which states, "Discharges from MS4s that cause or contribute to the violation of water quality standards (designated beneficial uses and water quality objectives developed to protect beneficial use) are prohibited."

2. Failure to Prevent Pollutants in Storm Water Discharges – Against Both Dischargers

The Dischargers violated Effluent Standard V.A.2 of Order No. 2009-0009-DWQ which states, "dischargers shall minimize or prevent pollutants in storm water discharges and authorized non-storm water discharges through the use of controls, structures, and management practices that achieve BAT for toxic and non-conventional pollutants and BCT for conventional pollutants."

3. Failure to Implement an Adequate Jurisdictional Urban Runoff Management Program – Against City Only

The City violated section D.2 Jurisdictional Urban Runoff Management Program Construction Component of Order No. R9-2007-0001 which states, "Each Copermittee shall implement a construction program which meets the requirements of this section, reduces construction site discharges of pollutants from the MS4 to the MEP, and prevents construction site discharges from the MS4 from causing or contributing to a violation of water quality standards."

C. DETERMINATION OF ADMINISTRATIVE CIVIL LIABILITY

Pursuant to CWC section 13385, any person who violates waste discharge requirements issued pursuant to Chapter 5.5 of the CWC (i.e., NPDES Permits) shall be liable civilly.

Pursuant to CWC section 13385(c), the maximum civil liability that the San Diego Water Board may impose for a violation of an NPDES permit is ten thousand dollars (\$10,000) for each day the violation occurs and/or ten dollars (\$10) per gallon discharged but not cleaned up that exceeds 1,000 gallons.

CWC section 13385(e) specifies the factors that the San Diego Water Board shall consider in establishing the amount of discretionary liability for the alleged violations. These factors include: "...the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, 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 State Water Board's Water Quality Enforcement Policy (Enforcement Policy), provides a penalty calculation methodology for Water Boards⁵ to use in administrative civil liability cases. The penalty calculation methodology enables the Water Boards to fairly and consistently implement liability provisions of the Water Code for maximum enforcement impact to address, correct, and deter water quality violations. The penalty calculation methodology provides a consistent approach and analysis of factors to determine liability based on the applicable Water Code section.

Pursuant to the Enforcement Policy, when there is a discharge, Water Boards shall determine an initial liability factor based on the Potential for Harm score and the extent of Deviation from Requirements for the violation. Water Boards shall calculate the Potential for Harm by determining the actual or threatened impact to beneficial uses caused by the violation using a three-factor scoring system to quantify: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) the discharge's susceptibility to cleanup or abatement. These factors will be used to determine a per day factor using the matrix set forth in the Enforcement Policy that is multiplied by the maximum per day amount allowed under the Water Code. If applicable, the Water Board shall also determine an initial liability amount on a per gallon basis using the Potential for Harm score and the extent of Deviation of Requirement of the violation.

For each non-discharge violation Water Boards shall calculate an initial liability factor, considering the Potential for Harm and extent of Deviation from Requirements. Water Boards shall use the matrix set forth in the Enforcement Policy that corresponds to the appropriate Potential for Harm and the Deviation from Requirement categories.

⁵ "Water Boards" refers to the State Water Resources Control Board and the Regional Water Quality Control Boards.

Pursuant to the Enforcement Policy, Water Boards shall use three adjustment factors for modification of the initial liability amount. These factors include: culpability, cleanup and cooperation, and history of violations. The initial liability amount can be increased or decreased based on these adjustment factors. Additional adjustments may be used regarding multiple violations resulting from the same incident and multiple day violations.

**VIOLATION 1: DISCHARGES OF SEDIMENT TO THE MS4 AND
ROSSINI CREEK TRIBUTARY TO SAN ELIJO
LAGOON – AGAINST BOTH DISCHARGERS**

Step 1 – Potential for Harm for Discharge Violations

Factor 1: Harm or Potential for Harm to Beneficial Uses

This factor evaluates direct or indirect harm or potential for harm from the violation. A score between 0 (negligible) and 5 (major) is assigned in accordance with the statutory factors of the nature, circumstances, extent and gravity of the violation.

The San Diego Water Board Prosecution Team (Prosecution Team) has assigned a score of 4 (above moderate) out of 5 to Factor 1 of the penalty calculation because:

- a. Sediment was directly discharged to Rossini Creek, a sensitive wetland area.
- b. Impacts to Rossini Creek were likely substantial, with temporary restrictions on beneficial uses.
- c. The discharge entered Rossini Creek less than 2 miles upstream of its inlet into San Elijo Lagoon.
- d. Sediment was indirectly discharged to San Elijo Lagoon, a high risk receiving water.
- e. San Elijo Lagoon is a Clean Water Act section 303(d) listed impaired water body for sediment.
- f. Sediment discharges negatively impact water contact recreation, wildlife habitat, riparian and marine habitat, and endangered species habitat beneficial uses.

- g. Sediment discharges cause acute effects on the invertebrate aquatic community.

The Enforcement Policy defines **above moderate** for discharge violations as:

More than moderate threat to beneficial uses (i.e., impacts are observed or likely substantial, temporary restrictions on beneficial uses (e.g., less than 5 days), and human or ecological health concerns.)

Factor 2: Physical, Chemical, Biological or Thermal Characteristics of the Discharge

The discharge of sediment to receiving waters poses a **moderate** risk or threat to potential receptors because:

- a. Sediment discharges diminish the physical quality of in-stream waterways by altering or obstructing flows and affecting existing riparian functions.
- b. Sediment acts as a binding carrier to other toxic constituents like metals and organic contaminants (i.e. pesticides and PCBs). It is possible, if not likely, that these toxic constituents were present in the discharged sediment, since the Project site was a former agricultural operation, with contaminated sediment.
- c. Sediment discharges affect the quality of receiving waters and the ability to support habitat related beneficial uses by reducing visibility and impacting biotic feeding and reproduction.

Accordingly, the Prosecution Team assigns a score of **2** out of **4** to Factor 2 of the penalty calculation. The Enforcement Policy defines **moderate** as:

Discharged material poses a moderate risk or threat to potential receptors (i.e, the chemical and/or physical characteristics of the discharged material have some level of toxicity or pose a moderate level of concern regarding receptor protection).

Factor 3: Susceptibility to Cleanup and Abatement

Pursuant to the Enforcement Policy a score of 0 is assigned for this factor if 50 percent or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned to this factor if less than 50 percent of the discharge is susceptible to cleanup or abatement.

Less than 50 percent of the discharge was susceptible to cleanup or abatement. Accordingly, a score of **1 (one)** is assigned to the penalty calculation for Factor 3.

Final Score – “Potential for Harm”

Based on the above determinations, the Potential for Harm final score for these discharge violations is **7 (seven)**.

Step 2 – Assessments for Discharge Violations

CWC section 13385 states that a Regional Water Board may impose civil liability on a daily basis, a per gallon basis, or both. Due to the difficulty in accurately determining the volume of sediment discharged during the two documented discharge events, civil liability was only calculated on a per day basis for these violations.

Per Day Assessments for Discharge Violations

a. Extent of Deviation from Requirement

The Prosecution Team has assigned a Deviation from Requirement score of “**major**” because:

- a. Order No. 2009-0009-DWQ prohibits all discharges other than storm water from construction sites to waters of the United States unless otherwise authorized by an NPDES permit. Pollutants were discharged to waters of the United States from the Project on at least two occasions.
- b. Order No. R9-2007-0001 prohibits: (1) discharges into and from MS4s that cause or threaten to cause a condition of pollution, contamination, or nuisance, (2) discharges which have not been reduced to the MEP, and (3) discharges that cause or contribute to the violation of water quality standards. Pollutants were discharged into and from the MS4 that were not reduced to the MEP and caused or threatened to cause a condition of pollution, contamination, or nuisance.

The Enforcement Policy defines **major** for discharge violations as:

The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).

Per Day Factor and Per Day Assessment

Using a "Potential for Harm" factor of 7 and "Deviation from Requirement" factor of "Major", the "Per Day Factor" for discharging sediment from the Project to the MS4, Rossini Creek and San Elijo Lagoon is 0.310 in Table 2 of the Enforcement Policy. Pursuant to CWC section 13385 the maximum civil liability for these violations is ten thousand dollars (\$10,000) per day of violation (per violation). Calculating the Per Day Assessment is achieved by multiplying:

$$\begin{aligned} &(\text{Per Day Factor}) \times (\text{Statutory Maximum Liability}) = \\ &(0.310) \times (\$10,000) = \$3,100 \end{aligned}$$

Step 3 – Per Day Assessments for Non-Discharge Violations

Step 3 does not apply to discharge violations.

Step 4 – Adjustment Factors

Culpability

The Prosecution Team has assigned a culpability multiplier of 1.3 out of a range from 0.5 to 1.5 for these violations because:

- a. BMPs identified in the SWPPP were not implemented.
- b. Grading activities were initiated in the wet season, the site was immediately completely graded, and appropriate BMPs were not implemented by Cal USS Builders or required by the City, contrary to the recommendations in Order No. 2009-0009-DWQ and Encinitas Municipal Code section 23.24.370.
- c. The Dischargers' QSP failed to adequately prepare the Project to prevent sediment discharges prior to forecasted rain events.
- e. The Dischargers failed to correct identified BMP deficiencies in a timely manner.
- f. The City failed to require the timely correction of identified BMP deficiencies.

Cleanup and Cooperation

The Prosecution Team has assigned a cleanup and cooperation multiplier of **1.1** from a range of .75 to 1.5 for this violation because the Dischargers failed to expeditiously return the site to compliance during the rainy season.

History of Violation

The Prosecution Team assigned a history of violation multiplier of **1.0** because the Dischargers do not have a history of construction or municipal storm water violations.

Multiple Day Violations

At this time the Prosecution Team only has evidence indicating discharges of sediment from the Project occurred on two days; therefore, a reduction for multiple days of violation does not apply to these violations.

Step 5 – Determination of Initial Amount of Liability

The Base Liability amount for these violations of **eight thousand eight hundred sixty six dollars (\$8,866)** is determined by multiplying the Per Day Assessment by the Days of Violation to determine the Initial Amount of Liability and then applying the adjustment factors as follows:

$$\begin{aligned} &(\text{Per Day Assessment}) \times (\text{Days of Violation}) = \\ &(\$3,100) \times 2 = \$6,200 \end{aligned}$$

$$\begin{aligned} &(\text{Initial Liability Amount}) \times (\text{Culpability}) \times (\text{Cooperation}) \times (\text{History of Violation}) = \\ &(\$6,200) \times (1.3) \times (1.1) \times (1.0) = \$8,866 \end{aligned}$$

Step 6 – Ability to Pay and Ability to Continue In Business

See section D. Adjustment Factors as to All Dischargers and All Violations

Step 7 – Other Factors as Justice May Require

See section D. Adjustment Factors as to All Dischargers and All Violations

Step 8 – Economic Benefit

The San Diego Water Board has determined that the Dischargers did derive an economic benefit from discharging pollutants to waters of the United States. The economic benefit was derived by failing to implement and maintain adequate erosion and sediment control BMPs. Violation 2 in this Technical Analysis addresses the BMP violations, and the calculated economic benefit for those violations was estimated to be **fifty eight thousand seven hundred ninety four dollars (\$58,794)** using the USEPA BEN model (**Appendix W**).

Step 9 – Maximum and Minimum Liability Amounts

Pursuant to CWC section 13385 the maximum civil liability that the San Diego Water Board may assess for these violations is (a) ten thousand dollars (\$10,000) per day of violation (per violation); and (b) ten dollars (\$10) for every gallon discharged, over one thousand gallons discharged, that was not cleaned up. CWC section 13385(d) requires that when pursuing civil liability under CWC section 13385, "At a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitutes the violation." If no economic benefit was derived from the violation, there is no minimum liability requirement.

In this instance, the Prosecution Team is only proposing the assessment of civil liability for the discharges of sediment to waters of the United States on a per day basis based on information currently available. Sediment was known to be discharged to waters of the United States on December 13, 2012 and March 8, 2013, therefore, the maximum civil liability that could be assessed for these violations is **twenty thousand dollars (\$20,000)**.

CWC section 13385(e) requires that when pursuing civil liability under section 13385, "at a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation." The Enforcement Policy requires that the adjusted Total Base Liability shall be at least ten percent higher than the Economic Benefit Amount. Because the economic benefit is the same for Violations 1 and 2, the minimum liability amount is achieved cumulatively with the two violations, and is calculated to be **sixty four thousand six hundred seventy three dollars (\$64,673)** as applied in Violation 2.

Step 10 – Proposed Civil Liability for Violation No. 1

Based on the penalty calculation methodology within Section VI of the Enforcement Policy, the proposed civil liability for discharging sediment to waters of the United States in violation of Order Nos. 2009-0009-DWQ and R9-2007-0001 and the Basin Plan on two days is **eight thousand eight hundred sixty six dollars (\$8,866)** plus staff costs.

**VIOLATION 2: FAILURE TO PREVENT POLLUTANTS IN STORM
WATER DISCHARGES – AGAINST BOTH
DISCHARGERS**

Step 1 – Potential for Harm for Discharge Violations

Step 1 does not apply to this non-discharge violation.

Step 2 – Assessments for Discharge Violations

Step 2 does not apply to this non-discharge violation.

Step 3 – Per Day Assessments for Non-Discharge Violations

Pursuant to the Enforcement Policy, Water Boards shall calculate an initial liability factor for each non-discharge violation. The calculation shall consider the violation's potential for harm, and extent to which the violation deviates from applicable requirements.

Potential for Harm

The Prosecution Team has assigned a "Potential for Harm" score for this violation of **"major"** because:

- a. Rossini Creek is a sensitive wetland area.
- b. The failure to implement adequate BMPs resulted in the direct discharge of sediment to Rossini Creek.
- c. Impacts to Rossini Creek were likely substantial, with temporary restrictions on beneficial uses.
- d. San Elijo Lagoon is a high risk receiving water.

- e. San Elijo Lagoon is a Clean Water Act section 303(d) listed impaired water body for sediment.
- f. The failure to implement adequate BMPs resulted in the indirect discharge of sediment to San Elijo Lagoon.
- g. Sediment discharges negatively impact water contact recreation, wildlife habitat, riparian and marine habitat, and endangered species habitat beneficial uses.

The Enforcement Policy defines "major" for non-discharge violations as:

The characteristics of the violation present a particularly egregious threat to beneficial uses, and/or the circumstances of the violation indicate a very high potential for harm. Additionally, non-discharge violations involving particularly sensitive habitats should be considered major.

Deviation from Requirement

The Prosecution Team has assigned a "Deviation from Requirement" score of "major" because:

- a. Order No. 2009-0009-DWQ identifies erosion control BMPs as a necessary BAT/BCT and the primary means for preventing storm water contamination at construction sites. Although the SWPPP identified numerous erosion control BMPs that would be deployed during the construction process, including erosion control blankets, check dams, erosion control seeding or alternate methods for concentrated flow paths, inspections and records indicate they were insufficient or entirely absent prior to the December 13, 2012 discharge.
- b. Order No. 2009-0009-DWQ identifies sediment control BMPs as the secondary means for preventing storm water contamination at construction sites. Although the SWPPP identified numerous sediment control BMPs that would be deployed during the construction process, including sediment traps, fiber rolls, street sweeping, storm drain inlet protection and stabilized construction entrance and exits, inspections and records indicate they were ineffective or entirely absent prior to the December 13, 2012 discharge.

- c. Order No. 2009-0009-DWQ requires Risk Level 2 dischargers to effectively manage all run-on, all runoff within the site and all runoff that discharges off the site. The SWPPP failed to address run-on at the south end of the Project. Run-on in the dog park area identified in a December 4, 2012 inspection report was not addressed prior to the December 13, 2012 discharge.
- d. Order No. 2009-0009-DWQ requires Risk Level 2 dischargers to inspect, maintain and repair pollution controls. Site inspections failed to address maintenance of the sediment basins prior to the March 8, 2013 discharge.

The Enforcement Policy defines "major" for non-discharge violations as:

The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).

Per Day Factor and Per Day Assessment

Using a "Potential for Harm" factor of "Major" and "Deviation from Requirement" factor of "Major", the "Per Day Factor" for failing to implement effective erosion and sediment controls in Table 3 of the Enforcement Policy is 0.85. Calculating the Per Day Assessment is achieved by multiplying:

$$\begin{aligned} &(\text{Per Day Factor}) \times (\text{Statutory Maximum Liability}) = \\ &(0.85) \times (\$10,000) = \$8,500 \end{aligned}$$

Step 4 – Adjustment Factors

Culpability

The Prosecution Team assigned a culpability multiplier for this violation of 1.3 out of a range from 0.5 to 1.5 for this violation because:

- a. The Dischargers' QSP and QSD failed to adequately evaluate the erosion and sediment control BMPs needed to prevent discharges from the Project prior to the December 13, 2012 forecasted rain event.
- b. The Dischargers failed to implement erosion and sediment control BMPs identified in the SWPPP prior to the December 13, 2012 discharge.

- c. The Dischargers failed to properly maintain sediment control BMPs (sediment basins) after multiple storm events between January 7, 2013 and March 8, 2013.
- d. The Dischargers' QSD failed to identify the run-on potential at the south end of the construction project in the SWPPP.
- e. The Dischargers failed to mitigate the run-on potential in the dog park area prior to the December 13, 2012 discharge.
- f. The Dischargers failed to address the BMP corrections identified by the QSP, QSD or City inspector in a timely manner.
- g. The Dischargers failed to comply with Encinitas Municipal Code 12.24.370 by grading during the wet season without erosion control BMPs.

Cleanup and Cooperation

The Prosecution Team has assigned a cleanup and cooperation multiplier of **1.1** from a range of .75 to 1.5 for this violation because the Dischargers failed to expeditiously return the site to compliance during the rainy season.

