

ERRATA SHEET

I declare under penalty of perjury that I have read the foregoing ALL pages of my testimony, taken on JANUARY 14, 2016 (date) at SAN DIEGO (city), CALIFORNIA (state), and that the same is a true record of the testimony given by me at the time and place herein above set forth, with the following exceptions:

<u>Page</u>	<u>Line</u>	<u>Should read:</u>	<u>Reason for Change:**</u> (See below before completion)
2-92	HEADER	WAYNE CHIU	
12	16	billing and project oversight.	
13	22	Projects were related primarily to TMDLs,	
13	23	basin planning work.	
14	22	Storm water report reviews.	
19	3	it was attended by QSPs.	
41	16	Their SWPPP	
46	5	soil or earthen	
46	6	berms, but	
54	22	and the perimeter controls	
74	1	adequately implementing erosion	
80	22	compliance assurance unit	
EXHIBIT	COVER PAGES	CHIU, WAYNE	

Date: 21 JANUARY 2016



Signature of Witness

WAYNE CHIU

Name Typed or Printed

**

THE "REASON FOR CHANGE" COLUMN SHOULD ONLY BE COMPLETED FOR FEDERAL DISTRICT OR BANKRUPTCY COURT MATTERS (FRCP RULE 30(e)). THIS COLUMN SHOULD NOT BE COMPLETED FOR STATE COURT ACTIONS.

Job No. _____

Rev. 3/15/14

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN DIEGO REGION

IN THE MATTER OF:)
)
)
Administrative Civil Liability)
Complaint No. R9-2015-0110)
Against San Altos-Lemon Grove, LLC)
_____)

DEPOSITION OF WAYNE CHIU, a witness herein,
noticed by Oppen & Varco, taken at 225 Broadway,
San Diego, California, at 8:34 a.m., on Thursday,
January 14, 2016, before Diane M. Lytle, CSR 8606.

Hutchings Number 600593



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1 APPEARANCES OF COUNSEL:

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23 JOSHUA ROSENBAUM

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I N D E X

WITNESS: WAYNE CHIU

EXAMINATION BY:

PAGE

MS. BERESFORD

5, 89

MR. BOYERS

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E X H I B I T S

Exhibit identification within the transcript is flagged with "(EXHIBIT)" as an identifier.

EXHIBIT	DESCRIPTION	IDENTIFIED	MARKED
1	Before the San Diego Regional Water Quality Control Board Subpoena for Adjudicative Action (EXHIBIT 1)	7	92
2	Email chain beginning date August 14, 2014 (EXHIBIT 2)	22	92
3	Email chain beginning date August 25, 2014 (EXHIBIT 3)	25	92
4	Exhibit No. 8 Facility Inspection Report and various documents (EXHIBIT 4)	32	92
5	Email chain beginning date December 15, 2014 (EXHIBIT 5)	59	92

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E X H I B I T S (Continued)

EXHIBIT	DESCRIPTION	IDENTIFIED	MARKED
6	Exhibit No. 18 Facility Inspection Report (EXHIBIT 6)	63	92
7	Exhibit No. 19 Facility Inspection Report (EXHIBIT 7)	66	92
8	Email chain beginning date May 12, 2015 (EXHIBIT 8)	79	92

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1 WAYNE CHIU,
2 a witness herein, having been sworn, testifies as
3 follows:
4

5 -EXAMINATION-
6

7 BY MS. BERESFORD:

8 Q. Good morning, Mr. Chiu.

9 A. Good morning.

10 08:34 Q. My name is Linda Beresford. I'm one of the
11 attorneys for San Altos in the matter of complaint
12 number R9-2015-0110. I'll be taking your deposition
13 this morning.

14 Can you please state your name and spell it for the
15 08:34 record.

16 A. Wayne Chiu, W-A-Y-N-E, C-H-I-U.

17 Q. Thank you.

18 Have you had your deposition taken before?

19 A. No.

20 08:34 Q. Okay.

21 I have a few ground rules to go through so that we
22 can hopefully have a smooth process this morning.

23 You're here today appearing under oath, obviously.

24 We have a court reporter taking down what you say. So

25 08:34 if possible, when you answer my questions, if you could

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08:34 please respond verbally, "yes" or "no" or with a sentence, instead of nodding or shrugging or saying "uh-huh." That makes the transcript more clear.

A. Okay.

08:34 Q. Great.

It's also important, to have an accurate transcript, to make sure you understand my question. So if you don't understand my question, please let me know, and I will do my best to restate it. If you answer the question, I'm going to proceed on the assumption that you understand.

A. Okay.

Q. Okay.

Again, for the sake of having a clear transcript, it's easiest for the court reporter if there's only one person speaking at a time. So I ask that you please wait and let me finish my question before you respond. And I will do my best to also wait for you to complete your answer before I continue.

08:35 Is that agreeable?

A. Agreed.

Q. Thanks.

Feel free to take a break at any time. Just ask, and we can take a break. My only request is that if there's a question pending, please answer the question

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1 08:35 before we break; is that fair?

2 A. Sure.

3 Q. And finally, I do have to ask, but have you
4 taken any medication today, or is there any other reason

5 08:35 why you can't give your best testimony today?

6 A. I only took some ibuprofen this morning.

7 Q. Is that going to impair your ability --

8 A. It should not impair my ability to answer your
9 questions.

10 08:36 Q. Great. Thank you.

11 I took a couple Extra-Strength Tylenol myself this
12 morning.

13 MR. BOYERS: Is that going to impair your ability
14 to ask questions?

15 08:36 MS. BERESFORD: You can only hope.

16 MR. BOYERS: I can only hope.

17 MS. BERESFORD: Let's mark this as Exhibit 1,
18 please. (EXHIBIT 1)

19 Q. I've given you a document that's marked as

20 08:36 Exhibit 1.

21 Have you seen that document before?

22 A. Yes.

23 Q. Can you please state for the record what it is.

24 A. It's the subpoena for my deposition.

25 08:36 Q. Did you do anything to prepare for your

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08:36 deposition today?

A. Well, for the deposition that was scheduled in December, we had a meeting with the attorney -- our attorney just to kind of go over what to expect.

08:37 Q. And then did you do anything else?

A. No.

Q. Did you review any specific documents?

A. Maybe about a week ago, I looked at the inspection report.

08:37 Q. Which inspection report?

A. December 15th.

Q. Okay.

Did you look at anything else?

A. No.

08:37 Q. Exhibit 1 to the subpoena asked for you to produce documents. I'll represent to you that counsel produced a lot of documents yesterday that they indicated were responsive for all witnesses for the water board.

08:37 When you were -- Did you assist in preparing the documents to be produced?

A. The only role I had was providing anything that I had within my files to Frank Melbourn.

Q. And as you were going through that process,
08:38 were there any documents that you saw that you thought

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1 08:38 were responsive to the case but you did not produce for
2 some reason, other than documents that might have been
3 withheld for attorney-client privilege?

4 A. No.

5 08:38 Q. I'd like to get a little bit of your
6 background, please.

7 A. Okay.

8 Q. Can you please tell me where you graduated from
9 high school?

10 08:38 A. Northgate High School, Walnut Creek,
11 California.

12 Q. Did you go to college after that?

13 A. I did.

14 Q. And where is that?

15 08:38 A. University of California Los Angeles.

16 Q. Did you graduate from UCLA?

17 A. I did.

18 Q. And what year was that?

19 A. 1993.

20 08:38 Q. And what was your degree?

21 A. Engineering geology, Bachelor of Science.

22 Q. Is that two degrees, or is that one combined
23 program?

24 A. It's a specialized degree in geology, so it's a
25 08:39 single degree.

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1 08:39

Q. Engineering geology?

2 A. Engineering geology.

3 **Q. Not engineering and geology?**

4 A. No. It was a geology degree with an

5 08:39 engineering specialty.

6 **Q. Interesting. I had not heard of that before.**7 **Did you get any advanced degrees after that?**

8 A. I did.

9 **Q. And what were those?**10 08:39 A. Environmental engineering degree from
11 California Polytechnic State University in San Luis
12 Obispo.13 **Q. And what year was that?**

14 A. 1999.

15 08:39 **Q. And is that a master's?**

16 A. Yes. Master of Science.

17 **Q. Any other advanced degrees?**

18 A. Nope.

19 MS. BERESFORD: Okay.

20 08:39 I'm sorry. Off for a second.

21 (A recess is taken.)

22 MS. BERESFORD: Let's go back on.

23 **Q. Did you work any time between the time that you**
24 **graduated from UCLA and the time that you started your**
25 08:40 **master's degree at Cal Poly?**

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1 08:40 A. Work? I was in the Peace Corps for two years.
2 Q. Where did you go?
3 A. Poland.
4 Q. Sounds pretty cool.
5 08:40 A. Could be worse places.
6 Q. Do you speak Polish?
7 A. I do. Not great, but I do.
8 Q. Did you have any other jobs before you went to
9 Cal Poly?
10 08:40 A. No.
11 Q. Okay.
12 And what was your first job after you got your
13 master's in 1999?
14 A. I worked for an environmental or geotechnical
15 08:41 environmental firm called Pacific Environmental Group in
16 San Jose.
17 Q. What did you do for them?
18 A. I was a staff engineer working primarily on
19 soil and groundwater cleanup, remediation-type work.
20 08:41 Q. How long were you there?
21 A. About six months. They got bought out by a
22 larger firm.
23 Q. And did you continue on?
24 A. I did not. I moved on to another firm, Cambria
25 08:41 Environmental Technology. They're based out of Oakland,

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08:41 but I worked out of their Sonoma office.

Q. And what did you do for them?

A. Pretty much the same thing as what I did at Pacific Environmental Group.

08:42 **Q. And how long were you with Cambria?**

A. Approximately eight months.

Q. And what did you do after that?

A. I was offered a position at another small environmental firm, Toxichem, T-O-X-I-C-H-E-M, Management Systems, Inc.

Q. And what did you do for them?

A. Similar work, only I was doing a little more project management. And so it was actually -- I think I did pretty much everything that you can possibly do for a project from the word processing all the way up to the building and project oversight.

Q. Small firms are like that.

And how long were you at Toxichem?

A. Approximately two years.

08:43 **Q. So according to my time line, that brings us up to about 2002; is that about right?**

A. That's about right.

Q. And what did you do next?

A. Moved to San Diego and worked for Kleinfelder, Inc.

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1 08:43 Q. And what did you do for them?

2 A. I started out with similar work, soil and
3 groundwater remediation work. And then I expanded into
4 environmental compliance work, air modeling, hazardous

5 08:43 waste permitting. Let's see, what else? Project
6 management.

7 Q. All right.

8 A. Not as much word processing.

9 Q. I worked for Kleinfelder in the early 1990s, so

10 08:44 I can relate.

11 A. A lot of people have.

12 Q. How long were you at Kleinfelder?

13 A. Four years.

14 Q. Okay.

15 08:44 And, then, so that brings us to about 2006.

16 A. Correct.

17 Q. What did you do then?

18 A. I was offered a position at the regional board.

19 Q. And what was your first position at the

20 08:44 regional board?

21 A. I was in the water quality standards unit.
22 Projects were related primarily to MDLs, but a lot of
23 basic planning work.

24 Q. What was your title at that point?

25 08:44 A. Water resource control engineer.

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08:44 Q. How long were you a water resource control engineer?

A. Well, I still am a water resource control engineer. We don't change our titles when we move around inside the water board. But if that --

08:44 Q. That's all right. I'll ask the next question then.

A. So you're still a water recourse control engineer. Are you still in the water quality standards unit?

08:45 A. No.

Q. And so after you finished your time in the water quality standards unit, what unit did you move to?

A. Storm water management unit.

Q. Okay.

08:45 And when was that?

A. 2009.

Q. And are you still in the storm water management unit?

A. I am.

08:45 Q. And when you started with the storm water management unit in 2009, what were your duties?

A. Water report, reviews for the municipal program and working on the Riverside County MS4 permit.

Q. And how long did you do that type of work?

08:45 A. I still do that work. Although, you know, I

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1 08:46 moved on to other MS4 permits.

2 Q. Okay.

3 So you added duties at some point?

4 A. Yeah. Well, yes. So then I've also added more

5 08:46 to just municipal work.

6 Q. Okay.

7 Have you ever worked on the construction general
8 permit for storm water management controls?

9 A. Only in terms of oversight and implementation
10 08:46 of the permit within San Diego Region.

11 Q. So just to be clear, I was just referring to
12 the construction general permit, and that is the
13 National Pollutant Discharge Elimination System general
14 permit for storm water discharges associated with
15 08:47 construction and land disturbance, actually.

16 Is that how you understood it to be?

17 A. Correct.

18 Q. So when I refer to "the construction general
19 permit" or "the permit," that's the permit I'm referring
20 08:47 to.

21 A. Okay.

22 Q. Okay.

23 So at some point, you started assisting with
24 oversight and implementation for the construction
25 08:47 general permit?

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08:47 A. Correct.

Q. Do you know approximately when that was?

A. I think my first inspection for construction was, I want to say, 2012, but I'm not 100 percent sure.

08:47 Q. Okay.

And when you started working with the permit, one of your first duties were to do inspections for that permit at construction sites?

A. Correct.

08:48 Q. Had you done any work with the construction general permit at any of your prior employments with the private environmental consulting firms?

A. No.

Q. So the first time you ever worked with the permit was approximately 2012 when you started doing inspections?

A. Correct.

08:48 Q. Okay.
When you started to do inspections in 2012, did you receive any training before you did that?

A. Well, part of my first inspection was kind of a ride-along inspection. I was observing another inspector.

Q. Who was that?

08:48 A. It was Dat Quach, D-A-T Q-U-A-C-H.

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1 08:48 Q. And then have you had any training since then?

2 A. No. Just on-the-job training.

3 Q. How many times did you go out with someone else
4 to be trained on the job?

5 08:49 A. I think I've been to -- During that initial
6 period, I think, maybe eight -- eight or nine sites with
7 other inspectors.

8 Q. Did you go to any specific training sessions
9 put on by either the San Diego Regional -- Take it one
10 08:49 at a time.

11 Did you go to any specific training sessions put on
12 by the San Diego Regional Water Quality Control Board?

13 A. Yes.

14 Q. And can you describe those to me.

15 08:49 A. We had a QSP/QSD trainer of record come in and
16 provide training to several of our staff.

17 Q. When was that?

18 A. I'm not sure. 2013, maybe.

19 Q. Okay.

20 08:50 And how long was that training?

21 A. It was the standard training for a QSD, so it
22 was over a three-day period.

23 Q. Have you done any other training sessions put
24 on by the San Diego Regional Water Quality Control

25 08:50 Board?

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08:50 A. No.

Q. Have you done any training sessions put on by the State Water Resources Control Board?

A. I'm not sure if the training I mentioned was put on by the State or by the Region.

Q. Okay.

I didn't want to combine them just for confusion, so we can group them together.

A. Okay.

08:51 Q. So any training given by either the State Board or the Regional Board you went to this three-day training? Any other training sessions?

A. No.

Q. Okay.

08:51 Have you done any training sessions put on by any other private associations or construction groups?

A. As a trainee?

Q. Yes.

A. No.

08:51 Q. Okay.

Have you been giving training sessions?

A. I have participated in training sessions.

Q. What does that mean?

A. Most through question-answer-type sessions.

08:51 Q. And where are those sessions? In what format

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1 08:51 is that?

2 A. I attended one with the association of general
3 contractors, and it was attended by GSPs.

4 Q. Were you a speaker?

5 08:52 A. Yes. Again, it was more of a question-answer
6 format.

7 Q. Have you participated in any training similar
8 to that?

9 A. As a trainee?

10 08:52 Q. As a trainee or a trainer.

11 A. I've attended several
12 question-answer-format-type sessions. I don't know if
13 they were necessarily formal training or not.

14 Q. And you're appearing in a capacity as a
15 08:52 representative of the water board to answer questions?

16 A. Correct.

17 Q. Okay.

18 And about how many of those have you done?

19 A. I can't remember specifically, but I know I've
20 08:52 done at least three or four.

21 Q. Okay.

22 And that's over the past two to three years?

23 A. Correct.

24 Q. Okay.

25 08:53 Are you a QSP?

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1 08:53 A. I am not.

2 Q. Okay.

3 Are you a QSD?

4 A. I am not.

5 08:53 Q. Are you a trainer of record?

6 A. I am not.

7 Q. Do you know if Dat Quach was a trainer of
8 record?

9 A. I do not know.

10 08:53 Q. Do you know if the San Diego Regional Water
11 Quality Control Board has any trainers of record on
12 staff?

13 A. I believe so. We've recently hired somebody
14 who I believe has a trainer of record on her
15 08:53 qualifications.

16 Q. And who is that?

17 A. Erica Ryan.

18 Q. I'm sorry?

19 A. Erica Ryan.

20 08:53 Q. And when was she hired?

21 A. I want to say two months ago.

22 Q. Okay.

23 Before that, do you know if the Regional Board had
24 any trainers of record on staff?

25 08:54 A. I do not know.

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1 08:54 Q. Okay.

2 About how many construction sites do you think you
3 have inspected for compliance with the permit?

4 A. Close to 100 or -- I'm sorry, individual sites
5 08:54 or numbers of inspections?

6 If it's numbers of inspections, close to a 100. If
7 it's number of sites, maybe 80.

8 Q. Thank you for clarifying that.

9 THE REPORTER: Eight or 80?

10 08:54 THE WITNESS: 80, sorry.

11 MS. BERESFORD:

12 Q. Today we're going to be talking about the
13 Valencia Hills construction site on San Altos Place in
14 Lemon Grove.

15 08:55 Are you familiar with that?

16 A. I am.

17 Q. So if I refer to "the site," you'll understand
18 that's what I'm talking about?

19 A. Yes.

20 08:55 Q. Okay.

21 When did you first hear about the site?

22 A. In 2014. I don't know the exact time, but it
23 was somewhere near late summer or early autumn.

24 Q. And do you know from whom you heard about the
25 08:55 site?

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08:55 A. The City of Lemon Grove provided us a report
that an unauthorized non-storm water discharge had been
released from a construction project in their
jurisdiction, and they informed us of it because there's
08:55 a requirement in the MS4 permit to notify us when there
are these types of releases.

Q. And what did you do when you heard about that?

A. I contacted the site by email and notified them
that it was an unauthorized discharge under the
08:56 construction general permit.

Q. Did you ask for any information?

A. I did. I asked them for some reports, like
weekly inspection reports. And I think I asked them for
what they -- maybe some sampling results. And I think
08:56 what they want -- would do to prevent future
unauthorized discharge.

MS. BERESFORD: Let's mark this as Exhibit 2.
(EXHIBIT 2)

THE WITNESS: That looks about right.

08:57 MS. BERESFORD:

**Q. Can you please state for the record what
Exhibit 2 is.**

A. It's a email from the City of Lemon Grove's --
I believe it was the assistant city engineer at the
08:57 time, providing me information about the contact for

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1 08:57 that site.

2 Q. Did you follow up with the City of Lemon Grove
3 after this initial email exchange?

4 A. I did not.

5 08:57 Well, I'm sorry. I think they -- I think when we
6 got the information from the site, I may have cc'd the
7 City of Lemon Grove on, you know, my acknowledgment of
8 the receipt of the information.

9 Q. Okay.

10 08:58 We'll talk about the exchange with the contractor
11 in a minute.

12 So did you ever call the City after that, in
13 September or October, to remind them about their
14 obligations to notify the board of certain violations or
15 08:58 anything like that?

16 A. No.

17 Q. So you don't recall speaking with anyone at the
18 City in the approximate time frame of September to late
19 November of 2014?

20 08:58 A. Not that I can recall.

21 Q. Do you recall exchanging email with them during
22 that time frame?

23 A. Are we talking about this specific site?

24 Q. Yes.

25 08:59 A. I don't think so.

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1 08:59 Q. And do you recall exchanging email with
2 them more generally about their obligations under the
3 MS4?

4 A. I think -- I don't remember when it was, but
5 08:59 we -- we did do an audit of their construction
6 management program. But I don't remember if it was
7 before or after this incident.

8 Q. Why did you audit their construction management
9 program?

10 08:59 A. I was -- It was during a period of time where I
11 was in between MS4 permit renewals or MS4 permit work,
12 and I had some time to start doing some MS4 permit
13 auditing of programs. And so I had been auditing
14 several construction management programs throughout the
15 09:00 region.

16 Q. Who else did you audit besides the City of
17 Lemon Grove?

18 A. Let's see. I think, over a period of
19 approximately six months to a year -- I don't remember
20 09:00 the exact time frame -- but I audited the -- I go from
21 north to south -- City of Murrieta, City of Temecula,
22 Riverside County. Let's see. Port of San Diego, City
23 of San Diego. Let's see. City of Chula Vista. There's
24 a few more. I can't remember right now.

25 09:00 Q. How did you select the cities that you audited?

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1 09:01 A. My area of responsibility is where -- is based
2 on watersheds, but I was also tasked with Riverside
3 County. So that's why I was looking at Riverside County
4 programs.

5 09:01 I'm also responsible for a lot of the
6 co-permittees that discharge --

7 THE REPORTER: I'm sorry.

8 THE WITNESS: I'm sorry. I forget there's terms
9 people don't know.

10 09:01 So I also am responsible for overseeing MS4 permit
11 oversight in couple of watersheds. So city or
12 co-permittees or cities that are within the San Diego
13 Bay watersheds.

14 And so that area, at the time, was something I was
15 09:01 focused on. That's why I was looking at the Port,
16 Chula Vista, Lemon Grove, the City of San Diego.

17 MS. BERESFORD:

18 Q. Is the City of Lemon Grove one of those
19 involved in the --

20 09:02 A. They are.

21 Q. -- in the San Diego Bay watershed?

22 A. They are.

23 MS. BERESFORD: Can we mark this as Exhibit 3,
24 please. (EXHIBIT 3)

25 09:02 Q. Do you recognize Exhibit 3?

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09:02 A. I do.

Q. And can you please state what it is.

A. Appears to be the email exchange I had with the site about their unauthorized non-storm water discharge and the list of information I requested from them.

Q. Is that standard of practice, if there's an unauthorized non-storm water discharge that you contact the site and ask for this type of information?

A. If it's significant and we're notified of it.

09:03 Q. What would you consider significant?

A. In this situation, it was several tens of thousands of gallons that had discharged from the site lacking BMPs, which result in a discharge of sediment-laden water into the MS4.

09:03 Q. And what did you do after you got this information?

A. I logged it into the SMARTS, which is short for the Storm Water Multiple Application tracking -- or Report Tracking System.

09:04 Q. Very good.

MR. BOYERS: That's very good.

MS. BERESFORD:

Q. What did you do after you logged it into SMARTS?

09:04 A. I moved on to other things.

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1 09:04 Q. Did you follow up with the City about this at
2 all?

3 A. I did not.

4 Q. And did you contact the company at all during
5 09:04 the next couple -- through the end of November?

6 A. No.

7 Q. Okay.

8 Have you gone to any CASQA training? Do I need to
9 define what CASQA is?

10 09:05 A. No, I don't --

11 Q. Please don't make me. C-A-S- --

12 A. -Q-A.

13 Q. -- -Q-A.

14 A. It's the California Stormwater Quality

15 09:05 Association.

16 Q. Now you're showing off.

17 A. I know storm water.

18 Q. Have you been to any CASQA training?

19 A. No.

20 09:05 Q. And what were your findings after your audit of
21 the City of Lemon Grove construction program?

22 A. I found that they were not adequately requiring
23 the implementation of erosion control BMPs per their
24 local ordinances, that they were not issuing enforcement

25 09:05 actions as required to compel compliance with their

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09:05 local ordinances. But that -- Of the jurisdictions I had audited at that time -- I believe I had already audited maybe three or four -- that their inspector was actually one of the better inspectors I had seen.

09:06 Q. And who was that?

A. Gary Harper.

Q. Do you know how much training Mr. Harper has had?

A. I do not.

09:06 Q. How did you communicate your findings to them?

A. I believe in my audit report, I mentioned that they had -- I thought I had mentioned something about the inspector and how he had done a good job of generally doing inspections.

09:06 Q. I mean your findings. You were telling me that you did not think that they were adequately requiring implementations.

A. I put that in an audit report, which I issued to them.

09:07 Q. Do you know when that was issued?

A. As I said, I don't remember when I did the audit. It was some time, I believe, in 2014.

Q. Of the audits that you were doing, how many of the entities did you feel were not adequately meeting their obligations?

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1 09:07 A. I would say all of them.

2 Q. So after you had the exchange about the
3 non-storm water discharge in the summer of 2014, when
4 was the next time you heard about the site?

5 09:08 A. It was in December. The City contacted me
6 about the site again.

7 Q. Do you know who at the City contacted you?

8 A. I believe it was Malik Tamimi, their storm
9 water manager.

10 09:08 Q. And what did they say?

11 A. They said that -- or they requested that I come
12 and do a joint inspection with them of the site. And
13 there was -- Part of the reason for the inspection was
14 the site was claiming that they were in compliance with
15 09:08 their local ordinances. And the reasoning was they said
16 they were in compliance with the construction general
17 storm water permit requirements.

