

California Regional Water Quality Control Board
Santa Ana Region

March 3, 2006

**UPDATE TO THE
AGENDA**
(Prepared on 02/24/06)

The following items have been postponed:

17. **Administrative Civil Liability Complaint, SunCal Companies, Tract 31462, Beaumont, Riverside County.**
18. **Big Bear Lake Nutrient Total Maximum Daily Loads (TMDLs), Public Hearing.** This item is postponed to the April 21, 2006, Board Meeting.

The following items have been removed for the reasons stated:

16. **Administrative Civil Liability Complaint, K. Hovnanian-Forecast Homes Tracts No. 30789 and 31917, Lake Elsinore, Riverside County.**
This item was settled and no Board action was necessary.

**State of California
Regional Water Quality Control Board
Santa Ana Region
Staff Report**

March 3, 2006

ITEM: 17

Subject: Order No. R8-2006-0018, Affirming Administrative Civil Liability Complaint No. R8-2005-0099, Suncal Companies, Beaumont, Riverside County

BACKGROUND

On November 23, 2005, the Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2005-0099 (copy attached) to Suncal Companies (Suncal), for alleged violations of the State's General Permit for Storm Water Runoff Associated with Construction Activity (General Permit). In the ACL, the Executive Officer proposed an assessment of \$270,990 for the alleged violations.

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to affirm, reject, or modify the proposed administrative civil liability assessment against Suncal.

ACL No. R8-2005-0099 was issued by the Executive Officer to Suncal for violations of the General Permit. Suncal failed to implement an adequate combination of erosion and sediment control best management practices (BMPs) and discharged sediment-laden storm water to creeks tributary to San Timoteo Creek.

DISCUSSION

The General Permit regulates the discharge of storm water from construction sites as required under Section 402(p) of the Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and fee (annual fee of \$200 plus \$20/acre up to 100 acres plus 18.5% surcharge), with the State Water Resources Control Board (State Board). Suncal filed two NOIs for the site; the first one on December 5, 2003 (WDID 8 33C324950) and the second NOI on August 4, 2004 (WDID 8 33C329129). The site is located southwest of the intersection of Cherry Valley Boulevard and Interstate 10.

Suncal's approximately 800-acre site is being developed in stages. On March 3 and 4, 2004, Board staff inspected the site. Board staff found that most slopes had deep rill erosion and there were inadequate perimeter controls. Board staff also noted violations

involving filling below the ordinary high water mark and filling without proper authorization.

On January 20 and 25, 2005, the Department of Fish & Game visited the site and found large areas of the site with inadequate erosion and sediment control. On January 28, 2005, Board staff inspected the site. Some BMPs were implemented, some of the BMPs were inadequate or had failed, there were deep erosion gullies, and a large amount of sediment was observed in the nearby creek that is tributary to San Timoteo Creek.

On February 11, 2005, during a rain event, Board staff inspected the site and found an inadequate combination of erosion and sediment controls. Concentrated flows were noted without adequate erosion controls and sediment-laden flows were leaving the site without adequate sediment controls.

On February 11, 2005, Board staff spoke to Mr. Gary Parker, by phone, about site conditions noted during the February 11, 2005 inspection. Board staff requested that additional BMPs be implemented to effectively control erosion and to control sediments leaving disturbed areas.

On February 18, 2005, Board staff re-inspected the site and observed no improvements in BMPs. The following week Board staff notified Mr. Gary Parker that additional BMPs were still needed.

On April 29, 2005, Board staff re-inspected the site on the day after a rain event. Board staff observed sediment-laden water from the sediment basins being discharged into the creek. Board staff also noted a dirt-bottomed channel that discharged directly into the creek. BMPs (plastic sheeting) at the end of the channel had failed, and a significant amount of sediment had been discharged into the creek.

Suncal violated Provisions A.3 and C.2 and Section A.6 of the General Permit. Pursuant to Water Code Section 13385(c) civilly liability may be administratively imposed for the preceeding violations by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day of violation. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons. The volume of the sediment-laden storm water discharge was estimated to be approximately 13 million gallons, based on runoff from 4 days of rain and the area of the site. Therefore the maximum civil liability that can be imposed is \$130.06 million gallons (\$60,000 for six days of violation, including 2 days of filling, and \$10 per gallon based on the discharge volume).

The Water Code specifies factors the Board shall consider in establishing the amount of civil liability. These factors are discussed below.

1. Nature, Circumstances, Extent and Gravity of the Violations

The discharger was fully aware of the requirements of the General Permit to develop and implement an adequate combination of erosion and sediment controls. As a result of inadequate BMP implementation, excessive sediment was discharged to natural drainages tributary to Timoteo Creek.

