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8 **CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD**
9 **SAN DIEGO REGION**
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11 IN THE MATTER OF:) **DECLARATION OF DEE DEE**
12 ADMINISTRATIVE CIVIL LIABILITY COMPLAINT) **EVERETT IN SUPPORT OF SAN**
13 NO. R9-2015-0110) **ALTOS – LEMON GROVE, LLC'S**
14 AGAINST SAN ALTOS – LEMON GROVE, LLC) **LEGAL AND TECHNICAL**
15) **ARGUMENTS AND ANALYSIS IN**
16) **OPPOSITION TO ADMINISTRATIVE**
) **CIVIL LIABILITY COMPLAINT NO.**
) **R9-2015-0110**
)
)
)

17 I, Dee Dee Everett, hereby declare as follows:

18 1. I am a paralegal with the law firm of Oppen & Varco LLP, counsel for San Altos
19 – Lemon Grove, LLC. I know the following of my own personal knowledge and if called as a
20 witness, I could and would competently testify to the matters discussed herein.

21 2. Attached as Exhibit A are true and correct copies of excerpts of the Deposition of
22 Wayne Chiu dated January 14, 2016.

23 3. Attached as Exhibit B are true and correct copies of excerpts of the Deposition of
24 Chiara Clemente dated January 22, 2016.

25 4. Attached as Exhibit C are true and correct copies of excerpts of the Deposition of
26 Leon Peter Firsht dated December 28, 2015.

27 5. Attached as Exhibit D are true and correct copies of excerpts of the Deposition of
28 Gary Harper dated December 28, 2015.

6. Attached as Exhibit E are true and correct copies of excerpts of the Deposition of Frank Melbourn, Volume I dated January 13, 2016.

7. Attached as Exhibit F are true and correct copies of excerpts of the Deposition of Frank Melbourn, Volume II dated January 14, 2016.

8. Attached as Exhibit G are true and correct copies of excerpts of the Deposition of Tad Nakatani dated December 29, 2015.

9. Attached as Exhibit H are true and correct copies of excerpts of the Deposition of Brian Alan Nemerow dated December 29, 2015.

10. Attached as Exhibit I are true and correct copies of excerpts of the Deposition of John Robert Quenzer dated December 29, 2015.

11. Attached as Exhibit J are true and correct copies of excerpts of the Deposition of Malik Tamimi dated December 28, 2015.

I declare, subject to penalty of perjury under the laws of the state of California, that the foregoing is true and correct.

Executed this 3rd day of February, 2016, at San Diego, California.

Dee Dee Everett
Dee Dee Everett

EXHIBIT A

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

1 09:27 Q. Did you ask anyone what they were doing with
2 those stockpiles?

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

5 09:27 Q. They told you -- They told you after you left
6 or --

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

10 09:27 Q. But they didn't state what they were doing with
11 those stockpiles?

12 A. No.

13 Q. And you didn't ask?

14 A. I didn't ask.

15 09:27 Q. Okay.

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

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

21 A. Well, my understanding is, any area of a site
22 that has been disturbed can be considered active.
23 However, if no activity to disturb an active area is
24 scheduled for 14 days or longer, then it becomes
25 09:28 inactive on day 15.

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.

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.

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.

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

1 10:18 here. But I'd say they did significant improvements.

2 MS. BERESFORD:

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

4 A. Verbally.

5 10:18 Q. Was there anything in writing to follow up?

6 A. No.

7 Q. When did you go to the site next?

8 How about I show you this exhibit?

9 MS. BERESFORD: Can you please --

10 10:19 THE WITNESS: That will help.

11 MS. BERESFORD: Can you please mark this.

12 (EXHIBIT 7)

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

15 10:19 MS. BERESFORD:

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

18 A. Looks like I was out there in May.

19 Q. Can you please state for the record what

20 10:19 Exhibit 7 is.

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

24 But it was an inspection report for an inspection

25 10:19 that was conducted at the site on May 13th, 2015.

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.

1 10:27 that most projects refer to.

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

4 A. I think it does provide good guidance as to how
5 10:27 to implement BMPs.

6 Q. Okay.

7 Going back to the May 13 report, finding number 3
8 talks about "Several areas were observed to be inactive,
9 or scheduled to be inactive or could be scheduled to be
10 10:27 inactive."

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

13 A. There were several lots that appeared to be
14 completed lots that did not need to have additional
15 10:27 activity on them. So as I said, you know, they -- they
16 may have been storing things there or driving there, but
17 that doesn't necessarily make them active. And they
18 probably shouldn't have been areas where they were
19 storing things and actively driving on them. There were
20 10:28 plenty of other areas where they could have done that.

21 So photo 4 shows an example of that. Photo 5
22 showed a slope that I saw that I -- it appeared at that
23 time to look to be inactive. And given the guidance I
24 had provided to that site, I expected them to be
25 10:28 stabilizing any and all slopes as soon as they possibly

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

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 WD - Ex 810 Dep
DATE 5-14-16

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

Main Line: (619) 516-1990

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Version: 2015.0.5863 / Virus Database: 4342/9725 - Release Date: 05/08/15

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.

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.

EXHIBIT B

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 CHIARA CLEMENTE, witness
herein, noticed by Oppen & Varco, taken at
225 Broadway, Suite 1900, San Diego,
California, on Friday, January 22, 2016, at
9:07 a.m., before Marc Volz, CSR 2863, RPR, CRR

Hutchings Number 601699

1 Q. Are you able to tell me why there's no
2 violation asserted for December 14?

3 A. I don't know.

4 MS. DRABANDT: Objection.

5 MS. BERESFORD:

6 Q. Can you please again go back to page 6 of the
7 Technical Analysis for the Encinitas ACL. I'm at the
8 very bottom paragraph of that page where it says
9 "San Diego Water Board staff inspected the site on
10 December 17, 2012. The inspection revealed that
11 temporary erosion control BMPs identified in the city's
12 SWPPP (soil binders and velocity dissipation devices)
13 were not implemented. The inspection also revealed that
14 most of the sediment control BMPs identified in the
15 SWPPP (sediment traps, fiber rolls, street sweeping,
16 storm drain inlet protection and construction entrance
17 and exit stabilization) were not implemented or were
18 totally ineffective as shown in following paragraphs."
19 Do you see that paragraph?

20 A. Yes.

21 Q. Are things like failure to use fiber rolls and
22 soil binders evidence of failure to apply linear
23 sediment controls?

24 A. Yes.

25 Q. Does the Encinitas ACL allege a specific

1 violation for failure to apply linear sediment controls?

2 A. No.

3 Q. Why not?

4 MS. DRABANDT: Objection. Attorney-client
5 privilege.

6 MS. BERESFORD:

7 Q. Was the failure to apply linear sediment
8 controls, as described by failure to use soil binders,
9 fiber rolls, et cetera, considered one of the basis for
10 the violation of failure to implement adequate controls?

11 A. Yes.

12 Q. Why did you incorporate it into failure to
13 implement adequate controls and not have a separate
14 violation?

15 MS. DRABANDT: Objection. Attorney-client
16 privileged.

17 MS. BERESFORD:

18 Q. Does the San Altos complaint allege both
19 failure to have adequate controls in an active or
20 inactive area and a separate violation for failure to
21 have linear sediment controls?

22 A. Yes.

23 Q. Why was a separate approach taken there?

24 MS. DRABANDT: Objection. Attorney-client
25 privileged.

1 MS. BERESFORD: Let the record reflect we're trying
2 to determine how the fair and consistent policy is
3 applied into very different complaints and the Water
4 Board will not answer that question.

5 MS. BERESFORD:

6 Q. Let's look at page 8 of the Technical Analysis
7 for the Encinitas ACL.

8 MS. DRABANDT: Is now a good time for a break or do
9 you want to wait a little?

10 MS. BERESFORD: If you would like to take a break,
11 you can. I leave it up to the witness.

12 THE WITNESS: Sure. Let's take a break.

13 MS. BERESFORD: Okay. Great.

14 (Recess.)

15 MS. BERESFORD:

16 Q. I'm going to go back to something. We talked
17 earlier -- and please state it differently if I'm
18 mischaracterizing it -- that the Encinitas ACL alleged
19 violations for failure to implement adequate controls,
20 structures and management practice at the project; that
21 it did not distinguish between inactive and active
22 areas.

23 A. Correct.

24 Q. The San Altos complaint alleges violations
25 specific to active failure to have BMPs on active areas

1 and failure to have sufficient BMPs on inactive areas;
2 is that correct?

3 A. Correct.

4 Q. Can you describe for me the unique facts of the
5 San Altos case that caused this different approach?

6 MS. DRABANDT: Objection to the point where any
7 attorney-client privileged information regarding
8 strategies.

9 If you can answer, generally speaking, go ahead.

10 THE WITNESS: The unique facts of the San
11 Altos-Lemon Grove case that did what?

12 MS. BERESFORD:

13 Q. That resulted in having separate violations for
14 inactive and active areas versus one allegation overall
15 for lack of BMPs.

16 A. No, I cannot describe them.

17 Q. Did you discuss that issue with Mr. Melbourn?

18 A. No.

19 Q. I'm sorry?

20 A. No.

21 Q. We were also talking about that the Encinitas
22 ACL did not allege specific violations for failure to
23 have linear sediment controls, and the San Altos
24 complaint does allege specific violations for linear
25 sediment controls. Can you describe the unique facts

1 areas that I considered either unsubstantiated or that
2 raised questions and I would discuss those, but I don't
3 specifically recall what areas we discussed.

4 MS. BERESFORD: Let's mark this, please, as
5 Exhibit number 4.

6 Q. Can you please identify this document.

7 A. This is Exhibit Number 8 to the site's
8 complaint -- or to the site's technical report, which is
9 the December 15, 2014 Facility Inspection Report written
10 by Wayne Chiu.

11 Q. Have you seen this document before?

12 A. Yes, I believe so.

13 Q. If you could please turn to page 7 and look at
14 photo 4. Then down in the right-hand corner there's
15 text that says "Photos 4 through 7 show completed
16 building pads and adjacent slopes without any erosion
17 controls." Do you see that?

18 A. Uh-huh.

19 Q. And then about six lines up from the bottom,
20 part of the sentence reads "Photos 4 through 7 --" I'll
21 start at the beginning. "Sediment from completed lots
22 and slopes in photos 4 through 7 transported to road in
23 photo 8 lacking any erosion control measures during
24 storm events, and inadequate runoff controls to reduce
25 and prevent transport of sediment through site." Do you

1 see that?

2 A. Uh-huh.

3 Q. I'd like to then go to the findings on page 3.

4 A. Uh-huh.

5 Q. The findings say "Several areas were observed
6 to be inactive without effective soil control. See
7 photos 4 through 7." Do you see that?

8 A. I see "Several areas were observed to be
9 inactive, or could be scheduled to be inactive, without
10 effective soil cover to control potential erosion," dot,
11 dot, dot.

12 Q. So is photo 4 the basis for violation number 4:
13 "Failure to have, implement erosion control BMPs in
14 inactive areas"?

15 A. I'm sure it was part of the evidence that was
16 put into the allegations of violation for failure to
17 have adequate erosion control.

18 Q. Is photo 4 also used -- and I'm looking at the
19 language now at the bottom of page 7, to have inadequate
20 run-off controls?

21 A. So that's interesting. I'm not quite sure I
22 understand that sentence very well because -- let me
23 read the sentence. "Sediment from completed lots and
24 slopes in photos 4 through 7 transported to road in
25 photo 8 lacking any erosion control measures during

1 storm events, and inadequate runoff controls to reduce
2 and prevent transport of sediment." So I would have to
3 look and see whether photo 8 refers to inadequate
4 run-off controls.

5 Q. Photo 8 is right there on page 7. Would you
6 look at that?

7 A. I would defer to the technical staff on this.

8 Q. Let's go back to page 3.

9 A. Of the inspection report?

10 Q. Yes, please. Going to finding number 3, in
11 reading that text would you agree that photo 4 was one
12 of the basis to allege a violation of failure to have
13 sufficient BMPs in an inactive area?

14 A. What I read from this is that -- let me finish
15 reading it first, sorry. So the only thing I can say
16 with certainty is that photo 4 is evidence of
17 effective -- of lacking effective soil cover for erosion
18 control.

19 Q. Does the first sentence of finding 3 specify
20 that it was for areas observed to be inactive?

21 A. Yes. It says several areas were observed to be
22 inactive. And then the next sentence says "Several
23 completed building pads and several inactive slopes
24 lacked any effective soil cover."

25 Q. Then going to finding number 5, can you please

1 read that first sentence?

2 A. "Several slopes throughout the site were
3 observed to lack linear sediment controls along the toe
4 and grade breaks of exposed slopes. See photos 4
5 through 7."

6 Q. So were photos 4 through 7 used as evidence to
7 allege violations of failure to have linear sediment
8 controls?

9 A. Yes.

10 Q. Were photos 4 through 7 used to support the
11 alleged violation of failure to have effective soil
12 cover for inactive areas? Going back up to number 3.

13 A. Possibly.

14 Q. If you could please turn to page 4. Finding
15 number 7 says "Lack of effective run-on and run-off
16 controls observed within and around the site which
17 contributed to sediment discharges from the site. See
18 photos 4 and 14." Do you see that?

19 A. Uh-huh.

20 Q. So was photo 4 used as evidence for the
21 allegation of failure to have effective run-on and
22 run-off controls?

23 A. Yes.

24 Q. If you go to number 6 above, please. It says
25 "Lack of effective perimeter sediment controls observed

1 which resulted in unauthorized sediment discharges from
2 the site. See photos 9 through 14."

3 A. I'm sorry, where are we?

4 Q. I'm sorry. Page 4 of the exhibit.

5 A. Number 6?

6 Q. Number 6. It says "Lack of effective perimeter
7 sediment controls observed which resulted in
8 unauthorized sediment discharges from the site. See
9 photos 9 through 14." You see that?

10 A. Yes.

11 Q. So was photo 14 used as evidence to allege
12 failure to have effective perimeter sediment controls?

13 A. Yes.

14 Q. And then going to number 7, photo 14, was that
15 used to establish lack of effective run-on and run-off
16 controls?

17 A. Yes.

18 MS. BERESFORD: Can we please mark this exhibit as
19 number 5.

20 Q. Can you please state what Exhibit 5 is?

21 A. This is Exhibit Number 18 to the Valencia
22 technical report for the administrative civil liability
23 complaint, which is a May 8, 2015 Facility Inspection
24 Report conducted by Frank Melbourn.

25 Q. Are you familiar with this document?

1 areas that I considered either unsubstantiated or that
2 raised questions and I would discuss those, but I don't
3 specifically recall what areas we discussed.

4 MS. BERESFORD: Let's mark this, please, as
5 Exhibit number 4.

6 Q. Can you please identify this document.

7 A. This is Exhibit Number 8 to the site's
8 complaint -- or to the site's technical report, which is
9 the December 15, 2014 Facility Inspection Report written
10 by Wayne Chiu.

11 Q. Have you seen this document before?

12 A. Yes, I believe so.

13 Q. If you could please turn to page 7 and look at
14 photo 4. Then down in the right-hand corner there's
15 text that says "Photos 4 through 7 show completed
16 building pads and adjacent slopes without any erosion
17 controls." Do you see that?

18 A. Uh-huh.

19 Q. And then about six lines up from the bottom,
20 part of the sentence reads "Photos 4 through 7 --" I'll
21 start at the beginning. "Sediment from completed lots
22 and slopes in photos 4 through 7 transported to road in
23 photo 8 lacking any erosion control measures during
24 storm events, and inadequate runoff controls to reduce
25 and prevent transport of sediment through site." Do you

1 see that?

2 A. Uh-huh.

3 Q. I'd like to then go to the findings on page 3.

4 A. Uh-huh.

5 Q. The findings say "Several areas were observed
6 to be inactive without effective soil control. See
7 photos 4 through 7." Do you see that?

8 A. I see "Several areas were observed to be
9 inactive, or could be scheduled to be inactive, without
10 effective soil cover to control potential erosion," dot,
11 dot, dot.

12 Q. So is photo 4 the basis for violation number 4:
13 "Failure to have, implement erosion control BMPs in
14 inactive areas"?

15 A. I'm sure it was part of the evidence that was
16 put into the allegations of violation for failure to
17 have adequate erosion control.

18 Q. Is photo 4 also used -- and I'm looking at the
19 language now at the bottom of page 7, to have inadequate
20 run-off controls?

21 A. So that's interesting. I'm not quite sure I
22 understand that sentence very well because -- let me
23 read the sentence. "Sediment from completed lots and
24 slopes in photos 4 through 7 transported to road in
25 photo 8 lacking any erosion control measures during

1 storm events, and inadequate runoff controls to reduce
2 and prevent transport of sediment." So I would have to
3 look and see whether photo 8 refers to inadequate
4 run-off controls.

5 Q. Photo 8 is right there on page 7. Would you
6 look at that?

7 A. I would defer to the technical staff on this.

8 Q. Let's go back to page 3.

9 A. Of the inspection report?

10 Q. Yes, please. Going to finding number 3, in
11 reading that text would you agree that photo 4 was one
12 of the basis to allege a violation of failure to have
13 sufficient BMPs in an inactive area?

14 A. What I read from this is that -- let me finish
15 reading it first, sorry. So the only thing I can say
16 with certainty is that photo 4 is evidence of
17 effective -- of lacking effective soil cover for erosion
18 control.

19 Q. Does the first sentence of finding 3 specify
20 that it was for areas observed to be inactive?

21 A. Yes. It says several areas were observed to be
22 inactive. And then the next sentence says "Several
23 completed building pads and several inactive slopes
24 lacked any effective soil cover."

25 Q. Then going to finding number 5, can you please

1 read that first sentence?

2 A. "Several slopes throughout the site were
3 observed to lack linear sediment controls along the toe
4 and grade breaks of exposed slopes. See photos 4
5 through 7."

6 Q. So were photos 4 through 7 used as evidence to
7 allege violations of failure to have linear sediment
8 controls?

9 A. Yes.

10 Q. Were photos 4 through 7 used to support the
11 alleged violation of failure to have effective soil
12 cover for inactive areas? Going back up to number 3.

13 A. Possibly.

14 Q. If you could please turn to page 4. Finding
15 number 7 says "Lack of effective run-on and run-off
16 controls observed within and around the site which
17 contributed to sediment discharges from the site. See
18 photos 4 and 14." Do you see that?

19 A. Uh-huh.

20 Q. So was photo 4 used as evidence for the
21 allegation of failure to have effective run-on and
22 run-off controls?

23 A. Yes.

24 Q. If you go to number 6 above, please. It says
25 "Lack of effective perimeter sediment controls observed

1 which resulted in unauthorized sediment discharges from
2 the site. See photos 9 through 14."

3 A. I'm sorry, where are we?

4 Q. I'm sorry. Page 4 of the exhibit.

5 A. Number 6?

6 Q. Number 6. It says "Lack of effective perimeter
7 sediment controls observed which resulted in
8 unauthorized sediment discharges from the site. See
9 photos 9 through 14." You see that?

10 A. Yes.

11 Q. So was photo 14 used as evidence to allege
12 failure to have effective perimeter sediment controls?

13 A. Yes.

14 Q. And then going to number 7, photo 14, was that
15 used to establish lack of effective run-on and run-off
16 controls?

17 A. Yes.

18 MS. BERESFORD: Can we please mark this exhibit as
19 number 5.

20 Q. Can you please state what Exhibit 5 is?

21 A. This is Exhibit Number 18 to the Valencia
22 technical report for the administrative civil liability
23 complaint, which is a May 8, 2015 Facility Inspection
24 Report conducted by Frank Melbourn.

25 Q. Are you familiar with this document?

1 A. Yes.

2 MS. BERESFORD: I apologize. Can we go off the
3 record for a moment, please.

4 (Recess.)

5 MS. BERESFORD:

6 Q. I would like to go back to -- is Exhibit 5 to
7 the deposition Exhibit Number 18 to the ACL Technical
8 Analysis?

9 A. Yes.

10 Q. Yes, please. Look at that. I would like to
11 look at page 6 which has photograph number 1.

12 A. Uh-huh.

13 Q. Was this photograph used as evidence to show
14 the violation of failure to have sufficient linear
15 sediment controls?

16 A. I don't know.

17 Q. Looking at the third sentence underneath
18 photograph number 1, it says "Displayed slopes in the
19 photograph show signs of erosion, and were lacking
20 erosion and sediment control BMPs at their base." Is
21 that discussing lack of linear sediment controls?

22 A. Yes. But the question was, was it used in the
23 violation.

24 Q. Okay. So you believe it shows evidence of lack
25 of linear sediment controls, but you don't know if that

1 was the basis for the violation for this day.

2 A. Correct.

3 Q. The second to the last sentence also says
4 "There was an absence of run-on/run-off control BMPs."
5 Do you see that?

6 A. Yes.

7 Q. Do you know if these facts were used for the
8 basis of alleging failure to have sufficient run-on and
9 run-off control BMPs?

10 A. I do not know.

11 Q. Let's look at photograph number 2. The second
12 sentence says "The photograph also displays unprotected
13 (absent erosion control BMPs) disturbed soil and a lack
14 of sediment controls above street gutters." Do you see
15 that?

16 A. Yes.

17 Q. Do you think this photograph was used to
18 establish lack of perimeter sediment controls at the
19 site?

20 A. I do not know but I suspect so.

21 Q. If you can look at photograph number 3. The
22 second sentence says "The photograph displays a sediment
23 discharge from disturbed construction areas into the
24 street." Does this show a failure to have sufficient
25 linear sediment controls?

1 A. I do not know.

2 Q. The next sentence says "Except the area with
3 plastic sheeting, displayed slopes in the photograph
4 show sign of erosion, and were lacking erosion and
5 sediment control BMPs at their base."

6 A. So I believe the photo provides evidence of
7 lacking erosion and sediment control BMPs at the base.
8 I do not know if it was used in the allegations.

9 Q. The language is not always precise, so I didn't
10 hear. Do you think it shows failure to have sufficient
11 linear sediment controls?

12 A. I would defer to technical staff.

13 Q. I have the same question for photograph
14 number 4. It says "The photograph displays disturbed
15 soil without erosion control BMPs and sediment control
16 BMPs." Does that mean linear sediment control BMPs?

17 A. I would defer to technical staff.

18 Q. What other sediment control BMPs are there?

19 A. I would defer to technical staff.

20 Q. I'm just saying in general. If you call
21 sediment controls, is there something different between
22 sediment control BMPs and linear sediment control BMPs?

23 A. I don't know.

24 Q. Then I would have the same question about
25 photograph number 6. It says "The photograph displays

1 disturbed soil without erosion control BMPs and sediment
2 control BMPs." Does that mean linear sediment control
3 BMPs?

4 A. I would, once again, defer to technical staff.
5 I do not know the answer.

6 MS. BERESFORD: Let's please mark this as Exhibit
7 Number 6.

8 Q. Can you please identify exhibit number 6 for
9 me.

10 A. This is Exhibit Number 19 to the technical
11 report for the San Altos-Lemon Grove complaint. It is a
12 Facility Inspection Report for the site on May 13, 2015,
13 conducted by -- or written by Wayne Chiu.

14 Q. Are you familiar with this document?

15 A. I am.

16 Q. Can you please look at page 3?

17 A. Page what?

18 Q. 3. Looking at finding number 3, at the bottom
19 of page 3 it says "Several areas were observed to be
20 inactive, or could be scheduled to be inactive, without
21 effective soil cover to control potential erosion."

22 A. Uh-huh.

23 Q. "Several completed building pads and several
24 inactive slopes (See photos 4 through 6) lacked any
25 effective soil cover for erosion control."

