

ERRATA SHEET

I declare under penalty of perjury that I have read the foregoing 54 pages of my testimony, taken on 12/29/2015 (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>20</u>	<u>10</u>	<u>... Valencia site on December...</u>	
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Date: 1/16/2016



Signature of Witness
John Quenzer

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. _____

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 JOHN ROBERT QUENZER, witness
herein, noticed by Oppen & Varco, taken at
225 Broadway, Suite 1900, San Diego,
California, on Tuesday, December 29, 2015, at
1:19 p.m., before Marc Volz, CSR 2863, RPR, CRR

Hutchings Number 599122



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I N D E X

WITNESS: JOHN ROBERT QUENZER

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E X H I B I T S

SAN ALTOS- DESCRIPTION IDENTIFIED MARKED
LEMON GROVE, LLC

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1 JOHN ROBERT QUENZER,
2 witness herein, having been sworn, testifies as follows:

3 -EXAMINATION-

4 BY MS. BERESFORD:

5 Q. Good afternoon, Mr. Quenzer. Am I saying your
6 last name properly?

7 A. Yes, you are.

8 Q. Thanks. My name is Linda Beresford. I'm one
9 of the attorneys for San Altos-Lemon Grove, LLC in the
10 matter of Administrative Civil Liability Complaint
11 No. R9-2015-0110, issued by the Regional Water Quality
12 Control Board. Can you please state your name and spell
13 it for the record.

14 A. John Quenzer, J-o-h-n Q-u-e-n-z-e-r.

15 Q. Mr. Quenzer, have you ever had your deposition
16 taken before?

17 A. I have not, no.

18 Q. Okay. A few ground rules that everyone here is
19 very familiar with but we'll review for you. You're
20 here today appearing under oath. We have a court
21 reporter taking everything down. So if you could please
22 answer each question verbally with a yes, no or a
23 complete sentence and not nod your head or shrug your
24 shoulders or say things like uh-huh it will help for a
25 clear record. Do you understand?

1 A. Yes.

2 Q. Thank you. In order to have an accurate
3 transcript it's best if we can only have one person
4 speaking at a time. So I would ask if you could wait to
5 let me finish my question before you answer and I also
6 will do my best to wait for you to finish your answer
7 before I start speaking. That will help the court
8 reporter. Does that make sense?

9 A. Yes.

10 Q. Please feel free to take a break or ask to take
11 a break at any time. My only request is that if I have
12 asked you a question, if you please answer the question
13 and then we'll take a break. Is that agreeable?

14 A. Yes.

15 Q. And last, I'm sorry but I do have to ask: Have
16 you taken any medication today or is there any other
17 reason why you would not be able to give your best
18 testimony today?

19 A. No.

20 Q. Thank you. Can you please mark this as
21 Exhibit 1.

22 MS. BERESFORD: Can you please review the document
23 that you just received marked as Exhibit 1.

24 A. Yes.

25 Q. Have you seen that document before?

1 A. Yes, I have.

2 Q. Can you please state what it is?

3 A. I believe it is the subpoena that I received to
4 come and take a deposition today.

5 Q. Does that document ask you to bring documents
6 today?

7 A. It does, yes.

8 Q. Did you do that?

9 A. I sent them to -- I sent them in advance of
10 today's meeting.

11 Q. Did you send them to Jim Lough?

12 A. I did, yes.

13 Q. When you were collecting documents to respond
14 to the subpoena did you see any documents that you
15 thought might be responsive that you did not produce for
16 any reason?

17 A. No.

18 Q. Did you do anything else to prepare for today's
19 deposition?

20 A. Aside from collecting the records, no.

21 Q. Let's get a little bit about your background,
22 please. Where did you graduate from high school?

23 A. I graduated from Des Moines Christian High
24 School in Des Moines, Iowa.

25 Q. Did you go to college after that?

1 A. Yes.

2 Q. Where did you go to college?

3 A. I went to college at University of California,
4 San Diego.

5 Q. Did you graduate?

6 A. Yes, I did.

7 Q. What year was that?

8 A. 2002.

9 Q. What was your degree in?

10 A. It was in environmental systems with an
11 environmental chemistry focus.

12 Q. Do you have any advanced degrees?

13 A. Yes. I have a master's degree.

14 Q. What is that in?

15 A. It is in environmental engineering and science.

16 Q. Is there a lot of math in that?

17 A. There is some math in that.

18 Q. What year did you get that degree?

19 A. 2014.

20 Q. Do you have any other advanced degrees?

21 A. No, I do not.

22 Q. What was your first job after you graduated
23 from UCSD in 2002?

24 A. My first job after that was tutoring.

25 Q. In what subjects?

1 A. I tutored math, chemistry, biology, English,
2 physics, SAT verbal and SAT math.

3 Q. All right. How long were you a tutor?

4 A. I was a tutor for about one year.

5 Q. What did you do after that?

6 A. After -- well, before I started tutoring I had
7 a year where I traveled. So after that time then I
8 started working at D-Max Engineering.

9 Q. So you graduated in 2002 and then you traveled
10 for a year?

11 A. Correct.

12 Q. And then you tutored from approximately 2003 to
13 2004?

14 A. Approximately.

15 Q. Then you started in D-Max in approximately
16 2004?

17 A. Correct.

18 Q. What was your first job with D-Max?

19 A. The title of my first position was staff
20 scientist.

21 Q. What did you do as a staff scientist?

22 A. I primarily did a variety of different
23 inspections and field monitorings.

24 Q. What type of inspections did you do?

25 A. I did mainly inspections of industrial and

1 commercial businesses and municipal facilities.

2 Q. When you say you did inspections of industrial
3 and commercial businesses --

4 A. Yes.

5 Q. -- what type of inspections?

6 A. They were focused on stormwater compliance with
7 the requirements of various different cities.

8 Q. Did you do any inspections for the Construction
9 General Permit?

10 A. I did not.

11 Q. How long were you a staff scientist?

12 A. I don't remember exactly how long.

13 Q. D-Max does not make a big deal about their
14 promotions, do they? Do you recall what your next title
15 was?

16 A. My next title was assistant project scientist.

17 Q. You don't recall approximately when you became
18 an assistant project scientist?

19 A. I don't remember the exact date. It was
20 probably within the first couple years after I started
21 working at D-Max.

22 Q. What did you do as an assistant project
23 scientist?

24 A. As an assistant project scientist I supervised
25 other people doing inspections and doing water quality

1 monitoring.

2 Q. Did any of those involve inspections or
3 monitorings for under the General Construction
4 Stormwater Permit?

5 A. No, they did not.

6 Q. Approximately -- let me rephrase. What was
7 your next title after assistant project scientist?

8 A. My next title was project scientist.

9 Q. Very linear.

10 A. Yes.

11 Q. Do you know approximately when that transition
12 occurred?

13 A. I don't remember for sure. I think it was
14 within a couple years again.

15 MR. ROSENBAUM: Excuse me. 294 miles?

16 THE WITNESS: 284.

17 MS. BERESFORD:

18 Q. Can you describe your duties as a project
19 scientist, please.

20 A. My duties were, again, supervising people doing
21 inspections, supervising people doing monitoring, as
22 well as preparing stormwater plans, mainly for
23 municipalities, and doing some marketing work.

24 Q. Again, did any of the stormwater work involve
25 inspections, plans or anything like that associated with

1 the Construction General Stormwater Permit?

2 A. With the Construction General Permit itself, I
3 don't recall what time that I began working for the
4 Construction General Permit. It may have been when I
5 was project scientist. But I don't remember exactly
6 what time in my career that started.

7 Q. At some point though you started doing work
8 associated with the Construction General Permit.

9 A. Yes.

10 Q. Can you give me an approximate time frame:
11 Five years ago, three years ago?

12 A. Let's see. Approximately something like three
13 to five years ago. That sounds reasonable.

14 Q. Did you have a new title at some point after
15 project scientist?

16 A. Yes. Senior scientist.

17 Q. By my timeline, advancement every couple years,
18 you became a project scientist in approximately 2008
19 maybe. Do you have any idea when you may have become a
20 senior scientist?

21 A. I don't remember for sure.

22 Q. Approximately a couple years after that?

23 A. That sounds reasonable.

24 Q. What did you do as a senior scientist?

25 A. As a senior scientist I had many of the same

1 duties that I had as a project scientist and became
2 involved in managing larger projects and doing
3 additional business development or marketing kind of
4 work.

5 Q. Do you think as a senior scientist is when you
6 began doing work with the Construction General Permit?

7 A. That sounds reasonable. I don't remember for
8 sure.

9 Q. When you started doing work with the General
10 Construction Stormwater Permit what type of work did you
11 do?

12 A. Let's see. So the main thing that I did was
13 working on stormwater pollution prevention plans, and I
14 did some training related to the Construction General
15 Permit for municipal agencies.

16 Q. Can you describe what that training was?

17 A. It was approximately a couple-hour-long type of
18 sessions with municipal staff, mainly engineers, talking
19 to them about what the requirements of the General
20 Construction Permit are.

21 Q. Did you get a new title after senior scientist?

22 A. I did not.

23 Q. So you are a senior scientist today.

24 A. That is correct.

25 Q. Has your work relating to the Construction

1 General Permit changed at all?

2 A. I am still preparing stormwater pollution
3 prevention plans and occasionally doing trainings, so
4 that's still what I do.

5 Q. Who are you preparing Stormwater Pollution
6 Prevention Plans -- or SWPPPs, S-W-P-P-P -- who are you
7 preparing those documents for?

8 A. Primarily for municipal agencies.

9 Q. For their jurisdictional urban runoff
10 management plans or for their individual construction
11 sites?

12 A. For individual construction projects.

13 Q. Have you prepared a SWPPP since July 1, 2015?

14 A. Yes, I have.

15 Q. About how many?

16 A. I don't remember for sure. I would say a
17 handful.

18 Q. Can you tell me about some of your other job
19 duties as a senior scientist since approximately 2014?

20 A. Could you be more specific?

21 Q. Yes. So you've indicated to me that you have
22 developed some SWPPPs. You did some training for
23 municipalities. I'm saying the broader, beyond just the
24 construction permit what else have you done as a senior
25 scientist?

1 A. So some of the other things I could elaborate a
2 little bit more. So for example, preparing
3 jurisdictional runoff management plans for different
4 cities is something I've done over the last two years.
5 So that involves preparing different components of their
6 plan. There's, you know, industrial, commercial,
7 residential, construction, development. Probably don't
8 need to list all the components of the document. But
9 that's something I've done. Annual report preparation,
10 mainly for municipalities for additional monitored
11 programs. And I have worked on water quality
12 improvement plans, specifically for the San Diego Bay
13 watershed locally.

14 **Q. Anything else that you would consider of**
15 **significance?**

16 A. Well, I had mentioned working on inspection
17 projects and water quality monitoring projects before as
18 well.

19 **Q. Anything else?**

20 A. I can't think of anything else.

21 **Q. When it comes to stormwater compliance and**
22 **inspection training, things like that, what training**
23 **have you had specifically in that area?**

24 A. Are we talking specifically about construction?

25 **Q. No. I would say stormwater compliance issues**

1 in general.

2 A. So the training that I've had, first, I've gone
3 through the qualified SWPPP developer and practitioners
4 training for the Construction General Permit. And I
5 don't know that this is specifically training, but
6 there's a certified professional in stormwater quality.
7 There's a certification where you have to pass an exam.
8 Took that one. Aside from that, the training that I can
9 think of, aside from the education that I've received,
10 is mainly going to conferences. So I typically will go
11 to the California Stormwater Quality Association
12 conference which happens once per year.

13 Q. Are you a trainer of record?

14 A. I am not.

15 Q. Forgive me. I know you said you did the
16 classes for the qualified SWPPP developer and the
17 qualified stormwater professional. Does that mean you
18 are a QSP?

19 A. Yes. I am a QSD and QSP.

20 Q. Can you please describe for me the relationship
21 between D-Max and the city of Lemon Grove?

22 A. The city of Lemon Grove is D-Max's client.

23 Q. What do you do for them?

24 A. What do I do personally or what does D-Max do?

25 Q. What does D-Max do?

1 A. D-Max provides stormwater management support to
2 the city of Lemon Grove.

3 MS. BERESFORD: Can you read his answer back,
4 please.

5 (Answer on page 17, lines 1-2 read by reporter.)

6 MS. BERESFORD:

7 Q. Can you please be a little more specific? What
8 does that mean?

9 A. Sure. So we recently prepared an updated
10 jurisdictional runoff management plan for the city of
11 Lemon Grove. We are currently helping the city of
12 Lemon Grove update their BMP design manual for the new
13 development requirements that will go into effect in
14 2016. We have done industrial, commercial and
15 construction and municipal inspections for the city of
16 Lemon Grove and water quality monitoring as well. We
17 also provide as needed support to the city for
18 stormwater management. Whatever they may happen to ask.

19 Q. As we go through today's deposition I'm going
20 to be referring to a construction project called the
21 Valencia construction site on San Altos Place in
22 Lemon Grove. Are you familiar with that construction
23 site?

24 A. Yes.

25 Q. So if I refer to the site you'll understand

1 that's what I'm referring to?

2 A. Yes, I will.

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

4 A. I first heard about the Valencia site
5 probably -- I don't remember the exact date but when it
6 was going through the development approval process at
7 the city.

8 Q. What did you hear about it then?

9 A. Nothing specific, just that it was a
10 development project that was going to be happening.

11 Q. Did the site ever come to your attention
12 because of the stormwater management issues?

13 A. Yes.

14 Q. Can you tell me approximately when that was?

15 A. I don't remember an exact date. It would have
16 been sometime in 2014 if I remember correctly.

17 Q. Do you recall if the city contacted D-Max with
18 a specific request for that site?

19 A. Yes.

20 Q. Do you know what that request was?

21 A. They wanted us to do not only for that site,
22 but they wanted us to do construction inspections for
23 that site.

24 MS. BERESFORD: Can you please mark that as
25 Exhibit 2.

1 Q. Have you seen this document before?

2 A. Yes, I have.

3 Q. Can you please describe to me what it is?

4 A. It is an email from Malik Tamimi at the city of
5 Lemon Grove to me asking me to prepare a proposal to do
6 construction inspections at two sites in the city,
7 including the Valencia construction site.

8 Q. Who is Mr. Tamimi?

9 A. He is in charge of stormwater at the city of
10 Lemon Grove.

11 Q. Is he your primary contact for the work that
12 D-Max does for Lemon Grove?

13 A. Yes, he is.

14 Q. After you got this email did you talk to
15 Mr. Tamimi on the phone?

16 A. I don't remember for sure.

17 Q. So he asks for construction inspections. Did
18 you ever talk to him about why they were asking for your
19 assistance on those two specific sites?

20 A. I don't remember.

21 Q. And then to your recollection did D-Max perform
22 construction inspections for the city of Lemon Grove?

23 A. Yes, we did.

24 MS. BERESFORD: Can we please mark this as
25 Exhibit 3. It is the December 12 memo.

1 Q. Can you please take a look at the document
2 marked Exhibit 3.

3 A. Yes.

4 Q. Have you seen this document before?

5 A. Yes, I have.

6 Q. Can you please describe for me what it is?

7 A. The document is a memo that I prepared and sent
8 to Malik Tamimi at the city of Lemon Grove that
9 summarizes the results of water quality sampling and
10 analysis that I did at the Valencia site in December 12,
11 2014.

12 Q. The memo is dated December 12, 2014?

13 A. That is correct.

14 Q. So in addition to the construction site
15 inspections did Mr. Tamimi ask you to do water quality
16 testing?

17 A. He did, yes.

18 Q. Did he specifically ask for turbidity sampling?

19 A. Yes, he did.

20 Q. Did he discuss with you why he asked for a
21 turbidity sampling?

22 A. Because -- I don't remember a detailed
23 discussion, but I believe what I recall is the turbidity
24 can be an indicator of sediment discharge. I should
25 probably also add that turbidity is a parameter that is

1 typically sampled under the Construction General Permit
2 when sampling is required.