18 Q. I want to go back to Mr. Harper for a second.

19 A. Okay.

20 09:09 Q. How did you determine you felt he was doing a
21 good job?

22 A. Of the inspectors that I had observed from the
23 different municipalities, he was the -- appeared to be
24 the most proficient at identifying deficiencies in BMP
25 09:09 implementation.

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09:09 He also had the authority to issue enforcement actions, where other cities did not have inspectors that had that authority.

Q. Did you ever go to a site with him?

09:09 A. Yes, I went to two -- two sites, I believe.

Q. Before the audit or after?

A. During the audit.

Q. During the audit.

Do you know which sites those were?

09:10 A. I can't recall names or anything. I just know they were construction sites within the City's jurisdiction at the time.

Q. Was it the San Altos site?

A. No.

09:10 **Q. Okay.**

Who told you that he had authority to issue enforcement actions?

A. He did. And the city engineer -- I think it's the city engineer, he's able to issue citations.

09:10 **Q. I will just comment that their testimony in this case is not similar to that testimony.**

MR. BOYERS: I think the record speaks for itself, so we don't need to testify as to what the record says.

MS. BERESFORD: I'm just commenting. And he's sharing his knowledge, and that's why we're here.

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1 09:10 Q. Okay.

2 So after the City contacted you and requested a
3 joint inspection, what happened then?

4 A. I met them. I met the City and the site
5 09:11 representatives on site and conducted an inspection for
6 compliance with the construction permit.

7 Q. Was it your understanding that the City had
8 been conducting inspections prior to that time?

9 A. Yes, they had informed me that they had issued
10 09:11 the site a stop work notice and -- or at least multiple
11 stop work notices, and that the BMPs had not been
12 implemented, which resulted in discharges in a couple of
13 storm events that had occurred earlier in the month.

14 Q. Did they tell you, when they went out to
15 09:11 inspect the site, that they were inspecting it for
16 compliance with the general permit?

17 A. No.

18 Q. What did they -- did they tell you -- and when
19 I say, "they," I mean city inspectors or private workers
20 09:12 on their behalf -- did they tell you the purpose for
21 which they were inspecting the site?

22 A. They only told me that the site was not
23 complying with their local requirements, local BMP
24 requirements.

25 09:12 MS. BERESFORD: Okay.

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09:12 I apologize. Let's go off the record.

(A recess is taken.)

MS. BERESFORD:

Q. Please take a look at this, which I guess is
09:21 Exhibit 4, which is Exhibit Number 8 to the ACL. So
it's Exhibit 4 to the deposition, Exhibit Number 8 to
the ACL. (EXHIBIT 4)

Do you recognize that document?

A. I do.

09:21 Q. Can you please state what it is.

A. It is the inspection report I prepared for my
December 15th inspection, December 15th, 2014.

Q. Did you take any field notes when you were out
at the site?

09:22 A. No.

Q. Do you remember what the weather conditions
were like?

A. I think it was partly cloudy, but more sunny
than cloudy.

09:22 Q. Did you document that in your inspection report
anywhere?

A. I did not.

Q. Do you know if rain was in the forecast on that
day?

09:22 A. I believe there was rain that was forecast soon

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1 09:22 after that inspection, but I don't remember.

2 Q. Okay.

3 Can you please look at page 2 of your report.

4 A. Page 2 of 9?

5 09:23 Q. Yes.

6 The first sentence of the second paragraph says,
7 "The site failed to implement BMPs before the storm,
8 resulting in unauthorized discharges of sediment and
9 sediment-laden storm water from the site to the City's

10 09:23 municipal separate storm sewer system."

11 Do you see that?

12 A. Yes.

13 Q. On what facts did you base that statement?

14 A. Based on what the City told me and the photos
15 09:23 that were provided as part of their inspection report.

16 Q. Do you know who conducted the previous
17 inspections?

18 A. I believe it was with -- Can I look at this?

19 Q. Sure.

20 09:24 A. Because it was based on whatever I saw in here.
21 I think it was Gary Harper.

22 Q. Did you ask Mr. Harper questions about his
23 inspections?

24 A. I did not.

25 09:24 Q. Have you since talked to Mr. Harper about any

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09:24 of his inspections of the site?

A. No.

Q. In the middle of that paragraph, it says, "The site again failed to implement BMPs before a subsequent

09:24 storm event that occurred on December 11, again resulting in an authorized discharges of sediment and settlement-laden storm water from the site to the City's MS4."

Do you see that?

09:24 A. I do.

Q. I'm sorry?

A. I do.

Q. And on what facts do you base that statement?

A. Again, based on the inspection report and
09:25 photos provided by the City.

Q. And did you interview the person or persons who conducted those inspections?

A. I did not.

Q. If you could please look at page 3.

09:25 Your first finding says, "Several stockpiles were observed without adequate containment."

Do you see that?

A. I do.

Q. And on what basis did you make that finding?

09:26 A. I observed several stockpiles without any berm

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1 09:26 or anything that could contain the stockpile. And if
2 there was a berm, it wasn't fully encapsulating or
3 containing the stockpile.

4 **Q. Do you know if they were actively using any of**
5 09:26 **those stockpiles at the time?**

6 A. They shouldn't have been if there was a stop
7 work notice.

8 **Q. Well, could they have used some of those**
9 **stockpiles to implement new BMPs at the site?**

10 09:26 MR. BOYERS: Objection. Speculation.

11 MS. BERESFORD:

12 **Q. You can still answer.**

13 A. Oh.

14 MR. BOYERS: I'll tell you when you can't answer.

15 09:26 THE WITNESS: Okay. I'm not sure how this whole
16 things works. Okay.

17 If they were, I would say they would have been
18 ineffective BMPs.

19 MS. BERESFORD:

20 09:27 **Q. But could they have been working with the**
21 **stockpile on that day or the next couple of weeks for**
22 **BMP purposes?**

23 MR. BOYERS: Same objection.

24 THE WITNESS: I don't know. I don't think so.

25 09:27 MS. BERESFORD:

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09:27 Q. Did you ask anyone what they were doing with those stockpiles?

A. They told me that they would contain -- cover them after I left.

09:27 Q. They told you -- They told you after you left or --

A. No. I mean, they told me, when I pointed this out to them, that they would contain and cover them after I left.

09:27 Q. But they didn't state what they were doing with those stockpiles?

A. No.

Q. And you didn't ask?

A. I didn't ask.

09:27 Q. Okay.

When you are evaluating whether or not a stockpile -- You know what, please strike that.

Let's look at -- Can you please state for me the difference between an active versus inactive part of a construction site as defined by the permit.

A. Well, my understanding is, any area of a site that has been disturbed can be considered active. However, if no activity to disturb an active area is scheduled for 14 days or longer, then it becomes

09:28 inactive on day 15.

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1 09:29 Q. How about stockpiles? Are stockpiles active if
2 they're going to be used within the next 14 days?

3 A. I don't consider stockpiles part of the
4 active/inactive categoric -- categorization of the terms
5 09:29 of the permit. Say that for -- I think it's
6 construction material stockpiles, they require cover and
7 berm at all times unless actively being used. For waste
8 stockpiles, it's protect from wind and rain at all times
9 and contain unless actively being used.

10 09:29 Q. And how -- define "actively being used."

11 A. Well, if I see a -- if I see that, you know,
12 there is evidence that they are adding to a stockpile or
13 removing from that stockpile during the day, then I
14 would call that actively being used. But if they're not
15 09:30 moving anything or adding to it, then I would expect it
16 to be covered and contained.

17 Q. Is that defined anywhere in the permit?

18 A. The "actively"?

19 Q. Yes.

20 09:30 A. Not that I know.

21 Q. Do you know if that is defined anywhere in the
22 CASQA handbook?

23 A. I don't know.

24 Q. You don't know, or you're answering "no"?

25 09:30 A. Oh, I'm sorry. I don't know.

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09:30 Q. Okay. Thank you.

A. Sorry for the pause there.

Q. That's okay.

09:30 Going to finding number 3 on page 3 of your report,
it says, "Several areas were observed to be inactive, or
could be scheduled to be inactive, without effective
soil cover to control potential erosion."

09:31 Can you please explain to me the first part of that
sentence, what you meant by "Several areas were observed
to be inactive, or could be scheduled to be inactive."

09:31 A. There were several slopes and completed lots
that I observed during my inspection. And it was clear
to me that those slopes had not been worked on for quite
some time. And I did ask about some of those slopes and
lots, and the site representatives indicated to me that
they had not been worked on for several weeks. And
given that the site was under a stop work notice, I
would have expected those to be inactive.

09:31 Now, the part about could be scheduled to be
inactive, part of the -- one of the main erosion control
BMPs that every Storm Water Pollution Prevention Plan,
SWPPP, has a scheduling BMP. And part of the scheduling
BMP is to schedule as many parts of your site to be
inactive as possible and to make sure that those are
09:32 provided appropriate erosion controls until they are

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1 09:32 made active again.

2 So given the site was under a stop work notice for
3 at least two weeks and not been worked on for probably
4 longer than that, I determined that there were several

5 09:32 areas that were inactive or were scheduled to be
6 inactive. And I saw most of those areas with little to
7 no evidence of erosion control BMP.

8 Q. Did you talk to the site rep about what their
9 construction schedule was on that day?

10 09:33 A. They just said that they were working on
11 implementing BMPs.

12 Q. So you did not discuss the specific
13 construction schedule of where they had scheduled to be
14 doing work for the month of December?

15 09:33 A. No, because my understanding was they were
16 under a stop work notice.

17 Q. Sure.

18 But they had a schedule before they were under the
19 stop work notice; isn't that right?

20 09:33 MR. BOYERS: Objection. Leading.

21 MS. BERESFORD:

22 Q. Do you think they would have had a construction
23 schedule for the month of December if they hadn't had a
24 stop work notice?

25 09:33 A. I'm sure they would have.

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1 09:33 Q. Can you tell me -- Where you were just talking
2 about this scheduling BMP, that there's a requirement
3 that they schedule areas to be inactive, do you know
4 where that is in the general permit?

5 09:33 A. General permit requires that they have erosion
6 control BMPs implemented, which includes effective soil
7 cover for inactive areas. And then they're required to
8 put in their SWPPP a description of the BMPs that they
9 will implement on a site. And pretty much every SWPPP
10 09:34 out there has a scheduling BMP as one of the BMPs they
11 plan on implementing to prevent erosion.

12 Q. Does the general permit specifically say you
13 need to have a scheduling BMP, so that as many parts of
14 the site as possible are inactive at any given time?

15 09:34 A. No.

16 Q. So for your finding number 3, when you were
17 talking about areas that could be scheduled to be
18 inactive, did you specify those areas anywhere in your
19 report?

20 09:35 A. I did not, although I did include some photos.

21 Q. Finding number 4 on page 3, the last sentence
22 says, "Risk Level 2 construction sites are required to
23 implement appropriate erosion control BMPs (runoff
24 control and soil stabilization) in conjunction with

25 09:36 sediment control BMPs for areas under active

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1 09:36 construction."

2 Do you see that sentence?

3 A. I do.

4 Q. Can you please state the basis for me -- the

5 09:36 basis for that statement.

6 A. Which statement, the first statement or the
7 last statement?

8 Q. Well, it's one sentence.

9 A. So you're talking about the "Risk Level 2
10 09:36 construction sites are required" --

11 Q. Yes.

12 A. That is a citation out of the construction
13 general permit.

14 Q. And why was this a Risk Level 2 construction
15 09:36 site?

16 A. They're -- SWPPP identified themselves as a
17 Risk Level 2 construction site.

18 Q. And the sentence, with respect to active areas;
19 is that right?

20 09:36 A. Correct.

21 Q. And so in this instance, what erosion controls
22 for active areas do you believe were required by the
23 permit that were not in effect at that time?

24 A. Runoff controls and soil stabilization.

25 09:37 Q. Did you specify where on the site that was

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1 09:37 **expected?**

2 A. Anywhere that they considered active, which
3 should have -- not have been much of the site,
4 considering they were under a stop work notice.

5 09:37 **Q. And what would be a runoff control measure?**

6 A. Runoff controls are typically some sort of
7 linear control feature that reduces sheet flow lines or
8 linear controls that would prevent sheet flow from
9 flowing onto and over a slope.

10 09:37 **Q. And what else?**

11 A. Are we talking about just runoff controls, or
12 are you talking about soil stabilization as well?

13 **Q. What else for -- Let's finish with runoff**
14 **controls.**

15 09:37 A. That would probably be the bulk of the runoff
16 controls.

17 **Q. Okay.**

18 **And then what about soil stabilization?**

19 A. We would expect to see some sort of product
20 09:38 applied to the surface of disturbed soil areas to
21 prevent those areas from moving when coming into contact
22 with precipitation or runoff. So examples might include
23 soil binders, mulch, hydromulch, hydroseed. For slopes,
24 it could be all of those things.

25 09:38 And blankets or -- I should say grass blankets,

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1 09:38 geotextiles, plastic sheeting, anything that would
2 ensure that the soil underneath is stabilized so that it
3 will not move.

4 Q. You commented that it was under a stop work
5 09:39 notice; correct?

6 A. Correct.

7 Q. So you expected, at that point, that the whole
8 site should be inactive?

9 A. I did.

10 09:39 Q. So why did you cite them with problems for
11 active areas?

12 A. Because the site representatives were claiming
13 that the entire site was active.

14 Q. So why did you cite them for areas that are
15 09:39 inactive?

16 A. Because I told them that several areas appeared
17 to be inactive, and according to their description of
18 what had been going on on the site, it met the
19 definition of inactive area.

20 09:39 Q. Well, then, why didn't you tell them that the
21 whole site was inactive if it was under a stop work
22 notice?

23 A. I tried to.

24 Q. So did you believe the whole site should have
25 09:39 been considered inactive?

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09:39 A. After two weeks, yes.

Q. So why did you cite them for violations of active areas?

MR. BOYERS: Objection. Asked and answered.

09:39 MS. BERESFORD:

Q. Well, just because they say it's an active area, you're saying you're not necessarily accepting their definition.

A. Correct.

09:40 So I was just -- essentially, I was trying to let them know, through my findings, that anything they would call active still had erosion control requirements. Anything that was inactive was expected to have effective soil coverage.

09:40 Q. So if it's an active area, not under a stop work notice, and rain is not expected, is there -- are they still required to apply soil stabilization products?

09:40 A. If you look at the wording there, it says implement appropriate erosion BMPs. Now, the key word there, I believe, is "appropriate." So if it's dry weather and no rain is expected, appropriate would be to not have runoff and soil stabilization as you might have under expected rain events, but at least prepared to implement when it is expected.

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1 09:41 And so under dry conditions, I would not expect the
2 same level of implementation, but given that there had
3 been several days of rain, I would have expected at
4 least to see the runoff control and soil stabilization
5 09:41 in active areas prior to those particular rain events
6 on -- earlier in the month.

7 Q. Okay.

8 And you were talking earlier about one of the
9 appropriate erosion control BMPs that you did not see
10 09:41 was effective linear control features; is that correct?

11 A. Correct.

12 Q. Is that what you're talking about in finding
13 number 5?

14 A. Partially.

15 09:41 There's a specific requirement in the permit for
16 slopes to have linear sediment controls. And this is,
17 in particular, for Risk Level 2 sites and above. So
18 Risk Level 2, Risk Level 3 sites.

19 And they're required to apply linear sediment
20 09:42 controls at the top of the slope, on the slope and at
21 the base of the slope to meet that requirement.

22 Q. Going back to the active areas, what were the
23 linear control features that you did not see that were
24 not slope-related?

25 09:42 A. Well, there was several unpaved roads that had

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09:42 no chevrons or other check dams, or anything like that,
that would reduce the sheet flow along those unpaved
roads, and as a result, there was evidence of
significant rilling and erosion of those roads.

09:42 And then I also did see a couple of soil or earth
and berms, but they were placed in areas that would not
provide that runoff control. And at least one of those
berms included a pipe that allowed flow through it.
That would actually cause erosion on the output of that

09:43 pipe.

**Q. Are you familiar with the ACL Complaint issued
in this case?**

A. I'm familiar with it.

**Q. And are you familiar that violation number 1
alleged that sediment-laden storm water had discharged
from the site for six days?**

A. I don't know the exact number of days, but I
know that was an allegation.

Q. Okay.

09:44 **Is sediment a pollutant under the permit?**

A. It is.

**Q. Is it a pollutant if it is discharged at any
level?**

What I mean level, I mean concentration.

09:44 MR. BOYERS: I'm going to object as a legal

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1 09:44 conclusion.

2 THE WITNESS: I would say it's considered a
3 pollutant at any level.

4 MS. BERESFORD:

5 09:44 Q. Are you familiar with Table 1 in section
6 5(a) (2) of the permit.

7 I'm sorry, that I don't have.

8 A. 5(a) (2), I have seen that table, yes.

9 Q. What do you think the purpose of that table is?

10 09:45 A. The table is there to provide guidance to a
11 site as to when they need to begin implementing more
12 rigorous BMPs.

13 Q. So if you have turbidity at less than 250 NTU,
14 is that an indication that the BMPs are likely
15 09:45 appropriate?

16 MR. BOYERS: Objection. Vague.

17 THE WITNESS: I would not say that.

18 I would say that at 250 NTU, there is a significant
19 concern at that point. But under 250 NTU, we still have

20 09:45 a pollutant being discharged from the site. And if
21 there are not BMPs being implemented per the
22 requirements of the permit, any discharge of sediment
23 that is not being controlled to the best available
24 control technology, BCT or BAT standard, is discharging

25 09:46 in violation of the permit.

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09:46 MS. BERESFORD:

**Q. After you conducted your inspection on
December 15 --**

MR. BOYERS: Are you done with the table?

09:46 MS. BERESFORD: Yes.

MR. BOYERS: All right.

THE WITNESS: Thanks.

MS. BERESFORD:

Q. -- what happened then?

09:46 A. I told the site representatives that I was going to hand the site over to the City of Lemon Grove to continue oversight. Because I was confident that they would be able to provide the site the guidance necessary to bring the site into compliance with local ordinances, which would be expected to bring the site into compliance with the construction general permit.

Q. And why is that? Why is it -- If a site's in compliance with their local ordinances, how do you know that means it's necessarily in compliance with the permit?

A. The local ordinances require that erosion control BMPs being implemented as the most important measure to control sediment discharges from the site.

09:47 The local ordinances require that all slopes be

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1 09:47 stabilized prior to a rain event.

2 Local ordinances require that the sites implement
3 all the sediment controls and all the other BMPs that we
4 would expect to see implemented under the construction

5 09:47 general permit.

6 So I thought if the site were to be brought into
7 compliance with local ordinances, that we should be able
8 to come to the conclusion that they have brought the
9 site into compliance with the construction general
10 09:47 permit requirements.

11 Q. Are you aware that city employees have
12 testified that they do not believe the compliance with
13 the municipal ordinances necessarily means compliance
14 with the general permit?

15 09:48 A. That's a possibility.

16 Q. Did you discuss with them that was your
17 expectation, that if the site was in compliance with the
18 local ordinance, that your expectation -- that was the
19 same as compliance with the general permit?

20 09:48 A. I did not say that specifically. I just said
21 that, you know, I'm going to leave this to the local
22 municipality to bring the site into compliance with
23 local ordinances. And if there are additional problems
24 with the site, that the City can bring me in again.

25 09:48 Q. Did the water board issue a notice of violation

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09:48 after your December 15 inspection?

A. Yes.

Q. So you're saying you turned it back over to the City, but at the same time, the water board issued a

09:49 notice of violation?

A. Yes.

MR. BOYERS: Objection. Argumentative.

MS. BERESFORD:

Q. Why were you doing both?

09:49 A. The notice of violation was for violations of the construction general permit. We have at our discretion whether or not to pursue further enforcement action after we issue a notice of violation.

Q. Was the site ever referred to the compliance assurance unit?

09:49

A. Yes.

Q. And when was that?

A. After we issued the notice of violation.

Q. And do you know what the conclusions of the compliance assurance unit were at that time?

09:49

MR. BOYERS: Objection. Calls for speculation.

THE WITNESS: I don't.

MS. BERESFORD:

Q. Who is in the assurance compliance unit?

09:49 A. It is supervised by Chiara Clemente. And her

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1 09:50 staff consists of Frank Melbourn, Christopher Means and
2 Rebecca Stewart.

3 Q. So you referred the site to that unit after the
4 December 15 inspection?

5 09:50 A. (Nods head in the affirmative.)

6 THE REPORTER: Is that a "yes"?

7 THE WITNESS: Oh, I'm sorry. Yes, yes.

8 MS. BERESFORD:

9 Q. And did they have --

10 09:50 A. I thought there was more to the question.

11 Q. Did they ever tell you what they thought about
12 that evaluation?

13 A. I think --

14 MR. BOYERS: Objection. Vague, potentially calls
15 09:50 for attorney-client privilege.

16 MS. BERESFORD:

17 Q. I'm sorry. He identified Chiara and Frank.

18 Did Chiara or Frank ever discuss the site with you
19 in the next 30 days after your December 15

20 09:50 investigation?

21 A. Yes.

22 Q. And what was that discussion?

23 A. Whether or not we should bring it over to the
24 compliance oversight group to pursue additional

25 09:51 enforcement action.

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1 09:51 Q. And what was the conclusion at that time?

2 A. I don't know. I don't remember.

3 Q. Have you seen this document --

4 MS. BERESFORD: Let's go off the record.

5 09:51 (A recess is taken.)

6 MS. BERESFORD: Let's go back on.

7 THE WITNESS: Do I need to look at it?

8 MS. BERESFORD:

9 Q. Yes, please.

10 09:51 Have you seen the document that I just handed to
11 you?

12 A. Yes.

13 Q. And can you please state what it is.

14 A. It was the response from the site, describing
15 09:52 how they were addressing the violations identified in
16 the notice of violation.

17 Q. Is it often referred to as a corrective action
18 report?

19 A. I don't know if that --

20 09:52 MR. BOYERS: By who?

21 MS. BERESFORD: I don't know. I have heard this
22 document referred to as a corrective action report. I
23 thought that was a term that had been assigned to the
24 document.

25 09:52 THE WITNESS: No. It was simply a response.

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1 09:52 MS. BERESFORD:
2 Q. Okay.
3 And what is the date of it?
4 A. It says January 1st.
5 09:52 Q. And it is addressed to you?
6 A. Correct.
7 Q. From whom?
8 A. I believe it was sent over via email. Oh, by
9 Ben Anderson, the legally responsible person listed in
10 09:53 SMARTS for this site.
11 Q. And what did you think of the corrective action
12 report?
13 MR. BOYERS: Objection. Vague.
14 THE WITNESS: It indicated to me that they were
15 09:53 trying to bring their site into compliance, but they had
16 not done so fully yet, and that there was still some
17 work to do.
18 MS. BERESFORD:
19 Q. Did you provide them with any response on this
20 09:53 document?
21 A. I did not.
22 Q. Why not?
23 A. At this point, I was waiting to see what the
24 City of Lemon Grove was doing with the site.
25 09:53 Q. Did you feel that it addressed the issues in

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1 09:53 the notice of violation?

2 A. As I said, it looked like they were making
3 efforts to address the violations, but that they still
4 had some additional work to do.

5 09:54 Q. Did you tell the City of Lemon Grove that you
6 were not responding to this, that you were relying on
7 them to follow up to make sure that whatever
8 discrepancies still existed, that they were the ones
9 responsible for making that happen?

10 09:54 A. No.

11 Q. What further actions did you think were
12 required beyond what they said they were doing in here?

13 A. I just remember seeing that they had not
14 applied erosion controls yet to a few of their slopes,
15 09:54 so that it appeared that there was still some work to be
16 done on implementing erosion controls that would meet
17 the requirements of the permit.

18 Other than that, I would say it looked like that
19 they were on the face of it, implementing BMPs that
20 09:55 would address some of the other violations noted.
21 Mainly, the housekeeping ones and -- housekeeping BMPs
22 and the primary controls.

23 Q. So you think this document did show that they
24 were addressing their housekeeping BMPs?

25 09:55 A. Correct, yes.

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1 09:55 Q. And it was addressing the perimeter controls?

2 A. Yes, I think so. Without reading it fully, I
3 can't come to a full conclusion at this point.

4 Q. Did you share your conclusions with anybody at
5 09:55 the water board?

6 A. Immediately after this, I don't think so.

7 Q. Did you ever discuss this document with anybody
8 at the water board?

9 A. I may have forwarded a copy of this to the
10 09:56 compliance assurance unit, but I don't know if they read
11 it.

12 Q. So did you ever discuss this document with
13 Mr. Melbourn?

14 A. I don't think so, not until recently.

15 09:56 Q. And when you say, "recently," what does that
16 mean?

17 A. After we were served -- Or after -- I don't
18 know. It was sometime in the past few months, so it
19 might have been somewhere around the time we were given
20 09:56 our subpoenas.