1 A. Uh-huh.

2 Q. Then if you go and look at pages -- page 7,
3 photos 4 through 6. And particularly photo 5 through 6.

4 A. Uh-huh.

5 Q. Were these photographs used to establish
6 failure to have sufficient BMPs in inactive areas?

7 A. I would presume so but I do not know for sure.

8 Q. And then going back to page 4 up in the
9 findings, paragraph number 5 says "Several slopes
10 throughout the site were observed to lack linear
11 sediment controls along the toe and grade breaks of
12 exposed slopes (See photos 1, 5, 6, 8, 9, 11, and 12).
13 So were photos 5 and 6 also used to establish failure to
14 have sufficient linear sediment controls?

15 A. Yes. Or it appears so.

16 Q. Paragraph 4 says "Active areas were observed to
17 lack appropriate control BMPs (run-off control and soil
18 stabilization) to prevent erosion during storm events.
19 See photos 7 through 12." You can look at photos 7
20 through 12 on page 8. Were those photos used to
21 establish the violation of failure to have sufficient
22 BMPs in active areas?

23 A. Sufficient erosion control BMPs?

24 Q. Yes.

25 A. Yes, I would presume so.

1 Q. Does finding number 4 also say that those
2 photos were used to establish failure to have sufficient
3 run-off control?

4 A. If those same photo numbers were alleged, can
5 we just say that for all of them?

6 Q. Well, I'd like to but, unfortunately, I think
7 we have to go through this process. So were photos 7
8 through 12 also used to establish failure to effectively
9 manage run-off control?

10 A. Yes. Run-on and run-off controls.

11 Q. And that's discussed in finding number 7 below;
12 is that correct?

13 A. Correct.

14 Q. Then going to finding number 6 states that
15 "Lack of effective perimeter sediment controls observed
16 (See photos 13 and 14)." So was photo 14 also used to
17 establish lack of effective perimeter sediment control?

18 A. Yes.

19 Q. And in finding number 7 below it says photo 14
20 was also used to establish lack of effective run-on and
21 run-off controls; is that correct?

22 A. Yes.

23 MS. BERESFORD: Can we please mark this as our next
24 exhibit.

25 THE WITNESS: Number 7.

1 disturbed soil without erosion control BMPs and sediment
2 control BMPs." Does that mean linear sediment control
3 BMPs?

4 A. I would, once again, defer to technical staff.
5 I do not know the answer.

6 MS. BERESFORD: Let's please mark this as Exhibit
7 Number 6.

8 Q. Can you please identify exhibit number 6 for
9 me.

10 A. This is Exhibit Number 19 to the technical
11 report for the San Altos-Lemon Grove complaint. It is a
12 Facility Inspection Report for the site on May 13, 2015,
13 conducted by -- or written by Wayne Chiu.

14 Q. Are you familiar with this document?

15 A. I am.

16 Q. Can you please look at page 3?

17 A. Page what?

18 Q. 3. Looking at finding number 3, at the bottom
19 of page 3 it says "Several areas were observed to be
20 inactive, or could be scheduled to be inactive, without
21 effective soil cover to control potential erosion."

22 A. Uh-huh.

23 Q. "Several completed building pads and several
24 inactive slopes (See photos 4 through 6) lacked any
25 effective soil cover for erosion control."

1 A. Uh-huh.

2 Q. Then if you go and look at pages -- page 7,
3 photos 4 through 6. And particularly photo 5 through 6.

4 A. Uh-huh.

5 Q. Were these photographs used to establish
6 failure to have sufficient BMPs in inactive areas?

7 A. I would presume so but I do not know for sure.

8 Q. And then going back to page 4 up in the
9 findings, paragraph number 5 says "Several slopes
10 throughout the site were observed to lack linear
11 sediment controls along the toe and grade breaks of
12 exposed slopes (See photos 1, 5, 6, 8, 9, 11, and 12).
13 So were photos 5 and 6 also used to establish failure to
14 have sufficient linear sediment controls?

15 A. Yes. Or it appears so.

16 Q. Paragraph 4 says "Active areas were observed to
17 lack appropriate control BMPs (run-off control and soil
18 stabilization) to prevent erosion during storm events.
19 See photos 7 through 12." You can look at photos 7
20 through 12 on page 8. Were those photos used to
21 establish the violation of failure to have sufficient
22 BMPs in active areas?

23 A. Sufficient erosion control BMPs?

24 Q. Yes.

25 A. Yes, I would presume so.

1 Q. Does finding number 4 also say that those
2 photos were used to establish failure to have sufficient
3 run-off control?

4 A. If those same photo numbers were alleged, can
5 we just say that for all of them?

6 Q. Well, I'd like to but, unfortunately, I think
7 we have to go through this process. So were photos 7
8 through 12 also used to establish failure to effectively
9 manage run-off control?

10 A. Yes. Run-on and run-off controls.

11 Q. And that's discussed in finding number 7 below;
12 is that correct?

13 A. Correct.

14 Q. Then going to finding number 6 states that
15 "Lack of effective perimeter sediment controls observed
16 (See photos 13 and 14)." So was photo 14 also used to
17 establish lack of effective perimeter sediment control?

18 A. Yes.

19 Q. And in finding number 7 below it says photo 14
20 was also used to establish lack of effective run-on and
21 run-off controls; is that correct?

22 A. Yes.

23 MS. BERESFORD: Can we please mark this as our next
24 exhibit.

25 THE WITNESS: Number 7.

1 MS. BERESFORD:

2 Q. Are you familiar with this document?

3 A. I am.

4 Q. Can you please say what it is?

5 A. Exhibit 7 is pages 17 and 18 from the
6 enforcement policy.

7 Q. I'd like to talk about the section that starts
8 at the bottom of page 7 that says "Multiple Violations
9 Resulting From the Same Incident." It talks about
10 where -- can you please describe for me this policy
11 specific to Subsection C where it says the violation
12 continues for more than one day. Can you please explain
13 how this enforcement policy works for that fact.

14 A. It's the one I'm most unclear about so I'm not
15 sure I would be good to explain it.

16 Q. Who would be able to explain it then?

17 A. So it would be my counsel. Whenever we have
18 questions regarding the interpretation of the
19 enforcement policy we would defer to our counsel. But
20 basically, for the record, what the language is, is "For
21 situations not addressed my statute, a single base
22 liability amount can also be assessed for multiple
23 violations at the discretion of the Water Boards, under
24 the following circumstances." And it lists multiple
25 circumstances going on into page 18. And number C is

1 "The violation continues for more than one day." So
2 that means under these circumstances, if the violations
3 continue for more than one day, it's implying that the
4 Water Board has the discretion to assign a single base
5 liability amount.

6 Q. Did San Altos have violations that continued
7 for more than one day?

8 A. They did.

9 Q. Do you have the discretion to assign a single
10 base liability amount to those violations?

11 MS. DRABANDT: Calls for a legal conclusion. You
12 can answer.

13 THE WITNESS: I can answer?

14 MS. DRABANDT: I'm not asking you to not answer.

15 THE WITNESS: So what you're referring to -- and
16 this is why I find that "C" language confusing is
17 because this is for multiple violations, but what you're
18 really asking me to do is refer to the multiple day
19 violations which is page 18.

20 MS. BERESFORD:

21 Q. No. I'm asking you to interpret this specific
22 section.

23 A. Yeah. And I've never applied the "C" to the
24 multiple day violations. And I would ask counsel, if
25 they thought it was appropriate, if the Water Board

1 wanted to use its discretion on this situation.

2 Q. Did you discuss this issue put together,
3 subsection C, with Mr. Melbourn?

4 A. No.

5 Q. How about subsection D? It says "When
6 violations are not independent of one another or are not
7 substantially distinguishable." Is it your
8 understanding that this policy that we have multiple
9 violations that are not substantially distinguishable
10 that you can establish a single base liability?

11 A. Yes.

12 Q. In your opinion were there violations in the
13 San Altos case that were not substantially
14 distinguishable?

15 MS. DRABANDT: Objection. Calls for legal
16 conclusion. Attorney-client privileged.

17 MS. BERESFORD: Are you directing her not to
18 answer?

19 MS. DRABANDT: Yeah.

20 MS. BERESFORD: Just to be clear for the record,
21 you've stated a lot of attorney-client privileged
22 objections. I have interpreted those to mean that
23 you're directing her not to answer. Is that a correct
24 interpretation of your objection?

25 MS. DRABANDT: Correct.

1 MS. BERESFORD:

2 Q. Are you familiar with this document?

3 A. I am.

4 Q. Can you please say what it is?

5 A. Exhibit 7 is pages 17 and 18 from the
6 enforcement policy.

7 Q. I'd like to talk about the section that starts
8 at the bottom of page 7 that says "Multiple Violations
9 Resulting From the Same Incident." It talks about
10 where -- can you please describe for me this policy
11 specific to Subsection C where it says the violation
12 continues for more than one day. Can you please explain
13 how this enforcement policy works for that fact.

14 A. It's the one I'm most unclear about so I'm not
15 sure I would be good to explain it.

16 Q. Who would be able to explain it then?

17 A. So it would be my counsel. Whenever we have
18 questions regarding the interpretation of the
19 enforcement policy we would defer to our counsel. But
20 basically, for the record, what the language is, is "For
21 situations not addressed my statute, a single base
22 liability amount can also be assessed for multiple
23 violations at the discretion of the Water Boards, under
24 the following circumstances." And it lists multiple
25 circumstances going on into page 18. And number C is

1 "The violation continues for more than one day." So
2 that means under these circumstances, if the violations
3 continue for more than one day, it's implying that the
4 Water Board has the discretion to assign a single base
5 liability amount.

6 Q. Did San Altos have violations that continued
7 for more than one day?

8 A. They did.

9 Q. Do you have the discretion to assign a single
10 base liability amount to those violations?

11 MS. DRABANDT: Calls for a legal conclusion. You
12 can answer.

13 THE WITNESS: I can answer?

14 MS. DRABANDT: I'm not asking you to not answer.

15 THE WITNESS: So what you're referring to -- and
16 this is why I find that "C" language confusing is
17 because this is for multiple violations, but what you're
18 really asking me to do is refer to the multiple day
19 violations which is page 18.

20 MS. BERESFORD:

21 Q. No. I'm asking you to interpret this specific
22 section.

23 A. Yeah. And I've never applied the "C" to the
24 multiple day violations. And I would ask counsel, if
25 they thought it was appropriate, if the Water Board

1 MS. BERESFORD:

2 Q. So you can't tell me any facts as to why you
3 did not consolidate those.

4 A. Correct.

5 Q. Did you consolidate multiple violations in the
6 Encinitas ACL into one ongoing violation?

7 A. Yes.

8 Q. Can you state the unique facts of San Altos
9 where that did not occur in the San Altos case?

10 A. No. Sorry. I cannot state it without
11 disclosing attorney-client privileged information.

12 MS. DRABANDT: Thank you for clarifying.

13 MS. BERESFORD: I think we are nearing the end. I
14 apologize, but if you give me another five minutes we
15 will talk and hopefully wrap up shortly.

16 (Recess.)

17 MS. BERESFORD: Back on the record. Just a couple
18 of final questions.

19 Q. You mentioned earlier that the supervisors of
20 the compliance assurance unit participated in round
21 tables to discuss various issues, including the
22 enforcement policy?

23 A. So the enforcement coordinators participate in
24 round tables and have done like an enforcement
25 conference or trainings to discuss implementation of the



3232 Main Street
Lemon Grove, California 91945
(619) 825-3810

LETTER OF TRANSMITTAL

NAME OF COMPANY	California Regional Water Quality Control Board
ATTN	Wayne Chiu, Water Resources Control Engineer
PHONE #	

DATE	1/27/15
REF	WDID 937C369143
FAX #	

SPECIAL INSTRUCTIONS:

OVERNITE SERVICE _____ REGULAR MAIL _____ HAND DELIVERED X
FAX _____ COURIER _____

- ☒ Reports ☐ Under separate cover via _____ the following items:
- ☐ Shop Drawings ☐ Mylars ☐ Plans/Forms ☐ Samples ☐ Specifications
- ☒ Copy of Letter ☐ Change Order ☐ Miscellaneous ☐ Fees ☐ Returning your billing

No.	Date	Sheets	Description
1	1/27/15	-	DVD with documents related to Valencia/San Altos LLC project site
2	-		
3	-		

THESE ARE TRANSMITTED AS CHECKED BELOW:

- ☐ For Your Approval ☒ For Your Use ☐ As requested ☐ For review and comment
- ☐ For Review ☐ Returned for Corrections ☐ Blueprints for Use ☐ Return Corrected Prints

REMARKS

Wayne,
Provided is a DVD containing documents related to the Valencia project located in Lemon Grove

If you have any questions please contact me.

Leon

STATEMENT OF CONFIDENTIALITY: The information in this transmittal letter is legally privileged and confidential information and is intended only for the use of the addressee listed on this cover sheet. If you have received this transmittal in error, please immediately notify us by telephone at the number indicated below to arrange return of the document. Thank you.

COPY	FILE	FROM	Leon Firsh, City Engineer, City of Lemon Grove
------	------	------	---------------------------------------------------

If enclosures are not as noted, kindly notify us at once

ENGINEERING	SANITATION	LIGHTING
3232 Main St Lemon Grove, CA 91945 Tel (619) 825-3810 Fax (619) 825-3818	3232 Main St Lemon Grove, CA 91945 Tel (619) 825-3810 Fax (619) 825-3818	3232 Main Street Lemon Grove, CA 91945 Tel (619) 825-3810 Fax (619) 825-3818

EXHIBIT 13
REPORTER M. Voiz
WITNESS L. Firsh
DATE 12-28-15 Firsh Excerpt from Ex. 13



CITY OF LEMON GROVE

"Best Climate On Earth"

Engineering Services Department

January 26, 2015

Mr. Wayne Chiu, PE
Water Resource Control Engineer
California Regional Water Quality Control Board
San Diego Region
2375 Northside Drive, Suite 100
San Diego, CA 92108

Subject: Summary of Valencia Construction Site (937C369143) Notice of Violation

Dear Wayne,

As you are aware, Regional Water Quality Control Board (Regional Board) was notified on December 2, 2014 of a Notice of Violation/Stop Work Notice issued by the city to San Altos LLC (Valencia) for failure to comply with the city's minimum Best Management Practices (BMPs). Furthermore, the Regional Board was also notified that this site was also permitted under its own State of California General Construction Permit with a WDID 937C369143.

The city welcomed the opportunity to work with the Regional Board with the same goal of bringing the Valencia site into compliance with stormwater BMPs requirements. This correspondence is intended to provide the Regional Board with a summary of actions the city has taken since the issuance of the NOV/Stop Work Notice on December 2, 2014 and the removal of the NOV/Stop Work Notice on January 22, 2015.

The table below provides a summary of actions and events:

Date	Description
12/2/14	City Issues NOV/Stop Work Notice to San Altos LLC
12/8/14	City Hires DMAX Engineering to Conduct Inspections and Sampling
12/9/14	DMAX Conducts Inspection/Confirms BMP Deficiencies
12/11/14	DMAX Conducts Follow-Up Inspection with Rain Forecasted the Next Day
12/11/14	City Issues 1st Administrative Citation Warning
12/12/14	DMAX Conducts Sampling/Illegal Discharge Observed
12/12/14	City Issues 2nd Administrative Citation Fine \$100
12/15/14	Regional Board Conducts Joint Inspection/Observes Violations
12/16/14	DMAX Conducts Inspection/BMP Deficiencies Observed

3232 Main Street Lemon Grove, California 91945-1705

619.825.3810 FAX 619.825.3418 www.ci.lemon-grove.ca.us



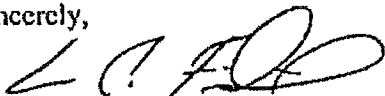
Date	Description
12/16/14	City Issues 3rd Administrative Citation \$200/Letter Warning City Will Hire Erosion Control Company at Developers Cost
12/17/14	DMAX Attempts to Conduct Sampling, No Runoff Available to Collect
12/17/14	City Staff Onsite to Monitor BMP Installation
12/23/14	City Staff Onsite to Monitor BMP Installation
12/24/14	City Staff Onsite to Monitor BMP Installation
12/29/14	City Staff Onsite to Monitor BMP Installation
12/31/14	DMAX Attempts to Conduct Sampling, No Runoff Available to Collect Only Pounded/Some Sediment Discharge Observed
1/6/15	DMAX Conducts Inspection With Most Major BMP Deficiencies Addressed
1/14/15	DMAX Conducts Inspection With Minor BMP Deficiencies Outstanding
1/16/15	DMAX Prepares Memo Summarizing Inspections and Sampling, Indicates Removal of Stop Work Is Appropriate for 1/14/15 Inspection
1/19/15	DMAX Conducts Inspection With Minor BMP Deficiencies Outstanding
1/21/15	Valencia Requests Stop Work Be Removed
1/22/15	Valencia Provides Response Addressing Inspection Deficiencies from 1/19/15
1/22/15	City Removes Stop Work Notice

In addition, supporting documentation has been provided for the Regional Board review and use. The following documents are provided on a DVD:

- Copy of Transmittal Letter
- Copy of this Letter
- Copies of Inspections/Pictures/Enforcement Actions/Administrative Citations issued by the City
- Memorandums, Inspection forms, Sampling Results, Pictures from City's Stormwater Consultant
- Copies of San Altos LLC Daily Reports and Related Forms/Letters

Once again the City of Lemon Grove appreciates the opportunity to work with the Regional Board to bring the Valencia site into compliance. Should you have any questions regarding the information and documentation provided please do not hesitate to contact me directly at (619) 825-3825.

Sincerely,



Leon P. Firsh
City Engineer

Attachments: DVD

EXHIBIT C

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 LEON PETER FIRSHT, witness
herein, noticed by Oppen & Varco, taken at
225 Broadway, Suite 1900, San Diego,
California, on Monday, December 28, 2015, at
1:10 p.m., before Marc Volz, CSR 2863, RPR, CRR

Hutchings Number 599121

1 A. I think so but I don't recall.

2 Q. Did those have any guest speakers?

3 A. No.

4 Q. So Mr. Tamimi did the presentations himself?

5 A. Yes.

6 Q. Do you remember generally what they covered?

7 A. Probably what a priority project is, frequency
8 of inspections. Talked in general about city
9 requirements for industrial commercial inspections.
10 That's all I recall at the moment.

11 Q. Did he ever discuss whether there was a
12 difference -- let me start over. Did he ever review the
13 Jurisdictional Urban Runoff Management Plan?

14 A. Yes.

15 Q. That's often referred to as the JURMP.

16 A. Yes.

17 Q. Did he ever discuss the relationship between
18 violations of the JURMP and whether those were
19 violations of the Construction General Permit?

20 A. Yes.

21 Q. What did he say about that?

22 A. That the city had its own program within the
23 municipal code which was separate from the Regional
24 Board's construction inspection program.

25 Q. Do you have an idea, was it your impression

1 whether or not a violation of the JURMP was also a
2 violation of the General Construction Stormwater Permit?

3 A. Possibly. We didn't necessarily look at it
4 from the aspect that it would be a violation. We were
5 only concerned with what the city's municipal code
6 stated.

7 Q. Other than the two trainings that was given by
8 Mr. Tamimi do you have any additional stormwater
9 training or certification?

10 A. No.

11 Q. Are you familiar with what a Qualified
12 Stormwater Professional is?

13 A. USP?

14 Q. Yes.

15 A. Yes, I've heard the term.

16 Q. Are you one?

17 A. I am not.

18 Q. Have you heard the term of a Qualified SWPPP
19 Developer or a QSD?

20 A. Yes.

21 Q. Are you one?

22 A. No.

23 Q. Have you ever inspected construction sites for
24 stormwater violations?

25 A. I have attended the inspection. I may have my

1 A. No, we have not.

2 Q. Do you know why he requested it in this
3 instance?

4 MR. BOYERS: Objection. Speculation.

5 THE WITNESS: I can presume because he came out to
6 the site on December 15th. I don't recall the exact
7 date.

8 MS. BERESFORD:

9 Q. But he never discussed with you on the phone or
10 told you in an email any other reason why he would want
11 this type of information?

12 A. Mr. Chiu submitted -- actually sent an email.
13 It's not in here, but he sent an email to the developer
14 and the city stating what he was asking from each of us.

15 Q. Were you concerned that the city might be
16 issued a penalty if it didn't submit all of this
17 information?

18 A. Yes. The email is actually attached.

19 Q. Would it be fair to characterize that you
20 prepared this information to protect the city from
21 violations?

22 A. Yes. No, I'm sorry, I don't see the email, the
23 follow-up email after the meeting that Wayne sent but I
24 know there was an email.

25 Q. Do you recall generally what that email is

1 saying?

2 A. I think from what I recall is he asked
3 Mr. Anderson to provide a response by a certain date and
4 he asked that the city monitor the contractor through
5 specific documents.

6 Q. Was the city nervous about this project and
7 whether it was going to get its own violation?

8 MR. BOYERS: Objection. Speculation.

9 THE WITNESS: Let me clarify this. When you say
10 city, I'd say for myself the answer is yes, but I don't
11 know about others.

12 MS. BERESFORD:

13 Q. What was it in particular that was making you
14 nervous about getting a violation from the Regional
15 Board?

16 A. I guess maybe that I'd heard that the Regional
17 Board was difficult to deal with.

18 Q. Was that specific to stormwater issues or in
19 general?

20 A. Stormwater.

21 MS. BERESFORD: I will mark this as Exhibit 14.
22 And it actually says Exhibit 14 at the top. Before we
23 go on, it's 2:40. It's been about an hour and a half.
24 Do you need a short break?

25 THE WITNESS: No.

EXHIBIT D

EXHIBIT D

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.)
)
)
_____)

THE DEPOSITION OF GARY HARPER, a witness
herein, noticed by Oppen & Varco, LLP,
at 225 Broadway, Suite 1900, San Diego,
California, at 8:28 a.m., on Monday,
December 28, 2015, before R. Jerrod Jones,
CSR 11750, RPR

Litigation Services Number 598612

1 Q. And what were you doing?

2 A. I was working at Lien Engineering.

3 Q. And what is a certificate in special
4 inspection?

5 A. Special inspection started with the
6 Northridge earthquake. It's structural inspection
7 for steel, welding, masonry, fireproofing. And as a
8 special inspector, you are assigned to stay on a job
9 site the whole time that any kind of structural
10 building was going on.

11 Q. Okay. What year did you get that
12 certificate?

13 A. It took about two years. You get a
14 certificate in each field for welding, and then for
15 steel and for concrete.

16 Q. Does that program include any training in
17 storm water compliance?

18 A. No.

19 Q. Are you required to do continuing
20 education classes for that certificate?

21 A. No.

22 Q. So after you got your certificate, you
23 said you worked for CTE for approximately six months?

24 A. Yes.

25 Q. Why did you leave there?

1 A. I was -- Poway had a job as an engineering
2 inspector, and I applied for that.

3 Q. So you started work with the City of Poway
4 approximately when?

5 A. 2003.

6 Q. Okay. And how long were you with them?

7 A. Five years.

8 Q. And why did you leave the City of Poway?

9 A. I was going to start a company with a
10 friend of mine who is an engineer in inspection, but
11 it didn't pan out.

12 Q. And so then what did you do after that?

13 A. I went to work for the City of Lemon Grove
14 as an engineering inspector.

15 Q. And what year did you start with the City
16 of Lemon Grove?

17 A. 2010. 2011.

18 Q. And you've been with them ever since?

19 A. Yes.

20 Q. So this case I'm sure you are aware has to
21 do a lot with storm water issues. What training have
22 you had to inspect a site for storm water issues?

23 A. Periodically at the City of Lemon Grove,
24 they have storm water training. Malik Tamimi heads
25 those meeting, trains us.

