



May 28, 2009

**To:** Ben Neill  
Water Resource Control Engineer  
Northern Watershed Protection Unit  
San Diego Regional Water Quality Control Board  
9174 Sky Park Ct., Suite 100  
San Diego, CA 92123

Zoila Verdaguer-Finch  
Project Manager, Environmental Engineering  
OC Watersheds Program  
2301 Glassell St.  
Orange, CA 92865

Jonathan D. Vivanti, P.E.  
Civil Engineer/Planner  
Watershed Studies Group  
U.S. Army Corps of Engineers  
Los Angeles District – Planning Division  
911 Wilshire Blvd. #14003  
Los Angeles, CA 90017

**From:** Penny Elia  
Save Hobo Aliso Task Force Chair  
Sierra Club  
30632 Marilyn Drive  
Laguna Beach, CA 92651

**Re:** Comments for:  
Tentative Order No. R9-2009-0002  
NPDES NO. CAS0108740  
Waste Discharge Requirements for Discharges of Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watershed of the County of Orange, The Incorporated Cities of Orange County, and The Orange County Flood Control District Within the San Diego Region  
**AND**  
Aliso Creek Mainstem Ecosystem Restoration and proposed SUPER Project

## **INTRODUCTION**

The Sierra Club has been actively involved in publicly supporting the new MS4 Permit requirements at a majority of the past and recent stakeholders meetings. Simultaneously, we have opposed the County of Orange SUPER Project that proposes the construction of 26 concrete drop structures in Aliso Creek, the only remaining natural creek in Orange County. We have also strongly supported efforts that would allow for restoration of this natural creek with one of the first goals being strengthened MS4 Permit regulations.

In a meeting recommended by Congresswoman Loretta Sanchez that was held on May 20, 2009, with representatives from Sierra Club, Friends of Harbors, Beaches and Parks, Dolores Gonzalez-Hayes, Senior Advisor, Office of Congresswoman Loretta Sanchez, Jonathan D. Vivante and Ed Demesa of U.S. Army Corps of Engineers, MaryAnne Skorpanich, Director, OC Watersheds Program OC Public Works Department County of Orange, we discussed in detail how the implementation of the new MS4 Permit and Aliso Creek Mainstem Ecosystem Restoration are inseparable with respect to a total restoration and clean up of the entire watershed. At the May 20<sup>th</sup> meeting Ms. Gonzalez-Hayes advised the County that their "Project Implementation Priorities" needed to be adjusted to indicate that the "priority" project is in fact the Aliso Creek Mainstem study and not the proposed SUPER Project. It was also strongly suggested to the County representative that an update be provided to the City of Laguna Beach on the County's watershed priorities since the City has publicly supported the SUPER Project over a plan for restoration of the creek. Furthermore, the Laguna Beach City Council will be voting on support of the MS4 Permit this coming Tuesday, June 2, 2009, with a staff recommendation to oppose the Tentative Order.

In the May 20<sup>th</sup> meeting Army Corps and County Watersheds were asked by the Sierra Club to attend the July 1, 2009 MS4 Permit hearing and support the new permit. The County was adamant that they could not support the permit, but Mr. Vivanti advised that the Corps' support was implied in their planned restoration efforts. We are hopeful that the Corps will convey this support to the Regional Board and its staff through more than just an implicit manner, but we are encouraged that their support is there and request that this fact be duly recorded and reported to the Regional Board members. Sierra Club further explained to the Corps and County that we felt it was in the creek's best interest and the taxpayers' best interest to stop or at least capture the majority of the six upstream cities' runoff before embarking on any kind of study to clean up or restore Aliso Creek. We repeatedly urged that a larger vision be employed since chronic illegal discharges from MS4 storm drains by Copermitees contribute in excess of 5,000,000 gallons each day of polluted urban runoff to knowingly and negligently perpetuate a significant public health and safety nuisance at Aliso Beach in South Laguna, Laguna Beach, California. Marine life and critical habitat in locally protected coastal receiving waters and Environmentally Sensitive Areas (ESA) remain degraded by elevated flows of abandoned imported water which constitutes the primary source of dry weather polluted urban runoff.