21 Q. Was it before or after he had drafted the
22 complaint?

23 A. After.

24 Q. Did you discuss it with Ms. Clemente at any
25 09:57 time before the water board drafted the complaint?

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09:57 A. I don't think so.

Q. And just to be clear, you did not share your conclusions with the City of Lemon Grove?

A. No.

09:57 Q. And you did not share your conclusions with San Altos?

A. No.

Q. When was the next time you went to the site?

A. I want to say March of 2015.

09:57 Q. Approximately March 27, 2015 ring any bells?

A. That sounds about right.

Q. Why did you go back out at that time?

A. I'm sorry, could you repeat the question again.

Q. Yes.

09:58 Why did you go back out to the site at that time?

A. We were determining whether or not they had brought the site into compliance with -- or into substantial compliance with the requirements of the construction permit.

09:58 At that time, the -- I believe the City had lifted their stop work notice order late January. I think, at this point in time, the compliance oversight group and the compliance assurance unit had -- and the storm water management unit had agreed that an appropriate

09:58 enforcement action for this site would be a -- you know,

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1 09:58 an administrative civil liability based on the one-day
2 violation. And so we wanted to make sure the site had
3 been brought into compliance so that a one-day violation
4 ACL, administrative civil liability, could, in fact, be
5 09:59 issued rather than pursuing a more significant
6 administrative civil liability.

7 Q. You indicated that the City had lifted the stop
8 work notice in -- sometime in January 2015; is that
9 correct?

10 09:59 A. Correct.

11 Q. Did you get notice from the City of their
12 determination that they were doing that?

13 A. Yes.

14 Q. Did they provide you with additional
15 09:59 information about why they were lifting that stop work
16 notice?

17 A. They gave me a set of documents that -- or a CD
18 with a -- with documents that supported their decision
19 to lift the stop work notice.

20 09:59 Q. Did you review it?

21 A. I did.

22 Q. And what did you think about that submission?

23 A. I thought that there were still some areas
24 where the site could be improved, but that I didn't

25 10:00 disagree that they could lift the stop work notice.

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1 10:00 Q. Did you convey your conclusions to the City?

2 A. Only that I didn't disagree with the lifting of
3 the stop work notice.

4 Q. But you didn't mention any discrepancies at the
5 10:00 site?

6 A. No.

7 Q. Did you share any of those conclusions with
8 San Altos at the time?

9 A. I don't know.

10 10:00 Q. You don't recall?

11 A. I don't recall.

12 Q. So you indicated that sometime in February or
13 March, the compliance group was considering an ACL based
14 on a one-day violation?

15 10:00 A. Correct.

16 Q. And what was that one-day violation going to
17 be?

18 MR. BOYERS: Objection. I'm going to assert the
19 attorney-client privilege.

20 10:01 And if you want, I'd like to confer with him since
21 I was not the attorney at that time, just to make sure.

22 Is that okay? Can we step out?

23 MS. BERESFORD: Yes, please.

24 We'll go off the record.

25 10:01 (A recess is taken.)

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1 10:01 MS. BERESFORD:

2 Q. Before we revisit your inspection on March 27,
3 I want to go back and look at a couple of other things.
4 Have you seen this document (indicating)?

5 10:08 A. You want to give this --

6 Q. Yes.

7 Can we please mark it as Exhibit 5. (EXHIBIT 5)

8 A. Okay, yeah.

9 Q. Have you seen this document before?

10 10:09 A. Yes.

11 Q. And can you please state what it is.

12 A. This is the email I sent to Ben Anderson
13 immediately -- or almost immediately after the end of my
14 inspection on December 15, requesting some additional
15 10:09 information.

16 Q. And is that common after you do a site
17 inspection? Will you follow-up requesting this type of
18 information?

19 A. Yes, if I haven't reviewed something on site, I
20 10:09 will ask for the information.

21 Q. Okay.

22 And did he submit the information that you were
23 asking for --

24 A. Yes.

25 10:09 Q. -- separately, or was that part of the

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10:09 corrective action report?

A. Separately.

Q. Okay.

You mentioned previously that you prepared an audit
10:10 report for Lemon Grove.

A. Yes.

Q. Do you know if you produced that report as part
of the documents that were produced in response to the
subpoena?

10:10 A. I don't know. I don't think so, no, no.

Q. No, you did not produce it?

A. Let me think. No, I did not.

MS. BERESFORD: Okay.

We may ask for that separately, if possible.

10:10 MR. BOYERS: Is that -- That's a public record?

THE WITNESS: Yes.

MR. BOYERS: Okay. I just wanted to make sure.

MS. BERESFORD:

Q. And we've also talked about the site is under a
10:10 stop work notice.

Do you, as part of your inspections under the
construction general permit, have a determination of
what work is allowed and not allowed under a stop work
notice?

10:10 A. No.

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1 10:10 Q. So if a contractor receives a stop work notice
2 but they continue to work, would that be a violation of
3 the construction general permit?

4 A. No.

5 10:11 Q. So is it possible that even though San Altos
6 had a stop work notice, that they were still working?

7 MR. BOYERS: Objection. Speculation.

8 THE WITNESS: I wouldn't be able to say yes or no.

9 MS. BERESFORD:

10 10:11 Q. Is it possible?

11 MR. BOYERS: Same objection.

12 THE WITNESS: Yes, it's possible.

13 MS. BERESFORD:

14 Q. Okay.

15 10:11 So at that point, if a contractor was still working
16 even though there's a stop work notice under the general
17 permit, would that mean that there are still active and
18 inactive parts of the site?

19 A. Yes.

20 10:11 Q. Okay.

21 So let's go back. You said you went back out on
22 March 27. Without revealing any attorney-client
23 discussions, can you tell me why you went out at the end
24 of March.

25 10:12 A. To determine whether or not the site has been

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10:12 brought into compliance with the construction general permit.

Q. Did you tell the City you were going back out on March 27?

10:12 A. I don't think so. I'm not sure. I don't remember.

Q. Did you tell San Altos that you were coming out on the 27th?

A. Yes.

10:12 **Q. Did you prepare a report on that day?**

A. No.

Q. Did you take any field notes?

A. No.

Q. Who else was present?

10:12 A. Frank Melbourn was there, Ben Anderson, Don Sturgeon. Let's see. Tim Anderson. Somebody from New Point Development. I can't remember his name off the top of my head. May have been a couple other people that were there as well, but I don't remember who they were. I think one of them was a landscaper, possibly, from the landscaping company.

Q. Okay.

But from the water board, it was you and Frank Melbourn?

10:13 A. Correct.

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1 10:13 Q. And was there any representative from the City
2 at that point?

3 A. Not that I recall.

4 Q. Okay.

5 10:13 Do you remember what the weather conditions were on
6 March 27th?

7 A. I remember it being fairly sunny.

8 Q. Do you know if rain was eminent?

9 A. I can't remember. I believe there was some
10 10:14 rain events that followed our inspection, but I don't
11 know.

12 Q. You don't know the dates?

13 A. I don't know the dates.

14 MS. BERESFORD: Okay.

15 10:14 Can you please mark that as Exhibit 6. This will
16 be Exhibit Number 6 to the deposition. It's Exhibit
17 Number 18 to the ACL. (EXHIBIT 6)

18 Q. Have you seen this document before?

19 A. I have seen it. I never really read it --

20 10:15 Q. What is it?

21 A. -- closely.

22 It's Frank Melbourn's inspection report for the
23 site from May 8th, 2015.

24 Q. Were you on the site on May 8th, 2015?

25 10:15 A. I was not.

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10:15 Q. Okay.

Can you go to page 3 of this document.

A. 3 of 10?

Q. Yes.

10:15 And before the section called "Findings," can you
please read the last sentence of the paragraph above
"Findings."

A. "Overall, the San Diego Water Board inspector,
Wayne Chiu, found that the Discharger implemented
10:15 corrective actions that largely addressed the violations
identified in Notice of Violation No. R9-2015-0153."

Q. Do you believe that to be an accurate statement
and -- I'm sorry.

That statement -- Is that statement referring to
10:16 your March 27 site visit?

A. Yes.

Q. So would you say that that sentence that you
just read is accurate?

A. Yes, with some qualifications.

10:16 Q. And what are those qualifications?

A. "Largely addressed" meant that it appeared that
the site had been implementing the BMPs that I had noted
were not being implemented, but that there were still
several areas that were considered active that they had
10:16 not provided adequate answers for in terms of how they

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1 10:16 would address them should there be a rain event.

2 And so at the inspection on March 27th, we had
3 informed them that, you know, because it was dry, that,
4 you know, what they had on site appeared adequate. But

5 10:17 if there's a rain event, they need to know what BMPs
6 they will implement should there be a rain event, and
7 they did not have an answer for that.

8 **Q. Why did you not issue a report for March 27?**

9 A. We felt that they had, again, largely met the
10 10:17 requirements. And with the additional feedback we
11 provided to them, we expected them to understand that
12 they would implement those BMPs should there be a rain
13 event.

14 **Q. So as of March 27, did you feel that they had**
15 10:17 **shown that they had made significant efforts to come**
16 **back into compliance with the permit?**

17 A. It appeared at the time that they had
18 implemented several BMPs that were addressing the issues
19 that I had identified, but there were still several
20 10:18 areas that they could have improved.

21 **Q. But had they made significant effort to come**
22 **back into compliance with the permit based on what you**
23 **saw in December?**

24 MR. BOYERS: Objection. Vague as to "significant."

25 10:18 THE WITNESS: I think "significant" is the key word

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10:18 here. But I'd say they did significant improvements.

MS. BERESFORD:

Q. How did you convey your comments to San Altos?

A. Verbally.

10:18 **Q. Was there anything in writing to follow up?**

A. No.

Q. When did you go to the site next?

How about I show you this exhibit?

MS. BERESFORD: Can you please --

10:19 THE WITNESS: That will help.

MS. BERESFORD: Can you please mark this.

(EXHIBIT 7)

THE WITNESS: If you give me a date and time, that shows me when I was there last.

10:19 MS. BERESFORD:

Q. Exhibit 7 to the deposition is Exhibit Number 19 to the ACL.

A. Looks like I was out there in May.

Q. Can you please state for the record what Exhibit 7 is.

A. It is an inspection report that was prepared by Frank. Maybe it was prepared by me. I'm not sure. I don't remember.

But it was an inspection report for an inspection that was conducted at the site on May 13th, 2015.

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1 10:19 Q. And do you think that was the next time you
2 went to the site after your March 27 visit?

3 A. Yes.

4 Q. Do you know why you went back out to the site
5 10:20 on May 13?

6 A. I think because Frank Melbourn had been out
7 there on May 8th, he wanted me to come with him on
8 May 13th to confirm what he had observed.

9 Q. Do you remember the weather conditions on
10 10:20 May 13?

11 A. I think it was sunny. I don't remember.
12 Photos look like it was partly cloudy.

13 Q. Was it raining on -- during your site visit?

14 A. No.

15 10:20 Q. Okay.

16 And do you know if rain was forecast for the next
17 48 hours?

18 A. I can't recall.

19 Q. Let's look at finding number 1 on page 3 --

20 10:21 A. Okay.

21 Q. -- which talks about "Several stockpiles
22 observed without adequate containment."

23 Do you see that?

24 A. I do.

25 10:21 Q. And you refer to photos 1 and 2.

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10:21 A. Yep.

Q. Did you talk to anybody at the site about whether they were using those stockpiles that day?

10:21 A. No. But from what I remember, there was little to no activity that day, especially in the areas where the stockpiles were observed.

Q. But did you ask anybody --

A. No.

Q. -- if they were going to work?

10:21 A. But I didn't see them being actively used at the time.

Q. Earlier when we were talking about that actively being used, I thought that you said that for your purposes, if they were going to be using the stockpile during that day, that that would be actively being used.

10:22 A. Well, if I can see evidence that they were moving anything to or from the stockpile, then I would consider that being -- actively being used. But I didn't see any evidence that there was any activity around those stockpiles at the time of the inspection.

Q. Do you normally ask -- If you see a stockpile that's not covered and there's not equipment in the immediate vicinity, did you ask somebody there, "Are you doing anything with that stockpile?"

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1 10:22 A. If I'm with somebody who has knowledge of the
2 site, I do.

3 Q. Were you with anybody that day?

4 A. I was not.

5 10:22 Q. Did San Altos know that you were coming out
6 that day?

7 A. No.

8 Q. So they were not -- you did not make sure that
9 there was someone available to answer questions?

10 10:23 A. No. Simply an inspection to determine whether
11 or not BMPs were being implemented.

12 Q. And what is your practice, then, in terms of
13 whether an area is active or inactive if you're doing an
14 inspection and you don't ask for a site representative
15 10:23 to be with you? How do you know whether an area is
16 active versus inactive?

17 MR. BOYERS: Objection. Compound, vague, calls for
18 speculation.

19 THE WITNESS: A lot of it is based on experience,
20 10:23 seeing the condition of a site, and there's usually some
21 evidence of whether or not a site has had recent
22 activity or not.

23 Driving on an area, I don't necessarily consider
24 something that automatically makes it an active area.

25 10:24 Because, again, if you look at the scheduling BMP, then,

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10:24 you know, you can make a site inactive and reduce the
amount of traffic in that area if it's not necessary.

MS. BERESFORD:

Q. What do you mean, if you look at the scheduling

10:24 **BMP?**

A. Erosion control BMP, that is in every SWPPP.
If you look at the description in there, it says that
you are to schedule as much of your site that has been
disturbed to be inactive for as long as possible.

10:24 **Q. And we talked about that before. But you said
that there was not a requirement in the permit that
required that.**

Is that -- Did I misunderstand?

A. Well, there's no requirement in the permit to
10:24 have the scheduling BMP, but there's a requirement in
the permit to include in your SWPPP a description of the
BMPs you will implement on the site. And so every SWPPP
includes these scheduling BMPs to control erosion from
the site.

10:25 **Q. Sure.**

**But does every BMP say, "And we will work to make
as much of the site inactive as possible"?**

A. If they put the scheduling BMP in their set of
erosion controls, BMPs that they will implement, and

10:25 they put the CASQA cut sheet that says what that is,

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1 10:25 that CASQA description for scheduling says that they
2 will schedule as much of the site to be inactive as
3 possible for as long as possible.

4 Q. Do you know where that is in the CASQA

5 10:25 handbook?

6 A. I believe it's EC1, Erosion Control 1. And
7 you look at any SWPPP, that is their first erosion
8 control BMP that they have as their primary erosion
9 control BMP.

10 10:26 Q. Is to make as much of the site as inactive as
11 possible for as long as possible?

12 A. As long as possible.

13 Q. Do you think the CASQA handbook establishes the
14 standard of care for BMPs for construction sites?

15 10:26 A. I think it's the primary source that most
16 people refer to when determining how to implement BMPs.

17 Q. So you think that would make it the standard of
18 care?

19 A. One of them.

20 10:26 I believe Caltrans also puts out their own set of
21 BMPs that they expect to see on construction sites, and
22 so several people use Caltrans references.

23 I think there's also a -- another source. I'm not
24 sure it's WEFTEC, or something like that. But for the

25 10:26 most part in California, CASQA does seem to be the one

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10:27 that most projects refer to.

Q. And do you think it's a good handbook to follow?

A. I think it does provide good guidance as to how to implement BMPs.

Q. Okay.

Going back to the May 13 report, finding number 3 talks about "Several areas were observed to be inactive, or scheduled to be inactive or could be scheduled to be inactive."

Can you identify for me the specific areas that you thought were inactive.

A. There were several lots that appeared to be completed lots that did not need to have additional activity on them. So as I said, you know, they -- they may have been storing things there or driving there, but that doesn't necessarily make them active. And they probably shouldn't have been areas where they were storing things and actively driving on them. There were plenty of other areas where they could have done that.

So photo 4 shows an example of that. Photo 5 showed a slope that I saw that I -- it appeared at that time to look to be inactive. And given the guidance I had provided to that site, I expected them to be stabilizing any and all slopes as soon as they possibly

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1 10:28 could.

2 Similarly, with photo 6, there was a slope there
3 that appeared like it could have been inactive or
4 scheduled to be inactive and stabilized with some sort
5 10:28 of effective soil covering.

6 Q. Did you talk to anyone about what they were
7 doing in these areas?

8 A. No.

9 Q. Do you know where on the site these areas are?

10 10:29 A. Let's see. I think photo 4 was a lot that is
11 kind of on the -- I would say the southern side of the
12 site. Photo 6 is kind of in the -- I think the -- I'm
13 sorry. Photo 4 was on the northern end on the site.
14 Photo 6 is on the southeastern side of the site, maybe
15 10:29 more in the middle-ish area. The slope in photo 5, I
16 think, was in the south or northeastern corner of the
17 site.

18 Q. I'm sorry, say that again.

19 A. The northeastern corner of the site.

20 10:29 But we walked the entire site too, and these were
21 just examples of areas that we saw without the erosion
22 control BMPs. There were several areas throughout the
23 site where we expected to see erosion control BMPs.

24 Q. And did you note those anywhere?

25 10:30 A. No. I thought we had plenty of examples that

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1 10:30 showed that they weren't adequately implementing regimen
2 control BMPs for active areas.

3 Q. Did you send a copy of this to San Altos?

4 A. I believe Frank Melbourn did. I think I was
5 10:30 cc'd on the email.

6 Q. If you could go to page 4, the finding number 4
7 about "Active areas were observed to lack appropriate
8 erosion control BMPs."

9 Can you please identify for me the erosion control
10 10:31 BMPs that you think they did not -- that were not
11 sufficient?

12 A. Well, if you look at photos 7 through 12, these
13 were areas where it was obvious that they were driving a
14 lot and probably moving in and out different areas.
15 10:31 There's no evidence of anything that would -- would be
16 considered runoff controls, which I would expect at a
17 minimum.

18 And then there were no obvious soil stabilization
19 measures that were being implemented. And I believe
20 10:32 that there had been at least a couple of rain events
21 prior to the day of this inspection. So I would have
22 expected to see at least some evidence of those types of
23 BMPs being implemented or having been implemented, but
24 there was no obvious evidence of them.

25 10:32 Q. What kind of runoff controls do you think they

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1 10:32 should have had on areas where they were actively
2 driving?

3 A. Well, a lot of these areas are graded so that
4 they're crowned in a way so that the runoff would flow
5 10:32 to the sides. I would expect there to be some check
6 dams along the way, along the sides, that would be able
7 to slow down and capture sediment as it flows through
8 that area. There was nothing there that you can see in
9 those photos, and there's nothing there when I was out
10 10:33 there.

11 Q. And what about soil stabilization on areas
12 where people are actively driving?

13 A. A lot of areas -- If they were to limit the
14 access of those areas to just the most important areas
15 10:33 to drive, they could have stabilized those areas with
16 gravel or some other material that would make sure that
17 the soil remains in place if it rains.

18 You know, there's also other stabilization methods
19 that are a little bit more technical, but they could
20 10:33 have been -- easily been applied, and there would have
21 been evidence of it if it had been applied.

22 Q. On areas where they're actively driving or
23 areas where that you think they should have limited
24 driving?

25 10:33 A. On those areas that they were actively driving.

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1 10:33 Because if there was a rain event, they should have
2 applied those soils stabilization measures and not had
3 anyone driving out there during the rain event or
4 immediately prior to the rain event or -- I mean

5 10:34 immediately after the rain event. Because it's likely
6 those would have been muddy areas, and that could have
7 contributed to erosion and transfer of sediment through
8 the site.

9 So again, I didn't see any obvious evidence of any
10 10:34 controls that were implemented to prevent erosion or
11 control runoff from these active areas.

12 Q. If there's a rain event, say, on May 13, and
13 there's alleged violations for insufficient BMPs on
14 active areas, and then two days later, it's sunny and
15 10:34 there's no rain in the forecast, do you think it's a
16 violation of the permit to say a violation on May 15 --
17 to say, "Well, I don't see evidence that you had this
18 during your rain event"?

19 MR. BOYERS: Objection. Calls for a legal
20 10:35 conclusion, question was confusing.

21 THE WITNESS: I'd say yes because there should have
22 been evidence that they had implemented BMPs on May
23 13th, and I should have been able to have seen evidence
24 that if there was sediment transported or I should see
25 10:35 no evidence that there was sediment transported through

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1 10:35 the site in an uncontrolled manner.

2 MS. BERESFORD:

3 Q. So for something they didn't do on May 13, that
4 violation continues even if it's dry weather, and
5 10:35 there's no more sediment moving around?

6 MR. BOYERS: Objection. Argumentative.

7 THE WITNESS: The requirement is that they have
8 that BMP implemented. If they did not implement it,
9 then they have not met the requirement.

10 10:35 MS. BERESFORD:

11 Q. So they might not have implemented on the rainy
12 day.

13 What's the requirement on the sunny day when no
14 rain is eminent? Is it a new requirement each day?

15 10:36 A. It is appropriate to the time and the
16 conditions. So if they had rain earlier, I would expect
17 those BMPs to be there, depending on the conditions, two
18 days later. If that is a -- still a wet area, and there
19 is the potential for runoff to still occur, then yes, I
20 10:36 would expect those to be there.

21 Now, if it's completely dry and there is no
22 evidence of sediment transport, I would say that if
23 there were erosion control BMPs implemented for soil
24 stabilization purposes, I would see evidence that it had
25 10:36 been implemented. And absent that, I would say they

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1 10:36 hadn't implemented appropriate erosion controls on the
2 rainy day. And there was no evidence that it was there.

3 Q. So it's a violation of the rainy day.

4 I'm talking about what's the violation on the sunny
5 10:37 day? Is the sunny day a violation for something they
6 didn't do two days before?

7 A. I would -- I would ask what is the appropriate
8 erosion control at the time.

9 Q. For the sunny day?

10 10:37 A. Yeah. And it would depend on the conditions of
11 the site.

12 Q. Okay.

13 A. But can I -- can I follow on that a little bit.

14 Q. Sure.

15 10:37 A. Appropriate erosion controls includes two
16 elements, runoff controls and soil stabilization, in
17 addition to your sediment controls. So, you know, to
18 simply say something is active and something is dry does
19 not necessarily mean that you are not required to
20 10:37 implement runoff controls or soils stabilization. The
21 expectation is it is there, if you can implement it,
22 regardless of whether or not it's a rainy day or not.

23 Q. Sure.

24 If you can implement it and part of the site is
25 10:38 active, is that something you considered?

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1 10:38 A. Uh-huh.

2 THE REPORTER: Is that a "yes"?

3 THE WITNESS: Yes. I'm sorry.

4 MS. BERESFORD: Let's go off the record.

5 10:38 (A recess is taken.)

6 MS. BERESFORD: Please let's mark this as

7 Exhibit 8. (EXHIBIT 8)

8 Q. Have you seen this document before?

9 A. Yes.

10 10:52 Q. And what is it?

11 A. It's an email I sent to Ben Anderson, the LRP
12 for the site, notifying him that we had observed some
13 evidence of inadequate erosion/sediment BMP
14 implementation and evidence of sediment discharges from
15 10:52 the site as a result of that inadequate BMP
16 implementation.

17 Q. Can you go to -- it's marked as page number 2,
18 but it's an email from you to Ben Anderson dated May 8.

19 A. Right.

20 10:53 Q. And it says, "The Water Board is prepared to
21 issue an Administrative Civil Liability Complaint for
22 violations."

23 And you offered to meet with him; is that correct?

24 A. Yes.

25 10:53 Q. And what was that? What was going to be the

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10:53 **purpose of that meeting?**

A. It's to discuss the potential enforcement action options that would be available to him.

Q. And what would those have been?

10:53 A. An ACL for the one day of violation -- for one day's worth of violation.

MR. BOYERS: I'm going to ask you not to talk about -- that's disclosing the attorney-client privilege. It's not referenced in this email.

10:53 THE WITNESS: It was just to discuss future potential enforcement actions that were going to be available to him.

MS. BERESFORD:

Q. Is that common? Do you meet with everyone that is going to potentially be receiving an ACL?

A. This was the first case in which I was involved in that had a potential ACL, so I don't know what the typical practice is.

Q. Did someone direct you to meet with him, or was it something that you did on your own?

A. It was in conference with our storm water supervisor at the time, and compliance insurance unit.

Q. Did you talk on the phone to Mr. Anderson about this?

10:54 A. Which part?

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1 10:54 Q. You sent him an email about this meeting.
2 Did you ever talk on the phone with him about the
3 meeting?

4 A. No. Everything was via email.

5 10:55 Q. Okay.

6 A. This is the complete conversation.

7 Q. Okay.

8 And then on Tuesday, May 12, you're saying the
9 meeting is off; is that correct?

10 10:55 A. Yes.

11 Q. And that was based on the inspection from --
12 says by the Friday last week.

13 So I'm assuming the inspection of May 8; is that
14 correct?

15 10:55 A. Yes.

16 Q. Do you know why the water board went back out
17 to the site on May 8?

18 A. I don't.

19 I know Frank Melbourn wanted to check out the site
20 10:55 again, after our March inspection, to see if BMPs were
21 still being implemented.

22 Q. Okay.

23 When you go to the site to do an inspection -- When
24 you go to a construction site to do an inspection for
25 10:56 the permit, do you generally announce yourself or go to

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1 10:56 the construction trailer?