3 Q. Did you perform this sampling?

4 A. Yes, I did.

5 Q. Did you calibrate the instrument before you
6 took the sample?

7 A. Yes, I did.

8 Q. Did you produce a calibration log with the
9 documents that you produced?

10 A. No, I did not.

11 Q. Do you have a calibration log?

12 A. I did not find one, no.

13 Q. What EPA method did you use when you analyzed
14 these samples?

15 A. I don't know the name of the EPA method. I
16 used a Hanna Instruments turbidity meter. I don't
17 recall the exact model number of the meter, although I
18 certainly could find that.

19 Q. Did you have a QA/QC log?

20 A. Is that different than a -- are you talking
21 about the calibration log.

22 Q. Yes. The quality assurance/quality control
23 log.

24 A. I did not have one, no.

25 Q. So you did not have one. I just want to be

1 clear. Did you have one and you didn't find it or you
2 did not have one?

3 A. We're talking about a calibration record for
4 this particular sampling event?

5 Q. No. I'm talking about a quality
6 assurance/quality control log. It's different than a
7 calibration log.

8 A. Could you explain to me what you have in mind
9 by a quality assurance/quality control log?

10 Q. Usually when you do sampling there's some sort
11 of log to assure your quality control standards and so
12 that's what I'm looking for.

13 A. For field meters our typical practice is that
14 we calibrate them before we go to the field and that we
15 will make sure that the meter is reading within the
16 acceptable tolerance levels, and that's what we do for
17 QA/QC for field tests. If it was a laboratory test then
18 the laboratory would provide us with additional data on
19 what they've done. But since this was a field test we
20 don't have anything beyond that.

21 Q. And you can't find the field log that you did.

22 A. No, I cannot.

23 Q. Was there a background sample that you took for
24 this sampling?

25 A. There was, yes.

1 Q. Was there just one or more?

2 A. I only recall one.

3 Q. How did you select the location of that sample?

4 A. It was directly adjacent to the site. And if I
5 refer back to the exhibit, the memo, it was very close
6 to -- I'm looking at photo 2 in the memo. And it was
7 very close to a location that had runoff from the
8 construction site. And so I wanted to see what runoff
9 from the adjacent neighborhood looked like, and this was
10 the closest possible location that I could find. And
11 just to refer to photo 2, the yellow arrow there
12 indicates where I took the background sample from.

13 Q. Unfortunately, my copy is black and white.

14 A. Sorry.

15 Q. Okay. Was there a reason why you didn't sample
16 upgradient of the discharge point into Chollas Creek?

17 A. Upgradient of the discharge point into Chollas
18 Creek? Which discharge point into Chollas Creek?

19 Q. Any of them. I mean, you have one -- is your
20 background sample upgradient of the site?

21 A. Is it upgradient of the site itself?

22 Q. Uh-huh.

23 A. If I understand what you're asking correctly,
24 are you asking if the runoff from the background site
25 would have flowed through the construction site area?

1 Q. I'm wondering if -- yes, if you took a sample,
2 would it have flowed into the storm drain without
3 combining with any runoff from the site.

4 A. The background sample that I took did not
5 commingle with runoff from the site before runoff left
6 the Valencia site.

7 MS. BERESFORD: Can you please repeat that answer.

8 (Answer on page 24, lines 4-6 read by reporter.)

9 Q. I'm not sure I understand what you just said.
10 Can you please say it a little better.

11 A. If I refer back to photo 2 again -- and since
12 you don't have it in color, so referring to this photo,
13 the background sample was taken where the yellow arrow
14 is. The flow direction along the curb gutter was from
15 the yellow arrow towards the area where we see the red
16 arrow. The red arrow indicates the location where there
17 was runoffs coming underneath the fence from the
18 Valencia site. So the runoff from the curb gutter and
19 the background site eventually would mix together with
20 runoff from the Valencia site but not before that runoff
21 had already left the Valencia site. So the background
22 runoff that I sampled did not ever enter the Valencia
23 site.

24 Q. Right. So what I'm trying to ask is, you did
25 not take a sample point that did not commingle with

1 stormwater leaving the Valencia site. A sample that was
2 totally independent of the Valencia site.

3 A. The background sample, there was no water from
4 the Valencia site had that entered it. So it was not
5 commingled with any water from the Valencia site.

6 Q. I'm sorry if I misunderstood. I thought you
7 were indicating that there was water that came under the
8 fence from the Valencia site.

9 A. That is correct. If I can clarify a little
10 further. I took a sample of water coming underneath the
11 fence from the Valencia site before they commingled with
12 any other water that was not from the Valencia site.
13 And I took another sample upgradient from that location
14 from the surrounding residential neighborhood and there
15 was no mixing of the two.

16 Q. Thank you. I understand better. Did you take
17 a sample below the downgradient from the Valencia site?

18 A. I'm not sure what you mean by downgradient.

19 Q. At a stormwater point downgradient from the
20 construction site.

21 A. Of runoff from the construction site?

22 Q. Yes.

23 A. Yes, I did.

24 Q. Where is that?

25 A. There were three of those locations. And so

1 referring to figure 1 in the memo, there is one that's
2 called Valencia_San Altos, which is in the figure that
3 we were just looking at, which was where the red arrow
4 was. There is another one that's called Valencia_Akins
5 on figure 1, which was runoff from the construction
6 site. And then finally there was a sample at a location
7 called Akins_Inlet which was farther down the street
8 from the Valencia_Akins site.

9 Q. Did the Akins_Inlet have runoff from the
10 Valencia site?

11 A. Yes, it did.

12 Q. So, do you have a downgradient sample that does
13 not include any runoff from the Valencia site?

14 A. No, I do not.

15 Q. When you were at the site on December 12 did
16 you observe stormwater that had sediment in the
17 stormwater rolling into the storm drain?

18 A. I observed stormwater that had sediments in it.
19 And by the storm drain do you mean the location that I
20 indicated as Akins_Inlet?

21 Q. Into any storm drain.

22 A. Yes, I did.

23 Q. Does your memo say that?

24 A. I don't recall. So what the memo does say is
25 that there's a photo 3, is the site Akins_Inlet, which

1 is the storm drain. And then also if we look at table
2 1, which is sampling results, the turbidity value was
3 477 at that location which indicates that there's
4 sediment in that water.

5 Q. Was there any potential runoff from any other
6 properties that commingled at the Akins_Inlet sampling
7 point?

8 A. Yes, there was.

9 Q. So the 477, is that representative of only
10 runoff from the Valencia site?

11 A. No, it is not.

12 Q. So did you see stormwater with sediment in it
13 that you could say was solely from the Valencia site?

14 A. What I can say is that I saw stormwater with
15 sediment in it at two discharge points from the Valencia
16 site. Whether that was only from the Valencia site I
17 can't say for certain.

18 Q. On page 4 of your memo you have photos of water
19 in glasses. What is that intended to demonstrate?

20 A. It is intended to allow the reader of the memo
21 to get a visual sense of what the turbidity measurements
22 that are reported in the document indicate, and also to
23 demonstrate that since the turbidity readings were high
24 as reported by the meter, that visually looking at the
25 sampled water, that it appears to be consistent with the

1 readings that were recorded.

2 Q. Is that something you would normally do for
3 these types of memos?

4 A. Yes, it is.

5 Q. I want to go back to the samples. Is there any
6 sample that you would say was solely of stormwater
7 discharge from the Valencia site?

8 A. I would repeat the same answer that I had
9 before which is that there are two discharge point
10 locations that I sampled. Whether they were solely
11 water from the Valencia site I can't say for certain.

12 Q. After you prepared this memo did you talk to
13 anyone at the city of Lemon Grove about it?

14 A. I don't recall specific conversations. I'm
15 guessing that I did talk to them about it because they
16 asked me to prepare it.

17 Q. Did anyone specifically ask you if this memo
18 was evidence of a discharge of non stormwater from the
19 construction site?

20 A. I don't remember any conversations about
21 discharges of non stormwater, no.

22 Q. Did anyone from the Water Board call you to
23 discuss this memo?

24 A. Not that I recall, no.

25 MS. BERESFORD: Can we please mark this as

1 Exhibit 4.

2 Q. Have you seen this document before?

3 A. Yes, I have.

4 Q. Can you please state what it is.

5 A. It is an email from Malik Tamimi at the city of
6 Lemon Grove to me and copied to Tad Nakatani who also
7 works for D-Max Engineering.

8 Q. It is dated December 16, 2014; is that correct?

9 A. That is correct.

10 Q. The first sentence of the email says, "John, we
11 would like the follow-up inspection today so that we can
12 attach it to our enforcement letter that we will be
13 drafting today." Do you see that?

14 A. Yes, I do.

15 Q. He sent this at 10:53 a.m. Do you know if
16 D-Max had already done an inspection of the site by that
17 time?

18 A. I don't know.

19 Q. Did you find anything odd in the request for an
20 inspection report that the city hadn't seen with the
21 assumption that they would attach it to an enforcement
22 letter?

23 MR. BOYERS: Objection. Vague as to odd.
24 Speculation.

25 MS. BERESFORD:

1 Q. You can answer.

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

3 Q. It sounds to me like he wants to attach an
4 inspection report to an enforcement letter when he
5 hasn't even seen the inspection report. Am I misreading
6 what he's asking you to do?

7 A. I would have to say I personally was not that
8 involved with the inspections. And I don't know the
9 chronology of when all the different inspections were
10 done and when the different enforcement actions were
11 taken.

12 Q. Do you know why the email was sent to you?

13 MR. BOYERS: Objection. Speculation.

14 MS. BERESFORD:

15 Q. If you know.

16 A. I don't know the specific reason why this
17 particular email was sent to me. I will say that Malik
18 and I have worked together for a long time, and that
19 I'm, overall, the contact for the work that D-Max does
20 for Lemon Grove so he will often send me emails.

21 Q. How long have you worked with Malik?

22 A. Since 2004.

23 Q. Did he ever discuss with you whether he was
24 concerned about the Regional Board taking an action
25 against the city of Lemon Grove because of problems with

1 the Valencia site?

2 A. Not that I can remember.

3 MS. BERESFORD: Can you please mark this as
4 Exhibit 5. Exhibit 5 is a December 17 memo. It says
5 Exhibit Number 10 at the top.

6 Q. Have you seen that document before?

7 A. Yes, I have.

8 Q. Can you please describe what it is.

9 A. It is a memo from Brian Nemerow, who worked at
10 that time for D-Max Engineering, sent to Malik Tamimi at
11 the city of Lemon Grove on December 17, 2014.

12 Q. What is it discussing?

13 A. It is discussing a field visit to the Valencia
14 construction site on December 17.

15 Q. Were you at the site on December 17?

16 A. I was not.

17 Q. Do you know why you were copied on this memo?

18 A. I was copied on the memo because I had done
19 sampling -- or I had done the previous sampling visit
20 and I had looked at the memo before it was sent out.

21 Q. The yellow highlighting on the memo, do you see
22 that?

23 A. Yes, I do.

24 Q. Did you do that?

25 A. I did not personally do that, no.

1 Q. Do you know who did?

2 A. I do not.

3 MS. BERESFORD: Let's mark this as Exhibit 6. This
4 is a December 31 memo has an Exhibit Number 12 at the
5 top.

6 Q. Have you seen that document before?

7 A. Yes, I have.

8 Q. What is it?

9 A. It is a memo from me to Malik Tamimi and Leon
10 Firsht at the city of Lemon Grove, dated December 31st
11 2014.

12 Q. What is it discussing?

13 A. It is discussing a field visit that I made to
14 the site on December 31st 2014.

15 Q. Do you know why you went out that day?

16 A. I was asked to go to the site to do sampling,
17 specifically for turbidity again.

18 Q. Who asked you to do that?

19 A. I believe it was Malik Tamimi.

20 Q. How many samples did you take that day?

21 A. Let me see. It appears that I had two samples.
22 I did three analyses, but it appears there were two
23 samples taken from two locations.

24 Q. Can you describe that a little bit more for me,
25 please.

1 A. Sure. So I'm reading the memo here to refresh
2 my memory. So I had a sample from ponded water at the
3 Akins Avenue entrance/exit location. And then a sample
4 from ponded water behind the first set of gravel bags
5 downstream of the Akins Avenue entrance -- or
6 exit/entrance. And I measured turbidity in each of
7 those samples. And then -- I suppose to clarify -- I
8 took another sample at the entrance/exit location
9 shortly after the first sample and agitated that sample
10 and then took the turbidity of that one. So there were
11 three total samples taken from two locations.

12 Q. For the third sample you indicated you agitated
13 the ponded water; is that correct?

14 A. That is correct.

15 Q. Is that an approved sampling protocol used,
16 commonly used?

17 MR. BOYERS: Objection. Vague as to approved.

18 MS. BERESFORD:

19 Q. Is it approved by any regulatory authority?

20 A. I'm not aware of an approval system for that
21 kind of sampling technique. I'm not sure I fully
22 understand the question.

23 Q. Do you use that sampling technique frequently?

24 A. Do I personally use it frequently? I do not
25 personally use it frequently, no.

1 Q. Why did you do it on that day?

2 A. At the time that I went to the site there was
3 no discharge anymore because there was no rain and no
4 runoff at the time that I was there. But there was
5 water that had collected immediately next to the
6 discharge point from the Valencia site. And so the
7 reason that I took the sample and then agitated it is
8 that most likely -- not most likely, typically what
9 happens is that after water that has sediment in it is
10 still in a ponded location for a matter of time, then
11 sediment particles will start to drop out of the water,
12 and therefore the turbidity of the water that is sampled
13 after its been sitting for some time will typically be
14 lower than what it was at the time it was flowing
15 before.

16 Q. Are there EPA methods that you're supposed to
17 follow when taking turbidity sampling?

18 A. Are there EPA methods for any kind of turbidity
19 sampling? Are we talking about sampling analysis or
20 turbidity.

21 Q. I'm talking about when you take a sample. Is
22 there a protocol that's supposed to be followed when
23 you're taking a sample?

24 A. Yes, there is.

25 Q. Does disturbing a pond follow any sort of

1 standard protocol that is recommended for this type of
2 sampling?

3 A. I'm not aware of a standard protocol prepared
4 by anyone about that, no.

5 Q. About swirling a puddle.

6 A. I am not aware of a standard protocol about
7 swirling a puddle, no.

8 Q. Did you calibrate the instrument before you
9 took any of your samples?

10 A. Yes, I did.

11 Q. Did you find the calibration log for this
12 event?

13 A. No, I did not.

14 Q. So you did not produce it.

15 A. That is correct.

16 Q. Is that unusual that you can't find your
17 calibration logs?

18 A. It is somewhat unusual, yes.

19 Q. Does it surprise you that you couldn't find
20 them for either of the sampling events for this
21 property?

22 A. No, it did not.

23 Q. Why not?

24 A. It didn't surprise me because I remembered
25 that -- I should clarify my answer. It didn't surprise

1 me because I couldn't remember where I put the
2 calibration logs.

3 Q. Does D-Max have a protocol of where you're
4 supposed to put them?

5 A. We do. But typically they go into a binder
6 that we have. So I guess it would be surprising that I
7 did not find them in that binder.

8 Q. You did not observe stormwater with sediment in
9 it being discharged to the storm drain on December 31st;
10 is that correct?

11 A. That is correct.

12 Q. Did you discuss this memo with anyone from the
13 city of Lemon Grove after you prepared it?

14 A. I don't remember details of any discussions. I
15 know that I emailed it to them. And I remember letting
16 them know that I was not able to take a sample of
17 stormwater runoff because it was not raining at the time
18 that I was there.