To date, the County of Orange Watersheds representative present at the May 20<sup>th</sup> meeting has not responded to multiple emails requesting an update on her presentation to the City of Laguna Beach. The Sierra Club and Friends of Harbors, Beaches and Parks will continue to follow up on this important informational update.

## **MS4 Permit Comments**

As the Sierra Club Task Force Chair for Save Hobo Aliso, I have attended almost every stakeholders workshop on the new permit and have spoken at the Regional Board hearings in San Diego as to the negative impacts of the proposed SUPER Project on Aliso Creek. I also attended most of the workshops for the last MS4 Permit that was derailed by the Copermittees. During most of the workshops the Copermittees have been extremely vocal about how impossible the new permit will be to implement and enforce, how unfair this new permit will be, and the poor light it will put them in with businesses and residents that feel they have a God given right to not only waste water, but also pollute the very creek and receiving waters of the Pacific Ocean that the MS4 Permits attempts to protect and preserve.

At one of the first workshops for this current permit, the EPA representative was very clear in her refute to the Copermittees. She explained to them, and the rest of the audience, that non-compliance has been going on for almost 35 years. NOW is the time to stop polluting our watersheds and NOW is the time for the Copermittees to take responsibility for their runoff and pollution.

At a subsequent workshop a representative from NRDC made it very clear that NOW is the time for the Copermittees to comply and that their non-compliance has been tolerated since 2000, while our natural resources have been devastated. NOW is the time for clean up and abatement orders should the Copermittees continue to ignore existing permit requirements while they adamantly oppose strengthened regulations. Just as many businesses and residents feel it's their God given right to pollute, so do the Copermittees. This must stop and stop now, and the only apparent way to end this devastation to our watershed and natural resources is through adoption of the new MS4 Permit.

The Sierra Club supports the entire permit with emphasis on the following:

Wet weather and dry weather discharges are subject to the conditions and requirements established in the San Diego Basin Plan for point source discharges. These water quality standards must be complied with at all times, irrespective of the source and manner of discharge.

The increased runoff characteristics from new development must be controlled to protect against increased erosion of channel beds and banks, sediment pollutant generation, or other impacts to beneficial uses and stream habitat due to increased erosive force. Special note: With this implementation there would be no need for 26 concrete drop structures in Aliso Creek.

Increased pollutant loads created by increased and uncontrolled urban development must be controlled to protect downstream receiving water quality.

Development that is ordinarily insignificant in its impact on the environment may become significant in a particularly sensitive environment. Therefore, additional control to reduce pollutants from new and existing development must be required for areas adjacent to or discharging directly to an ESA. This holds particularly true for Aliso Creek. Development has been uncontrolled and unmonitored for far too long.

Non-storm water discharges should be effectively prohibited unless specifically exempted. Exempted discharges identified as a source of pollutants are required to be addressed through prohibition. Dry weather non-storm water discharges have been shown to contribute significant levels of pollutants and flow in arid, urban Southern California watersheds. The Copermittees have identified landscape irrigation, irrigation water and lawn water, previously exempted discharges, as a source of pollutants and conveyance of pollutants to waters of the United States. In the case of Aliso Creek this is a chronic problem that is leading to not only destruction of the watershed and associated wildlife, but also to our receiving waters.

Copermittees MUST reduce the discharge of pollutants in storm water urban runoff. This can no longer be ignored and the ongoing pollution can no longer be tolerated.

Pollutants can be effectively reduced in urban runoff by the application of a combination of pollution prevention, source control, and treatment control BMPs. Every available tool must be implemented now, with particular emphasis on construction and mobile businesses that include car detailing. Please see attached series of photos showing a car detailer that travels throughout the County detailing cars and allowing pollutants to run into the gutter and storm drains uncontrolled.

With these photos in mind, I would like the Board to consider the adoption of a citizen-based water quality monitoring program. Please see the attached draft graphics that have been developed by the City of Newport Beach. This concept has been shared with the City of Laguna Beach for several years, but due to a weakened MS4 Permit they have not seen the need to adopt.

Copermittees must be required to implement a timely, comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water from the permitted areas so as not to exceed the MALs.

Use of Low-Impact Development (LID) site design BMPs at new development, redevelopment and retrofit must be implemented.

