



City of Carlsbad

Office of the Mayor

May 16, 2006

John Minan, Chair, and Members of the
California Regional Water Quality Control Board-San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

**Re: Agenda of June 14, 2006, Issuance of Administrative Civil Liability
(ACL) Order against the City of Carlsbad (tentative Order No.
R9-2006-0009) for alleged violations at the Municipal Golf Course
Construction Site (5800 Hidden Valley Road, Carlsbad, CA 92009) pursuant
to § 13385 of the Water Code**

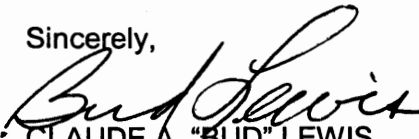
Dear Chair Minan and Members of the Regional Board:

I have proudly served as Mayor of the City of Carlsbad for twenty years. In all those years, I can assure you that attention to the City's level of compliance with storm water regulations has never been stronger than it has been in the last 5 years.

The City of Carlsbad has over 600,000 visitors each year to our beaches. Our 95,000 residents and thousands of businesses and their employees enjoy our beaches, lagoons and open space on a daily basis. I can assure you that I take great pride in our beaches and lagoons, as do my fellow council members. We take the Regional Board's regulation of clean water on our waters very seriously.

In response to the Golf Course ACL, the City has submitted statements from our City Manager, City Attorney, Public Works Director and our City Engineer about various programs that demonstrate that the failure to submit the NOI was an anomaly, and will not be repeated. The City has also submitted evidence of continuing compliance with BMP requirements for the Golf Course Project. In short, we have been striving and achieving compliance with the Municipal NPDES and the Construction Activities General Permit in our City. We request that the Board accept your staff's original settlement recommendation, as submitted on December 14, 2005, when this matter first came before the Board.

Sincerely,


CLAUDE A. "BUD" LEWIS
Mayor

cc: John H. Robertus, Executive Officer
Frank Melbourn, P.E., Water Resources Control Engineer



2 - B



City of Carlsbad

Office of the City Manager

May 24, 2006

Chairman John Minan and Members
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Re: Agenda of June 14, 2006, Issuance of Administrative Civil Liability (ACL) Order against the City of Carlsbad (tentative Order No. R9-2006-0009) for alleged violations at the Municipal Golf Course Construction Site (5800 Hidden Valley Road, Carlsbad, CA 92009) pursuant to § 13385 of the Water Code

Dear Chair Minan and Members of the Board:

During my tenure as City Manager of the City of Carlsbad, I have reviewed several storm water permits that governed the City. I have helped recruit, interview, and select employees who have years of experience in water quality assessment, inspections, and environmental regulations and placed them at several key levels in our organization.

I have directed that our Public Works Director is to be our single point of contact, and responsible for implementing the City's Municipal NPDES permit, Order # 2001-01, as issued in 2001, and for ensuring our continued compliance. I recently promoted our City Engineer, Glenn Prum, to the position of Public Works Director, partially due to his experience with storm water regulations. I can assure you that I take the City's compliance with this permit seriously, and I insist on the same from City staff.

In the past five years, the City has spent tens of thousands of dollars on training programs, outreach and education, inspections, water quality monitoring, responding to public comments, and revising internal City ordinances, policies, and procedures to comply with this permit and improve water quality in our region. We believe that our perseverance and dedication to ensuring we have clean water to swim and surf in along our shorelines under this permit is second to none.

I echo the Mayor's comments, and trust that the information submitted by the City of Carlsbad in response to the Golf Course ACL satisfies any questions you may have regarding the City of Carlsbad's continued compliance with Order # 2001-01 and the GCASP.



Chairman Minan and Members
CA Regional Water Quality Control Board
May 24, 2006
Page 2

The City requests adherence to the prior settlement, as submitted on December 14, 2005, which has been paid in full. In this connection, I understand that when Mr. Melbourn inspected the Golf Course in April, the City staff answered all questions to his satisfaction, and that he was satisfied with the implementation of best management practices (BMPs).