19 Q. Did you ever talk to anyone at the Regional
20 Board about this memo?

21 A. I did not, no.

22 Q. The memo, the version that you have there's
23 yellow highlighting on there. Did you do that
24 highlighting?

25 A. I did not, no.

1 MS. BERESFORD: Can we please mark this as
2 Exhibit 7.

3 Q. Have you seen this document before?

4 A. Yes, I have.

5 Q. What is this?

6 A. It is an email from me to Leon Firsht at the
7 city of Lemon Grove dated January 5, 2015.

8 Q. Do you know what the photos discussed in this
9 email are?

10 A. I am not sure based on looking at the email,
11 no.

12 Q. Did you go to the site sometime after December
13 31st?

14 A. No, I did not.

15 MS. BERESFORD: Can we please mark that as
16 Exhibit 8. Exhibit 8 is a January 16 memo with Exhibit
17 Number 23 at the top. I would also like you to mark
18 that as Exhibit 9, please.

19 Q. Let's look at Exhibit 9 first. Can you tell me
20 what that is?

21 A. Exhibit 9 is an email from Leon Firsht at the
22 city of Lemon Grove to Tad Nakatani and Malik Tamimi and
23 I am copied on that email.

24 Q. Have you seen this email chain before?

25 A. I believe so.

1 Q. In Leon's email of January 14 to Tad what is he
2 asking for?

3 A. He is asking for D-Max to prepare a memo
4 documenting all the inspections and sampling that D-Max
5 has performed at the Valencia site.

6 Q. Have you seen the document as Exhibit 8 before?

7 A. Yes, I have.

8 Q. Is the memo, Exhibit 8, the memo that was
9 prepared in response to this request?

10 A. I believe so.

11 Q. Do you know why they wanted this memo?

12 MR. BOYERS: Objection. Speculation.

13 THE WITNESS: I know that they requested it. I
14 don't know all the details.

15 MS. BERESFORD:

16 Q. So going to Mr. Firsht's email on Exhibit 9, it
17 says in the second paragraph, "If you can include the
18 removal of the stop work and reasons why you feel it can
19 be removed." And then the third sentence says, "I'm
20 going to use what you provide to send to the Regional
21 Board." Did you ever talk to them about them wanting
22 documentation for a specific reason to send to the
23 Board?

24 A. I don't remember any conversations that I was
25 in, no.

1 MS. BERESFORD: Please mark that as be Exhibit 10.
2 Please mark that as Exhibit 11.

3 Q. Have you seen a document Exhibit 10 before?

4 A. Yes, I have.

5 Q. What is this?

6 A. It is an email chain with the most recent email
7 at the top being from me to Malik Tamimi and Leon Firsht
8 at city of Lemon Grove. It's dated March 2nd 2015.

9 Q. What is this email chain discussing?

10 A. The email chain is discussing results of
11 sampling that was done at the Valencia site on March 2nd
12 2015.

13 Q. Have you seen the document --

14 A. I need to rephrase that. I believe the
15 sampling was actually done March 1st, not March 2nd.

16 Q. Thanks. Have you seen the document Exhibit 11?

17 A. Yes, I have.

18 Q. Can you tell me what this is?

19 A. It is a memo summarizing the results of
20 sampling done at the Valencia site on March 1st 2015.

21 Q. What does your message to Mr. Tamimi in your
22 email of March 2nd say?

23 A. It says that the turbidity levels in the -- it
24 doesn't say turbidity levels in particular. It says the
25 monitoring results from the sampling are below the

1 General Construction Permit limits.

2 Q. You concur with that statement today in
3 reviewing the March 2 memo?

4 A. Yes, I do. I guess there would be a minor
5 clarification in that for turbidity, since turbidity has
6 an upper -- for pH since turbidity has an upper and
7 lower limit it's within the acceptable range. It's not
8 below the low end of the range.

9 Q. For turbidity or pH?

10 A. For pH. I'm sorry. Not for turbidity.

11 Q. So the turbidity samples are the results of the
12 sampling. Those numbers were below the numeric action
13 level of the Construction General Permit?

14 A. That is correct.

15 Q. And the pH levels are within the ranges stated
16 in the state Construction General Permit?

17 A. That is also correct.

18 MS. BERESFORD: I'm not going to make this an
19 exhibit.

20 MS. BERESFORD: Let's go off the record for a
21 second.

22 (A discussion was held off the record.)

23 MS. BERESFORD: Can we please mark this as
24 Exhibit 12 and Exhibit 13, please.

25 THE WITNESS: Okay.

1 MS. BERESFORD:

2 Q. Have you seen these documents before?

3 A. Yes, I have.

4 Q. What is Exhibit 12?

5 A. Exhibit 12 is an email from Gary Harper at the
6 city of Lemon Grove to Tad Nakatani at D-Max, Malik
7 Tamimi and Tamara O'Neal at the city of Lemon Grove and
8 copied to me and to Brian Nemerow. It's dated May 16,
9 2015.

10 Q. What is Exhibit 13?

11 A. Exhibit 13 is a memo, dated May 15, 2015, from
12 Brian Nemerow to Malik Tamimi, Gary Harper and Tamara
13 O'Neal who all worked for the city of Lemon Grove at
14 that time.

15 Q. Were you on-site for the May 15 sampling?

16 A. I was not.

17 Q. Going to Exhibit 12, in the second paragraph --

18 A. Second paragraph?

19 Q. The second paragraph of the email from Tad to
20 Gary.

21 A. Okay.

22 Q. The third sentence says, "We took a sample of
23 one of the basin inlets to get a picture of the
24 turbidity levels prior to treatment by the basins."
25 Turbidity was measured at 233 in this sample. This

1 information was not included in the memo." Going back
2 to the memo, did you review the memo before it was
3 finalized?

4 A. I did look at the memo before it was sent out,
5 yes.

6 Q. Can you tell me about this sample that Tad is
7 talking about in his email? Why wasn't it discussed in
8 the memo?

9 A. Well, as far as what the sample is, I think the
10 email describes it well. As why it was not included in
11 the memo, the reason was because that there was no --
12 this was runoff within the site that went into one of
13 the basins on-site. But since there was no actual
14 discharge off-site from that water, and the main purpose
15 of the memo was looking at discharges from the site,
16 that is why it wasn't included, at least that's my
17 recollection.

18 Q. So the email says there was no discharge at the
19 San Altos entrance; is that correct?

20 A. It says, "No discharge was observed at the
21 San Altos entrance."

22 Q. So there was a sample taken. Can you describe
23 to me the Valencia_Akins sample? Where is that?

24 A. The location is shown on figure 1 in the memo
25 and also in photo number 1.

1 Q. Is that downstream of the construction site?

2 A. Meaning runoff from the construction site goes
3 there? Yes.

4 Q. Then there's a second sample at the
5 Akins_Inlet; is that correct?

6 A. That is correct.

7 Q. Is the Akins_Inlet downstream from the sample
8 taken at the Valencia_Akins?

9 A. Yes, it is.

10 Q. So the sample result going into the Akins_Inlet
11 the turbidity is 95.

12 A. That's what it says in the memo, yes.

13 Q. Do we know the sample taken at photo 1? Is
14 there possibly additional runoff from a neighboring
15 property across the street that commingles there?

16 A. I don't know. I wasn't there.

17 Q. Then we see at the Akins_Inlet at photo 2 that
18 there are sandbags around the inlet; is that correct?

19 A. I believe -- I was not there, but I believe
20 they would have been gravel bags.

21 Q. Oh, excuse me. Gravel bags. Okay. Thanks.

22 MS. BERESFORD: I think I'm just going to have a
23 few more follow-up questions. If we can take a short
24 break, I'll review to be sure I don't have anything
25 further and then we can finish up.

1 MR. BOYERS: Sure. I'm only going to have one or
2 two.

3 MS. BERESFORD: So we'll go off the record for
4 about a 10-minute break.

5 (Recess.)

6 MS. BERESFORD: Let's go back on, please. Please
7 mark this as Exhibit 14.

8 Q. I have it open to a page, but Exhibit 14 is a
9 few documents together, or two documents that appear to
10 be together. Have you seen this document before?

11 A. It looks like it may be a combination of a
12 couple different documents. I have seen all the pieces
13 before, yes.

14 Q. I want to talk about the December 8, 2015
15 as-needed construction inspection support letter.

16 A. Okay.

17 Q. Do you think this letter describes the scope of
18 services that you were to provide under the agreement
19 for as-needed stormwater quality services with the city
20 of Lemon Grove?

21 A. Not the ones that occurred during the times
22 that we're talking about. I believe this one is a
23 proposal that we just sent to the city earlier in
24 December and it hasn't to my knowledge been approved
25 yet. So it's a little bit different.

1 Q. Do you know if the scope of services that you
2 were providing for the city during the period of
3 December 2014 through July 2015, do you know if the
4 scope of services was the same as was described in this
5 December 8, 2015 letter?

6 A. It's similar, not exactly the same.

7 Q. That's okay. I'll be quick to what I'm
8 actually looking for. The bottom circle, point, says
9 that you will provide a document project name,
10 inspection date, instances of noncompliance noted,
11 corrections made and date of correction on a
12 spreadsheet. Do you know if you were providing a
13 similar spreadsheet for the city of Lemon Grove for the
14 period of December 2014 through December of 2015?

15 A. I'm not aware of a spreadsheet like that, no.

16 Q. I would like to go back to Exhibit 6, please,
17 which is your December 31, 2014 memo, also identified as
18 Exhibit 12 at the top of the document. I'd like you to
19 look at photograph number 4 and the picture. This
20 picture on Akins Avenue, do you know if it is across the
21 street from the Valencia construction site?

22 A. Could you clarify what you mean by across the
23 street?

24 Q. Sure. The opening of the construction project
25 is on one side of the street. I'm wondering if this

1 picture is on the same side of the street or across the
2 street.

3 A. It appears to be on the same side of the street
4 as the construction site discharge point because there
5 is a fence along the street there.

6 Q. There isn't a fence on both sides of the
7 street?

8 A. I don't recall for certain, but it appears to
9 be consistent with -- that's the way I remember the site
10 looking. Yeah. It was on -- it was on the same side as
11 the one that -- sorry. It was on the same side of the
12 street as the curb gutter that had the discharge from
13 the construction site, yes.

14 Q. Do you know approximately how far down it is?

15 A. I don't know for sure, no.

16 Q. Is it possible that some of the sediment in
17 photo 4 came from sites other than the Valencia
18 construction site?

19 A. From other construction sites or --

20 Q. Other properties?

21 A. Other properties? It would be hard for me to
22 say for sure.

23 Q. Have you ever discussed this site with
24 Mr. Wayne Chiu of the Water Board?

25 A. I don't remember having any discussions with

1 him, no.

2 Q. Have you discussed the site with Mr. Melbourn
3 of the Water Board?

4 A. Not that I can recall.

5 Q. Have you discussed the site with anyone else at
6 the Water Board?

7 A. Not that I can remember, no.

8 Q. Have you ever been involved with any other
9 sites that were the subject of administrative civil
10 liability from the Regional Board for stormwater
11 violations?

12 A. Not that I can remember, no.

13 Q. Are you aware that the Water Board is seeking
14 penalties of more than \$800,000 for this site?

15 A. I am aware of that, yes.

16 Q. Are you aware of any other Water Board
17 enforcement action for stormwater violations seeking
18 similar penalties?

19 A. For the -- I'm not aware of anything else for
20 that same amount of money, no.

21 MS. BERESFORD: I think I'm done. You have a
22 couple questions?

23 MR. BOYERS: I do.

24 -EXAMINATION-

25 BY MR. BOYERS:

1 Q. We're going to start with Exhibit 3. If you
2 could pull Exhibit 3 from your pile. This is the
3 December 12th memo from you to Mike Tamimi regarding
4 water quality samples taken on December 12. So just so
5 I can understand what you did -- and I'm looking at
6 figure 1 on page 2, and I'm referencing it in sort of --
7 cross-referencing it with the numbers in table 1. Okay?
8 So the Valencia_San Altos turbidity sample showed 427
9 NTUs; is that correct?

10 A. Correct.

11 Q. That sample was representative only of
12 discharge from the Valencia site. That's correct?

13 A. I can say that it was discharge from the
14 Valencia site. I am not aware of other properties that
15 were discharging there, but I can't say for certain that
16 there was nothing else that came through there.

17 Q. But in your professional opinion, given your
18 knowledge of the site, it's your belief it's more likely
19 than not that that indicates NTUs specifically from the
20 Valencia site.

21 MS. BERESFORD: Objection. I don't think he's been
22 qualified as an expert.

23 MR. BOYERS: I think you qualified him as an expert

24 MS. BERESFORD: I don't think I did that.

25 MR. BOYERS:

1 Q. You can answer the question.

2 A. Can you repeat the question.

3 MR. BOYERS: Can you read it back.

4 (Question on page 48, lines 17-20 read by
5 reporter.)

6 THE WITNESS: Yes.

7 MR. BOYERS:

8 Q. Then looking also at figure 1, the
9 Valencia_Akins NTU sample that you took and
10 cross-referencing it with Table 1, that reading was 513,
11 correct?

12 A. That is correct.

13 Q. And is it your belief that that NTU reading was
14 related to discharge from the Valencia site?

15 A. Yes.

16 Q. I think your testimony was that you did observe
17 sediment-laden stormwater going into the storm drain.

18 A. That is correct.

19 Q. That was observed at the Akins_Inlet.

20 A. Correct.

21 Q. Which is in the lower left-hand corner of your
22 figure 1, correct?

23 A. Correct.

24 Q. Given the readings of 427 at the Valencia_San
25 Altos location and the 513 NTU reading at the

1 Valencia_Akins location, is it your opinion that it's
2 reasonable to expect that the 477 reading at the
3 Akins_Inlet is a result of the sediment from the
4 Valencia site?

5 MS. BERESFORD: Objection. Leading.

6 THE WITNESS: I would say in my professional
7 opinion it is likely that the discharge from the Akins
8 location impacted the turbidity reading at the
9 Akins_Inlet location.

10 MR. BOYERS:

11 Q. Now I'm going to ask you to look at Exhibit 6.
12 If my notes are correct, your testimony with respect to
13 this exhibit was that you did not actually see a
14 discharge to the storm drain during your inspection on
15 December 31st 2014; is that correct?

16 A. That is correct.

17 Q. However, given the site conditions that you
18 observed during your visit, is it your belief that there
19 was a discharge of sediment-laden stormwater to the
20 storm drain prior to your arrival?

21 A. Yes, that is my belief.

22 MR. BOYERS: Thank you. That's all I have.

23 MS. BERESFORD: I do have some questions.

24 -FURTHER EXAMINATION-

25 BY MS. BERESFORD:

1 Q. What is that belief based on?

2 A. Could you be more specific?

3 Q. Sure. He just said it was your belief before
4 you got there, there was sediment-laden stormwater that
5 went to the stormwater -- storm drain, excuse me, before
6 your visit to the site on December 31st. Can you please
7 say why you believe that is so.

8 A. Yes, I can. So, it had been raining before I
9 got to the site. And I don't recall exactly how much
10 rain that we had, but given the relatively turbid water
11 that was pooled next to the discharge point, it appears
12 likely that there was runoff from the site and that
13 there was at least some sediment in that water.

14 Q. From the site did you have a similar inspection
15 at the storm drain?

16 A. At the storm drain itself -- let me see if
17 there was -- I have to review this to see if I had
18 anything specific about the storm drain. You're asking
19 what I saw at the storm drain?

20 Q. Yes.

21 A. At the storm drain itself I don't remember what
22 I saw. I don't remember if there was ponded water there
23 or not.

24 Q. So do you have an opinion as to -- this memo
25 does not say that you know that stormwater ladened with

1 sediment went into the storm drain from the Valencia
2 site; is that correct?

3 A. The memo does not say that, correct.

4 Q. Do you have any opinion on that based on -- I
5 mean, you say you have ponded water that you inspected
6 at the site but you didn't inspect ponded water at the
7 storm drain; is that correct?

8 A. I don't believe it says I didn't inspect ponded
9 water at the storm drain but it doesn't say that I did.

10 Q. Do you recall what you did?

11 A. I recall looking around the storm drain, and I
12 don't recall whether there was ponded water or not
13 there. So that's all I can say about that.