History of Violation

The Prosecution Team assigned a history of violation multiplier of **1.0** because the Dischargers do not have a history of construction or municipal storm water violations.

Multiple Day Violations

The days of violation for failure to prevent pollutants in storm water discharges has been determined to be:

October 8, 2012 – December 27, 2012 = 81 days
January 8, 2013 – March 8, 2013 = 60 days

The period from December 28, 2012 through January 7, 2013 was not included in the violation period because there is no evidence of noncompliance during this period.

The Enforcement Policy provides that for violations lasting more than 30 days, the daily assessment can be less than the calculated daily assessment provided that it is not less than the per day economic benefit, if any, resulting from the violation and the Water Board can make one of the following findings:

- The violation is not causing daily detrimental impacts to the environment or the regulatory program;
- The violation results in no economic benefit from the illegal conduct that can be measured on a daily basis; or,
- The violation occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation.

Upon review of the findings necessary to invoke the Enforcement Policy's Multiple Day Violations reduction, the Prosecution Team concludes that the failure to prevent pollutants in storm water discharges did not cause a daily detrimental impact because it did not rain during the majority of the one hundred forty one days (141) that the alleged violations occurred. Therefore, in this instance it is appropriate to apply an adjustment to the number of days of violation. The Prosecution Team elected to apply the maximum reduction allowed by the Enforcement Policy as indicated in the table below.⁶

Alleged Violation	Days of Violation	Adjusted Days of Violation	Total Adjusted Days of Violation
Failure to Prevent Pollutants in Storm Water Discharges	10/8/2012 – 12/27/2013 = 81 1/8/2013 – 3/8/2013 = 60	8 8	16

⁶ The Enforcement Policy allows for a maximum reduction for multiple day violations resulting from an assessment of the Initial Total Base Liability Amount for the first day of violation, plus an assessment for each five day period of violation until the 30th day, plus an assessment for each additional thirty (30) days of violation.

Step 5 – Determination of Base Liability Amount

The Base Liability amount for failure to prevent pollutants in storm water discharges of **one hundred ninety four thousand four hundred eighty dollars (\$194,480)** is determined by multiplying the Per Day Assessment by the Adjusted Days of Violation to determine the Initial Amount of Liability and then applying the adjustment factors as calculated as follows:

$$\begin{aligned} &\text{Per Day Assessment) x (Days of Violation) =} \\ &(\$8,500) \times (16) = \$136,000 \end{aligned}$$

$$\begin{aligned} &(\text{Initial Amount of Liability}) \times (\text{Culpability}) \times (\text{Cooperation}) \times (\text{History of Violation}) = \\ &(\$136,000) \times (1.3) \times (1.1) \times (1.0) = \$194,480 \end{aligned}$$

Step 6 – Ability to Pay and Ability to Continue in Business

See section D. Adjustment Factors as to All Dischargers and All Violations

Step 7 – Other Factors as Justice May Require

See section D. Adjustment Factors as to All Dischargers and All Violations

Step 8 – Economic Benefit

The Prosecution Team has determined that the Dischargers achieved an economic benefit from failing to install the appropriate pollution control devices (erosion and sediment control BMPs) from the commencement of construction activities on October 8, 2012 through December 20, 2012. Based on the USEPA BEN model, the Dischargers avoided the costs associated with the maintenance and repair of sediment and erosion control BMPs in the amount of **forty eight thousand four hundred thirty dollars (\$48,430)** during the violation period.

In addition, the Dischargers achieved an economic benefit for failing to properly maintain the sediment basins from January 8, 2013 through March 8, 2013. The USEPA BEN model, has calculated an economic benefit for this avoided cost of **ten thousand three hundred sixty four dollars (\$10,364)** during the violation period.

The total economic benefit for this violation is calculated to be **fifty eight thousand seven hundred ninety four dollars (\$58,794)**.

Step 9 – Maximum and Minimum Liability Amounts

Pursuant to CWC section 13385 the maximum civil liability that the San Diego Water Board may assess for this violation is (a) ten thousand dollars (\$10,000) per day of violation (per violation); and (b) ten dollars (\$10) for every gallon discharged, over one thousand gallons discharged, that was not cleaned up. The maximum liability for failure to prevent pollutants in storm water discharges for one hundred forty one (141) days is **one million four hundred ten thousand dollars (\$1,410,000)**.

The minimum liability, achieved cumulatively with Violations 1 and 2, is the economic benefit plus ten percent, for a total of **sixty four thousand six hundred seventy three dollars (\$64,673)**.

Step 10 – Proposed Civil Liability for Violation No. 2

Based on the penalty calculation methodology within Section VI of the Enforcement Policy, the civil liability for failing to prevent pollutants in storm water discharges in violation of Order No. 2009-0009-DWQ on one hundred forty one (141) days is calculated to be **one hundred ninety four thousand four hundred eighty dollars (\$194,480)**, plus staff costs.

**VIOLATION 3: FAILURE TO IMPLEMENT AN ADEQUATE
JURISDICTIONAL URBAN RUNOFF
MANAGEMENT PLAN – AGAINST CITY ONLY**

Step 1 – Potential for Harm for Discharge Violations

Step 1 does not apply to this non-discharge violation.

Step 2 – Assessments for Discharge Violations

Step 2 does not apply to this non-discharge violation.

Step 3 – Per Day Assessments for Non-Discharge Violations

Potential for Harm

The Prosecution Team assigned a "Potential for Harm" score of "major" to this violation because:

- a. Rossini Creek is a sensitive wetland area.

- b. San Elijo Lagoon is a Clean Water Act section 303(d) listed impaired water body for sediment.
- c. Failure to implement the construction component of the City's JURMP resulted in discharges of sediment into and from the MS4 to particularly sensitive habitats.
- d. Failure to implement the construction component of the City's JURMP has the potential to cause harm to other receiving waters throughout the City's jurisdictional boundaries.

The Enforcement Policy defines **major** for non-discharge violations as:

The characteristics of the violation present a particularly egregious threat to beneficial uses, and/or the circumstances of the violation indicate a very high potential for harm. Additionally, non-discharge violations involving particularly sensitive habitats should be considered major."

Deviation from Requirement

The Prosecution Team assigned a "Deviation from Requirement" score of **"major"** to this violation because:

- a. Order No. R9-2007-0001 prohibits discharges into and from MS4s in a manner causing, or threatening to cause, a condition of pollution, contamination, or nuisance (as defined by CWC section 13050), in waters of the state. The City failed to prohibit discharges into and from its MS4 that caused, or threatened to cause, a condition of pollution, contamination, or nuisance in Rossini Creek and San Elijo Lagoon.
- b. Order No. R9-2007-0001 prohibits discharges from MS4s that have not been reduced to the MEP. The City failed to require the implementation of adequate controls, structures and management practices at the Project to the MEP.
- c. Order No. R9-2007-0001 requires municipalities to enforce grading ordinances to ensure compliance with the Order. The City failed to enforce its own Municipal Code 23.24.370 by not requiring the implementation of adequate BMPs prior to rain events. The City failed to enforce its own Municipal Code 23.24.390 by not requiring maintenance of sediment basins after rain events.

- d. Order No. 2007-0001 requires municipalities to implement follow-up actions (i.e., enforcement) necessary to comply with the Order. The City failed to take appropriate enforcement action at the Project when BMP deficiencies identified in inspection reports were not corrected.

The Enforcement Policy defines major for non-discharge violations as:

The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).

Per Day Factor and Per Day Assessment

Using a "Potential for Harm" factor of "Major" and "Deviation from Requirement" factor of "Major", the "Per Day Factor" for failing to implement an adequate JURMP in Table 3 of the Enforcement Policy is 0.85. Calculating the Per Day Assessment is achieved by multiplying:

$$\begin{aligned} &(\text{Per Day Factor}) \times (\text{Statutory Maximum Liability}) = \\ &(0.85) \times (\$10,000) = \$8,500 \end{aligned}$$

Step 4 – Adjustment Factors

Culpability

The Prosecution Team has assigned a culpability multiplier of 1.4 out of a range from 0.5 to 1.5 to this violation because:

- a. The City, as both a municipal Copermittee and the Project's LRP, was aware of the applicable requirements and failed to implement these requirements on its own capital improvement project.
- b. The City allowed pollutants (sediment) from the Project to discharge into and from the MS4 in a manner causing, or threatening to cause, a condition of pollution, contamination, or nuisance (as defined by CWC section 13050) in waters of the state.
- c. The City allowed discharges of pollutants (sediment) downstream of the Project that were not reduced to the MEP.
- d. The City failed to enforce its grading ordinances in compliance with Order No. R9-2007-0001.

- e. The City failed to take adequate follow-up actions (i.e. enforcement) on BMP deficiencies that were not undertaken in compliance with Order R9-2007-0001.
- f. The City failed to adequately oversee the construction project with regards to compliance with local ordinances or Order No. 2009-0009-DWQ from the commencement of construction activities until after the December 13, 2012 discharges.
- g. The City failed to identify the failure to maintain the sediment basins in accordance with Encinitas Municipal Code 23.24.390.

Cleanup and Cooperation

The Prosecution Team has assigned a cleanup and cooperation multiplier of 1.1 from a range of .75 to 1.5 for this violation because the City failed to ensure that the Project stayed in compliance with Order No. 2009-0009-DWQ during the rainy season.

History of Violation

The Prosecution Team assigned a history of violation multiplier of 1.0 because the City does not have a history of construction or municipal storm water violations.

Multiple Day Violations

The days of violation for failure to implement an adequate JURMP has been calculated to be:

October 8, 2012 through December 13, 2012 = 67 days
January 8, 2013 through March 8, 2013 = 60 days

The period from December 14, 2012 through January 7, 2013 was not included in the violation period because the City's inspection reports indicate that it was conducting adequate storm water inspections by identifying and requiring correction of observed violations during this period of time. The violation period commenced again on January 8, 2013 because the City failed to implement Municipal Code 23.24.390 when it did not require the sediment basins to be pumped dry after a qualifying storm event.

Upon review of the findings necessary to invoke the Enforcement Policy's Multiple Day Violations reduction, the Prosecution Team believes that the failure to implement an adequate JURMP did not cause a daily detrimental impact because it did not rain during the majority of the one hundred twenty seven (127) days that the alleged violations occurred. Therefore, in this instance it is appropriate to apply an adjustment to the number of days of violation. The Prosecution Team elected to apply the maximum reduction allowed by the Enforcement Policy as indicated in the table below:

Alleged Violation	Days of Violation	Adjusted Days of Violation	Total Adjusted Days of Violation
Failure to Implement an Adequate JURMP	10/8/12 – 12/13/12 = 67 1/8/13 – 3/8/13 = 60	8 8	16 days

Step 5 – Determination of Base Liability Amount

The Base Liability amount for failure to implement an adequate JURMP of **two hundred nine thousand four hundred forty dollars (\$209,440)** is determined by multiplying the Per Day Assessment by the Adjusted Days of Violation to determine the Initial Amount of Liability and then applying the adjustment factors as calculated as follows:

$$\begin{aligned} &(\text{Per Day Assessment}) \times (\text{Days of Violation}) = \\ &(\$8,500) \times (16) = \$136,000 \end{aligned}$$

$$\begin{aligned} &(\text{Initial Amount of Liability}) \times (\text{Culpability}) \times (\text{Cooperation}) \times (\text{History of Violation}) = \\ &(\$136,000) \times (1.4) \times (1.1) \times (1.0) = \$209,440 \end{aligned}$$

Step 6 – Ability to Pay and Ability to Continue in Business

See section D. Adjustment Factors as to All Dischargers and All Violations

Step 7 – Other Factors as Justice May Require

See section D. Adjustment Factors as to All Dischargers and All Violations

Step 8 – Economic Benefit

The Prosecution Team suspects that the City obtained some economic benefit by failing to conduct the appropriate oversight of the Project. However, the information necessary to quantify the economic benefit is not available. It is anticipated that the proposed liability amount for this violation would recover any economic benefit derived by the City.

Step 9 – Maximum and Minimum Liability Amounts

Pursuant to CWC section 13385 the maximum civil liability that the San Diego Water Board may assess for this violation is (a) ten thousand dollars (\$10,000) per day of violation (per violation); and (b) ten dollars (\$10) for every gallon discharged, over on thousand gallons discharged, that was not cleaned up. The maximum liability for failure to implement an adequate JURMP for one hundred twenty seven days (127) is **one million two hundred seventy thousand dollars (\$1,270,000)**.

No minimum liability amount for this violation has been assigned because the economic benefit derived by the City cannot be calculated due to the complexity in determining whether or how much staff time was saved by not conducting the appropriate oversight of the Project.

Step 10 – Proposed Civil Liability for Violation No. 3

Based on the penalty calculation methodology within Section VI of the Enforcement Policy, the civil liability for failing to implement an adequate JURMP in violation of Order No. R9-2007-0001 on one hundred twenty seven (127) days was calculated to be **two hundred nine thousand four hundred forty dollars (\$209,440)** plus staff costs.

D. ADJUSTMENT FACTORS AS TO ALL DISCHARGERS, AND ALL VIOLATIONS

Ability to Pay and Ability to Continue In Business

According to the City's budget ending June 30, 2012, it had \$60,401,659 in total assets and \$11,667,071 in total liabilities. Based on this information, the City has the ability to pay the proposed liability without impacting its required governmental activities.

Based on the contracted amount owed to USS Cal Builders for construction of the Project of \$16,941,882 and therefore the small percentage of the project price that the recommended penalty represents, it is anticipated that the USS Cal Builders has the ability to pay. In addition, information contained in SMARTS indicates that USS Cal Builders has four large-scale active constructions sites within the state in addition to twelve terminated large-scale construction projects.

Based on this publicly available data and the joint and several nature of the liability, the burden of this affirmative defense now shifts to the Dischargers to offer any evidence they would like the Prosecution Team to consider when evaluating their ability to pay the recommended administrative liability.

Other Factors as Justice May Require

The San Diego Water Board has incurred approximately **eighteen thousand sixty five dollars (\$18,065)** in staff costs associated with investigating the violations and preparing the Complaint. The total liability proposed in Complaint No. R9-2013-0152 includes the addition of these identified staff costs. If the Dischargers elect to contest this matter, the recommended liability may increase to recover additional necessary staff costs incurred through hearing. These staff costs are not divided by violation and are added at the end of the collective penalty assessment.

E. TOTAL PROPOSED LIABILITY AMOUNT

The total proposed liability amount for the violations addressed in Complaint No. R9-2013-0152 is **four hundred twelve thousand seven hundred eighty six dollars (\$412,786)** plus staff costs of **eighteen thousand sixty five dollars (\$18,065)** for a total of **four hundred thirty thousand eight hundred fifty one dollars (\$430,851)**. A summary of the staff costs incurred to date is provided in **Appendix X**. A summary of the methodology used by the Prosecution Team to calculate the proposed civil liability is summarized in Attachment 1, Penalty Methodology Decision of ACL Complaint No. R9-2013-0152. The civil liability for each violation addressed in ACL Complaint R9-2013-0152 is summarized in Table 1 below:

Alleged Violation	Days of Violation	Adjusted Days of Violation	Liability Per Adjusted Days of Violation	Total Liability
Discharges of Sediment to the MS4, and Rossini Creek Tributary to San Elijo Lagoon	2	n/a	\$4,433	\$8,866
Failure to Prevent Pollutants in Storm Water Discharges	141	16	\$12,155	\$194,480
Failure to Implement an Adequate JURMP	127	16	\$13,090	\$209,440
Total Base Liability Amount				\$412,786
Staff Costs to Date				\$18,065
Total Proposed Civil Liability⁷				\$430,851

Table 1: Total Proposed Civil Liability

⁷ Of this amount, the City is jointly and severally liable for all of the violations identified in ACL Complaint R9-2013-0152 for a total liability amount of \$430,851. USS Cal Builders is jointly and severally liable for all the violations in ACL Complaint R9-2013-0152 except for the violations related to the City's failure to implement an adequate JURMP, for a total liability amount of \$221,441.

Appendices

Appendix A	City of Encinitas September 24, , 2012 letter "Required Sediment and Erosion Control"
Appendix B	Notice of Intent
Appendix C	Contract
Appendix D	SWPPP
Appendix E	City (Geopacifica) Inspection Reports October 12, 2012 through December 13, 2012
Appendix F	QSP Inspection Reports November 7, 2012 through December 4, 2012
Appendix G	City of Encinitas Stop Work Order
Appendix H	City of Encinitas Administrative Citation
Appendix I	City Inspection Report December 14, 2012
Appendix J	San Diego Water Board Inspection Report December 17, 2012
Appendix K	Summit Erosion Control Inspection December 20, 2012
Appendix L	NOV R9-2013-0008
Appendix M	Response to NOV R9-2013-0008
Appendix N	City Inspection Reports December 20 – 27, 2012
Appendix O	City Inspection Reports December 31, 2012 – January 4, 2013
Appendix P	City Inspection Report January 10, 2013
Appendix Q	QSD Email December 28, 2012
Appendix R	City Inspection Reports January 11 – 16, 2013
Appendix S	Geopacifica Inspection Report January 18, 2013
Appendix T	Geopacifica Inspection Reports January 22 – 30, 2013
Appendix U	City Inspection Report January 31, 2013
Appendix V	City Notice of Violation and Administrative Citation
Appendix W	BEN Calculations
Appendix X	Staff Costs

Administrative Civil Liability Complaint

Fact Sheet

The State Water Resources Control Board and the nine Regional Boards are authorized to issue complaints for civil liabilities under Water Code section 13323 for violations of the Water Code. This document describes generally the process that follows the issuance of a complaint.