2. Ability to Pay the Proposed Assessment

The discharger has not provided any information to indicate that it would have difficulty paying the proposed assessment.

3. Prior History of Violations

Prior to the inspections that led to the issuance of the ACL for the subject site, Board staff issued one Notice of Violation to Suncal in June 2002.

4. Degree of Culpability

Suncal submitted an NOI and agreed to comply with the terms and conditions of the General Permit. Suncal is therefore fully culpable for violating the General Permit, which implements the Clean Water Act. In addition, staff warned Suncal, on at least four occasions, that the BMPs were inadequate and needed improvement.

5. Economic Benefit or Savings, if any, Resulting from the Violations

By failing to effectively implement an effective combination of erosion and sediment control BMPs, Suncal gained an economic advantage of approximately \$81,000. Economic savings from these violations are estimated as follows:

Cost to implement and maintain erosion controls	\$72,000
Cost to construct and maintain sediment basins and conveyance systems	\$9,000
Total cost savings	<hr/> = \$81,000

STATEWIDE ENFORCEMENT POLICY

On February 19, 2002, the State Water Resources Control Board adopted a Revised Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are consistent, predictable, and fair. The above-described administrative civil liability complaint is in accordance with the State Enforcement Policy.

RECOMMENDATIONS

After consideration of the above factors, staff recommends that the Board affirm the assessment of \$270,990 specified in the Administrative Civil Liability Complaint issued by the Executive Officer on November 23, 2005.

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:)	Complaint No. R8-2005-0099
)	for
Suncal Companies)	Administrative Civil Liability
P.O. Box 627)	
Calimesa, CA 92320)	
<u>Attn: Mr. Gary Parker</u>)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Suncal Companies (Suncal) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Section 13385(c) of the California Water Code.
2. A hearing in this matter will be scheduled for the Board's regular meeting on January 18, 2006. Suncal or its representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days prior to the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Suncal obtained coverages for its construction site under the General Permit for Storm Water Discharges Associated with Construction Activities, NPDES No. CAS000002, Order No. 99-008-DWQ (General Permit) on December 5, 2003 and August 4, 2004. The site has been assigned WDID Nos. 8 33C324950 & 8 33C329129 and is located in the City of Beaumont.
5. Suncal is alleged to have violated Provisions A. 3, C. 2 and Section A. 6 of the General Permit. Specific violations are identified in Paragraph 7, below.
 - a. Provision A. 3 of the General Permit states:

"Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance."
 - b. Provision C. 2 states:

"All dischargers shall develop and implement a SWPPP in accordance with Section A: Storm Water Pollution Prevention Plan. The discharger shall

implement controls to reduce pollutants in storm water discharges from their construction sites to the BAT/BCT¹ performance standard.”

c. Section A. 6 states:

“At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season..... ”

6. Suncal is also alleged to have violated California Water Code Section 13376. Section 13376 states, “...any person discharging dredged or fill material or proposing to discharge dredged or fill material into the navigable waters of the United States within the jurisdiction of this state shall file a report of the discharge in compliance with the procedures set forth in Section 13260...” Specific violations are identified in Paragraph 7, below.
7. This complaint is based on the following facts:
 - a. Suncal is the owner named in the Notice of Intent (NOI) for an 802-acre construction site located on the southwest side of Interstate 10, directly west of the intersection of Cherry Valley Boulevard and Interstate 10, Beaumont. The land consists of east-west valleys and small hills. Several hundred acres have currently been disturbed with several more phases to be graded in the near future. The developer is also Suncal Companies, and the NOI identifies Mr. Gary Parker as the contact for the site.
 - b. On March 3 & 4, 2004, Board staff inspected the site and noted deep rill erosion along most slopes and inadequate sediment controls along the perimeter. The failure to fully implement an adequate combination of erosion and sediment control is a violation of Section A. 6 of the General Permit. Board staff also observed grading activities within waters of the United States without proper authorization and filling activities below the ordinary high water mark in violation of the Clean Water Act Section 401 Water Quality Certification. The former constitutes a violation of section 13385(a)(5) of the Water Code, and the later constitutes a violation of section 13385(a)(2) of the Water Code.
 - c. On January 20 & 25, 2005, Department of Fish and Game staff inspected the site with the permittee’s consultant. The consultant was at the site to determine the amount of sediment discharged to waters of the State and adversely impacting aquatic habitat areas. Photographs of the site visit show large areas of the site with inadequate erosion and sediment controls.
 - d. On January 28, 2005, following receipt of a complaint from the Department of Fish & Game, Board staff conducted an inspection of the Suncal construction site. At the time of the inspection, a few pollution control improvements were observed.