14 Q. I hate to belabor something but I'm going to be
15 a little picky about some of the questions he just asked
16 you. Maybe it's best if we have you try to go back and
17 read the question because I don't want to misstate what
18 somebody said.

19 A. Are you referring to a specific exhibit?

20 Q. If we go back to Exhibit 3, I believe, and that
21 was the December 12. That's what you were asking him
22 about before?

23 MR. BOYERS: Uh-huh.

24 MS. BERESFORD:

25 Q. I believe one of his questions was with respect

1 to the sample taken at the Valencia_Akins location.

2 A. Okay.

3 Q. I believe his question was do you believe that
4 the sediment in that sample was related to the Valencia
5 site. I believe your answer was affirmative; is that
6 correct?

7 A. That is correct.

8 Q. Could there have been other sites that also
9 contributed to that sampling point?

10 A. It is possible. I have to review a topographic
11 map to look at the exact drainage area and I don't have
12 that with me right now.

13 Q. We do not have a photograph of the Valencia --
14 I apologize. You do. Of the Valencia Akins, the
15 photo 1.

16 MS. BERESFORD: I don't have any other questions.

17 MR. BOYERS: Nor do I.

18 MS. BERESFORD: Thank you very much.

19 I propose that Oppen & Varco hold onto the original
20 copy of the transcript. We will forward it to
21 Mr. Quenzer for review. We would ask that he review
22 that in approximately two weeks time. To the extent
23 that he has any changes, if he has any changes he will
24 provide that to us. We will, of course, provide a copy
25 to the Regional Board. If the event that the original

1 transcript is lost, the Regional Board agrees that we
2 can use a copy in its place.

3 MR. BOYERS: We still stipulate to all the above.

4 MR. ROSENBAUM: Do you want a copy?

5 MR. BOYERS: I always want my own copy, yes.

6 MS. BERESFORD: Thank you very much.

7 (The proceedings concluded at 3:06 p.m.)

8 ***

9 I declare under penalty of perjury under the laws
10 of the State of California that the foregoing is true
11 and correct.

12
13 Executed at _____, California,
14 on _____.

15
16
17 _____
JOHN ROBERT QUENZER
18
19
20
21
22
23
24
25

1 STATE OF CALIFORNIA) ss

2

3 I, Marc Volz, CSR 2863, do hereby declare:

4

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

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

13

14 I further declare that I have no interest in the
15 event of the action.

16

17 I declare under penalty of perjury under the laws
18 of the State of California that the foregoing is true
19 and correct.

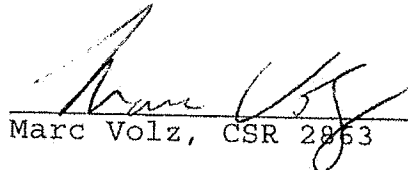
20

21 WITNESS my hand this 5th day of
22 January, 2016.

23

24

25


Marc Volz, CSR 2863



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EXHIBITS

Quenzer, John Robert



Litigation
SERVICES

Job: 599122

Exhibit: 00001

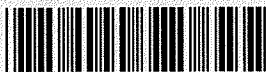


EXHIBIT 1
REPORTER M. K/2
WITNESS J. Quenzer
DATE 12-29-15

OPPER & VARCO, LLP
S. WAYNE ROSENBAUM (Bar No. 182456)
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ATTORNEYS FOR SAN ALTOS – LEMON GROVE, LLC

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

IN THE MATTER OF:) **SAN ALTOS – LEMON GROVE, LLC'S**
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT) **NOTICE OF DEPOSITION OF JOHN**
No. R9-2015-0110) **QUENZER AND REQUEST FOR**
AGAINST SAN ALTOS – LEMON GROVE, LLC) **PRODUCTION OF DOCUMENTS**
Date: December 29, 2015
Time: 1:00 p.m.
Place: Law Offices of Oppper & Varco LLP
225 Broadway, Suite 1900
San Diego, CA 92101

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 29, 2015 at 1:00 p.m., San Altos – Lemon Grove, LLC will take the deposition of John Quenzer in accordance with the enclosed subpoena. This deposition will take place at the law firm of Oppper & Varco, LLP, located at 225 Broadway, Suite 1900, San Diego, CA 92101, before a certified reporter or person authorized to administer oaths who is present at the specified time and place. Said deposition will continue from day to day, Saturdays, Sundays and holidays excepted, until completed.

YOU ARE FURTHER NOTIFIED that the deposition may also be recorded by videotape as authorized by the Code of civil Procedure section 2025.340 and Plaintiff reserves the right to use any videotaped portion of the deposition testimony at a hearing in this matter. The deposition may also be recorded through such means as to provide the instant display of the testimony as also authorized by Code of Civil Procedure section 2025.340.

1 YOU ARE FURTHER NOTIFIED that San Altos-Lemon Grove, LLC requests that John
2 Quenzer produce the documents identified in Attachment A to this Notice of Deposition and
3 Request for Production of Documents.

4
5 Dated: December 10, 2015

OPPER & VARCO LLP

6
7
8 
9 Linda C. Beresford
Attorney for San Altos – Lemon Grove, LLC

EXHIBIT A

1 S. WAYNE ROSENBAUM (SBN 182456)
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4 Email: swr@envirolawyer.com

5 Attorney for San Altos – Lemon Grove, LLC

6 BEFORE THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

7 SAN DIEGO REGION

8 IN THE MATTER OF;

9 **Administrative Civil Liability Complaint**
10 **No. R9-2015-0110 Against San Altos – Lemon Grove, LLC**

AFFIDAVIT IN SUPPORT OF SUBPOENA FOR
DOCUMENTS AND THINGS FROM JOHN
QUENZER

11 1. I, S. Wayne Rosenbaum, declare that I am counsel for San Altos – Lemon Grove, LLC (“San
12 Altos”), a Designated Party in the above-entitled matter.

13 2. On December 4, 2015, the Advisory Team for the California Regional Water Quality Control
14 Board, San Diego Region (“Advisory Team”) issued the Final Hearing Procedures for ACLC R9-2015-0110. (“Final
15 Hearing Procedures”), which included a list of deadlines (the “Schedule”) prior to the currently scheduled hearing
16 date of February 10, 2016.

17 3. The Schedule requires San Altos submit “All evidence (other than witness testimony to be
18 presented orally at the hearing) that the Designated Party would like the San Diego Water Board to consider” by
19 January 4, 2016.

20 4. Good cause exists for the production of the document described below because such evidence is
21 probative of the veracity of the alleged violations of the Complaint.

22 5. As an Employee of D-Max Engineering, Inc. providing on-call Storm Water inspection services
23 for the City of Lemon Grove, John Quenzer has, or should have, the documents described below in his possession or
24 control.

25 6. The exact documents to be produced include:
26
27

28 AFFIDAVIT IN SUPPORT OF SUBPOENA FOR DOCUMENTS AND THINGS FROM JOHN QUENZER

1 a. All records and documents, including, but not limited to, inspection reports, notices of
2 violation, administrative citations, stop work notices, correct work notices, field notes, photographs, audio
3 or video recordings, phone logs, and internal communications, including emails, related to inspections that
4 occurred at the San Altos -- Lemon Grove, LLC Valencia Hills Construction Site on the following dates:

5 December 1, 2014

6 December 2, 2014

7 December 3, 2014

8 December 4, 2014

9 December 5, 2014

10 December 6, 2014

11 December 7, 2014

12 December 8, 2014

13 December 9, 2014

14 December 11, 2014

15 December 12, 2014

16 December 15, 2014

17 December 16, 2014

18 December 17, 2014

19 December 31, 2014

20 January 6, 2015

21 January 7, 2015

22 January 8, 2015

23 January 9, 2015

24 January 10, 2015

25 January 11, 2015

26 January 12, 2015

1	January 13, 2015
2	March 1, 2015
3	March 18, 2015
4	March 19, 2015
5	March 20, 2015
6	March 21, 2015
7	March 22, 2015
8	March 23, 2015
9	March 24, 2015
10	March 25, 2015
11	March 26, 2015
12	March 27, 2015
13	March 28, 2015
14	March 29, 2015
15	March 30, 2015
16	March 31, 2015
17	April 1, 2015
18	May 8, 2015
19	May 9, 2015
20	May 10, 2015
21	May 11, 2015
22	May 12, 2015
23	May 13, 2015
24	May 14, 2015
25	May 15, 2015
26	September 15, 2015

1 October 5, 2015

2 b. Any additional records and documents, including, but not limited to, inspection reports,
3 notices of violation, administrative citations, stop work notices, correct work notices, field notes,
4 photographs, audio or video recordings, phone logs, and internal communications, including emails, related
5 to inspections that occurred at the San Altos -- Lemon Grove, LLC Valencia Hills Construction Site,
6 regardless of whether or not the inspection led to the issuance of a formal report, notice, or citation from Mr.
7 Quenzer and/or the City of Lemon Grove to San Altos -- Lemon Grove, LLC from March 6, 2014 to
8 October 19, 2015.

9 c. Any documents, contracts, work orders, requests for services, communications or records
10 thereof including but not limited to emails, or invoices related to inspections, testing, report writing, or
11 materials related to services rendered by D-Max Engineering, Inc. on behalf of the City of Lemon Grove
12 that involved or affected the San Altos -- Lemon Grove, LLC Valencia Hills Project Site during the period
13 of March 6, 2014 through October 19, 2015.

14 d. A copy of Mr. Quenzer's curriculum vitae listing his education, qualifications, and
15 experience.

16 7. Emails, writings, or photographs should be provided in both printed and digital formats. Audio or
17 video recordings may be provided in conventional formats accessible on personal computers without the assistance
18 of specialized software.

19
20 I declare under penalty of perjury that the foregoing is true and correct.

21
22 Dated this 10th of December, 2015.

23
24 
25 S. Wayne Rosenbaum
26 Attorney for San Altos -- Lemon Grove, LLC
27

28 AFFIDAVIT IN SUPPORT OF SUBPOENA FOR DOCUMENTS AND THINGS FROM JOHN QUENZER

**BEFORE THE SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD
SUBPOENA FOR ADJUDICATIVE ACTION**

ATTORNEY OR PARTY WITHOUT ATTORNEY REQUESTING SUBPOENA (name, address, and telephone no.): S. Wayne Rosenbaum, Esq. Oppen & Varco LLP 225 Broadway, Suite 1900, San Diego, CA 92101 Phone: (619) 231-5858 Fax: (619) 231-5853 E-Mail: swr@envirolawyer.com REPRESENTING: San Altos - Lemon Grove, LLC	FOR REGIONAL WATER BOARD USE ONLY
TITLE OF THE PROCEEDING: Administrative Civil Liability Complaint No. R9-2015-0110	
☒ SUBPOENA ☒ SUBPOENA DUCES TECUM	☐ RE HEARING ☒ RE DEPOSITION

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name): JOHN QUENZER

1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this proceeding as follows unless you make special agreement with the person named in item 3:

a. Date: December 29, 2015	Time: 1:00 PM PST
b. Address: 225 Broadway, Suite 1900, San Diego, CA 92101	

2. AND YOU ARE:

- a. ☐ Ordered to appear in person. (Wat. Code, § 1080; Gov. Code, § 11450.10; Cal. Code Regs., tit. 23, § 649.6.)
b. ☐ Not required to appear in person if you produce the records described in the accompanying affidavit in compliance with Evidence Code sections 1560 and 1561. (Wat. Code, § 1080; Gov. Code, § 11450.10(b); Cal. Code Regs., tit. 23, § 649.6.)
c. ☒ Ordered to appear in person and to produce the records described in the accompanying affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized by subdivision (b) of section 1560, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpoena. (Wat. Code, § 1080; Gov. Code, § 11450.10; Cal. Code Regs., tit. 23, § 649.6.)

3. IF YOU HAVE ANY QUESTIONS ABOUT WITNESS FEES OR THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

a. Name: S. Wayne Rosenbaum	b. Telephone number: (619) 231-5858
------------------------------------	--

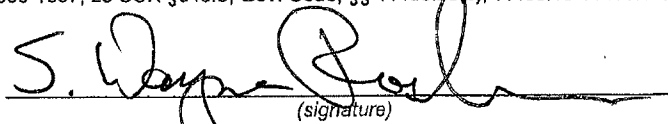
(Gov. Code, § 11450.20(a); Code Civ. Proc., § 1985.2.)

4. **WITNESS FEES:** You are entitled to witness fees and mileage actually traveled, both ways, as provided by law. Request them from the person who serves this subpoena or from the person named in item 3. (Wat. Code, §§ 1081, 1083, 1084; Gov. Code, §§ 11450.40, 68070 et seq.; Code Civ. Proc., §§ 1986.5, 2065.)
5. If you object to the terms of this subpoena, you may file a motion for a protective order including a motion to quash. Motions must be made within a reasonable period after receipt of the subpoena, and shall be made with written notice to all parties, with proof of service upon all parties attached. In response to your motion, the hearing officer may make an order quashing the subpoena entirely, modifying it, or directing compliance with it, or may make any order needed to protect the parties or witnesses from unreasonable or oppressive demands, including unreasonable violations of the right to privacy. (Gov. Code, § 11450.30.) (Send motions to: San Diego Regional Water Quality Control Board, 2375 Northside Drive, Suite 100, San Diego, CA 92108, Attn: David Gibson, with copies to all parties and to Catherine George Hagan, State Water Resources Control Board, Office of Chief Counsel, c/o San Diego Water Board, 2375 Northside Drive, Suite 100, San Diego, CA 92108.)

DISOBEDIENCE OF THIS SUBPOENA MAY CAUSE YOU TO BE LIABLE FOR CONTEMPT AND OTHER PENALTIES PROVIDED BY LAW

(Wat. Code, §§ 1090-1097; 23 CCR §648.8; Gov. Code, §§ 11450.20(b), 11455.10-11455.30.)

Dated: December 10, 2015


(signature)

Name: S. Wayne Rosenbaum

Title: Partner - Oppen & Varco LLP
Attorney for San Altos - Lemon Grove, LLC

1 S. WAYNE ROSENBAUM (SBN 182456)
2 OPPER & VARCO, LLP
225 Broadway, Suite 1900
San Diego, California 92101
3 Telephone: 619.231.5858
Facsimile: 619.231.5853
4 Email: swr@envirolawyer.com

5 Attorney for San Altos – Lemon Grove, LLC

6 BEFORE THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

7 SAN DIEGO REGION

8 IN THE MATTER OF:

9 **Administrative Civil Liability Complaint**
10 **No. R9-2015-0110 Against San Altos – Lemon Grove, LLC**

AFFIDAVIT IN SUPPORT OF SUBPOENA FOR
DOCUMENTS AND THINGS FROM JOHN
QUENZER

11 1. I, S. Wayne Rosenbaum, declare that I am counsel for San Altos – Lemon Grove, LLC (“San
12 Altos”), a Designated Party in the above-entitled matter.

13 2. On December 4, 2015, the Advisory Team for the California Regional Water Quality Control
14 Board, San Diego Region (“Advisory Team”) issued the Final Hearing Procedures for ACLC R9-2015-0110. (“Final
15 Hearing Procedures”), which included a list of deadlines (the “Schedule”) prior to the currently scheduled hearing
16 date of February 10, 2016.

17 3. The Schedule requires San Altos submit “All evidence (other than witness testimony to be
18 presented orally at the hearing) that the Designated Party would like the San Diego Water Board to consider” by
19 January 4, 2016.

20 4. Good cause exists for the production of the document described below because such evidence is
21 probative of the veracity of the alleged violations of the Complaint.

22 5. As an Employee of D-Max Engineering, Inc. providing on-call Storm Water inspection services
23 for the City of Lemon Grove, John Quenzer has, or should have, the documents described below in his possession or
24 control.