Do not hesitate to contact my staff or me should you need any further clarification on our commitment to clean water.

Sincerely,

A handwritten signature in black ink, appearing to read "Raymond R. Patchett", with a long horizontal line extending to the right.

Raymond R. Patchett
City Manager

cc: John H. Robertus, Executive Office
Frank Melbourn, P.E., Water Resource Control Officer

2 - C

RONALD R. BALL
CITY ATTORNEY

JANE MOBALDI
ASSISTANT CITY ATTORNEY

RONALD KEMP
DEPUTY CITY ATTORNEY

PAUL G. EDMONSON
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CITY OF CARLSBAD

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RANDEE HARLIB
SECRETARY TO CITY ATTORNEY
ARDIS SEIDEL
LEGAL SECRETARY/PARALEGAL

May 24, 2006

John Minan, Chair, and Members
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, California 92123

RE: Agenda of June 10, 2006, Issuance of Administrative Civil Liability (ACL) Order against the City of Carlsbad (tentative Order No. R9-2006-0009) for alleged violations at the Municipal Golf Course Construction Site (5800 Hidden Valley Road, Carlsbad, CA 92009) pursuant to section 13385 of the Water Code

Dear Chair and Members of the Regional Board:

This letter is written in support of the City's response in the above referenced item in which it is alleged that the City violated State Water Resources Control Board Order No. 99-08-DWQ, NPDES General Permit No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity, Complaint No. R9-2005-0264.. In short, the allegation is that the City failed to file a Notice of Intent ("NOI") with respect to the City's Golf Course Project.

The Board should be aware that Carlsbad Municipal Code Section 2.14.050 provides that the City Attorney is responsible for "approving as to form" all contracts to which the City is a party. As a result of this incident, the City Attorney's office has revised its contract review procedures, and now verifies that a Notice of Intent has been filed with the State Board as required for City construction projects as part of its contract review. This office recognizes the importance of complying with both the Statewide General Construction Activities Storm Water Permit and NPDES MS4 permit and will continue to assist all City departments in complying with the requirements for construction projects and land use approvals.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ronald R. Ball", is written over a large, stylized initial "R".

RONALD BALL
City Attorney

c: John H. Robertus, Executive Officer
Frank Melbourn, P.E., Water Resource Control Engineer



2 - D



City of Carlsbad

Public Works – Engineering

May 23, 2006

John Minan, Chair, and Members,
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

AGENDA OF JUNE 14, 2006, ISSUANCE OF ADMINISTRATIVE CIVIL LIABILITY (ACL) ORDER AGAINST THE CITY OF CARLSBAD (TENTATIVE ORDER NO. R9-2006-0009) FOR ALLEGED VIOLATIONS AT THE MUNICIPAL GOLF COURSE CONSTRUCTION SITE (5800 HIDDEN VALLEY ROAD, CARLSBAD, CA 92009) PURSUANT TO § 13385 OF THE WATER CODE

Dear Chair Minan and Members of the Regional Board:

I am the Public Works Director for the City of Carlsbad. My duties include the oversight and coordination of the four main departments within Public Works: Engineering, Maintenance & Operations, General Services and Environmental Programs. The City's storm water program officially resides in the Environmental Programs Division but is, in fact, strongly represented in all aspects of Public Works and throughout the City. I am committed to the success of the City of Carlsbad's storm water program and the protection of the water bodies within the City. The City takes pride in the fact that our staff is fully-trained and competent in programs management, design, review, construction, inspection, enforcement, implementation, and maintenance as they relate to water quality. Skip Hammann was recently promoted to City Engineer in part because of his demonstrated commitment to the success of the storm water program.