2 A. Yes.

3 Q. That was compound.

4 So tell me, when you arrive at the site, what's

5 10:56 your normal practice?

6 A. I try to find the construction trailer, to find
7 somebody on site who knows about the SWPPP or the BMPs
8 that are being implemented on the site. And then
9 usually review the documents if they're available.

10 10:56 And then walk the site with that person to identify
11 any deficiencies so that we can see together what the
12 deficiencies may be, and then to talk about what's
13 occurring on the site so I can get some context for
14 what's going on so I can identify deficiencies if there
15 10:57 are deficiencies, make those determinations whether or
16 not something is active or inactive being disturbed per
17 the permit terms, and then usually close it out with,
18 you know, informing them of what deficiencies I may have
19 seen. Letting them know what my future documentation
20 10:57 might be for my inspection, potential outcomes of the
21 inspection, those types of things.

22 Q. How do you document an inspection?

23 A. Usually -- Well, it depends on the site, the
24 history of compliance, previous documentation that has
25 10:58 been generated, potentially, you know, information that

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1 10:58 I've received from the local municipality.

2 So for many sites where I've visited, I'll generate
3 an email of some sort. We call it a staff enforcement
4 letter. It's an email that just identifies

5 10:58 deficiencies. And then the email may request some
6 additional information that I wasn't able to review or
7 didn't have time to review. And then usually a response
8 requesting a response for how the site plans on bringing
9 their site into compliance with the requirements of the

10 10:58 permit.

11 Q. What percentage of the time do you say you go
12 to a site and you think everything is perfect, they
13 don't need to do anything else here?

14 A. Percentagewise, I would say less than
15 10:59 1 percent.

16 Q. So would you say 99 percent of your
17 inspections, you can find some violation of the permit?

18 A. Yes.

19 Q. When you went out to the site on May 13 -- and

20 10:59 I'd like to refer to that --

21 A. May 13 --

22 Q. -- exhibit.

23 A. -- inspection report?

24 Q. Yes.

25 10:59 A. Exhibit 7?

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1 10:59 Q. Yes, please. Exhibit 19 to the ACL.

2 Exhibit 7.

3 Did a representative of the site accompany you
4 during that inspection?

5 11:00 A. No.

6 Q. Did you attempt to find somebody at the site?

7 A. We went by the trailer, but there was nobody
8 there.

9 Q. Was 11:30?

10 11:00 A. It was 11:30.

11 Q. Maybe they were at lunch?

12 A. Possibly.

13 Q. Do you have any sort of policy in terms of
14 times that you do inspections to try to assure that
15 11:00 there might be a site representative on the site?

16 A. No.

17 Q. Were you involved -- Oh, let me rephrase.

18 Please take a look at that document. It will not
19 be an exhibit. That document says notice of hearing and
20 11:01 issuance of complaint for administrative civil liability
21 against the City of Encinitas and USS Cal Builders.

22 You have already given it back to me.

23 A. I don't know anything about it.

24 Q. So were you involved in preparing this
25 11:01 complaint in any way?

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1 11:01 A. No.

2 Q. Okay.

3 MS. BERESFORD: I don't think I have any other
4 questions.

5 11:01 MR. BOYERS: Okay. Can we just have maybe two
6 minutes, and then I'll have a few questions.

7 MS. BERESFORD: Sure. Okay.

8 (A recess is taken.)

9 MR. BOYERS: Back on.

10 11:04

11 -EXAMINATION-

12

13 BY MR. BOYERS:

14 Q. Okay.

15 11:04 We talked a lot about your qualifications.

16 Are you a professional engineer?

17 A. I'm a registered professional engineer, civil
18 engineer.

19 Q. Okay.

20 11:04 I'm going to show you --

21 MR. ROSENBAUM: It's the first document.

22 MR. BOYERS: Correct.

23 Q. In our production, the first document.

24 Can you identify that?

25 11:05 A. That's the Storm Water Pollution Prevention

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1 11:05 Plan for the site.

2 Q. Okay.

3 MS. BERESFORD: Do you have copies for us?

4 MR. ROSENBAUM: It's previously produced.

5 11:05 MR. BOYERS: Yeah.

6 MR. ROSENBAUM: Do you have copies we can look at
7 it right now?

8 MR. BOYERS: I'll show it to you before I show it
9 to him. So this is the -- I don't have a hard copy.

10 11:05 I'm going to ask him about scheduling BMP.

11 THE WITNESS: Uh-huh.

12 MR. BOYERS: Okay.

13 Q. So in Section 3 of the SWPPP entitled Best
14 Management Practices, can you identify in Table 3.1

15 11:05 where the scheduling BMP is?

16 A. Scheduling BMP is included under the erosion
17 control BMPs. And according to them and their schedule,
18 they would be implementing it during the entirety of the
19 project.

20 11:06 Q. Okay.

21 And there's a note next to that that says EC1-1.

22 Do you see that?

23 A. Yes.

24 Q. Can you tell me what that references?

25 11:06 A. EC1 refers to kind of a -- a shortened

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1 11:06 reference number to erosion control BMP that is
2 described as part of the CASQA BMP handbook for
3 construction sites. I believe it's short for erosion
4 control measure 1.

5 11:06 Q. And can you tell me generally what that EC1 in
6 the CASQA manual describes.

7 A. The short version is that the site that is
8 going to be disturbing soil should be phasing their
9 project in as much as possible -- to limit the amount of
10 11:06 disturbed soil as much as possible. And for areas that
11 have been disturbed, that you make it inactive and
12 stabilize it for as long as possible during the entire
13 project.

14 MR. BOYERS: Thank you.

15 11:07 Do you want to look at this?

16 MS. BERESFORD: If you're done, that's fine.

17 MR. BOYERS: I'll keep it out. Yeah.

18 Q. If you could grab Exhibit 7 for me, which is
19 Exhibit 19 --

20 11:07 A. Okay.

21 Q. -- of the ACL complaint.

22 And if you can turn to page 8 of 9, I'm looking at
23 photographs 7 through 12.

24 A. Yes.

25 11:07 Q. And I believe your testimony was that this

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1 11:07 represented an active area of the site for which you
2 found erosion control BMPs to be not sufficient; is that
3 correct?

4 A. Correct.

5 11:07 Q. Let's assume that this -- these photos depicted
6 an inactive area of the site for a moment.

7 A. Okay.

8 Q. What BMPs would you expect to have seen if this
9 were an inactive area?

10 11:08 A. I would have --

11 MS. BERESFORD: I'm sorry, before you start.
12 Objection. Hypothetical.

13 THE WITNESS: I would have expected there to be
14 some evidence of a soil stabilization BMP or something
15 11:08 that would be considered effective soil cover to prevent
16 the potential for erosion.

17 MR. BOYERS:

18 Q. And does that exist in any of these
19 photographs?

20 11:08 A. No.

21 Q. So is it fair to say that regardless of
22 whether these photographs depict an inactive or an
23 active area, there are violations of construction
24 general permit?

25 11:08 MS. BERESFORD: Objection. Calls for conclusion.

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1 11:08 There's been no establishment that they're, in
2 fact, violations for active areas.

3 THE WITNESS: If these are active areas, I would
4 have expected erosion control BMPs. If there are
5 11:09 inactive areas, I would have expected erosion control
6 BMPs.

7 MR. BOYERS: Thank you. That's all I have.

8 MS. BERESFORD: I have just a couple others.

9
10 11:09 -EXAMINATION-

11
12 BY MS. BERESFORD:

13 Q. Have you ever been employed in the construction
14 industry?

15 11:09 A. No.

16 Q. Have you ever taken any training on how
17 construction projects proceed?

18 A. No training, but I did have a class that was
19 about construction management.

20 11:09 Q. And what class was that?

21 A. It was the PE review class.

22 Q. I'm sorry, say that again.

23 A. The review course for the professional engineer
24 registration exam.

25 11:09 Q. And when did you take that?

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11:09 A. 2005 or 2006.

Q. How long was that course?

A. Well, the entire course was over like a
two-and-a-half-month period. But one of the modules, so
11:10 one-day course.

Q. And how long was that one-day class?

A. It was a total of six hours, including breaks.

MS. BERESFORD: I don't have any other questions.

So thus far, the parties have stipulated, and I
11:10 propose on this transcript that the parties stipulate,
that the court reporter send Oppen & Varco the original
transcript.

We will, in turn, send it to -- to whom?

MR. BOYERS: You can send it to me.

11:10 MS. BERESFORD: Okay.

We will send it to Mr. Boyers, who will, in turn,
forward it to Mr. Chiu for review.

He will then send any changes back to us, and we
will retain the original.

11:11 The parties agree that if the original is lost, a
copy can be used.

MR. BOYERS: That's fine.

And can I add, can you send a cc to Laura Drabandt.

MS. BERESFORD: Well, we'll be sending the
11:11 original, so we can't --

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1 11:11 MR. BOYERS: Well, okay.

2 Do you mean you're going to send me -- What are you
3 sending me?

4 MS. BERESFORD: I want to send you the original
5 11:11 physical transcript.

6 MR. BOYERS: That's fine, yeah.

7 MS. BERESFORD: So I should send that to you?

8 MR. BOYERS: Yes, that's fine.

9 MS. BERESFORD: Okay.

10 11:11 You order a copy, you should get your own
11 electronic.

12 MR. BOYERS: I will get my own electronic, thanks.

13 MS. BERESFORD: Okay.

14 Given the time frames that we are working in --

15 11:11 Let's go off the record for a second.

16 (A recess is taken.)

17 MS. BERESFORD: Back on. All right. We're back on
18 the record.

19 We are revising our schedule of how we're doing

20 11:14 things. We've asked the court reporter for the
21 transcript by next Tuesday, the 19th.

22 We'll send it by -- the original by overnight mail
23 to Ms. Clemente at the water board, who will give it to
24 Mr. Chiu, and he has agreed to provide his verification

25 11:14 and signature under any changes, to the extent that

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11:14 there are any, back by the following Tuesday, which I
believe is January 25.

Stipulated?

MR. BOYERS: Is it the 25th? Maybe my math is off.

11:15 THE WITNESS: 25th is a Monday.

MS. BERESFORD: Then by the 26th.

MR. BOYERS: Yeah, that's fine.

(Whereupon the documents referred to are marked by
the reporter as Exhibits 1 through 8 for
11:15 identification.)

(The proceedings concluded at 11:15 a.m.)

I declare under penalty of perjury under the laws
of the State of California that the foregoing is true
and correct.

Executed at SAN DIEGO, California,
on 21 JANUARY 2016.



WAYNE CHIU

1 STATE OF CALIFORNIA) ss

2

3 I, Diane Lytle, CSR 8606, do hereby declare:

4

5 That, prior to being examined, the witness named in
6 the foregoing deposition was by me duly sworn pursuant
7 to Section 2093(b) and 2094 of the Code of Civil
8 Procedure;

9

10 That said deposition was taken down by me in
11 shorthand at the time and place therein named and
12 thereafter reduced to text under my direction.

13

14 I further declare that I have no interest in the
15 event of the action.

16

17 I declare under penalty of perjury under the laws
18 of the State of California that the foregoing is true
19 and correct.

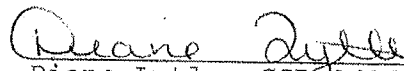
20

21 WITNESS my hand this 18th day of
22 January, 2016.

23

24

25


Diane Lytle, CSR 8606



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WAYNE CHUI - 1/14/2016

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Chui, Wayne



Litigation
SERVICES

Job: 600593

Exhibit: 00001



BEFORE THE SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD
SUBPOENA FOR ADJUDICATIVE ACTION

ATTORNEY OR PARTY WITHOUT ATTORNEY REQUESTING SUBPOENA (name, address, and telephone no.): S. Wayne Rosenbaum, Esq. (619) 231-5858 Opper & Varco LLP, 225 Broadway, 19th Floor, San Diego, CA 92101 REPRESENTING: San Altos - Lemon Grove, LLC		FOR REGIONAL WATER BOARD USE ONLY
TITLE OF THE PROCEEDING: Administrative Civil Liability Complaint No. R9-2015-0110		
<input checked="" type="checkbox"/> SUBPOENA <input checked="" type="checkbox"/> SUBPOENA DUCES TECUM <input type="checkbox"/> RE HEARING <input type="checkbox"/> RE DEPOSITION		

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name): Wayne Chiu

1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this proceeding as follows unless you make special agreement with the person named in item 3:

a. Date: January 14, 2016	Time: 8:30 a.m.	+
b. Address: 225 Broadway, 19th Floor, San Diego, CA 92101		

2. AND YOU ARE:

- a. ☐ Ordered to appear in person. (Wat. Code, § 1080; Gov. Code, § 11450.10; Cal. Code Regs., tit. 23, § 649.6.)
b. ☐ Not required to appear in person if you produce the records described in the accompanying affidavit in compliance with Evidence Code sections 1560 and 1561. (Wat. Code, § 1080; Gov. Code, § 11450.10(b); Cal. Code Regs., tit. 23, § 649.6.)
c. ☒ Ordered to appear in person and to produce the records described in the accompanying affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized by subdivision (b) of section 1560, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpoena. (Wat. Code, § 1080; Gov. Code, § 11450.10; Cal. Code Regs., tit. 23, § 649.6.)

3. IF YOU HAVE ANY QUESTIONS ABOUT WITNESS FEES OR THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

a. Name: S. Wayne Rosenbaum	b. Telephone number: (619) 231-5858
-----------------------------	-------------------------------------

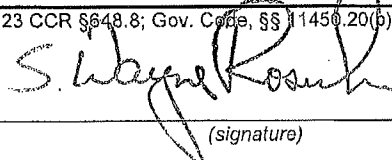
(Gov. Code, § 11450.20(a); Code Civ. Proc., § 1985.2.)

4. WITNESS FEES: You are entitled to witness fees and mileage actually traveled, both ways, as provided by law. Request them from the person who serves this subpoena or from the person named in item 3. (Wat. Code, §§ 1081, 1083, 1084; Gov. Code, §§ 11450.40, 68070 et seq.; Code Civ. Proc., §§ 1986.5, 2065.)
5. If you object to the terms of this subpoena, you may file a motion for a protective order including a motion to quash. Motions must be made within a reasonable period after receipt of the subpoena, and shall be made with written notice to all parties, with proof of service upon all parties attached. In response to your motion, the hearing officer may make an order quashing the subpoena entirely, modifying it, or directing compliance with it, or may make any order needed to protect the parties or witnesses from unreasonable or oppressive demands, including unreasonable violations of the right to privacy. (Gov. Code, § 11450.30.) (Send motions to: San Diego Regional Water Quality Control Board, 2375 Northside Drive, Suite 100, San Diego, CA 92108, Attn: David Gibson, with copies to all parties and to Catherine George Hagan, State Water Resources Control Board, Office of Chief Counsel, c/o San Diego Water Board, 2375 Northside Drive, Suite 100, San Diego, CA 92108.)

DISOBEDIENCE OF THIS SUBPOENA MAY CAUSE YOU TO BE LIABLE FOR CONTEMPT AND OTHER PENALTIES PROVIDED BY LAW

(Wat. Code, §§ 1090-1097; 23 CCR §648.8; Gov. Code, §§ 11450.20(b), 11455.10-11455.30.)

Dated: January 5, 2016


(signature)

Name: S. Wayne Rosenbaum

Title: Partner - Opper & Varco LLP
Attorney for San Altos - Lemon Grove

EXHIBIT 1
REPORTER D. Lytle
WITNESS W. Chiu
DATE 1-14-16

1 S. WAYNE ROSENBAUM (SBN 182456)
2 OPPER & VARCO, LLP
3 225 Broadway, Suite 1900
4 San Diego, California 92101
5 Telephone: 619.231.5858
6 Facsimile: 619.231.5853
7 Email: swr@envirolawyer.com

8 Attorney for San Altos – Lemon Grove, LLC

9 BEFORE THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

10 SAN DIEGO REGION

11 IN THE MATTER OF:

12 **Administrative Civil Liability Complaint**
13 **No. R9-2015-0110 Against San Altos – Lemon Grove,**
14 **LLC**

AFFIDAVIT IN SUPPORT OF SUBPOENA FOR
DOCUMENTS AND THINGS

15 1. I, S. Wayne Rosenbaum, declare that I am counsel for San Altos – Lemon Grove, LLC (“San
16 Altos”), a Designated Party in the above-entitled matter.

17 2. On December 4, 2015, the Advisory Team for the California Regional Water Quality Control
18 Board, San Diego Region (“Advisory Team”) issued the Final Hearing Procedures for ACLC R9-2015-0110. (“Final
19 Hearing Procedures”), which included a list of deadlines (the “Schedule”) prior to the currently scheduled hearing
20 date of February 10, 2016.

21 3. The Schedule requires San Altos submit “All evidence (other than witness testimony to be
22 presented orally at the hearing) that the Designated Party would like the San Diego Water Board to consider” by
23 January 4, 2016.

24 4. Good cause exists for the production of the document described below because such evidence is
25 probative of the veracity of the alleged violations of the Complaint.

26 5. [xxx] has, or should have, the documents described below in his possession or control.

27 6. The exact documents to be produced include:

28 a. All records and documents, including, but not limited to, inspection reports, notices of
violation, administrative citations, stop work notices, correct work notices, field notes, photographs, audio
or video recordings, phone logs, and internal communications, including emails, related to inspections that
occurred at the San Altos – Lemon Grove, LLC Valencia Hills Construction Site on the following dates:

AFFIDAVIT IN SUPPORT OF SUBPOENA FOR DOCUMENTS AND THINGS

1	December 1, 2014
2	December 2, 2014
3	December 3, 2014
4	December 4, 2014
5	December 5, 2014
6	December 6, 2014
7	December 7, 2014
8	December 8, 2014
9	December 9, 2014
10	December 12, 2014
11	December 15, 2014
12	December 16, 2014
13	December 17, 2014
14	December 31, 2014
15	January 6, 2015
16	January 7, 2015
17	January 8, 2015
18	January 9, 2015
19	January 10, 2015
20	January 11, 2015
21	January 12, 2015
22	January 13, 2015
23	March 18, 2015
24	March 19, 2015
25	March 20, 2015
26	March 21, 2015
27	March 22, 2015

AFFIDAVIT IN SUPPORT OF SUBPOENA FOR DOCUMENTS AND THINGS

1 March 23, 2015
2 March 24, 2015
3 March 25, 2015
4 March 26, 2015
5 March 27, 2015
6 March 28, 2015
7 March 29, 2015
8 March 30, 2015
9 March 31, 2015
10 April 1, 2015
11 May 8, 2015
12 May 9, 2015
13 May 10, 2015
14 May 11, 2015
15 May 12, 2015
16 May 13, 2015
17 May 14, 2015
18 May 15, 2015
19 September 15, 2015

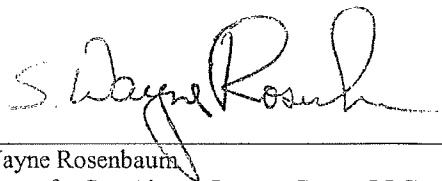
20 b. Any additional records and documents, including, but not limited to, inspection reports,
21 notices of violation, administrative citations, stop work notices, correct work notices, field notes,
22 photographs, audio or video recordings, phone logs, and internal communications, including emails, related
23 to inspections that occurred at the San Altos – Lemon Grove, LLC Valencia Hills Construction Site,
24 regardless of whether the inspection led to the issuance of a formal report, notice, or citation by [yyy] from
25 March 6, 2014 to October 19, 2015.
26
27

28 AFFIDAVIT IN SUPPORT OF SUBPOENA FOR DOCUMENTS AND THINGS

1 7. Emails, writings, or photographs should be provided in both printed and digital formats. Audio or
2 video recordings may be provided in conventional formats accessible on personal computers without the assistance
3 of specialized software.

4
5 I declare under penalty of perjury that the foregoing is true and correct.

6
7 Dated this 5th day of January, 2016.

8 
9

10 S. Wayne Rosenbaum
11 Attorney for San Altos – Lemon Grove, LLC
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28 AFFIDAVIT IN SUPPORT OF SUBPOENA FOR DOCUMENTS AND THINGS

OPPER & VARCO, LLP
S. WAYNE ROSENBAUM (Bar No. 182456)
LINDA C. BERESFORD (Bar No. 199145)
225 BROADWAY, SUITE 1900
SAN DIEGO, CALIFORNIA 92101
TELEPHONE: 619.231.5858
FACSIMILE: 619.231.5853

ATTORNEYS FOR SAN ALTOS – LEMON GROVE, LLC

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

IN THE MATTER OF:) **SAN ALTOS – LEMON GROVE, LLC'S**
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT) **AMENDED NOTICE OF DEPOSITION**
No. R9-2015-0110) **OF WAYNE CHIU AND REQUEST**
AGAINST SAN ALTOS – LEMON GROVE, LLC) **FOR PRODUCTION OF DOCUMENTS**
Date: January 14, 2016
Time: 8:30 a.m.
Place: Law Offices of Oppen & Varco LLP
225 Broadway, Suite 1900
San Diego, CA 92101

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

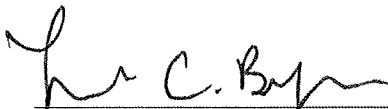
PLEASE TAKE NOTICE that on January 14, 2016 at 8:30 a.m., San Altos – Lemon Grove, LLC will take the deposition of Wayne Chiu in accordance with the enclosed subpoena. This deposition will take place at the law firm of Oppen & Varco, LLP, located at 225 Broadway, Suite 1900, San Diego, CA 92101, before a certified reporter or person authorized to administer oaths who is present at the specified time and place. Said deposition will continue from day to day, Saturdays, Sundays and holidays excepted, until completed.

YOU ARE FURTHER NOTIFIED that the deposition may also be recorded by videotape as authorized by the Code of civil Procedure section 2025.340 and Plaintiff reserves the right to use any videotaped portion of the deposition testimony at a hearing in this matter. The deposition may also be recorded through such means as to provide the instant display of the testimony as also authorized by Code of Civil Procedure section 2025.340.

1 YOU ARE FURTHER NOTIFIED that San Altos-Lemon Grove, LLC requests that Gary
2 Harper produce the documents identified in Attachment A to this Notice of Deposition and
3 Request for Production of Documents.

4
5 Dated: January 4, 2016

OPPER & VARCO LLP

6
7 

8 Linda C. Beresford
9 Attorney for San Altos – Lemon Grove, LLC

1 S. WAYNE ROSENBAUM (SBN 182456)
2 OPPER & VARCO, LLP
225 Broadway, Suite 1900
San Diego, California 92101
3 Telephone: 619.231.5858
Facsimile: 619.231.5853
4 Email: swr@envirolawyer.com

5 Attorney for San Altos – Lemon Grove, LLC

6 BEFORE THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

7 SAN DIEGO REGION

8 IN THE MATTER OF;

9 **Administrative Civil Liability Complaint**
10 **No. R9-2015-0110 Against San Altos – Lemon Grove, LLC**

AFFIDAVIT IN SUPPORT OF SUBPOENA FOR
DOCUMENTS AND THINGS

11 1. I, S. Wayne Rosenbaum, declare that I am counsel for San Altos – Lemon Grove, LLC (“San
12 Altos”), a Designated Party in the above-entitled matter.

13 2. On December 4, 2015, the Advisory Team for the California Regional Water Quality Control
14 Board, San Diego Region (“Advisory Team”) issued the Final Hearing Procedures for ACLC R9-2015-0110 (“Final
15 Hearing Procedures”), which included a list of deadlines (the “Schedule”) prior to the currently scheduled hearing
16 date of February 10, 2016.

17 3. The Schedule requires San Altos submit “All evidence (other than witness testimony to be
18 presented orally at the hearing) that the Designated Party would like the San Diego Water Board to consider” by
19 January 4, 2016.

20 4. Good cause exists for the production of the document described below because such evidence is
21 probative of the veracity of the alleged violations of the Complaint.

22 5. [xxx] has, or should have, the documents described below in his possession or control.