The issuance of a complaint is the first step in the possible imposition of an order requiring payment of penalties. The complaint details the alleged violations including the appropriate Water Code citations, and it summarizes the evidence that supports the allegations. **If you receive a complaint, you must respond timely as directed. If you fail to do so, a default order may be issued against you.** The complaint is accompanied by a letter of transmittal, a waiver options form, and a Hearing Procedure. Each document contains important information and deadlines. You should read each document carefully. A person issued a complaint is allowed to represent him or herself. However, legal advice may be desirable to assist in responding to the complaint.

Parties

The parties to a complaint proceeding are the Regional Water Board or State Water Board Prosecution Team and the person(s) named in the complaint, referred to as the "Discharger(s)." The Prosecution Team is comprised of Regional Water Board staff and management. Other interested persons may become involved and may become "designated parties." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit comments. If the matter proceeds to hearing, the hearing will be held before the full membership of the Regional Water Board (seven Governor appointed members) or before a panel. The board members who will hear the evidence and rule on the matter act as judges. They are assisted by advisory staff, who provide advice on technical and legal issues. Both the Prosecution Team and the Advisory Team have their own attorney. Neither the Prosecution Team nor the Discharger or his/her representatives are permitted to communicate with the board members or the Advisory Team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Notice.

Complaint Resolution Options

Once issued, a complaint can lead to (1) withdrawal of the complaint; (2) withdrawal and reissuance; (3) payment and waiver; (4) settlement; or (5) hearing.

Withdrawal may result if the discharger provides information to the Prosecution Team that clearly and unmistakably demonstrates that a fundamental error exists in the information set forth in the complaint.

ACL Complaint Fact Sheet

Withdrawal and Reissuance may result if the Prosecution Team becomes aware of information contained in the complaint that can be corrected.

Payment and waiver may result when the Discharger elects to pay the amount of the complaint rather than to contest it. The Discharger makes a payment for the full amount and the matter is ended, subject to public comment.

Settlement results when the Parties negotiate a resolution of the complaint. The settlement can be payment of an amount less than the proposed penalty or partial payment and suspension of the remainder pending implementation by the Discharger(s) of identified activities, such as making improvements that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project (CP). Qualifying criteria for CPs and SEPs are contained in the State Water Board's Enforcement Policy, which is available at the State Water Board's website at: www.swrcb.ca.gov/plans_policies/docs/wqcp.doc.

Hearing: If the matter proceeds to hearing, the Parties will be allowed time to present evidence and testimony in support of their respective positions. The hearing must be held within 90 days of the issuance of the Complaint, unless the Discharger waives that requirement by signing and submitting the Waiver Options Form included in this package. The hearing will be conducted under rules set forth in the Hearing Notice. The Prosecution Team has the burden of proving the allegations and must present competent evidence to the Board regarding the allegations. Following the Prosecution Team's presentation, the Discharger and other parties are given an opportunity to present evidence, testimony and argument challenging the allegations. The parties may cross-examine each others' witnesses. Interested persons may provide comments, but may generally not submit evidence or testimony. At the end of the presentations by the Designated Parties, the Board Members will deliberate to decide the outcome. The Board may issue an order requiring payment of the full amount recommended in the complaint, it may issue an order requiring payment of a reduced amount, it may order the payment of a higher amount, decide not to impose an assessment or it may refer the matter to the Attorney General's Office.

Factors That Must Be Considered By the Board

Except for Mandatory Minimum Penalties under Water Code Section 13385 (i) and (h), the Board is required to consider several factors specified in the Water Code, including nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any resulting from the violations, and other matters as justice may require (Water Code Section 13327, 13385(e) and 13399). During the period provided to submit evidence (set forth in the Hearing Notice) and at the hearing, a discharger may submit information that it believes supports its position regarding the complaint. If a discharger intends to present arguments about its ability to pay it must provide reliable documentation to establish

ACL Complaint Fact Sheet

that ability or inability. The kinds of information that may be used for this purpose include:

For an individual:

1. Last three years of signed federal income tax returns (IRS Form 1040) including schedules;
2. Members of household, including relationship, age, employment and income;
3. Current living expenses;
4. Bank account statements;
5. Investment statements;
6. Retirement account statements;
7. Life insurance policies;
8. Vehicle ownership documentation;
9. Real property ownership documentation;
10. Credit card and line of credit statements;
11. Mortgage loan statements;
12. Other debt documentation.

For a business:

1. Copies of last three years of company IRS tax returns, signed and dated,
2. Copies of last three years of company financial audits
3. Copies of last three years of IRS tax returns of business principals, signed and dated.
4. Any documentation that explains special circumstances regarding past, current, or future financial conditions.

For larger firms:

1. Federal income tax returns for the last three years, specifically:
 - a. IRS Form 1120 for C Corporations
 - b. IRS Form 1120 S for S Corporations
 - c. IRS Form 1065 for partnerships
2. A completed and signed IRS Form 8821. This allows IRS to provide the SWRCB with a summary of the firm's tax returns that will be compared to the submitted income tax returns. This prevents the submission of fraudulent tax returns;
1. The following information can be substituted if income tax returns cannot be made available:
 - a. Audited Financial Statements for last three years;
 - b. A list of major accounts receivable with names and amounts;
 - c. A list of major accounts payable with names and amounts;
 - d. A list of equipment acquisition cost and year purchased;
 - e. Ownership in other companies and percent of ownership for the last three years;
 - f. Income from other companies and amounts for the last three years.

ACL Complaint Fact Sheet

For a municipality, county, or district:

1. Type of entity:
 - a. City/Town/Village;
 - b. County;
 - c. Municipality with enterprise fund;
 - d. Independent or publicly owned utility;
2. The following 1990 and 2000 US Census data:
 - a. Population;
 - b. Number of persons age 18 and above;
 - c. Number of persons age 65 and above;
 - d. Number of individual below 125% of poverty level;
 - e. Median home value;
 - f. Median household income.
3. Current or most recent estimates of:
 - a. Population;
 - b. Median home value;
 - c. Median household income;
 - d. Market value of taxable property;
 - e. Property tax collection rate.
4. Unreserved general fund ending balance;
5. Total principal and interest payments for all governmental funds;
6. Total revenues for all governmental funds;
7. Direct net debt;
8. Overall net debt;
9. General obligation debt rating;
10. General obligation debt level.
11. Next year's budgeted/anticipated general fund expenditures plus net transfers out.

This list is provided for information only. A discharger remains responsible for providing all relevant and reliable information regarding your financial situation, which may include items in the above lists, but could include other documents not listed. Please note that all evidence regarding this case, including financial information, will be made public.

Petitions

If the Regional Water Board issues an order requiring payment, a discharger may challenge that order by filing a petition for review with the State Water Board pursuant to Water Code section 13320. More information on the petition process is available at www.swrcb.ca.gov/public_notices/petitions. An order of the State Water Board, including its ruling on a petition from a Regional Water Board order, can be challenged by filing a petition for writ of mandate in Superior Court pursuant to Water Code section 13330.

Once an order for payment of penalties becomes final, the Regional or State Water Board may seek an order of the Superior Court under Water Code Section 13328, if necessary, in order to collect payment of the penalty amount.

SAN DIEGO WATER QUALITY CONTROL BOARD

PROPOSED DRAFT

**HEARING PROCEDURE FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
NO. R9-2013-0152
ISSUED TO**

**CITY OF ENCINITAS
AND
USS CAL BUILDERS, INC.**

SCHEDULED FOR FEBRUARY 12, 2014

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Background

The Assistant Executive Officer of the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code (CWC) section 13385 against the City of Encinitas (City) and USS Cal Builders, Inc. (collectively, Dischargers) alleging that they have violated Prohibition III.A and III.B, and Effluent Standard V.A.2 of Order No. 2009-0009-DWQ, Prohibitions and Receiving Water Limitations A.1, A.2, and A.3 and Basin Plan Waste Discharge Prohibition 14 and that the City has violated Section D.2 of the Jurisdictional Urban Runoff Management Program Construction Component of Order No. R9-2007-0001, by failing to prevent the discharge of sediment to the municipal separate storm sewer (MS4), Rossini Creek and San Elijo Lagoon during construction of the Hall Property Park in Encinitas, California. The ACL Complaint proposes that administrative civil liability in the amount of \$430,851 be imposed as authorized by CWC Section 13385. Unless the Dischargers waive their right to a hearing and pay the proposed liability, a hearing will be held before the San Diego Water Board during its meeting of February 12, 2014, in San Diego.

Purpose of Hearing

The purpose of the hearing is to receive relevant evidence and testimony regarding the proposed ACL Complaint. At the hearing, the San Diego Water Board will consider whether to adopt, modify, or reject the proposed assessment.

The public hearing on February 12, 2014, will commence as announced in the San Diego Water Board meeting agenda. The meeting will be held at the San Diego Water Board Office at 2375 Northside Drive, Suite 100, in San Diego. An agenda for the

meeting will be issued at least ten days before the meeting and will be posted on the San Diego Water Board's web page at: www.waterboards.ca.gov/sandiego.

Hearing Procedures

The hearing will be conducted in accordance with this hearing procedure. This proposed draft version of the hearing procedure has been prepared by the Prosecution Team, and is subject to revision and approval by the San Diego Water Board's Advisory Team. A copy of the procedures governing an adjudicatory hearing before the San Diego Water Board may be found at Title 23 of the California Code of Regulations, § 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Title 23 of the California Code of Regulations (CCR), § 648(b), Chapter 5 of the Administrative Procedures Act (commencing with § 11500 of the Government Code) does not apply to adjudicatory hearings before the San Diego Water Board. This Notice provides additional requirements and deadlines related to the proceeding.

THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM IN ITS DISCRETION. ANY OBJECTIONS TO THE PROPOSED HEARING PROCEDURE MUST BE RECEIVED BY CATHERINE HAGAN, SENIOR STAFF COUNSEL, NO LATER THAN DECEMBER 2, 2013, OR THEY WILL BE WAIVED. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Hearing Participation

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the San Diego Water Board, staff or others, at the discretion of the San Diego Water Board.

The following participants are hereby designated as parties in this proceeding:

- (1) San Diego Water Board Prosecution Staff
- (2) City of Encinitas Staff
- (3) Cal USS Builders, Inc. Staff

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party, and not already listed above, shall request party status by submitting a request in writing (with copies to the existing designated parties) no later than 5 p.m. on **December 11, 2013**, to Catherine Hagan, Senior Staff Counsel, at the address set forth below. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the San Diego Water Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be submitted by 5 p.m. on **December 23, 2013**. The parties will be notified by 5 p.m. on **December 31, 2013**, as to whether the request has been granted or denied.

Contacts

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San Diego, CA 92101

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the San Diego Water Board (Prosecution Staff) have been separated from those who will provide advice to the San Diego Water Board (Advisory Staff). Members of the Advisory Staff are: Catherine Hagan, Senior Staff Counsel, and David Gibson, Executive Officer. Members of the Prosecution Staff are: Julie Macedo, Staff Counsel, James Smith, Assistant Executive Officer, Jeremy Haas, Environmental Program Manager, Chiara Clemente, Senior Environmental Scientist of the Compliance Assurance Unit, and Rebecca Stewart, Sanitary Engineering Associate.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in *ex parte* communications regarding this matter with members of the Advisory Staff or members of the San Diego Water Board. An *ex parte* contact is any written or verbal communication pertaining to the investigation, preparation, or prosecution of the ACL Complaint between a member of a designated party or interested party on the one hand, and a San Diego Water Board member or an Advisory Staff member on the other hand, unless the communication is copied to all other designated and interested parties (if written) or made at a proceeding open to all other parties and interested persons (if verbal). Communications regarding non-controversial procedural matters are not *ex parte* contacts and are not restricted. Communications among the designated and interested parties themselves are not *ex parte* contacts.

Hearing Time limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined 20 minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than ten days after all of the evidence has been received (**January 23, 2014**). Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the San Diego Board Chair (at the hearing) upon a showing that additional time is necessary.

Submission of Evidence and Policy Statements

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the San Diego Water Board to consider. Evidence and exhibits already in the public files of the San Diego Water Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, CCR, Section 648.3.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.
5. (Dischargers only) If the Dischargers intend to argue an inability to pay the civil liability proposed in the Complaint (or an increased or decreased amount as may be imposed by the San Diego Water Board), the Dischargers should

submit supporting evidence as set forth in the "ACL Fact Sheet" under "Factors that must be considered by the Board."

6. (Dischargers only) If the Dischargers would like to propose a Supplemental Environmental Project (SEP) or Enhanced Compliance Action (ECA) in lieu of paying some or all of the civil liability in accordance with the State Water Board's Water Quality Enforcement Policy, the Dischargers shall submit a detailed SEP or ECA proposal including a specific implementation timetable.

The Prosecution Team shall submit two hard copies of the information to Catherine Hagan, Senior Staff Counsel, so that it is received no later than 5 p.m. on **December 31, 2013**.

The remaining designated parties shall submit 2 hard copies and one electronic copy of the information to Catherine Hagan, Senior Staff Counsel, so that they are received no later than 5 p.m. on **January 13, 2014**.

In addition to the foregoing, each designated party shall send (1) one copy of the above information to each of the other designated parties by 5 p.m. on the deadline specified above.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to Catherine Hagan, Senior Staff Counsel, as early as possible, but they must be received by **January 15, 2014**. Interested persons do not need to submit written comments in order to speak at the hearing.

In accordance with Title 23, California Code of Regulations, Section 648.4, the San Diego Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the San Diego Water Board may exclude evidence and testimony that is not submitted in accordance with this hearing procedure. Excluded evidence and testimony will not be considered by the San Diego Water Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team at or before the hearing¹ for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Request for Pre-hearing Conference

A designated party may request that a pre-hearing conference be held before the hearing in accordance with CWC section 13228.15. A pre-hearing conference may

¹ Each Regional Board may choose to require earlier submission of all visual aids by all parties. OE prefers early submission of visual aids, so that they have time to confirm that the aids do not go beyond the scope of previously-submitted evidence.

address any of the matters described in subdivision (b) of Government Code Section 11511.5. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, no later than 5 p.m. on **January 23, 2014**.

Evidentiary Objections

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection so that it is received by 5 p.m. on **January 22, 2014** to the Advisory Team with a copy to all other designated parties. The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

Evidentiary Documents and File

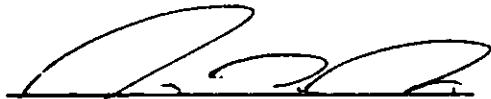
The Complaint and related evidentiary documents are on file and may be inspected or copied at the San Diego Water Board office at 2375 Northside Drive, Suite 100, San Diego, CA 92108. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the San Diego Water Board Chair. Many of these documents are also posted on-line at www.waterboards.ca.gov/sandiego. Although the web page is updated regularly, to ensure access to the latest information, you may contact Catherine Hagan, Senior Staff Counsel.

Questions

Questions concerning this proceeding may be addressed to Catherine Hagan, Senior Staff Counsel.

IMPORTANT DEADLINES

- November 21, 2013 Prosecution Team issues ACL Complaint to Discharger and Advisory Team, sends proposed Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice
- December 2, 2013 Objections due on proposed Hearing Procedure.
- December 11, 2013 Deadline for submission of request for designated party status.
- December 13, 2013 Advisory Team issues Hearing Procedure.
- December 23, 2013 Deadline for opposition to request for designated party status.
- December 23, 2013 Dischargers' deadline for waiving right to hearing.
- December 31, 2013 Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above.
- December 31, 2013 Advisory Team issues decision on requests for designated party status, if any.
- January 13, 2014 Remaining Designated Parties' Deadline for submission of all information required under "Evidence and Policy Statements," above.
- January 15, 2014 Interested Parties' deadline for submission of non-evidentiary policy statements.
- January 22, 2014 All Designated Parties' deadline for submission of rebuttal evidence (if any) and evidentiary objections.
- January 23, 2014 All Designated Parties' deadline for submission of request for pre-hearing conference.
- February 12, 2014 Hearing


James Smith
Assistant Executive Officer

21 Nov 2013
DATE

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent USS Cal Builders, Inc. (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R9-2013-0152 (hereinafter the "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

☐ **(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay the liability.)**

- a. I hereby waive any right the Discharger may have to a hearing before the San Diego Water Board.
- b. I certify that the Discharger will remit payment for the joint and several portion of the administrative civil liability imposed in the amount of **two hundred twenty one thousand four hundred forty one dollars (\$221,441)** by check that references "ACL Complaint No. R9-2013-0152" made payable to the "State Water Resources Control Board". Payment must be received by the San Diego Water Board by **January 11, 2013** or this matter will be placed on the San Diego Water Board's agenda for a hearing as initially proposed in the Complaint.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the San Diego Water Board receive significant new information or comments from any source (excluding the San Diego Water Board's Prosecution Team) during this comment period, the San Diego Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer of the San Diego Water Board, and that the San Diego Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.
- e. I understand that both USS Cal Builders, Inc. and the City of Encinitas must waive their right to a hearing before the San Diego Water Board or this waiver will become void and a hearing will be scheduled. The Regional Board does not make any determination regarding appropriate contribution rights, either in settlement discussions or at hearing.

☐ **(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the Discharger may have to a hearing before the San Diego Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the San Diego Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the San Diego Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the San Diego Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

☐ **(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the San Diego Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the San Diego Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the San Diego Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent the City of Encinitas. (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R9-2013-0152 (hereinafter the "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

☐ **(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay the liability.)**

- a. I hereby waive any right the Discharger may have to a hearing before the San Diego Water Board.
- b. I certify that the Discharger will remit payment for the joint and several portion of the administrative civil liability imposed in the amount of **four hundred thirty thousand eight hundred fifty one (\$430,851)** by check that references "ACL Complaint No. R9-2013-0152" made payable to the "State Water Resources Control Board". Payment must be received by the San Diego Water Board by **January 11, 2013** or this matter will be placed on the San Diego Water Board's agenda for a hearing as initially proposed in the Complaint.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the San Diego Water Board receive significant new information or comments from any source (excluding the San Diego Water Board's Prosecution Team) during this comment period, the San Diego Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer of the San Diego Water Board, and that the San Diego Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.
- e. I understand that both the City of Encinitas and USS Cal Builders, Inc. must waive their right to a hearing before the San Diego Water Board or this waiver will become void and a hearing will be scheduled. The Regional Board does not make any determination regarding appropriate contribution rights, either in settlement discussions or at hearing.