1 Q. How often do you have those meetings?
2 A. I think I've had two in five years.
3 Q. Do you remember what those meetings were
4 about?
5 A. Stormwater.
6 Q. Can you be any more specific?
7 A. I can't. It's been a while.
8 Q. Do you know when the last one was?
9 A. No. I'm sorry.
10 Q. Mr. Tamimi heads those meetings?
11 A. Yes.
12 Q. Did you ever have any guest speakers?
13 A. Yes.
14 Q. Do you know who they were?
15 A. Yes.
16 Q. Can you tell me?
17 A. Yes.
18 Q. Who were they?
19 A. Tad from D-Max, and two other individuals
20 from D-Max. I don't remember who they were.
21 Q. How long were those two trainings?
22 A. Maybe an hour or two.
23 Q. Do you recall if they focused on any
24 specific type of storm water permit?
25 A. No. I'm sorry, I don't.

1 Q. Well, I know the answers to these, but I'm
2 going to ask them anyway, just to be clear for the
3 record. Are you a qualified storm water
4 professional?

5 A. I don't know.

6 Q. Okay. I was going -- do you know what a
7 qualified storm water professional is?

8 A. I do not.

9 Q. Okay. Do you know what a qualified
10 stormwater -- or a qualified SWPPP developer is?

11 A. I'm not sure.

12 Q. Are you familiar with a document called
13 the General Construction storm water permit?

14 A. I'm not familiar with it.

15 Q. Okay. How many sites have you -- well,
16 let me rephrase.

17 Have you ever inspected any construction sites
18 for storm water compliance?

19 A. Yes.

20 Q. How many sites?

21 A. I'm sorry, but I don't remember. It's
22 many, many.

23 Q. More than ten?

24 A. Yes.

25 Q. More than 20?

1 Q. Are you familiar with a document called
2 the Jurisdictional Urban Runoff Management Plan,
3 often referred to as the JURMP?

4 A. Yes.

5 Q. When you go to a site to inspect a site,
6 are you evaluating it for whether or not it complies
7 with the JURMP?

8 Let me rephrase before I go on. Do you know if
9 the City of Lemon Grove has a JURMP?

10 A. Yes.

11 Q. So when you inspect sites in the city of
12 Lemon Grove, are you inspecting them to see if they
13 are in compliance with the City's JURMP?

14 A. Yes.

15 Q. And when you inspect sites in the city of
16 Lemon Grove, are you inspecting them to see if they
17 are in compliance with the City's ordinances?

18 A. Yes.

19 Q. But you are not inspecting the site to see
20 if its compliant with rules set up by the State Water
21 Resources Control Board or the Regional Water Quality
22 Control Board?

23 A. Not specifically.

24 Q. I want to move specifically to talk about
25 the San Altos, Lemon Grove site. They are

1 THE WITNESS: I don't understand the question.
2 I'm sorry.

3 BY MS. BERESFORD:

4 Q. I'm trying to better understand when you
5 are at a site and you are trying to figure out what's
6 an inactive versus an active area. Does it matter to
7 you if they say, "We're going to work on that area in
8 three or four days," you would call that area an
9 active area or an inactive area?

10 MR. BOYERS: The same objection.

11 THE WITNESS: I'm sorry. I still don't
12 understand what you're asking.

13 BY MS. BERESFORD:

14 Q. To you, is an active area something that
15 somebody is only working on that day?

16 A. No.

17 Q. So what is an active area for you?

18 A. They're areas that are either actively
19 working on or have been actively working on in the
20 last ten days or haven't been disturbed.

21 Q. Okay. So going back to the pictures. You
22 don't recall identifying these as active or inactive;
23 is that correct?

24 A. I don't recall. That's correct.

25 Q. And so do you know how someone would know

1 Q. Okay. Do you know why you might not have
2 filled one out?

3 A. Yes.

4 Q. And why would you not have filled one out
5 that day?

6 A. Rain was imminent, and they had an illegal
7 discharge.

8 Q. So you didn't -- for that reason, you
9 didn't fill out an additional Inspection Form?

10 A. I'm sorry. I don't remember.

11 Q. You know, I apologize, I want to go back
12 to Exhibit 3. That is the December 2nd form again.

13 A. Okay.

14 Q. The second page is called NPDES Storm
15 Water Program Construction Storm Water Compliance
16 Inspection Form. Do you see that?

17 A. Yes.

18 Q. You indicated to me before that you were
19 not doing inspections in accordance with the Regional
20 Board Construction Permit. Is that your correct
21 testimony?

22 A. Yes.

23 Q. So when this form says Construction Storm
24 Water Compliance Inspection Form, what are you
25 looking in a compliance form? What is this form

1 Q. Okay. Do you know why you might not have
2 filled one out?

3 A. Yes.

4 Q. And why would you not have filled one out
5 that day?

6 A. Rain was imminent, and they had an illegal
7 discharge.

8 Q. So you didn't -- for that reason, you
9 didn't fill out an additional Inspection Form?

10 A. I'm sorry. I don't remember.

11 Q. You know, I apologize, I want to go back
12 to Exhibit 3. That is the December 2nd form again.

13 A. Okay.

14 Q. The second page is called NPDES Storm
15 Water Program Construction Storm Water Compliance
16 Inspection Form. Do you see that?

17 A. Yes.

18 Q. You indicated to me before that you were
19 not doing inspections in accordance with the Regional
20 Board Construction Permit. Is that your correct
21 testimony?

22 A. Yes.

23 Q. So when this form says Construction Storm
24 Water Compliance Inspection Form, what are you
25 looking in a compliance form? What is this form

1 specific to?

2 A. The grading plans and the terms.

3 Q. Thank you. Let's go back to Exhibit 4,
4 which is the December 4th Inspection Form. Do you
5 see that the first page has yellow highlighting and
6 red underline?

7 A. Yes.

8 Q. Did you make those marks? Did you make
9 that highlighting?

10 A. I don't think so.

11 Q. Okay. Let's go to the next page of
12 photographs. And on the bottom left-hand corner,
13 there's a red box with a comment that says, "Sediment
14 in street." Did you make that?

15 A. I don't think so.

16 Q. Do you know who did?

17 A. I do not.

18 Q. Okay. Let's go to the next page of
19 photographs. There's a box in the upper left-hand
20 corner and text that says, "Lack of erosion control
21 in inactive areas." Did you make that mark?

22 A. I don't think so.

23 Q. Did you identify this photograph as an
24 inactive area anywhere in your report?

25 A. I don't see anything.

1 THE WITNESS: I don't know.

2 BY MS. BERESFORD:

3 Q. Do you recall if you asked anybody during
4 this inspection about which areas were active and
5 which areas were inactive?

6 A. I don't remember.

7 MS. BERESFORD: Okay. Thanks.

8 Would you please mark that as Exhibit 6.

9 (Exhibit Number 6 was marked for
10 identification.)

11 BY MS. BERESFORD:

12 Q. Do you recognize this document?

13 A. Yes.

14 Q. And what is it?

15 A. It's a Correct Work.

16 Q. Did you fill it out?

17 A. I think so.

18 Q. And what is the date of it?

19 A. December 9th.

20 Q. 2014?

21 A. 2014.

22 Q. Did you visit the site that day?

23 A. Yes, I think so.

24 Q. There are two pages of photographs
25 attached. Did you take those photographs?

1 MR. BOYERS: Objection. Speculation.

2 BY MS. BERESFORD:

3 Q. Did you talk to anybody about this
4 document?

5 A. No.

6 Q. And did you say that you had previously
7 skimmed it?

8 A. Yes.

9 Q. And what did you think about it?

10 A. In what way?

11 Q. You skimmed it. Did you have any thoughts
12 after skimming it?

13 A. No, I didn't.

14 MS. BERESFORD: I believe this is Exhibit 10.
15 (Exhibit Number 10 was marked for
16 identification.)

17 BY MS. BERESFORD:

18 Q. Have you seen this document before?

19 A. Yes, I think so.

20 Q. And what is it?

21 A. It is a Correct Work issued from the City
22 to Valencia.

23 Q. And did you fill this out?

24 A. I think so, yes.

25 Q. And what's the date of it?

1 A. March 24th, 2015.

2 Q. There are photographs attached; is that
3 correct?

4 A. Yes.

5 Q. Did you take those photographs?

6 A. Yes, I think I did.

7 Q. As you get to the third and fourth pages
8 of photographs, I note that possibly even the last
9 page, some of the photographs are dated March 23rd.
10 Did you go out both days?

11 Well, first of all, if you took the
12 photographs, do you believe that you took the
13 photographs on March 24th, those that are dates
14 stamped March 24th?

15 A. I think so.

16 Q. What about the photographs that are date
17 stamped March 23rd, do you believe you took those?

18 A. Yes, I think so.

19 Q. Do you know why you went out two days in a
20 row?

21 A. No. I'm sorry. I don't remember why.

22 Q. So I have inspection reports from you from
23 December of 2014, and then this report from
24 March 2015. Did you go out to the site in between
25 that period of time?

1 A. I don't remember. I'm sorry.

2 Q. Is there a reason that you wouldn't have
3 gone for such a long period of time?

4 A. Yes.

5 Q. And what would that reason have been?

6 A. That Tad started doing the inspections.

7 Q. The last page is a document called
8 Inspector's Report. Did you prepare this document?

9 A. Yes, I think so.

10 Q. Did you do it on your own, or did you do
11 it with some assistance from someone at the City?

12 A. I think I did it alone.

13 Q. Under the "Remarks" it says, "Follow-up to
14 Tad's inspection of 3/18/15." Do you see that?

15 A. Yes.

16 Q. If Tad was inspecting the site, do you
17 know why you went back out?

18 A. I don't remember. Sorry.

19 Q. Do you know if someone told you to go out
20 and inspect the site?

21 A. I don't remember that.

22 Q. Now, this Inspector's Report on the last
23 page is different than the Construction Storm Water
24 Compliance Inspection Form that you filled out in
25 December of 2014; is that correct?

1 A. That's right.

2 Q. Why did you use a different form?

3 A. Because I needed more space to report
4 everything that was going on.

5 Q. Okay. Do you see on the first page it
6 says, "Erosion control is inadequate," and it's
7 highlighted?

8 A. Yes.

9 Q. Did you do that highlighting?

10 A. I don't think so.

11 Q. If you go to the second -- I'm sorry, the
12 last page of photographs, there's a red box and red
13 text that says, "Lack of erosion controls in active
14 areas." Do you see that?

15 A. Yes.

16 Q. Did you make that notation on that
17 photograph?

18 A. No.

19 Q. Does your report anywhere indicate that
20 photograph is of an active area?

21 A. I'm sorry. Can you repeat that one.

22 Q. Did you note anywhere in your report that
23 this photograph reflected "lack of erosion controls
24 in active areas"?

25 A. Yes.

1 Q. And where did you note that?

2 A. Number six.

3 Q. And how would somebody reading that know
4 that it was this photograph?

5 A. They wouldn't.

6 Q. Did anyone call you from the Regional
7 Board to ask you which photographs demonstrated it?

8 A. No.

9 Q. Did you ask anyone -- it says -- I'm
10 looking at your number six. It says, "Some other
11 areas that seem inactive last week are now active."

12 How did you know that they were inactive the
13 week before?

14 A. From the report, I must have gone out
15 there the week before.

16 Q. Do you think you went out the week before?

17 A. I don't remember.

18 Q. Did you ask anybody about which areas were
19 active or inactive?

20 A. Almost every time I went out there.

21 Q. And to you that meant within ten days?

22 A. Yeah.

23 Q. I'd like to direct your attention to
24 number two on that page. It says, "Concrete waste.
25 Crew did clean concrete waste, although another spill

1 Q. And where did you note that?

2 A. Number six.

3 Q. And how would somebody reading that know
4 that it was this photograph?

5 A. They wouldn't.

6 Q. Did anyone call you from the Regional
7 Board to ask you which photographs demonstrated it?

8 A. No.

9 Q. Did you ask anyone -- it says -- I'm
10 looking at your number six. It says, "Some other
11 areas that seem inactive last week are now active."

12 How did you know that they were inactive the
13 week before?

14 A. From the report, I must have gone out
15 there the week before.

16 Q. Do you think you went out the week before?

17 A. I don't remember.

18 Q. Did you ask anybody about which areas were
19 active or inactive?

20 A. Almost every time I went out there.

21 Q. And to you that meant within ten days?

22 A. Yeah.

23 Q. I'd like to direct your attention to
24 number two on that page. It says, "Concrete waste.
25 Crew did clean concrete waste, although another spill

1 occurred at lot 23 that was not cleaned up."

2 So in reading this, do you believe that there
3 were two -- for lack of a better term -- spills of
4 concrete waste at the site?

5 A. No.

6 Q. Can you describe to me what that sentence
7 means, then?

8 A. The first concrete waste crew did not
9 clean concrete waste, although it says "another
10 spill."

11 Q. Although it says, correct me if I'm wrong,
12 "Concrete crew did clean concrete waste."

13 A. Yes.

14 Q. "Although another spilled occurred at lot
15 23."

16 A. Yes, it appears there were two spills by
17 that sentence.

18 Q. And by that, do you think that means they
19 cleaned up the first one?

20 A. Yes.

21 Q. Do you have a date of when that might have
22 happened?

23 A. No.

24 Q. It says, "There's another spill that was
25 not cleaned up."

1 Did you have a date of when that spill may have
2 occurred?

3 A. No.

4 Q. Is it possible that the first concrete
5 waste spill was cleaned in a day?

6 MR. BOYERS: Objection. Speculation.

7 THE WITNESS: I'm sorry. Can you repeat that.

8 BY MS. BERESFORD:

9 Q. So you've indicated earlier yes, you think
10 there were two spills. Is it possible that they
11 could have cleaned a spill in a day's time?

12 MR. BOYERS: The same objection.

13 THE WITNESS: Yes.

14 BY MS. BERESFORD:

15 Q. Going back to number six, talking about
16 erosion control on inactive areas versus active
17 areas. Based on your report and what you see in the
18 photographs, what additional erosion controls on
19 active areas would you have recommended that they
20 use?

21 MR. BOYERS: I'm going to object as leading.

22 MS. BERESFORD: Well, then, I will rephrase.

23 BY MS. BERESFORD:

24 Q. Based on your report and the photographs,
25 do you think they should have implemented more

EXHIBIT E

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 FRANK MELBOURN
TAKEN AT SAN DIEGO, CALIFORNIA
JANUARY 13, 2016

Job Number 600096

REPORTED BY DULCEMARIA DUARTE, CSR
CERTIFICATE NO. 13968

1 recall, were you already intending on developing an
2 administrative civil liability complaint?

3 A When --

4 MS. DRABANDT: I'm going to object.
5 Attorney-client privilege.

6 BY MS. BERESFORD:

7 Q When you visited the site, had you discussed with
8 Mr. Chiu your intent to -- that the purpose of visiting the
9 site was for the purpose of developing an administrative
10 civil liability complaint?

11 A No.

12 Q Okay. Have you ever discussed the site with Malik
13 Tamimi?

14 A Yes.

15 Q Can you describe those discussions for me?

16 A The discussions were focused on the procedural
17 aspects of the issuance of an administrative civil liability
18 complaint, specifically when would be the hearing and the
19 timing.

20 Q How many times did you speak with him?

21 A I would estimate five times.

22 Q Do you recall when your first conversation was?

23 A No.

24 Q Did you ever discuss any specific alleged
25 violations of the site with Mr. Tamimi?

1 A No.

2 Q Did you ever speak with Gary Harper?

3 A No.

4 Q Did you ever speak with Leon Firsht?

5 A No.

6 Q Did you ever talk to Tad Nakatani?

7 A No.

8 Q Did you ever talk to John Quenzer?

9 A No.

10 Q Did you ever speak to Brian Nemero?

11 A No.

12 Q Have you ever spoken to John Draminski?

13 A No.

14 Q Have you ever spoken to Tamara O'Neil?

15 A No.

16 Q Okay. Do you recognize this document?

17 A I recognize it as an ACL complaint package.

18 However, I was not involved with this case.

19 Q Oh, then I'm giving you the wrong document. My
20 apologies.

21 Have you ever recognized this document?

22 A Yes.

23 Q And what is that?

24 A This is the notice of hearing and issuance of
25 Complaint No. R9-2015-0110 for administrative civil

1 13:00 failure to adequately manage run-on -- excuse me --
2 runoff within the site.

3 Number 3 on page 8 of 10 again shows sediment in
4 the street which, in my opinion, is a failure to manage
5 13:01 the runoff from within the site.

6 And just my recollection and finding number 6 on
7 page 4 of 10 stating that there was a lack of effective
8 run-on and runoff controls observed.

9 Q. Anything else for May 8?

10 13:01 A. Not that I recall.

11 Q. Okay.

12 Let's talk about May 13, and I'd like to refer you
13 to Exhibit Number 19 of the ACL.

14 A. I have Exhibit Number 19.

15 13:01 Q. And can you please identify for me those --

16 Well, first, let me ask, is this what you relied on for
17 the allegations for violation number 8 for May 13?

18 A. I relied upon this inspection report and my
19 recollection from my visit of the site at the same time,

20 13:02 as well as the photographs that Wayne took and I took of
21 the site.

22 Q. Okay.

23 Can you please identify for me the basis for your
24 allegation of failure to manage run-on and runoff for

25 13:02 May 13, please?

1 December 4, 2014, December 12, 2014, December 17, 2014,
2 December 31, 2014, May 8th, 2015, and September 15, 2015."

3 Q Thank you. So to paraphrase -- and please correct
4 me if I'm wrong -- but the primary basis of the
5 allegation -- of the alleged violation is for discharging
6 sediment-laden storm water from the cite into Encanto
7 Channel and thence Chollas Creek on those dates; is that
8 correct?

9 A Yes.

10 Q Okay. I would like to talk -- well, first, is
11 sediment a pollutant under the Construction General Permit?

12 A Yes.

13 Q Is it a pollutant if it's discharged at any level
14 at any concentration?

15 A I would say yes. It's a pollutant when it's
16 discharged. The -- yes.

17 Q Is sediment subject to the best control technology
18 standard as defined in Appendix 5 of the construction
19 permit?

20 A Yes.

21 Q Is compliance with best control technology measured
22 by compliance with Section 5A2 and Table One of the permit?

23 A Could you repeat that?

24 Q Yes. Do you recognize that page?

25 A Yes.

1 Q And what is that page?

2 A It's a page out of the Construction Storm Water
3 Permit related to F1 Standards in receiving water
4 monitoring.

5 Q So my question is: Is compliance with best control
6 technology measured by compliance with that table for
7 sediment?

8 A Could you repeat the question one more time?

9 Q Yes.

10 MS. BERESFORD: Could you please read it back for
11 me, please?

12 (Last question was read.)

13 MS. DRABANDT: Objection. Calls for legal
14 conclusion.

15 THE WITNESS: My response is no.

16 BY MS. BERESFORD:

17 Q So how do they measure compliance with best control
18 technology for sediment?

19 MS. DRABANDT: Same objection.

20 THE WITNESS: Well, I understood you to say
21 compliance in general. So compliance with BCT or the best
22 conventional technology means two things to me -- two
23 different things because we have other regulations that
24 apply, and so I would just say that with this -- compliance
25 with BCT is one aspect of it, but there could be other

1 things that occur on the construction site that could cause
2 other type of violations.

3 BY MS. BERESFORD:

4 Q Okay. So when evaluating whether there has been a
5 violation of a permit for discharge of sediment, does
6 compliance with that table matter in any way?

7 MS. DRABANDT: Objection. Calls for legal
8 conclusion.

9 THE WITNESS: The information in the table is
10 useful for determining how well or effective some of the
11 best management practices are at the site, but, in my
12 opinion, compliance with those numbers do not necessarily
13 constitute compliance with the permit.

14 BY MS. BERESFORD:

15 Q So if there is a discharge of sediment and someone
16 takes a turbidity sample, and the turbidity sample is 10
17 NTUs, is that a violation of the permit?

18 MS. DRABANDT: Objection. Calls for legal
19 conclusion.

20 THE WITNESS: I would say that a sample with 10 NTU
21 is a very low amount, and so that would be what we would
22 consider a fairly clean sample.

23 So that would not raise my -- my -- raise any
24 alarms with me if I saw something of that amount, but,
25 again, that is just one factor there could be other things

1 and also directly into Encanto Channel.

2 Q Can you show me the evidence that it was deposited
3 into the storm water conveyance channel?

4 A I rely on the fact that I can see that the sediment
5 reached all the way down to -- all the way down -- flowed
6 down Akins Avenue into the City of San Diego storm water
7 conveyance system. There's two inlets on Akins Avenue on
8 each side of the street. Those connect into Encanto
9 Channel.

10 Also directly opposite from the discharge point
11 that's shown, there's -- I'm looking at the first page of
12 photos, and I'm looking at the middle row, far right column,
13 there's some bags of -- gravel bags where you can see
14 sediment has overtopped -- sediment-laden water has
15 overtopped that. The photo below it also shows the
16 entrance.

17 Opposite that there is a connection to Encanto
18 Channel where I observed the site several times where it
19 would discharge there. So in my opinion based upon seeing
20 the sediment in the street and in the gutters from these
21 photos, that there was a discharge into the city storm water
22 conveyance system and also into Encanto Channel directly.

23 Q What facts are there that copper, lead, or zinc
24 entered Chollas Creek?

25 A I would rely on studies that have been done

1 nationwide and also statewide that show that construction
2 storm water runoff is likely to contain those pollutants.

3 Q Do you have an estimate for this particular site
4 what the concentrations of copper, lead, or zinc might be?

5 A No.

6 Q Do you know if any recommendations were provided to
7 the discharger advising them of additional BMPs that they
8 should implement on December 4?

9 A Basing this solely on Exhibit 3, I see that there
10 was a box checked "Erosion control is inadequate," and a box
11 that was checked saying "Failure to maintain
12 erosion/sediment control device."

13 So from that I would take that the City notified
14 the developer San Altos that those needed to be addressed.

15 Furthermore, the box at the top is checked saying
16 "Stop Work Notice of Violation." That's a very serious
17 effort by municipality. That's one of the strongest
18 enforcement tools they have is to tell the developer they
19 have to stop construction work on the site, and that the
20 only work they can do is fixing their erosion control
21 deficiencies.

22 Because for the developer time is money, and so
23 every day that they are not constructing is another day that
24 they are losing out on -- on profits. So this is a very
25 serious matter when I see a city or a municipality issue a

1 A At this point, no.

2 Q Could it have been?

3 A Highly unlikely.

4 Q And why is that?

5 A When there are flows through Encanto Channel or any
6 storm water conveyance system or creek, the flows are
7 usually strong enough to where they will push through
8 sediment.

9 There will always be some sediment that will stay
10 behind typically, unless it's a very, very strong event.
11 But typically the sediment will be pushed down, and so it
12 would be very difficult to recover.

13 Q Do you know what the flow of Encanto Channel was on
14 December 4?

15 A I do not.

16 Q Do you know if Mr. Harper actually observed whether
17 or not sediment was flowing into the storm water conveyance
18 on December 4?

19 A I do not know for sure. However, I will point out
20 that as the listed inspector for the City for this
21 inspection report/Notice of Violation Work Stop Notice,
22 that -- and also an assumption that I would make that he
23 took these photographs -- but on the -- on the third page of
24 the photographs looking at the left-hand column middle
25 photo, that there is flow of sediment-laden water going down

1 Akins Avenue towards the inlet.

2 So I would be surprised if he didn't see it go in.

3 I believe the photo below it shows the inlet, but it's a
4 little hard for me to see it in this reproduction of the
5 photo.

6 Q Okay. Thank you. Let's talk about December 12th
7 which is Exhibit No. 7, or I would like to refer to it as
8 Exhibit No. 7 to the ACL.

