

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

**IN THE MATTER OF:**

**JACK EITZEN  
38155 VIA VISTA GRANDE  
MURRIETA, CALIFORNIA**

**COMPLAINT NO. R9-2010-0104  
FOR  
ADMINISTRATIVE CIVIL LIABILITY**

**VIOLATIONS OF  
ORDER NO. 99-08-DWQ**

**App. ID No. 288215**

**November 15, 2010**

**JACK EITZEN IS HEREBY GIVEN NOTICE THAT:**

1. Jack Eitzen (hereinafter Discharger) has violated Special Provision for Construction Activity C.2 of Order No. 99-08-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated With Construction Activity, for which the San Diego Water Board may impose civil liability pursuant to Water Code section 13385(c)(1).
2. Special Provision for Construction Activity C.2 states that all dischargers shall develop and implement a Storm Water Pollution Prevention Plan (SWPPP) in accordance with Section a: Storm Water Pollution Prevention Plan. The discharger shall implement controls to reduce pollutants in storm water discharges from their construction sites to the best available technology/best conventional pollutant control technology (BAT/BCT) performance standard.
3. On December 21, 2005, the Discharger submitted a Notice of Intent (NOI) for coverage of construction activities conducted at 38155 Via Vista Grande, Murrieta, California, pursuant to the requirements of Order No. 99-08-DWQ.
4. The Discharger is the owner and general contractor of the property located at 38155 Via Vista Grande, Murrieta, California, APN 928-230-016.
5. This Administrative Civil Liability Complaint is issued under authority of Water Code section 13323.

**VIOLATIONS SUBJECT TO THIS COMPLAINT**

6. Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan (SWPPP)

The Discharger violated Special Provision For Construction Activity C.2 of Order No. 99-08-DWQ when he failed to have a SWPPP on site during construction activity and when he failed to implement adequate best management practices (BMPs) to reduce pollutants in storm water discharges. The violations occurred between January 2, 2008 and March 13, 2008 (72 days), September 24, 2008 and December 23, 2008 (91 days), and February 11, 2010 through March 30, 2010 (48 days). The total days of violation are 211.

**MAXIMUM AND MINIMUM CIVIL LIABILITY**

7. Pursuant to Water Code section 13385(c)(1) and (2), the maximum civil liability that the San Diego Water Board may impose for a violation of an NPDES Permit is ten thousand dollars (\$10,000) for each day the violation occurs and/or ten dollars (\$10) per gallon discharged but not cleaned up that exceeds 1,000 gallons.
8. Pursuant to the State Water Resources Control Board's Water Quality Enforcement Policy, at a minimum, at least ten percent more than the calculated Economic Benefit for each violation must be recovered. The economic benefit associated with the alleged violations is estimated to be \$15,000. The rationale for the estimated amount is described further in the technical analysis. The maximum and minimum liabilities that may be imposed by the San Diego Water Board for the violations alleged in this Complaint are summarized in Table 1.

<b>Alleged Violation</b>	<b>Days of Violation</b>	<b>Minimum Civil Liability (based on Economic Benefit + 10%)</b>	<b>Maximum Civil Liability</b>	<b>Statutory Authority (Water Code Section)</b>
Failure to Develop and Implement an Adequate SWPPP	211	\$16,500	\$2,110,000	13385
	<b>Total</b>	<b>\$16,500</b>	<b>\$2,110,000</b>	

**Table 1. Minimum and Maximum Liability**

**PROPOSED CIVIL LIABILITY**

15. The amount of discretionary assessment proposed is based upon consideration of factors described in Water Code section 13385(e) as applied to the violations and described further in the technical analysis.

16. Based on the penalty calculation methodology within Section VI of the Water Quality Enforcement Policy, civil liability should be imposed on the Discharger by the San Diego Water Board as detailed in Table 2 below.

Violation	Days of Violation	Adjusted Days of Violation	Liability Per Adjusted Days of Violation	Total Liability
Failure to Develop and Implement an Adequate SWPPP	211	24	\$12,375	\$297,000
Staff Costs to Date				<b>\$4,950</b>
<b>TOTAL PROPOSED LIABILITY</b>				<b>\$301,950</b>
<b>Table 2. Total Proposed Liability</b>				

17. The Enforcement Policy also provides under "Other Factors as Justice May Require" that the cost of investigation and enforcement should be added to the liability amount. Over the course of trying to resolve this matter with the Discharger, the San Diego Water Board Prosecution Team invested 33 hours to investigate, prepare enforcement documents, and consider this action. The total investment of the San Diego Water Board to date is \$4,950. Adding staff costs of \$4,950 to the proposed liability of results in a total liability of **\$301,950**.

The proposed civil liability will permit the recovery of costs incurred by San Diego Water Board staff in investigating the claims and in pursuing this enforcement action.

Dated this 15th day of November 2010.

  
JAMES G. SMITH  
Assistant Executive Officer

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

SMARTS App ID: 288215  
SMARTS Violation IDs: 841300, 841135  
SMARTS Enf. ID: 402985