Enforcement of local urban runoff related ordinances, permits, and plans must be an essential component of every urban runoff management program and specifically required in the federal storm water regulations and this Order.

Retrofitting existing development with storm water treatment controls including LID, is mandatory to address storm water discharges from existing development that may cause or contribute to a condition of pollution or a violation of water quality standards. Cooperation with private landowners is mandatory to effectively identify, implement and maintain retrofit projects for the preservation, restoration, and enhancement of water quality.

Runoff treatment and/or mitigation must occur prior to the discharge of urban runoff into receiving waters.

Due to Orange County's significant, uncontrolled development, early pollutant control actions and further pollutant impact assessments by the Copermittees are mandatory.

Discharges of Waste to State Water Quality Protected Areas (SWQPAs) or Areas of Special Biological Significance (ASBS) must be prohibited except where allowable under a State approved Ocean Plan Exception or Special Condition.

Discharges from each approved development project must be subject to the most stringent of management measures.

It is mandatory that each Copermittee must require each Priority Development Project to implement LID BMPs which will collectively minimize directly connected impervious areas, limit loss of existing infiltration capacity, and protect areas that provide important water quality benefits necessary to maintain riparian and aquatic biota, and/or are particularly susceptible to erosion and sediment loss. With this in mind, it would be virtually impossible for the County of Orange or the Army Corps of Engineers to even remotely consider a project such as the SUPER Project.

Each Copermittee must revise its SSMP/WQMP to implement a watershed specific Hydromodification Management Plan (HMP) to include specific criteria for minimizing and mitigating hydrologic modification at all development and redevelopment projects. Again, this would require the County of Orange and Army Corps of Engineers to discard any notion of a project that contains any characteristics similar to the SUPER Project. The Army Corps has been tasked with an ecosystem restoration of Aliso Creek. The Corps' implied support of the MS4 Permit will assist in this effort which would include disconnecting impervious areas by reducing the percentage of Effective Impervious Area (EIA) to less than five percent of total project area; also disconnect impervious area from receiving waters using on-site or off-site storm water reuse, evapotranspiration, and/or infiltration for small precipitation events, based on limitations imposed by soil conditions, groundwater contamination potential and considerations for the use of amendments to improve soil conditions.

Each Copermittee must annually notify the Regional Board, prior to the commencement of the wet season, of all construction sites with potential violations such as the SUPER Project or any other construction project in the Aliso Creek watershed.

Each Copermittee must implement a retrofitting program which meets the requirements of this section, solves chronic flooding problems, reduces impacts from hydromodification, incorporates LID, supports stream restoration, systematically reduces downstream channel erosion, reduces the discharges of storm water pollutants from the MS4 to the MEP, and prevents discharges from the MS4 from causing or contributing to a violation of water quality standards.

The Watershed Permittees must develop, implement, and update annually, a Watershed Water Quality Work Plan that ranks each watershed's highest priority issues. The Watershed Water Quality Work plan shall identify planned watershed assessment, BMP evaluation, BMP selection, and BMP implementation efforts for each watershed planning area for the full 5-year Permit cycle. The goal of the work plan to is to demonstrate a responsive and adaptive approach for the judicious and effective use of available resources to attack the highest priority problems on a watershed basis. This

element should have special emphasis and be brought to the attention of the Army Corps of Engineers in light of their Aliso Creek Mainstem Ecosystem Restoration Project.

### **Aliso Creek Mainstem Ecosystem Restoration Comments**

Restoration of a healthy ocean must be achieved. We cannot protect the ocean by poisoning it with our wastewater and urban runoff. No less an authority than Sylvia Earle, former Director of NOAA, went on national television recently (see MSNBC) to urge immediate efforts to end ocean pollution and protect the ocean's ability to naturally modulate climate conditions. Without swift action to restore a healthy ocean, we will witness even greater, devastating climate change. Similarly, Marcia McNutt, Director of the Monterey Bay Aquarium, reminds us that every second breath comes from the ocean's ability to produce oxygen.

The solutions are readily technologically available as soon as citizens, resource agencies and elected representatives, working together, are ready to act.