23 6. The exact documents to be produced include:

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26 or video recordings, phone logs, and internal communications, including emails, related to inspections that
27 occurred at the San Altos – Lemon Grove, LLC Valencia Hills Construction Site on the following dates:

28 AFFIDAVIT IN SUPPORT OF SUBPOENA FOR DOCUMENTS AND THINGS

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26	March 21, 2015
27	March 22, 2015

AFFIDAVIT IN SUPPORT OF SUBPOENA FOR DOCUMENTS AND THINGS

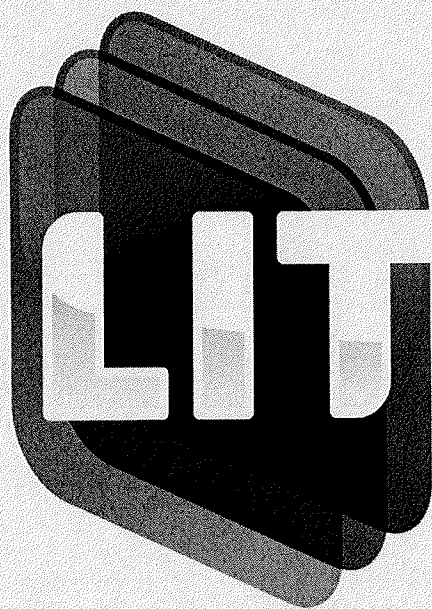
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4 March 26, 2015
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10 April 1, 2015
11 May 8, 2015
12 May 9, 2015
13 May 10, 2015
14 May 11, 2015
15 May 12, 2015
16 May 13, 2015
17 May 14, 2015
18 May 15, 2015
19 September 15, 2015

20 b. Any additional records and documents, including, but not limited to, inspection reports,
21 notices of violation, administrative citations, stop work notices, correct work notices, field notes,
22 photographs, audio or video recordings, phone logs, and internal communications, including emails, related
23 to inspections that occurred at the San Altos – Lemon Grove, LLC Valencia Hills Construction Site,
24 regardless of whether the inspection led to the issuance of a formal report, notice, or citation by [yyy] from
25 March 6, 2014 to October 19, 2015.
26
27

28 AFFIDAVIT IN SUPPORT OF SUBPOENA FOR DOCUMENTS AND THINGS

- 4 -

Chui, Wayne



Litigation
SERVICES

Job: 600593

Exhibit: 00002



From: Tamara Oneal
Sent: Thursday, August 14, 2014 2:25 PM
To: 'Chiu, Wayne@Waterboards'
Cc: Malik Tamimi; Gary Harper; Leon Firsht
Subject: FW: Illegal Discharge

Hi Wayne,

The QSP for this project is Donald Sturgeon, his email address is:

Dsturgeon@whitsoncm.com

I do not have the owner's email address. The developer, Ben Anderson of BCA Development Inc., has been acting as the owner's representative on project related issues.

Ben Anderson's, email address is:
benanderso@aol.com or bencanderson@bcadevelopment.com

The onsite Construction Manager for BCA Development Inc. is Tim Anderson, his email address is:
tima@bcadevelopment.com or timandersonnn62@gmail.com

Thank you,
Tamara

From: Chiu, Wayne@Waterboards <Wayne.Chiu@waterboards.ca.gov>
Sent: Thursday, August 14, 2014 1:56:27 PM
To: Malik Tamimi
Cc: Leon Firsht
Subject: RE: Illegal Discharge

Hi Malik,

Thanks for the notification and forwarding the report from Tamara Oneal.

Do you happen to have the emails for the QSP and the site owner? I would like to notify them that we are aware of the unauthorized non-storm water discharge from their site and request some additional information.

Thanks,
Wayne

From: Malik Tamimi [<mailto:mtamimi@lemongrove.ca.gov>]
Sent: Thursday, August 14, 2014 11:54 AM
To: Chiu, Wayne@Waterboards
Cc: Leon Firsht
Subject: Illegal Discharge
Importance: High

Hi Wayne,

EXHIBIT 2
REPORTER D. Lytle
WITNESS W. Chiu
DATE 1-14-16

As you requested during our phone conversation (24 hr verbal notification of illegal discharge), here is the project's WDID # 937C369143. As I mentioned we just issued a Notice of Violation for illegal discharge. Their QSP is onsite and said that he would be sampling the runoff. The address is 1350 San Altos Place. It is near the Lemon Grove and City of San Diego boundary line. I will be following up with a written 5-Day report on Monday.
Let me know if you have any questions.

-Malik

Chui, Wayne



Litigation SERVICES

Job: 600593

Exhibit: 00003



From: Ben Anderson [benanderso@aol.com]
Sent: Monday, August 25, 2014 8:41 AM
To: Leon Firsh; Gary Harper
Cc: tima@bcadevelopment.com; timothyanderson45@gmail.com
Subject: Fwd: WDID 937C369143 (Valencia): Unauthorized Non-Storm Water Discharge (SM-828060)
Attachments: 8-14-14_Unauthorized_discharge.pdf; Photo_Documentation.pdf; Weekly_Inspection7-3-14_to_08-21-14.zip

FYI.
Ben-

-----Original Message-----

From: Donald Sturgeon
To: Chiu, Wayne@Waterboards
Cc: bencanderson ; 'Ben Anderson'
Sent: Fri, Aug 22, 2014 1:55 pm
Subject: RE: WDID 937C369143 (Valencia): Unauthorized Non-Storm Water Discharge (SM-828060)

Mr. Chiu,
Please see the attached information and documentation regarding the Unauthorized Non-Storm Water discharge that occurred at the Valencia project (WDID 9 37C369143). Feel free to contact me with any questions.

Thank you,

Donald Sturgeon
Project Manager
QSD, CPESC



11021 Via Frontera, Suite E
San Diego, CA 92127
C: 858-652-9390
P: 858-673-0966
F: 858-487-8355
Dsturgeon@whitsoncm.com

EXHIBIT 3
REPORTER D. Lytle
WITNESS W. Chiu
DATE 1-14-16

From: Chiu, Wayne@Waterboards [<mailto:Wayne.Chiu@waterboards.ca.gov>]
Sent: Friday, August 15, 2014 8:35 AM
To: Ben Anderson
Cc: Donald Sturgeon; Tim Anderson; Tamara Oneal (toneal@lemongrove.ca.gov); Malik Tamimi (mtamimi@lemongrove.ca.gov)
Subject: WDID 937C369143 (Valencia): Unauthorized Non-Storm Water Discharge (SM-828060)

Mr. Anderson:

We were notified by the City of Lemon Grove of the unauthorized non-storm water discharge from your construction site to the City's municipal separate storm sewer system (MS4), which is one or more violations of the requirements in Order No. 2009-0009-DWQ, the Statewide Construction General Storm Water Permit (CGP).

Please send me the following information and documentation, or a date by which you can provide the information, by Monday, August 18, 2014:

1. A description of the circumstances that resulted in the unauthorized non-storm water discharge.
2. A description of the measures that were in place to control non-storm water discharges during construction and to manage runoff within the site and from the site.
3. A description of the controls in place to control erosion and sediment discharges from the site.
4. A description of the response taken to eliminate the non-storm water discharge.
5. The estimated volume of the non-storm water discharged from the site.
6. Photos of the unauthorized non-storm water discharge and any corrective actions that have been implemented.
7. Copies of the weekly QSP inspection reports from the beginning of July to the most recent available.
8. A description of any additional measures that will be implemented to prevent another unauthorized non-storm water discharge from the site.
9. Copies of any visual and water quality monitoring records and reports for the unauthorized non-storm water discharge.

Depending on your response, an inspection and/or additional enforcement action may be necessary.

Please let me know if you have any questions.

Thanks,

Wayne Chiu, PE

Water Resource Control Engineer

Storm Water Management Unit

California Regional Water Quality Control Board

San Diego Region

2375 Northside Drive, Suite 100

San Diego, CA 92108

Direct Line: (619) 521-3354

Main Line: (619) 516-1990

Chui, Wayne



Litigation
SERVICES

Job: 600593

Exhibit: 00004



Exhibit No. 8

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD - SAN DIEGO REGION
WATERSHED PROTECTION PROGRAM

FACILITY INSPECTION REPORT

FACILITY: Valencia
WDID/FILE NO.: 937C369143INSPECTION DATE/TIME: 12/15/2014; 10:00 am

REPRESENTATIVE(S) PRESENT DURING INSPECTION:

NAME: <u>Wayne Chiu</u>	AFFILIATION: <u>San Diego Water Board</u>
NAME: <u>Ben Anderson</u>	AFFILIATION: <u>BCA Development, Inc.</u>
NAME: <u>Tim Anderson</u>	AFFILIATION: <u>BCA Development, Inc.</u>
NAME: <u>Donald Sturgeon</u>	AFFILIATION: <u>Whitson CM</u>
NAME: <u>Leon Firsht</u>	AFFILIATION: <u>City of Lemon Grove</u>
NAME: <u>Gary Harper</u>	AFFILIATION: <u>City of Lemon Grove</u>

San Altos Lemon Grove LLC
NAME OF OWNER, AGENCY OR PARTY RESPONSIBLE FOR DISCHARGE5780 Fleet Avenue
Carlsbad, CA 92008
OWNER MAILING ADDRESSBen Anderson, 714-966-1544
OWNER CONTACT NAME AND PHONE #BCA Development, Inc.
FACILITY OR DEVELOPER NAME (if different from owner)1350 San Altos Place
Lemon Grove, CA 91945
FACILITY ADDRESSSame
FACILITY OR DEVELOPER CONTACT NAME AND PHONE #

APPLICABLE WATER QUALITY LICENSING REQUIREMENTS:

- | | |
|---|---|
| <input type="checkbox"/> MS4 URBAN RUNOFF REQUIREMENTS | <input type="checkbox"/> GENERAL OR INDIVIDUAL WASTE DISCHARGE REQUIREMENTS OR NPDES |
| <input checked="" type="checkbox"/> CONSTRUCTION GENERAL PERMIT | <input type="checkbox"/> GENERAL OR INDIVIDUAL WAIVER OF WASTE DISCHARGE REQUIREMENTS |
| <input type="checkbox"/> CALTRANS GENERAL PERMIT | <input type="checkbox"/> SECTION 401 WATER QUALITY CERTIFICATION |
| <input type="checkbox"/> INDUSTRIAL GENERAL PERMIT | <input type="checkbox"/> CWC SECTION 13264 |

INSPECTION TYPE (Check One):

- ☐ "A" TYPE COMPLIANCE--COMPREHENSIVE INSPECTION IN WHICH SAMPLES ARE TAKEN. (EPA TYPE S)
- ☐ "B" TYPE COMPLIANCE--A ROUTINE NONSAMPLING INSPECTION. (EPA TYPE C)
- ☐ NONCOMPLIANCE FOLLOW-UP--INSPECTION MADE TO VERIFY CORRECTION OF A PREVIOUSLY IDENTIFIED VIOLATION.
- ☐ ENFORCEMENT FOLLOW-UP--INSPECTION MADE TO VERIFY THAT CONDITIONS OF AN ENFORCEMENT ACTION ARE BEING MET.
- ☒ COMPLAINT--INSPECTION MADE IN RESPONSE TO A COMPLAINT.
- ☐ PRE-REQUIREMENT--INSPECTION MADE TO GATHER INFO. RELATIVE TO PREPARING, MODIFYING, OR RESCINDING REQUIREMENTS.
- ☐ NO EXPOSURE CERTIFICATION (NEC) - VERIFICATION THAT THERE IS NO EXPOSURE OF INDUSTRIAL ACTIVITIES TO STORM WATER.
- ☐ NOTICE OF TERMINATION REQUEST FOR INDUSTRIAL FACILITIES OR CONSTRUCTION SITES - VERIFICATION THAT THE FACILITY OR CONSTRUCTION SITE IS NOT SUBJECT TO PERMIT REQUIREMENTS.
- ☐ COMPLIANCE ASSISTANCE INSPECTION - OUTREACH INSPECTION DUE TO DISCHARGER'S REQUEST FOR COMPLIANCE ASSISTANCE.

INSPECTION FINDINGS:

Y WERE VIOLATIONS NOTED DURING THIS INSPECTION? (YES/NO/PENDING SAMPLE RESULTS)EXHIBIT 4
REPORTER D. Lytle
WITNESS W. Chiu
DATE 1-14-16

Facility: Valencia
Inspection Date: 12/15/2014

I. COMPLIANCE HISTORY / PURPOSE OF INSPECTION

On December 2, 2014, the City of Lemon Grove (City) issued a Stop Work/Notice of Violation to the Valencia construction site (WDID 9 37C369143) for failing to implement construction storm water best management practices (BMPs) required by local ordinances. The City's inspection report issued with the Stop Work/Notice of Violation noted inadequate implementation of erosion controls, entrance/exit stabilization, and stockpile management and warned the project manager that a "discharge is imminent" without adequate BMPs. The site was required to stop work and implement BMPs to be prepared for a storm event that occurred on December 3 and 4, 2014.

The site failed to implement BMPs before the storm, resulting in unauthorized discharges of sediment and sediment-laden storm water from the site to the City's municipal separate storm sewer system (MS4). The City issued a second Stop Work/Notice of Violation on December 4, 2014 for the illegal discharges to the City's MS4. The City conducted a follow up inspection on December 9, 2014 and noted the same BMP deficiencies identified before the December 3 and 4, 2014 storm event, as well as additional deficiencies in perimeter sediment controls. The inspection report provided recommendations for locations that needed to be addressed and types of BMPs. The site again failed to implement BMPs before a subsequent storm event that occurred on December 11, 2014, again resulting in unauthorized discharges of sediment and sediment-laden storm water from the site to the City's MS4. On December 11, 2014, the City issued an Administrative Citation to the site requiring BMPs to be implemented by December 15, 2014 before monetary penalties would begin. The Stop Work/Notice of Violation issued on December 2 and 4, 2014 and the Administrative Citation issued on December 11, 2014 by the City are attached to the end of this inspection report.

On the morning of December 12, 2014, the City contacted the San Diego Water Board about the unauthorized discharges of sediment and sediment-laden storm water to their MS4 from the Valencia construction site. According to the City's storm water manager, the site owner was claiming the site was in compliance with the requirements of the Statewide Construction General Storm Water Permit, Order No. 2009-0009-DWQ (CGP) and therefore should be considered in compliance with the City's ordinances. The City's storm water manager requested an inspection from the San Diego Water Board to determine whether the construction site was in compliance with the requirements of the CGP.

Wayne Chiu of the San Diego Water Board performed an inspection of the Valencia construction site for compliance with the requirements CGP. According to the Storm Water Multiple Application & Report Tracking System (SMARTS), the site is a Risk Level 2 construction site, disturbing over 18 acres, and owned by San Alto Lemon Grove LLC. The developer of the site is BCA Development, Inc.

The San Diego Water Board inspector met with Mr. Ben Anderson, the contact for the owner and developer of the site, Mr. Tim Anderson, project manager for the developer,

Facility: Valencia
Inspection Date: 12/15/2014

and Mr. Donald Sturgeon, the Qualified Storm Water Pollution Prevention Plan (SWPPP) Practitioner (QSP) performing the weekly inspections. Also present to observe during the inspection were Mr. Leon Firsht and Mr. Gary Harper, City Engineer and Construction Storm Water Inspector for the City of Lemon Grove, respectively. The San Diego Water Board inspector did not review the SWPPP or other records during the inspection.

II. FINDINGS

1. Several stockpiles observed without adequate containment (See Photo 1). Evidence of erosion and sediment transport from the stockpile observed during the inspection. All construction sites are required to contain and securely protect stockpiled waste material from wind and rain at all times unless actively being used.
2. Construction equipment and vehicles observed without appropriate BMPs (e.g. drip pans) to prevent oil, grease, or fuel to leak in to the ground, storm drains, or surface waters (See Photos 2 and 3). All construction sites are required to prevent oil, grease or fuel to leak in to the ground, storm drains, or surface waters, and to place all equipment and vehicles, which are to be fueled, maintained and stored in a designated area fitted with appropriate BMPs.
3. Several areas were observed to be inactive, or could be scheduled to be inactive, without effective soil cover to control potential erosion. Several completed building pads and several inactive slopes (See Photos 4 through 7) lacked any effective soil cover for erosion control. The lack of erosion controls in these areas contributed to unauthorized sediment discharges from the site (See Photos 9 through 11). All construction sites are required to provide effective soil cover for inactive areas (i.e. areas that have been disturbed and not scheduled to be re-disturbed for at least 14 days) and all finished slopes, open space, utility backfill, and completed lots.
4. Active areas were observed to lack appropriate erosion control BMPs (runoff control and soil stabilization) to prevent erosion during storm events (See Photo 8). The project manager and QSP could not describe any erosion control measures that were in place or were ready to be deployed before the December 3 and 4, 2014 and December 11, 2014 storm events. Risk Level 2 construction sites are required to implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction.
5. Several slopes throughout the site were observed to lack linear sediment controls along the toe and grade breaks of exposed slopes (See Photos 4 through 7). Risk Level 2 construction sites are required to apply linear sediment controls along the toe of the slope, face of the slopes, and at the grade breaks of exposed

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD-SAN DIEGO REGION

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Facility: Valencia
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slopes to comply with sheet flow lengths given in Table 1 of Attachment D to the CGP.

6. Lack of effective perimeter sediment controls observed which resulted in unauthorized sediment discharges from the site (See Photos 9 through 14). All construction sites are required to establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.
7. **Lack of effective run-on and runoff controls** observed within and around the site which contributed to sediment discharges from the site (See Photos 4 and 14). All construction sites are required to effectively manage run-on, all runoff within the site and all runoff that discharges off the site.

III. COMMENTS AND RECOMMENDATIONS

Comments

1. There is evidence that good site management "housekeeping" BMPs were not being adequately implemented (See Findings 1 and 2).
2. There is evidence that erosion controls were not adequately implemented for several inactive areas contributing to discharges of sediment from the site (See Finding 3).
3. There is evidence that erosion controls were not adequately implemented for several active areas prior to storm events contributing to discharges of sediment from the site (See Finding 4).
4. There is evidence that linear sediment controls were not adequately implemented for several exposed slopes contributing to slope erosion and discharges of sediment from the site (See Finding 5).
5. There is evidence that perimeter sediment controls, as well as run-on and runoff controls, were not adequately implemented which contributed to discharges of sediment from the site (See Findings 6 and 7).
6. There was evidence observed during the inspection that the site has not implemented BMPs to meet BCT Technology Based Effluent Limitations (TBELs) under Section V.A.2 of the CGP, as required for all construction sites, which resulted in the unauthorized discharges of sediment and sediment-laden water from the site observed or documented on December 4, 11, and 15, 2014 (See Compliance History discussion and Findings 1 through 7).

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD-SAN DIEGO REGION

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7. There is evidence that either the QSP was not adequately identifying and recommending implementation of good site management "housekeeping," erosion control, sediment control, and run-on/runoff control BMPs, or the owner/developer was not directing the implementation of the BMPs as recommended by the QSP.

Recommendations

1. Issue a Notice of Violation for discharges of sediment from the site and failure to implement Risk Level 2 requirements of CGP.
2. Refer the site to the Compliance Assurance Unit to determine whether or not issuing formal enforcement action may be appropriate.

IV. SIGNATURE SECTION

Wayne Chiu	12/15/2014
STAFF INSPECTOR	INSPECTION DATE
Eric Becker	
REVIEWED BY SUPERVISOR	DATE

SMARTS:

Tech Staff Info & Use	
WDID	937C369143
Place ID	SM-828060
Inspection ID	2024185
Violation ID	855345, 855346

Facility: Valencia
Inspection Date: 12/15/2014



Photo 1

Photo 1 shows soil stockpile without adequate containment. Evidence of erosion and sediment transport along that base of the stockpile. Most stockpiles observed during inspection lacked adequate containment.



Photo 2



Photo 3

Photos 2 and 3 show construction equipment and vehicles without appropriate BMPs (e.g. drip pans) to prevent oil, grease, or fuel to leak in to the ground, storm drains, or surface waters. Most vehicles observed during inspection lacked appropriate BMPs.

Facility: Valencia
Inspection Date: 12/15/2014



Photo 4



Photo 5



Photo 6



Photo 7



Photo 8

Photos 4 through 7 show completed building pads and adjacent slopes without any erosion controls and evidence of significant erosion and sediment transport. **Photo 8** shows evidence of erosion and sediment transport in unpaved road sloping to locations shown in Photos 9 through 11. Sediment from completed lots and slopes in Photos 4 through 7 transported to road in Photo 8 lacking any erosion control measures during storm events, and inadequate runoff controls to reduce and prevent transport of sediment through site.

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Inspection Date: 12/15/2014



Photo 9



Photo 10



Photo 11



Photo 12

Photos 9 through 12 show inadequate implementation of perimeter sediment controls and run-on/runoff controls to prevent discharges of sediment from the site. Photo 9 shows evidence of erosion and sediment transport from road shown in Photo 8 to perimeter with inadequately installed perimeter sediment and runoff controls (i.e. fiber roll not properly trenched and staked). Photos 10 shows evidence of sediment transport from the site beneath the inadequately installed perimeter sediment and runoff controls. Photo 11 shows evidence of sediment transport from the site to MS4 channel protected by silt fence and gravel bags. Photo 12 shows **sediment that has been discharged into the MS4 channel** due to inadequate implementation of erosion, sediment, and runoff controls by the site.

Facility: Valencia
Inspection Date: 12/15/2014



Photo 13



Photo 14

Photos 13 and 14 show lack of effective perimeter sediment controls and run-on/runoff controls. Photo 13 shows evidence of erosion and sediment transport due to lack of perimeter run-on controls. Photo 14 shows evidence of sediment discharged from the site to the MS4 drainage system due to erosion caused by run-on that then ran off the site due to inadequate perimeter sediment controls and runoff controls.



NOTICE

DATE: 12/2/14
PROJECT: VALENCIA
PROJECT #: GR-1692
ADDRESS: SAN ANTON PL

☒ STOP WORK/NOTICE OF VIOLATION

Stop all other work until erosion control/NPDES deficiencies noted below are corrected. Issuance of this Stop Work Notice will notify the Regional Water Quality Control Board regarding your BMP deficiencies. This may subject you to fines of up to \$10,000/day.

☐ CORRECT WORK

Correct noted deficiencies within the specified time frame to avoid a Stop Work Notice:

☐ 24 Hours ☐ 72 Hours ☐ 5 Days ☐ Prior to October 1st, And/Or ☐ Before Rain Event

THIS PROJECT IS IN CONFLICT WITH THE FOLLOWING:

- ☐ City of Lemon Grove Grading Ordinance* ☒ City of Lemon Grove JURMP
☐ Other: _____

THE AREAS OF CONFLICT ARE:

- ☐ Erosion control is not on site ☐ Erosion control is not per the approved plan
☒ Erosion control is inadequate ☐ Failure to maintain erosion/sediment control device
☐ Other: _____

THE FOLLOWING DEFICIENCIES ARE NOTED:

- ☒ Stabilized construction entrance ☐ Runoff from the site ☐ Desilting basin
☐ Perimeter protection at toe of slope ☐ Waste/materials storage
☐ Concrete washout inadequate, not maintained ☐ No secondary containment
☒ Cover stockpiles ☐ No storm drain inlet/outlet protection ☐ Trash/debris not managed
☐ Cover on sloped and/or flat areas that are inactive for more than 10 days
☐ Other: _____

***STOP/ CORRECT WORK ADEQUATELY ADDRESSED (DATE/SIGNATURE) _____

- CC: ☒ City Engineer
☒ Engineering
☐ Management Analyst
☐ Code Compliance
☐ Building
☐ RWQCB

ISSUED TO: TIM ANDERSON (via Email)
DATE/TIME: 12/2/14 3pm
BY: GARY HARPER
TITLE: ENR. INSPECTOR
PHONE: (619) 454-1272

IF YOU HAVE FURTHER QUESTIONS, PLEASE
CALL THE CITY OF LEMON GROVE'S
DEVELOPMENT SERVICES DEPARTMENT AT
(619) 825-3805.

* Having deficiencies in your erosion control is a violation of the City of Lemon Grove's Grading Ordinance. A violation of the City's Grading Ordinance is a misdemeanor. Each separate day or portion thereof on which a violation exists or is allowed to exist shall constitute a separate offense punishable by the provisions of the Ordinance.