☐ **(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the Discharger may have to a hearing before the San Diego Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the San Diego Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the San Diego Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the San Diego Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

☐ **(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the San Diego Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the San Diego Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the San Diego Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

- d. When violations are not independent of one another or are not substantially distinguishable. For such violations, the Water Boards may consider the extent of the violation in terms of the most egregious violation;
- e. A single act may violate multiple requirements, and therefore constitute multiple violations. For example, a construction dewatering discharge to a dewatering basin located on a gravel bar next to stream may violate a requirement that mandates the use of best management practices (BMPs) for sediment and turbidity control, a requirement prohibiting the discharge of soil silt or other organic matter to waters of the State, and a requirement that temporary sedimentation basins be located at least 100 feet from a stream channel. Such an act would constitute three distinct violations that may be addressed with a single base liability amount.

If the violations do not fit the above categories, each instance of the same violation shall be calculated as a separate violation.

Except where statutorily required, multiple violations shall not be grouped and considered as a single base liability amount when those multiple violations each result in a distinguishable economic benefit to the violator.

Multiple Day Violations

For violations that are assessed a civil liability on a per day basis, the initial liability amount should be assessed for each day up to thirty (30) days. For violations that last more than thirty (30) days, the daily assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if any, resulting from the violation. For these cases, the Water Board must make express findings that the violation:

- a. Is not causing daily detrimental impacts to the environment or the regulatory program;
- b. Results in no economic benefit from the illegal conduct that can be measured on a daily basis; or,
- c. Occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation.

If one of the above findings is made, an alternate approach to penalty calculation for multiple day violations may be used. In these cases, the liability shall not be less than an amount that is calculated based on an assessment of the initial Total Base Liability Amount for the first day of the violation, plus an assessment for each five day period of violation until the 30th day, plus an assessment for each thirty (30) days of violation. For example, a violation lasting sixty-two (62) days would accrue a total of 8 day's worth of violations, based on a per day assessment for day 1, 5, 10, 15, 20, 25, 30, and 60. Similarly, a violation lasting ninety-nine (99) days would accrue a total of 9 day's worth of violations, based on a per day assessment for day 1, 5, 10, 15, 20, 25, 30, 60, and 90.

STEP 5 – Determination of Total Base Liability Amount

The Total Base Liability Amount will be determined by adding the amounts above for each violation, though this may be adjusted for multiple day violations as noted above. Depending on the statute controlling the liability assessment for a violation, the liability can be assessed as either a per day penalty, a per gallon penalty, or both.

Exhibit No. 8

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

FACILITY INSPECTION REPORT

FACILITY: Valencia
WDID/FILE NO.: 937C369143

INSPECTION DATE/TIME: 12/15/2014; 10:00 am

REPRESENTATIVE(S) PRESENT DURING INSPECTION:

NAME: Wayne Chiu
NAME: Ben Anderson
NAME: Tim Anderson
NAME: Donald Sturgeon
NAME: Leon Firsh
NAME: Gary Harper

AFFILIATION: San Diego Water Board
AFFILIATION: BCA Development, Inc.
AFFILIATION: BCA Development, Inc.
AFFILIATION: Whitson CM
AFFILIATION: City of Lemon Grove
AFFILIATION: City of Lemon Grove

San Altos Lemon Grove LLC
NAME OF OWNER, AGENCY OR PARTY RESPONSIBLE FOR DISCHARGE
5780 Fleet Avenue
Carlsbad, CA 92008
OWNER MAILING ADDRESS

BCA Development, Inc.
FACILITY OR DEVELOPER NAME (if different from owner)
1350 San Altos Place
Lemon Grove, CA 91945
FACILITY ADDRESS

Ben Anderson, 714-966-1544
OWNER CONTACT NAME AND PHONE #

Same
FACILITY OR DEVELOPER CONTACT NAME AND PHONE #

APPLICABLE WATER QUALITY LICENSING REQUIREMENTS:

- | | |
|---|---|
| ☐ MS4 URBAN RUNOFF REQUIREMENTS | ☐ GENERAL OR INDIVIDUAL WASTE DISCHARGE REQUIREMENTS OR NPDES |
| ☒ CONSTRUCTION GENERAL PERMIT | ☐ GENERAL OR INDIVIDUAL WAIVER OF WASTE DISCHARGE REQUIREMENTS |
| ☐ CALTRANS GENERAL PERMIT | ☐ SECTION 401 WATER QUALITY CERTIFICATION |
| ☐ INDUSTRIAL GENERAL PERMIT | ☐ CWC SECTION 13264 |

INSPECTION TYPE (Check One):

- ☐ "A" TYPE COMPLIANCE--COMPREHENSIVE INSPECTION IN WHICH SAMPLES ARE TAKEN. (EPA TYPE S)
- ☐ "B" TYPE COMPLIANCE--A ROUTINE NONSAMPLING INSPECTION. (EPA TYPE C)
- ☐ NONCOMPLIANCE FOLLOW-UP--INSPECTION MADE TO VERIFY CORRECTION OF A PREVIOUSLY IDENTIFIED VIOLATION.
- ☐ ENFORCEMENT FOLLOW-UP--INSPECTION MADE TO VERIFY THAT CONDITIONS OF AN ENFORCEMENT ACTION ARE BEING MET.
- ☒ COMPLAINT--INSPECTION MADE IN RESPONSE TO A COMPLAINT.
- ☐ PRE-REQUIREMENT--INSPECTION MADE TO GATHER INFO. RELATIVE TO PREPARING, MODIFYING, OR RESCINDING REQUIREMENTS.
- ☐ NO EXPOSURE CERTIFICATION (NEC) - VERIFICATION THAT THERE IS NO EXPOSURE OF INDUSTRIAL ACTIVITIES TO STORM WATER.
- ☐ NOTICE OF TERMINATION REQUEST FOR INDUSTRIAL FACILITIES OR CONSTRUCTION SITES - VERIFICATION THAT THE FACILITY OR CONSTRUCTION SITE IS NOT SUBJECT TO PERMIT REQUIREMENTS.
- ☐ 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)

EXHIBIT 4
REPORTER M. Lopez
WITNESS C. Clemente
DATE 1-22-16

Facility: Valencia
Inspection Date: 12/15/2014

I. COMPLIANCE HISTORY / PURPOSE OF INSPECTION

On December 2, 2014, the City of Lemon Grove (City) issued a Stop Work/Notice of Violation to the Valencia construction site (WDID 9 37C369143) for failing to implement construction storm water best management practices (BMPs) required by local ordinances. The City's inspection report issued with the Stop Work/Notice of Violation noted inadequate implementation of erosion controls, entrance/exit stabilization, and stockpile management and warned the project manager that a "discharge is imminent" without adequate BMPs. The site was required to stop work and implement BMPs to be prepared for a storm event that occurred on December 3 and 4, 2014.

The site failed to implement BMPs before the storm, resulting in unauthorized discharges of sediment and sediment-laden storm water from the site to the City's municipal separate storm sewer system (MS4). The City issued a second Stop Work/Notice of Violation on December 4, 2014 for the illegal discharges to the City's MS4. The City conducted a follow up inspection on December 9, 2014 and noted the same BMP deficiencies identified before the December 3 and 4, 2014 storm event, as well as additional deficiencies in perimeter sediment controls. The inspection report provided recommendations for locations that needed to be addressed and types of BMPs. The site again failed to implement BMPs before a subsequent storm event that occurred on December 11, 2014, again resulting in unauthorized discharges of sediment and sediment-laden storm water from the site to the City's MS4. On December 11, 2014, the City issued an Administrative Citation to the site requiring BMPs to be implemented by December 15, 2014 before monetary penalties would begin. The Stop Work/Notice of Violation issued on December 2 and 4, 2014 and the Administrative Citation issued on December 11, 2014 by the City are attached to the end of this inspection report.

On the morning of December 12, 2014, the City contacted the San Diego Water Board about the unauthorized discharges of sediment and sediment-laden storm water to their MS4 from the Valencia construction site. According to the City's storm water manager, the site owner was claiming the site was in compliance with the requirements of the Statewide Construction General Storm Water Permit, Order No. 2009-0009-DWQ (CGP) and therefore should be considered in compliance with the City's ordinances. The City's storm water manager requested an inspection from the San Diego Water Board to determine whether the construction site was in compliance with the requirements of the CGP.

Wayne Chiu of the San Diego Water Board performed an inspection of the Valencia construction site for compliance with the requirements CGP. According to the Storm Water Multiple Application & Report Tracking System (SMARTS), the site is a Risk Level 2 construction site, disturbing over 18 acres, and owned by San Alto Lemon Grove LLC. The developer of the site is BCA Development, Inc.

The San Diego Water Board inspector met with Mr. Ben Anderson, the contact for the owner and developer of the site, Mr. Tim Anderson, project manager for the developer,

Facility: Valencia
Inspection Date: 12/15/2014

and Mr. Donald Sturgeon, the Qualified Storm Water Pollution Prevention Plan (SWPPP) Practitioner (QSP) performing the weekly inspections. Also present to observe during the inspection were Mr. Leon Firsh and Mr. Gary Harper, City Engineer and Construction Storm Water Inspector for the City of Lemon Grove, respectively. The San Diego Water Board inspector did not review the SWPPP or other records during the inspection.

II. FINDINGS

1. Several **stockpiles observed without adequate containment** (See Photo 1). Evidence of erosion and sediment transport from the stockpile observed during the inspection. All construction sites are required to contain and securely protect stockpiled waste material from wind and rain at all times unless actively being used.
2. Construction **equipment and vehicles observed without** appropriate BMPs (e.g. **drip pans**) to prevent oil, grease, or fuel to leak in to the ground, storm drains, or surface waters (See Photos 2 and 3). All construction sites are required to prevent oil, grease or fuel to leak in to the ground, storm drains, or surface waters, and to place all equipment and vehicles, which are to be fueled, maintained and stored in a designated area fitted with appropriate BMPs.
3. Several areas were **observed to be inactive**, or could be scheduled to be inactive, **without effective soil cover** to control potential erosion. Several completed building pads and several inactive slopes (See Photos 4 through 7) lacked any effective soil cover for erosion control. The lack of erosion controls in these areas contributed to **unauthorized sediment discharges from the site** (See Photos 9 through 11). All construction sites are required to provide effective soil cover for inactive areas (i.e. areas that have been disturbed and not scheduled to be re-disturbed for at least 14 days) and all finished slopes, open space, utility backfill, and completed lots.
4. **Active areas** were observed to **lack appropriate erosion control BMPs** (runoff control and soil stabilization) to prevent erosion during storm events (See Photo 8). The project manager and QSP could not describe any erosion control measures that were in place or were ready to be deployed before the December 3 and 4, 2014 and December 11, 2014 storm events. Risk Level 2 construction sites are required to implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction.
5. Several slopes throughout the site were observed to **lack linear sediment controls** along the toe and grade breaks of exposed slopes (See Photos 4 through 7). Risk Level 2 construction sites are required to apply linear sediment controls along the toe of the slope, face of the slopes, and at the grade breaks of exposed

Facility: Valencia
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slopes to comply with sheet flow lengths given in Table 1 of Attachment D to the CGP.

6. Lack of effective perimeter sediment controls observed which resulted in unauthorized sediment discharges from the site (See Photos 9 through 14). All construction sites are required to establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.
7. **Lack of effective run-on and runoff controls** observed within and around the site which contributed to sediment discharges from the site (See Photos 4 and 14). All construction sites are required to effectively manage run-on, all runoff within the site and all runoff that discharges off the site.

III. COMMENTS AND RECOMMENDATIONS

Comments

1. There is evidence that good site management "housekeeping" BMPs were not being adequately implemented (See Findings 1 and 2).
2. There is evidence that erosion controls were not adequately implemented for several inactive areas contributing to discharges of sediment from the site (See Finding 3).
3. There is evidence that erosion controls were not adequately implemented for several active areas prior to storm events contributing to discharges of sediment from the site (See Finding 4).
4. There is evidence that linear sediment controls were not adequately implemented for several exposed slopes contributing to slope erosion and discharges of sediment from the site (See Finding 5).
5. There is evidence that perimeter sediment controls, as well as run-on and runoff controls, were not adequately implemented which contributed to discharges of sediment from the site (See Findings 6 and 7).
6. There was evidence observed during the inspection that the site has not implemented BMPs to meet BCT Technology Based Effluent Limitations (TBELs) under Section V.A.2 of the CGP, as required for all construction sites, which resulted in the unauthorized discharges of sediment and sediment-laden water from the site observed or documented on December 4, 11, and 15, 2014 (See Compliance History discussion and Findings 1 through 7).

Facility: Valencia
Inspection Date: 12/15/2014

7. There is evidence that either the QSP was not adequately identifying and recommending implementation of good site management "housekeeping," erosion control, sediment control, and run-on/runoff control BMPs, or the owner/developer was not directing the implementation of the BMPs as recommended by the QSP.

Recommendations

1. Issue a Notice of Violation for discharges of sediment from the site and failure to implement Risk Level 2 requirements of CGP.
2. Refer the site to the Compliance Assurance Unit to determine whether or not issuing formal enforcement action may be appropriate.

IV. SIGNATURE SECTION

Wayne Chiu	12/15/2014
STAFF INSPECTOR	SIGNATURE
Eric Becker	
REVIEWED BY SUPERVISOR	DATE

SMARTS:

Tech Staff Info & Use	
WDID	937C369143
Place ID	SM-828060
Inspection ID	2024185
Violation ID	855345, 855346

Facility: Valencia
Inspection Date: 12/15/2014



Photo 1

Photo 1 shows soil **stockpile without adequate containment**. Evidence of erosion and sediment transport along that base of the stockpile. Most stockpiles observed during inspection lacked adequate containment.



Photo 2



Photo 3

Photos 2 and 3 show **construction equipment and vehicles without** appropriate BMPs (e.g. **drip pans**) to prevent oil, grease, or fuel to leak in to the ground, storm drains, or surface waters. Most vehicles observed during inspection lacked appropriate BMPs.

Facility: Valencia
Inspection Date: 12/15/2014



Photo 4



Photo 5



Photo 6



Photo 7



Photo 8

Photos 4 through 7 show completed building pads and adjacent slopes without any erosion controls and evidence of significant erosion and sediment transport. Photo 8 shows evidence of erosion and sediment transport in unpaved road sloping to locations shown in Photos 9 through 11. Sediment from completed lots and slopes in Photos 4 through 7 transported to road in Photo 8 lacking any erosion control measures during storm events, and inadequate runoff controls to reduce and prevent transport of sediment through site.

Facility: Valencia
Inspection Date: 12/15/2014



Photo 9



Photo 10



Photo 11



Photo 12

Photos 9 through 12 show inadequate implementation of perimeter sediment controls and run-on/runoff controls to prevent discharges of sediment from the site. Photo 9 shows evidence of erosion and sediment transport from road shown in Photo 8 to perimeter with inadequately installed perimeter sediment and runoff controls (i.e. fiber roll not properly trenched and staked). Photos 10 shows evidence of sediment transport from the site beneath the inadequately installed perimeter sediment and runoff controls. Photo 11 shows evidence of sediment transport from the site to MS4 channel protected by silt fence and gravel bags. Photo 12 shows **sediment that has been discharged into the MS4 channel** due to inadequate implementation of erosion, sediment, and runoff controls by the site.

Facility: Valencia
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Photo 13



Photo 14

Photos 13 and 14 show lack of effective perimeter sediment controls and run-on/runoff controls. Photo 13 shows evidence of erosion and sediment transport due to lack of perimeter run-on controls. Photo 14 shows evidence of sediment discharged from the site to the MS4 drainage system due to **erosion caused by run-on** that then ran off the site due to inadequate perimeter sediment controls and runoff controls.



NOTICE

DATE: 12/2/14
PROJECT: VALENCIA
PROJECT #: GR-1692
ADDRESS: SAN AITO PL

☒ STOP WORK/NOTICE OF VIOLATION

Stop all other work until erosion control/NPDES deficiencies noted below are corrected. Issuance of this Stop Work Notice will notify the Regional Water Quality Control Board regarding your BMP deficiencies. This may subject you to fines of up to \$10,000/day.

☐ CORRECT WORK

Correct noted deficiencies within the specified time frame to avoid a Stop Work Notice:

☐ 24 Hours ☐ 72 Hours ☐ 5 Days ☐ Prior to October 1st, And/Or ☐ Before Rain Event

THIS PROJECT IS IN CONFLICT WITH THE FOLLOWING:

- ☐ City of Lemon Grove Grading Ordinance* ☒ City of Lemon Grove JURMP
☐ Other: _____

THE AREAS OF CONFLICT ARE:

- ☐ Erosion control is not on site ☐ Erosion control is not per the approved plan
☒ Erosion control is inadequate ☐ Failure to maintain erosion/sediment control device
☐ Other: _____

THE FOLLOWING DEFICIENCIES ARE NOTED:

- ☒ Stabilized construction entrance ☐ Runoff from the site ☐ Desilting basin
☐ Perimeter protection at toe of slope ☐ Waste/materials storage
☐ Concrete washout inadequate, not maintained ☐ No secondary containment
☒ Cover stockpiles ☐ No storm drain inlet/outlet protection ☐ Trash/debris not managed
☐ Cover on sloped and/or flat areas that are inactive for more than 10 days
☐ Other: _____

***STOP/ CORRECT WORK ADEQUATELY ADDRESSED (DATE/SIGNATURE) _____

- CC: ☒ City Engineer
☒ Engineering
☐ Management Analyst
☐ Code Compliance
☐ Building
☐ RWQCB

ISSUED TO: TIM ANDERSON (via Email)
DATE/TIME: 12/2/14 3pm
BY: GARY HARPER
TITLE: ENG. INSPECTOR
PHONE: (619) 454-1272

IF YOU HAVE FURTHER QUESTIONS, PLEASE
CALL THE CITY OF LEMON GROVE'S
DEVELOPMENT SERVICES DEPARTMENT AT
(619) 825-3805.