25 6. The exact documents to be produced include:
26
27

28 AFFIDAVIT IN SUPPORT OF SUBPOENA FOR DOCUMENTS AND THINGS FROM JOHN QUENZER

1 a. All records and documents, including, but not limited to, inspection reports, notices of
2 violation, administrative citations, stop work notices, correct work notices, field notes, photographs, audio
3 or video recordings, phone logs, and internal communications, including emails, related to inspections that
4 occurred at the San Altos – Lemon Grove, LLC Valencia Hills Construction Site on the following dates:

5 December 1, 2014

6 December 2, 2014

7 December 3, 2014

8 December 4, 2014

9 December 5, 2014

10 December 6, 2014

11 December 7, 2014

12 December 8, 2014

13 December 9, 2014

14 December 11, 2014

15 December 12, 2014

16 December 15, 2014

17 December 16, 2014

18 December 17, 2014

19 December 31, 2014

20 January 6, 2015

21 January 7, 2015

22 January 8, 2015

23 January 9, 2015

24 January 10, 2015

25 January 11, 2015

26 January 12, 2015

1	January 13, 2015
2	March 1, 2015
3	March 18, 2015
4	March 19, 2015
5	March 20, 2015
6	March 21, 2015
7	March 22, 2015
8	March 23, 2015
9	March 24, 2015
10	March 25, 2015
11	March 26, 2015
12	March 27, 2015
13	March 28, 2015
14	March 29, 2015
15	March 30, 2015
16	March 31, 2015
17	April 1, 2015
18	May 8, 2015
19	May 9, 2015
20	May 10, 2015
21	May 11, 2015
22	May 12, 2015
23	May 13, 2015
24	May 14, 2015
25	May 15, 2015
26	September 15, 2015

27

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AFFIDAVIT IN SUPPORT OF SUBPOENA FOR DOCUMENTS AND THINGS FROM JOHN QUENZER

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S. Wayne Rosenbaum
Attorney for San Altos – Lemon Grove, LLC

Quenzer, John Robert



Litigation
SERVICES

Job: 599122

Exhibit: 00002



John Quenzer

From: Malik Tamimi [mtamimi@lemongrove.ca.gov]
Sent: Thursday, December 04, 2014 12:12 PM
To: jquenzer@dmxinc.com
Cc: Leon Firsh
Subject: Construction Inspections

EXHIBIT 2
REPORTER M. Volz
WITNESS J. Quenzer
DATE 12-29-15

Hi John,

We need an as needed agreement for construction inspections. We have two sites...Valencia (17 acres) and Vista Serrano. We would like an inspector to start as early as this Monday. They will conduct the inspection, write up the recommended corrective actions the day of the inspection and provide to the City as a packet with photos (pdf), prepare any type of violation writeup, and fill out the inspection form. Let me know.

Also, when will we get our draft construction section?

Thank you

-Malik

Quenzer, John Robert



Litigation
SERVICES

Job: 599122

Exhibit: 00003

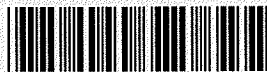


EXHIBIT 3
REPORTER M. Lb/z
WITNESS J. Quenzer
DATE 12-29-15

D-MAX Engineering, Inc.
Consultants in Water & Environmental Sciences



Memo

Date: December 12, 2014

To: Malik Tamimi

Cc: Tad Nakatani

From: John Quenzer *JQ*

Subject: December 12, 2014 Sampling at Valencia Construction Site

Per the City's request, D-MAX collected samples of runoff from the Valencia construction site. Samples were taken at the Akins Avenue and San Altos Place entrance/exit locations to the site (sites Valencia_Akins and Valencia_SanAltos, respectively). A sample of runoff from a residential portion of Lemon Grove flow south/southwest toward the San Altos entrance exit was also taken to assess background conditions (site Background_SanAltos). Because gravel bags were noted along Akins Avenue from the site discharge point down to the nearest storm drain inlet, a sample was also taken downstream of the last set of gravel bags, just before the water entered the inlet (site Akins_Inlet). Figure 1 and photos 1 through 3 show the sampling locations.

Each sample was collected and analyzed for turbidity using a calibrated field meter. Most of the site runoff appears to be discharging via the Akins Avenue discharge point (Valencia_Akins). Note that two different samples were taken from site Valencia_Akins, about an hour apart, to see if runoff characteristics would vary over time. Only a minimal difference in turbidity was observed between the two samples. The sample taken at the inlet along Akins Avenue (Akins_Inlet) had somewhat lower turbidity, likely due to the use of gravel bags along the curb between the site and the inlet, but the turbidity levels were still not substantially lower. Results are summarized in the table below, and photos of the samples in clear containers are presented as photos 4 through 6.

Table 1. Sampling Results

Site	Sample Date	Sample Time	Turbidity (NTU)
Valencia_Akins	12/12/2014	11:05	505
Background_SanAltos	12/12/2014	11:26	18.73
Valencia_SanAltos	12/12/2014	11:27	427
Valencia_Akins	12/12/2014	11:55	513
Akins_Inlet	12/12/2014	11:58	477



Figure 1. Sampling Locations



Photo 1. Site Valencia_Akins



Photo 2. Sites Valencia_SanAltos (red arrow) and Background_SanAltos (yellow arrow)



Photo 3. Site Akins_Inlet



Photo 4. First Sample (11:05) from Site Valencia_Akins



Photo 5. Samples from Sites Background_SanAltos (left) and Valencia_SanAltos (right)



Photo 6. Second Sample from Site Valencia_Akins (11:58, left) and Sample from Site Akins_Inlet (right)

Quenzer, John Robert



Litigation
SERVICES

Job: 599122

Exhibit: 00004



John Quenzer

EXHIBIT 4
REPORTER M. Volz
WITNESS J. Quenzer
DATE 12-29-15

From: Malik Tamimi [mtamimi@lemongrove.ca.gov]
Sent: Tuesday, December 16, 2014 10:53 AM
To: jquenzer@dmamaxinc.com
Cc: 'Tad Nakatani'
Subject: Valencia

John....we would like the follow-up inspection today so that we can attach it to our enforcement letter that we will be drafting today. Tad can do the inspection on his own unless he really needs to talk to Gary or needs Gary to accompany him. Also, can you be on standby to conduct the same turbidity monitoring if it rains tomorrow?

Thank you

-Malik

Quenzer, John Robert



Litigation
SERVICES

Job: 599122

Exhibit: 00005



D-MAX Engineering, Inc.

Consultants in Water & Environmental Sciences

**Memo**

EXHIBIT 5
REPORTER M. Vols
WITNESS J. Quenzer
DATE 12-29-15

Date: December 17, 2014**To:** Malik Tamimi**Cc:** Tad Nakatani; John Quenzer**From:** Brian Nemerow**Subject:** December 17, 2014 Field Visit at Valencia Construction Site

Per the City's request, D-MAX visited the Valencia construction site on the morning of December 17, 2014, following a storm earlier in the morning. Rain had ended a few hours prior to the site visit, and no runoff was observed flowing out from the construction site at the Akins or San Altos entrance/exit locations at the time of the site visit.

Evidence of sediment discharge was observed at the Akins entrance/exit location (Photos 1 and 2) and along the curb farther downstream (Photo 3). A crew from Downstream Services was power washing the curb along Akins to remove accumulated sediment (Photos 4, 5, and 6). This indicates that there likely had been a noticeable sediment discharge earlier in the day. Based on talking with the crew, our understanding is that they were working on behalf of the Valencia project, and they also planned to use a vactor truck to remove accumulated sediment from the downstream storm drain on Akins. The crew was taking measures to prevent discharge of water from power washing, including using a vactor truck to reclaim the water, but a small amount of water was observed discharging to the inlet along Akins. The water was seeping through gravel bags around the inlet and discharge to the storm drain. A sample of the power washing discharge water was collected, and turbidity was measured at 52 NTU.



Figure 1. Observation Locations



Photo 1. Evidence of sediment discharge at Akins entrance/exit



Photo 2. Evidence of sediment discharge at Akins entrance/exit



Photo 3. Sediment accumulation along Akins curb gutter, downstream of Akins entrance/exit



Photo 4. Power washing activity performed by Downstream Services



Photo 5. Power washing activity performed by Downstream Services



Photo 6. Power washing activity performed by Downstream Services

Quenzer, John Robert



Litigation
SERVICES

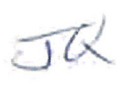
Job: 599122

Exhibit: 00006



D-MAX Engineering, Inc.

Consultants in Water & Environmental Sciences

**Memo****Date:** December 31, 2014**To:** Leon Firsht, Malik Tamimi**Cc:** Tad Nakatani**From:** John Quenzer **Subject:** December 31, 2014 Field Visit at Valencia Construction SiteEXHIBIT 6
REPORTER M. Volz
WITNESS J. Quenzer
DATE 12-29-15

D-MAX visited the Valencia construction site on the morning of December 31, 2014, following a storm earlier the previous night. Rain had ended a few hours prior to the site visit, and no runoff was observed flowing out from the construction site at the time of the site visit.

Ponded water was observed at the Akins Avenue entrance/exit location and behind several sets of gravel bags installed along Akins Avenue. Samples were collected from the ponded water at the Akins Avenue entrance/exit (Photo 1) and from ponded water behind the first set of gravel bags downstream of the Akins Avenue exit/entrance (Photos 2 and 3). Turbidity was measure at 250 NTU in the first sample (Akins entrance/exit), and 235 NTU in the second sample (first set of gravel bags along Akins).

Some sediment had settled out at the bottom of the pools of water in both of the locations at which samples were collected, and care was taken not to disturb the settled sediment when samples were taken. Note that because water had been pooled and sediment had settled out over time, the turbidity results as given above are likely lower than the turbidity of the discharge that had occurred earlier when it was raining. To approximate that effect, the settled sediment at the Akins entrance/exit location was disturbed, and a sample was taken a few minutes later. The turbidity of that sample was 998 NTU.

Observations farther downstream along the curb indicated that in some places sediment had been conveyed around gravel bag installations. Photo 4 gives an example of this. Sediment accumulation was also noted along Akins Avenue, close to the storm drain inlet.



Figure 1. Map of Site and Immediate Vicinity



Photo 1. Ponded Water at Akens Avenue Entrance/Exit



Photos 2 & 3. Ponded Water at First Set of Gravel Bags Downstream of Akins Avenue Entrance/Exit (Looking downstream and upstream, respectively)

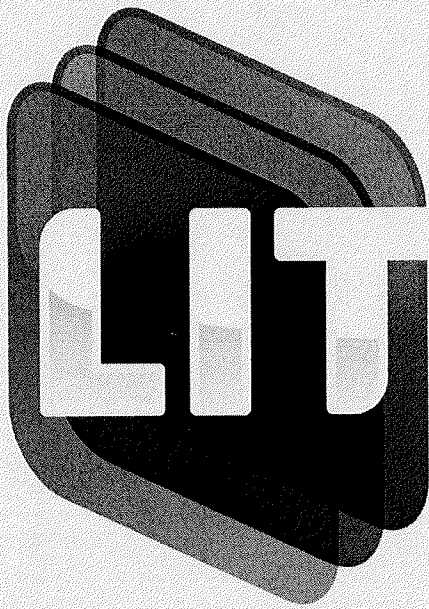


Photo 4. Evidence of Discharge Carrying Sediment around Gravel Bags along Akins Avenue



Photo 5. Sediment Accumulation along Akins Avenue, Close to Inlet

Quenzer, John Robert



Litigation
SERVICES

Job: 599122

Exhibit: 00007



John Quenzer

From: Leon Firsht [lfirsht@lemongrove.ca.gov]
Sent: Monday, January 05, 2015 2:29 PM
To: 'John Quenzer'
Cc: Malik Tamimi
Subject: RE: Valencia photos

EXHIBIT 7
REPORTER M. Volz
WITNESS J. Quenzer
DATE 01-29-15

John,
For your photos can you zip them?

I want to download them and if its not zipped I have to download them one photo at a time.

Leon

From: Malik Tamimi
Sent: Monday, January 05, 2015 2:18 PM
To: Leon Firsht
Subject: FW: Valencia photos

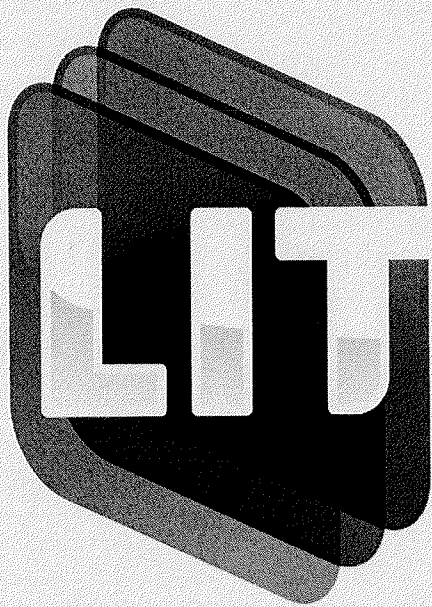
Hi...see the link below...we can cite them for failure to fully implement erosion control BMPs.

From: John Quenzer [mailto:jquenzer@dmxinc.com]
Sent: Monday, January 05, 2015 2:01 PM
To: Malik Tamimi
Subject: Valencia photos

Hi Malik,
You can view photos at this [link](#)

John Quenzer | D-MAX Engineering, Inc.
7220 Trade Street | Suite 119 | San Diego, California 92121
Phone: 858.586.6600 ext 25 | Fax: 858.586.6644 | Email: jquenzer@dmxinc.com

Quenzer, John Robert



Litigation
SERVICES

Job: 599122

Exhibit: 00008



D-MAX Engineering, Inc.

Consultants in Water & Environmental Sciences

**Memo**
 EXHIBIT 8
 REPORTER M. Volz
 WITNESS J. Quenzer
 DATE 12-29-15
Date: January 16, 2015**To:** Leon Firsh, Malik Tamimi**Cc:** John Quenzer**From:** Tad Nakatani**Subject:** Summary of Inspections and Sampling at Valencia Construction Site between December 9, 2014 and January 14, 2015

Per the City's request, D-MAX conducted multiple visits to the Valencia construction site to perform inspections and to collect storm water runoff samples. Table 1 summarizes the dates of all inspection and sampling visits.

Table 1. Inspection and Sampling Attempt Dates

Date	Activity
12/9/2014	Inspection
12/11/2014	Inspection
12/12/2014	Sampling
12/16/2014	Inspection
12/17/2014	Sampling
12/31/2014	Sampling
1/6/2015	Inspection
1/14/2015	Inspection

Summary of Inspections

Several significant BMP deficiencies were observed during the initial inspection on December 9, when the site was already under a Stop Work Notice from the City. Most significantly, there were several areas that lacked adequate erosion control BMPs, and there was also evidence of concentrated flows being directed to unstabilized areas, causing significant erosion. D-MAX documented these deficiencies and provided BMP recommendations as requested by the City. D-MAX re-inspected the site two days later on December 11 and observed that the majority of the deficiencies had not been corrected. On December 12, D-MAX visited the site during a rain event and collected samples of runoff from the site. Turbidity measurements were above 500 NTU for two samples taken near the southeast corner of the site and were above 400 NTU for a sample taken near the northeast corner of the site.

During the next inspection on December 16, some additional BMP deficiencies had been addressed, but the progress was still not sufficient. D-MAX returned to the site the following day to attempt to collect a sample, but the rain had already stopped, and no runoff sample was collected. D-MAX did observe sediment on the roadway outside of the southeast corner of the



site. A power-washing contractor was in the process of cleaning the road when D-MAX visited the site. D-MAX returned to the site on the morning of December 31 to attempt to collect another runoff sample, but once again the rain had stopped several hours before the site visit. D-MAX observed some sediment in the roadway again, but it appeared to be less than during the previous visit. D-MAX sampled water ponded at two locations just outside the southeast corner of the site. Turbidity was measured at 250 NTU and 235 NTU at these locations, but these measurements likely do not accurately reflect the turbidity of runoff since there had been time for sediment to settle out.

During the inspection on January 6, D-MAX observed that most of the major BMP deficiencies had been addressed, but a few still remained unresolved.