9 BY MS. BERESFORD:

10 Q Do you recognize Exhibit 7?

11 A Yes.

12 Q Can you state what it is?

13 A Exhibit No. 7 contains -- the cover on Exhibit 7 is
14 the administrative citation from the City of Lemon Grove to
15 Tim Anderson the project manager for the San Altos Lemon
16 Grove, LLC Development. It's dated -- the date of the
17 violation observed is December 12, 2014. The date of the
18 citation is December 15, 2014, and was issued by Leon
19 Firsht.

20 Q Did you rely on this document for the -- for
21 alleging that Violation No. 1 occurred on December 12th?

22 A I did. I also would like to add that in addition
23 with Exhibit No. 7 is some attachments.

24 There's the attachment describing the Lemon Grove
25 Municipal Code for discharge of non-storm water prohibited.

1 Q Okay. Moving to December 17, I would like to refer
2 you to Exhibit No. 10.

3 A I have it.

4 Q Okay. Can you please state what Exhibit No. 10 is?

5 A Exhibit No. 10 is a D-Max Engineering, Incorporated
6 memo dated December 17, 2014 from Brian Nemero to Malik
7 Tamimi, and the subject line states "December 17, 2014,
8 Field Visit at Valencia Construction Site."

9 Q Did you rely on this document to state that there
10 was the alleged Violation No. 1 on December 17?

11 A Yes.

12 Q Did you rely on any other facts for the allegation
13 that Violation No. 1 occurred on December 17?

14 A No.

15 Q Did you make the highlighting and red underlining
16 on this document?

17 A Yes.

18 Q And what are the facts here that support that
19 sediment entered into the storm drain on December 17?

20 A I relied upon the photographs that were attached to
21 the report. Photograph No. 1 is the construction site
22 entrance that is located on Akins Avenue. It's adjacent to
23 a City of San Diego neighborhood, and the gravel bags are
24 covered in sediment.

25 There is sediment in the street. The gravel bags

1 Q So did anyone observe the sediment going into the
2 storm drain?

3 A I don't know.

4 Q Do you know which weather station you rely on when
5 you're taking your rainfall data?

6 A I know from one of my inspection reports that the
7 NOAA Station for Lemon Grove was not active, and so I
8 believe at one point I've cited the La Mesa Station which is
9 close by. And also another weather reporting station that
10 we've used for that region is the one at Gillespie Field.

11 Q How far is that from the site?

12 A Off the top of my head, I don't know. But it's
13 when -- when one does a search for the closest weather
14 stations, those are the two that come up.

15 Q Is there a station at Federal Avenue?

16 A I do not know.

17 Q Okay. I would like to talk about December 31,
18 please, and specifically Exhibit No. 12 to the ACL.

19 A I have Exhibit No. 12.

20 Q And what is that?

21 A Exhibit No. 12 is a D-Max Engineering, Incorporated
22 memo dated December 31, 2014, from John Quenzer to Leo
23 Firsht and Malik Tamimi.

24 The subject states "December 31st, 2014, Field
25 Visit at Valencia Construction Site."

1 Storm Water Permit if they were to do so.

2 BY MS. BERESFORD:

3 Q To not cover an active stockpile?

4 A To not cover a stockpile that's not actively being
5 worked on.

6 Q Okay. How do you define -- or how does the permit
7 define actively being used?

8 MS. DRABANDT: Objection. Calls for legal
9 conclusion.

10 THE WITNESS: That section of the permit does not
11 define actively.

12 BY MS. BERESFORD:

13 Q Do you -- when -- in your interpretations is it --
14 is that definition different than whether it's been used in
15 the last 14 days?

16 A Yes.

17 Q Can you please be more specific then in what your
18 definition of it is then?

19 A If you read the permit language specifically, it's
20 in a section that's in a different section from the active
21 versus inactive definition, and it uses the word "actively,"
22 and my reading of that section of the permit is that one is
23 actively pulling material from that stockpile.

24 And the reason being, is that we are not only
25 concerned with erosion due to rain events, but there's also

1 Storm Water Permit if they were to do so.

2 BY MS. BERESFORD:

3 Q To not cover an active stockpile?

4 A To not cover a stockpile that's not actively being
5 worked on.

6 Q Okay. How do you define -- or how does the permit
7 define actively being used?

8 MS. DRABANDT: Objection. Calls for legal
9 conclusion.

10 THE WITNESS: That section of the permit does not
11 define actively.

12 BY MS. BERESFORD:

13 Q Do you -- when -- in your interpretations is it --
14 is that definition different than whether it's been used in
15 the last 14 days?

16 A Yes.

17 Q Can you please be more specific then in what your
18 definition of it is then?

19 A If you read the permit language specifically, it's
20 in a section that's in a different section from the active
21 versus inactive definition, and it uses the word "actively,"
22 and my reading of that section of the permit is that one is
23 actively pulling material from that stockpile.

24 And the reason being, is that we are not only
25 concerned with erosion due to rain events, but there's also

1 a component that's concerned about wind erosion. And so,
2 obviously, if a sediment pile or some sort of a material
3 pile is not covered and not being used, then it would be
4 open to wind erosion.

5 So, therefore, it is our understanding of the
6 permit that unless one is actively removing material from
7 that stockpile, it needs to be covered.

8 Q Okay. Let's talk about December 2nd, and if I can
9 refer you to Exhibit No. 2 of the ACL?

10 A I have it.

11 Q Did you rely on this document in alleging Violation
12 No. 2 for December 2nd?

13 A Yes.

14 Q Did you rely on any other facts for purposes of
15 alleging Violation No. 2 for December 2nd?

16 A Yes.

17 Q And what other facts did you rely on?

18 A I believe I looked at rainfall data indicating that
19 there were imminent storms.

20 Q Did you rely on any other facts for alleging the
21 Violation No. 2 for December 2nd?

22 A Mainly the photographs from -- from the inspection
23 report. There might have been some other things, but right
24 now just mainly I recall using the photographs.

25 Q Okay. Did you do the highlighting and red box

1 "Effective: Yes or no. No."

2 Q Is there any indication of what those stockpiles
3 were being used for?

4 A No.

5 Q Okay. And sticking with Exhibit No. 4, there was
6 an allegation of an uncovered stockpile for December 8.

7 Did you rely on Exhibit No. 4 for alleged Violation
8 No. 2 for December 8th?

9 A Yes.

10 Q Did you rely on any other evidence for Violation
11 No. 2 for December 8th?

12 A It's difficult to answer that, but I would say that
13 not only am I looking at the inspection report but looking
14 at the previous inspection reports to see if there's any
15 consistent deficiencies. So I was looking at the totality
16 of things but mainly relying upon the photograph and the
17 text from the inspection.

18 Q Do you know who conducted the inspection on
19 December 8th?

20 A I don't know who conducted the inspection on
21 December 8th, but it says on the inspection report that the
22 inspector name is Harper.

23 Q Did you ever talk with Mr. Harper about his
24 inspection?

25 A No.

1 "Effective: Yes or no. No."

2 Q Is there any indication of what those stockpiles
3 were being used for?

4 A No.

5 Q Okay. And sticking with Exhibit No. 4, there was
6 an allegation of an uncovered stockpile for December 8.

7 Did you rely on Exhibit No. 4 for alleged Violation
8 No. 2 for December 8th?

9 A Yes.

10 Q Did you rely on any other evidence for Violation
11 No. 2 for December 8th?

12 A It's difficult to answer that, but I would say that
13 not only am I looking at the inspection report but looking
14 at the previous inspection reports to see if there's any
15 consistent deficiencies. So I was looking at the totality
16 of things but mainly relying upon the photograph and the
17 text from the inspection.

18 Q Do you know who conducted the inspection on
19 December 8th?

20 A I don't know who conducted the inspection on
21 December 8th, but it says on the inspection report that the
22 inspector name is Harper.

23 Q Did you ever talk with Mr. Harper about his
24 inspection?

25 A No.

1 Q Did you ever talk with him about whether he thought
2 they were improving from on December 8th as opposed to
3 December 4th?

4 A No.

5 Q And I don't want to put words in your mouth. You
6 noted on page 2, it says "Need to cover stockpiles," but you
7 don't know what those stockpiles were being used for; is
8 that correct?

9 A That is correct.

10 Q Okay. Do you know if it was raining on December
11 8th?

12 A I don't recall.

13 Q What facts demonstrate that the alleged violations
14 on December 5, 6, 7, or 8 resulted in impacts to the
15 beneficial uses of Encanto Channel?

16 A Could you repeat that?

17 Q Sure. Are there any facts that this alleged
18 Violation No. 2 uncovered stockpiles resulted in impacts to
19 beneficial uses of Encanto Channel?

20 A I would look at the weather report to see if there
21 where any storm events in that time period.

22 It's -- I see on this inspection report from
23 Exhibit No. 4 that it talked about on Friday there was a 95
24 percent chance of storm event, so that would color my
25 opinion on whether there might have been impacts.

1 Q Right. I'm talking about December 5, 6, 7, and 8.

2 A So 5, 6, 7, and 8, I would -- I would want to look
3 at the rainfall data to see, but potentially, there could be
4 if there was a storm event.

5 Q What if there was not a storm event?

6 A Less likely, unless there was significant winds.
7 If there was significant winds, it could have blown sediment
8 into the receiving waters.

9 Q Did you attach wind data to any of your technical
10 reports?

11 A No.

12 Q Did you look at wind data for your technical
13 reports?

14 A No. I will -- I will correct that. In the weather
15 information it does have wind data, so I apologize. It
16 does.

17 In the precipitation data it includes the full
18 weather report, and it does include wind. It's not my
19 highest priority, but it is something that we do look at.

20 Q Do you have a miles-per-hour criteria that you look
21 at when evaluating potential impacts?

22 A No.

23 Q So how do you evaluate wind data?

24 A There would be two things. One is the maximum
25 velocity, but also if there's notations for gust -- but,

1 again, that's what I would say is a lesser point for us
2 typically, but it is of importance.

3 There have been sites that we've contacted the air
4 pollution control board on when -- even during the dry dust
5 control. They're lacking dust control. We have made those
6 contacts.

7 Q For December 5, 6, 7, and 8, do you have facts that
8 there was direct threat to potential receptors for this
9 specific alleged violation?

10 A Based upon the inspection reports that I saw and
11 the lack of erosion control and sediment control on the
12 site, I would say they -- the site posed a threat to water
13 quality.

14 Q Is that the same as a direct threat to potential
15 receptors?

16 A Yes.

17 Q I would like to talk about September 15 where I
18 will refer you to Exhibit No. 22.

19 What is the basis for alleged Violation No. 2 for
20 September 15?

21 A Exhibit No. 2 is the Lemon Grove inspection report
22 by TAD Nakatani on September 15, 2015, of the Valencia site.
23 In there -- in his inspection report he noted on page 2 in
24 regard to material stockpiles, he described some small
25 sediment piles are not protected "Effective: Yes or no.

1 No." On the following page, I believe -- that's it.

2 Q Do you know what the sediment piles were being used
3 for?

4 A No.

5 Q Did you talk to Mr. Nakatani about this report?

6 A No.

7 Q Is it possible that they were going to be working
8 on those piles that afternoon?

9 MS. DRABANDT: Objection. Speculative.

10 THE WITNESS: I don't know.

11 BY MS. BERESFORD:

12 Q Okay. All right. Let's go to -- we're going to
13 talk about Violation No. 4 in a second, if you want to take
14 a look at that.

15 MR. ROSENBAUM: Can we go off the record for one
16 second?

17 MS. DRABANDT: Go off the record.

18 (Brief recess.)

19 MS. BERESFORD: We'll go back on.

20 BY MS. BERESFORD:

21 Q I'm sorry. Before we move on to Violation No. 4, I
22 do want to go back and talk about the definition of active a
23 little bit more.

24 Can you please look at that (indicating)?

25 A Yes.

1 "actively using stockpiles."

2 Q And on that basis you think the definition is
3 different?

4 A Yes.

5 Q Have you ever heard that discussed at any training?

6 A No.

7 Q Do you know if the CASQA BMP handbook discussing
8 that?

9 A I do not.

10 Q You know, can I ask you to find that in here for
11 me? Please forgive my ignorance, but I would like to know.

12 MR. ROSENBAUM: Can we go off the record for a
13 second?

14 MS. DRABANDT: Sure. Let's go off the record.

15 MS. BERESFORD: Go back on.

16 BY MS. BERESFORD:

17 Q And I was asking Mr. Melbourne to please locate for
18 me in the permit the reference to active and actively as
19 respects to stockpiles that he has been talking about.

20 So if you could please do that?

21 A Yes. So if you look at Attachment D to the
22 Construction Storm Water Permit which is -- Attachment D
23 applies to Risk Level 2 Construction Sites and this site is
24 a Risk Level 2 Site, so these are the requirements that
25 apply to it.

1 And on page 1, Attachment D if you look at Section
2 B which is "Good Site Management Housekeeping No. 1(b)," it
3 says "Cover and burn loose stockpile construction materials
4 that are not actively being used and (i.e., soils, spoils,
5 aggregate flash stucco, hydrated line, etc.)."

6 Q Okay. And then I had asked whether you had heard
7 in any training direction that that definition or use of
8 actively was different from the active definition in the
9 glossary.

10 Have you heard any direction on that in any
11 training?

12 A No.

13 Q And do you know if the CASQA handbook discusses
14 that?

15 A I don't believe it does.

16 Q And did you ever talk to San Altos specifically
17 about that?

18 A No.

19 Q Do you know if Mr. Chiu discussed that with
20 San Altos?

21 A I do not know.

22 Q Okay. Let's move to alleged Violation No. 4.
23 If you could refer to the ACL and state what alleged
24 Violation No. 4 is, please?

25 A Linda, did you want this back (indicating)?

1 can see some equipment parked in that area. Also does not
2 appear to have been sprayed, and there is two stockpiles
3 that are uncovered that have not been sprayed.

4 For this alleged violation there was an imminent
5 storm event, so these areas needed to be protected. And
6 given that this, in my judgment, this area was inactive
7 based upon looking at the site and the conditions around the
8 development -- that this area was inactive.

9 I'm much more confident about the area near the
10 house in that staging area and above that blue line that you
11 see on the left side middle, but I think also a decent case
12 can be made that the Tangelos Place, itself, should have
13 been sprayed with some sort of erosion control material.

14 Because if you look in subsequent photos of the
15 site, there was not substantial grading occurring on that
16 road that was at the base at which it was until they paved
17 it. And, yes, they were using it for transportation. So
18 some trucks may have been riding on it, but as far as
19 grading, there was no grading that occurred on that area for
20 several months.

21 On the second page of photographs in the upper
22 left, you'll see a car parked on a very flat graded area.
23 That area does not appear, to me, to be active. They were
24 parking vehicles on there. And so, again, in my opinion,
25 that area should have been sprayed with some sort of erosion

1 control material.

2 The photo in the bottom right is a continuation of
3 that area, and, again, I would say in my opinion, that
4 should have been sprayed.

5 Q Any other areas that you deem to be inactive on
6 December 1?

7 A No.

8 Q I'd like to go to the first page of photos.
9 We talked a lot about those -- oh, I'm sorry. Strike that.
10 Did you ever ask anybody if there was going to be
11 work performed on any of these areas in the next 14 days?

12 A I was not at the site on this date, so no.

13 Q In preparing the ACL when you were looking at these
14 photographs, did you talk to anyone to find out if they had
15 worked on these areas that you identified as inactive in the
16 next 14 days?

17 A No. I did not talk to anybody, but I did look at,
18 like I said, subsequent inspection reports and photographs
19 to look at areas and to see when there was activity on those
20 areas.

21 Also, in my follow-up inspections or my inspections
22 that occurred later on, I could see the same pattern. And,
23 again, this area -- this site was under a Stop Work Notice,
24 so --

25 Q I don't believe it was on December 1.

1 construction states, "Areas of construction activity that
2 are not active, and those that have been active and are not
3 scheduled to be re-disturbed for at least 14 days."

4 Q Okay. Let's talk about December 1.

5 Can you, please, identify for me the facts that you
6 relied on for this alleged violation for December 1?

7 A So I relied upon Exhibit No. 2 which is the Stop
8 Work Notice issued by the City of Lemon Grove on December 2,
9 2014, by -- it appears to be Gary Harper from the City of
10 Lemon Grove.

11 Attached to his inspection report are some
12 photographs that were taken on December 1, 2014, and
13 December 2, 2014. In this exhibit I highlighted the first
14 page of photographs in the upper left-hand corner of
15 photograph -- and I put a text box that says "Lack of
16 erosion control BMPs on inactive areas."

17 In the photograph you will see a roadway. It is
18 Tangelos Place, and there is a house in the upper left part
19 that is being -- like, stuccoed. You can see that in the
20 lower right-hand corner of the picture that there's some
21 orange. The orange is indicative of sprayed-on erosion
22 control product.

23 There is no looks like no soil binder on the graded
24 street, and there is a side part of the street which is a
25 housing pad that is also not covered. In the foreground you

1 can see some equipment parked in that area. Also does not
2 appear to have been sprayed, and there is two stockpiles
3 that are uncovered that have not been sprayed.

4 For this alleged violation there was an imminent
5 storm event, so these areas needed to be protected. And
6 given that this, in my judgment, this area was inactive
7 based upon looking at the site and the conditions around the
8 development -- that this area was inactive.

9 I'm much more confident about the area near the
10 house in that staging area and above that blue line that you
11 see on the left side middle, but I think also a decent case
12 can be made that the Tangelos Place, itself, should have
13 been sprayed with some sort of erosion control material.

14 Because if you look in subsequent photos of the
15 site, there was not substantial grading occurring on that
16 road that was at the base at which it was until they paved
17 it. And, yes, they were using it for transportation. So
18 some trucks may have been riding on it, but as far as
19 grading, there was no grading that occurred on that area for
20 several months.

21 On the second page of photographs in the upper
22 left, you'll see a car parked on a very flat graded area.
23 That area does not appear, to me, to be active. They were
24 parking vehicles on there. And so, again, in my opinion,
25 that area should have been sprayed with some sort of erosion

1 control material.

2 The photo in the bottom right is a continuation of
3 that area, and, again, I would say in my opinion, that
4 should have been sprayed.

5 Q Any other areas that you deem to be inactive on
6 December 1?

7 A No.

8 Q I'd like to go to the first page of photos.
9 We talked a lot about those -- oh, I'm sorry. Strike that.

10 Did you ever ask anybody if there was going to be
11 work performed on any of these areas in the next 14 days?

12 A I was not at the site on this date, so no.

13 Q In preparing the ACL when you were looking at these
14 photographs, did you talk to anyone to find out if they had
15 worked on these areas that you identified as inactive in the
16 next 14 days?

17 A No. I did not talk to anybody, but I did look at,
18 like I said, subsequent inspection reports and photographs
19 to look at areas and to see when there was activity on those
20 areas.

21 Also, in my follow-up inspections or my inspections
22 that occurred later on, I could see the same pattern. And,
23 again, this area -- this site was under a Stop Work Notice,
24 so --

25 Q I don't believe it was on December 1.

1 control material.

2 The photo in the bottom right is a continuation of
3 that area, and, again, I would say in my opinion, that
4 should have been sprayed.

5 Q Any other areas that you deem to be inactive on
6 December 1?

7 A No.

8 Q I'd like to go to the first page of photos.
9 We talked a lot about those -- oh, I'm sorry. Strike that.
10 Did you ever ask anybody if there was going to be
11 work performed on any of these areas in the next 14 days?

12 A I was not at the site on this date, so no.

13 Q In preparing the ACL when you were looking at these
14 photographs, did you talk to anyone to find out if they had
15 worked on these areas that you identified as inactive in the
16 next 14 days?

17 A No. I did not talk to anybody, but I did look at,
18 like I said, subsequent inspection reports and photographs
19 to look at areas and to see when there was activity on those
20 areas.

21 Also, in my follow-up inspections or my inspections
22 that occurred later on, I could see the same pattern. And,
23 again, this area -- this site was under a Stop Work Notice,
24 so --

25 Q I don't believe it was on December 1.

1 A Correct. It was not on December 1, but it was on
2 December 2nd all the way through until it was released on
3 January 22nd.

4 Q Do you know what the weather report was for
5 December 1?

6 A I don't recall, but I know that there were
7 significant storm events that occurred pretty much every
8 week during the month of December.

9 Q If someone is working on an active area, and they
10 need to prepare for a storm event, do you know the timeline
11 that they need to be -- how long that weather forecast is
12 that they look at?

13 A Well, there's -- there's different things that they
14 will at look at. One is when they look for storm events
15 that are greater than a 50 percent chance in the forecast,
16 they'll often look 48 hours out.

17 But in this case, I believe, the storm event was
18 predicted for the following day on December 2nd, and
19 typically in the permit, from what I recall, it talks about
20 trying to address these areas as soon as possible, but
21 typically no later than 24 hours prior to the anticipated
22 storm event.

23 And I think that's -- in the photographs, you can
24 see, there was a meeting of staff, and so, therefore, it
25 looks like they were trying to address the deficiencies at

1 Q Did you talk to her about what that meeting was
2 about?

3 A No.

4 Q Did you talk to Mr. Harper about what the meeting
5 was about?

6 A No.

7 Q Do you have any idea what the meeting was about?

8 A I believe very strongly that it was a meeting to
9 discuss deficient BMPs.

10 Q But why? Why could they not have been talking
11 about where they were going to work that afternoon?

12 A Because this is a fairly substantial meeting, and
13 there was an imminent storm event, and the City was very
14 concerned that there was going to be a sediment discharge
15 from the site.

16 In fact, if you look at page 2 of the inspection
17 report, it says "See Stop Work Notice. Discharge is
18 imminent. If NOAA forecast is correct, 100 percent heavy
19 rain this afternoon."

20 Q And what is the date of this photograph?

21 A That's on the 1st.

22 Q Is that the first time that anyone from the city
23 had been out there in several months?

24 A I do not know.

25 Q All right. Let's talk about December 2nd.

1 A Yes. I would point to you on the 7th page of
2 photos, if you were to look at the lower right-hand photo
3 that has the text box "Lack of Erosion Control BMPs on
4 Inactive Areas," again, that's Tangelos Place. And that
5 area -- they finished grading that, and they did not do any
6 other land disturbance to that until they paved it.

7 A photo looking in the opposite direction is on the
8 next page in the upper left. Again, these were some steep
9 slopes. Yes, there was traffic that could drive on there,
10 but as far as land disturbance for construction activity,
11 they could have put some sort of soil binder on there or
12 some gravel to protect that.

13 Again, some energy dissipators given the steepness
14 of the slope would have been helpful.

15 **Q So for your interpretation of the permit driving on**
16 **an area is not active use of an area?**

17 **A I have a tough problem with that because if you**
18 **look at most of the areas where you focus on driving such as**
19 **the entrances, they implement BMPs. They'll put on gravel,**
20 **or they'll put in shaker plates because of the driving**
21 **aspect to it and the fact that they don't want to track**
22 **stuff off the site.**

23 **So when I look at some of these areas where they've**
24 **graded it and there's no further grading that's going to go**
25 **on to those sites until they put in the street, they might**

1 do some digging for utilities on the side, but if they're
2 done grading for that area, given the ease of being able to
3 apply some sort of soil binder or gravel to some of these
4 areas, in my mind and based on the permit requirements and
5 my experience, that those are areas that they should
6 protect. It makes a lot of sense.

7 It helps to prevent the erosion from happening in
8 the first place. And if you look at the site back in --
9 later in a few months -- later in May when I was out on the
10 site, again, you saw completely unprotected areas, and it
11 was a muddy mess, and it was a huge source of sediment for
12 the site.