* Having deficiencies in your erosion control is a violation of the City of Lemon Grove's Grading Ordinance. A violation of the City's Grading Ordinance is a misdemeanor. Each separate day or portion thereof on which a violation exists or is allowed to exist shall constitute a separate offense punishable by the provisions of the Ordinance.



CITY OF LEMON GROVE
3232 Main Street, Lemon Grove, CA 91945

**NPDES STORMWATER PROGRAM
CONSTRUCTION STORMWATER COMPLIANCE INSPECTION FORM**

Inspector Name /Signature/Date/Time: HARPER / [Signature] / 12/2/14 / 1pm

Inspection: ☐ Permit-Required Inspection ☐ Follow-up Inspection ☒ Other (Explain) Weekly

Construction Project Priority: ☐ High ☐ Medium ☐ Low

GENERAL INFORMATION

Grading or Building Permit #: GC-1692

Project Name & Type: VALENCIA, SUBDIVISION

Project Location & Address: SAN AITOJ PL

Contractor's Name & Telephone #: ANDERSON DEVELOPMENT (949) 275-6739

Property Owner & Telephone #: SAN AITOJ LLC

Is this Project Greater than an Acre? ☒ Yes ☐ No ☐ N/A

If yes: Provide Record of Waste Discharge Identification Number (WDID#): 937C 36 9143

Does this Project have an NOI/SWPPP Available? ☒ Yes ☐ No ☐ N/A

Is Weather Triggered Action Plan Completed? ☒ Yes ☐ No ☐ N/A

Is Advanced Treatment Implemented Appropriately? ☐ Yes ☐ No ☒ N/A

Is More than 17 Acres of Cleared or Graded Areas Left Exposed at Any Given Time? ☐ Yes ☒ No ☐ N/A

Is 125% of Materials to Install Standby BMPs Available? ☐ Yes ☒ No ☐ N/A

Are Routine Self-Inspections Being Conducted by Developer/Owner? ☒ Yes ☐ No ☐ N/A

Project Site is in What Sub-Watershed: ☐ Chollas Creek 908.22 ☐ Sweetwater River 909.12

Nearest Conveyances or Water Bodies: M 54

BMP	Yes	No	N/A	Description/Explanation	Effective Yes/No
Soil Stabilization and Erosion Prevention					
Is construction site phased/scheduled to address erosion control on a timely basis?	☒			<u>Contractor Hydroseeding AS NEEDED, BUT DID NOT SEED AS PLANNED</u>	<u>N</u>
Preservation of existing vegetation?	☒				<u>Y</u>
Physical Stabilization: Hydraulic Mulch, Hydroseeding, Soil Binders, Straw Mulch					
Geotextiles, Plastic Covers, Erosion Prevention Blankets, Wood Mulching	☒			<u>NOT ENOUGH PLASTIC COVERS FOR STOCKPILES</u>	<u>NO</u>
Site Drainage: Outlet Protection/Slope Drain	☒				<u>Y</u>
Inlet/Outlet Protection	☒				<u>Y</u>
Sediment Control/Containment					
Perimeter Protection: Silt Fencing, Gravel Bags, Fiber Rolls	☒				<u>Y</u>

BMP	Yes	No	N/A	Description/Explanation	Effective Yes/No
Storm Drain inlet protection: Sediment Trap, De-silting Basin, Gravel Bag Barrier	Y				Y
Tracking Controls: Stabilized Entrance/Exit Road Stabilization, Tire Wash, Street Sweeping	Y			ENTRANCE NEEDS TO BE CLEANED. ALSO NEED STREET SWEEP	NO
Materials and Equipment Management					
Are materials and wastes stored in a manner that minimizes or eliminates the potential to discharge these materials to the storm drain system, is secondary containment used?	Y				Y
Are material stockpiles protected: covered, contained and located away from non-storm water discharges?	Y			SOME ARE COVERED SOME ARE NOT	NO
Are heavy equipment and vehicles parked in designated areas with permeable surface?	Y				Y
Are appropriate spill response and containment measures kept on the site?	Y				Y
Are wastes managed and stored properly (Solid, liquid, sanitary, concrete, hazardous)	Y				Y
Are concrete washouts properly installed, maintained with no evidence of discharges.	Y				Y
Is timely service and removal provided to prevent waste containers and sanitary facilities from overflowing?	Y				Y
Non-Storm Water Management					
Is the site free of evidence of illegal connections and/or illicit discharges?	Y				Y
Discharge Locations					
Are the discharge locations free of significant erosion or sediment transport?		N		TC-1 IS DOWNSTREAM OF UPPER SITE; NEEDS TO BE CLEANED	NO
Other					
Are there any other potential storm water pollution issues/concerns?	Y			RAIN EVENT TODAY, TC-1 SHOULD BE PROTECTED	NO
Was there any employee or subcontractor training on stormwater BMPs?		N			

VIOLATIONS

- ☐ No violations noted at time of inspection/investigation
☐ No violations; however, recommended corrective actions required
☐ Inspection Form as Correct Work Notice ☐ Correct Work Notice Issued on: _____
☒ Violation: Illegal Discharge/Illegal Connection/Improper BMPs Implementation
☒ Stop Work Notice Issued on: 12/2/14

RECOMMENDED CORRECTIVE ACTION

SEE STOP WORK NOTICE - Discharge is
 IMMINENT IF NOAA FORECAST CORRECT: 100% Heavy
 RAIN THIS AFTERNOON.
 I CALL TO TIM ANDERSON THIS MORNING AT 9AM.
 LEFT V. MAIL THAT SITUATION NEEDED ATTENTION ASAP - NO
 RETURN CALL



NOTICE

DATE: 12/4/2014
PROJECT: Valencia
PROJECT #: GIR-1692
ADDRESS: SAN ANTONIO PL

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***STOP/ CORRECT WORK ADEQUATELY ADDRESSED (DATE/SIGNATURE) _____

- CC: ☒ City Engineer
☒ Engineering
☐ Management Analyst
☐ Code Compliance
☐ Building
☒ RWQCB

ISSUED TO: Tim Anderson (Email)
DATE/TIME: 12/4/2014 10AM
BY: GARY HARPER
TITLE: ENG. INSPECTOR
PHONE: (619) 454 1272

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CALL THE CITY OF LEMON GROVE'S
DEVELOPMENT SERVICES DEPARTMENT AT
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CITY OF LEMON GROVE ADMINISTRATIVE CITATION

A) TYPE OF VIOLATION

Circle One:

Warning

1st Citation
\$100

2nd Citation
\$200

3rd Citation
\$500

4th Citation
\$1,000

Payment of \$ — is due no later than — to the City of Lemon Grove.
The City accepts cash, check or credit card.

If the violation is not corrected by the date specified therein and/or payment is not received by the date above, the next level of citation may be issued, other enforcement actions may occur, and penalties may be assessed (25% and interest at the rate of 10% per month). Payment of fine does not excuse or discharge the failure to correct violation identified below.

B) RESPONSIBLE PARTY INFORMATION

Person Cited:

Anderson
(Last Name)

Tim
(First Name)

Circle One:

Property Owner

Tenant

Business Owner

Other

Site Representative
/ Project Manager

Mailing Address:

3194-C2

Airport Loop Drive

Business Name (if applicable):

Corte Mesa, CA 92626
BCT Development

C) VIOLATION(S) INFORMATION

Date (Violation Observed):

12/11/14

Time (Violation Observed):

4:00-5:00 P.M.

Location of Violation:

1350 San Altos, LG / Valencia
(Street Address)

(APN)

Violation(s) Observed (Code Section and Description):

B.4B.060

18.0B.560

Inadequate BMP's - see
attached inspection reports

18.0B.170

18.0B.180

D) CORRECTION(S) REQUIRED (with date to complete corrections)

Install BMP's per Recommendation's
Maintain adequate surplus of BMP's

12/15/14

5:00 P.M.

E) SERVICING CITATION INFORMATION

Enforcing Officer Name

Leon Fingst

Phone No.

619-825-3825

Signature

[Signature]

Date

12/11/14

Person Cited - Signature Acknowledging Receipt

(Date)

Citation Served (circle one):

In Person

By Mail

/ Email
Posted on Property

This citation may be appealed within thirty (30) days from date of correction identified in Section D. To request an appeal, a Request an Appeal Hearing form (available at City Hall) should be completed and returned to City Hall. In the event a Hardship Waiver is requested, the Request for an Appeal Hearing and Hardship Waiver forms are required within fifteen (15) days from the correction date identified in Section D.

WHITE-ORIGINAL

PINK-COPY

CITATION CARD-OWNER

Lemon Grove Municipal Code

[Up](#)[Previous](#)[Next](#)[Main](#)[Search](#)[Print](#)[No Frames](#)[Title 8 HEALTH AND SAFETY](#)[Chapter 8.48 STORMWATER MANAGEMENT AND DISCHARGE CONTROL](#)**8.48.060 Best management practice requirements and general requirements applicable to all dischargers.**

A. **Applicable Requirements.** All dischargers in the city must comply with the generally applicable prohibitions and requirements in Sections 8.48.010 through 8.48.060 of this chapter, and must also comply with any other parts of this chapter (including relevant parts of the Manual) that are applicable to the type of facility or activity owned or operated by that discharger.

B. **Minimum Best Management Practices for All Dischargers.** All dischargers in the city must install, implement and maintain at least the following minimum BMPs:

1. **Eroded Soils.** Prior to the rainy season, dischargers must remove or secure any significant accumulations of eroded soils from slopes previously disturbed by clearing or grading, if those eroded soils could otherwise enter the stormwater conveyance system or receiving waters during the rainy season.
2. **Pollution Prevention.** Dischargers employing ten or more persons on a full-time basis shall implement those stormwater pollution prevention practices that are generally recognized in that discharger's industry or business as being effective and economically advantageous.
3. **Prevention of Illegal Discharges.** Illicit connections must be eliminated (even if the connection was established pursuant to a valid permit and was legal at the time it was constructed), and illegal discharge practices eliminated.
4. **Slopes.** Completed slopes that are more than five feet in height, more than two hundred fifty square feet in total area, and steeper than 3:1 (run-to-rise) that have been disturbed at any time by clearing, grading, or landscaping, shall be protected from erosion prior to the first rainy season following completion of the slope, and continuously thereafter.
5. **Storage of Materials and Wastes.** All materials and wastes with the potential to pollute urban runoff shall be stored in a manner that either prevents contact with rainfall and stormwater, or contains contaminated runoff for treatment and disposal.
6. **Use of Materials.** All materials with the potential to pollute urban runoff (including, but not limited to, cleaning and maintenance products used outdoors, fertilizers, pesticides and herbicides, etc.) shall be used in accordance with label directions. No such product may be disposed of or rinsed into receiving waters or the stormwater conveyance system.

C. **Inspection, Maintenance, Repair and Upgrading of BMPs.** BMPs at manned facilities must be inspected by the discharger before and following predicted rain events. BMPs at unmanned facilities must be inspected by the discharger at least once during the rainy season and at least once between each rainy season. These BMPs must be maintained so that they continue to function as designed. BMPs that fail must be repaired as soon as it is safe to do so. If the failure of a BMP indicates that the BMPs in use are inappropriate or inadequate to the circumstances, the BMPs must be modified or upgraded to prevent any further failure in the same or similar circumstances.

D. **Stormwater Pollution Prevention Plan.** An authorized enforcement official may require a commercial, industrial or land disturbance activity discharger to prepare and submit an SWPPP for approval by that official if: (1) the discharger does not come into compliance with this chapter after one or more warnings (or other enforcement action) that BMPs are inadequate or are not being adequately maintained; or (2) the facility or activity at issue is a significant source of contaminants to receiving waters despite compliance with this

chapter. Any discharger required to submit and to obtain approval of an SWPPP shall install, implement, and maintain the BMPs specified in the approved SWPPP.

The SWPPP shall identify the BMPs that will be used by the discharger to prevent or control pollution of stormwater to the MEP. If the facility is an industrial facility, the SWPPP submitted to the city shall at a minimum meet the requirements of the state NPDES general industrial stormwater permit. If the activity at issue is a construction or land disturbance activity, the SWPPP submitted to the city shall at a minimum meet the requirements of the state NPDES general construction stormwater permit. If a facility required to submit an SWPPP to the city discharges non-stormwater to groundwater, the facility shall obtain an RWQCB permit as required by the State Water Code, and shall describe the requirements of that permit in the SWPPP.

Whenever submission of an SWPPP is required pursuant to this chapter, an authorized enforcement official may take existing city BMPs into account when determining whether the practices proposed in the SWPPP are BMPs that will prevent or control pollution to the required level of MEP.

E. Notification of Spills, Releases and Illegal Discharges. Spills, releases, and illegal discharges of pollutants to receiving waters or to the stormwater conveyance system shall be reported by the discharger as required by all applicable state and federal laws. In addition, any such spills, releases and illegal discharges with the potential to endanger health, safety or the environment shall be reported to the Directors within twenty-four hours after discovery of the spill, release or discharge. If safe to do so, necessary actions shall be taken to contain and minimize the spill, release or illegal discharge.

F. Sampling, Testing, Monitoring and Reporting. Commercial, industrial or land disturbance activity dischargers shall perform the sampling, testing, monitoring and reporting required by this chapter. In addition, an authorized enforcement official may order a discharger to conduct testing or monitoring and to report the results to the city if: (1) the authorized enforcement official determines that testing or monitoring is needed to determine whether BMPs are effectively preventing or reducing pollution in stormwater to the MEP, or to determine whether the facility is a significant source of contaminants to receiving waters; or (2) the authorized enforcement official determines that testing or monitoring is needed to assess the impacts of an illegal discharge on health, safety or the environment; or (3) an illegal discharge has not been eliminated after written notice by an authorized enforcement official; or (4) repeated violations have been documented by written notices from authorized enforcement officials; or (5) the RWQCB requires the city to provide any information related to the discharger's activities.

Testing and monitoring ordered pursuant to this subsection may include the following:

1. Visual monitoring of dry weather flows, wet weather erosion, and/or BMPs;
2. Visual monitoring of premises for spills or discharges;
3. Laboratory analyses of stormwater or non-stormwater discharges for pollutants;
4. Background or baseline monitoring or analysis; and
5. Monitoring of receiving waters or sediments that may be affected by pollutant discharges by the discharger (or by a group of dischargers including the discharger).

The authorized enforcement official may direct the manner in which the results of required testing and monitoring are reported, and may determine when required sampling, testing or monitoring may be discontinued.

G. Mitigation. All illegal discharges must be mitigated within a reasonable period of time to correct or compensate for all damage to the environment caused by the illegal discharge. The authorized enforcement official shall determine whether mitigation measures proposed or completed by the discharger meet this standard. The authorized enforcement official shall require the discharger to submit a mitigation plan and schedule by a specified date prior to taking action, and to submit a summary of completed mitigation by a specified date. Notwithstanding the granting of any period of time to the discharger to correct the damage, the

discharger shall remain liable for some or all of any fines or penalties imposed pursuant to this chapter, or by the RWQCB. (Ord. 369 § 1, 2008)

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Title 18 CITYWIDE REGULATIONS Chapter 18.08 EXCAVATION AND GRADING Article II. Permits and Fees						

18.08.170 Erosion control required.

A. Plans for an erosion control system shall be prepared and submitted for the review and approval of the city engineer as a part of any application for a construction permit. The erosion control system shall comply with the requirements of the latest national pollutant discharge elimination system permit, Chapters 8.48 and this chapter to satisfy the requirements for erosion control and eliminate the discharge of sediment and pollutants. The erosion control plan shall include, but not be limited to, the following information:

1. Name, address, and a twenty-four hour phone number of the owner or responsible party, and the person or contractor responsible for installing and maintaining the erosion control system and performing emergency erosion control work;
2. The name, address and signature of the civil engineer or person who prepared the plan;
3. All desilting basins, debris basins, silt traps, and other desilting, velocity retarding and protection facilities necessary to adequately protect the site and downstream properties from erosion and its effects, preserve natural hydrologic features, and preserve riparian buffers and corridors;
4. The streets, easements, drains, and other improvements;
5. The location and placement of gravel bags, diverters, check dams, slope planting, drains, and other erosion controlling devices and measures;
6. Access routes to all such erosion control facilities and how access shall be maintained during inclement weather.

B. Erosion control system standards shall be as follows:

1. The faces of cut-and-fill slopes and the project site shall be prepared and maintained to control against erosion. Where cut slopes are not subject to erosion due to the erosion-resistant character of the materials, such protection may be omitted upon approval of the city engineer.
2. Where necessary, temporary and/or permanent erosion control devices such as desilting basins, check dams, cribbing, riprap, or other devices or methods as approved by the city engineer, shall be employed to control erosion, prevent discharge of sediment, and provide safety.
3. Temporary desilting basins constructed of compacted earth shall be compacted to a relative compaction of ninety percent of maximum density. A gravel bag or plastic spillway must be installed for overflow, as designed by the engineer of work, to avoid failure of the earthen dam. A soils engineering report prepared by the soils engineer, including the type of field-testing performed, location and results of testing shall be submitted to the city engineer for approval upon completion of the desilting basins.
4. Desilting facilities shall be provided at drainage outlets from the graded site, and shall be designed to provide a desilting capacity capable of containing the anticipated runoff for a period of time adequate to allow reasonable settlement of suspended particles.
5. Desilting basins shall be constructed around the perimeter of projects, whenever feasible, and shall provide improved maintenance access from paved roads during wet weather. Grading cost estimates must include maintenance and ultimate removal costs for temporary desilting basins.
6. The erosion control provisions shall take into account drainage patterns during the current and future phases of grading.