D-MAX performed its most recent inspection on January 14. D-MAX's assessment from this inspection is that the developer has made sufficient improvements to the site, and it is appropriate to lift the Stop Work Notice. There were some minor BMP deficiencies during the January 14 inspection, and the developer will still be required to address these promptly. However, the major deficiencies that led to the Stop Work Notice have been addressed, and the overall state of the site has been improved to the point where it no longer poses the severe risk of sediment discharges that it did in December.

Table 2 provides a summary of the different BMP deficiencies observed during inspections as well as the corrective actions that had been implemented as of January 14, 2015.



Table 2. Summary of BMP Deficiencies Observed and Corrective Actions Taken

BMP Deficiency	Corrective Action(s) Taken
Several lots lacked adequate erosion control BMPs.	Additional lots were hydroseeded. Some smaller areas were protected with plastic sheeting
Numerous slopes on the edges of lots were not sufficiently stabilized and protected from concentrated flows, and rills/gullies had formed.	Slopes were repaired where possible. BMPs were added upstream of slopes to prevent concentrated flows. Plastic sheeting was used in select areas to create protected spillways where concentrated flows could not be eliminated. Improved growth of hydroseed on slopes was also observed. All of the larger rills were addressed, but a few small rills still remained on January 14. The developer is required to address these areas still.
Sidewalls at the edges of lots also lacked erosion controls and several showed signs of erosion.	Sidewalls were protected with plastic sheeting.
Portions of the slope on the western edge of the site lacked full stabilization.	Additional fiber rolls were installed. Plastic sheeting was used to create protected spillways in areas where upstream contours were causing flows to concentrate.
Dirt roadways lacked sufficient stabilization and sediment controls.	Roads were compacted and large berms were built on them. A portion of the road that is inactive was hydroseeded.
Runoff from a significant portion of the site was being directed as concentrated flow to an unstabilized area in the site's southeast corner.	The developer built up an embankment to redirect flows away from this area and toward a settling area.
Some stockpiles lacked adequate cover	Covers were put on stockpiles.
The developer did not have sufficient quantities of BMP materials on site.	Additional gravel bags, fiber rolls, and silt fences were delivered to the site.
A significant amount of sediment was observed along the roadway at the southeast corner of the site.	Sweeping did not effectively remove all sediment, so a power-washing contractor was hired and removed the sediment from the road.
Gravel bag inlet protection BMPs were not always in place	Gravel bags were put in place to protect on-site and downstream off-site inlets.
Filter fabric used as part of inlet protection became potentially clogged by hydroseeding materials	Filter fabric was replaced.
Stockpiles were placed close to a drain inlet. The inlet is elevated above the ground height in that area, decreasing the risk of discharge, but stockpiles still need to be relocated away from the drain.	This deficiency was first observed on January 6. On January 14, the stockpiles had been covered, but they had not been moved sufficiently far enough away from the drain inlet. The developer is still required to address this item.
Sediment control BMPs were lacking or damaged in places.	A significant amount of additional silt fences and gravel bags were added to the site perimeter and the perimeters of lots.



Photo 1. Lot lacking erosion control BMPs



Photo 2. Hydroseed added to a lot



Photo 3. Evidence of erosion at edge of a lot



Photo 4. Rills filled in, area re-hydroseeded, silt fence added to perimeter of lot.



Photo 5. Sidewall without adequate erosion control



Photo 6 Sidewall protected with plastic sheeting.

Quenzer, John Robert



Litigation
SERVICES

Job: 599122

Exhibit: 00009



John Quenzer

From: Leon Firsht [lfirsht@lemongrove.ca.gov]
Sent: Tuesday, January 20, 2015 10:03 AM
To: 'Tad Nakatani'; Malik Tamimi
Cc: 'John Quenzer'
Subject: RE: Valencia Inspection Form

EXHIBIT 9
REPORTER M. Volz
WITNESS J. Quenzer
DATE 12-29-15

Thank you.

-----Original Message-----

From: Tad Nakatani [mailto:tnakatani@dmxinc.com]
Sent: Friday, January 16, 2015 4:34 PM
To: Leon Firsht; Malik Tamimi
Cc: 'John Quenzer'
Subject: RE: Valencia Inspection Form

Hi Leon,

Here is the summary memo.

Thanks,
Tad

-----Original Message-----

From: Leon Firsht [mailto:lfirsht@lemongrove.ca.gov]
Sent: Wednesday, January 14, 2015 9:16 AM
To: 'Tad Nakatani'
Cc: Leon Firsht
Subject: RE: Valencia Inspection Form

Tad,

I just spoke to Malik and he suggested DMax prepare a memo documenting all the inspections and sampling that Dmax performed at Valencia.

Also, if you can include the removal of the STOP WORK and reasons why you feel it can be removed.

I'm going to use what you provide to send to the Regional Board.

I'll take the inspection report today and memo by the end of the week if that works with your schedule.

Leon

-----Original Message-----

From: Tad Nakatani [mailto:tnakatani@dmxinc.com]
Sent: Tuesday, January 13, 2015 10:10 AM
To: Leon Firsht
Cc: Malik Tamimi; 'John Quenzer'
Subject: RE: Valencia Inspection Form

I could do 7:30AM tomorrow.

-----Original Message-----

From: Leon Firsht [mailto:lfirsht@lemongrove.ca.gov]

Sent: Tuesday, January 13, 2015 10:04 AM
To: 'Tad Nakatani'
Cc: Malik Tamimi; 'John Quenzer'
Subject: RE: Valencia Inspection Form

Tomorrow morning?

-----Original Message-----

From: Tad Nakatani [<mailto:tnakatani@dmxinc.com>]
Sent: Tuesday, January 13, 2015 10:03 AM
To: Leon Firsht
Cc: Malik Tamimi; 'John Quenzer'
Subject: RE: Valencia Inspection Form

Hi Leon,
I am not available today. Do you want me to see if another inspector from our office is available?

Tad Nakatani | D-MAX Engineering, Inc.
7220 Trade Street | Suite 119 | San Diego, California 92121
Phone: 858.586.6600 ext 17 | Fax: 858.586.6644 | Email:
tnakatani@dmxinc.com

-----Original Message-----

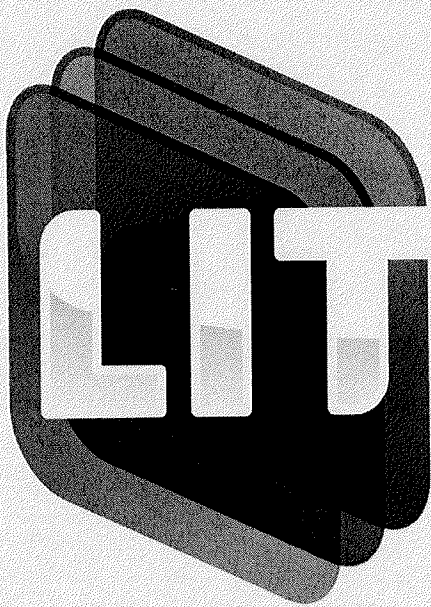
From: Leon Firsht [<mailto:lfirsht@lemongrove.ca.gov>]
Sent: Tuesday, January 13, 2015 9:30 AM
To: Tad Nakatani
Cc: Malik Tamimi; John Quenzer
Subject: Re: Valencia Inspection Form

Sorry for late notice, can we do an inspection today?

Leon

> On Jan 6, 2015, at 2:25 PM, "Tad Nakatani" <tnakatani@dmxinc.com> wrote:
>
> Hi Leon,
>
> Here is my inspection report. Also, you can download my photos from
> the
link below:
> <https://www.hightail.com/download/UlRUbUpkR0ZlaFIzZU1UQw>
>
>
> Tad Nakatani | D-Max Engineering, Inc.
> 7220 Trade Street | Suite 119 | San Diego, California 92121
> Phone: 858.586.6600 ext 17 | Fax: 858.586.6644 | Email:
tnakatani@dmxinc.com<<mailto:tnakatani@dmxinc.com>>
>
> <Inspection Form 2015-01-06.pdf>

Quenzer, John Robert



Litigation
SERVICES

Job: 599122

Exhibit: 00010



John Quenzer

EXHIBIT 10
REPORTER M. 16/2
WITNESS J. Quenzer
DATE 12-29-15

From: John Quenzer [jqenzer@dmxinc.com]
Sent: Monday, March 02, 2015 4:05 PM
To: 'Malik Tamimi'; 'Leon Firsh'
Cc: 'Tad Nakatani'; 'John Draminski'
Subject: RE: Valencia sampling results

Yes, the results are below the General Construction Permit limits, which is a good sign.

John Quenzer | D-Max Engineering, Inc.
7220 Trade Street | Suite 119 | San Diego, California 92121
Phone: 858.586.6600 ext 25 | Fax: 858.586.6644 | Email: jqenzer@dmxinc.com

From: Malik Tamimi [<mailto:mtamimi@lemongrove.ca.gov>]
Sent: Monday, March 02, 2015 3:53 PM
To: 'John Quenzer'; Leon Firsh
Cc: 'Tad Nakatani'; 'John Draminski'
Subject: RE: Valencia sampling results

Great results indicate compliance, correct me if I am wrong?

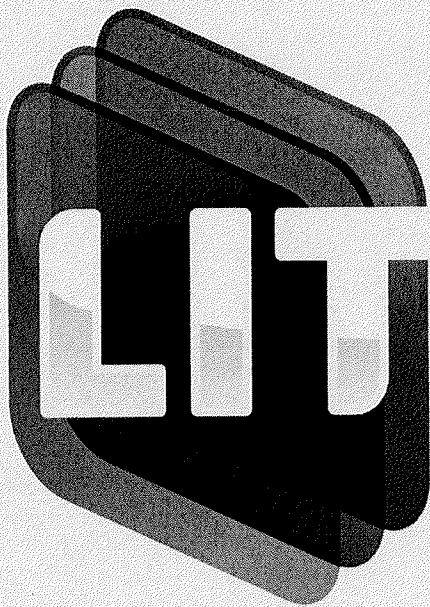
From: John Quenzer [<mailto:jqenzer@dmxinc.com>]
Sent: Monday, March 02, 2015 3:50 PM
To: Leon Firsh; Malik Tamimi
Cc: 'Tad Nakatani'; 'John Draminski'
Subject: Valencia sampling results

Hi Leon and Malik,
Results from sampling at the Valencia site yesterday morning are attached. I'm forwarding these to you since Tad is out of town today through Wednesday. Please let me or John Draminski (copied on this email) know if you have any questions.

Thanks,

John Quenzer | D-Max Engineering, Inc.
7220 Trade Street | Suite 119 | San Diego, California 92121
Phone: 858.586.6600 ext 25 | Fax: 858.586.6644 | Email: jqenzer@dmxinc.com

Quenzer, John Robert



Litigation
SERVICES

Job: 599122

Exhibit: 00011



D-MAX Engineering, Inc.

Consultants in Water & Environmental Sciences



Memo

EXHIBIT 11
REPORTER M. Volz
WITNESS J. Quenzer
DATE 12-29-15

Date: March 2, 2015

To: Malik Tamimi, Leon Firsht

Cc: Tad Nakatani, John Quenzer

From: John Draminski

Subject: March 1, 2015 Sampling at Valencia Construction Site

Per the City's request, D-MAX collected samples of runoff from the Valencia construction site. Samples were taken at the Akins Avenue and San Altos Place entrance/exit locations to the site (sites Valencia_Akins and Valencia_SanAltos, respectively). Because gravel bags were noted along Akins Avenue from the site discharge point down to the nearest storm drain inlet, a sample was also taken downstream of the last set of gravel bags, just before the water entered the inlet (site Akins_Inlet). Figure 1 and photos 1 through 3 show the sampling locations.

Each sample was collected and analyzed for turbidity and pH using a calibrated field meter. Most of the site runoff appears to be discharging via the Akins Avenue discharge point (Valencia_Akins). The sample taken at the inlet along Akins Avenue (Akins_Inlet) had somewhat lower turbidity, likely due to the use of gravel bags along the curb between the site and the inlet. The sampling location at the San Altos discharge point (Valencia_SanAltos) was the overflow of a ponded gutter, which was the only safely accessible sampling location. The slight amount of ponding before discharge may have lowered the turbidity level, although sheet flow from the site coming out under the fence also seemed relatively clear based on visual observations (Photo 2). Results are summarized in the table below, and photos of the samples in clear containers are presented as photos 4 through 6.

Table 1. Sampling Results

Site	Sample Date	Sample Time	Turbidity (NTU)	pH
Valencia_Akins	3/1/2015	07:42	147	8.01
Valencia_SanAltos	3/1/2015	08:48	21.89	8.00
Akins_Inlet	3/1/2015	07:27	39.99	8.30

Note: the State Construction General Permit (CGP) sets numeric actions levels (NAL) of 250 for turbidity and 6.5 to 8.5 for pH. While the Valencia site is risk level 1 and thus not technically subject to these NALs, the sampling data above indicates the runoff does not exceed the CGP NALs.



Figure 1. Sampling Locations



Photo 1. Site Valencia_Akins



Photo 2. Site Valencia_SanAltos



Photo 3. Site Akins_Inlet

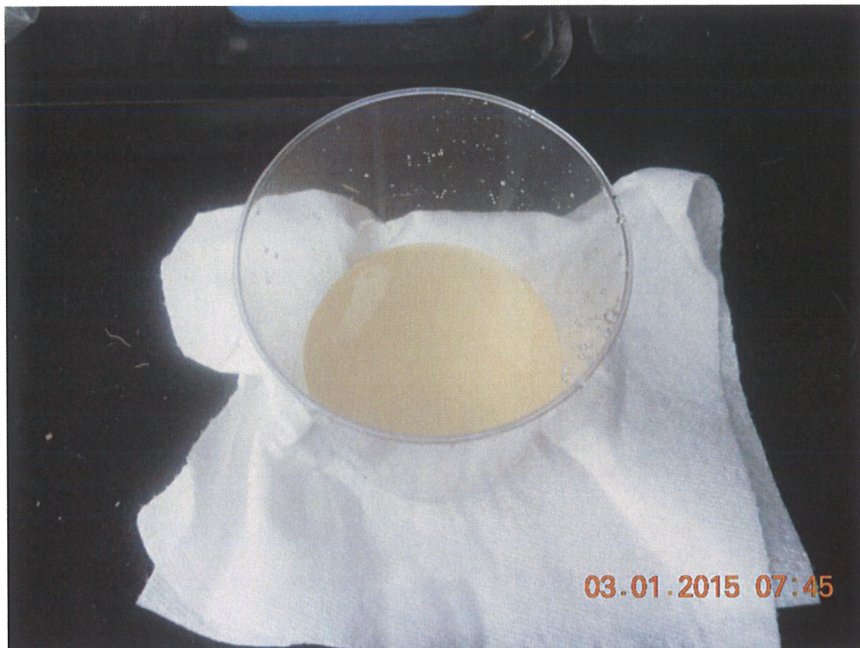


Photo 4. Sample from Site Valencia_Akins

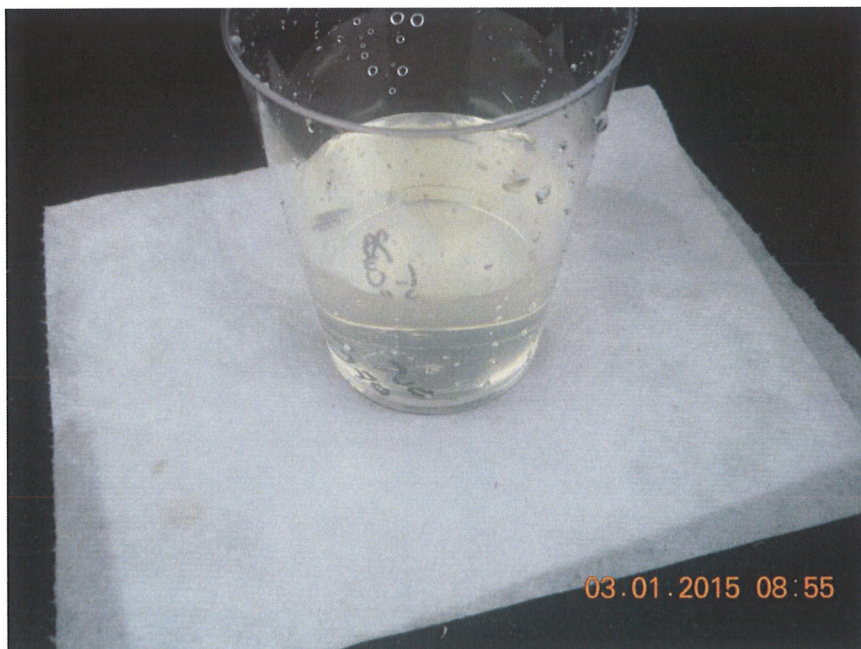
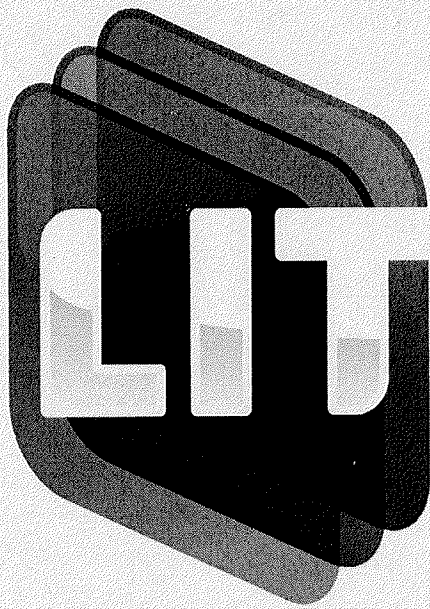


Photo 5. Sample from Site Valencia_SanAltos



Photo 6. Sample from Site Akins_Inlet

Quenzer, John Robert



Litigation
SERVICES

Job: 599122

Exhibit: 00012



John Quenzer

EXHIBIT 12
REPORTER M. Volz
WITNESS J. Quenzer
DATE 12-29-15

From: Gary Harper [gharper@lemongrove.ca.gov]
Sent: Saturday, May 16, 2015 9:15 AM
To: Tad Nakatani; Malik Tamimi; Tamara Oneal
Cc: 'Brian Nemerow'; 'John Quenzer'
Subject: RE: Valencia Storm Event 5/14/15

Thanks Tad.

