



California Regional Water Quality Control Board San Diego Region



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March 24, 2009

IN THE MATTER OF:

Mr. Geoffrey Sherman)
BBA Partners LLC)
17140 Bernardo Center Dr #310)
San Diego, CA 92128)

**NOTICE OF VIOLATION
NO. R9-2009-0039**

WDID NO. 9 37C345205

In reply refer to:
CWU: 645217:schwkw

**Subject Site: The Heights Road Improvement at Valley View Road in Poway
WDID NO. 9 37C345205**

Mr. Geoffrey Sherman, BBA Partners LLC (Discharger) is hereby notified of:

Violations of State Water Resources Control Board Order 99-08-DWQ

Such violations subject you to possible enforcement action by the California Regional Water Quality Control Board, San Diego Region (Regional Board).

I. Project Description and Responsible Parties

The Heights Road Improvement project (Project) is the construction of a road with utilities for future development of 8 to 10 houses on Valley View Road in Poway, San Diego County, California. This Project is subject to the State Water Resources Control Board (SWRCB) Order No. 99-08-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002, *Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity* (Water Quality Order No. 99-08-DWQ) because the Project disturbs at least one acre of soil.

A Notice of Intent (NOI) to comply with the terms of *Water Quality Order No. 99-08-DWQ* was approved on January 8, 2007 and assigned WDID number 9 37C345205. The NOI identifies the Project's property owner and developer as BBA Partners LLC and Watkins Landmark Construction respectively. Geoffrey Sherman is identified as the Project Manager for BBA Partners LLC. Jody James Watkins is identified as the contact for Watkins Landmark Construction.

II. Potential Civil Liability

Pursuant to CWC Section 13385, any person who violates any waste discharge requirements or dredged and fill material permit or any water quality certification issued pursuant to Section 13160 shall be liable civilly in accordance with the section. Pursuant to CWC Section 13385 the maximum civil liability that the Regional Board may assess is ten thousand dollars (\$10,000) per day of violation (per violation). CWC Section 13385(e) requires that, when pursuing civil liability under CWC Section 13385, "At a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation."

III. Identification of Violations

A. CONSTRUCTION VIOLATIONS

The Regional Board inspected the Project on February 17, 2009 for compliance with Water Quality Order No. 99-08-DWQ. On February 18, 2009, the Regional Board contacted Mr. Oscar Iniguez with Watkins Landmark Construction to discuss concerns with compliance with Water Quality Order No. 99-08-DWQ. At that time, Mr. Iniguez was notified of potential violations regarding the construction best management practices. The February 17 Inspection Report was sent out on February 24, 2009.

The Regional Board inspected the Project on March 11, 2009 and found continued inadequate construction best management practices (BMPs). A copy of the March 11 Inspection Report is attached to this NOV.

The Project began construction in March of 2007. The City of Poway (City) had issued 11 Stop or Correct Work Notices for the Project. The first Correct Work Notice was issued on September 5, 2007 at the very beginning of the rainy season.

The table below contains all Stop Work or Correct Work Notices issued by the City of Poway to the Heights Project:

Date	Stop or Correct	Description
9/5/07	Correct	Inadequate erosion control and desilting basin not per plan
9/19/07	Stop	Inadequate erosion control and desilting basin not per plan. The City verified that the site was protected to the Maximum Extent Practicable (MEP) on September 21.
12/4/07	Stop	Inadequate erosion control and sediment discharge before a 70% chance of rain
1/5/08	Stop	Rain Event Discharge
1/22/08	Stop	Inadequate erosion control and sediment discharge
1/31/08	Stop	Inadequate erosion control and Failure to maintain erosion control
4/1/08	Correct	Stabilized construction entrance needs maintenance

8/11/08	Correct	Inadequate erosion control and failure to maintain erosion control
10/1/08	Correct	Inadequate erosion control and failure to maintain erosion control and insufficient gravel bags on site.
12/9/08	Stop	No dust control
12/19/08	Correct	Inadequate erosion control, runoff from site impacting adjacent properties

i. FAILURE TO IMPLEMENT / MAINTAIN BEST MANAGEMENT PRACTICES

The Discharger failed to comply with Water Quality Order No. 99-08-DWQ, Special Provision for Construction Activity C.2 which requires the discharger to reduce pollutants in storm water discharges from their construction sites to the best available technology economically achievable and best conventional pollutant control technology (BAT/BCT) performance standard. Water Quality Order No. 99-08-DWQ Sections A.6 and A.8 clarify what constitutes BAT and BCT by stating "At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season. These disturbed areas include rough graded roadways, slopes, and building pads." The project had inadequate erosion control and sediment control BMP during the February 17 and March 11, 2009 Regional Board inspections and during the City of Poway inspections where Stop or Correct Notices were issued listed in the table above.