CITY OF LEMON GROVE
3232 Main Street, Lemon Grove, CA 91945

NPDES STORMWATER PROGRAM CONSTRUCTION STORMWATER COMPLIANCE INSPECTION FORM

Inspector Name /Signature/Date/Time: Harper / Sam / 12/2/14 / 1pm

Inspection: ☐ Permit-Required Inspection ☐ Follow-up Inspection ☒ Other (Explain) Weekly

Construction Project Priority: ☐ High ☐ Medium ☐ Low

GENERAL INFORMATION

Grading or Building Permit #: GR-1692

Project Name & Type: VALENCIA, SUBDIVISION

Project Location & Address: SAN AITOJ PL

Contractor's Name & Telephone #: ANDERSON DEVELOPMENT (949) 275-6239

Property Owner & Telephone #: SAN AITOJ LLC

Is this Project Greater than an Acre? ☒ Yes ☐ No ☐ N/A

If yes: Provide Record of Waste Discharge Identification Number (WDID#): 937C 36 9143

Does this Project have an NOI/SWPPP Available? ☒ Yes ☐ No ☐ N/A

Is Weather Triggered Action Plan Completed? ☒ Yes ☐ No ☐ N/A

Is Advanced Treatment Implemented Appropriately? ☐ Yes ☐ No ☒ N/A

Is More than 17 Acres of Cleared or Graded Areas Left Exposed at Any Given Time? ☐ Yes ☒ No ☐ N/A

Is 125% of Materials to Install Standby BMPs Available? ☐ Yes ☒ No ☐ N/A

Are Routine Self-Inspections Being Conducted by Developer/Owner? ☒ Yes ☐ No ☐ N/A

Project Site is in What Sub-Watershed: ☐ Chollas Creek 908.22 ☐ Sweetwater River 909.12

Nearest Conveyances or Water Bodies: M 54

BMP	Yes	No	N/A	Description/Explanation	Effective Yes/No
Soil Stabilization and Erosion Prevention					
Is construction site phased/scheduled to address erosion control on a timely basis?	<input checked="" type="checkbox"/>			CONTRACTOR HYDROSEEDING AS NEEDED, BUT DID NOT SEED AS PLANNED	N
Preservation of existing vegetation?	<input checked="" type="checkbox"/>				Y
Physical Stabilization: Hydraulic Mulch, Hydroseeding, Soil Binders, Straw Mulch					
Geotextiles, Plastic Covers, Erosion Prevention Blankets, Wood Mulching	<input checked="" type="checkbox"/>			NOT ENOUGH PLASTIC COVERS FOR STOCKPILES	NO
Site Drainage: Outlet Protection/Slope Drain	<input checked="" type="checkbox"/>				Y
Inlet/Outlet Protection	<input checked="" type="checkbox"/>				Y
Sediment Control/Containment					
Perimeter Protection: Silt Fencing, Gravel Bags, Fiber Rolls	<input checked="" type="checkbox"/>				Y

BMP	Yes	No	N/A	Description/Explanation	Effective Yes/No
Storm Drain inlet protection: Sediment Trap, De-silting Basin, Gravel Bag Barrier	Y				Y
Tracking Controls: Stabilized Entrance/Exit Road Stabilization, Tire Wash, Street Sweeping	Y			Entrance needs to be cleaned. Also need street swept	NO
Materials and Equipment Management					
Are materials and wastes stored in a manner that minimizes or eliminates the potential to discharge these materials to the storm drain system, is secondary containment used?	Y				Y
Are material stockpiles protected: covered, contained and located away from non-storm water discharges?	Y			Some are covered some are not	NO
Are heavy equipment and vehicles parked in designated areas with permeable surface?	Y				Y
Are appropriate spill response and containment measures kept on the site?	Y				Y
Are wastes managed and stored properly (Solid, liquid, sanitary, concrete, hazardous)	Y				Y
Are concrete washouts properly installed, maintained with no evidence of discharges.	Y				Y
Is timely service and removal provided to prevent waste containers and sanitary facilities from overflowing?	Y				Y
Non-Storm Water Management					
Is the site free of evidence of illegal connections and/or illicit discharges?	Y				Y
Discharge Locations					
Are the discharge locations free of significant erosion or sediment transport?		N		TC-1 is downstream of upper site's needs to be cleaned	NO
Other					
Are there any other potential storm water pollution issues/concerns?	Y			Rain event today, TC-1 should be protected	NO
Was there any employee or subcontractor training on stormwater BMPs?		N			

VIOLATIONS

- ☐ No violations noted at time of inspection/investigation
☐ No violations; however, recommended corrective actions required
☐ Inspection Form as Correct Work Notice ☐ Correct Work Notice Issued on: _____
☒ Violation: Illegal Discharge/Illegal Connection/Improper BMPs Implementation
☒ Stop Work Notice Issued on: 12/2/14

RECOMMENDED CORRECTIVE ACTION

See stop work notice - Discharge is
imminent if NOAA forecast correct: 100% Heavy
Rain this afternoon.
I call to Tim Anderson this morning at 9am.
Left v. mail that situation needed attention ASAP - NO
Return call



NOTICE

DATE: 12/4/2014
 PROJECT: Valencia
 PROJECT #: GIR-1692
 ADDRESS: SAN ANTONIO PL

☒ STOP WORK/NOTICE OF VIOLATION

Stop all other work until erosion control/NPDES deficiencies noted below are corrected. Issuance of this Stop Work Notice will notify the Regional Water Quality Control Board regarding your BMP deficiencies. This may subject you to fines of up to \$10,000/day.

☐ CORRECT WORK

Correct noted deficiencies within the specified time frame to avoid a Stop Work Notice:

☐ 24 Hours ☐ 72 Hours ☐ 5 Days ☐ Prior to October 1st, And/Or ☐ Before Rain Event

THIS PROJECT IS IN CONFLICT WITH THE FOLLOWING:

- ☐ City of Lemon Grove Grading Ordinance* ☒ City of Lemon Grove JURMP
☐ Other: _____

THE AREAS OF CONFLICT ARE:

- ☐ Erosion control is not on site ☒ Erosion control is not per the approved plan
☒ Erosion control is inadequate ☒ Failure to maintain erosion/sediment control device
☐ Other: _____

THE FOLLOWING DEFICIENCIES ARE NOTED:

- ☒ Stabilized construction entrance ☒ Runoff from the site ☐ Desilting basin
☐ Perimeter protection at toe of slope ☐ Waste/materials storage
☐ Concrete washout inadequate, not maintained ☐ No secondary containment
☒ Cover stockpiles ☐ No storm drain inlet/outlet protection ☐ Trash/debris not managed
☐ Cover on sloped and/or flat areas that are inactive for more than 10 days
☒ Other: Illegal Discharge

***STOP/ CORRECT WORK ADEQUATELY ADDRESSED (DATE/SIGNATURE) _____

- CC: ☒ City Engineer
☒ Engineering
☐ Management Analyst
☐ Code Compliance
☐ Building
☒ RWQCB

ISSUED TO: Tim Anderson (Email)
 DATE/TIME: 12/4/2014 10AM
 BY: GARY HARPER
 TITLE: ENG. INSPECTOR
 PHONE: (619) 454 1272

IF YOU HAVE FURTHER QUESTIONS, PLEASE
 CALL THE CITY OF LEMON GROVE'S
 DEVELOPMENT SERVICES DEPARTMENT AT
 (619) 825-3805.

* Having deficiencies in your erosion control is a violation of the City of Lemon Grove's Grading Ordinance. A violation of the City's Grading Ordinance is a misdemeanor. Each separate day or portion thereof on which a violation exists or is allowed to exist shall constitute a separate offense punishable by the provisions of the Ordinance.



CITY OF LEMON GROVE ADMINISTRATIVE CITATION

A) TYPE OF VIOLATION

Circle One: Warning 1st Citation \$100 2nd Citation \$200 3rd Citation \$500 4th Citation \$1,000

Payment of \$ — is due no later than — to the City of Lemon Grove.
The City accepts cash, check or credit card.

If the violation is not corrected by the date specified therein and/or payment is not received by the date above, the next level of citation may be issued, other enforcement actions may occur, and penalties may be assessed (25% and interest at the rate of 10% per month). Payment of fine does not excuse or discharge the failure to correct violation identified below.

B) RESPONSIBLE PARTY INFORMATION

Person Cited: Anderson Tim
(Last Name) (First Name)
Circle One: Property Owner Tenant Business Owner Other Site Representative
Mailing Address: 3194-C2 Airport Loop Drive 1 Project Manager
Business Name (if applicable): Corte Mesa, CA 92626
BGA Development

C) VIOLATION(S) INFORMATION

Date (Violation Observed): 12/11/14 Time (Violation Observed): 4:00-5:00 P.M.
Location of Violation: 1350 San Altos, LG / Valencia
(Street Address) (APN)
Violation(s) Observed (Code Section and Description):
B.48.060 18.08.560 Inadequate BMP's - see
18.08.170 attached inspection reports
18.08.180

D) CORRECTION(S) REQUIRED (with date to complete corrections)

Install BMP's per Recommendation's 12/15/14
Maintain adequate surplus of BMP's 5:00 P.M.

E) SERVICING CITATION INFORMATION

Enforcing Officer Name Leon Fingst Phone No. 619-825-3825 Signature [Signature] Date 12/11/14
Person Cited - Signature Acknowledging Receipt _____ (Date) _____
Citation Served (circle one): In Person By Mail / Email Posted on Property

This citation may be appealed within thirty (30) days from date of correction identified in Section D. To request an appeal, a Request an Appeal Hearing form (available at City Hall) should be completed and returned to City Hall. In the event a Hardship Waiver is requested, the Request for an Appeal Hearing and Hardship Waiver forms are required within fifteen (15) days from the correction date identified in Section D.

WHITE-ORIGINAL

PINK-COPY

CITATION CARD-OWNER

Lemon Grove Municipal Code							
Up	Previous	Next	Main		Search	Print	No Frames
Title 8 HEALTH AND SAFETY							
Chapter 8.48 STORMWATER MANAGEMENT AND DISCHARGE CONTROL							

8.48.060 Best management practice requirements and general requirements applicable to all dischargers.

A. Applicable Requirements. All dischargers in the city must comply with the generally applicable prohibitions and requirements in Sections 8.48.010 through 8.48.060 of this chapter, and must also comply with any other parts of this chapter (including relevant parts of the Manual) that are applicable to the type of facility or activity owned or operated by that discharger.

B. Minimum Best Management Practices for All Dischargers. All dischargers in the city must install, implement and maintain at least the following minimum BMPs:

1. Eroded Soils. Prior to the rainy season, dischargers must remove or secure any significant accumulations of eroded soils from slopes previously disturbed by clearing or grading, if those eroded soils could otherwise enter the stormwater conveyance system or receiving waters during the rainy season.

2. Pollution Prevention. Dischargers employing ten or more persons on a full-time basis shall implement those stormwater pollution prevention practices that are generally recognized in that discharger's industry or business as being effective and economically advantageous.

3. Prevention of Illegal Discharges. Illicit connections must be eliminated (even if the connection was established pursuant to a valid permit and was legal at the time it was constructed), and illegal discharge practices eliminated.

4. Slopes. Completed slopes that are more than five feet in height, more than two hundred fifty square feet in total area, and steeper than 3:1 (run-to-rise) that have been disturbed at any time by clearing, grading, or landscaping, shall be protected from erosion prior to the first rainy season following completion of the slope, and continuously thereafter.

5. Storage of Materials and Wastes. All materials and wastes with the potential to pollute urban runoff shall be stored in a manner that either prevents contact with rainfall and stormwater, or contains contaminated runoff for treatment and disposal.

6. Use of Materials. All materials with the potential to pollute urban runoff (including, but not limited to, cleaning and maintenance products used outdoors, fertilizers, pesticides and herbicides, etc.) shall be used in accordance with label directions. No such product may be disposed of or rinsed into receiving waters or the stormwater conveyance system.

C. Inspection, Maintenance, Repair and Upgrading of BMPs. BMPs at manned facilities must be inspected by the discharger before and following predicted rain events. BMPs at unmanned facilities must be inspected by the discharger at least once during the rainy season and at least once between each rainy season. These BMPs must be maintained so that they continue to function as designed. BMPs that fail must be repaired as soon as it is safe to do so. If the failure of a BMP indicates that the BMPs in use are inappropriate or inadequate to the circumstances, the BMPs must be modified or upgraded to prevent any further failure in the same or similar circumstances.

D. Stormwater Pollution Prevention Plan. An authorized enforcement official may require a commercial, industrial or land disturbance activity discharger to prepare and submit an SWPPP for approval by that official if: (1) the discharger does not come into compliance with this chapter after one or more warnings (or other enforcement action) that BMPs are inadequate or are not being adequately maintained; or (2) the facility or activity at issue is a significant source of contaminants to receiving waters despite compliance with this

chapter. Any discharger required to submit and to obtain approval of an SWPPP shall install, implement, and maintain the BMPs specified in the approved SWPPP.

The SWPPP shall identify the BMPs that will be used by the discharger to prevent or control pollution of stormwater to the MEP. If the facility is an industrial facility, the SWPPP submitted to the city shall at a minimum meet the requirements of the state NPDES general industrial stormwater permit. If the activity at issue is a construction or land disturbance activity, the SWPPP submitted to the city shall at a minimum meet the requirements of the state NPDES general construction stormwater permit. If a facility required to submit an SWPPP to the city discharges non-stormwater to groundwater, the facility shall obtain an RWQCB permit as required by the State Water Code, and shall describe the requirements of that permit in the SWPPP.

Whenever submission of an SWPPP is required pursuant to this chapter, an authorized enforcement official may take existing city BMPs into account when determining whether the practices proposed in the SWPPP are BMPs that will prevent or control pollution to the required level of MEP.

E. Notification of Spills, Releases and Illegal Discharges. Spills, releases, and illegal discharges of pollutants to receiving waters or to the stormwater conveyance system shall be reported by the discharger as required by all applicable state and federal laws. In addition, any such spills, releases and illegal discharges with the potential to endanger health, safety or the environment shall be reported to the Directors within twenty-four hours after discovery of the spill, release or discharge. If safe to do so, necessary actions shall be taken to contain and minimize the spill, release or illegal discharge.

F. Sampling, Testing, Monitoring and Reporting. Commercial, industrial or land disturbance activity dischargers shall perform the sampling, testing, monitoring and reporting required by this chapter. In addition, an authorized enforcement official may order a discharger to conduct testing or monitoring and to report the results to the city if: (1) the authorized enforcement official determines that testing or monitoring is needed to determine whether BMPs are effectively preventing or reducing pollution in stormwater to the MEP, or to determine whether the facility is a significant source of contaminants to receiving waters; or (2) the authorized enforcement official determines that testing or monitoring is needed to assess the impacts of an illegal discharge on health, safety or the environment; or (3) an illegal discharge has not been eliminated after written notice by an authorized enforcement official; or (4) repeated violations have been documented by written notices from authorized enforcement officials; or (5) the RWQCB requires the city to provide any information related to the discharger's activities.

Testing and monitoring ordered pursuant to this subsection may include the following:

1. Visual monitoring of dry weather flows, wet weather erosion, and/or BMPs;
2. Visual monitoring of premises for spills or discharges;
3. Laboratory analyses of stormwater or non-stormwater discharges for pollutants;
4. Background or baseline monitoring or analysis; and
5. Monitoring of receiving waters or sediments that may be affected by pollutant discharges by the discharger (or by a group of dischargers including the discharger).

The authorized enforcement official may direct the manner in which the results of required testing and monitoring are reported, and may determine when required sampling, testing or monitoring may be discontinued.

G. Mitigation. All illegal discharges must be mitigated within a reasonable period of time to correct or compensate for all damage to the environment caused by the illegal discharge. The authorized enforcement official shall determine whether mitigation measures proposed or completed by the discharger meet this standard. The authorized enforcement official shall require the discharger to submit a mitigation plan and schedule by a specified date prior to taking action, and to submit a summary of completed mitigation by a specified date. Notwithstanding the granting of any period of time to the discharger to correct the damage, the

8.48.060 Best management practice requirements and general requirements applicable to dischargers
Public Hearing Document No. 12 of 3

discharger shall remain liable for some or all of any fines or penalties imposed pursuant to this chapter, or by the RWQCB. (Ord. 369 § 1, 2008)

18.08.170 Erosion control required.

Lemon Grove Municipal Code							
Up	Previous	Next	Main		Search	Print	No Frames
Title 18 CITYWIDE REGULATIONS							
Chapter 18.08 EXCAVATION AND GRADING							
Article II. Permits and Fees							

18.08.170 Erosion control required.

A. Plans for an erosion control system shall be prepared and submitted for the review and approval of the city engineer as a part of any application for a construction permit. The erosion control system shall comply with the requirements of the latest national pollutant discharge elimination system permit, Chapters 8.48 and this chapter to satisfy the requirements for erosion control and eliminate the discharge of sediment and pollutants. The erosion control plan shall include, but not be limited to, the following information:

1. Name, address, and a twenty-four hour phone number of the owner or responsible party, and the person or contractor responsible for installing and maintaining the erosion control system and performing emergency erosion control work;
2. The name, address and signature of the civil engineer or person who prepared the plan;
3. All desilting basins, debris basins, silt traps, and other desilting, velocity retarding and protection facilities necessary to adequately protect the site and downstream properties from erosion and its effects, preserve natural hydrologic features, and preserve riparian buffers and corridors;
4. The streets, easements, drains, and other improvements;
5. The location and placement of gravel bags, diverters, check dams, slope planting, drains, and other erosion controlling devices and measures;
6. Access routes to all such erosion control facilities and how access shall be maintained during inclement weather.

B. Erosion control system standards shall be as follows:

1. The faces of cut-and-fill slopes and the project site shall be prepared and maintained to control against erosion. Where cut slopes are not subject to erosion due to the erosion-resistant character of the materials, such protection may be omitted upon approval of the city engineer.
2. Where necessary, temporary and/or permanent erosion control devices such as desilting basins, check dams, cribbing, riprap, or other devices or methods as approved by the city engineer, shall be employed to control erosion, prevent discharge of sediment, and provide safety.
3. Temporary desilting basins constructed of compacted earth shall be compacted to a relative compaction of ninety percent of maximum density. A gravel bag or plastic spillway must be installed for overflow, as designed by the engineer of work, to avoid failure of the earthen dam. A soils engineering report prepared by the soils engineer, including the type of field-testing performed, location and results of testing shall be submitted to the city engineer for approval upon completion of the desilting basins.
4. Desilting facilities shall be provided at drainage outlets from the graded site, and shall be designed to provide a desilting capacity capable of containing the anticipated runoff for a period of time adequate to allow reasonable settlement of suspended particles.
5. Desilting basins shall be constructed around the perimeter of projects, whenever feasible, and shall provide improved maintenance access from paved roads during wet weather. Grading cost estimates must include maintenance and ultimate removal costs for temporary desilting basins.
6. The erosion control provisions shall take into account drainage patterns during the current and future phases of grading.

18.08.170 Erosion control required.

7. All removable protective devices shown shall be in place at the end of each working day when there is a fifty percent chance of rain within a forty-eight hour period. If the developer does not provide the required installation or maintenance of erosion control structures within two hours of notification at the twenty-four hour number on the plans, the city engineer may order city crews to do the work or may issue contracts for such work and charge the cost of this work along with reasonable overhead charges to the cash deposits or other instruments implemented for this work without further notification to the owner. No additional work on the project except erosion control work may be performed until the full amount drawn from the deposit is restored by the developer.

8. At any time of year, an inactive site shall be fully protected from erosion and discharges of sediment. Flat areas with less than five percent grade shall be fully covered unless sediment control is provided through desiltation basins at all project discharge points. A site is considered inactive if construction activities have ceased for a period of ten or more consecutive days.

C. No grading work shall be allowed between October 1st and the following April 30th on any site when the city engineer determines that erosion, mudflow or sediment or silt discharge may adversely affect downstream properties, drainage courses, storm drains, streets, easements, or public or private facilities or improvements unless an approved erosion control system has been implemented on the site. If the city determines that it is necessary for the city to cause erosion control measures to be installed or cleanup to be done, the developer shall pay all of the city's direct and indirect costs including extra inspection, supervision, and reasonable overhead charges. (Ord. 371 § 1, 2008)

Lemon Grove Municipal Code							
Up	Previous	Next	Main		Search	Print	No Frames
Title 18 CITYWIDE REGULATIONS							
Chapter 18.08 EXCAVATION AND GRADING							
Article II. Permits and Fees							

18.08.180 BMP maintenance.

All BMPs for erosion prevention and sediment control shall be functional at all time. Prior to the rainy season and after each major storm, all source control and structural treatment BMPs shall be inspected to assure the functionality. BMP maintenance shall be conducted throughout the life of the project. (Ord. 371 § 1, 2008)

18.08.560 Responsibility of permittee.

Lemon Grove Municipal Code							
Up	Previous	Next	Main		Search	Print	No Frames
Title 18 CITYWIDE REGULATIONS							
Chapter 18.08 EXCAVATION AND GRADING							
Article V. Grading Operations							

18.08.560 Responsibility of permittee.

It shall be the responsibility of the permittee to know the conditions and/or restrictions placed on the grading permit and as outlined in applicable sections of this chapter, and as continued on the approved report (s) and to insure that all contractors, subcontractors, employees, agents and consultants are also knowledgeable of the same, and insure that they carry out the proposed work in accordance with the approved plans and specifications and with the requirements of the permit and this chapter. The permittee shall also be responsible to maintain in an obvious and accessible location on the site, a copy of the permit and grading plans bearing the approval of the city engineer. (Ord. 371 § 1, 2008)

Meeting Minutes/Phone Record



CITY OF LEMON GROVE

Engineering Department

3232 Main Street

Lemon Grove, CA 91945

619-825-3811

Date:	12/11/14 5:00 P.M.	Project:	Valencia
<input type="checkbox"/> Meeting <input type="checkbox"/> Phone <input checked="" type="checkbox"/> Site Visit			
Attendees:			
Leon + Gary			
Notes:			
Site inspection to review recommended "Construction BMP Recommendations" from 12/9/14 inspection (attached).			
① No erosion control provided. ② Insufficient/Improperly installed check dams. ③ Repair + stabilization of gullies not completed. ④ Not completed. ⑤ Completed. ⑥ Not visible. ⑦ Mostly complete. ⑧ N/A			



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Flash Flood Watch

Wind Advisory

For warnings and/or advisories in effect for adjacent areas to this point, see <http://www.wrh.noaa.gov/sgx>

Change Table Font Size [Increase](#) [Decrease](#)

Forecast For Lat/Lon: 32.7370/-117.0200 (Elev. 492 ft)

Lemon Grove CA

Forecast Created at: 6pm PST Dec 11, 2014

Custom Weather Forecast Table

	Thu Dec 11	Fri Dec 12	Sat Dec 13	Sun Dec 14	Mon Dec 15	Tue Dec 16
Weather	Chance Rain	Slight Chance Rain Showers and TStorms	Likely Rain Showers and TStorms	Chance Rain	Chance Rain	Likely Rain
Daily-Temp	High 67 Low 53	High 63 Low 58	High 63 Low 51	High 65 Low 48	High 64 Low 50	High 64 Low 52
Chance of Precip	0% 0% 5% 45%	100% 90% 65% 75%	30% 15% 5% 5%	5% 5% 5% 5%	5% 40% 40% 55%	55% 60% 60% 60%
Precip	0.00" 0.00" 0.00" 0.01"	0.57" 0.29" 0.06" 0.12"	0.00" 0.00" 0.00" 0.00"	0.00" 0.00" 0.00" 0.00"		
12-hr Snow Total	0" 0" 0" 0"	0" 0" 0" 0"	0" 0" 0" 0"			
FRET	0.06"	0.06"	0.05"	0.06"	0.07"	0.07"
6-Hour Temp	4am 10am 4pm 10pm 53 62 65 60	4am 10am 4pm 10pm 58 61 60 54	4am 10am 4pm 10pm 52 59 59 52	4am 10am 4pm 10pm 49 59 61 54	4am 10am 4pm 10pm 51 59 61 55	4am 10am 4pm 10pm 53 60 61 55
Cloudiness	86% 49% 75% 100%	100% 91% 84% 75%	69% 51% 30% 37%	41% 41% 30% 30%	41% 41% 62% 62%	90% 90% 87% 87%
Dewpoint	52 53 54 53	52 54 52 50	49 48 46 46	43 44 44 48	44 43 45 49	47 51 49 51
Relative Humidity	94% 73% 67% 78%	79% 77% 73% 88%	89% 69% 61% 81%	80% 57% 52% 81%	79% 57% 54% 81%	82% 72% 63% 88%
Wind	S 2 7 8 10 S S S S	SE 15 6 6 W W SW W	E 2 2 5 3 W NW E E	N 3 1 5 5 W E E	S 6 7 7 7 SW SE SE	S 8 9 7 6 S S S S
Snow Level (ft)	9317 9161	7608 6313 5478 5212	5704		6701 5923 5850 5993 5805 5704	561

Forecast Weather Table Interface

Select Weather Format

- ☐ Custom Weather Table
- ☐ XML
- ☐ Point Forecast Page
- ☐ Point Forecast Matrix
- ☐ Hourly Tabular Forecast
- ☐ Hourly Weather Graph

Interval in Hours: ☐ 1 ☐ 3 ☐ 6

Duration in Days: ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7

Enter a Location or Click on Map Below

Search by address, city, state; latitude/longitude...