----- Original message -----

From: Tad Nakatani <tnakatani@dmxinc.com>
Date: 05/15/2015 4:50 PM (GMT-08:00)
To: Gary Harper <gharper@lemongrove.ca.gov>, Malik Tamimi <mtamimi@lemongrove.ca.gov>, Tamara Oneal <toneal@lemongrove.ca.gov>
Cc: 'Brian Nemerow' <bnemerow@dmxinc.com>, 'John Quenzer' <jquenzer@dmxinc.com>
Subject: RE: Valencia Storm Event 5/14/15

Hi All,

We performed sampling at Valencia this morning. We went to all of the site's entrances, but water was actually only discharging from the Akins entrance. We sampled there and found relatively high turbidity. See the attached memo for details.

Unlike in previous storms, no discharge was observed at the San Altos entrance. We observed that significant portions of the site, including the area near the San Altos entrance, was draining to on-site basins. We took a sample at one of the basin inlets to get a picture of the turbidity levels prior to treatment by the basins. Turbidity was measured at 233 NTU in this sample which is just below the Numeric Action Level of 250 NTU. This information was not included in the memo, but please let me know if you'd like us to add it.

Feel free to give me a call if you have any questions.

Thanks,
Tad

Tad Nakatani | D-Max Engineering, Inc.
7220 Trade Street | Suite 119 | San Diego, California 92121
Phone: 858.586.6600 ext 17 | Fax: 858.586.6644 | Email: tnakatani@dmxinc.com

From: Gary Harper [<mailto:gharper@lemongrove.ca.gov>]
Sent: Wednesday, May 13, 2015 7:36 AM
To: 'Tad Nakatani'
Cc: Tamara Oneal; Malik Tamimi
Subject: Valencia Storm Event 5/14/15

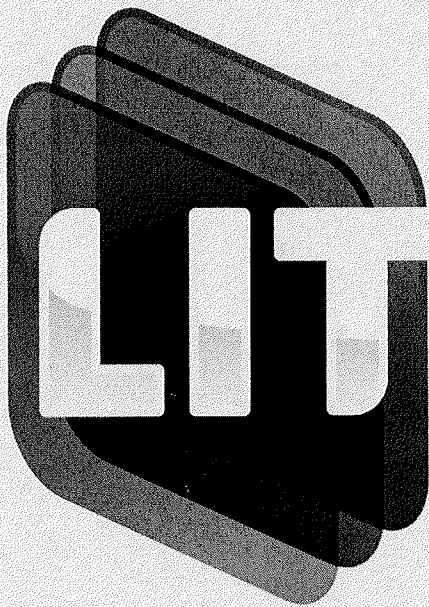
Hi Tad,

Could you please perform a pre-rain event inspection and have the site monitored for the upcoming rain event this weekend?

Thanks,

Gary

Quenzer, John Robert



Litigation
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Job: 599122

Exhibit: 00013



D-MAX Engineering, Inc.

Consultants in Water & Environmental Sciences



Memo

EXHIBIT 13

REPORTER M. Holz

WITNESS J. Quenzer

DATE 12-29-15

Date: May 15, 2015

To: Malik Tamimi, Gary Harper, Tamara O'Neal

Cc: Tad Nakatani, John Quenzer

From: Brian Nemerow

Subject: May 15, 2015 Sampling at Valencia Construction Site

Per the City's request, D-MAX collected samples of runoff from the Valencia construction site. Runoff was observed discharging from the construction site only at the Akins Avenue entrance/exit sampling location (site Valencia_Akins, Figure 1 and Photo 1). Because gravel bag check dams were positioned along Akins Avenue from the site discharge point down to the nearest storm drain inlet, a sample was also taken downstream of the last set of gravel bags, just before the water entered the inlet (site Akins_Inlet, Figure 1 and Photo 2).

Each sample was collected and analyzed for turbidity and pH using a calibrated field meter. The Valencia_Akins site had a turbidity value that exceeded the numeric action level of 250 NTU. Unprotected loose sediment observed along the site perimeter near the Akins entrance likely contributed to the high turbidity levels. Photo 3a shows the project area near the Akins inlet during the rain event on 5/15/2015. Photo 3b is a close-up photo of the same area two days earlier. It appears that the loose sediment observed on 5/13/2015 was not sufficiently cleaned up or protected prior to the rain event.

The sample collected at the Akins_Inlet site downstream of the Akins entrance had a turbidity value below the numeric action level. This decrease in turbidity between the Valencia_Akins and Akins_Inlet locations may be due to a combination of sediment settling out at the gravel bag check dams and the runoff from Akins Avenue comingling with the site runoff. Results are summarized in the table below, and photos of the samples in clear containers are presented as photos 4 and 5.

Following sampling, the construction site foreman was informed of the high turbidity measurement, and he stated he was working toward remediating the issue.

Table 1. Sampling Results

Site	Sample Date	Sample Time	Turbidity (NTU)	pH
Valencia_Akins	5/15/2015	07:20	308	8.35
Akins_Inlet	5/15/2015	07:40	95	8.23



Figure 1. Sampling Locations



Photo 1. Site Valencia_Akins



Photo 2. Site Akins_Inlet



Photo 3a. Project area at the Akins Ave entrance/exit during rain event



Photo 3b. Project area at the Akins Ave entrance/exit on 5/13/2015. (Same telephone pole as seen in photo 3a)



Photo 4. Sample from Site Valencia_Akins



Photo 5. Sample from Site Akins_Inlet

Quenzer, John Robert



Litigation
SERVICES

Job: 599122

Exhibit: 00014



EXHIBIT 14
REPORTER M. 1/6/12
WITNESS J. Guenzler
DATE 12-25-15

**AGREEMENT FOR
AS-NEEDED STORMWATER QUALITY SERVICES**

THIS AGREEMENT is approved and effective upon the date of the last signature, by and between the CITY OF LEMON GROVE, a municipal corporation (the "CITY"), and D-Max Engineering, Inc., a water and environmental sciences firm (the "CONSULTANT").

RECITALS

WHEREAS, the CITY desires to employ a CONSULTANT to provide stormwater construction inspection support on an as-needed basis for the CITY.

WHEREAS, the CITY has determined that the CONSULTANT is qualified by experience and has the ability to perform the services desired by the CITY, and the CONSULTANT is willing to perform such services.

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:

1. **ENGAGEMENT OF CONSULTANT.** The CITY hereby agrees to engage the CONSULTANT and the CONSULTANT hereby agrees to perform the services hereinafter set forth in accordance with all terms and conditions contained herein.

The CONSULTANT represents that all services required hereunder will be performed directly by the CONSULTANT or under direct supervision of the CONSULTANT.

2. **SCOPE OF SERVICES.** The CONSULTANT will perform services set forth in Exhibit A.

The CONSULTANT can expect to perform stormwater construction inspection support on an as-needed basis for various construction projects. This will involve the technical review of various stormwater documents related to construction projects and involve site visits and field inspections.

Each task will be provided to the CONSULTANT. Depending on the magnitude of an individual item, a detailed scope of work and cost proposal may be prepared, or it may simply be agreed that the work will be performed on a time and material basis. Prior to the beginning of any work, a task order may be requested that discusses the scope and fee (in the case of time and material work the fee will be a "not-to-exceed" amount.) A task order will not be valid until signed by both the CONSULTANT and the City.

The CONSULTANT shall be responsible for all research and reviews related to the work and shall not rely on CITY personnel for such services, except as authorized in advance by the CITY. The CONSULTANT shall participate in meetings if required by a task order to keep staff advised of the progress on the project.

The CITY may unilaterally, or upon request from the CONSULTANT, from time to time reduce or increase the Scope of Services to be performed by the CONSULTANT under this Agreement per project. Upon doing so, the CITY and the CONSULTANT agree to meet in good faith and confer for the purpose of negotiating a corresponding reduction or increase in the compensation associated with said change in services.

3. **PROJECT COORDINATION AND SUPERVISION.** Leon Firsh, City Engineer, is hereby designated as the Project Manager for the CITY and will monitor the progress and execution of this Agreement. The CONSULTANT shall assign a single Project Manager to provide supervision and have overall responsibility for the progress and execution of this Agreement for the CONSULTANT. Arsalan Dadkhah, Ph. D., PE is hereby designated as the Project Manager for the CONSULTANT.

4. **COMPENSATION AND PAYMENT.** The compensation for the CONSULTANT shall be based on monthly billings covering actual work performed. Billings shall include labor classifications, respective rates, hours worked and reimbursable expenses, if any. The total cost for all work described in each task order shall not exceed the schedule given in the task order without prior written authorization from the CITY. Monthly invoices will be processed for payment and remitted within thirty (30) days from receipt of invoice, provided that work is accomplished as determined by and in the sole discretion of the CITY.

On an annual basis, the CONSULTANT may request an increase in the schedule of fees of no more than the increase in the Consumer Price Index for the previous one year period.

The CONSULTANT shall maintain all books, documents, papers, employee time sheets, accounting records, and other evidence pertaining to costs incurred and shall make such materials available at its office at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment under this Agreement, for inspection by the CITY and for furnishing of copies to the CITY, if requested.

5. **LENGTH OF AGREEMENT.** This Agreement will last two years from the executed date of the Agreement or until all work has been completed by the CONSULTANT and accepted by the CITY, whichever occurs first.

6. **DISPOSITION AND OWNERSHIP OF DOCUMENTS.** The Memoranda, Reports, Maps, Drawings, Plans, Specifications and other documents prepared by the CONSULTANT for this Project, whether paper or electronic, shall become the property of the CITY for use with respect to this Project, and shall be turned over to the CITY upon completion of the Project, or any phase thereof, as contemplated by this Agreement.

Contemporaneously with the transfer of documents, the CONSULTANT hereby assigns to the CITY and CONSULTANT thereby expressly waives and disclaims, any copyright in, and the right to reproduce, all written material, drawings, plans, specifications or other work prepared under this Agreement, except upon the CITY's prior authorization regarding reproduction, which authorization shall not be unreasonably withheld. The CONSULTANT shall, upon request of the CITY, execute any further document(s) necessary to further effectuate this waiver and disclaimer.

The CONSULTANT agrees that the CITY may use, reuse, alter, reproduce, modify, assign, transfer, or in any other way, medium or method utilize the CONSULTANT's work product for the CITY's purposes, and the CONSULTANT expressly waives and disclaims any residual rights granted to it by Civil Code Sections 980 through 989 relating to intellectual property and artistic works.

Any modification or reuse by the CITY of documents, drawings or specifications prepared by the CONSULTANT shall relieve the CONSULTANT from liability under Section 14 but only with

respect to the effect of the modification or reuse by the CITY, or for any liability to the CITY should the documents be used by the CITY for some project other than what was expressly agreed upon within the Scope of this project, unless otherwise mutually agreed.

7. **INDEPENDENT CONSULTANT.** Both parties hereto in the performance of this Agreement will be acting in an independent capacity and not as agents, employees, partners or joint venturers with one another. Neither the CONSULTANT nor the CONSULTANT'S employees are employees of the CITY and are not entitled to any of the rights, benefits, or privileges of the CITY's employees, including but not limited to retirement, medical, unemployment, or workers' compensation insurance.

This Agreement contemplates the personal services of the CONSULTANT and the CONSULTANT's employees, and it is recognized by the parties that a substantial inducement to the CITY for entering into this Agreement was, and is, the professional reputation and competence of the CONSULTANT and its employees. Neither this Agreement nor any interest herein may be assigned by the CONSULTANT without the prior written consent of the CITY. Nothing herein contained is intended to prevent the CONSULTANT from employing or hiring as many employees, or subcontractors, as the CONSULTANT may deem necessary for the proper and efficient performance of this Agreement. All agreements by CONSULTANT with its subcontractor(s) shall require the subcontractor to adhere to the applicable terms of this Agreement.

8. **CONTROL.** Neither the CITY nor its officers, agents or employees shall have any control over the conduct of the CONSULTANT or any of the CONSULTANT's employees except as herein set forth, and the CONSULTANT expressly agrees not to represent that the CONSULTANT or the CONSULTANT's officers, agents, or employees are in any manner officers, agents, or employees of the CITY. It is understood that the CONSULTANT, its officers, agents, and employees are as to the CITY wholly independent consultants and that the CONSULTANT's obligations to the CITY are solely such as are prescribed by this Agreement.

9. **COMPLIANCE WITH APPLICABLE LAW.** The CONSULTANT, in the performance of the services to be provided herein, shall comply with all applicable State and Federal statutes and regulations, and all applicable ordinances, rules and regulations of the CITY OF LEMON GROVE, whether now in force or subsequently enacted. The CONSULTANT, and each of its subcontractors, shall obtain and maintain a current CITY OF LEMON GROVE business license prior to and during performance of any work pursuant to this Agreement.

10. **LICENSES, PERMITS, ETC.** The CONSULTANT represents and covenants that it has all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. The CONSULTANT represents and covenants that the CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval which is legally required for the CONSULTANT to practice its profession.

11. **STANDARD OF CARE.** The CONSULTANT, in performing any services under this Agreement, shall perform in a manner consistent with that level of care and skill ordinarily exercised by members of the CONSULTANT's trade or profession currently practicing under similar conditions and in similar locations. The CONSULTANT shall take all special precautions necessary to protect the CONSULTANT's employees and members of the public from risk of harm arising out of the nature of the work and/or the conditions of the work site.

Unless disclosed in writing prior to the date of this Agreement, the CONSULTANT warrants to the CITY that it is not now, nor has it within the preceding five (5) years, been debarred by a governmental agency or involved in debarment, arbitration or litigation proceedings concerning the CONSULTANT's professional performance or the furnishing of materials or services relating thereto.