7. All removable protective devices shown shall be in place at the end of each working day when there is a fifty percent chance of rain within a forty-eight hour period. If the developer does not provide the required installation or maintenance of erosion control structures within two hours of notification at the twenty-four hour number on the plans, the city engineer may order city crews to do the work or may issue contracts for such work and charge the cost of this work along with reasonable overhead charges to the cash deposits or other instruments implemented for this work without further notification to the owner. No additional work on the project except erosion control work may be performed until the full amount drawn from the deposit is restored by the developer.

8. At any time of year, an inactive site shall be fully protected from erosion and discharges of sediment. Flat areas with less than five percent grade shall be fully covered unless sediment control is provided through desiltation basins at all project discharge points. A site is considered inactive if construction activities have ceased for a period of ten or more consecutive days.

C. No grading work shall be allowed between October 1st and the following April 30th on any site when the city engineer determines that erosion, mudflow or sediment or silt discharge may adversely affect downstream properties, drainage courses, storm drains, streets, easements, or public or private facilities or improvements unless an approved erosion control system has been implemented on the site. If the city determines that it is necessary for the city to cause erosion control measures to be installed or cleanup to be done, the developer shall pay all of the city's direct and indirect costs including extra inspection, supervision, and reasonable overhead charges. (Ord. 371 § 1, 2008)

Lemon Grove Municipal Code[Up](#)[Previous](#)[Next](#)[Main](#)[Search](#)[Print](#)[No Frames](#)[Title 18 CITYWIDE REGULATIONS](#)[Chapter 18.08 EXCAVATION AND GRADING](#)[Article II. Permits and Fees](#)**18.08.180 BMP maintenance.**

All BMPs for erosion prevention and sediment control shall be functional at all time. Prior to the rainy season and after each major storm, all source control and structural treatment BMPs shall be inspected to assure the functionality. BMP maintenance shall be conducted throughout the life of the project. (Ord. 371 § 1, 2008)

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Chapter 18.08 EXCAVATION AND GRADING							
Article V. Grading Operations							

18.08.560 Responsibility of permittee.

It shall be the responsibility of the permittee to know the conditions and/or restrictions placed on the grading permit and as outlined in applicable sections of this chapter, and as continued on the approved report (s) and to insure that all contractors, subcontractors, employees, agents and consultants are also knowledgeable of the same, and insure that they carry out the proposed work in accordance with the approved plans and specifications and with the requirements of the permit and this chapter. The permittee shall also be responsible to maintain in an obvious and accessible location on the site, a copy of the permit and grading plans bearing the approval of the city engineer. (Ord. 371 § 1, 2008)

Meeting Minutes/Phone Record



CITY OF LEMON GROVE
Engineering Department
3232 Main Street
Lemon Grove, CA 91945
619-825-3811

Date: 12/11/14 5:00 P.M.	Project: Valencia
☐ Meeting ☐ Phone ☒ Site Visit	
Attendees: Leon + Gary	
Notes: Site inspection to review recommended "Construction BMP Recommendations" from 12/9/14 inspection (attached).	
① No erosion control provided. ② Insufficient/Improperly installed check dams. ③ Repair + stabilization of gullies not completed. ④ Not completed. ⑤ Completed. ⑥ Not visible. ⑦ Mostly complete. ⑧ N/A	



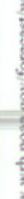
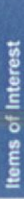
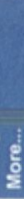
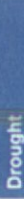
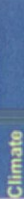
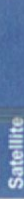
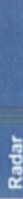
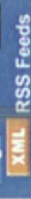
National Weather Service Forecast Office San Diego, CA

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Enter location



Warnings and/or Advisories In Effect for this Point:

[Flash Flood Watch](#)
[Wind Advisory](#)

For warnings and/or advisories in effect for adjacent areas to this point, see <http://www.wrhi.noaa.gov/sgx>

Change Table Font Size Increase Decrease

Forecast For Lat/Lon: 32.7370/-117.0200 (Elev. 492 ft)
Lemon Grove CA

Forecast Created at: 6pm PST Dec 11, 2014

Custom Weather Forecast Table

	Thu Dec 11	Fri Dec 12	Sat Dec 13	Sun Dec 14	Mon Dec 15	Tue Dec 16
Weather	Chance Rain	Slight Chance Rain Rain Likely Rain Showers and TStorms	High 63 Low 51 Chance Rain Showers	High 65 Low 48 Chance Rain	High 64 Low 50 Chance Rain	High 64 Low 52 Likely Rain
Daily-Temp	High 67 Low 53	High 63 Low 58	High 63 Low 51	High 65 Low 48	High 64 Low 50	High 64 Low 52
Chance of Precip	0% 0% 5% 45%	0% 0% 5% 45%	0% 0% 5% 45%	0% 0% 5% 45%	0% 0% 5% 45%	0% 0% 5% 45%
Precip	0.00" 0.00" 0.00" 0.01"	0.00" 0.00" 0.00" 0.01"	0.00" 0.00" 0.00" 0.00"	0.00" 0.00" 0.00" 0.00"	0.00" 0.00" 0.00" 0.00"	0.00" 0.00" 0.00" 0.00"
12-hr Snow Total	0" 0" 0" 0"	0" 0" 0" 0"	0" 0" 0" 0"	0" 0" 0" 0"	0" 0" 0" 0"	0" 0" 0" 0"
FRET	0.06"	0.06"	0.05"	0.06"	0.07"	0.07"
6-Hour Temp	4am 53 62 65 60 10pm 58 61 60 54	4am 58 61 60 54 10pm 58 61 60 54	4am 52 59 59 52 10pm 52 59 59 52	4am 49 59 59 54 10pm 49 59 59 54	4am 51 59 59 55 10pm 51 59 59 55	4am 53 60 61 55 10pm 53 60 61 55
Cloudiness	86% 49% 75% 100%	86% 49% 75% 100%	86% 49% 75% 100%	86% 49% 75% 100%	86% 49% 75% 100%	86% 49% 75% 100%
Dewpoint	52 53 54 53	52 53 54 53	52 53 54 53	52 53 54 53	52 53 54 53	52 53 54 53
Relative Humidity	94% 73% 67% 78%	94% 73% 67% 78%	94% 73% 67% 78%	94% 73% 67% 78%	94% 73% 67% 78%	94% 73% 67% 78%
Wind	S 2 7 8 10 SE 15 15 15 15	S 2 7 8 10 SE 15 15 15 15	S 2 7 8 10 SE 15 15 15 15	S 2 7 8 10 SE 15 15 15 15	S 2 7 8 10 SE 15 15 15 15	S 2 7 8 10 SE 15 15 15 15
Snow Level (ft)	9317 9161	7608 6313 5478 5212	5704		6701 5923 5850 5993 5805 5704	561

Forecast Weather Table Interface

Select Weather Format

- ☐ Custom Weather Table
- ☐ XML
- ☐ Point Forecast Page
- ☐ Point Forecast Matrix
- ☐ Hourly Tabular Forecast
- ☐ Hourly Weather Graph

Interval in Hours: 1 3 6

Duration in Days: 1 2 3 4 5 6 7

Enter a Location or Click on Map Below

Search by address, city, state, latitude/longitude...



CITY OF LEMON GROVE
3232 Main Street, Lemon Grove, CA 91945

NPDES STORMWATER PROGRAM CONSTRUCTION STORMWATER COMPLIANCE INSPECTION FORM

Inspector Name /Signature/Date/Time: TAD NAKATANI / [Signature] / 12/11/14 9:00AM

Inspection: ☐ Permit-Required Inspection ☒ Follow-up Inspection ☐ Other (Explain) _____

Construction Project Priority: ☐ High ☒ Medium ☐ Low

GENERAL INFORMATION

Grading or Building Permit #: Gr-1692

Project Name & Type: VALENCIA SUBDIVISION

Project Location & Address: SAN ALTOS PLACE

Contractor's Name & Telephone #: ANDERSON DEVELOPMENT (949) 275-6739

Property Owner & Telephone #: SAN ALTOS LLC

Is this Project Greater than an Acre? ☒ Yes ☐ No ☐ N/A

If yes: Provide Record of Waste Discharge Identification Number (WDID#): 937C 369143

Does this Project have an NOI/SWPPP Available? ☒ Yes ☐ No ☐ N/A

Is Weather Triggered Action Plan Completed? ☐ Yes ☐ No ☒ N/A

Is Advanced Treatment Implemented Appropriately? ☐ Yes ☐ No ☒ N/A

Is More than 17 Acres of Cleared or Graded Areas Left Exposed at Any Given Time? ☐ Yes ☒ No ☐ N/A

Is 125% of Materials to Install Standby BMPs Available? ☐ Yes ☒ No ☐ N/A

Are Routine Self-Inspections Being Conducted by Developer/Owner? ☐ Yes ☐ No ☐ N/A

Project Site is in What Sub-Watershed: ☒ Chollas Creek 908.22 ☐ Sweetwater River 909.12

Nearest Conveyances or Water Bodies: _____

BMP	Yes	No	N/A	Description/Explanation	Effective Yes/No
Soil Stabilization and Erosion Prevention					
Preservation of existing vegetation?			☒		
Physical Stabilization: Hydraulic Mulch, Hydroseeding, Soil Binders, Straw Mulch	☒			Grulies & unstabilized pads still not addressed	No
Geotextiles, Plastic Covers, Erosion Prevention Blankets, Wood Mulching	☒			some plastic sheets added but not yet sufficient	No
Site Drainage: Outlet Protection/Slope Drain		☒			
Inlet/Outlet Protection	☒			see inlet protection comment below	No
Sediment Control/Containment					
Perimeter Protection: Silt Fencing, Gravel Bags, Fiber Rolls	☒			Additional fiber rolls not placed on slopes yet	No
Storm Drain inlet protection: Sediment Trap, De-silting Basin, Gravel Bag Barrier	☒			Per discussion w/contractor, they still need to add gravel bag inlet protection	No

BMP	Yes	No	N/A	Description/Explanation	Effective Yes/No
Tracking Controls: Stabilized Entrance/Exit Road Stabilization, Tire Wash, Street Sweeping	X			NE entrance still not stabilized but not currently in use	No
Materials and Equipment Management					
Are materials and wastes stored in a manner that minimizes or eliminates the potential to discharge these materials to the storm drain system, is secondary containment used?	X				Yes
Are material stockpiles protected: covered, contained and located away from non-storm water discharges?	X			still need to protect all stockpiles	No
Are heavy equipment and vehicles parked in designated areas with permeable surface?	X				Yes
Are appropriate spill response and containment measures kept on the site?	X				Yes
Are wastes managed and stored properly (Solid, liquid, sanitary, concrete, hazardous)	X				Yes
Are concrete washouts properly installed, maintained with no evidence of discharges.	X				Yes
Is timely service and removal provided to prevent waste containers and sanitary facilities from overflowing?	X				Yes
Non-Storm Water Management					
Is the site free of evidence of illegal connections and/or illicit discharges?	X				Yes
Discharge Locations					
Are the discharge locations free of significant erosion or sediment transport?		X		still need to clean sediment on Akins	No
Other					
Are there any other potential storm water pollution issues/concerns?	X			Regrading stabilization still needed	No
Was there any employee or subcontractor training on stormwater BMPs?			X		

VIOLATIONS

- ☐ No violations noted at time of inspection/investigation
☒ No violations; however, recommended corrective actions required
☒ Inspection Form as Correct Work Notice ☐ Correct Work Notice Issued on: _____
☐ Violation: Illegal Discharge/Illegal Connection/Improper BMPs Implementation
☐ Stop Work Notice Issued on: _____

RECOMMENDED CORRECTIVE ACTION

FLOW ALONG SOUTHERN EDGE OF SITE HAS BEEN
 REDIRECTED AWAY FROM THE CORNER. ALL OTHER CORRECTIVE
 ACTIONS FROM THE 12/9/14 INSPECTION HAVE NOT YET
 BEEN ADDRESSED. REFER TO THAT INSPECTION FOR FULL
 DESCRIPTION OF CORRECTIVE ACTIONS.



CITY OF LEMON GROVE
3232 Main Street, Lemon Grove, CA 91945

NPDES STORMWATER PROGRAM CONSTRUCTION STORMWATER COMPLIANCE INSPECTION FORM

Inspector Name /Signature/Date/Time: TAD NAKATANI 12/9/14 1:00 pm

Inspection: ☒ Permit-Required Inspection ☐ Follow-up Inspection ☐ Other (Explain) _____

Construction Project Priority: ☒ High ☒ Medium ☐ Low

GENERAL INFORMATION

Grading or Building Permit #: Gr-1692

Project Name & Type: VALENCIA SUBDIVISION

Project Location & Address: SAN ALTOS PLACE

Contractor's Name & Telephone #: ANDERSON DEVELOPMENT (949) 275-6739

Property Owner & Telephone #: SAN ALTOS LLC

Is this Project Greater than an Acre? ☒ Yes ☐ No ☐ N/A

If yes: Provide Record of Waste Discharge Identification Number (WDID#): 937C369143

Does this Project have an NOI/SWPPP Available? ☒ Yes ☐ No ☐ N/A

Is Weather Triggered Action Plan Completed? ☐ Yes ☐ No ☒ N/A

Is Advanced Treatment Implemented Appropriately? ☐ Yes ☐ No ☒ N/A

Is More than 17 Acres of Cleared or Graded Areas Left Exposed at Any Given Time? ☐ Yes ☐ No ☐ N/A

Is 125% of Materials to Install Standby BMPs Available? ☐ Yes ☒ No ☐ N/A

Are Routine Self-Inspections Being Conducted by Developer/Owner? ☐ Yes ☐ No ☐ N/A

Project Site is in What Sub-Watershed: ☒ Chollas Creek 908.22 ☐ Sweetwater River 909.12

Nearest Conveyances or Water Bodies: _____

BMP	Yes	No	N/A	Description/Explanation	Effective Yes/No
Soil Stabilization and Erosion Prevention					
Preservation of existing vegetation?			☒		
Physical Stabilization: Hydraulic Mulch, Hydroseeding, Soil Binders, Straw Mulch	☒			Gullies through edges of hydroseeding mats Some mats not secured, northern row not secured	No
Geotextiles, Plastic Covers, Erosion Prevention Blankets, Wood Mulching		☒			
Site Drainage: Outlet Protection/Slope Drain		☒			
Inlet/Outlet Protection		☒			
Sediment Control/Containment					
Perimeter Protection: Silt Fencing, Gravel Bags, Fiber Rolls	☒			Additional fiber rolls needed on western slope	No
Storm Drain inlet protection: Sediment Trap, De-silting Basin, Gravel Bag Barrier		☒			

BMP	Yes	No	N/A	Description/Explanation	Effective Yes/No
Tracking Controls: Stabilized Entrance/Exit Road Stabilization, Tire Wash, Street Sweeping	X			MC entrance lacks stabilization	No
Materials and Equipment Management					
Are materials and wastes stored in a manner that minimizes or eliminates the potential to discharge these materials to the storm drain system, is secondary containment used?	X				Yes
Are material stockpiles protected: covered, contained and located away from non-storm water discharges?	X			Several off unprotected stockpiles	No
Are heavy equipment and vehicles parked in designated areas with permeable surface?	X				Yes
Are appropriate spill response and containment measures kept on the site?	X				Yes
Are wastes managed and stored properly (Solid, liquid, sanitary, concrete, hazardous)	X				Yes
Are concrete washouts properly installed, maintained with no evidence of discharges.	X				Yes
Is timely service and removal provided to prevent waste containers and sanitary facilities from overflowing?	X				Yes
Non-Storm Water Management					
Is the site free of evidence of illegal connections and/or illicit discharges?	X				Yes
Discharge Locations					
Are the discharge locations free of significant erosion or sediment transport?		X		Large amount of sediment on roadway SE of site	No
Other					
Are there any other potential storm water pollution issues/concerns?	X			Roadways within project are unstabilized and show signs of erosion	No
Was there any employee or subcontractor training on stormwater BMPs?			X		

VIOLATIONS

☐ No violations noted at time of inspection/investigation

☒ No violations; however, recommended corrective actions required

☒ Inspection Form as Correct Work Notice ☐ Correct Work Notice Issued on: _____

☐ Violation: Illegal Discharge/Illegal Connection/Improper BMPs Implementation

☐ Stop Work Notice Issued on: _____

RECOMMENDED CORRECTIVE ACTION

- Add erosion controls to all ^{ditches} ~~eros~~ inactive for 10 days, including roadways not currently in use.
- Cover & protect stockpiles
- Repair/protect gullies that have formed on slopes
- Redirect flow near southeast corner so it does not flow toward damaged wall
- Sweep road outside of construction entrance
- Install check dams of stabilization on roadways prior to rain

Construction BMP Recommendations

Site: VALENCIA SUBDIVISION

Date: 12/9/14

Recommendations:

- ① • Add erosion control to road segment (by northern corner) that are not in use. Can be hydroseeded or stabilized with gravel.
- ② • For roads that are in use, add check dams prior to rain. Ensure proper installation to prevent rills from forming underneath BMP if using fiber rolls
- ③ • Repair ^{erode} gullies in slopes on edges of pads. May consider using erosion control blankets.
- ④ • A couple pads on western side do not appear hydroseeded. Add hydroseed or other erosion control
- ⑤ • Cover & protect stockpiles. Some stockpiles near entrance are only partially covered. Others to the west are completely uncovered
- ⑥ • Ensure that enough BMP materials are kept on site. Not enough fiber rolls were on site
- ⑦ • Redirect flow along the southern side of site. It currently is causing erosion along the road and directs flow to a damaged wall. Direct away from wall and break up flow with check dams to prevent erosion
- ⑧ • Sweep road to remove sediment