¹ BAT is the acronym for Best Available Technology; BCT is the acronym for Best Conventional Technology.

Some of the slopes had been sprayed with Topein. However, significant erosion gullies and other BMP failures were noted. Board staff informed site personnel that the failures appeared to be due to lack of adequate erosion controls, improper design of other control measures and a lack of maintenance of the BMPs. A large amount of sediment was noted in the creek. The discharge of sediment to the creek and the failure to fully implement an adequate combination of erosion and sediment controls are violations of Provisions A. 3, C. 2 and Section A. 6 of the General Permit.

- e. During a rain event on February 11, 2005, Board staff took a sample of sediment-laden runoff from the site. The sample contained 43,000 mg/l total suspended solids (TSS) compared to the U. S. EPA benchmark of 100 mg/l TSS². This is a violation of Provision A.3 of the General Permit. The discharge of TSS, in excess of levels expected in storm water runoff where proper control measures are implemented, threatens to cause pollution and indicates that proper controls have not been implemented. It was also found that the erosion control measures were still inadequate. This is a violation of Section A. 6 of the General Permit.
 - f. On February 18, 2005, Board staff re-inspected the site during a storm event and collected samples from the same location as the previous week. This sample contained 17,000 mg/l TSS. This is a violation of Provision A. 3 of the General Permit.
 - g. Board staff returned to the site on April 29, 2005, the day after a rain event. Board staff observed water from the sediment basins being discharged into a dirt-bottomed channel that discharged directly into the nearby creek. BMPs (plastic sheeting) at the end of the channel had failed, and a significant amount of sediment was being discharged into the creek. This is a violation of Provisions A 3 and C. 2 of the General Permit.
 - h. On the same day, Board staff observed sediment-laden water being pumped from a sediment basin to the creek without any BMPs. This is a violation of Provision C. 2. of the General Permit.
8. Suncal violated the General Permit by failing to properly implement an effective combination of erosion and sediment control BMPs and by discharging storm water containing pollutants. Suncal also violated Section 13376 of the California Water Code by discharging fill materials to waters of the State without authorization. Pursuant to Water Code Section 13385(a), civil liability may be imposed for the preceding violations.
 9. Section 13385(a)(1) provides that any person who violates Section 13375 or 13376 shall be civilly liable, and 13385(a)(2) provides that any person who violates waste discharge requirements shall be also civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs. Additional

² The 100 mg/l benchmark for TSS is directly from the federal industrial multi-sector permit. Construction is considered one kind of industry.

liability, not to exceed \$10 per gallon of discharge, may be imposed for each gallon discharged in excess of 1,000 gallons.

10. Sediment-laden storm water discharged from the site was estimated to be 13 million gallons based on 4 days when staff either observed discharges from the site or had clear evidence that there was sediment discharged (based on rainfall intensity, disturbed area and runoff coefficient).
11. Pursuant to Section 13385(c), the total maximum assessment for which Suncal is civilly liable is \$130.06 million (13 million gallons -1,000 gallons = 12.999 million gallons @ \$10 per gallon + \$60,000 for 6 days of violation @ \$10,000/day) for the violations cited in Paragraph 7, above.
12. Suncal saved approximately \$81,000 by not implementing adequate control measures at the site. This is based on an additional cost of properly building two desiltation basins (\$2,000 @ \$1,000/basin), properly designing and constructing a conveyance channel (\$3,000), using proper BMPs while pumping from the sediment basins (\$4,000 @ \$2,000/basin) and the cost of erosion controls and proper maintenance of all the control measures (\$72,000). Board staff costs for investigating this incident were approximately \$2,450 (35 hours at \$70/hour). These factors were also considered in assessing the penalty proposed in Paragraph 14, below.
13. Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors include: nature, circumstances, extent, and gravity of the violation, and, with respect to the discharger, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The factors are evaluated in the table below.

Factor	Comment
Nature, Circumstances, Extent and Gravity of Violation	Due to the lack of adequate sediment basins and an adequate spillway, sediment-laden storm water discharges occurred on at least three separate occasions and entered the creek that flows into San Timoteo Creek. Jurisdictional water was filled without authorization. Photos taken and samples collected at the site indicated excessive sediments in the discharge. Suncal failed to implement an effective combination of erosion and sediment control BMPs.