13 Q Do you know if you can drive on soil binder?

14 A You can, but it does break down.

15 Q How quickly?

16 A It depends on how much activity -- driving activity
17 occurs on there. So more activity, then it would break down
18 quicker. But as far as the application of it, it doesn't
19 take much application, and it's very cost effective for
20 sites. Also gravel, gravel is more expensive but has longer
21 lasting impacts.

22 Q Can you drive on energy dissipators?

23 A It's best if you don't. Straw wattles hold a
24 better for you to drive over than, say, a gravel bag, but
25 they lose their ability on areas where you drive over them.

1 those -- I would have thought that they would have sprayed
2 those also.

3 Q Did you ever talk to anyone about what those sites
4 were scheduled to be used for in the next 14 days?

5 A No.

6 Q Okay. Let's talk about December 4. And I'm
7 referring to Exhibit No. 3.

8 Can you please identify for me the areas that are
9 subject to Violation No. 4 for December 4?

10 A So the one that really stood out to me from this,
11 there's at least two or three photographs that caught my
12 attention. But on the second page of photographs in the
13 upper left, there is a box -- red box that I've identified
14 "Lack of erosion control in inactive areas." So what's
15 missing here on the front is -- this is one of the
16 construction entrances. So what's missing there is gravel,
17 and a shaker plate, or something like that.

18 But that's -- that's not the focus but -- but just
19 that's one that thing stood out to me. But if you look up
20 towards the center and then going towards the right of the
21 photo. That area there was graded and is developed as a
22 park for the residents there at the community, and so that
23 area did not change substantially, and that was not an area
24 where -- where they were driving up and around on.

25 And so that was an area that we had identified with

1 upper left -- it looks like there's a box container. And
2 there were several areas that were sprayed with the orange
3 bonded fiber matrix material, soil binder.

4 And you can see there's a lot of erosion rills, and
5 there's a lot of erosion that was lost less So where they
6 sprayed, but still there was a lot of erosion there. Those
7 areas needed to be touched up. They needed to be repaired.

8 **Q Do you know if they were slated to work on those**
9 **areas within the next 14 days?**

10 **A I'm not aware that they were slated to be worked on**
11 **in the next 14 days.**

12 **Q Could they have been scheduled for that?**

13 **A Again, I doubt it because they were under a Stop**
14 **Work Notice.**

15 **Q But could they have been scheduled for it?**

16 **MS. DRABANDT: Objection. Speculative.**

17 **THE WITNESS: I don't know.**

18 BY MS. BERESFORD:

19 **Q Any other areas?**

20 **A** If you go to the next page, the middle left where
21 you see a bunch of the partially covered stockpiles. That
22 area there, I think, could have also have been sprayed as
23 being inactive. It does not look like to me that area was
24 used to access the stockpiles, so, therefore, a soil binder
25 would have been appropriate in that section.

1 Q Do you know what they were doing in that area as of
2 December 4, or what they were scheduled to be doing?

3 A That was one of the later phases scheduled, so I
4 don't believe there was any scheduled activity for that
5 section.

6 Q Did you ever discuss with anyone what that schedule
7 was?

8 A On later visits when I was on the site, I did talk
9 to the site superintendent when they were on the site. I
10 did talk with them about scheduling, yes.

11 Q And so did you discuss with a them what the
12 schedule was with them for December?

13 A No.

14 Q So did you know the schedule for this area in
15 December?

16 A No.

17 Q Any other areas?

18 A I don't think so.

19 Q Going back to the photographs on December 1st --
20 the first page of photographs on December 1st.

21 Do you know if they implemented any BMPs?

22 A Excuse me. Linda, which exhibit are we on?

23 Q I'm sorry. December 1st which I believe is part of
24 Exhibit No. 2.

25 A Okay.

1 A It's in a different location, so the ones that had
2 shown up previously are gone.

3 Q So does that sound like the ones that they had
4 worked on are gone?

5 A That would be a reasonable inference.

6 Q Any other inactive areas on January 14th?

7 A I'm not sure if I -- if we talked about that, but
8 No. 5 -- I'm looking at Exhibit 25 which is the January 14,
9 2015, City of Lemon Grove inspection report. On page 3 for
10 "Recommendations 5." It talks about "Stabilize area, if
11 inactive or rain in forecast." Again, that's Section 5.

12 On the map on the final page it's in the upper
13 northwest corner of the site, and that site -- that part of
14 the site was not active at that time for -- for work. And,
15 again, they were under the Stop Work Notice, so I would
16 assume that area was inactive.

17 And also then it talks about No. 7 on the BMP
18 recommendations page, it says, "Repair minor rails and
19 protect against concentrated flows in the area." And that
20 No. 7 correlates to some of the pads along the southern part
21 of Avalon Way.

22 And those were some of the first ones built and
23 worked on, but the parkway strips or the areas along the --
24 the streets would not have been, in my mind, active at that
25 time. So those would have been area that's should have had

1 soil cover.

2 Q And do you know if they were doing any work to
3 implement BMPs in those areas on January 14th?

4 MS. DRABANDT: Objection. Speculative.

5 THE WITNESS: I do not know.

6 BY MS. BERESFORD:

7 Q Okay. Jumping ahead to May 9, 10, 11, and 12.

8 Do you have any reports for those days?

9 A I do not have specific inspection reports for May
10 9, 10, or 11, or 12.

11 Q Do you know if they were working in any of those
12 areas -- were they working on the site on those days?

13 A I'd have to refer to my inspection notes, but, if I
14 can recall, during that time period there were storm events.

15 And so, therefore, most of their efforts most
16 likely would have been to address the BMP deficiencies.

17 Q Did you produce your inspection notes?

18 A I produced my inspection report.

19 Q Do you have separate notes that you take?

20 A No.

21 Q Okay. I'd like to refer you to Exhibit 18 which is
22 the inspection report for May 8, and that's -- I'd like you
23 to look at page 3 at the bottom, No. 2 says, "Several areas
24 were observed to be inactive or could be scheduled to be
25 inactive."

1 Q Were you -- were they driving in that area?

2 A No. It's not an area where there would be vehicles
3 driving on it.

4 Q Did you ask for the construction schedule for the
5 next two weeks?

6 A I did not.

7 Q Do you know how far this location is from Encanto
8 Channel?

9 A This site is located right next to Encanto Channel.

10 Q What does that mean? Do you have an estimated
11 distance?

12 A It's adjacent to Encanto Channel. The development
13 site abuts Encanto Channel.

14 Q Is there one -- did you observe storm water flowing
15 all through the side of where it's adjacent, or does it
16 enter in distinct locations?

17 A I observed flows in Encanto Channel, and I observed
18 the storm drain inlets on Akins Avenue that discharge
19 directly into Encanto Channel.

20 Q And did you -- in preparing allegations for this
21 ACL, did you determine there was a substantial threat to
22 beneficial water use?

23 A I determined that there was a threat to beneficial
24 uses from this site.

25 Q And what facts did you rely on for that

1 or no.

2 Q Were your -- was your reaction to this report
3 substantially different from how you feel when you read
4 other similar reports?

5 A It was not substantially different.

6 Q We're going to go back to Notice of Violation No.
7 4, and look at the allegations for September 15.
8 I will ask you to look at Exhibit No. 22 to the ACL.

9 A Did you say 22?

10 Q Yes, I did.

11 Did you rely on this document for Notice of
12 Violation No. 4 for September 15?

13 A Yes, I did.

14 Q Did you rely on any other evidence for that
15 allegation?

16 A Not that I recall.

17 Q Can you identify the inactive areas for me that
18 form the basis of Notice of Violation No. 4 for September
19 15?

20 A In looking at Exhibit No. 22 which is Tad
21 Nakatani's September 15, 2015, City of Lemon Grove
22 inspection form of the San Altos-Valencia Hills site. If
23 you look on the first page of that under "Physical
24 Stabilization," it states, "Significant areas lack erosion
25 control. Evidence of erosion throughout site. Effective:

1 Yes or no. No."

2 And when I look at the BMP Recommendations on page
3 3, No. 1 states, "Utilize erosion controls on all disturbed
4 areas prior to rain events or when they are inactive,
5 whichever comes first."

6 And I note that on the map on page 4, that his one
7 circle applies to a lot of the lots in the graded pads
8 throughout the site. During this time, September 15, 2015,
9 the areas that I would expect that were inactive would have
10 been those along Valencia Court that have the one circled
11 and those along Orlando Drive that have the one.

12 The ones that are circled along Tangelos Place, I
13 would expect that that was an active area for that time of
14 the development.

15 Q Do you know where they were doing construction on
16 from September 15 to September 30?

17 A I believe it was along Tangelos Place.

18 Q Could they have been doing any other work in any
19 other area of the site?

20 MS. DRABANDT: Objection. Speculative.

21 THE WITNESS: I don't know.

22 BY MS. BERESFORD:

23 Q Okay.

24 A I would also note No. 5 on that BMP Recommendation,
25 states, "Clean sediment out of roadway and gutter." Again,

1 A Yes.

2 Q Are underlying soils waters of the United States?

3 MS. DRABANDT: Objection. Calls for legal
4 conclusion.

5 THE WITNESS: It may.

6 BY MS. BERESFORD:

7 Q How is that?

8 A Depends on the site characteristics.

9 Q Can you be more specific?

10 A If the geology is such that there's a high
11 groundwater level, then it could be.

12 Q Do you know what the groundwater level at this site
13 is?

14 A No.

15 Q Other than clean up the stucco, if stucco falls on
16 the ground before a rain event, weather best management
17 practice would be the best available technology for purposes
18 of the construction general permit?

19 A I have seen on various sites where stucco
20 contractors will lay down a fabric material or a plastic.
21 So I've seen it where it's a plastic, and then on top of
22 that a fabric material or a fabric material that is
23 waterproof.

24 And it will catch the bulk of the stucco that falls
25 off during the stucco application process. And, thereby,

1 they can pick it up, and they can then dump it into the
2 concrete bins -- or construction, after it's dried, they can
3 then dump it into construction waste bins. If it's still
4 wet, they can -- they can dump it into a concrete washout.

5 Q Is it possible that stucco can fall on the soil
6 even if somebody is using that type of process?

7 MS. DRABANDT: Objection. Speculative.

8 THE WITNESS: Yes, it's possible.

9 BY MS. BERESFORD:

10 Q And do you know if using the process you're just
11 described, if that complies with OSHA?

12 A I do not know if that complies with OSHA.

13 Q Let's look at Exhibit No. 13, please, to the ACL.

14 A I have Exhibit No. 13.

15 Q Did you rely on this document for the allegation of
16 the failure to discharge -- the failure to prevent the
17 discharge of concrete waste to the ground for March 18?

18 A My technical analysis does not cite Exhibit No. 13
19 in there. However, I believe it does cite Exhibit 14.
20 I will say that Exhibit No. 13 does contain photographs that
21 to me depict violations of Section B.2.I of Attachment D to
22 the Construction Storm Water Permit.

23 Q And what would that be?

24 A In looking at the first page of photographs in the
25 upper right-hand corner, there appears to be a discharge of

1 changed its ways, then this follow-up inspection would not
2 have discovered another discharge.

3 It was just a matter of days, different, in less
4 than five days, or five days.

5 Q Let's go back to Exhibit No. 13.

6 How many pictures in that exhibit do you think show
7 discharges of concrete waste to the ground?

8 A In the photographs themselves, I would say only
9 one.

10 Q On March 18?

11 A Correct. However, I would note that on page 3 of
12 the BMP Recommendations for No. 2 it says, "Concrete waste
13 observed on multiple locations."

14 Q And how many pictures of discharges to ground are
15 in Exhibit 16?

16 A One.

17 Q Do you know how many houses they were doing stucco
18 work at during this period?

19 A I do not.

20 Q So on March 18 they have multiple locations. On
21 March 23rd -- or March 24 they have one.

22 Is it possible that they improved, and just had one
23 accident on March 24?

24 A I don't know.

25 Q Is it possible that they didn't have any on

1 March 19?

2 A It's possible.

3 Q Possible they didn't have any on March 20?

4 A It's possible.

5 Q Possible they didn't have any on March 21?

6 A It's possible.

7 Q Possible they didn't have any on March 22?

8 A Possible.

9 Q Let's look at Exhibit No. 17 -- and before we move
10 on -- I'm sorry. So this one that was identified for March
11 24, do you know when they cleaned that up?

12 A I do not.

13 Q Okay. Let's look at Exhibit No. 17.

14 Did you rely on this document for the allegation
15 for Violation No. 13?

16 A Yes.

17 Q And what is the basis of that allegation?

18 A Based upon Exhibit No. 17 which is the City of
19 Lemon Grove's Administrative Citation for \$1,000 issued to
20 Tim Anderson the project manager for the San Altos-Lemon
21 Grove Project, Valencia Hills. It was for illegal
22 discharges of cementous materials. The date of the
23 violation is April 1, 2015, and it was issued by Tamara
24 O'Neil on April 1, 2015.

25 Attached to it are photographs of various houses

1 April 1st -- are there any facts that that waste actually
2 left the site?

3 A No.

4 Q Any evidence that that waste actually harmed waters
5 of the United States?

6 A No.

7 Q Do you know which site where you saw the plastic
8 being used by the stucco contractors?

9 A I believe it was the Garden Community site.

10 Q Let's look at Exhibit No. 13 again which was for
11 March 18, and I'm going to jump to Notice of Violation No.
12 12.

13 Do you know what was stored in those drums?
14 I'm sorry. Let's be more specific. I'm referring to
15 Exhibit No. 13, and the last page has photographs, and it
16 appears to be the same photograph on page No. 17 of the
17 technical analysis for the ACL.

18 Do you know what was in those drums?

19 A I do not know.

20 Q Do you know if they were hazardous or nonhazardous?

21 A I do not know.

22 Q Do you know if the containers were watertight?

23 A I don't think they were.

24 Q And why do you say that?

25 A Well, looking at the photograph, it appears that

1 one of the lids is cracked open.

2 Q Can you show me where?

3 A I'm looking at the photograph in the technical
4 analysis which is labeled Figure 12 on page 17. To me, the
5 bucket on the front left appears to have a lid where the lip
6 goes up, so, to me, it does not look like it was sealed.

7 Q I'm sorry. I don't know if it matters. I'm
8 looking at Exhibit No. 16 which I have one page of
9 photographs attached to that.

10 A Yes.

11 Q I do not see a picture of chemicals. You're saying
12 that's from Exhibit No. 15 from the ACL.

13 So that photograph comes from Exhibit No. 15?

14 A Yes.

15 Q Okay. My apologies.

16 Do you know if there was any rain that occurred
17 between March 18 and March 24?

18 A Not without looking at the precipitation data, no.

19 Q So do you have any evidence that this alleged
20 violation caused a threat to beneficial use of Encanto
21 Channel?

22 A Based on the information in front of me, no.

23 Q Okay.

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

25 (Brief recess.)

1 Q If they were the same stockpile, wouldn't he have
2 put all the information together?

3 A Let me see. I agree with you. They are separate
4 stockpiles.

5 Q Does the Notice of Violation allege that stockpiled
6 waste material is exposed from January 6th through January
7 14?

8 A It does not note it. However, in looking at the
9 two reports that -- it's reasonable to assume that they were
10 in that position that the inspector deemed a deficiency
11 because it shows up in both reports.

12 Q You're talking about the stockpiles near the basin?

13 A Correct.

14 Q So are those the stockpiles that you are focused on
15 for Violation No. 11?

16 A Yes.

17 Q How do we know that they're waste stockpiles?

18 A I would say that I base that upon my confusion that
19 it was the -- the scrap pile from the one above.

20 Q But you think they're different stockpiles at this
21 point?

22 A At this point I agree with you. They are different
23 stockpiles based upon the information in the map.

24 Q And do you have any evidence that waste stockpiles
25 were not protected from wind and rain from January 6th

1 through January 13?

2 A I do not.

3 Q Let's look at Violation No. 10, please.

4 A I have it in front of me.

5 Q Can you please state what that is for the record?

6 A On page 16 of the "ACL Complaint Violation No. 10"
7 is: "The failure to protect storm drain inlets (3 days)
8 pursuant to Section E.6 Attachment D to the Construction
9 Storm Water Permit.

10 "Dischargers shall ensure that all storm drain
11 inlets, and perimeter controls. Control BMPs, and pollutant
12 controls at entrances and exits (Example, tire washout
13 locations) are maintained and protected from activities that
14 reduce their effectiveness."

15 Q Let's look at Exhibit No. 4, please, to the ACL.

16 Did you rely on this report for the allegation of
17 failure to protect storm drain inlets on December 8th?

18 A I did.

19 Q Did you rely on any other evidence for this for
20 December 8?

21 A Not that I can recall.

22 Q Do you know if there was a discharge resulting from
23 this alleged violation on December 8th?

24 A I do not.

25 Q Do you know if there was an alleged potential -- or

1 connected to the MS4?

2 A I don't know.

3 Q Let's look at May 13 and Exhibit No. 19.

4 A I have Exhibit No. 19 in front of me.

5 Q Can you please identify for me what in that
6 document states that there was failure to protect a storm
7 drain on May 13th?

8 A I did not write this inspection report. I was at
9 the site on May 13, 2015, and so I recall documenting
10 through a photograph and visually seeing this figure that we
11 have in -- the photograph in Figure 11 on page 16. So it
12 was not included by Wayne in his inspection report.

13 MS. DRABANDT: May I, please, ask for an
14 explanation of what photograph you're referring to?

15 THE WITNESS: So in the Technical Analysis to the
16 ACL complaint on page 16, there's a photograph on -- that's
17 entitled Figure 11. And it's a photograph I took during the
18 inspection that Wayne Chiu conducted of the site. And so it
19 documented the failure to protect a storm drain inlet at the
20 site.

21 BY MS. BERESFORD:

22 Q So Mr. Chiu's report did not identify that as a
23 violation on May 13th?

24 A It did not.

25 Q Do you know if that storm drain was -- or if

1 that -- the picture on page 16 of a storm drain inlet, do
2 you know if that was connected to the MS4?

3 A I don't know.

4 Q If it was not connected to the MS4, is it still a
5 violation of the Construction General Permit?

6 MS. DRABANDT: Objection. Calls for a legal
7 conclusion.

8 THE WITNESS: In my opinion, it's a violation of
9 the Construction Storm Water Permit.

10 BY MS. BERESFORD:

11 Q If it's not connected to the MS4?

12 A Right. And the reason being I have seen many sites
13 where the developers will say a storm inlet is not
14 connected, and there will be sediment inside -- which there
15 was at the time that I took this photograph -- and they will
16 not clean it out.

17 And so, therefore, as soon as there is a set of --
18 a storm event and the site is connected, it will discharge
19 the sediment.

20 Q So you're citing them for a violation that you
21 think they're going to do, but have not done yet?

22 A It's --

23 MS. DRABANDT: Objection. Argumentative. Calls
24 for legal conclusion.

25 THE WITNESS: I would say --

1 BY MS. BERESFORD:

2 Q Is it possible that they could have cleaned it out?

3 Did you ever ask them if they did?

4 A Well, it wasn't protected at the time. And we were
5 expecting storm events. So, in my mind, that is a violation
6 of the Construction Storm Water Permit requirement.

7 Q Okay. Even if it's not connected to the MS4?

8 A Even if it's connected to the MS4.

9 Q Where is it going to go?

10 A If it's connected, it's going to go to Encanto
11 Channel.

12 Q What if it's not connected?

13 A Then, it's going to stay on site.

14 Q And is that still a violation?

15 MS. DRABANDT: Objection. Calls for legal
16 conclusion.

17 THE WITNESS: I would refer to the Construction
18 Storm Water Permit.

19 BY MS. BERESFORD:

20 Q If you didn't notify them of this being a potential
21 violation, how are they supposed to take corrective action
22 before a storm water event?

23 A I provided the inspection report to the developer.

24 Q Your inspection report?

25 A Oh, I'm sorry, Wayne's did. And it did not include

1 Q Could that be down the street and not related to
2 the perimeter?

3 A I don't think so because it says, "Discharge
4 location," so that is typically an entrance or exit area.

5 Q Have you talked to Mr. Harper about what location
6 he meant there?

7 A I did not.

8 Q Are there any pictures of the discharge locations
9 from December 8th?

10 A Not in the attached photos to Exhibit No. 4.

11 Q So there's no evidence of a discharge on 5, 6, or
12 7; is that correct?

13 A That would be correct.

14 Q Let's talk about May 9 through 12, please.

15 Do you have any inspection reports from May 9
16 through 12?

17 A I do not.

18 Do you know what the weather was like on May 10,
19 11, 12?

20 A I don't recall.

21 Q How do you know that there was insufficient
22 perimeter controls on May 9, 10, 11, and 12?

23 A I based that allegation upon the fact that there
24 were inadequate perimeter sediment control BMPs on May 8th
25 and also on May 13th. And so far I'm inferring that they

1 you were saying?

2 A Perhaps you misunderstood.

3 Q Okay. So, wow, I'm sorry if I misunderstood. So
4 when you were talking about the areas of active versus
5 inactive, there could have been active areas going on in
6 those days?

7 A If you look at the definition in the permit, it
8 talks about an area that is no longer scheduled to be worked
9 on, or hasn't been worked on in the last 14 days, I believe.
10 I'd have to refer to the permit, but I would refer to that
11 definition.

12 Q So as an -- even if someone is under a Stop Work
13 Notice, and they were scheduled to work on that area within
14 the next 14 days, would that still make that area active?

15 A Yes.

16 Q So did you ever discuss with anyone what the
17 schedule of active areas were to be for the month of
18 December?

19 A No.

20 Q Did you ever discuss with anyone what the areas of
21 active construction was supposed to be for the month of
22 January?

23 A No.

24 Q Are you aware that when Gary Harper was inspecting
25 the site and identifying areas as inactive versus active,

1 A I don't know. I hadn't thought about it.

2 Q Can we look, please, at Exhibit No. 2 --

3 A Yes. I have Exhibit No. 2.

4 Q -- to the ACL. And I'd like to look at the first
5 page of photographs, which are date stamped December 1. And
6 two of the photographs, one in the upper left-hand corner
7 and one in the lower right-hand corner are time stamped as
8 10:44 a.m.

9 Do you see that?

10 A Yes, I see that.

11 Q Are these two locations close to each other?

12 A I believe they are close to each other.

13 Q And can you describe how where they are in
14 relationship to each other?

15 A I believe that the photograph on the lower
16 right-hand side is slightly down the hill on Tangelos Place
17 from the photograph in the upper left.

18 Q Can you describe for me why the photograph in the
19 upper left is considered inactive but the photograph in the
20 lower right is considered active?

21 A So if you recall when I talked about the photo in
22 the upper left, that the areas where -- it might be easier
23 for me to point to you -- but the areas here (indicating)
24 and along here, I described as being inactive, and I was
25 making the comment that this area here which is Tangelos

1 Place is a roadway, and that it had been graded and was not
2 changing significantly -- was not planned or scheduled to be
3 regraded for many months as far as with pavement and
4 utilities to be put in.

5 And so my comment was that I deemed this area
6 (indicating) to be inactive because the only thing that was
7 occurring on there was some traffic, and it -- very little
8 because they ended up closing the northeast entrance/exit
9 very shortly after this time period. So even less traffic
10 was going on there, and so my comment was even though this
11 is a graded roadway, and there's some traffic, it was my
12 opinion that there should also be some soil stabilization on
13 there. A soil binder could be sprayed on there. This area
14 along here (indicating).

15 This area has some traffic (indicating), looks like
16 they have some vehicles parked there, but again it's -- it's
17 not scheduled to be regraded.

18 Q If somebody is using a location -- a graded area as
19 a road, just as a road, and the road has some slopes on it,
20 are the slopes on the road active or inactive?

21 A If the road is graded, and there's no plan to do
22 any other land disturbance to it, it's just being used as a
23 dirt road, then I would say it's inactive.