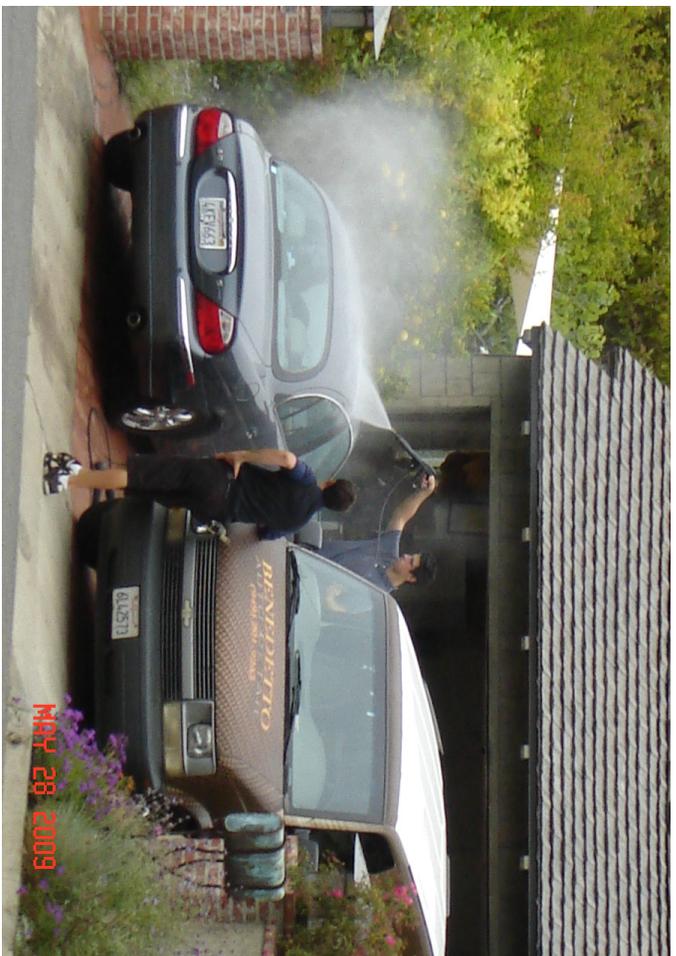
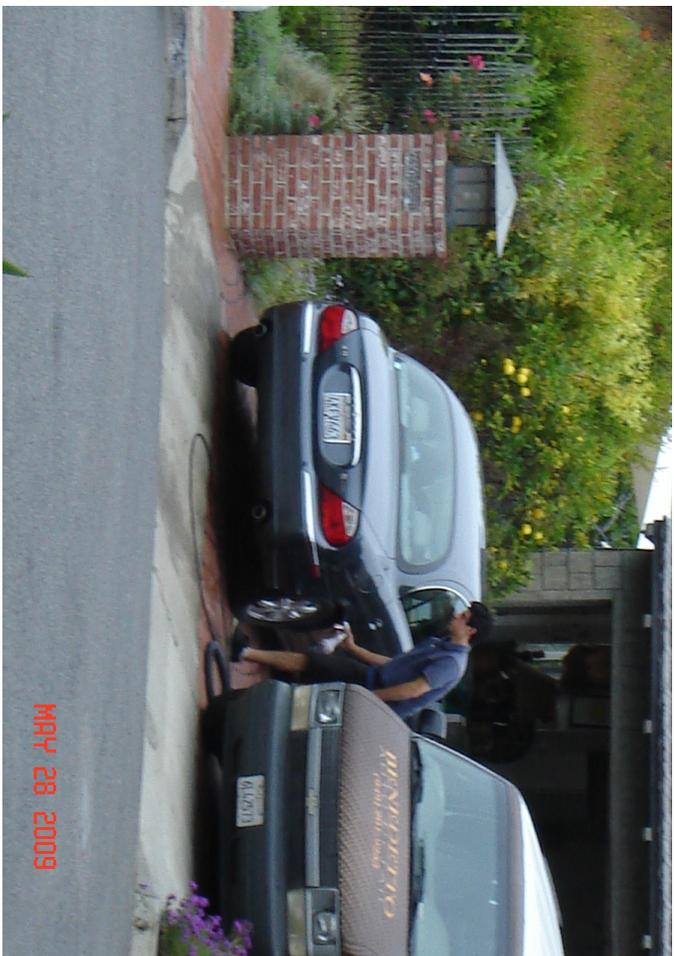
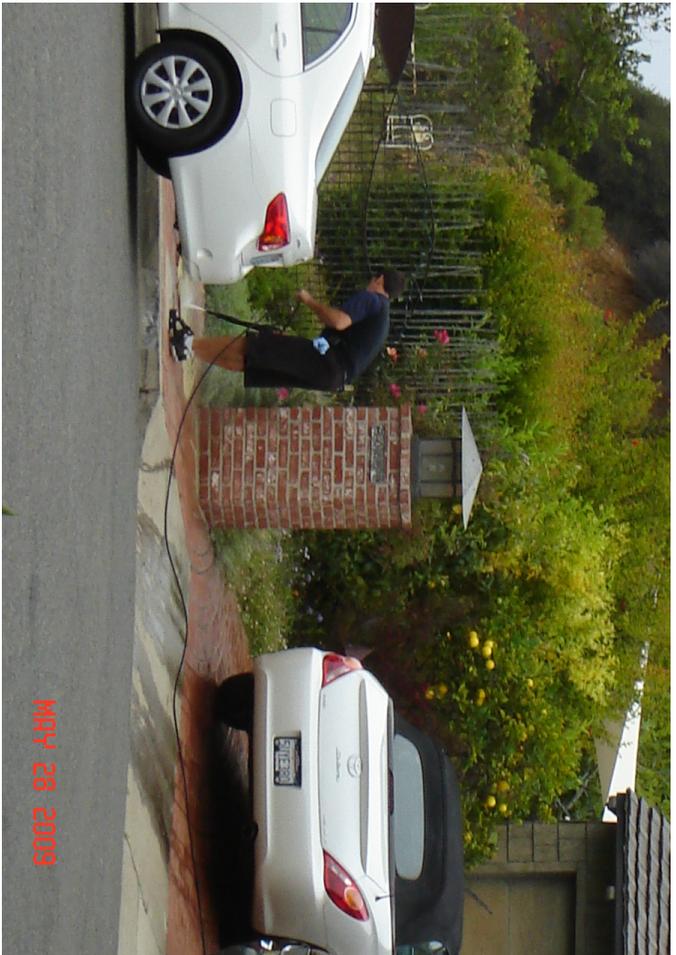
Sierra Club applauds Congresswoman Loretta Sanchez and her senior advisor, Dolores Gonzalez-Hayes for their proactive stance in bringing the environmental community, County of Orange Watersheds and Army Corps of Engineers together. It is imperative that these two agencies move forward with a plan that will eliminate concrete from Aliso Creek while adopting the policies of the new MS4 Permit which will dramatically minimize the runoff and current flow rates that are creating pollution and destroying the creek's natural resources. As discussed in our meeting of May 20<sup>th</sup>, these agencies are morally and ethically obligated to protecting and preserving our natural resources above all other mandates.