The City of Carlsbad is dedicated to enforcing the requirements of the Clean Water Act (CWA), the General Construction Activities Storm Water Permit (General Permit), and the Municipal NPDES MS4 Permit (Municipal Permit). Being a coastal community that also contains three lagoons, water quality is of the utmost importance to the City and its residents. The quality of life experienced by the residents of Carlsbad which they, in turn, demand of the City government, is reflected in the City's commitment to enhancing the environment in which we live. This recent incident with the Carlsbad Municipal Golf Course construction project should not be viewed as an indication that the City has lowered the standards regarding environmental quality standards. It has not. The City takes the Clean Water Act and the California Regional Water Quality Board seriously. Nor should any inference be drawn that the City of Carlsbad treats itself differently than it treats private development within the City. Carlsbad takes these matters very seriously and has incorporated the provisions of the CWA, General Permit, and Municipal Permit into ordinances, standards, and procedures.



May 24, 2006

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

Page 2

Carlsbad recognized early the importance of incorporating the Municipal Permit provisions into the project approval conditions. Prior to the adoption of the most recent Municipal Permit, Carlsbad required that these provisions be added to each individual project and incorporated into the site design, years before the final adoption of the current version of the Municipal Permit. It can take years from the time a project is reviewed for permit approvals until the construction is completed. As a result, Carlsbad wanted to ensure that projects would be in compliance with the latest permit regulations throughout the life of the project. The Bressi Ranch Master Plan is an example of incorporating the Ahwahnee Water Principles into a project that began the planning phase prior to the adoption of the current Municipal Permit. As a result, this project is an outstanding example of compliance with the current permit. This is a demonstration of the City's long-standing commitment.

In Carlsbad, **ALL** grading permits are designated as high-priority projects for the purpose of implementing construction inspections and BMPs. One of the things this means is that during the rainy season, every active grading permit is inspected for the implementation, maintenance, and effectiveness of construction BMPs once a week. This is documented into the individual project file and reported to the RWQCB in the annual JURMP report. This approach has been effective in getting the project owners and contractors focused on the performance of the required storm water protection measures.

The City has taken steps to enhance the success of the General and Municipal permits. For example, Carlsbad, in its efforts to enforce the General Permit, the Municipal Permit, and other storm water permit requirements, has taken efforts to reduce the duplication and confusion in the contractor community as to the overlapping requirements of the permits. For years, local agencies have required grading permits to provide erosion control plans which typically reflect erosion control measures to be installed to stabilize the site at the end of construction. The State has required a Storm Water Pollution Prevention Plan (SWPPP) for projects subject to the General Permit, which is an erosion control prevention plan that contains generic BMPs and site-specific erosion control plans; however, the SWPPP and City grading permit erosion control plans may not be the same and may conflict with one another. Carlsbad has taken efforts to reduce this duplication and confusion. For years, Carlsbad has required that applicants submit copies of the SWPPP and NOI for grading permits subject to the General Permit. The effort now is to incorporate the General Permit requirements into the City's requirements so the Municipal Permit compliments the General Permit and the CWA requirements, reducing redundancy and confusion of permit requirements for the contractor and applicant, ultimately enhancing the overall success of the storm water program. We are trying to make our storm water program into a symphony, not a series of performances by soloists playing different compositions.

The City is committed to training its personnel to the highest level possible in all aspects of self-improvement which is demonstrated in the tuition reimbursement plan. Carlsbad has conducted several workshops for staff, contractors, and developers to review the requirements of the Municipal permit. Storm water training is conducted throughout the every division of the City. Staff attends storm water training programs on an ongoing basis as new training becomes available.

May 24, 2006

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

Page 3

The problems that occurred on the Golf Course project are not typical of the attention to detail that Carlsbad pays to storm water issues. The Golf Course construction project has caused the City to review its policies and practices to ensure that similar incidents do not occur on any future projects within the City. As regrettable as the incident has been, we would ask that the Board consider the City's long history of being a leader in the storm water management field and also consider the City's rapid response to the issues that resulted in the issuance of the Notice of Violation.

Thank you for your consideration in this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "Glenn Pruim". The signature is fluid and cursive, with the first name "Glenn" written in a larger, more prominent script than the last name "Pruim".