Culpability	Suncal violated the terms of the General Permit by failing to implement an adequate SWPPP during construction activities. Through a significant portion of the rainy season, Suncal did not implement adequate combination of erosion and sediment controls and continued to discharge polluted storm water into the creek. Suncal failed to adequately respond to Board staff's efforts to bring the site into compliance.
Economic Benefit or Savings	Suncal saved approximately \$81,000 by not implementing adequate BMPs.
Prior History of Violations	ACL-2001-0094, NTCs on 5/7/02 and 2/25/03 & NOVs 10/17/03, 11/5/03, 2/13/04 & 3/11/04.
Other matters as justice may require	Regional Board staff spent approximately 35 hours investigating this incident (@\$70.00 per hour, the total cost for staff time is \$2,450).
Ability to pay	The discharger has not provided any information to indicate that it is unable to pay the proposed assessment.

14. After consideration of the above factors, the Executive Officer proposes that civil liability be imposed on Suncal in the amount of \$270,990 for the violations cited above. This amount is based on cost savings of \$81,000, \$60,000 for 6 days of violation @ \$10,000/day and \$129,990 for 13 million - 1,000 gallons @ \$0.01/gallon of discharge.

WAIVER OF HEARING

Suncal may waive its right to a hearing. If you choose to do so, please sign the attached waiver form and return it, together with a check for \$270,990 to this office in the enclosed preprinted envelope.

If you have any questions, please contact Ms. Milasol C. Gaslan at (951) 782-4419, or Mr. Michael J. Adackapara at (951) 782-3238 or contact the Board's legal counsel, Jorge Leon, at (916) 341-5180.

11-23-05
Date


Gerard J. Thibeault
Executive Officer

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:)	Order No. R8-2006-0018
)	for
Suncal Companies)	Administrative Civil Liability
P.O. Box 627)	
Calimesa, CA 92320)	
<u>Attn: Mr. Gary Parker)</u>)	

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on March 3, 2006 to receive testimony and to take evidence on the allegations contained in Complaint No. R8-2005-0099, dated November 23, 2005, and on the recommendation for the imposition of administrative civil liability pursuant to Water Code Section 13385. The Board finds as follows:

1. On August 19, 1999, the State Water Resources Control Board (State Board) adopted Waste Discharge Requirements, Order No. 99-08-DWQ, (NPDES No. CAS000002), General Permit for Storm Water Discharges Associated with Construction Activity (General Permit). Suncal Companies (Suncal) is authorized to discharge storm water from its construction site located on the southwest side of Interstate 10, directly west of the intersection of Cherry Valley Boulevard and Interstate 10, Beaumont (site), under the Permit, WDDIDs No. 8 33C324950 and 8 33C329129. The General Permit requires Suncal to develop and implement a Storm Water Pollution Prevention Plan (SWPPP) and a monitoring program/reporting plan. The SWPPP must identify best management practices (BMPs) to reduce or prevent pollutants in storm water and authorized non-storm water discharges. Suncal is required to implement controls to reduce pollutants in storm water discharges from their construction sites to the Best Available Technology (BAT)/Best Conventional Pollutant Control Technology (BCT) performance standard.
2. On March 3 & 4, 2004, January 28, February 11, February 18, and April 29, 2005, Board staff conducted inspections of the site and on January 20 & 25, 2005 Department of Fish & Game staff inspected the site. Board staff observed a lack of erosion controls, unauthorized grading activities within the waters of the US, filling activities in violation of the 401 Water Quality Certification, a large amount of sediment discharges to the adjacent creek that is tributary to San Timoteo Creek, and a lack of maintenance of the best management practices (BMPs) at the site.
3. The allegations in Complaint No. R8-2005-0099 are incorporated herein.
4. Water Code Section 13385(a)(1) provides that any person who violates Section 13375 or 13376 shall be civilly liable, and 13385(a)(2) provides that any person who violates waste discharge requirements or any water quality certification shall

be also civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day of violation. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons. Based on the violations cited above, Suncal is civilly liable for a maximum amount of \$130,060,000.

5. On November 23, 2005, after consideration of the factors specified in Section 13385(e) of the Water Code, the Executive Officer issued Administrative Civil Liability Complaint No. R8-2005-0099 to Suncal, proposing that the Board impose civil liability in the amount of \$270,990 on Suncal, for the violations cited above.
6. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to California Water Code Section 13385, administrative civil liability shall be imposed on Suncal in the amount of \$270,990 for the violations cited in Complaint No. R8-2005-0099, payable as set forth below.

1. Suncal shall pay \$270,990 to the State Board by April 3, 2006.
2. Suncal may submit a proposal prior to April 3, 2006 to the Executive Officer for participation in a supplemental environmental project in an amount of up to \$135,495. The balance of the total assessment of \$270,990 shall be paid to the State Board by April 3, 2006.
3. The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

Pursuant to Water Code Section 13320, you may petition the State Board for review of this Order. If you choose to do so, you must submit the petition to the State Board within 30 days of the Regional Board's action on this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on March 3, 2006.

Gerard J. Thibeault
Executive Officer