CITY OF LEMON GROVE
3232 Main Street, Lemon Grove, CA 91945

NPDES STORMWATER PROGRAM CONSTRUCTION STORMWATER COMPLIANCE INSPECTION FORM

Inspector Name /Signature/Date/Time: TAD NAKATANI / TAD / 12/11/14 9:00AM

Inspection: ☐ Permit-Required Inspection ☒ Follow-up Inspection ☐ Other (Explain) _____

Construction Project Priority: ☐ High ☒ Medium ☐ Low

GENERAL INFORMATION

Grading or Building Permit #: Gr-1692

Project Name & Type: VALENCIA SUBDIVISION

Project Location & Address: SAN ALTOS PLACE

Contractor's Name & Telephone #: ANDERSON DEVELOPMENT (949) 275-6739

Property Owner & Telephone #: SAN ALTOS LLC

Is this Project Greater than an Acre? ☒ Yes ☐ No ☐ N/A

If yes: Provide Record of Waste Discharge Identification Number (WDID#): 937C369143

Does this Project have an NOI/SWPPP Available? ☒ Yes ☐ No ☐ N/A

Is Weather Triggered Action Plan Completed? ☐ Yes ☐ No ☒ N/A

Is Advanced Treatment Implemented Appropriately? ☐ Yes ☐ No ☒ N/A

Is More than 17 Acres of Cleared or Graded Areas Left Exposed at Any Given Time? ☐ Yes ☒ No ☐ N/A

Is 125% of Materials to Install Standby BMPs Available? ☐ Yes ☒ No ☐ N/A

Are Routine Self-Inspections Being Conducted by Developer/Owner? ☐ Yes ☐ No ☐ N/A

Project Site is in What Sub-Watershed: ☒ Chollas Creek 908.22 ☐ Sweetwater River 909.12

Nearest Conveyances or Water Bodies: _____

BMP	Yes	No	N/A	Description/Explanation	Effective Yes/No
Soil Stabilization and Erosion Prevention					
Preservation of existing vegetation?			<input checked="" type="checkbox"/>		
Physical Stabilization: Hydraulic Mulch, Hydroseeding, Soil Binders, Straw Mulch	<input checked="" type="checkbox"/>			Grulies & unstabilized pads still not addressed	No
Geotextiles, Plastic Covers, Erosion Prevention Blankets, Wood Mulching	<input checked="" type="checkbox"/>			some plastic sheets added but not yet sufficient	No
Site Drainage: Outlet Protection/Slope Drain		<input checked="" type="checkbox"/>			
Inlet/Outlet Protection	<input checked="" type="checkbox"/>			see inlet protection comment below	No
Sediment Control/Containment					
Perimeter Protection: Silt Fencing, Gravel Bags, Fiber Rolls	<input checked="" type="checkbox"/>			Additional fiber rolls not placed on slopes yet	No
Storm Drain inlet protection: Sediment Trap, De-silting Basin, Gravel Bag Barrier	<input checked="" type="checkbox"/>			per discussion w/contractor, they still need to add gravel bag inlet protection	No

BMP	Yes	No	N/A	Description/Explanation	Effective Yes/No
Tracking Controls: Stabilized Entrance/Exit Road Stabilization, Tire Wash, Street Sweeping	X			NE entrance still not stabilized but not currently in use	No
Materials and Equipment Management					
Are materials and wastes stored in a manner that minimizes or eliminates the potential to discharge these materials to the storm drain system, is secondary containment used?	X				Yes
Are material stockpiles protected: covered, contained and located away from non-storm water discharges?	X			still need to protect all stockpiles	No
Are heavy equipment and vehicles parked in designated areas with permeable surface?	X				Yes
Are appropriate spill response and containment measures kept on the site?	X				Yes
Are wastes managed and stored properly (Solid, liquid, sanitary, concrete, hazardous)	X				Yes
Are concrete washouts properly installed, maintained with no evidence of discharges.	X				Yes
Is timely service and removal provided to prevent waste containers and sanitary facilities from overflowing?	X				Yes
Non-Storm Water Management					
Is the site free of evidence of illegal connections and/or illicit discharges?	X				Yes
Discharge Locations					
Are the discharge locations free of significant erosion or sediment transport?		X		still need to clean sediment on Akins	No
Other					
Are there any other potential storm water pollution issues/concerns?	X			Roadway stabilization still needed	No
Was there any employee or subcontractor training on stormwater BMPs?			X		

VIOLATIONS

- ☐ No violations noted at time of inspection/investigation
- ☒ No violations; however, recommended corrective actions required
- ☒ Inspection Form as Correct Work Notice ☐ Correct Work Notice Issued on: _____
- ☐ Violation: Illegal Discharge/Illegal Connection/Improper BMPs Implementation
- ☐ Stop Work Notice Issued on: _____

RECOMMENDED CORRECTIVE ACTION

FLOW ALONG SOUTHERN EDGE OF SITE HAS BEEN
REDIRECTED AWAY FROM THE CORNER. ALL OTHER CORRECTIVE
ACTIONS FROM THE 12/9/14 INSPECTION HAVE NOT YET
BEEN ADDRESSED. REFER TO THAT INSPECTION FOR FULL
DESCRIPTION OF CORRECTIVE ACTIONS.



CITY OF LEMON GROVE

3232 Main Street, Lemon Grove, CA 91945

NPDES STORMWATER PROGRAM CONSTRUCTION STORMWATER COMPLIANCE INSPECTION FORM

Inspector Name /Signature/Date/Time: TAD NAKATANI 12/9/14 1:00 pmInspection: ☒ Permit-Required Inspection ☐ Follow-up Inspection ☐ Other (Explain) _____Construction Project Priority: ☒ High ☒ Medium ☐ Low**GENERAL INFORMATION**Grading or Building Permit #: Gr-1692Project Name & Type: VALENCIA SUBDIVISIONProject Location & Address: SAN ALTOS PLACEContractor's Name & Telephone #: ANDERSON DEVELOPMENT (949) 275-6739Property Owner & Telephone #: SAN ALTOS LLCIs this Project Greater than an Acre? ☒ Yes ☐ No ☐ N/AIf yes: Provide Record of Waste Discharge Identification Number (WDID#): 937C369143Does this Project have an NOI/SWPPP Available? ☒ Yes ☐ No ☐ N/AIs Weather Triggered Action Plan Completed? ☐ Yes ☐ No ☒ N/AIs Advanced Treatment Implemented Appropriately? ☐ Yes ☐ No ☒ N/AIs More than 17 Acres of Cleared or Graded Areas Left Exposed at Any Given Time? ☐ Yes ☐ No ☐ N/AIs 125% of Materials to Install Standby BMPs Available? ☐ Yes ☒ No ☐ N/AAre Routine Self-Inspections Being Conducted by Developer/Owner? ☐ Yes ☐ No ☐ N/AProject Site is in What Sub-Watershed: ☒ Chollas Creek 908.22 ☐ Sweetwater River 909.12

Nearest Conveyances or Water Bodies: _____

BMP	Yes	No	N/A	Description/Explanation	Effective Yes/No
Soil Stabilization and Erosion Prevention					
Preservation of existing vegetation?			<input checked="" type="checkbox"/>		
Physical Stabilization: Hydraulic Mulch, Hydroseeding, Soil Binders, Straw Mulch	<input checked="" type="checkbox"/>			Gullies through edges of hydroseeded areas Some areas not seeded; northern road eroding	No
Geotextiles, Plastic Covers, Erosion Prevention Blankets, Wood Mulching		<input checked="" type="checkbox"/>			
Site Drainage: Outlet Protection/Slope Drain		<input checked="" type="checkbox"/>			
Inlet/Outlet Protection		<input checked="" type="checkbox"/>			
Sediment Control/Containment					
Perimeter Protection: Silt Fencing, Gravel Bags, Fiber Rolls	<input checked="" type="checkbox"/>			Additional fiber rolls needed on western slope	No
Storm Drain inlet protection: Sediment Trap, De-silting Basin, Gravel Bag Barrier		<input checked="" type="checkbox"/>			

BMP	Yes	No	N/A	Description/Explanation	Effective Yes/No
Tracking Controls: Stabilized Entrance/Exit Road Stabilization, Tire Wash, Street Sweeping	X			NE entrance lacks stabilization	No
Materials and Equipment Management					
Are materials and wastes stored in a manner that minimizes or eliminates the potential to discharge these materials to the storm drain system, is secondary containment used?	X				Yes
Are material stockpiles protected: covered, contained and located away from non-storm water discharges?	X			Several are unprotected stockpiles	No
Are heavy equipment and vehicles parked in designated areas with permeable surface?	X				Yes
Are appropriate spill response and containment measures kept on the site?	X				Yes
Are wastes managed and stored properly (Solid, liquid, sanitary, concrete, hazardous)	X				Yes
Are concrete washouts properly installed, maintained with no evidence of discharges.	X				Yes
Is timely service and removal provided to prevent waste containers and sanitary facilities from overflowing?	X				Yes
Non-Storm Water Management					
Is the site free of evidence of illegal connections and/or illicit discharges?	X				Yes
Discharge Locations					
Are the discharge locations free of significant erosion or sediment transport?		X		Large amount of sediment on roadway SE of site	No
Other					
Are there any other potential storm water pollution issues/concerns?	X			Roadways within project are unstabilized and show signs of erosion	No
Was there any employee or subcontractor training on stormwater BMPs?			X		

VIOLATIONS

- ☐ No violations noted at time of inspection/investigation
☒ No violations; however, recommended corrective actions required
☒ Inspection Form as Correct Work Notice ☐ Correct Work Notice Issued on: _____
☐ Violation: Illegal Discharge/Illegal Connection/Improper BMPs Implementation
☐ Stop Work Notice Issued on: _____

RECOMMENDED CORRECTIVE ACTION

- Add erosion controls to all ^{disturbed} areas inactive for 10 days, including roadways not currently in use.
- Cover & protect stockpiles
- Repair/protect gullies that have formed on slopes
- Redirect flow near southeast corner so it does not flow toward damaged wall
- Sweep road outside of construction entrance
- Install check dams of stabilization on roadways prior to rain

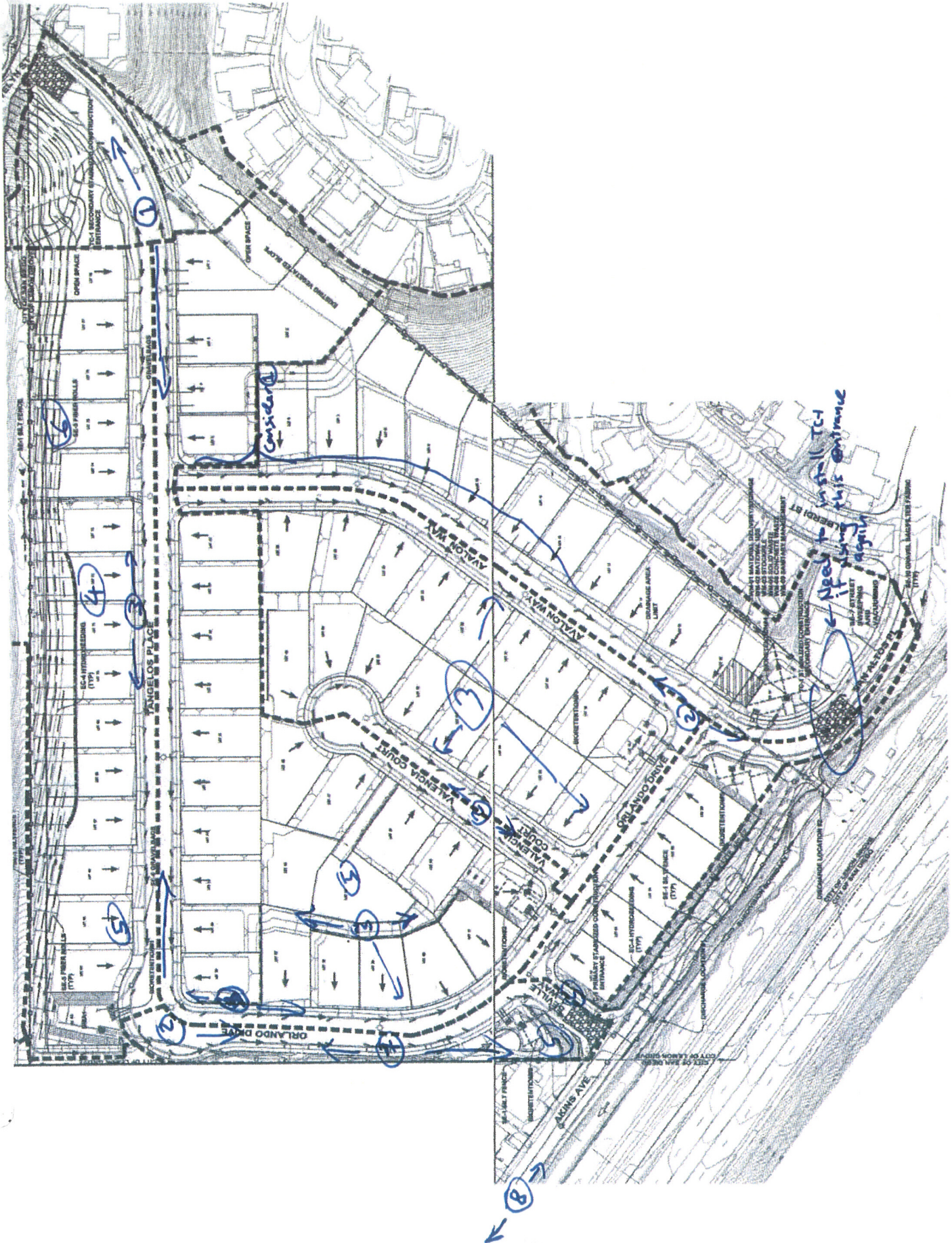
Construction BMP Recommendations

Site: VALENCIA SUBDIVISION

Date: 12/9/14

Recommendations:

- ① • Add erosion control to road segment (eg northern corner) that are not in use. Can be hydroseeded or stabilized with gravel.
- ② • For roads that are in use, add check dams prior to rain. Ensure proper installation to prevent rills from forming underneath BMP if using fiber rolls
- ③ • Repair ^{stabilize} gullies in slopes on edges of pads. May consider using erosion control blankets.
- ④ • A couple pads on western side do not appear hydroseeded. Add hydroseed or other erosion control
- ⑤ • Cover & protect stockpiles. Some stockpiles near entrance are only partially covered. Others to the west are completely uncovered
- ⑥ • Ensure that enough BMP materials are kept on site. Not enough fiber rolls were on site
- ⑦ • Redirect flow along the southern side of site. It currently is causing erosion along the road and directs flow to a damaged wall. Direct away from wall and break up flow with check dams to prevent erosion
- ⑧ • Sweep pad to remove sediment



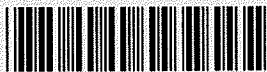
Chui, Wayne



Litigation SERVICES

Job: 600593

Exhibit: 00005



Wayne Rosenbaum

From: Chiu, Wayne@Waterboards <Wayne.Chiu@waterboards.ca.gov>
Sent: Monday, December 15, 2014 2:13 PM
To: Ben Anderson
Cc: Donald Sturgeon; Tim Anderson; Tamara Oneal; Malik Tamimi; Leon Firsht; Gary Harper; Becker, Eric@Waterboards; Melbourn, Frank@Waterboards; Clemente, Chiara@Waterboards
Subject: RE: WDID 937C369143 (Valencia): Unauthorized Storm Water Discharge (SM-828060)

Ben,

Thank you for taking the time to meet with me to walk through your site. As I mentioned at the end of the inspection, we will be issuing an inspection report and Notice of Violation (NOV) for the BMP deficiencies and unauthorized discharges of sediment from the site during the inspection. My goal is to have the inspection report and NOV to you by the end of the week. However, given the number of cases I am working on, and my scheduled time off, I may not be able to issue the inspection report and NOV until after the holidays.

Hopefully you and your QSP understand what is necessary to correct the deficiencies identified and can get those taken care of as soon as possible. In the meantime, please send me the following by **Friday, December 19**:

1. Copies of all the weekly BMP inspection reports, REAPs, pre- and post-storm inspection reports from November 1 to today's inspection.
2. Photos of the BMPs you have had implemented before the storm event that is anticipated to begin tonight or tomorrow, and photos of those BMPs after the storm event.
3. Photos of any additional BMPs you have implemented after this week's storm event.
4. A schedule for when you expect to have all the deficiencies identified during the inspection addressed.

I expect the City's inspector will continue to document how long those deficiencies continue, when they are corrected, and any other unauthorized discharges that may occur due to those continued deficiencies.

Please let me know if you have any questions.

Thank you,

Wayne Chiu, PE

Water Resource Control Engineer

Storm Water Management Unit

California Regional Water Quality Control Board

San Diego Region

2375 Northside Drive, Suite 100

San Diego, CA 92108

Direct Line: (619) 521-3354

Main Line: (619) 516-1990

EXHIBIT 5
REPORTER D. Lytle
WITNESS W. Chiu
DATE 1-14-16

From: Chiu, Wayne@Waterboards

Sent: Friday, December 12, 2014 11:38 AM

To: 'Ben Anderson'

Cc: 'Donald Sturgeon'; 'Tim Anderson'; Tamara Oneal (toneal@lemongrove.ca.gov); Malik Tamimi (mtamimi@lemongrove.ca.gov); Leon Firsht (lfirsht@lemongrove.ca.gov); Gary Harper (gharper@lemongrove.ca.gov); Becker, Eric@Waterboards; Melbourn, Frank@Waterboards

Subject: WDID 937C369143 (Valencia): Unauthorized Storm Water Discharge (SM-828060)

Mr. Anderson,

We were notified by the City of Lemon Grove of sediment and sediment-laden storm water discharges from your construction site due to inadequate implementation of construction storm water BMPs. These discharges from the site may be unauthorized discharges under the requirements of Order No. 2009-00090-DWQ, the Statewide Construction General Storm Water Permit (CGP).

Please have a representative meet me at the site at **10:00am on Monday, December 15** for an inspection to determine whether or not the requirements of the CGP were being adequately implemented to prevent the discharges of sediment and sediment-laden storm water from your site. Findings from the inspection will be used to determine whether corrective actions are necessary to bring the site into compliance and/or enforcement actions by the San Diego Water Board are warranted.

Please let me know if you have any questions.

Thank you,

Wayne Chiu, PE

Water Resource Control Engineer

Storm Water Management Unit

California Regional Water Quality Control Board

San Diego Region

2375 Northside Drive, Suite 100

San Diego, CA 92108

Direct Line: (619) 521-3354

Main Line: (619) 516-1990

Chui, Wayne



Litigation
SERVICES

Job: 600593

Exhibit: 00006



Exhibit No. 18**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD - SAN DIEGO REGION
WATERSHED PROTECTION PROGRAM****FACILITY INSPECTION REPORT****FACILITY:** Valencia Hills **INSPECTION DATE/TIME:** May 8, 2015; 19:00 **WDID/FILE NO.:** 93 7C369143**REPRESENTATIVE(S) PRESENT DURING INSPECTION:**NAME: Frank MelbournAFFILIATION: San Diego Water BoardNAME: Unnamed Security GuardAFFILIATION: UnknownSan Altos-Lemon Grove, LLC
NAME OF OWNER, AGENCY OR PARTY RESPONSIBLE FOR DISCHARGEBCA Development, Inc.
FACILITY OR DEVELOPER NAME (if different from owner)5780 Fleet Avenue
Carlsbad, CA 92008
OWNER MAILING ADDRESS1350 San Altos Place
Lemon Grove, CA 91945
FACILITY ADDRESSBen Anderson, 714-966-1544
OWNER CONTACT NAME AND PHONE #Same
FACILITY OR DEVELOPER CONTACT NAME AND PHONE #**APPLICABLE WATER QUALITY LICENSING REQUIREMENTS:**

- | | |
|---|---|
| <input type="checkbox"/> MS4 URBAN RUNOFF REQUIREMENTS | <input type="checkbox"/> GENERAL OR INDIVIDUAL WASTE DISCHARGE REQUIREMENTS OR NPDES |
| <input checked="" type="checkbox"/> CONSTRUCTION GENERAL PERMIT | <input type="checkbox"/> GENERAL OR INDIVIDUAL WAIVER OF WASTE DISCHARGE REQUIREMENTS |
| <input type="checkbox"/> CALTRANS GENERAL PERMIT | <input type="checkbox"/> SECTION 401 WATER QUALITY CERTIFICATION |
| <input type="checkbox"/> INDUSTRIAL GENERAL PERMIT | <input type="checkbox"/> CWC SECTION 13264 |

INSPECTION TYPE (Check One):

- ☐ "A" TYPE COMPLIANCE--COMPREHENSIVE INSPECTION IN WHICH SAMPLES ARE TAKEN. (EPA TYPE S)
- ☐ "B" TYPE COMPLIANCE--A ROUTINE NONSAMPLING INSPECTION. (EPA TYPE C)
- ☒ NONCOMPLIANCE FOLLOW-UP--INSPECTION MADE TO VERIFY CORRECTION OF A PREVIOUSLY IDENTIFIED VIOLATION.
- ☐ ENFORCEMENT FOLLOW-UP--INSPECTION MADE TO VERIFY THAT CONDITIONS OF AN ENFORCEMENT ACTION ARE BEING MET.
- ☐ COMPLAINT--INSPECTION MADE IN RESPONSE TO A COMPLAINT.
- ☐ PRE-REQUIREMENT--INSPECTION MADE TO GATHER INFO. RELATIVE TO PREPARING, MODIFYING, OR RESCINDING REQUIREMENTS.
- ☐ NO EXPOSURE CERTIFICATION (NEC) - VERIFICATION THAT THERE IS NO EXPOSURE OF INDUSTRIAL ACTIVITIES TO STORM WATER.
- ☐ NOTICE OF TERMINATION REQUEST FOR INDUSTRIAL FACILITIES OR CONSTRUCTION SITES - VERIFICATION THAT THE FACILITY OR CONSTRUCTION SITE IS NOT SUBJECT TO PERMIT REQUIREMENTS.
- ☐ COMPLIANCE ASSISTANCE INSPECTION - OUTREACH INSPECTION DUE TO DISCHARGER'S REQUEST FOR COMPLIANCE ASSISTANCE.

INSPECTION FINDINGS:Y WERE VIOLATIONS NOTED DURING THIS INSPECTION? (YES/NO/PENDING SAMPLE RESULTS)

EXHIBIT 6

REPORTER D. Lytle

WITNESS W. Chiu

DATE 1-14-16

Facility: Valencia Hills
Inspection Date: May 8, 2015

I. COMPLIANCE HISTORY / PURPOSE OF INSPECTION

On August 14, 2014, the City of Lemon Grove (City) notified the San Diego Water Board of an unauthorized non-storm water discharge to the City's Municipal Separate Storm Sewer System (MS4) from the Site caused by a contractor hitting a 12-inch water main. On August 15, 2014, the San Diego Water Board issued a Staff Enforcement Letter (SEL) via email to San Altos-Lemon Grove, LLC (Discharger) notifying them that the non-storm water discharge from the Site was an unauthorized discharge, with a request for additional information. The Qualified SWPPP¹ Practitioner (QSP) estimated that approximately 31,000 gallons of potable water discharged through the Site, and was "brown and sediment laden" when it discharged from the Site.

On December 2, 2014, the City issued a Stop Work/Notice of Violation to the Site for failing to implement Best Management Practices (BMPs) required by local storm water ordinances. The City's inspection form issued with the Stop Work/Notice of Violation noted inadequate implementation of erosion controls, entrance/exit stabilization, and stockpile management and warned the project manager that a "discharge is imminent" without adequate BMPs. The Discharger was required to stop work and implement BMPs to be prepared for a storm event that was expected to occur on December 3 and 4, 2014. The Discharger failed to implement BMPs before the storm, resulting in unauthorized discharges of sediment and sediment laden storm water runoff from the Site to an unnamed tributary to Chollas Creek. The City issued a second Stop Work/Notice of Violation to the Discharger on December 4, 2014, for the illegal discharges to the City's MS4.

The City conducted a follow up inspection of the Site on December 9, 2014, and noted the same BMP deficiencies identified before the December 3 and 4, 2014, storm event, as well as additional deficiencies in perimeter sediment controls. The City's inspection form identified areas to be addressed by the Discharger and recommended appropriate BMPs.

The Discharger again failed to implement BMPs before a storm event on December 11, 2014, and again it resulted in unauthorized discharges of sediment and sediment laden storm water from the Site to an unnamed tributary to Chollas Creek. On December 11, 2014, the City issued an Administrative Citation to the Discharger requiring BMPs to be implemented by December 15, 2014, before monetary penalties would begin. On the morning of December 12, 2014, the City contacted the San Diego Water Board about the unauthorized discharges of sediment and sediment-laden storm water to their MS4 from the Site. According to the City, the Discharger claimed the Site was in compliance with the requirements of the Construction Storm Water Permit; therefore the Discharger should be considered in compliance with the City's storm water ordinance. The City requested an inspection from the San Diego Water Board to determine compliance with the Construction Storm Water Permit.

¹ Storm Water Pollution Prevention Plan (SWPPP).

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD-SAN DIEGO REGION

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Facility: Valencia Hills
Inspection Date: May 8, 2015

On December 15, 2014, San Diego Water Board inspector, Wayne Chiu inspected the Site for compliance with the Construction Storm Water Permit. During the inspection, the San Diego Water Board inspector found evidence of inadequate implementation of stockpile management, vehicle storage and maintenance, erosion control, sediment control, run-on and runoff control, and inspection, maintenance, and repair requirements. The San Diego Water Board inspector also found evidence of inadequate implementation of additional erosion control and sediment controls required for Risk Level 2 construction sites. On December 19, 2014, the San Diego Water Board issued Notice of Violation No. R9-2014-0153 to the Discharger and requested a written response demonstrating that the violations were corrected. The Discharger provided a written response, dated January 1, 2015.

On January 26, 2015, the City provided written notification to the San Diego Water Board that the Stop Work had been removed for the Site with a summary of inspections and enforcement conducted by the City between December 2, 2014, and January 22, 2015. Between December 16, 2014, and January 19, 2015, a contractor to the City continued to inspect the Site to track BMP implementation progress. Based on an inspection conducted on January 6, 2015, the contractor to the City indicated most of the major BMP deficiencies had been addressed. The contractor to the City indicated removal of the Stop Work is appropriate in a January 16, 2015, memo to the City. The City removed the Stop Work on January 22, 2015.