24 Q Okay. And I'm sorry if you already explained this.
25 Forgive me.

1 Can you, please, describe for me what characterizes
2 this photograph in the lower right-hand corner as active?

3 A Well, I characterize that area as active was
4 because I see there were some pipes that were laid down
5 there, and it looks like there some vehicles did some
6 turning around. And so since there's some materials placed
7 there, that perhaps that was an area that was going to get
8 more traffic than what I would expect in some of the other
9 areas.

10 And so, therefore, they would also be -- it's a
11 housing pad, so I know at another point they will be
12 doing -- pouring concrete, digging utilities, that sort of
13 thing. And that's -- that phase, that area was due to be
14 worked fairly soon, if I can recall correctly.

15 Q How do you know? Like, what's your recollection
16 based on?

17 A Based on my discussions with the site
18 superintendent at later times as far as the sequencing of
19 the phases for the development.

20 Q And do you know when that conversation occurred?

21 A I believe it occurred sometime in the May of 2015
22 on-site. It may have also occurred on March of 2015 when I
23 was on-site.

24 Q Did you inspect the site on March 27th?

25 A I was -- I believe I was on the site. Wayne Chiu

1 was the lead on that, so I was there. I observed the
2 conditions at the time, but I did not produce an inspection
3 report.

4 Q Do you know if Mr. Chiu produced an inspection
5 report?

6 A I believe -- I don't believe an inspection report
7 was created for that.

8 Q Why not?

9 A If I can recall, that was a meeting in which Wayne
10 was discussing -- Wayne Chiu was discussing with the
11 developer the potential for enforcement, and it was also a
12 chance to get the -- the developer, the subcontractors, and
13 some of the City of Lemon Grove staff together to make sure
14 that everybody was on the same page when it came to
15 protecting the site from sediment and runoff.

16 Q Do you recall what the general conclusion of that
17 inspection was?

18 A I remembered that I was disappointed with the site
19 conditions, that the developer was planning to use -- what I
20 would say -- some unorthodox BMPs on the site, and was also
21 thinking that the rainy season was over, and that there
22 weren't going to be any more storm events, and so that they
23 felt they were in the clear.

24 Q Do you recall Mr. Chiu's conclusions after that
25 inspection were?

EXHIBIT F

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 FRANK MELBOURN, a witness herein,
noticed by Oppen & Varco LLP, taken at
225 Broadway, San Diego, California, at
12:06 p.m., on Thursday, January 14, 2016, before
Diane M. Lytle, CSR 8606.

Hutchings Number 600593

1 12:17 THE WITNESS: When I read this, there's a section
2 on there that talks -- under the perimeter protection,
3 it does state fiber rolls.

4 In the description, the inspector has stated,
5 12:17 "Slope protection still needed." And so it's under
6 fiber rolls that that statement was noted, and it said
7 that it's not effective. So, therefore, I'm reading it
8 to be linear protection.

9 MS. BERESFORD:

10 12:17 Q. Did you talk to Mr. Nakatani about what he
11 meant by that comment?

12 A. No.

13 Q. Do you know if the slopes identified on the map
14 with the number 3 that you noted, do you know if they
15 12:17 were scheduled to have had any work done on December 16?

16 A. No.

17 Q. So let me rephrase.

18 Did you know whether that -- those slopes would be
19 active on December 16?

20 12:18 A. No.

21 Q. Do you know what the weather conditions were
22 for December 16?

23 A. From Exhibit Number 9, I do not see anything
24 that indicates weather. However, I do recall from my
25 12:19 own recollection that December of 2014 there were storms

1 12:19 every week. So I would not be surprised if there was a
2 storm event that was -- that happened within a day or
3 two of this inspection.

4 Q. Do you know if there was evidence of a
5 12:19 discharge on December 16th?

6 A. I do not.

7 Q. Let's look at May 8, so if you could please
8 refer to Exhibit Number 18 to the ACL.

9 A. I have it in front of me.

10 12:20 Q. And what is this document?

11 A. Exhibit Number 18 is a Regional Water Quality
12 Control Board inspection report for the Valencia Hills
13 site on May 8th, 2015. It was produced by myself.

14 Q. And can you identify for me the slopes that did
15 12:21 not have sufficient linear sediment controls on May 8?

16 A. The best example I can point to would be
17 photograph number 1 on page 6 of 10. In the upper
18 left-hand corner, you can see a slope, and that would be
19 one slope that I recall that did not have the linear
20 12:22 sediment control. You can see it on the section towards
21 the upper center and upper right, but it did not
22 continue through.

23 Furthermore, reserve sediment in the street that is
24 indicative of erosion and the linear sediment controls
25 12:22 help to reduce the amount of erosion that occurs or

1 12:24 that that sediment came off of that slope. But what I
2 would say is that there is evidence of erosion from
3 those slopes. There is evidence of sediment in the
4 street, so it is not unreasonable to make the assumption
5 12:24 that some of the sediment from the slope exited onto the
6 street.

7 Q. Do you have any other evidence to support the
8 allegation for May 8th?

9 A. Just my recollection that I recall seeing
10 12:24 several slopes.

11 Q. Okay.

12 For ease of reference for future discussion, I'm
13 going to introduce this exhibit now.

14 Can you please mark this as Exhibit 6. (EXHIBIT 6)

15 12:25 We've discussed previously that you've considered
16 weather conditions in your -- in preparing the complaint
17 and the allegations; is that correct?

18 A. Yes.

19 Q. Is this the information that you relied on when
20 12:25 evaluating the weather conditions for the alleged
21 violations?

22 A. I relied upon this information, and there were
23 times that I also looked at information from NOAA
24 online; however, I found this information to be the best
25 12:26 when it came to user-friendliness and ease of

1 12:26 understanding.

2 Q. Did you make any notes from your investigation
3 of information from NOAA, N-O-A-A?

4 A. No.

5 12:26 Q. I want to briefly go back to the May 8,
6 Exhibit 19. All right.

7 I'm sorry. Never mind.

8 Let's proceed to May 13, please, and that would be
9 Exhibit Number 19 to the ACL.

10 12:27 A. I have it in front of me.

11 Q. Can you please identify the slopes that are
12 lacking linear sediment controls on these days -- I'm
13 sorry -- on May 13.

14 A. Looking at photo 1 on page 6 of 9 on the
15 12:29 exhibit, one can see several stockpiles covered with
16 black plastic.

17 If I can recollect appropriately, this looks like
18 Seville Way to me. But there's a slope there. I know
19 it's a street. But that's the type of place where you
20 12:29 have a slope. And this was a fairly steep slope that
21 the linear sediment control installation of fiber rolls
22 can work very effectively to reduce the amount of
23 energy. Also, they do actually hold up fairly well if
24 they're driven over a few times.

25 12:30 Looking at photo 2, it's hard -- I can see several

1 12:32 site during the inspection, but Wayne produced the
2 report.

3 Q. Do you know if any of these slopes were active?

4 MR. BOYERS: Objection. Vague as to the definition
5 12:33 of "active."

6 Are you referring to the construction general
7 permit definition?

8 MS. BERESFORD: Yes.

9 Q. Do you know if any of these slopes were active
10 12:33 defined by the construction general permit?

11 A. Based on my recollection of the site inspection
12 and walking the site, looking at the site, and based
13 upon my previous visits at the site, I would say some of
14 them may have been inactive and others may have been
15 12:33 active.

16 It was unfortunate that on that date, the site
17 representative did not meet us by the time we had
18 finished our inspection.

19 Q. Did he know you were there?

20 12:34 A. Yes.

21 Q. How did he know?

22 A. When we arrived on site, we went -- Wayne and I
23 went to the -- started walking the site. And within a
24 few minutes of us being on site, a contractor -- I don't
25 12:34 know that it was a representative of the developer, but

1 12:34 one of the contractors for the site approached us, asked
2 who we were. We explained who we were.

3 He got on the phone and called the site
4 superintendent and said that the site superintendent was
5 12:34 off site, but that he would be there shortly. By the
6 time we finished our inspection, walking the entire
7 site, he had not shown up, so we left.

8 Q. How do you know it was the site superintendent
9 that he called?

10 12:35 A. The person that called told us that it was the
11 site superintendent, and I believe the name he used was
12 Sandstrom.

13 Q. So you were just talking about some slopes are
14 active and some slopes are inactive.

15 12:35 Can you identify for me which you're alleging --
16 which slopes you're alleging are active and which slopes
17 you're alleging are inactive?

18 A. My opinion whether the slope was active or
19 inactive, it needed protection because there was a storm
20 12:36 event forecasted.

21 Q. For May 13th?

22 A. For within the next 24 to 48 hours. That's my
23 recollection. So I would have expected that they would
24 be preparing the site for a storm event.

25 12:36 Q. But for purposes of the allegations, can you

1 12:38 Some individual work on pads, housing pads, as they
2 went along. But, again, that area could have been
3 inactive. But it -- they could also consider it active.
4 But, in my opinion, that was inactive.

5 12:39 Same with photos 9 and 10, I would call those areas
6 inactive, those streets.

7 And to me, photo 7 would also be inactive. That
8 was used for some travel. But, again, I think it was
9 insufficient to bring in the definition of land

10 12:39 disturbance.

11 MS. BERESFORD:

12 Q. Is there evidence of a discharge on May 13?

13 A. When you say sediment discharge, do you mean to
14 the street or to the storm water conveyance system?

15 12:40 Q. To the storm water conveyance system.

16 A. No.

17 Q. With the exception of the road areas that you
18 identified on page 8, are the linear sediment controls
19 that you identified -- the deficient linear sediment
20 12:41 controls that you identified for May 13 different than
21 those that you identified on May 8?

22 A. Some were the same, some were different.

23 Q. Which ones were the same?

24 A. The ones that occurred on Seville Way would
25 12:42 have been the same.

1 12:42 Q. Is that it?

2 A. I believe so.

3 Q. Do you have any inspection reports for May 10,

4 11, or 12 -- I should say May 9, 10, 11, or 12?

5 12:42 A. I don't believe so.

6 Q. Excluding Seville Way, what evidence do you

7 have that there were insufficient linear sediment

8 controls on May 9, 10, 11, and 12?

9 A. I would base that opinion on the fact that

10 12:43 there were deficiencies at the site for quite a long

11 time, looking at the sea of Lemon Grove inspection

12 reports, my site visits.

13 Q. Anything specific?

14 A. No.

15 12:43 Q. Okay.

16 And, then, let's look at September 15, please, and

17 that would be Exhibit Number 22 to the ACL.

18 A. I have Exhibit Number 22.

19 Q. And what -- Did you rely on this document for

20 12:44 the allegations of insufficient linear sediment controls

21 for September 15?

22 A. I did.

23 Q. And what is the evidence -- What did you rely

24 on in this document to allege that violation?

25 12:45 A. What I recall is that attached to this Exhibit

1 13:00 failure to adequately manage run-on -- excuse me --
2 runoff within the site.

3 Number 3 on page 8 of 10 again shows sediment in
4 the street which, in my opinion, is a failure to manage
5 13:01 the runoff from within the site.

6 And just my recollection and finding number 6 on
7 page 4 of 10 stating that there was a lack of effective
8 run-on and runoff controls observed.

9 Q. Anything else for May 8?

10 13:01 A. Not that I recall.

11 Q. Okay.

12 Let's talk about May 13, and I'd like to refer you
13 to Exhibit Number 19 of the ACL.

14 A. I have Exhibit Number 19.

15 13:01 Q. And can you please identify for me those --

16 Well, first, let me ask, is this what you relied on for
17 the allegations for violation number 8 for May 13?

18 A. I relied upon this inspection report and my
19 recollection from my visit of the site at the same time,
20 13:02 as well as the photographs that Wayne took and I took of
21 the site.

22 Q. Okay.

23 Can you please identify for me the basis for your
24 allegation of failure to manage run-on and runoff for

25 13:02 May 13, please?

1 13:05 sediment control?

2 A. Yes.

3 Q. So if you have a failure to implement perimeter
4 sediment control, do you necessarily have a failure to
5 13:06 manage runoff?

6 MR. BOYERS: Objection. Legal conclusion.

7 THE WITNESS: I don't know.

8 MS. BERESFORD:

9 Q. But in this case, that -- that's -- is that
10 13:06 true, failure to manage -- failure to implement
11 perimeter sediment control, and, therefore, you also
12 have failure to manage runoff?

13 A. Could you rephrase that?

14 Q. Sure.

15 13:06 Is the failure to manage runoff related to the
16 failure to implement perimeter sediment control?

17 A. Yes.

18 Q. Okay.

19 What was the basis for your allegations of failure

20 13:07 to implement perimeter -- I'm sorry -- failure to manage
21 run-on and runoff for May 9, 10, 11, and 12?

22 A. The allegation was based upon the findings and
23 evidence collected during the inspections on May 8th and
24 May 13th by the regional board, and the fact that there
25 13:07 were consistent violations for those violations;

1 13:07 therefore, it was reasonable for us to infer that those
2 violations continued in the meanwhile.

3 Q. Did you have any independent evidence of what
4 occurred on the site on those days?

5 13:07 A. Not that I recall.

6 Q. Okay.

7 Do you -- Does the level of the BMPs require the
8 failure -- Let me start over.

9 Did the BMPs required to manage run-on and runoff,
10 13:08 do those change at -- depending on whether or not it's
11 dry weather or whether there's a storm in the 48-hour
12 forecast?

13 A. Yes.

14 Q. So in dry weather, are the BMPs associated with
15 13:08 managing run-on and runoff not as stringent if you are
16 in an active area?

17 A. Based upon my understanding of the construction
18 storm water permit, there are a lot of factors that are
19 dynamic for sites and so a factor will be weather. But
20 13:09 another factor will be the amount of acreage that's
21 open, the type of construction that's occurring.

22 So there's a lot of factors that play into it. So
23 I would say on a case by case, time by time that those
24 requirements change. Not that the requirements change,
25 13:09 but the implementation of BMPs that would say those

1 13:14 Q. How do you know that means there's sediment in
2 the street? Could it be just a notation that they
3 should sweep the street after they finish rebuilding?

4 A. I don't know.

5 13:14 Q. Who did this inspection?

6 A. I don't know, but the Exhibit Number 4 states
7 the inspector name that appears to be Harper.

8 Q. Did you ask him if that's what he meant by that
9 notation that there was sediment in the street?

10 13:15 A. No.

11 Q. Is it possible that they -- Let me continue.

12 Do any of the photographs show sediment in the
13 street on December 8?

14 A. None of the attached photographs to Exhibit
15 13:15 Number 4 demonstrate sediment in the street.

16 Q. Is it possible they cleaned up the sediment on
17 December 4 or December 5?

18 MR. BOYERS: Objection. Speculation.

19 THE WITNESS: I don't know.

20 13:15 MS. BERESFORD:

21 Q. Do you have any other evidence that there was
22 sediment in the street on December 5, 6, 7, or 8?

23 MR. BOYERS: I believe you have referenced 5, 6, or
24 7 before. Are we adding 8?

25 13:15 MS. BERESFORD: He was talking about Exhibit Number

1 13:23 residential area would be insignificant compared to what
2 would have come off of the construction site.

3 Q. Is there anything in the report for December 9
4 that indicates how much sediment he's talking about?

5 13:23 A. It states on page 2 of the December 9th, 2014
6 City of Lemon Grove inspection report that there was a
7 large amount of sediment on roadway southeast of site.

8 Q. Is Akins Avenue southeast or southwest?

9 A. In my opinion -- and I don't see on this map, I
10 13:24 don't see a north arrow indicated on there, but I would
11 say that the Akins Avenue area is southwest of this
12 site, not southeast.

13 BY MR. BOYERS: Okay.

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

15 13:25 (A recess is taken.)

16 MS. BERESFORD:

17 Q. I want to revisit your inspection on May 13.
18 You indicated that you and Mr. Chiu went to the site,
19 that you had spoken to somebody out there that attempted
20 13:34 to call someone that you thought was the site
21 superintendent, he didn't make it to the site before you
22 were done; is that correct?

23 A. Yes.

24 Q. Okay.

25 13:35 Did you follow up after the fact with anyone at the

1 13:35 site to discuss your findings?

2 A. I believe I transmitted -- Let's see datewise.

3 I don't recall specific date, but I visited the site on

4 May 15th and met with Tim Anderson and Tyler Sandstrom.

5 13:35 And so to coordinate that inspection meeting, I know at

6 some point I had to communicate with them. Whether it

7 was by telephone or by email, I don't recall.

8 Q. When you --

9 A. And at that point, I recall that I -- I believe

10 13:36 I -- Let me think. If I recall correctly, I believe I

11 talked with Tim Anderson by phone after I got back from

12 the inspection with Wayne Chiu on the 13th, and I

13 expressed that there were many deficiencies that were

14 noted at the site; and that there was a storm event

15 13:37 expected, I believe, sometime on the 14th or 15th; and

16 that the site really needed to get taken care of.

17 And if I can recall correctly, there was a storm

18 drain inlet that we see on figure 11 on page 16 of the

19 technical analysis that shows the unprotected storm

20 13:37 drain inlet. And I believe in the inspection that I

21 conducted on the 15th, that that was taken care of.

22 So referring to Exhibit Number 20, which is my

23 May 15th, 2015 inspection report for the site, the

24 page 8 of 8, photograph number 5 shows the same storm

25 13:37 drain inlet that now has been protected with gravel

1 13:43 Q. Okay.

2 So who ultimately decides which BMPs are
3 appropriate for any given day?

4 A. For the Regional Water Quality Control Board,
5 13:44 we are not in the business of specifying specific best
6 management practices that must be applied.

7 So, therefore, I would say from our point of view,
8 we will assess whether they were effective and whether
9 they complied with the requirements of the permit, but
10 13:44 that it would be ultimately up to the QSP for the site
11 to decide and the developer in conjunction with the QSP
12 to decide what is best for that site and that developer.

13 Q. Okay. Thank you.

14 I want to talk about some of the weather
15 13:44 information that you collected. And if I could refer
16 you back to Exhibit -- I believe it's Exhibit 6.

17 A. I have it in front of me.

18 Q. And I believe I asked if this is what you
19 relied on for weather information, and I think you
20 13:45 indicated yes, and that in some instances, you relied on
21 NOAA for certain things; is that correct?

22 A. Yes.

23 Q. I'm going to ask you to take a look at this,
24 please. Let's mark this as Exhibit 7. (EXHIBIT 7)

25 13:46 Do you know what Exhibit 7 is?

1 13:46 A. Exhibit 7 is a -- of the deposition appears to
2 be page 7, 8 --

3 Q. Oops. Did I give you --

4 MR. BOYERS: 31 and 32.

5 13:46 THE WITNESS: Did you want those also?

6 MS. BERESFORD: No, no.

7 THE WITNESS: Appears to be pages 7 and 8 of
8 Attachment D to the construction storm water permit.

9 MS. BERESFORD:

10 13:46 Q. Does this identify where a QSP is supposed to
11 look for weather information?

12 A. Yes.

13 Q. Where are they supposed to obtain that
14 information?

15 13:46 A. States that they can obtain precipitation
16 forecast information from the National Weather Service
17 Forecast Office, example, by entering the ZIP code of
18 the project's location at <http://srh.noaa.gov/forecast>.

19 Q. Does it say the discharger can get that
20 13:47 information from NOAA or that the discharger shall get
21 that information from NOAA?

22 A. It states "shall."

23 Q. So would you say the majority of the weather
24 information that you relied on came from this Weather

25 13:47 Underground site?

1 13:47 A. Yes.

2 Q. What is Weather Underground?

3 A. It is a web site that collects weather
4 information from various weather stations throughout the
5 13:48 nation.

6 Q. Why did you not use NOAA data?

7 A. The NOAA data does not present itself in a
8 format that is easily read and understood by a
9 layperson.

10 13:48 Q. So does that mean it's okay to use data from
11 somewhere other than NOAA under the permit?

12 A. For this case, I felt that using this weather
13 station was a good approximation of the weather that was
14 occurring at the site sufficient for me to know whether
15 13:48 there was a storm event or not during the time period.

16 Q. Do you know if there are any other locations
17 that collect weather data that's closer to the site than
18 the site that you relied on from the Weather
19 Underground?

20 13:49 A. I don't know.

21 Q. For about how many times did you look at the
22 NOAA data?

23 A. I would say two times or less.

24 Q. Do you know which site you referred to -- and
25 13:49 correct me if I'm wrong, my understanding is that NOAA

1 13:49 data is identified by latitude and longitude, do you
2 know which NOAA station you collected that information
3 from?

4 A. I do not.

5 13:50 Q. I would like to talk about December 16. I am
6 currently searching for which exhibit that might be.

7 MR. BOYERS: 9.

8 MS. BERESFORD:

9 Q. My colleague indicates Exhibit 9 to the ACL,
10 13:50 information about December 16.

11 A. I have Exhibit Number 9 in front of me.

12 Q. Unfortunately, I'm thinking of the wrong date.
13 I would like to talk about December 17.

14 MR. BOYERS: 10.

15 13:51 MS. BERESFORD:

16 Q. December 17 is the memo from Brian Nemerow, or
17 does it contain the memo from Brian Nemerow?

18 A. Exhibit Number 10 is a D-Max, Incorporated,
19 memo dated December 17th, 2014, from Brian Nemerow to

20 13:51 Malik Tamimi.

21 Q. When we were discussing some alleged violations
22 involving activity on December 16 yesterday, I recall
23 you indicating that you thought there had been rainfall
24 earlier in the day.

25 13:51 And my question to you is, did you track rainfall

1 14:18 areas that may contain additional pollutants so there is
2 no discharge into the underlying soil and onto the
3 surrounding areas."

4 There's an "into the underlying soil" and "onto the
5 14:18 surrounding areas." I take that as a discharge to the
6 ground.

7 Q. Okay.

8 How many times did you visit the site?

9 A. I don't recall a specific number, but I would
10 14:18 say anywhere between five to ten times.

11 Q. We've had a lot of discussion over the past
12 two days about active versus inactive areas.

13 Did you discuss the construction schedule every
14 time you went to the site?

15 14:19 A. No.

16 Q. When did you discuss the construction schedule?

17 Let me rephrase.

18 Did you ever discuss the construction schedule with
19 anyone from -- a representative of San Altos?

20 14:19 A. Yes.

21 Q. And when did you do that?

22 A. March 27th, 2015, the first time I was on the
23 site, we discussed the construction schedule.

24 On May 15th, 2015, we discussed the construction
25 14:19 schedule.

1 14:19 And it would have been either October or November
2 when I met with Attorney Rosenbaum at the site. We
3 discussed construction schedule.

4 Q. The first time, you said, you discussed the
5 14:20 construction schedule was March 27; is that correct?

6 A. I believe so.

7 Q. And did you talk about the past schedule or
8 what the schedule had been since November through March?

9 A. I know there was a discussion concerning the
10 14:20 stop work notice and the impact on some of the
11 activities, but the bulk of the scheduling conversation
12 that we had was on what was to come.

13 Q. Have you undergone any construction training?

14 MR. BOYERS: Objection. Vague as to what is
15 14:20 "construction training."

16 MS. BERESFORD:

17 Q. Have you taken any classes on construction
18 management?

19 A. I have not taken any classes on construction
20 14:21 management. I have had in my civil engineering studies
21 classes in -- in timber design, structural design,
22 foundations, soils, concrete design.

23 I don't believe I had any sort of construction
24 management classes or construction contracts training in
25 14:21 law school.