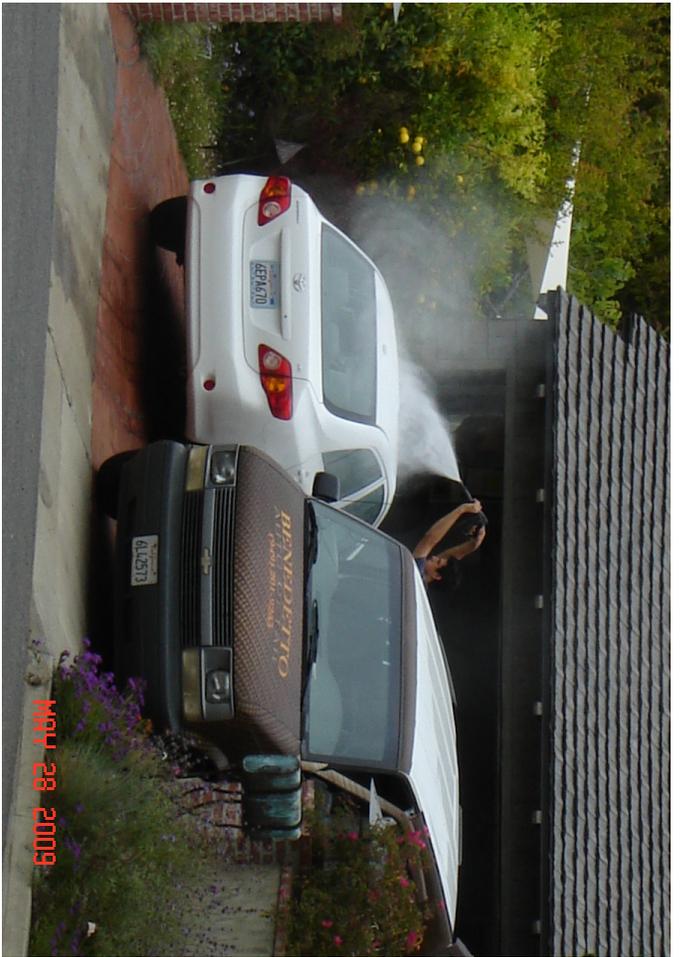
### **CONCLUSION**

The restoration of Aliso Creek will never be achieved without strict adherence to the new MS4 Permit. The County of Orange must embrace these new regulations along with the Army Corps of Engineers as they move towards an environmentally sound solution to restoration and flow controls in Aliso Creek. It is unfathomable to think that the Army Corps would move forward with a restoration plan without their partner's full agreement to all terms and conditions set forth by the new MS4 Permit. Without the County's and Copermittee's full cooperation with the new order, the Aliso Creek mainstem study is a total waste of taxpayer dollars and should be abandoned until full compliance can be met.

Attachments: Photos – mobile car detailing  
Citizens Water Quality Monitoring Program

Copy: Senator Barbara Boxer  
Congresswoman Loretta Sanchez  
Lynn Abramson  
Gina Semenza  
Dolores Gonzalez-Hayes  
MaryAnne Skorpanich  
David Shissler





# YELLOW TAG WARNING

## WATER QUALITY VIOLATION

We have observed activities at this address in apparent violation of water quality laws. These observations included:

- Wash water or pressure-wash water entered the gutter;
- Site not properly bermed or contained to control dirt or sediment runoff.
- Storm drain not properly protected.
- Soaps, chemicals, oils, solvents, or other contaminants entered the gutter
- Paint, cement, stucco, or other residue in the gutter.
- Trash, cigarette butts, construction debris, or yard debris in the gutter.
- Porta-john inadequately stabilized.

To avoid these problems:

- Use brooms, not hoses.
- Recapture wash water.
- Berm off all catch basins & storm drains.
- Dispose of paints & hazardous materials at these designated waste disposal sites:
  - 17121 Nichols in Huntington Beach (near Warner and Beach Blvd)
  - 6411 Oak Canyon in Irvine (off of Sand Canyon between the 5 and the 405).
  - Call 949-644-3066 (during working hours) or 714-834-6752 (24-hour hotline) for more information.

**YOU AND YOUR CONTRACTORS MAY BOTH BE LIABLE FOR ANY VIOLATION. FELONY VIOLATIONS OF WATER QUALITY LAWS ARE PUNISHABLE BY FINES OF UP TO \$25,000 AND/OR UP TO THREE YEARS IN STATE PRISON PLUS THE FULL COST (LABOR AND MATERIALS) TO CLEAN UP AN ILLEGAL DISCHARGE.**

**BE PART OF THE  
CLEAN WATER SOLUTION**

[www.CleanWaterNewport.com](http://www.CleanWaterNewport.com)  
or call 949-644-3215



DATE OF NOTICE: \_\_\_\_\_

Yellow Tag was given to:

- \_\_\_ CONTRACTOR
- \_\_\_ SUBCONTRACTOR OR CREW
- \_\_\_ PROPERTY OWNER/HOMEOWNER
- \_\_\_ TENANT/AGENT
- \_\_\_ NOTICE POSTED ON:

- \_\_\_ FRONT DOOR
- \_\_\_ GARAGE
- \_\_\_ FENCE
- \_\_\_ NEAR BUILDING PERMIT
- \_\_\_ OTHER

\_\_\_\_\_  
NAME OF R/P (if known)

\_\_\_\_\_  
STREET ADDRESS OF VIOLATION

\_\_\_\_\_  
STAFF MEMBER'S NAME & PHONE #

NATURE OF VIOLATION(S):

- Wash water or pressure-wash water entered the gutter.
- Site not properly bermed or contained to control dirt or sediment runoff.
- Storm drain not properly protected.
- Soaps, chemicals, oils, solvents, or other contaminants entered the gutter.
- Paint, cement, stucco or other residue in the gutter.
- Trash, cigarette butts, construction debris, or yard debris in the gutter.
- Porta-john inadequately stabilized.