The CONSULTANT is responsible for identifying any unique products, treatments, processes or materials whose availability is critical to the success of the project the CONSULTANT has been retained to perform, within the time requirements of the CITY, or, when no time is specified, then within a commercially reasonable time. Accordingly, unless the CONSULTANT has notified the CITY otherwise, the CONSULTANT warrants that all products, materials, processes or treatments identified in the project documents prepared for the CITY are reasonably commercially available. Any failure by the CONSULTANT to use due diligence under this subparagraph will render the CONSULTANT liable to the CITY for any increased costs that result from the CITY's later inability to obtain the specified items or any reasonable substitute within a price range that allows for project completion in the time frame specified or, when not specified, then within a commercially reasonable time.

12. **NON-DISCRIMINATION PROVISIONS.** The CONSULTANT shall not discriminate against any employee or applicant for employment because of age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. The CONSULTANT will take positive action to insure that applicants are employed without regard to their age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. Such action shall include but not be limited to the following: employment, promotion, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.

13. **CONFIDENTIAL INFORMATION.** The CITY may from time to time communicate to the CONSULTANT certain confidential information to enable the CONSULTANT to effectively perform the services to be provided herein. The CONSULTANT shall treat all such information as confidential and shall not disclose any part thereof without the prior written consent of the CITY. The CONSULTANT shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the services to be provided herein. The foregoing obligation of this Section 13, however, shall not apply to any part of the information that (i) has been disclosed in publicly available sources of information; (ii) is, through no fault of the CONSULTANT, hereafter disclosed in publicly available sources of information; (iii) is already in the possession of the CONSULTANT without any obligation of confidentiality; (iv) has been or is hereafter rightfully disclosed to the CONSULTANT by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party; or (v) is disclosed according to law or court order.

The CONSULTANT shall not disclose any reports, recommendations, conclusions or other results of the services or the existence of the subject matter of this Agreement without the prior written consent of the CITY. In its performance hereunder, the CONSULTANT shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

CONSULTANT shall be liable to CITY for any damages caused by breach of this condition, pursuant to the provisions of Section 14.

14. **INDEMNIFICATION AND HOLD HARMLESS.** The CONSULTANT shall indemnify, defend, and hold harmless the CITY, and its elected officials, officers, agents and employees from any and all claims, demands, costs or liability that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, its employees, agents, and subcontractors in the performance of services under this Agreement. CONSULTANT's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence or willful misconduct by the CITY or its elected officials, officers, agents, and employees. CONSULTANT's indemnification obligations shall not be limited by the insurance provisions of this Agreement. The CITY AND CONSULTANT expressly agree that any payment, attorney's fees, costs or expense CITY incurs or makes to or on behalf of an injured employee under the CITY's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.

15. **WORKERS' COMPENSATION.** The CONSULTANT shall comply with all of the provisions of the Workers' Compensation Insurance and Safety Acts of the State of California, the applicable provisions of Division 4 and 5 of the California Government Code and all amendments thereto; and all similar state or Federal acts or laws applicable; and shall indemnify, and hold harmless the CITY and its elected officials, officers, agents, and employees from and against all claims, demands, payments, suits, actions, proceedings and judgments of every nature and description, including reasonable attorneys' fees and defense costs presented, brought or recovered against the CITY or its elected officials, officers, agents, and employees for or on account of any liability under any of said acts which may be incurred by reason of any work to be performed by the CONSULTANT under this Agreement.

16. **INSURANCE.** The CONSULTANT, at its sole cost and expense, shall purchase and maintain, and shall require its subcontractors, when applicable, to purchase and maintain throughout the term of this Agreement, the following insurance policies:

☒ A. If checked, Professional Liability Insurance (errors and omissions) with minimum limits of \$1,000,000 per occurrence.

B. Automobile insurance covering all bodily injury and property damage incurred during the performance of this Agreement, with a minimum coverage of \$1,000,000 combined single limit per accident. Such automobile insurance shall include non-owned vehicles.

C. Comprehensive general liability insurance, with minimum limits of \$1,000,000 combined single limit per occurrence, covering all bodily injury and property damage arising out of its operation under this Agreement.

D. Workers' compensation insurance covering all of CONSULTANT's employees.

E. The aforesaid policies shall constitute primary insurance as to the CITY, its elected officials, officers, agents, and employees so that any other policies held by the CITY shall not contribute to any loss under said insurance. Said policies shall provide for thirty (30) days prior written notice to the CITY of cancellation or material change.

F. Said policies, except for the professional liability and workers' compensation policies, shall name the CITY and its elected officials, officers, agents, and employees as additional insureds.

G. If required insurance coverage is provided on a "claims made" rather than "occurrence" form, the CONSULTANT shall maintain such insurance coverage for three years after expiration of the term (and any extensions) of this Agreement.

H. Any aggregate insurance limits must apply solely to this Agreement.

I. Insurance shall be written with only California admitted companies which hold a current policy holder's alphabetic and financial size category rating of not less than A VIII according to the current Best's Key Rating Guide, or a company equal financial stability that is approved by the CITY.

J. This Agreement shall not take effect until certificate(s) or other sufficient proof that these insurance provisions have been complied with, are filed with and approved by the CITY. If the CONSULTANT does not keep all of such insurance policies in full force and effect at all times during the terms of this Agreement, the CITY may elect to treat the failure to maintain the requisite insurance as a breach of this Agreement and terminate the Agreement as provided herein.

17. **LEGAL FEES.** If any party brings a suit or action against the other party arising from any breach of any of the covenants or agreements or any inaccuracies in any of the representations and warranties on the part of the other party arising out of this Agreement, then in that event, the prevailing party in such action or dispute, whether by final judgment or out-of-court settlement, shall be entitled to have and recover of and from the other party all reasonable costs and expenses of suit, including reasonable attorneys' fees.

For purposes of determining who is to be considered the prevailing party, it is stipulated that attorneys' fees incurred in the prosecution or defense of the action or suit shall not be considered in determining the amount of the judgment or award. Attorneys' fees to the prevailing party if other than the CITY shall, in addition, be limited to the amount of attorneys' fees incurred by the CITY in its prosecution or defense of the action, irrespective of the actual amount of attorney's fees incurred by the prevailing party.

18. **MEDIATION/ARBITRATION.** If a dispute arises out of or relates to this Agreement, or the breach thereof, the parties agree first to try, in good faith, to settle the dispute by mutual negotiation between the principals, and failing that through nonbinding mediation in San Diego, California, in accordance with the Commercial Mediation Rules of the American Arbitration Association (the "AAA"). The costs of mediation shall be borne equally by the parties.

19. **TERMINATION.** This Agreement may be terminated with or without cause by the CITY. Termination without cause shall be effective only upon thirty (30) days written notice to the CONSULTANT. During said 30-day period the CONSULTANT shall perform all services in accordance with this Agreement. The CONSULTANT may terminate this agreement upon thirty (30) days prior notice in the event of a continuing and material breach by the CITY of its obligations under this Agreement including but not limited to payment of invoices. Termination with or without cause shall be effected by delivery of written Notice of Termination to the CONSULTANT as provided for herein.

This Agreement may also be terminated immediately by the CITY for cause in the event of a material breach of this Agreement that is not cured to the CITY's satisfaction within a ten (10) day prior cure period, or material misrepresentation by the CONSULTANT in connection with the formation of this Agreement or the performance of services, or the failure to perform services as directed by the CITY.

The CITY further reserves the right to immediately terminate this Agreement upon: (1) the filing of a petition in bankruptcy affecting the CONSULTANT; (2) a reorganization of the CONSULTANT for the benefit of creditors; or (3) a business reorganization, change in business name or change in business status of the CONSULTANT.

In the event of termination, all finished or unfinished Memoranda, Reports, Maps, Drawings, Plans, Specifications and other documents prepared by the CONSULTANT, whether paper or electronic, shall immediately become the property of and be delivered to the CITY, and the CONSULTANT shall be entitled to receive just and equitable compensation for any work satisfactorily completed on such documents and other materials up to the effective date of the Notice of Termination, not to exceed the amounts payable hereunder, less any damages caused the CITY by the CONSULTANT's breach, if any. Thereafter, ownership of said written materials shall vest in the CITY all rights set forth in Section 6.

20. **NOTICES.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered; or sent by overnight mail (Federal Express or the like); or sent by registered or certified mail, postage prepaid, return receipt requested; or sent by ordinary mail, postage prepaid; or sent by facsimile or fax; and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if sent by overnight mail, the business day following its deposit in such overnight mail facility, (iii) if mailed by registered, certified or ordinary mail, five (5) days within California or ten (10) days if the address is outside the State of California after the date of deposit in a post office or mailbox regularly maintained by the United States Postal Service, (iv) if given by facsimile or fax, when sent. Any notice, request, demand, direction or other communication delivered or sent as specified above shall be directed to the following persons:

To the CITY:
Leon Firsht, City Engineer
CITY OF LEMON GROVE
3232 Main Street
Lemon Grove, CA 91945

To the CONSULTANT:
Arsalan Dadkhah, Ph. D., PE
D-Max Engineering, Inc.
7220 Trade Street Suite 119
San Diego, CA 92121

Notice of change of address shall be given by written notice in the manner specified in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent.

21. **CONFLICT OF INTEREST AND POLITICAL REFORM ACT OBLIGATIONS.** During the term of this Agreement, the CONSULTANT shall not perform services of any kind for any person or entity whose interests conflict in any way with those of the CITY OF LEMON GROVE. The CONSULTANT also agrees not to specify any product, treatment, process or material for the project in which the CONSULTANT has a material financial interest, either direct or indirect, without first notifying the CITY of that fact. The CONSULTANT shall at all times comply with the terms of the Political Reform Act and the Lemon Grove Conflict of Interest Code. The

CONSULTANT shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the CITY in which the CONSULTANT has a financial interest as defined in Government Code Section 87103. The CONSULTANT represents that it has no knowledge of any financial interests that would require it to disqualify itself from any matter on which it might perform services for the CITY.

☒ If checked, the CONSULTANT shall comply with all of the reporting requirements of the Political Reform Act and the CITY OF LEMON GROVE Conflict of Interest Code. Specifically, the CONSULTANT shall:

1. Go to www.fppc.ca.gov
2. Download the Form 700: Statement of Economic Interests
3. Completely fill out the form
4. Submit the form to the Public Works Department with the signed Agreement.

The CONSULTANT shall be strictly liable to the CITY for all damages, costs or expenses the CITY may suffer by virtue of any violation of this Paragraph 21 by the CONSULTANT.

22. MISCELLANEOUS PROVISIONS.

A. *Computation of Time Periods.* If any date or time period provided for in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, then such date shall automatically be extended until 5:00 p.m. Pacific Time of the next day which is not a Saturday, Sunday or federal, state or legal holiday.

B. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.

C. *Captions.* Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

D. *No Obligations to Third Parties.* Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, or obligate any of the parties hereto, to any person or entity other than the parties hereto.

E. *Exhibits and Schedules.* The Exhibits and Schedules attached hereto are hereby incorporated herein by this reference for all purposes.

F. *Amendment to this Agreement.* The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

G. *Waiver.* The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

H. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

I. *Entire Agreement.* This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between the parties as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of any party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.

J. *Successors and Assigns.* This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

K. *Construction.* The parties acknowledge and agree that (i) each party is of equal bargaining strength, (ii) each party has actively participated in the drafting, preparation and negotiation of this Agreement, (iii) each such party has consulted with or has had the opportunity to consult with its own, independent counsel and such other professional advisors as such party has deemed appropriate, relative to any and all matters contemplated under this Agreement, (iv) each party and such party's counsel and advisors have reviewed this Agreement, (v) each party has agreed to enter into this Agreement following such review and the rendering of such advice, and (vi) any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

CITY OF LEMON GROVE

D-MAX ENGINEERING, INC.



Graham Mitchell, City Manager

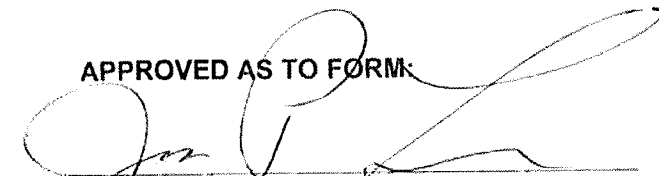


Arsalan Dadkhah, President

12-9-14
Date

12/9/14
Date

APPROVED AS TO FORM:



James Lough, City Attorney
12/9/14
Date

EXHIBIT A

D-MAX Engineering, Inc.

Consultants in Water & Environmental Sciences



December 8, 2015

Mr. Malik Tamimi
City of Lemon Grove
3232 Main Street
Lemon Grove, CA 91945

Subject: As-Needed Construction Inspection Support

Dear Mr. Tamimi:

Per your request, D-MAX Engineering, Inc. (D-MAX) is please to submit this proposal to complete storm water compliance inspections fort the City of Lemon Grove (City). All work will be completed in accordance with the City's Jurisdictional Urban Runoff Management Program and ordinances.

Scope of Services

We will complete inspections at two construction projects in the City, Valencia and Vista Serrano. Inspections will be completed whenever requested by the City of Lemon Grove.

Our scope of services will include the following.

- Review the approved erosion control plan for each project to familiarize ourselves with the proposed BMPs
- Complete site inspections, including meeting with the contractor's onsite responsible person. We will walk the site with the responsible person and discuss the condition of the sites and potential corrective actions during the inspection. We expect that the initial site inspection will generally be longer than subsequent inspections. During all inspections after the initial inspection, our inspector will document the extent to which deficiencies noted during the preceding inspections have been resolved.
- Document inspection results and required corrective actions on a City of Lemon Grove construction inspection form. The form will clearly identify instances of non-compliance and our recommendations for resolving the non-compliance. We will include photos, marked up schematics, or other figures as necessary to illustrate places where correction needs to be made. Inspection documentation will be delivered through email and, if necessary, by fax.
- Document project name, inspection date, instances of noncompliance noted, corrections made, and date of correction on a spreadsheet. This spreadsheet will provide an easy to reference source of information for tracking compliance.

We will also discuss corrections on the phone and via email with City staff and, if requested by the City, with the contractor's contact person as needed.



Cost Estimate

We will complete the services described herein on a time and materials basis in accordance with the attached fee schedule, not to exceed \$10,000. We expect that the per inspection cost, including reporting and recordkeeping, will range from about \$250 to \$500 per inspection, with the amount depending on the extent of deficiencies noted at the sites, whether we are inspecting one site only or both sites during a single trip to the City, and the amount of follow-up correspondence necessary following each inspection.

Should you have any questions regarding the above comments, please call me at (858) 586-6600, extension 22.

Sincerely,
D-MAX Engineering, Inc.

A handwritten signature in cursive script that reads "Arsalan Dadkhah".

Arsalan Dadkhah, Ph.D., P.E.
Principal



SCHEDULE OF FEES

January 1, 2014

LABOR

<u>Classification</u>	<u>Hourly Rate</u>
Clerk*	\$ 50
Word Processor*	60
Drafter*	70
Technician*	70
Senior Technician*	80
Staff Scientist/Engineer I	88
Staff Scientist/Engineer II	95
Assistant Project Scientist/Engineer	110
Project Scientist/Engineer	120
Senior Scientist/Engineer	130
Principal Scientist/Engineer	155

* Overtime (in excess of 8 hours per day) and weekend hours will be charged at 1.5 times the above rates for non-exempt personnel.

Field and hourly services will be charged portal to portal from our office, with a two-hour minimum.

Appearance as expert witnesses at court trials, mediation, arbitration hearings and depositions will be charged at \$200/hour. Time spent preparing for such appearances will be charged at the above standard hourly rates.

OTHER CHARGES

Subcontracted services, such as sub consultants, outside testing, drilling, and surveyors, will be charged at cost plus 15%. Other project-specific costs, such as rentals, expendable or special supplies, special project insurance, permits and licenses, shipping, subsistence, tolls and parking, outside copying/printing, etc., will be charged at cost plus 15%. Mileage will be charged at the current IRS rate.

Client will be responsible for any applicable taxes in addition to the fees due for Services.