GLENN PRUIM, PE
Public Works Director

c: Robertus and Melbourn
City Manager, Raymond Patchett
City Attorney, Ron Ball
City Engineer, Skip Hammann



City of Carlsbad

Public Works – Engineering

May 24, 2006

John Minan, Chair, and Members
California Regional Water Quality Control Board,
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, California 92123

RE: Agenda of June 14, 2006, Issuance of Administrative Civil Liability (ACL) Order against the City of Carlsbad (tentative Order No. R9-2006-0009) for alleged violations at the Municipal Golf Course Construction Site (5800 Hidden Valley Road, Carlsbad, CA 92009) pursuant to section 13385 of the Water Code

Dear Chair and Board members:

The City is alleged to have violated State Water Resources Control Board Order No. 99-08-DWQ, NPDES General Permit No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity, Complaint No. R9-2005-0264.

Background.

I am the City Engineer for the City of Carlsbad. My duties include the oversight and coordination of the City's Engineering Department which includes the design of public projects, review of both public and private projects, long range planning, and inspection of both public and private projects, and construction management of public projects. I am committed to the success of the City's storm water program and take the recent events at the Carlsbad Municipal Golf Course very seriously. I have personally investigated the root cause of what happened regarding the Golf Course ACL, and I and others in the City have implemented preventive measures to ensure that the events experienced on this project are prevented from happening again.

For your convenience I have attached copies of all correspondence submitted to your staff as a result of this action which included:

- event timelines for both the SWPPP implementation and issuance of the NOI
- internal investigation reports
- revised procedures for construction storm water compliance.

I became directly involved in the City's Golf Course construction project upon the award of the construction contracts and understand the importance of implementing the necessary SWPPP requirements. I directed the contractor and the City's construction managers to review the SWPPP documents to make sure that the storm water program for the Golf



Course were up to date, would meet the most recent City's requirements, and the RWQCB requirements because I was aware that there had been numerous revisions to the project over the years.

It became obvious to me very early, as documented in staff correspondence with the contractor, that there were contract issues with the implementation of the needed SWPPP. Staff began discussion with the contractor prior to the contract being fully executed to address the SWPPP implementation issues. The contract provided for the appropriate BMPs; however, it did not adequately address the scope or amount of materials required for this project (it is worth noting that this may result in an action by the City against the design consultant). Because this project is a public works project governed by the Public Contract Code, the City was limited in the ability to direct the contractor to take corrective actions, as they have legal implications. The project was awarded to the lowest responsible bidder along with his listed subcontractors, as required by the Public Contracts Code. Although the City had concerns about the erosion subcontractor's ability to perform, until it was demonstrated and documented that the subcontractor was not performing as required, the prime contractor could not retain a more qualified subcontractor without the risk of legal implications with the designated subcontractor. In short, the constraints of the Public Contract Code require that a contractor must proceed with a subcontractor until the subcontractor's performance is demonstrably inadequate. The City put the prime contractor on notice on September 30, 2005, prior to any notice by the RWQCB staff, that the contractor's efforts, through the subcontractor, in implementing the SWPPP were not adequate and if the subcontractor did not perform adequately, the City would take over the SWPPP efforts.

The NOI.

The construction contract documents indicated that an NOI had been obtained for this project. Several requests had been made by the field staff to get backup copies of the NOI information to complete the SWPPP documents, without success. Field staff was not aware that the required NOI had not been issued until it was brought to their attention by the RWQCB staff on Friday October 14, 2005. Staff immediately prepared the necessary documentation, personally submitted the information on the very next working day, Monday October 17, 2005 to the RWQCB Sacramento office, and immediately obtained the needed NOI. Carlsbad has conducted a thorough investigation into what happened and determined that it relied on erroneous information provided by an outside consulting firm. As a result of this investigation the City has revised procedures to validate the issuance of the NOI by checking the RWQCB website to ensure that it has been obtained prior to commencing construction of public and private projects.

The City does not dispute that the NOI was not obtained prior to construction. It was an administrative oversight and corrective measures have been taken to prevent this from occurring in the future. The fact that an NOI had not been issued did not affect the implementation of the SWPPP onsite. This is documented in the correspondence provided to the RWQCB staff.