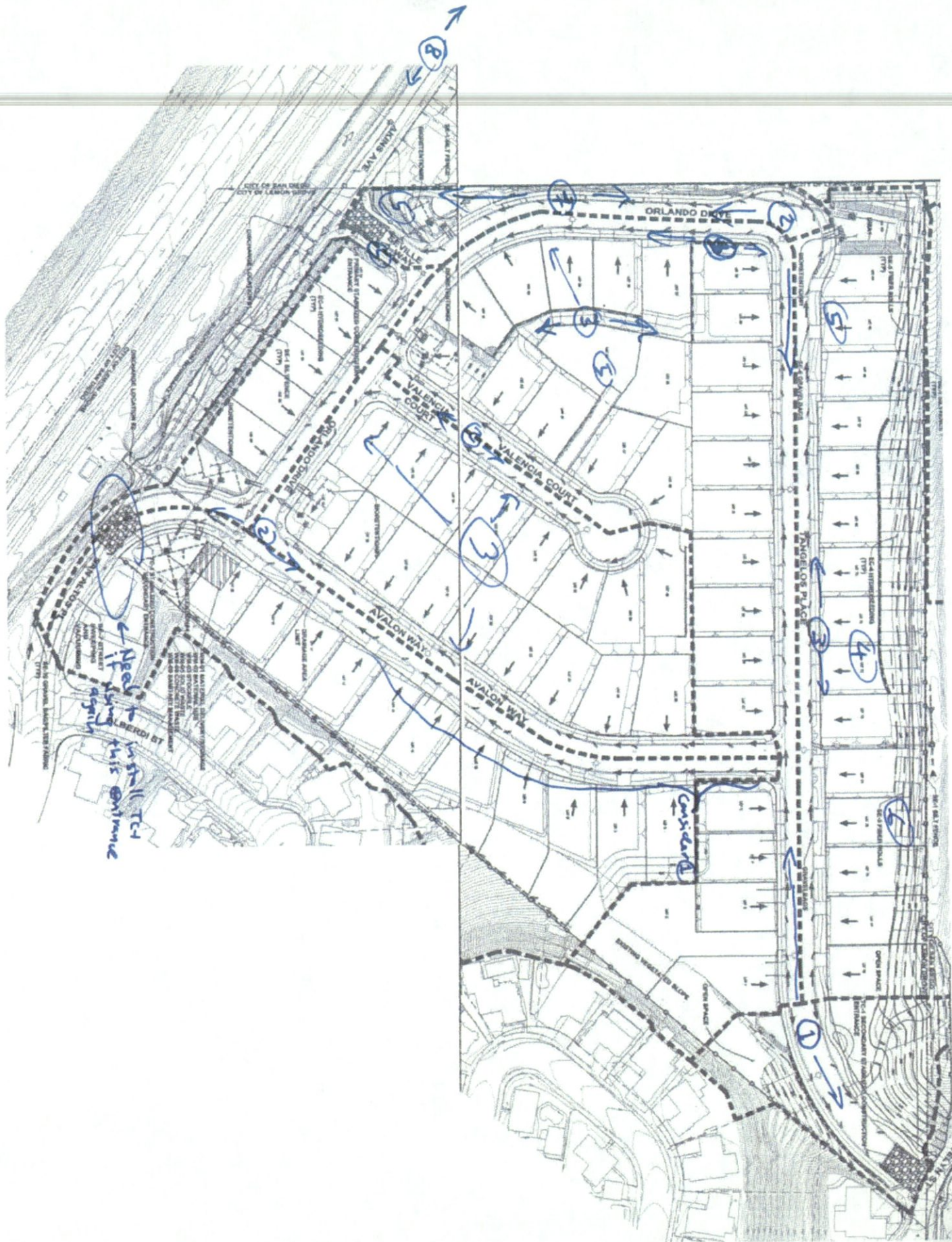


Exhibit No. 18

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

FACILITY INSPECTION REPORT

FACILITY: Valencia Hills INSPECTION DATE/TIME: May 8, 2015; 19:00 WDID/FILE NO.: 93 7C369143

REPRESENTATIVE(S) PRESENT DURING INSPECTION:

NAME: Frank Melbourn

AFFILIATION: San Diego Water Board

NAME: Unnamed Security Guard

AFFILIATION: Unknown

San Altos-Lemon Grove, LLC
NAME OF OWNER, AGENCY OR PARTY RESPONSIBLE FOR DISCHARGE

BCA Development, Inc.
FACILITY OR DEVELOPER NAME (if different from owner)

5780 Fleet Avenue
Carlsbad, CA 92008
OWNER MAILING ADDRESS

1350 San Altos Place
Lemon Grove, CA 91945
FACILITY ADDRESS

Ben Anderson, 714-966-1544
OWNER CONTACT NAME AND PHONE #

Same
FACILITY OR DEVELOPER CONTACT NAME AND PHONE #

APPLICABLE WATER QUALITY LICENSING REQUIREMENTS:

- | | |
|---|---|
| ☐ MS4 URBAN RUNOFF REQUIREMENTS | ☐ GENERAL OR INDIVIDUAL WASTE DISCHARGE REQUIREMENTS OR NPDES |
| ☒ CONSTRUCTION GENERAL PERMIT | ☐ GENERAL OR INDIVIDUAL WAIVER OF WASTE DISCHARGE REQUIREMENTS |
| ☐ CALTRANS GENERAL PERMIT | ☐ SECTION 401 WATER QUALITY CERTIFICATION |
| ☐ INDUSTRIAL GENERAL PERMIT | ☐ CWC SECTION 13264 |

INSPECTION TYPE (Check One):

- ☐ "A" TYPE COMPLIANCE--COMPREHENSIVE INSPECTION IN WHICH SAMPLES ARE TAKEN. (EPA TYPE S)
- ☐ "B" TYPE COMPLIANCE--A ROUTINE NONSAMPLING INSPECTION. (EPA TYPE C)
- ☒ NONCOMPLIANCE FOLLOW-UP--INSPECTION MADE TO VERIFY CORRECTION OF A PREVIOUSLY IDENTIFIED VIOLATION.
- ☐ ENFORCEMENT FOLLOW-UP--INSPECTION MADE TO VERIFY THAT CONDITIONS OF AN ENFORCEMENT ACTION ARE BEING MET.
- ☐ COMPLAINT--INSPECTION MADE IN RESPONSE TO A COMPLAINT.
- ☐ PRE-REQUIREMENT--INSPECTION MADE TO GATHER INFO. RELATIVE TO PREPARING, MODIFYING, OR RESCINDING REQUIREMENTS.
- ☐ NO EXPOSURE CERTIFICATION (NEC) - VERIFICATION THAT THERE IS NO EXPOSURE OF INDUSTRIAL ACTIVITIES TO STORM WATER.
- ☐ NOTICE OF TERMINATION REQUEST FOR INDUSTRIAL FACILITIES OR CONSTRUCTION SITES - VERIFICATION THAT THE FACILITY OR CONSTRUCTION SITE IS NOT SUBJECT TO PERMIT REQUIREMENTS.
- ☐ 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)

EXHIBIT 5
REPORTER M. 1/6/2
WITNESS C. Clemente
DATE 1-22-16

Facility: Valencia Hills

Inspection Date: May 8, 2015

I. COMPLIANCE HISTORY / PURPOSE OF INSPECTION

On August 14, 2014, the City of Lemon Grove (City) notified the San Diego Water Board of an unauthorized non-storm water discharge to the City's Municipal Separate Storm Sewer System (MS4) from the Site caused by a contractor hitting a 12-inch water main. On August 15, 2014, the San Diego Water Board issued a Staff Enforcement Letter (SEL) via email to San Altos-Lemon Grove, LLC (Discharger) notifying them that the non-storm water discharge from the Site was an unauthorized discharge, with a request for additional information. The Qualified SWPPP¹ Practitioner (QSP) estimated that approximately 31,000 gallons of potable water discharged through the Site, and was "brown and sediment laden" when it discharged from the Site.

On December 2, 2014, the City issued a Stop Work/Notice of Violation to the Site for failing to implement Best Management Practices (BMPs) required by local storm water ordinances. The City's inspection form issued with the Stop Work/Notice of Violation noted inadequate implementation of erosion controls, entrance/exit stabilization, and stockpile management and warned the project manager that a "discharge is imminent" without adequate BMPs. The Discharger was required to stop work and implement BMPs to be prepared for a storm event that was expected to occur on December 3 and 4, 2014. The Discharger failed to implement BMPs before the storm, resulting in unauthorized discharges of sediment and sediment laden storm water runoff from the Site to an unnamed tributary to Chollas Creek. The City issued a second Stop Work/Notice of Violation to the Discharger on December 4, 2014, for the illegal discharges to the City's MS4.

The City conducted a follow up inspection of the Site on December 9, 2014, and noted the same BMP deficiencies identified before the December 3 and 4, 2014, storm event, as well as additional deficiencies in perimeter sediment controls. The City's inspection form identified areas to be addressed by the Discharger and recommended appropriate BMPs.

The Discharger again failed to implement BMPs before a storm event on December 11, 2014, and again it resulted in unauthorized discharges of sediment and sediment laden storm water from the Site to an unnamed tributary to Chollas Creek. On December 11, 2014, the City issued an Administrative Citation to the Discharger requiring BMPs to be implemented by December 15, 2014, before monetary penalties would begin. On the morning of December 12, 2014, the City contacted the San Diego Water Board about the unauthorized discharges of sediment and sediment-laden storm water to their MS4 from the Site. According to the City, the Discharger claimed the Site was in compliance with the requirements of the Construction Storm Water Permit; therefore the Discharger should be considered in compliance with the City's storm water ordinance. The City requested an inspection from the San Diego Water Board to determine compliance with the Construction Storm Water Permit.

¹ Storm Water Pollution Prevention Plan (SWPPP).

Facility: Valencia Hills
Inspection Date: May 8, 2015

On December 15, 2014, San Diego Water Board inspector, Wayne Chiu inspected the Site for compliance with the Construction Storm Water Permit. During the inspection, the San Diego Water Board inspector found evidence of inadequate implementation of stockpile management, vehicle storage and maintenance, erosion control, sediment control, run-on and runoff control, and inspection, maintenance, and repair requirements. The San Diego Water Board inspector also found evidence of inadequate implementation of additional erosion control and sediment controls required for Risk Level 2 construction sites. On December 19, 2014, the San Diego Water Board issued Notice of Violation No. R9-2014-0153 to the Discharger and requested a written response demonstrating that the violations were corrected. The Discharger provided a written response, dated January 1, 2015.

On January 26, 2015, the City provided written notification to the San Diego Water Board that the Stop Work had been removed for the Site with a summary of inspections and enforcement conducted by the City between December 2, 2014, and January 22, 2015. Between December 16, 2014, and January 19, 2015, a contractor to the City continued to inspect the Site to track BMP implementation progress. Based on an inspection conducted on January 6, 2015, the contractor to the City indicated most of the major BMP deficiencies had been addressed. The contractor to the City indicated removal of the Stop Work is appropriate in a January 16, 2015, memo to the City. The City removed the Stop Work on January 22, 2015.

On March 27, 2015, the San Diego Water Board conducted a follow up inspection to determine if the Site had adequately implemented BMPs that achieve BAT and BCT for a Risk Level 2 construction site. While standing at the intersection of Orlando Drive and Seville Way, San Diego Water Board Inspector, Frank Melbourn, warned Discharger representatives that the then failure to have erosion and sediment control BMPs on Seville Way was a violation of the Construction Storm Water Permit, and would likely result in a sediment discharge if there were to be a rain event. Discharger representatives claimed that if the Site were to have another rain event, they would build a dirt berm at the top of Seville Way to prevent runoff from discharging down Seville Way. Overall, the San Diego Water Board inspector, Wayne Chiu, found that the Discharger implemented corrective actions that largely addressed the violations identified in Notice of Violation No. R9-2015-0153.

II. FINDINGS

1. The Site received approximately 0.5 inches of rain in the last 24 hours. Muddy sediment runoff was observed on Orlando Drive in two places, and also at the intersection of Orlando Drive and Valencia Court. The sediment came off of graded housing pads with ineffective or non-existent erosion and sediment control BMPs.
2. Several areas were observed to be inactive, or could be scheduled to be inactive, without effective soil cover to control erosion. The lack of erosion controls in these areas contributed to unauthorized sediment discharges from the site. All construction sites are required to provide effective soil cover for inactive areas

Facility: Valencia Hills

Inspection Date: May 8, 2015

(i.e. areas that have been disturbed and not scheduled to be re-disturbed for at least 14 days) and all finished slopes, open space, utility backfill, and completed lots.

3. **Active areas** were observed to **lack appropriate erosion control BMPs** (runoff control and soil stabilization) to prevent erosion during storm events. Risk Level 2 construction sites are required to implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction.
4. Several slopes throughout the site were observed **without linear sediment controls** along the toe and grade breaks of exposed slopes. Risk Level 2 construction sites are required to apply linear sediment controls along the toe of the slope, face of the slopes, and at the grade breaks of exposed slopes to comply with sheet flow lengths given in Table 1 of Attachment D to the Construction Storm Water Permit.
5. Seville Way is a short steep graded dirt street without erosion or sediment control BMPs. The failure to control the runoff from Seville Way resulted in a direct discharge into an unnamed tributary to Chollas Creek. Lack of effective perimeter sediment controls resulted in an unauthorized sediment discharge from the site. All construction sites are required to establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.
6. **Lack of effective run-on and runoff controls** observed within and around the site which contributed to sediment discharges from the site. All construction sites are required to effectively manage run-on, all runoff within the site and all runoff that discharges off the site.

III. COMMENTS AND RECOMMENDATIONS

Comments

1. There were no site storm water or construction personnel present to correct deficient/failed BMPs or to cleanup discharged sediment. There were two security guards on site.
2. There is evidence that erosion controls were not adequately implemented for several inactive areas contributing to discharges of sediment from the site.
3. There is evidence that erosion controls were not adequately implemented for several active areas prior to storm events contributing to discharges of sediment from the site.

Facility: Valencia Hills
Inspection Date: May 8, 2015

4. There is evidence that linear sediment controls were not adequately implemented for several exposed slopes contributing to slope erosion and discharges of sediment from the site.
5. There is evidence that perimeter sediment controls, as well as run-on and runoff controls, were not adequately implemented which contributed to discharges of sediment from the site.
6. There was evidence observed during the inspection that the site has not implemented BMPs to meet BCT Technology Based Effluent Limitations (TBELs) under Section V.A.2 of the CGP, as required for all construction sites, which resulted in the unauthorized discharges of sediment and sediment-laden water from the site.
7. There is evidence that either the QSP was not adequately identifying and recommending implementation of good site management "housekeeping," erosion control, sediment control, and run-on/runoff control BMPs, or the owner/developer was not directing the implementation of the BMPs as recommended by the QSP.
8. Failure to implement Rain Event Action Plan (REAP).

Recommendations

1. Issue a Notice of Violation for discharges of sediment from the site and failure to implement Risk Level 2 requirements of CGP.
2. Refer the site to the Compliance Assurance Unit to determine whether or not issuing formal enforcement action may be appropriate.

IV. SIGNATURE SECTION

Frank Melbourn
STAFF INSPECTOR


SIGNATURE

May 8, 2015
INSPECTION DATE

Chiara Clemente
REVIEWED BY SUPERVISOR


SIGNATURE

5/12/15
DATE

SMARTS:

Tech Staff Info & Use	
WDID	937C369143
Place ID	SM-828060
Inspection ID	2025608
Violation ID	857231 & 857232

Facility: Valencia Hills
Inspection Date: May 8, 2015



Photograph No. 1: 20150508_191716.jpg, taken by Frank Melbourn, San Diego Water Board

Photograph No. 1 looks west at Orlando Drive from San Altos Place. The photograph displays a **sediment discharge** from disturbed construction areas into the street. The sediment was an inch thick in some areas. Displayed slopes in the photograph show signs of erosion, and were lacking erosion and sediment control BMPs at their base. Parkway strips failed to have sediment control BMPs. There was no site personnel available to cleanup discharged sediment or maintain/reinforce failed BMPs. There was an absence of run-on/run-off control BMPs. For example there were no gravel bag chevrons or check dams along the street to slow down the runoff flow.

Facility: Valencia Hills
Inspection Date: May 8, 2015



Photograph No. 2: 20150508_191734.jpg, taken by Frank Melbourn, San Diego Water Board

Photograph No. 2 looks southwest at Orlando Drive from San Altos Place. The photograph displays a **sediment discharge** from disturbed construction areas into the street. The photograph also displays unprotected (absent erosion control BMPs) disturbed soil and a lack of sediment controls above street gutters. The gravel bags deployed to protect the storm drain inlet were ineffective as evidenced by the turbid sediment laden storm water on the inside edges of the gravel bags. Again the use of gravel bag chevrons could have been implemented in the street.

Facility: Valencia Hills
Inspection Date: May 8, 2015



Photograph No. 3: 20150508_191955.jpg, taken by Frank Melbourn, San Diego Water Board

Photograph No. 3 looks northeast at the corner of Valencia Court and Orlando Drive from Orlando Drive. The photograph displays a **sediment discharge** from disturbed construction areas into the street. Except the area with plastic sheeting, displayed slopes in the photograph show signs of erosion, and were lacking erosion and sediment control BMPs at their base.

Facility: Valencia Hills
Inspection Date: May 8, 2015



Photograph No. 4: 20150508_192214.jpg, taken by Frank Melbourn, San Diego Water Board

Photograph No. 4 looks northwest up Seville Way from Akins Avenue. The photograph displays disturbed soil without erosion control BMPs and sediment control BMPs.