OTHER COMMENTS: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Separate this section and fax to Newport Beach Code & Environmental Enforcement at 949-644-3229 or deliver to Newport Beach City Hall for follow-up.

# Our Beach & Your Construction Site

- Anything that enters the gutter goes right to Newport Bay or the Ocean -- there is no treatment system for gutter runoff! **If construction debris and water leave your construction site, you might be swimming in it later.**
- It is **AGAINST THE LAW** to discharge any of the following in the gutter and storm drain:
  - Wash water. Recapture wash water and pressure-washing water!
  - Paints (even water-based paints)
  - Paint thinners and solvents
  - Soaps (even bio-degradable soaps and "green" soaps)
  - Cleaning products
  - Oils or other hydrocarbons
  - Dirt and sediment
  - Residue with cement, drywall material, stucco, or grout
  - Trash, cigarette butts, construction debris, yard debris
  - Fertilizers and pesticides
- **FOLLOW YOUR GRADING AND EROSION CONTROL PLAN!** Remind contractors and subcontractors to keep all construction materials, water, & sediment on your construction site! Anticipate rain events! You **MUST** use sandbags or weirs to protect storm drain entrances to keep accidental discharges from entering the storm drains.
- Use brooms, not hoses. Never rinse construction materials so that the rinse water reaches the gutter!
- Drop excess paint off at qualifying hazardous disposal sites (call 714-834-6752 for locations) or let the can of water-based paint dry then put the dry can in the trash.
- Make sure porta-johns are stable (no knock-overs). When the cleaning or pumping service comes, don't let them spill soap or waste on the ground.

**YOU, YOUR CONTRACTORS, AND YOUR SUBS MAY EACH BE LIABLE FOR VIOLATIONS. FELONY VIOLATIONS OF WATER QUALITY LAWS ARE PUNISHABLE BY FINES OF UP TO \$25,000 AND/OR UP TO THREE YEARS IN STATE PRISON PLUS THE FULL COST (LABOR AND MATERIALS) TO CLEAN UP AN ILLEGAL DISCHARGE.**



**Be part of the Clean Water Solution!**

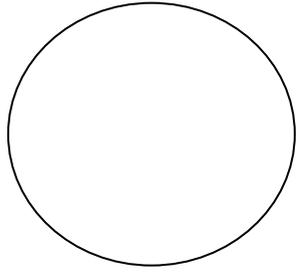
*Learn more about protecting Newport Bay and our ocean shoreline at:*

[www.CleanWaterNewport.com](http://www.CleanWaterNewport.com)

*or call 949-644-3215*

*City of Newport Beach -- Division of Code and Water Quality Enforcement*





## YOU CAN HELP KEEP OUR BEACHES CLEAN

Reducing runoff in your neighborhood helps keep our beaches open and our waters clean.

Water that runs off your property -- from sprinklers, hoses, car washing, construction activity, and house cleaning -- goes straight to the ocean and bay! It's not treated! Would you want to swim in runoff?

Here's how you can help reduce runoff:

- Use a broom (not a hose) to sweep up sand and debris.
- Check your sprinklers to make sure they're timed and aimed correctly so that they don't flow on the sidewalk.
- Always pick up after pets.
- Use as little fertilizers and pesticides as possible.
- Don't wash your car at home -- take it to a car wash -- they recycle wash water!
- Hire awning and home cleaning companies that contain wash water.
- Make sure outdoor showers drain into landscaping - not the street.

Violations of the City's Water Quality Ordinance are punishable by fines of \$100, 200, and \$500 per violation. Report violations all to **949-644-3215**.



Newport Beach -  
A Clean Water City  
[www.CleanWaterNewport.com](http://www.CleanWaterNewport.com)  
949-644-3215