On March 27, 2015, the San Diego Water Board conducted a follow up inspection to determine if the Site had adequately implemented BMPs that achieve BAT and BCT for a Risk Level 2 construction site. While standing at the intersection of Orlando Drive and Seville Way, San Diego Water Board Inspector, Frank Melbourn, warned Discharger representatives that the then failure to have erosion and sediment control BMPs on Seville Way was a violation of the Construction Storm Water Permit, and would likely result in a sediment discharge if there were to be a rain event. Discharger representatives claimed that if the Site were to have another rain event, they would build a dirt berm at the top of Seville Way to prevent runoff from discharging down Seville Way. Overall, the San Diego Water Board inspector, Wayne Chiu, found that the Discharger implemented corrective actions that largely addressed the violations identified in Notice of Violation No. R9-2015-0153.

II. FINDINGS

1. The Site received approximately 0.5 inches of rain in the last 24 hours. Muddy sediment runoff was observed on Orlando Drive in two places, and also at the intersection of Orlando Drive and Valencia Court. The sediment came off of graded housing pads with ineffective or non-existent erosion and sediment control BMPs.
2. Several areas were observed to be inactive, or could be scheduled to be inactive, without effective soil cover to control erosion. The lack of erosion controls in these areas contributed to unauthorized sediment discharges from the site. All construction sites are required to provide effective soil cover for inactive areas

Facility: Valencia Hills
Inspection Date: May 8, 2015

(i.e. areas that have been disturbed and not scheduled to be re-disturbed for at least 14 days) and all finished slopes, open space, utility backfill, and completed lots.

3. **Active areas** were observed to **lack appropriate erosion control BMPs** (runoff control and soil stabilization) to prevent erosion during storm events. Risk Level 2 construction sites are required to implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction.
4. Several slopes throughout the site were observed **without linear sediment controls** along the toe and grade breaks of exposed slopes. Risk Level 2 construction sites are required to apply linear sediment controls along the toe of the slope, face of the slopes, and at the grade breaks of exposed slopes to comply with sheet flow lengths given in Table 1 of Attachment D to the Construction Storm Water Permit.
5. Seville Way is a short steep graded dirt street without erosion or sediment control BMPs. The failure to control the runoff from Seville Way resulted in a direct discharge into an unnamed tributary to Chollas Creek. Lack of effective perimeter sediment controls resulted in an unauthorized sediment discharge from the site. All construction sites are required to establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.
6. **Lack of effective run-on and runoff controls** observed within and around the site which contributed to sediment discharges from the site. All construction sites are required to effectively manage run-on, all runoff within the site and all runoff that discharges off the site.

III. COMMENTS AND RECOMMENDATIONS

Comments

1. There were no site storm water or construction personnel present to correct deficient/failed BMPs or to cleanup discharged sediment. There were two security guards on site.
2. There is evidence that erosion controls were not adequately implemented for several inactive areas contributing to discharges of sediment from the site.
3. There is evidence that erosion controls were not adequately implemented for several active areas prior to storm events contributing to discharges of sediment from the site.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD-SAN DIEGO REGION

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Facility: Valencia Hills
Inspection Date: May 8, 2015

4. There is evidence that linear sediment controls were not adequately implemented for several exposed slopes contributing to slope erosion and discharges of sediment from the site.
5. There is evidence that perimeter sediment controls, as well as run-on and runoff controls, were not adequately implemented which contributed to discharges of sediment from the site.
6. There was evidence observed during the inspection that the site has not implemented BMPs to meet BCT Technology Based Effluent Limitations (TBELs) under Section V.A.2 of the CGP, as required for all construction sites, which resulted in the unauthorized discharges of sediment and sediment-laden water from the site.
7. There is evidence that either the QSP was not adequately identifying and recommending implementation of good site management "housekeeping," erosion control, sediment control, and run-on/runoff control BMPs, or the owner/developer was not directing the implementation of the BMPs as recommended by the QSP.
8. Failure to implement Rain Event Action Plan (REAP).

Recommendations

1. Issue a Notice of Violation for discharges of sediment from the site and failure to implement Risk Level 2 requirements of CGP.
2. Refer the site to the Compliance Assurance Unit to determine whether or not issuing formal enforcement action may be appropriate.

IV. SIGNATURE SECTION

Frank Melbourn
STAFF INSPECTOR


SIGNATURE

May 8, 2015
INSPECTION DATE

Chiara Clemente
REVIEWED BY SUPERVISOR


SIGNATURE

5/12/15
DATE

SMARTS:

Tech Staff Info & Use	
WDID	937C369143
Place ID	SM-828060
Inspection ID	2025608
Violation ID	857231 & 857232

Facility: Valencia Hills
Inspection Date: May 8, 2015



Photograph No. 1: 20150508_191716.jpg, taken by Frank Melbourn, San Diego Water Board

Photograph No. 1 looks west at Orlando Drive from San Altos Place. The photograph displays a **sediment discharge** from disturbed construction areas into the street. The sediment was an inch thick in some areas. Displayed slopes in the photograph show signs of erosion, and were lacking erosion and sediment control BMPs at their base. Parkway strips failed to have sediment control BMPs. There was no site personnel available to cleanup discharged sediment or maintain/reinforce failed BMPs. There was an absence of run-on/run-off control BMPs. For example there were no gravel bag chevrons or check dams along the street to slow down the runoff flow.

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Inspection Date: May 8, 2015



Photograph No. 2: 20150508_191734.jpg, taken by Frank Melbourn, San Diego Water Board

Photograph No. 2 looks southwest at Orlando Drive from San Altos Place. The photograph displays a **sediment discharge** from disturbed construction areas into the street. The photograph also displays unprotected (absent erosion control BMPs) disturbed soil and a lack of sediment controls above street gutters. The gravel bags deployed to protect the storm drain inlet were ineffective as evidenced by the turbid sediment laden storm water on the inside edges of the gravel bags. Again the use of gravel bag chevrons could have been implemented in the street.

Facility: Valencia Hills
Inspection Date: May 8, 2015



Photograph No. 3: 20150508_191955.jpg, taken by Frank Melbourn, San Diego Water Board

Photograph No. 3 looks northeast at the corner of Valencia Court and Orlando Drive from Orlando Drive. The photograph displays a **sediment discharge** from disturbed construction areas into the street. Except the area with plastic sheeting, displayed slopes in the photograph show signs of erosion, and were lacking erosion and sediment control BMPs at their base.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD-SAN DIEGO REGION

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Inspection Date: May 8, 2015



Photograph No. 4: 20150508_192214.jpg, taken by Frank Melbourn, San Diego Water Board

Photograph No. 4 looks northwest up Seville Way from Akins Avenue. The photograph displays disturbed soil without erosion control BMPs and sediment control BMPs.

Facility: Valencia Hills
Inspection Date: May 8, 2015



Photograph No. 5: 20150508_192234.jpg, taken by Frank Melbourn, San Diego Water Board

Photograph No. 5 looks southeast onto the unnamed tributary to Chollas Creek from the intersection of Seville Way and Akins Avenue. The photograph displays the **sediment discharge point** between the gap (identified by red arrow) in the site perimeter control BMPs into the unnamed tributary. A buildup of eroded sediment from the site can be seen at the base of the gravel bags.

Facility: Valencia Hills
Inspection Date: May 8, 2015



Photograph No. 6: 20150508_192253.jpg, taken by Frank Melbourn, San Diego Water Board

Photograph No. 6 looks northeast onto Akins Avenue from the intersection of Akins Avenue and Seville Way. The photograph displays disturbed soil **without erosion control BMPs** and **sediment control BMPs**. The photograph also displays perimeter control BMPs on the right hand side.

Chui, Wayne



Litigation
SERVICES

Job: 600593

Exhibit: 00007



Exhibit No. 19

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD - SAN DIEGO REGION
WATERSHED PROTECTION PROGRAM

FACILITY INSPECTION REPORT

FACILITY: Valencia
WDID/FILE NO.: 937C369143INSPECTION DATE/TIME: 5/13/2015; 11:30 am

REPRESENTATIVE(S) PRESENT DURING INSPECTION:

NAME: Wayne Chiu
NAME: Frank Melbourn
NAME: _____AFFILIATION: San Diego Water Board
AFFILIATION: San Diego Water Board
AFFILIATION: _____San Altos Lemon Grove LLC
NAME OF OWNER, AGENCY OR PARTY RESPONSIBLE FOR DISCHARGE
5780 Fleet Avenue
Carlsbad, CA 92008
OWNER MAILING ADDRESSBCA Development, Inc.
FACILITY OR DEVELOPER NAME (if different from owner)
1350 San Altos Place
Lemon Grove, CA 91945
FACILITY ADDRESSBen Anderson, 714-966-1544
OWNER CONTACT NAME AND PHONE #Same
FACILITY OR DEVELOPER CONTACT NAME AND PHONE #

APPLICABLE WATER QUALITY LICENSING REQUIREMENTS:

- | | |
|---|---|
| <input type="checkbox"/> MS4 URBAN RUNOFF REQUIREMENTS | <input type="checkbox"/> GENERAL OR INDIVIDUAL WASTE DISCHARGE REQUIREMENTS OR NPDES |
| <input checked="" type="checkbox"/> CONSTRUCTION GENERAL PERMIT | <input type="checkbox"/> GENERAL OR INDIVIDUAL WAIVER OF WASTE DISCHARGE REQUIREMENTS |
| <input type="checkbox"/> CALTRANS GENERAL PERMIT | <input type="checkbox"/> SECTION 401 WATER QUALITY CERTIFICATION |
| <input type="checkbox"/> INDUSTRIAL GENERAL PERMIT | <input type="checkbox"/> CWC SECTION 13264 |

INSPECTION TYPE (Check One):

- ☐ "A" TYPE COMPLIANCE--COMPREHENSIVE INSPECTION IN WHICH SAMPLES ARE TAKEN. (EPA TYPE S)
- ☐ "B" TYPE COMPLIANCE--A ROUTINE NONSAMPLING INSPECTION. (EPA TYPE C)
- ☒ NONCOMPLIANCE FOLLOW-UP--INSPECTION MADE TO VERIFY CORRECTION OF A PREVIOUSLY IDENTIFIED VIOLATION.
- ☐ ENFORCEMENT FOLLOW-UP--INSPECTION MADE TO VERIFY THAT CONDITIONS OF AN ENFORCEMENT ACTION ARE BEING MET.
- ☐ COMPLAINT--INSPECTION MADE IN RESPONSE TO A COMPLAINT.
- ☐ PRE-REQUIREMENT--INSPECTION MADE TO GATHER INFO. RELATIVE TO PREPARING, MODIFYING, OR RESCINDING REQUIREMENTS.
- ☐ NO EXPOSURE CERTIFICATION (NEC) - VERIFICATION THAT THERE IS NO EXPOSURE OF INDUSTRIAL ACTIVITIES TO STORM WATER.
- ☐ NOTICE OF TERMINATION REQUEST FOR INDUSTRIAL FACILITIES OR CONSTRUCTION SITES - VERIFICATION THAT THE FACILITY OR CONSTRUCTION SITE IS NOT SUBJECT TO PERMIT REQUIREMENTS.
- ☐ COMPLIANCE ASSISTANCE INSPECTION - OUTREACH INSPECTION DUE TO DISCHARGER'S REQUEST FOR COMPLIANCE ASSISTANCE.

INSPECTION FINDINGS:

Y WERE VIOLATIONS NOTED DURING THIS INSPECTION? (YES/NO/PENDING SAMPLE RESULTS)EXHIBIT 7
REPORTER D. Lytle
WITNESS W. Chiu
DATE 1-14-16

Facility: Valencia
Inspection Date: 5/13/2015

I. COMPLIANCE HISTORY / PURPOSE OF INSPECTION

On December 2, 2014, the City of Lemon Grove (City) issued a Stop Work/Notice of Violation to the Valencia construction site (WDID 9 37C369143) for failing to implement construction storm water best management practices (BMPs) required by local ordinances. The City's inspection report issued with the Stop Work/Notice of Violation noted inadequate implementation of erosion controls, entrance/exit stabilization, and stockpile management and warned the project manager that a "discharge is imminent" without adequate BMPs. The site was required to stop work and implement BMPs to be prepared for a storm event that occurred on December 3 and 4, 2014.

The site failed to implement BMPs before the storm, resulting in unauthorized discharges of sediment and sediment-laden storm water from the site to the City's municipal separate storm sewer system (MS4). The City issued a second Stop Work/Notice of Violation on December 4, 2014 for the illegal discharges to the City's MS4. The City conducted a follow up inspection on December 9, 2014 and noted the same BMP deficiencies identified before the December 3 and 4, 2014 storm event, as well as additional deficiencies in perimeter sediment controls. The inspection report provided recommendations for locations that needed to be addressed and types of BMPs. The site again failed to implement BMPs before a subsequent storm event that occurred on December 11, 2014, again resulting in unauthorized discharges of sediment and sediment-laden storm water from the site to the City's MS4. On December 11, 2014, the City issued an Administrative Citation to the site requiring BMPs to be implemented by December 15, 2014 before monetary penalties would begin. The Stop Work/Notice of Violation issued on December 2 and 4, 2014 and the Administrative Citation issued on December 11, 2014 by the City are attached to the end of this inspection report.

On December 15, 2014, Wayne Chiu of the San Diego Water Board inspected the site for compliance with the requirements of the Statewide Construction General Storm Water Permit, Order No. 2009-0009-DWQ (CGP). According to the Storm Water Multiple Application & Report Tracking System (SMARTS), the site is a Risk Level 2 construction site, disturbing over 18 acres, and owned by San Alto Lemon Grove LLC. The developer of the site is BCA Development, Inc. During the inspection, the San Diego Water Board observed evidence of inadequate implementation of stockpile management, vehicle storage and maintenance, erosion control, sediment control, run-on and runoff control, and inspection, maintenance, and repair requirements. In addition, there was evidence of inadequate implementation of additional erosion and sediment controls required for Risk Level 2 construction sites. On December 19, 2014, the San Diego Water Board issued Notice of Violation No. R9-2014-0153 to the Discharger and requested a written response demonstrating that the violations were corrected. The Discharger provided a written response, dated January 1, 2015. On January 26, 2015, the City provided written notification to the San Diego Water Board that the Stop Work had been removed for the site on January 22, 2015.

Facility: Valencia
Inspection Date: 5/13/2015

On March 27, 2015, the San Diego Water Board conducted a follow up inspection to determine if the site had adequately implemented BMPs that achieve BAT and BCT for a Risk Level 2 construction site. While standing at the intersection of Orlando Drive and Seville Way on the site, San Diego Water Board inspector, Frank Melbourn, warned Discharger representatives that the failure to have erosion and sediment control BMPs on Seville Way was a violation of the CGP, and would likely result in a sediment discharge from the site if there were to be a rain event. Discharger representatives claimed that if the site were to have another rain event, they would build a dirt berm at the top of Seville Way to prevent runoff from discharging down Seville Way. San Diego Water Board inspector, Wayne Chiu, found that the Discharger implemented corrective actions that largely addressed the violations identified in Notice of Violation No. R9-2015-0153.

On May 8, 2015, Frank Melbourn of the San Diego Water Board inspected the site following a rain event of approximately 0.5 inches. The inspector observed inadequate implementation of erosion controls in several inactive areas and active areas, perimeter sediment controls, linear sediment controls on several slopes, and run-on and runoff controls within and around the site. Evidence of sediment transport through the site observed on paved streets within the site, and an unauthorized discharge of sediment from the site to the Encanto Channel (a tributary to Chollas Creek) and Akins Road adjacent to the site.

On May 13, 2015, Wayne Chiu and Frank Melbourn of the San Diego Water Board conducted a subsequent inspection to determine if the site was implementing BMPs in preparation for a rain event forecasted for the following day.

II. FINDINGS

1. Several stockpiles observed without adequate containment (See Photos 1 and 2). All construction sites are required to contain and securely protect stockpiled waste material from wind and rain at all times unless actively being used.
2. Construction equipment and vehicles observed without appropriate BMPs (e.g. drip pans) to prevent oil, grease, or fuel to leak in to the ground, storm drains, or surface waters (See Photo 3). All construction sites are required to prevent oil, grease or fuel to leak in to the ground, storm drains, or surface waters, and to place all equipment and vehicles, which are to be fueled, maintained and stored in a designated area fitted with appropriate BMPs.
3. Several areas were observed to be inactive, or could be scheduled to be inactive, without effective soil cover to control potential erosion. Several completed building pads and several inactive slopes (See Photos 4 through 6) lacked any effective soil cover for erosion control. All construction sites are required to provide effective soil cover for inactive areas (i.e. areas that have been disturbed and not scheduled to be re-disturbed for at least 14 days) and all finished slopes, open space, utility backfill, and completed lots.

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4. **Active areas** were observed to **lack appropriate erosion control BMPs** (runoff control and soil stabilization) to prevent erosion during storm events (See Photos 7 through 12). Risk Level 2 construction sites are required to implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction.
5. Several slopes throughout the site were observed to **lack linear sediment controls** along the toe and grade breaks of exposed slopes (See Photos 1, 5, 6, 8, 9, 11, and 12). Risk Level 2 construction sites are required to apply linear sediment controls along the toe of the slope, face of the slopes, and at the grade breaks of exposed slopes to comply with sheet flow lengths given in Table 1 of Attachment D to the CGP.
6. Lack of effective perimeter sediment controls observed (See Photos 13 and 14). All construction sites are required to establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.
7. **Lack of effective run-on and runoff controls** observed within and around the site (See Photos 7 through 14). All construction sites are required to effectively manage run-on, all runoff within the site and all runoff that discharges off the site.
8. There were no personnel on site that appeared to be implementing BMPs to prepare for the forecasted rain event, such as erosion control measures or controls within the site to reduce sheet flow runoff lengths in active areas, or inspecting the perimeter controls for areas requiring additional attention, repairs, or maintenance.

III. COMMENTS AND RECOMMENDATIONS

Comments

1. There is evidence that good site management "housekeeping" BMPs were not being adequately implemented (See Findings 1 and 2).
2. There is evidence that erosion controls were not adequately implemented for several inactive areas contributing to discharges of sediment from the site (See Finding 3).
3. There is evidence that erosion controls were not adequately implemented for several active areas prior to storm events (See Finding 4).
4. There is evidence that linear sediment controls were not adequately implemented for several exposed slopes (See Finding 5).

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5. There is evidence that perimeter sediment controls, as well as run-on and runoff controls, were not adequately implemented (See Findings 6 and 7).
6. There is evidence that either the QSP was not adequately identifying and recommending implementation of good site management "housekeeping," erosion control, sediment control, and run-on/runoff control BMPs, or the owner/developer was not directing the implementation of the BMPs as recommended by the QSP (See Finding 8).
7. There was evidence observed during the inspection that the site has not implemented BMPs to meet BCT Technology Based Effluent Limitations (TBELs) under Section V.A.2 of the CGP, as required for all construction sites, which resulted in the unauthorized discharges of sediment and sediment-laden water from the site observed or documented on December 4, 11, and 15, 2014 (See Compliance History discussion and Findings 1 through 8).

Recommendations

The Discharger has failed to maintain compliance with the requirements of the CGP even after repeated enforcement actions by the City of Lemon Grove and the San Diego Water Board. A formal enforcement action should be issued to the Discharger for this continued and repeated noncompliance with the requirements of the CGP.

IV. SIGNATURE SECTION


Wayne Chiu
STAFF INSPECTOR


SIGNATURE

5/13/2015

INSPECTION DATE

Eric Becker
REVIEWED BY SUPERVISOR


SIGNATURE

5/20/15
DATE

SMARTS:

Tech Staff Info & Use	
WDID	937C369143
Place ID	SM-828060
Inspection ID	2025695
Violation ID	857243

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD-SAN DIEGO REGION

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Inspection Date: 5/13/2015



Photo 1



Photo 2

Photos 1 and 2 shows soil stockpiles covered with black plastic without adequate containment. Slope in Photo 1 covered with white plastic lacks linear sediment controls at the based and at grade break along top of slope.



Photo 3

Photo 3 shows construction vehicle without appropriate BMPs (e.g. drip pans) to prevent oil, grease, or fuel to leak in to the ground, storm drains, or surface waters.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD-SAN DIEGO REGION

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Photo 4



Photo 5



Photo 6

Photos 4 through 6 show several **inactive areas**, or areas that can be made to be inactive, **lacking any effective soil cover**. Photo 4 shows a completed lot that could have been stabilized with an effective soil cover and protected from activity. Photo 5 shows a slope that appeared to be inactive and potentially finished without effective soil cover. Photo 6 shows a slope in front of a building being constructed that could have been stabilized with an effective soil cover and made to be inactive.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD-SAN DIEGO REGION

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Facility: Valencia
Inspection Date: 5/13/2015



Photo 7



Photo 8



Photo 9



Photo 10



Photo 11



Photo 12

Photos 9 through 12 showed several **active areas** of the site that **lacked** any evidence of **soil stabilization** measures ready to be implemented to reduce erosion potential or other measures to reduce sheet flow lengths. Photos 8, 9, 11, and 12 are slopes toward where runoff would flow toward a low point and perimeter of the site.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD-SAN DIEGO REGION

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Facility: Valencia
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Photo 13



Photo 14

Photos 13 and 14 show areas of the perimeter where additional attention, repair, or maintenance is necessary to ensure the site has effective perimeter sediment controls to prevent erosion and sediment discharges from the site.

Chui, Wayne



Litigation
SERVICES

Job: 600593

Exhibit: 00008



Productionc8

From: Chiu, Wayne@Waterboards
Sent: Tuesday, May 12, 2015 9:46 AM
To: Ben Anderson (bencanderson@bcadevelopment.com)
Cc: Melbourn, Frank@Waterboards; Clemente, Chiara@Waterboards; Becker, Eric@Waterboards; 'BENANDERSO@aol.com'
Subject: RE: Administrative Civil Liability Complaint for Valencia (WDID 937C369143; SM-828060)

Hi Ben,

A San Diego Water Board inspector went by the site on Friday last week and observed evidence of additional sediment discharges from the site due to inadequate implementation of erosion and sediment control BMPs required for a Risk Level 2 construction site. I'll send you a copy of the inspection report when it is completed.

In light of this new information and evidence of noncompliance, we need to re-evaluate how the San Diego Water Board should proceed with the ACL Complaint. So, at this time I have to withdraw my offer to meet with you to discuss your case. I will contact you when we are ready to discuss the potential next steps for the ACL Complaint for this site.

Thanks,
Wayne Chiu, PE
Water Resource Control Engineer
Storm Water Management Unit
California Regional Water Quality Control Board
San Diego Region
2375 Northside Drive, Suite 100
San Diego, CA 92108
Direct Line: (619) 521-3354
Main Line: (619) 516-1990

From: BENANDERSO@aol.com [mailto:BENANDERSO@aol.com]
Sent: Tuesday, May 12, 2015 7:27 AM
To: Chiu, Wayne@Waterboards
Subject: Administrative Civil Liability Complaint for Valencia (WDID 937C3691...

Hi Wayne-

Hope you got my voice mails on Friday and Monday. I will talk to the rest of the team but let's set June 3rd @ 10:00 AM as the tentative time to meet.

Call me when you get a chance @ 949-233-6700. Thanks.

Ben-

From: bencanderson@bcadevelopment.com
To: benanderso@aol.com
Sent: 5/8/2015 11:21:58 A.M. Pacific Daylight Time
Subj: FW: Administrative Civil Liability Complaint for Valencia (WDID 937C369143; SM-828060)

EXHIBIT 8
REPORTER D. Lytle
WITNESS W. Chiu
DATE 1-14-16

From: Chiu, Wayne@Waterboards [<mailto:Wayne.Chiu@waterboards.ca.gov>]
Sent: Friday, May 08, 2015 9:01 AM
To: Ben Anderson (bencanderson@bcadevelopment.com)
Cc: Becker, Eric@Waterboards; Melbourn, Frank@Waterboards; Clemente, Chiara@Waterboards; Ellison, Kailyn@Waterboards
Subject: Administrative Civil Liability Complaint for Valencia (WDID 937C369143; SM-828060)

Ben,

The San Diego Water Board is prepared to issue an Administrative Civil Liability (ACL) Complaint (i.e. monetary penalties) for violations at the Valencia housing development construction site in Lemon Grove. I think it would make sense for us to meet and discuss this matter prior to issuing the ACL Complaint. An hour should be sufficient. I am available to meet at my office on the following dates and times:

May 28 at 1:30 p.m.

June 1 at 10 a.m. or 1:30 p.m.

June 3 at 10 a.m. or 1:30 p.m.

Please let me know which date and time works best for you.

Thanks,

Wayne Chiu, PE
Water Resource Control Engineer
Storm Water Management Unit
California Regional Water Quality Control Board
San Diego Region
2375 Northside Drive, Suite 100

San Diego, CA 92108

Direct Line: (619) 521-3354

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