Facility: Valencia Hills
Inspection Date: May 8, 2015



Photograph No. 5: 20150508_192234.jpg, taken by Frank Melbourn, San Diego Water Board

Photograph No. 5 looks southeast onto the unnamed tributary to Chollas Creek from the intersection of Seville Way and Akins Avenue. The photograph displays the **sediment discharge point** between the gap (identified by red arrow) in the site perimeter control BMPs into the unnamed tributary. A buildup of eroded sediment from the site can be seen at the base of the gravel bags.

Facility: Valencia Hills
Inspection Date: May 8, 2015



Photograph No. 6: 20150508_192253.jpg, taken by Frank Melbourn, San Diego Water Board

Photograph No. 6 looks northeast onto Akins Avenue from the intersection of Akins Avenue and Seville Way. The photograph displays disturbed soil **without erosion control BMPs** and **sediment control BMPs**. The photograph also displays perimeter control BMPs on the right hand side.

Exhibit No. 19

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

FACILITY INSPECTION REPORT

FACILITY: Valencia
WDID/FILE NO.: 937C369143

INSPECTION DATE/TIME: 5/13/2015; 11:30 am

REPRESENTATIVE(S) PRESENT DURING INSPECTION:

NAME: Wayne Chiu
NAME: Frank Melbourn
NAME: _____

AFFILIATION: San Diego Water Board
AFFILIATION: San Diego Water Board
AFFILIATION: _____

San Altos Lemon Grove LLC
NAME OF OWNER, AGENCY OR PARTY RESPONSIBLE FOR DISCHARGE

5780 Fleet Avenue
Carlsbad, CA 92008
OWNER MAILING ADDRESS

Ben Anderson, 714-966-1544
OWNER CONTACT NAME AND PHONE #

BCA Development, Inc.
FACILITY OR DEVELOPER NAME (if different from owner)

1350 San Altos Place
Lemon Grove, CA 91945
FACILITY ADDRESS

Same
FACILITY OR DEVELOPER CONTACT NAME AND PHONE #

APPLICABLE WATER QUALITY LICENSING REQUIREMENTS:

- | | |
|---|---|
| ☐ MS4 URBAN RUNOFF REQUIREMENTS | ☐ GENERAL OR INDIVIDUAL WASTE DISCHARGE REQUIREMENTS OR NPDES |
| ☒ CONSTRUCTION GENERAL PERMIT | ☐ GENERAL OR INDIVIDUAL WAIVER OF WASTE DISCHARGE REQUIREMENTS |
| ☐ CALTRANS GENERAL PERMIT | ☐ SECTION 401 WATER QUALITY CERTIFICATION |
| ☐ INDUSTRIAL GENERAL PERMIT | ☐ CWC SECTION 13264 |

INSPECTION TYPE (Check One):

- ☐ "A" TYPE COMPLIANCE--COMPREHENSIVE INSPECTION IN WHICH SAMPLES ARE TAKEN. (EPA TYPE S)
- ☐ "B" TYPE COMPLIANCE--A ROUTINE NONSAMPLING INSPECTION. (EPA TYPE C)
- ☒ NONCOMPLIANCE FOLLOW-UP--INSPECTION MADE TO VERIFY CORRECTION OF A PREVIOUSLY IDENTIFIED VIOLATION.
- ☐ ENFORCEMENT FOLLOW-UP--INSPECTION MADE TO VERIFY THAT CONDITIONS OF AN ENFORCEMENT ACTION ARE BEING MET.
- ☐ COMPLAINT--INSPECTION MADE IN RESPONSE TO A COMPLAINT.
- ☐ PRE-REQUIREMENT--INSPECTION MADE TO GATHER INFO. RELATIVE TO PREPARING, MODIFYING, OR RESCINDING REQUIREMENTS.
- ☐ NO EXPOSURE CERTIFICATION (NEC) - VERIFICATION THAT THERE IS NO EXPOSURE OF INDUSTRIAL ACTIVITIES TO STORM WATER.
- ☐ NOTICE OF TERMINATION REQUEST FOR INDUSTRIAL FACILITIES OR CONSTRUCTION SITES - VERIFICATION THAT THE FACILITY OR CONSTRUCTION SITE IS NOT SUBJECT TO PERMIT REQUIREMENTS.
- ☐ 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)

EXHIBIT 6
REPORTER M. V. 12
WITNESS C. Clemente
DATE 1-22-16

Facility: Valencia
Inspection Date: 5/13/2015

I. COMPLIANCE HISTORY / PURPOSE OF INSPECTION

On December 2, 2014, the City of Lemon Grove (City) issued a Stop Work/Notice of Violation to the Valencia construction site (WDID 9 37C369143) for failing to implement construction storm water best management practices (BMPs) required by local ordinances. The City's inspection report issued with the Stop Work/Notice of Violation noted inadequate implementation of erosion controls, entrance/exit stabilization, and stockpile management and warned the project manager that a "discharge is imminent" without adequate BMPs. The site was required to stop work and implement BMPs to be prepared for a storm event that occurred on December 3 and 4, 2014.

The site failed to implement BMPs before the storm, resulting in unauthorized discharges of sediment and sediment-laden storm water from the site to the City's municipal separate storm sewer system (MS4). The City issued a second Stop Work/Notice of Violation on December 4, 2014 for the illegal discharges to the City's MS4. The City conducted a follow up inspection on December 9, 2014 and noted the same BMP deficiencies identified before the December 3 and 4, 2014 storm event, as well as additional deficiencies in perimeter sediment controls. The inspection report provided recommendations for locations that needed to be addressed and types of BMPs. The site again failed to implement BMPs before a subsequent storm event that occurred on December 11, 2014, again resulting in unauthorized discharges of sediment and sediment-laden storm water from the site to the City's MS4. On December 11, 2014, the City issued an Administrative Citation to the site requiring BMPs to be implemented by December 15, 2014 before monetary penalties would begin. The Stop Work/Notice of Violation issued on December 2 and 4, 2014 and the Administrative Citation issued on December 11, 2014 by the City are attached to the end of this inspection report.

On December 15, 2014, Wayne Chiu of the San Diego Water Board inspected the site for compliance with the requirements of the Statewide Construction General Storm Water Permit, Order No. 2009-0009-DWQ (CGP). According to the Storm Water Multiple Application & Report Tracking System (SMARTS), the site is a Risk Level 2 construction site, disturbing over 18 acres, and owned by San Alto Lemon Grove LLC. The developer of the site is BCA Development, Inc. During the inspection, the San Diego Water Board observed evidence of inadequate implementation of stockpile management, vehicle storage and maintenance, erosion control, sediment control, run-on and runoff control, and inspection, maintenance, and repair requirements. In addition, there was evidence of inadequate implementation of additional erosion and sediment controls required for Risk Level 2 construction sites. On December 19, 2014, the San Diego Water Board issued Notice of Violation No. R9-2014-0153 to the Discharger and requested a written response demonstrating that the violations were corrected. The Discharger provided a written response, dated January 1, 2015. On January 26, 2015, the City provided written notification to the San Diego Water Board that the Stop Work had been removed for the site on January 22, 2015.

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On March 27, 2015, the San Diego Water Board conducted a follow up inspection to determine if the site had adequately implemented BMPs that achieve BAT and BCT for a Risk Level 2 construction site. While standing at the intersection of Orlando Drive and Seville Way on the site, San Diego Water Board inspector, Frank Melbourn, warned Discharger representatives that the failure to have erosion and sediment control BMPs on Seville Way was a violation of the CGP, and would likely result in a sediment discharge from the site if there were to be a rain event. Discharger representatives claimed that if the site were to have another rain event, they would build a dirt berm at the top of Seville Way to prevent runoff from discharging down Seville Way. San Diego Water Board inspector, Wayne Chiu, found that the Discharger implemented corrective actions that largely addressed the violations identified in Notice of Violation No. R9-2015-0153.

On May 8, 2015, Frank Melbourn of the San Diego Water Board inspected the site following a rain event of approximately 0.5 inches. The inspector observed inadequate implementation of erosion controls in several inactive areas and active areas, perimeter sediment controls, linear sediment controls on several slopes, and run-on and runoff controls within and around the site. Evidence of sediment transport through the site observed on paved streets within the site, and an unauthorized discharge of sediment from the site to the Encanto Channel (a tributary to Chollas Creek) and Akins Road adjacent to the site.

On May 13, 2015, Wayne Chiu and Frank Melbourn of the San Diego Water Board conducted a subsequent inspection to determine if the site was implementing BMPs in preparation for a rain event forecasted for the following day.

II. FINDINGS

1. Several **stockpiles observed without adequate containment** (See Photos 1 and 2). All construction sites are required to contain and securely protect stockpiled waste material from wind and rain at all times unless actively being used.
2. Construction **equipment and vehicles observed without** appropriate BMPs (e.g. **drip pans**) to prevent oil, grease, or fuel to leak in to the ground, storm drains, or surface waters (See Photo 3). All construction sites are required to prevent oil, grease or fuel to leak in to the ground, storm drains, or surface waters, and to place all equipment and vehicles, which are to be fueled, maintained and stored in a designated area fitted with appropriate BMPs.
3. Several **areas were observed to be inactive**, or could be scheduled to be inactive, **without effective soil cover** to control potential erosion. Several completed building pads and several inactive slopes (See Photos 4 through 6) lacked any effective soil cover for erosion control. All construction sites are required to provide effective soil cover for inactive areas (i.e. areas that have been disturbed and not scheduled to be re-disturbed for at least 14 days) and all finished slopes, open space, utility backfill, and completed lots.

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4. **Active areas** were observed to **lack appropriate erosion control BMPs** (runoff control and soil stabilization) to prevent erosion during storm events (See Photos 7 through 12). Risk Level 2 construction sites are required to implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction.
5. Several slopes throughout the site were observed to **lack linear sediment controls** along the toe and grade breaks of exposed slopes (See Photos 1, 5, 6, 8, 9, 11, and 12). Risk Level 2 construction sites are required to apply linear sediment controls along the toe of the slope, face of the slopes, and at the grade breaks of exposed slopes to comply with sheet flow lengths given in Table 1 of Attachment D to the CGP.
6. Lack of effective perimeter sediment controls observed (See Photos 13 and 14). All construction sites are required to establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.
7. **Lack of effective run-on and runoff controls** observed within and around the site (See Photos 7 through 14). All construction sites are required to effectively manage run-on, all runoff within the site and all runoff that discharges off the site.
8. There were no personnel on site that appeared to be implementing BMPs to prepare for the forecasted rain event, such as erosion control measures or controls within the site to reduce sheet flow runoff lengths in active areas, or inspecting the perimeter controls for areas requiring additional attention, repairs, or maintenance.

III. COMMENTS AND RECOMMENDATIONS

Comments

1. There is evidence that good site management "housekeeping" BMPs were not being adequately implemented (See Findings 1 and 2).
2. There is evidence that erosion controls were not adequately implemented for several inactive areas contributing to discharges of sediment from the site (See Finding 3).
3. There is evidence that erosion controls were not adequately implemented for several active areas prior to storm events (See Finding 4).
4. There is evidence that linear sediment controls were not adequately implemented for several exposed slopes (See Finding 5).

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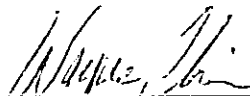
5. There is evidence that perimeter sediment controls, as well as run-on and runoff controls, were not adequately implemented (See Findings 6 and 7).
6. There is evidence that either the QSP was not adequately identifying and recommending implementation of good site management "housekeeping," erosion control, sediment control, and run-on/runoff control BMPs, or the owner/developer was not directing the implementation of the BMPs as recommended by the QSP (See Finding 8).
7. There was evidence observed during the inspection that the site has not implemented BMPs to meet BCT Technology Based Effluent Limitations (TBELs) under Section V.A.2 of the CGP, as required for all construction sites, which resulted in the unauthorized discharges of sediment and sediment-laden water from the site observed or documented on December 4, 11, and 15, 2014 (See Compliance History discussion and Findings 1 through 8).

Recommendations

The Discharger has failed to maintain compliance with the requirements of the CGP even after repeated enforcement actions by the City of Lemon Grove and the San Diego Water Board. A formal enforcement action should be issued to the Discharger for this continued and repeated noncompliance with the requirements of the CGP.

IV. SIGNATURE SECTION

Wayne Chiu
STAFF INSPECTOR


SIGNATURE

5/13/2015

INSPECTION DATE

Eric Becker
REVIEWED BY SUPERVISOR


SIGNATURE

5/20/15
DATE

SMARTS:

Tech Staff Info & Use	
WDID	937C369143
Place ID	SM-828060
Inspection ID	2025695
Violation ID	857243

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Photo 1



Photo 2

Photos 1 and 2 shows soil stockpiles covered with black plastic without adequate containment. Slope in Photo 1 covered with white plastic lacks linear sediment controls at the based and at grade break along top of slope.



Photo 3

Photo 3 shows construction vehicle without appropriate BMPs (e.g. drip pans) to prevent oil, grease, or fuel to leak in to the ground, storm drains, or surface waters.

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Photo 4



Photo 5



Photo 6

Photos 4 through 6 show several **inactive areas**, or areas that can be made to be inactive, **lacking any effective soil cover**. Photo 4 shows a completed lot that could have been stabilized with an effective soil cover and protected from activity. Photo 5 shows a slope that appeared to be inactive and potentially finished without effective soil cover. Photo 6 shows a slope in front of a building being constructed that could have been stabilized with an effective soil cover and made to be inactive.

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Photo 7



Photo 8



Photo 9



Photo 10



Photo 11



Photo 12

Photos 9 through 12 showed several **active areas** of the site that **lacked** any evidence of **soil stabilization** measures ready to be implemented to reduce erosion potential or other measures to reduce sheet flow lengths. Photos 8, 9, 11, and 12 are slopes toward where runoff would flow toward a low point and perimeter of the site.

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Photo 13



Photo 14

Photos 13 and 14 show areas of the perimeter where additional attention, repair, or maintenance is necessary to ensure the site has effective perimeter sediment controls to prevent erosion and sediment discharges from the site.

STEP 4 – Adjustment Factors

Violator's Conduct Factors

There are three additional factors that should be considered for modification of the amount of the initial liability: the violator's culpability, the violator's efforts to cleanup or cooperate with regulatory authorities after the violation, and the violator's compliance history. Not all factors will apply in every liability assessment.

TABLE 4 – Violator's Conduct Factors

Factor	Adjustment
Culpability	Discharger's degree of culpability regarding the violation. Higher liabilities should result from intentional or negligent violations than for accidental, non-negligent violations. A first step is to identify any performance standards (or, in their absence, prevailing industry practices) in the context of the violation. The test is what a reasonable and prudent person would have done or not done under similar circumstances. Adjustment should result in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and higher multiplier for intentional or negligent behavior.
Cleanup and Cooperation	Extent to which the discharger voluntarily cooperated in returning to compliance and correcting environmental damage, including any voluntary cleanup efforts undertaken. Adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation, and higher multiplier where this is absent.
History of Violations	Prior history of violations. Where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this.

After each of the above factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

Multiple Violations Resulting From the Same Incident

By statute, certain situations that involve multiple violations are treated as a single violation per day, such as a single operational upset that leads to simultaneous violations of more than one pollutant parameter. (Water Code § 13385, sub. (f)(1).) For situations not addressed by statute, a single base liability amount can also be assessed for multiple violations at the discretion of the Water Boards, under the following circumstances:

- a. The facility has violated the same requirement at one or more locations within the facility;
- b. A single operational upset where violations occur on multiple days;
- c. The violation continues for more than one day;

- d. When violations are not independent of one another or are not substantially distinguishable. For such violations, the Water Boards may consider the extent of the violation in terms of the most egregious violation;
- e. A single act may violate multiple requirements, and therefore constitute multiple violations. For example, a construction dewatering discharge to a dewatering basin located on a gravel bar next to stream may violate a requirement that mandates the use of best management practices (BMPs) for sediment and turbidity control, a requirement prohibiting the discharge of soil silt or other organic matter to waters of the State, and a requirement that temporary sedimentation basins be located at least 100 feet from a stream channel. Such an act would constitute three distinct violations that may be addressed with a single base liability amount.

If the violations do not fit the above categories, each instance of the same violation shall be calculated as a separate violation.

Except where statutorily required, multiple violations shall not be grouped and considered as a single base liability amount when those multiple violations each result in a distinguishable economic benefit to the violator.

Multiple Day Violations

For violations that are assessed a civil liability on a per day basis, the initial liability amount should be assessed for each day up to thirty (30) days. For violations that last more than thirty (30) days, the daily assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if any, resulting from the violation. For these cases, the Water Board must make express findings that the violation:

- a. Is not causing daily detrimental impacts to the environment or the regulatory program;
- b. Results in no economic benefit from the illegal conduct that can be measured on a daily basis; or,
- c. Occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation.

If one of the above findings is made, an alternate approach to penalty calculation for multiple day violations may be used. In these cases, the liability shall not be less than an amount that is calculated based on an assessment of the initial Total Base Liability Amount for the first day of the violation, plus an assessment for each five day period of violation until the 30th day, plus an assessment for each thirty (30) days of violation. For example, a violation lasting sixty-two (62) days would accrue a total of 8 day's worth of violations, based on a per day assessment for day 1, 5, 10, 15, 20, 25, 30, and 60. Similarly, a violation lasting ninety-nine (99) days would accrue a total of 9 day's worth of violations, based on a per day assessment for day 1, 5, 10, 15, 20, 25, 30, 60, and 90.

STEP 5 – Determination of Total Base Liability Amount

The Total Base Liability Amount will be determined by adding the amounts above for each violation, though this may be adjusted for multiple day violations as noted above. Depending on the statute controlling the liability assessment for a violation, the liability can be assessed as either a per day penalty, a per gallon penalty, or both.