Weather History for KSEE - November, 2014

November Precip Stats: Actual Month Total: 1.23 in | Average Month Total: 1.23 in

☒ Today ☐ Forecast

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
						Actual: 68° 53° 0.28 in Average: 76° 50° 0.03 in
2	3	4	5	6	7	8
Actual: 69° 51° 0.05 in Average: 76° 50° 0.02 in	Actual: 75° 44° 0.00 in Average: 75° 50° 0.02 in	Actual: 84° 42° 0.00 in Average: 75° 49° 0.03 in	Actual: 89° 42° 0.00 in Average: 75° 49° 0.03 in	Actual: 93° 46° 0.00 in Average: 75° 49° 0.04 in	Actual: 93° 46° 0.00 in Average: 75° 49° 0.04 in	Actual: 89° 48° 0.00 in Average: 75° 48° 0.05 in
9	10	11	12	13	14	15
Actual: 84° 48° 0.00 in Average: 75° 48° 0.05 in	Actual: 73° 57° 0.00 in Average: 75° 47° 0.04 in	Actual: 68° 62° 0.00 in Average: 75° 47° 0.04 in	Actual: 71° 55° 0.00 in Average: 75° 47° 0.04 in	Actual: 73° 55° 0.00 in Average: 75° 46° 0.03 in	Actual: 73° 53° 0.00 in Average: 75° 46° 0.02 in	Actual: 73° 51° 0.00 in Average: 75° 46° 0.02 in
16	17	18	19	20	21	22
Actual: 78° 48° 0.00 in Average: 75° 45° 0.03 in	Actual: 78° 41° 0.00 in Average: 75° 45° 0.03 in	Actual: 82° 39° 0.71 in Average: 75° 45° 0.03 in	Actual: 78° 41° 0.00 in Average: 74° 45° 0.03 in	Actual: 73° 42° 0.00 in Average: 74° 44° 0.04 in	Actual: 71° 51° 0.19 in Average: 74° 44° 0.04 in	Actual: 75° 46° 0.00 in Average: 73° 44° 0.05 in
23	24	25	26	27	28	29
Actual: 80° 46° 0.00 in Average: 73° 44° 0.05 in	Actual: 84° 39° 0.00 in Average: 73° 43° 0.05 in	Actual: 80° 39° 0.00 in Average: 72° 43° 0.07 in	Actual: 91° 42° 0.00 in Average: 72° 42° 0.07 in	Actual: 93° 44° 0.00 in Average: 72° 42° 0.06 in	Actual: 86° 42° 0.00 in Average: 71° 42° 0.06 in	Actual: 80° 41° 0.00 in Average: 71° 41° 0.06 in

30
Actual: 73° | 48°
0.00 in
Average: 71° | 41°
0.06 in

EXHIBIT 6
REPORTER D. W. A. K.
WITNESS F. Melbourn
DATE 1-14-16

Weather History for KSEE - December, 2014

☐ Today ☐ Forecast

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2	3	4	5	6
	Actual: 73° 48° Average: 0.00 in	Actual: 68° 57° Average: 0.39 in	Actual: 66° 59° Average: 0.32 in	Actual: 71° 53° Average: 0.36 in	Actual: 69° 51° Average: 0.00 in	Actual: 73° 55° Average: 0.00 in
	- - - in	- - - in	- - - in	- - - in	- - - in	- - - in
	8	9	10	11	12	13
7	Actual: 80° 50° Average: 0.00 in	Actual: 78° 51° Average: 0.00 in	Actual: 80° 46° Average: 0.00 in	Actual: 73° 46° Average: 0.00 in	Actual: 69° 55° Average: 0.00 in	Actual: 62° 51° Average: 0.70 in
	- - - in	- - - in	- - - in	- - - in	- - - in	- - - in
	15	16	17	18	19	20
14	Actual: 66° 41° Average: 0.00 in	Actual: 66° 42° Average: 0.00 in	Actual: 60° 46° Average: 0.45 in	Actual: 64° 48° Average: 0.38 in	Actual: 64° 46° Average: 0.00 in	Actual: 69° 42° Average: 0.00 in
	- - - in	- - - in	- - - in	- - - in	- - - in	- - - in
	22	23	24	25	26	27
21	Actual: 77° 46° Average: 0.00 in	Actual: 82° 44° Average: 0.00 in	Actual: 84° 44° Average: 0.00 in	Actual: 78° 42° Average: 0.00 in	Actual: 66° 41° Average: 0.01 in	Actual: 64° 33° Average: 0.00 in
	- - - in	- - - in	- - - in	- - - in	- - - in	- - - in
	29	30	31			
28	Actual: 62° 32° Average: 0.00 in	Actual: 66° 33° Average: 0.00 in	Actual: 57° 42° Average: 0.13 in	Actual: 50° 32° Average: 0.19 in		
	- - - in	- - - in	- - - in	- - - in		

Calendar Legend

Weather History for KSEE - January, 2015

☐ Today
 ☐ Forecast

January Precip Stats: Actual Month Total: 0.99 in | Average Month Total: 2.89 in

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2	3
				Actual: 59° 30° Average: 70° 39° 0.00 in 0.08 in	Actual: 60° 32° Average: 70° 39° 0.00 in 0.10 in	Actual: 64° 33° Average: 70° 39° 0.00 in 0.10 in
				8	9	10
				Actual: 82° 39° Average: 70° 39° 0.00 in 0.12 in	Actual: 73° 48° Average: 70° 39° 0.00 in 0.12 in	Actual: 68° 48° Average: 70° 39° 0.00 in 0.11 in
				15	16	17
				Actual: 73° 39° Average: 71° 40° 0.00 in 0.10 in	Actual: 75° 39° Average: 71° 40° 0.00 in 0.09 in	Actual: 80° 39° Average: 70° 40° 0.00 in 0.08 in
				22	23	24
				Actual: 73° 48° Average: 69° 41° 0.00 in 0.07 in	Actual: 78° 37° Average: 69° 41° 0.00 in 0.07 in	Actual: 82° 39° Average: 69° 41° 0.00 in 0.09 in
				29	30	31
				Actual: 78° 44° Average: 69° 40° 0.00 in 0.09 in	Actual: 71° 53° Average: 69° 40° 0.00 in 0.09 in	Actual: 62° 51° Average: 69° 40° 0.00 in 0.08 in
				5	6	7
				Actual: 73° 35° Average: 70° 39° 0.00 in 0.11 in	Actual: 84° 37° Average: 70° 39° 0.00 in 0.12 in	Actual: 89° 39° Average: 70° 39° 0.00 in 0.13 in
				12	13	14
				Actual: 59° 53° Average: 70° 39° 0.34 in 0.11 in	Actual: 69° 55° Average: 71° 39° 0.01 in 0.10 in	Actual: 69° 46° Average: 71° 39° 0.00 in 0.10 in
				19	20	21
				Actual: 78° 39° Average: 70° 40° 0.00 in 0.07 in	Actual: 77° 41° Average: 70° 41° 0.00 in 0.06 in	Actual: 66° 48° Average: 69° 41° 0.00 in 0.06 in
				26	27	28
				Actual: 80° 44° Average: 69° 40° 0.00 in 0.09 in	Actual: 73° 51° Average: 69° 40° 0.03 in 0.09 in	Actual: 75° 46° Average: 69° 40° 0.00 in 0.09 in
				3	4	5
				Actual: 59° 30° Average: 70° 39° 0.00 in 0.08 in	Actual: 60° 32° Average: 70° 39° 0.00 in 0.10 in	Actual: 64° 33° Average: 70° 39° 0.00 in 0.10 in

Calendar Legend

Weather History for KSEE - February, 2015

☐ Today
 ☐ Forecast

February Precip Stats: Actual Month Total: 0.65 in | Average Month Total: 3.32 in

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7
Actual: 78° 44° Average: 69° 40° 0.08 in	Actual: 80° 42° Average: 68° 40° 0.09 in	Actual: 82° 42° Average: 68° 40° 0.09 in	Actual: 82° 44° Average: 67° 40° 0.09 in	Actual: 86° 42° Average: 67° 40° 0.09 in	Actual: 84° 44° Average: 67° 40° 0.10 in	Actual: 78° 39° Average: 67° 40° 0.11 in
8	9	10	11	12	13	14
Actual: 80° 50° Average: 67° 40° 0.11 in	Actual: 78° 48° Average: 67° 41° 0.12 in	Actual: 80° 42° Average: 67° 41° 0.13 in	Actual: 89° 44° Average: 67° 41° 0.14 in	Actual: 87° 44° Average: 67° 41° 0.14 in	Actual: 89° 44° Average: 67° 42° 0.14 in	Actual: 89° 48° Average: 67° 42° 0.14 in
15	16	17	18	19	20	21
Actual: 84° 46° Average: 66° 42° 0.13 in	Actual: 75° 44° Average: 66° 42° 0.13 in	Actual: 75° 50° Average: 66° 42° 0.13 in	Actual: 78° 48° Average: 66° 43° 0.13 in	Actual: 75° 50° Average: 66° 43° 0.13 in	Actual: 73° 55° Average: 65° 43° 0.13 in	Actual: 69° 57° Average: 65° 43° 0.13 in
22	23	24	25	26	27	28
Actual: 62° 53° Average: 65° 43° 0.12 in	Actual: 66° 46° Average: 65° 43° 0.13 in	Actual: 69° 41° Average: 65° 43° 0.12 in	Actual: 75° 39° Average: 65° 43° 0.12 in	Actual: 73° 42° Average: 65° 43° 0.12 in	Actual: 66° 48° Average: 65° 43° 0.12 in	Actual: 64° 53° Average: 66° 43° 0.11 in

Calendar Legend



Mostly Cloudy



Partly Cloudy



Thunderstorms



Weather History for KSEE - March, 2015

☐ Today
 ☐ Forecast

March Precip Stats: Actual Month Total: 0.90 in | Average Month Total: 2.53 in

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7
Actual: 53° 50° Average: 66° 43° 0.69 in 0.12 in	Actual: 62° 46° Average: 67° 43° 0.16 in 0.11 in	Actual: 66° 42° Average: 67° 43° 0.01 in 0.10 in	Actual: 71° 39° Average: 68° 44° 0.00 in 0.09 in	Actual: 78° 37° Average: 69° 44° 0.00 in 0.09 in	Actual: 84° 37° Average: 69° 44° 0.00 in 0.09 in	Actual: 86° 41° Average: 69° 45° 0.00 in 0.08 in
8	9	10	11	12	13	14
Actual: 78° 42° Average: 69° 45° 0.00 in 0.08 in	Actual: 75° 46° Average: 70° 45° 0.00 in 0.08 in	Actual: 84° 44° Average: 70° 46° 0.00 in 0.08 in	Actual: 82° 53° Average: 70° 46° 0.00 in 0.08 in	Actual: 84° 50° Average: 70° 46° 0.00 in 0.07 in	Actual: 91° 51° Average: 71° 46° 0.00 in 0.08 in	Actual: 93° 51° Average: 71° 47° 0.00 in 0.08 in
15	16	17	18	19	20	21
Actual: 93° 55° Average: 71° 47° 0.00 in 0.08 in	Actual: 91° 53° Average: 72° 47° 0.04 in 0.09 in	Actual: 84° 51° Average: 72° 47° 0.00 in 0.08 in	Actual: 73° 59° Average: 72° 48° 0.00 in 0.08 in	Actual: 78° 57° Average: 71° 48° 0.00 in 0.08 in	Actual: 87° 53° Average: 71° 48° 0.00 in 0.07 in	Actual: 78° 55° Average: 71° 48° 0.00 in 0.08 in
22	23	24	25	26	27	28
Actual: 77° 51° Average: 71° 49° 0.00 in 0.08 in	Actual: 73° 48° Average: 70° 49° 0.00 in 0.08 in	Actual: 77° 46° Average: 70° 49° 0.00 in 0.09 in	Actual: 87° 50° Average: 70° 49° 0.00 in 0.08 in	Actual: 93° 50° Average: 69° 49° 0.00 in 0.08 in	Actual: 93° 51° Average: 69° 49° 0.00 in 0.08 in	Actual: 91° 48° Average: 68° 49° 0.00 in 0.07 in
29	30	31				
Actual: 84° 55° Average: 68° 48° 0.00 in 0.06 in	Actual: 84° 51° Average: 67° 48° 0.00 in 0.06 in	Actual: 80° 55° Average: 67° 48° 0.00 in 0.06 in				

Calendar Legend

Weather History for KSEE - April, 2015

☐ Today
 ☐ Forecast

April Precip Stats: Actual Month Total: 0.09 in | Average Month Total: 0.96 in

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4
			Actual: 78° 57° Average: 67° 47° 0.05 in	Actual: 75° 53° Average: 66° 47° 0.05 in	Actual: 89° 48° Average: 66° 47° 0.04 in	Actual: 86° 48° Average: 67° 47° 0.04 in
			8	9	10	11
			Actual: 69° 48° Average: 67° 47° 0.03 in	Actual: 69° 50° Average: 68° 47° 0.02 in	Actual: 75° 46° Average: 69° 47° 0.02 in	Actual: 75° 46° Average: 70° 47° 0.03 in
			15	16	17	18
			Actual: 80° 55° Average: 71° 47° 0.04 in	Actual: 84° 48° Average: 71° 48° 0.04 in	Actual: 86° 46° Average: 72° 48° 0.04 in	Actual: 84° 44° Average: 72° 48° 0.04 in
			22	23	24	25
			Actual: 71° 57° Average: 72° 49° 0.03 in	Actual: 69° 53° Average: 72° 49° 0.03 in	Actual: 66° 51° Average: 72° 49° 0.03 in	Actual: 64° 55° Average: 72° 50° 0.03 in
			29	30		
			Actual: 95° 50° Average: 72° 51° 0.02 in	Actual: 98° 53° Average: 73° 51° 0.02 in		

Calendar Legend

Weather History for KSEE - May, 2015

Today Forecast

May Precip Stats: Actual Month Total: 1.42 in | Average Month Total: 0.43 in

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
					Actual: 96° 57° Average: 73° 51° 0.00 in 0.02 in	Actual: 80° 55° Average: 73° 52° 0.00 in 0.02 in
3	4	5	6	7	8	9
Actual: 75° 60° Average: 73° 52° 0.00 in 0.02 in	Actual: 73° 59° Average: 73° 52° 0.00 in 0.02 in	Actual: 71° 59° Average: 73° 52° 0.00 in 0.02 in	Actual: 69° 57° Average: 73° 53° 0.00 in 0.02 in	Actual: 68° 55° Average: 73° 53° 0.00 in 0.02 in	Actual: 60° 48° Average: 73° 53° 0.52 in 0.02 in	Actual: 68° 55° Average: 73° 53° 0.00 in 0.02 in
10	11	12	13	14	15	16
Actual: 75° 51° Average: 73° 53° 0.00 in 0.02 in	Actual: 80° 53° Average: 73° 53° 0.00 in 0.02 in	Actual: 71° 55° Average: 73° 53° 0.00 in 0.02 in	Actual: 71° 55° Average: 73° 53° 0.00 in 0.01 in	Actual: 68° 55° Average: 73° 53° 0.43 in 0.01 in	Actual: 64° 53° Average: 73° 53° 0.46 in 0.01 in	Actual: 69° 55° Average: 73° 53° 0.00 in 0.01 in
17	18	19	20	21	22	23
Actual: 73° 53° Average: 73° 53° 0.00 in 0.01 in	Actual: 71° 57° Average: 73° 54° 0.00 in 0.01 in	Actual: 73° 55° Average: 73° 54° 0.00 in 0.01 in	Actual: 71° 55° Average: 73° 54° 0.00 in 0.01 in	Actual: 68° 57° Average: 73° 54° 0.00 in 0.01 in	Actual: 69° 55° Average: 73° 55° 0.00 in 0.01 in	Actual: 68° 55° Average: 73° 55° 0.01 in 0.01 in
24	25	26	27	28	29	30
Actual: 69° 57° Average: 73° 55° 0.00 in 0.01 in	Actual: 66° 57° Average: 74° 55° 0.00 in 0.01 in	Actual: 71° 60° Average: 74° 55° 0.00 in 0.01 in	Actual: 73° 57° Average: 74° 56° 0.00 in 0.01 in	Actual: 80° 57° Average: 74° 56° 0.00 in 0.01 in	Actual: 82° 57° Average: 73° 56° 0.00 in 0.01 in	Actual: 82° 55° Average: 73° 56° 0.00 in 0.01 in



Actual: 78° | 60°
Average: 73° | 56°
0.00 in
0.01 in

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Weather History for KSEE - June, 2015

 Today  Forecast

June Precip Stats: Actual Month Total: 0.14 in | Average Month Total: 0.19 in

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2	3	4	5	6
						
	Actual: 82° 59° 0.00 in	Actual: 80° 53° 0.00 in	Actual: 77° 60° 0.00 in	Actual: 71° 59° 0.00 in	Actual: 73° 57° 0.00 in	Actual: 78° 57° 0.00 in
	Average: 73° 56° 0.01 in	Average: 72° 56° 0.01 in	Average: 72° 56° 0.01 in	Average: 72° 56° 0.01 in	Average: 72° 56° 0.01 in	Average: 72° 56° 0.01 in
7	8	9	10	11	12	13
						
Actual: 84° 57° 0.00 in	Actual: 96° 57° 0.00 in	Actual: 91° 66° 0.00 in	Actual: 78° 64° 0.00 in	Actual: 75° 64° 0.00 in	Actual: 75° 62° 0.00 in	Actual: 80° 60° 0.00 in
Average: 72° 56° 0.01 in	Average: 73° 56° 0.01 in	Average: 73° 56° 0.01 in	Average: 73° 56° 0.01 in	Average: 74° 56° 0.01 in	Average: 74° 56° 0.01 in	Average: 74° 56° 0.01 in
14	15	16	17	18	19	20
						
Actual: 82° 64° 0.00 in	Actual: 89° 62° 0.00 in	Actual: 84° 62° 0.00 in	Actual: 86° 57° 0.00 in	Actual: 89° 59° 0.04 in	Actual: 96° 57° 0.00 in	Actual: 89° 62° 0.00 in
Average: 74° 57° 0.01 in	Average: 75° 57° 0.01 in	Average: 75° 57° 0.01 in	Average: 75° 57° 0.00 in	Average: 76° 57° 0.00 in	Average: 76° 58° 0.00 in	Average: 77° 58° 0.00 in
21	22	23	24	25	26	27
						
Actual: 86° 60° 0.00 in	Actual: 89° 60° 0.00 in	Actual: 91° 59° 0.00 in	Actual: 87° 60° 0.00 in	Actual: 89° 62° 0.00 in	Actual: 89° 62° 0.00 in	Actual: 82° 62° 0.00 in
Average: 77° 58° 0.00 in	Average: 78° 58° 0.00 in	Average: 78° 58° 0.00 in	Average: 79° 58° 0.00 in	Average: 79° 58° 0.00 in	Average: 79° 58° 0.00 in	Average: 80° 59° 0.00 in
28	29	30				
						
Actual: 91° 69° 0.00 in	Actual: 89° 66° 0.00 in	Actual: 91° 64° 0.10 in				
Average: 80° 59° 0.01 in	Average: 80° 59° 0.01 in	Average: 80° 59° 0.01 in				

Calendar Legend

Sunny
Clear

Mostly Cloudy



Partly Cloudy



Cloudy



Rain



Snow



Hail Flurries



Thunderstorms

Hazy
Fog

Sleet

7 denotes
chance of

Unknown

report this ad

report 11/15/2015

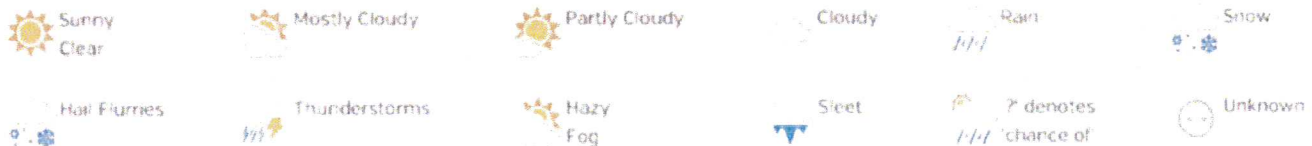
Weather History for KSEE - July, 2015

Today Forecast

July Precip Stats: Actual Month Total: 1.17 in | Average Month Total: 0.58 in

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4
			Actual: 89° 69° 0.00 in Average: 80° 59° 0.01 in	Actual: 91° 66° 0.00 in Average: 80° 60° 0.01 in	Actual: 89° 62° 0.00 in Average: 80° 60° 0.01 in	Actual: 82° 64° 0.00 in Average: 80° 60° 0.01 in
5	6	7	8	9	10	11
Actual: 80° 64° 0.00 in Average: 80° 60° 0.01 in	Actual: 78° 64° 0.00 in Average: 81° 60° 0.01 in	Actual: 82° 64° 0.00 in Average: 81° 60° 0.01 in	Actual: 78° 64° 0.00 in Average: 81° 61° 0.01 in	Actual: 77° 64° 0.00 in Average: 81° 61° 0.01 in	Actual: 80° 62° 0.00 in Average: 82° 61° 0.01 in	Actual: 82° 55° 0.00 in Average: 82° 61° 0.02 in
12	13	14	15	16	17	18
Actual: 86° 60° 0.00 in Average: 82° 61° 0.02 in	Actual: 87° 59° 0.00 in Average: 82° 61° 0.02 in	Actual: 82° 64° 0.00 in Average: 82° 61° 0.03 in	Actual: 82° 62° 0.00 in Average: 83° 61° 0.03 in	Actual: 86° 64° 0.00 in Average: 83° 61° 0.03 in	Actual: 91° 62° 0.00 in Average: 83° 61° 0.03 in	Actual: 80° 64° 0.79 in Average: 83° 61° 0.03 in
19	20	21	22	23	24	25
Actual: 91° 69° 0.38 in Average: 83° 61° 0.03 in	Actual: 84° 71° 0.00 in Average: 83° 61° 0.02 in	Actual: 82° 69° 0.00 in Average: 83° 61° 0.02 in	Actual: 84° 69° 0.00 in Average: 83° 61° 0.02 in	Actual: 87° 68° 0.00 in Average: 83° 61° 0.02 in	Actual: 91° 68° 0.00 in Average: 83° 61° 0.02 in	Actual: 95° 64° 0.00 in Average: 83° 61° 0.02 in
26	27	28	29	30	31	
Actual: 89° 64° 0.00 in Average: 84° 61° 0.02 in	Actual: 84° 64° 0.00 in Average: 84° 61° 0.02 in	Actual: 87° 60° 0.00 in Average: 84° 61° 0.02 in	Actual: 87° 66° 0.00 in Average: 84° 61° 0.02 in	Actual: 91° 68° 0.00 in Average: 84° 61° 0.02 in	Actual: 93° 68° 0.00 in Average: 85° 61° 0.02 in	