BMP Implementation Issues.

On September 30, 2005, prior to the rainy season, the City put the grading contractor on notice that their efforts had not been sufficient to date. Prior to the site visit by the RWQCB

on October 14, 2005 the City again put the grading contractor on notice that the City would take over the implementation of the SWPPP, due to the Contractor's failure to perform.

On October 14, 2005 there were several deficiencies in the implementation of the SWPPP noted by the RWQCB staff that had also been noted by the City's field staff requiring additional and corrective measures by the contractor. This is documented in the information provided to the RWQCB. On October 18, 2005 the RWQCB staff conducted a follow up visit and noted deficiencies in the implementation of the SWPPP. These deficiencies were also noted by the City. On October 24, 2005 another more highly qualified erosion control subcontractor was substituted for the implementation of the SWPPP's BMP activities. On October 28, 2005, a follow up inspection was performed by the RWQCB staff and determined that the site was in compliance with the SWPPP. At this time the City was still not satisfied with the site conditions and continued efforts to go beyond the minimal acceptable SWPPP requirements. Those efforts are continuing throughout the duration of the project.

The fact that there was not a proper NOI issued for this project, did not affect the diligence with which the City pursued the implementation of the SWPPP as documented in the material provided to the RWQCB staff. The City believed that a NOI had in fact been issued. This is not an excuse for the failure to properly obtain the NOI. There is no excuse in my opinion.

The City's Commitment.

The City of Carlsbad is committed to proper implementation of its duties under the Clean Water Act (CWA), the General Construction Activities Storm Water Permit (General Permit), and the Municipal NPDES MS4 Permit (Municipal Permit). The quality of life experienced by the residents of Carlsbad is reflected in the City's commitment to enhancing the environment we all live in. This recent incident which led to the ACL regarding the Carlsbad Municipal Golf Course is not an indication that: the City has lowered its standards regarding environmental quality. It is more a case of the limitations imposed by the Public Contracts Code in modifying behavior of deficient subcontractors. Carlsbad takes these matters very seriously and has incorporated the provisions of the CWA, General Permit, and Municipal Permit into ordinances, standards, and procedures.

The message in the field by the City's engineering inspectors is: implement whatever BMPs are effective to the maximum extent practicable; whatever was effective during the last storm may not be effective for future storms, so we require that we do whatever needs to be done; and implement BMPs that are efficient and cost effective, to the maximum extent practicable, as required by law. It takes diligence and thought to be effective. We view approved plans and permit requirements as imposing not a maximum level of effort, but a starting point. For example, if a typical construction entrance is not effective then the contractor would be required to install a tire washing station in addition to the minimum requirement of a construction entrance. The golf course is a good example of the type of measures required of all projects in Carlsbad, public or private.

Ongoing training is extremely important. Two years ago the entire engineering inspection field staff attended training presented by California Stormwater Quality Association (CASQA). This was a huge commitment to get the entire staff to attend a two-day seminar

and reschedule all of the ongoing construction activities to accommodate this training. Opportunities to continue, enhance, or refresh SWPPP training are strongly encouraged. One of the most effective forms of training is our ongoing training conducted at staff meetings. Engineering inspectors meet bi-weekly to discuss a variety of topics. A standing agenda item is NPDES requirements. The purpose of this item is to ask, "What's working and what's not working?" and to encourage a general discussion of storm water programs. In addition, storm water training is conducted in a similar fashion to our safety training by our staff inspectors. Once a month, a staff inspector is assigned a specific BMP topic to present to the rest of entire staff, such as a construction entrance. The purpose is to review the proper installation and implementation of the BMP. I have found this training to be extremely valuable. This is just one more demonstration of Carlsbad's commitment to the storm water program.

Thank you for your consideration in this matter.

Respectfully,



CONRAD "SKIP" HAMMANN, PE
City Engineer

c: John H. Robertus, Executive Officer
Frank Melbourn, Water Resource Control Engineer
Raymond Patchett, City Manager
Ron Ball, City Attorney
Glenn Pruum, Public Works Director