ii. FAILURE TO PREVENT PROHIBITED DISCHARGES

The Discharger failed to comply with Water Quality Order No. 99-08-DWQ Discharge Prohibition A.2 which states "Discharges of material other than storm water which are not otherwise authorized by an NPDES permit to a separate storm sewer system (MS4) or waters of the nation are prohibited..." The Project was documented as having unauthorized discharges of sediment from several locations during the February 17, 2009 inspection. The City of Poway also documented a discharge of sediment on December 4, 2007, and January 5, 2008, January 22, 2008, and December 19, 2008.

B. POST-CONSTRUCTION BMP VIOLATIONS

The Regional Board inspected the site on February 17 and March 11, 2009. The City of Poway sent the "Drainage Study for the City of Poway, The Heights Subdivision, Road Grading Plans (G1565-07) APN 277-080-09" (SUSMP/hydrology reports) for the Project to the Regional Board by letter dated February 20, 2009. These SUSMP/hydrology reports show that the three extended detention basins were incorrectly sized based on the methods in the California Stormwater Quality Association New Development and Redevelopment Handbook (CASQA Handbook).

The basins were sized using only the road surface area and not the entire drainage area of the basin resulting in basins which are not large enough to provide effective

treatment. The CASQA Handbook (page 5-15) identifies the "BMP drainage area" as including pervious areas, impervious areas, and off-site areas.

The basins were sized using a flow-based method instead of a volume-based method also resulting in inadequately sized basins. The CASQA Handbook (page 5-16) identifies the volume-based method as applying to detention basins.

During the March 11 inspection, it was noted that the risers for the basins were not sized to retain the water quality volume, and drain no more than half the water quality volume in 24 hours as recommended in the CASQA Handbook (page 5 & 6 of TC 22). The inlet of Basin 3 is adjacent to the outlet riser causing reduced residence time and treatment contrary to inlet design recommendations in the CASQA Handbook (page 5 of TC 22).

i. **FAILURE TO IMPLEMENT POST-CONSTRUCTION BMPS
CONSISTENT WITH LOCAL REQUIREMENTS**

The discharger failed to comply with Water Quality Order No. 99-08-DWQ, Special Provision C.2 which directs implementation of Section A.10 which requires the implementation of Post-Construction BMPs which are consistent with all local post-construction storm water management requirements, policies, and guidelines. The City's website on Standard Urban Stormwater Mitigation Plan (SUSMP) refers people to the CASQA Handbook for explanations of design and implementation. The basins are not designed to CASQA standards causing the basins to be too small with risers not designed correctly.

ii. **FAILURE TO COMPLY WITH REQUIREMENTS OF MUNICIPALITIES**

The discharger failed to comply with Water Quality Order No. 99-08-DWQ, Special Provision C.5 which states that dischargers shall comply with requirements of municipalities including municipal storm water management programs developed to comply with NPDES permits issued by the Regional Board to the local agencies. The basins are not designed in accordance with the City of Poway's SUSMP which requires priority projects be designed to remove pollutants of concern to the maximum extent practicable (MEP) through implementation of treatment BMPs. The basins are too small with incorrectly designed risers and do not meet the MEP standard.

The heading portion of this document includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence, please include this code in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

Questions pertaining to the issuance of this Notice of Violation should be directed to Kristin K. Schwall at (858) 467-2345 or kschwall@waterboards.ca.gov. Written correspondence pertaining to this Notice of Violation should be directed to the following address:

David T. Barker, Supervising Water Resource Control Engineer
Attn: Kristin Schwall CWU: 645217:kschwall
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100, San Diego, CA 92123-4340



David T. Barker
Supervising Water Resource Control Engineer

3/24/2009
DATE

cc: Oscar Iniguez, Watkins Landmark Construction, oscar@watkinslandmark.com
David Rizzuto, City of Poway, drizzuto@ci.poway.ca.us
Danis Bechter, City of Poway, dbechter@ci.poway.ca.us
Kevin Quinn, City of Poway, KQuinn@ci.poway.ca.us
Jim Kennedy, 14755 Valley View Road, Poway, CA 92064

CIWQS: Construction Inspection: 1614988, 1635553
Construction Permit BMP violation: 807599, 810794, 810795
Construction Discharge Violation: 807551
NOV: 361760