Calendar Legend


































report 11/15/2015

report this out

Weather History for KSEE - August, 2015

 Today
  Forecast

August Precip Stats: Actual Month Total: 0.06 in - Average Month Total: 0.96 in

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1  Actual: 87° 66° 0.00 in Average: 85° 61° 0.02 in
2  Actual: 87° 66° 0.00 in Average: 85° 61° 0.02 in	3  Actual: 91° 66° 0.00 in Average: 85° 61° 0.02 in	4  Actual: 95° 62° 0.00 in Average: 85° 61° 0.03 in	5  Actual: 98° 64° 0.00 in Average: 85° 62° 0.03 in	6  Actual: 91° 66° 0.00 in Average: 86° 62° 0.03 in	7  Actual: 84° 66° 0.00 in Average: 86° 62° 0.03 in	8  Actual: 84° 64° 0.00 in Average: 86° 62° 0.03 in
9  Actual: 82° 62° 0.00 in Average: 86° 62° 0.04 in	10  Actual: 82° 64° 0.00 in Average: 86° 62° 0.04 in	11  Actual: 84° 64° 0.00 in Average: 86° 62° 0.04 in	12  Actual: 91° 60° 0.06 in Average: 86° 62° 0.05 in	13  Actual: 98° 66° 0.00 in Average: 86° 62° 0.06 in	14  Actual: 100° 66° 0.00 in Average: 86° 62° 0.06 in	15  Actual: 104° 69° 0.00 in Average: 86° 62° 0.05 in
16  Actual: 102° 69° 0.00 in Average: 86° 62° 0.05 in	17  Actual: 87° 68° 0.00 in Average: 86° 62° 0.04 in	18  Actual: 89° 69° 0.00 in Average: 86° 62° 0.03 in	19  Actual: 87° 66° 0.00 in Average: 86° 62° 0.03 in	20  Actual: 84° 66° 0.00 in Average: 86° 62° 0.03 in	21  Actual: 86° 66° 0.00 in Average: 86° 62° 0.03 in	22  Actual: 86° 66° 0.00 in Average: 86° 62° 0.03 in
23  Actual: 89° 64° 0.00 in Average: 86° 62° 0.03 in	24  Actual: 91° 64° 0.00 in Average: 87° 62° 0.02 in	25  Actual: 87° 69° 0.00 in Average: 87° 62° 0.02 in	26  Actual: 96° 69° 0.00 in Average: 87° 62° 0.02 in	27  Actual: 100° 69° 0.00 in Average: 87° 62° 0.02 in	28  Actual: 105° 69° 0.00 in Average: 87° 62° 0.02 in	29  Actual: 100° 69° 0.00 in Average: 87° 62° 0.01 in
30  Actual: 91° 68° 0.00 in Average: 87° 62° 0.02 in	31  Actual: 84° 64° 0.00 in Average: 86° 62° 0.01 in					

Calendar Legend

Sunny
Clear

Mostly Cloudy



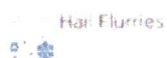
Partly Cloudy

Cloudy

Rain



Snow



Rain Flurries



Thunderstorms

Hazy
Fog

Sleet


 ? denotes
chance of


Unknown

report.html

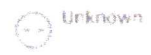
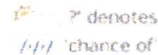
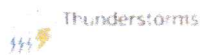
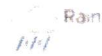
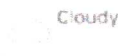
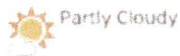
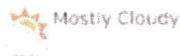
Weather History for KSEE - September, 2015

Today Forecast

September Precip Stats: Actual Month Total: 1.10 in | Average Month Total: 0.51 in

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
		Actual: 84° 66° 0.00 in Average: 86° 62° 0.01 in	Actual: 84° 64° 0.00 in Average: 86° 61° 0.02 in	Actual: 84° 60° 0.00 in Average: 86° 61° 0.02 in	Actual: 82° 66° 0.00 in Average: 86° 61° 0.02 in	Actual: 87° 64° 0.00 in Average: 86° 61° 0.02 in
6	7	8	9	10	11	12
Actual: 93° 62° 0.00 in Average: 86° 61° 0.01 in	Actual: 100° 69° 0.00 in Average: 85° 61° 0.01 in	Actual: 100° 71° 0.00 in Average: 85° 61° 0.01 in	Actual: 105° 75° 0.00 in Average: 85° 60° 0.01 in	Actual: 98° 75° 0.00 in Average: 85° 60° 0.01 in	Actual: 96° 75° 0.00 in Average: 85° 60° 0.01 in	Actual: 96° 75° 0.00 in Average: 84° 60° 0.01 in
13	14	15	16	17	18	19
Actual: 91° 69° 0.00 in Average: 84° 60° 0.01 in	Actual: 87° 68° 0.00 in Average: 84° 59° 0.01 in	Actual: 78° 66° 1.09 in Average: 84° 59° 0.01 in	Actual: 80° 64° 0.01 in Average: 84° 59° 0.01 in	Actual: 84° 62° 0.00 in Average: 84° 59° 0.01 in	Actual: 87° 60° 0.00 in Average: 84° 59° 0.02 in	Actual: 91° 64° 0.00 in Average: 83° 58° 0.02 in
20	21	22	23	24	25	26
Actual: 105° 69° 0.00 in Average: 83° 58° 0.03 in	Actual: 80° 69° 0.00 in Average: 83° 58° 0.03 in	Actual: 87° 66° 0.00 in Average: 83° 58° 0.03 in	Actual: 91° 64° 0.00 in Average: 82° 58° 0.03 in	Actual: 96° 66° 0.00 in Average: 82° 58° 0.03 in	Actual: 98° 66° 0.00 in Average: 82° 58° 0.03 in	Actual: 96° 66° 0.00 in Average: 81° 57° 0.02 in
27	28	29	30			
Actual: 102° 66° 0.00 in Average: 81° 57° 0.02 in	Actual: 95° 64° 0.00 in Average: 81° 57° 0.02 in	Actual: 91° 62° 0.00 in Average: 81° 57° 0.01 in	Actual: 93° 59° 0.00 in Average: 80° 57° 0.01 in			

Calendar Legend



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Weather History for KSEE - October, 2015

 Today  Forecast

October Precip Stats: Actual Month Total: 0.29 in | Average Month Total: 0.75 in

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2	3
				Actual: 89° 62° 0.00 in Average: 80° 56° 0.01 in	Actual: 84° 62° 0.00 in Average: 80° 56° 0.01 in	Actual: 82° 60° 0.00 in Average: 80° 56° 0.01 in
4	5	6	7	8	9	10
Actual: 71° 62° 0.06 in Average: 80° 55° 0.01 in	Actual: 68° 60° 0.23 in Average: 80° 55° 0.02 in	Actual: 78° 55° 0.00 in Average: 80° 55° 0.02 in	Actual: 82° 57° 0.00 in Average: 80° 54° 0.02 in	Actual: 91° 60° 0.00 in Average: 80° 54° 0.02 in	Actual: 105° 62° 0.00 in Average: 80° 54° 0.02 in	Actual: 102° 66° 0.00 in Average: 80° 53° 0.02 in
11	12	13	14	15	16	17
Actual: 102° 64° 0.00 in Average: 80° 53° 0.01 in	Actual: 100° 68° 0.00 in Average: 80° 53° 0.02 in	Actual: 91° 69° 0.00 in Average: 80° 53° 0.02 in	Actual: 93° 69° 0.00 in Average: 80° 53° 0.02 in	Actual: 86° 71° 0.00 in Average: 80° 53° 0.03 in	Actual: 75° 69° 0.00 in Average: 80° 53° 0.03 in	Actual: 82° 69° 0.00 in Average: 80° 53° 0.03 in
18	19	20	21	22	23	24
Actual: 78° 66° 0.00 in Average: 79° 53° 0.03 in	Actual: 75° 60° 0.00 in Average: 79° 53° 0.03 in	Actual: 78° 59° 0.00 in Average: 79° 53° 0.03 in	Actual: 84° 57° 0.00 in Average: 78° 52° 0.03 in	Actual: 82° 57° 0.00 in Average: 78° 52° 0.03 in	Actual: 87° 57° 0.00 in Average: 77° 52° 0.03 in	Actual: 95° 53° 0.00 in Average: 77° 52° 0.03 in
25	26	27	28	29	30	31
Actual: 84° 57° 0.00 in Average: 77° 52° 0.03 in	Actual: 91° 53° 0.00 in Average: 77° 51° 0.03 in	Actual: 91° 51° 0.00 in Average: 77° 51° 0.04 in	Actual: 82° 57° 0.00 in Average: 77° 51° 0.03 in	Actual: 82° 59° 0.00 in Average: 76° 51° 0.03 in	Actual: 87° 50° 0.00 in Average: 76° 50° 0.03 in	Actual: 93° 50° 0.00 in Average: 76° 50° 0.03 in

Calendar Legend

Sunny
Clear

Mostly Cloudy



Partly Cloudy

Cloudy



Rain



Snow



Hail Flurries



Thunderstorms

Hazy
Fog

Sleet

? denotes
chance of

Unknown

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Weather History for KSEE - November, 2015

 Today  Forecast

November Precip Stats: Actual Month Total: 1.03 in | Average Month Total: 1.23 in

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1 	2 	3 	4 	5 	6 	7 
Actual: 91° 50° 0.00 in Average: 76° 50° 0.03 in	Actual: 78° 48° 0.09 in Average: 76° 50° 0.02 in	Actual: 69° 51° 0.59 in Average: 75° 50° 0.02 in	Actual: 68° 48° 0.05 in Average: 75° 49° 0.03 in	Actual: 73° 44° 0.00 in Average: 75° 49° 0.03 in	Actual: 77° 42° 0.00 in Average: 75° 49° 0.04 in	Actual: 82° 41° 0.00 in Average: 75° 49° 0.04 in
8 	9 	10 	11 	12 	13 	14 
Actual: 78° 42° 0.00 in Average: 75° 48° 0.05 in	Actual: 71° 46° 0.01 in Average: 75° 48° 0.05 in	Actual: 66° 46° 0.05 in Average: 75° 47° 0.04 in	Actual: 78° 39° 0.00 in Average: 75° 47° 0.04 in	Actual: 78° 35° 0.00 in Average: 75° 47° 0.04 in	Actual: 82° 35° 0.00 in Average: 75° 46° 0.03 in	Actual: 82° 37° 0.00 in Average: 75° 46° 0.02 in
15 	16 	17 	18 	19 	20 	21 
Actual: 71° 44° 0.06 in Average: 75° 46° 0.02 in	Actual: 62° 42° 0.00 in Average: 75° 45° 0.03 in	Actual: 73° 35° 0.00 in Average: 75° 45° 0.03 in	Actual: 82° 39° 0.04 in Average: 75° 45° 0.03 in	Actual: 84° 42° 0.00 in Average: 74° 45° 0.03 in	Actual: 87° 42° 0.00 in Average: 74° 44° 0.04 in	Actual: 93° 46° 0.00 in Average: 74° 44° 0.04 in
22 	23 	24 	25 	26 	27 	28 
Actual: 89° 46° 0.00 in Average: 73° 44° 0.05 in	Actual: 82° 44° 0.00 in Average: 73° 44° 0.05 in	Actual: 73° 42° 0.00 in Average: 73° 43° 0.05 in	Actual: 64° 51° 0.03 in Average: 72° 43° 0.07 in	Actual: 64° 46° 0.01 in Average: 72° 42° 0.07 in	Actual: 62° 44° 0.10 in Average: 72° 42° 0.06 in	Actual: 68° 39° 0.00 in Average: 71° 42° 0.06 in
29 	30 					
Actual: 69° 37° 0.00 in Average: 71° 41° 0.06 in	Actual: 69° 35° 0.00 in Average: 71° 41° 0.06 in					

Calendar Legend

Sunny
Clear

Mostly Cloudy



Partly Cloudy



Cloudy



Rain



Snow



Hail Flurries



Thunderstorms

Hazy
Fog

Sleet

"?" denotes
"chance of"

Unknown

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Weather History for KSEE - December, 2015

 Today  Forecast

December Precip Stats: Actual Month to Date: 0.29 in - Average Month to Date: 0.78 in - Average Month Total: 1.84 in

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
		Actual: 73° 35° 0.00 in Average: 71° 41° 0.06 in	Actual: 82° 35° 0.00 in Average: 70° 41° 0.06 in	Actual: 82° 39° 0.00 in Average: 70° 41° 0.06 in	Actual: 69° 39° 0.00 in Average: 70° 41° 0.06 in	Actual: 80° 39° 0.00 in Average: 70° 41° 0.07 in
6	7	8	9	10	11	12
Actual: 82° 39° 0.00 in Average: 70° 41° 0.06 in	Actual: 82° 39° 0.00 in Average: 70° 40° 0.06 in	Actual: 86° 42° 0.00 in Average: 70° 40° 0.05 in	Actual: 80° 44° 0.00 in Average: 70° 40° 0.05 in	Actual: 71° 42° 0.00 in Average: 71° 40° 0.05 in	Actual: 62° 44° 0.19 in Average: 71° 39° 0.05 in	Actual: 64° 37° 0.00 in Average: 71° 39° 0.05 in
13	14	15	16	17	18	19
Actual: 66° 37° 0.10 in Average: 71° 39° 0.05 in	Forecast: 57° 34° 0.0 in Average: 71° 39° 0.05 in	Forecast: 62° 33° 0.0 in Average: 71° 38° 0.06 in	Forecast: 62° 34° 0.0 in Average: 71° 38° 0.06 in	Forecast: 66° 39° 0.0 in Average: 70° 38° 0.06 in	Forecast: 72° 41° 0.0 in Average: 70° 38° 0.06 in	Forecast: 69° 44° 0.01 in Average: 70° 37° 0.05 in
20	21	22	23	24	25	26
Forecast: 63° 42° 0.34 in Average: 70° 37° 0.06 in	Forecast: 64° 42° 0.22 in Average: 70° 37° 0.06 in	Forecast: 63° 39° 0.3 in Average: 70° 37° 0.05 in	Forecast: 62° 40° 0.2 in Average: 70° 37° 0.06 in	Record: 84° 30° 0.00 in Average: 70° 37° 0.06 in	Record: 87° 25° 0.76 in Average: 70° 37° 0.07 in	Record: 82° 26° 0.24 in Average: 70° 38° 0.06 in
27	28	29	30	31		
Record: 84° 28° 1.05 in Average: 70° 38° 0.06 in	Record: 86° 28° 0.96 in Average: 70° 38° 0.07 in	Record: 88° 31° 0.25 in Average: 70° 38° 0.07 in	Record: 91° 28° 0.59 in Average: 70° 38° 0.07 in	Record: 89° 31° 0.19 in Average: 70° 38° 0.08 in		

Calendar Legend

Sunny
Clear

Mostly Cloudy



Partly Cloudy

Cloudy



Rain



Snow



Hail Flurries



Thunderstorms

Hazy
Fog

Sleet

"?" denotes
"chance of"

Unknown

report this ad

ATTACHMENT D

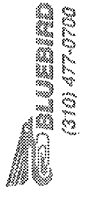
3. Upon identifying failures or other shortcomings, as directed by the QSP, Risk Level 2 dischargers shall begin implementing repairs or design changes to BMPs within 72 hours of identification and complete the changes as soon as possible.
4. For each inspection required, Risk Level 2 dischargers shall complete an inspection checklist, using a form provided by the State Water Board or Regional Water Board or in an alternative format.
5. Risk Level 2 dischargers shall ensure that checklists shall remain onsite with the SWPPP and at a minimum, shall include:
 - a. Inspection date and date the inspection report was written.
 - b. Weather information, including presence or absence of precipitation, estimate of beginning of qualifying storm event, duration of event, time elapsed since last storm, and approximate amount of rainfall in inches.
 - c. Site information, including stage of construction, activities completed, and approximate area of the site exposed.
 - d. A description of any BMPs evaluated and any deficiencies noted.
 - e. If the construction site is safely accessible during inclement weather, list the observations of all BMPs: erosion controls, sediment controls, chemical and waste controls, and non-storm water controls. Otherwise, list the results of visual inspections at all relevant outfalls, discharge points, downstream locations and any projected maintenance activities.
 - f. Report the presence of noticeable odors or of any visible sheen on the surface of any discharges.
 - g. Any corrective actions required, including any necessary changes to the SWPPP and the associated implementation dates.
 - h. Photographs taken during the inspection, if any.
 - i. Inspector's name, title, and signature.

H. Rain Event Action Plan

1. **Additional Risk Level 2 Requirement:** The discharger shall ensure a QSP develop a Rain Event Action Plan (REAP) 48 hours prior to any

likely precipitation event. A likely precipitation event is any weather pattern that is forecast to have a 50% or greater probability of producing precipitation in the project area. The discharger shall ensure a QSP obtain a printed copy of precipitation forecast information from the National Weather Service Forecast Office (e.g., by entering the zip code of the project's location at <http://www.srh.noaa.gov/forecast>).

2. **Additional Risk Level 2 Requirement:** The discharger shall ensure a QSP develop the REAPs for all phases of construction (i.e., Grading and Land Development, Streets and Utilities, Vertical Construction, Final Landscaping and Site Stabilization).
3. **Additional Risk Level 2 Requirement:** The discharger shall ensure a QSP ensure that the REAP include, at a minimum, the following site information:
 - a. Site Address
 - b. Calculated Risk Level (2 or 3)
 - c. Site Storm Water Manager Information including the name, company, and 24-hour emergency telephone number
 - d. Erosion and Sediment Control Provider information including the name, company, and 24-hour emergency telephone number
 - e. Storm Water Sampling Agent information including the name, company, and 24-hour emergency telephone number
4. **Additional Risk Level 2 Requirement:** The discharger shall ensure a QSP include in the REAP, at a minimum, the following project phase information:
 - a. Activities associated with each construction phase
 - b. Trades active on the construction site during each construction phase
 - c. Trade contractor information
 - d. Suggested actions for each project phase
5. **Additional Risk Level 2 Requirement:** The discharger shall ensure a QSP develop additional REAPs for project sites where construction activities are indefinitely halted or postponed (Inactive Construction). At a minimum, Inactive Construction REAPs must include:
 - a. Site Address
 - b. Calculated Risk Level (2 or 3)
 - c. Site Storm Water Manager Information including the name, company, and 24-hour emergency telephone number



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EXHIBIT G

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.)
)
)
_____)

THE DEPOSITION OF TAD NAKATANI, a witness
herein, noticed by Oppen & Varco, LLP,
at 225 Broadway, Suite 1900, San Diego,
California, at 8:42 a.m., on Tuesday,
December 29, 2015, before R. Jerrod Jones,
CSR 11750, RPR

Job Number 598613

1 **you were referring to there?**

2 A. I believe that is referring to the General
3 Construction Permit. Although, I pretty much was
4 just using that option as a -- I would say it's not
5 really, you know, something that we're -- excuse me.
6 That wouldn't be the General Construction Permit. I
7 believe that one is referring to the Municipal
8 Permit.

9 But I don't know that this is necessarily
10 meaning that we're doing this inspection to meet the
11 inspection frequency requirement of the Municipal
12 Permit. My understanding of this box was just sort
13 of that that's a, hey, this is our sort of a routine
14 inspection that we're doing for the City.

15 **Q. Okay. When you were asked or when you**
16 **went to go inspect the site, what was the standard**
17 **that you were comparing it against? Were you doing**
18 **an inspection per the Construction General Storm**
19 **Water Permit; or were you inspecting the site in**
20 **accordance with the City's Jurisdictional Urban**
21 **Runoff Management Plan?**

22 A. So this would be in accordance with the
23 City's standards.

24 **Q. So you were inspecting it in accordance**
25 **with the city's JURMP?**

1 A. Yeah. Or actually, they have a lot in
2 their Municipal Code as well.

3 Q. But when you were inspecting, you were not
4 inspecting for purposes of the Construction General
5 Storm Water Permit, correct?

6 A. Correct. My intention was to be doing it
7 for the City in accordance with the City standards.

8 Q. Okay. And then the next line says,
9 "Construction Project Priority."

10 A. Uh-huh.

11 Q. It looks like originally you checked
12 "High." Did you scratch that out and then check
13 "Medium"?

14 A. Yes.

15 Q. Can you describe what happened there a
16 little bit for me.

17 A. Well, I don't honestly remember exactly
18 why I initially checked "High." But that priority is
19 something that the City assigns to it. So I -- I
20 just may have found out initially I believed it was
21 high; and then found out from the City that they had
22 assigned a medium priority to it, maybe. I don't
23 know the exact thought process at that point.

24 Q. Okay. Sure. On the second page of the
25 document, you indicated that there were no

1 violations; is that correct?

2 A. Yes, that's what's indicated there.

3 Q. And is this your handwriting at the bottom
4 of the Recommended Corrective Action?

5 A. Yes. Yes, it is.

6 Q. Does this inspection document discuss
7 whether or not there were concerns with BMPs with
8 respect to active versus inactive areas?

9 A. Yes, there is a mention of inactive areas.

10 Q. Can you point out to me where that
11 reference is?

12 A. I noticed one under one comment on the
13 Recommended Corrective Actions on page two, the first
14 one there mentions inactive areas.

15 Q. Can you read that sentence to me.

16 A. "Add erosion control to all disturbed
17 areas inactive for ten days, including roadways not
18 currently in use."

19 Q. So when you were evaluating an active
20 versus inactive area, your evaluation was whether it
21 was active or inactive for a ten-day period; is that
22 correct?

23 A. In this instance, that appears to be
24 correct.

25 Q. And how would you have known whether an

1 violations; is that correct?

2 A. Yes, that's what's indicated there.

3 Q. And is this your handwriting at the bottom
4 of the Recommended Corrective Action?

5 A. Yes. Yes, it is.

6 Q. Does this inspection document discuss
7 whether or not there were concerns with BMPs with
8 respect to active versus inactive areas?

9 A. Yes, there is a mention of inactive areas.

10 Q. Can you point out to me where that
11 reference is?

12 A. I noticed one under one comment on the
13 Recommended Corrective Actions on page two, the first
14 one there mentions inactive areas.

15 Q. Can you read that sentence to me.

16 A. "Add erosion control to all disturbed
17 areas inactive for ten days, including roadways not
18 currently in use."

19 Q. So when you were evaluating an active
20 versus inactive area, your evaluation was whether it
21 was active or inactive for a ten-day period; is that
22 correct?

23 A. In this instance, that appears to be
24 correct.

25 Q. And how would you have known whether an

1 area was active or inactive for ten days?

2 A. At this point I would not have.

3 Q. You didn't ask anybody?

4 A. I don't recall. Let me see. Yeah, I
5 don't recall.

6 Q. Towards the top of the page, there's a
7 column. I think it's the third one down on page two.
8 It says, "Are material stockpiles protected, covered,
9 contained, and located away from non-storm water
10 discharges?" Do you see that?

11 A. Uh-huh.

12 Q. Then you checked "yes"?

13 A. Uh-huh.

14 Q. And then it says, "Several unprotected
15 stockpiles." Do you see that?

16 A. Uh-huh.

17 Q. Did you talk to anyone about how long the
18 stockpiles have been there, or when they were going
19 to go away, or anything like that?

20 A. I couldn't tell you for a particular
21 inspection whether or not I spoke to someone about
22 that, you know, unless I have a specific note about
23 it.

24 Q. So if you saw a stockpile, is it possible
25 it could have been moved later that day?

1 A. Yes. Yeah.

2 Q. Is it possible that the same stockpile
3 could have been moved the day before?

4 MR. BOYERS: Objection. Speculation.

5 BY MS. BERESFORD:

6 Q. I will rephrase. If you went out and did
7 an inspection and you saw a stockpile, did you have
8 any knowledge of when that stockpile was placed
9 there?

10 A. I may or may not have spoken to someone on
11 site during the inspection. But I can't tell just
12 from my notes at this point whether or not that's the
13 case.

14 Q. So for these stockpiles, you can't tell me
15 whether or not you knew when those stockpiles were
16 created?

17 A. Let's see. Someone may have told me when
18 it was created or last active, but they may not have.
19 I don't know at this point.

20 Q. Okay. Did you discuss this inspection
21 with anybody?

22 A. I don't know. I would say there was --
23 I'm not sure. Gary Harper may have been there during
24 that inspection, as he was there for many of them.
25 But just from looking at these forms, I can't tell

1 Q. So did you visit the site on that day?

2 A. Yes.

3 Q. Why did you go back out to the site on
4 that day?

5 A. Most likely it was because the City asked
6 me to go on that day.

7 Q. Do you recall if they said why?

8 A. I don't recall.

9 Q. Okay. Do you see that there's some yellow
10 highlighting on that document?

11 A. Yes.

12 Q. Did you make that highlighting?

13 A. No.

14 Q. Do you know who did?

15 A. No.

16 Q. Does this report discuss failure to have
17 erosion control BMPs in inactive and active areas?

18 A. I don't see specific mention of active
19 versus inactive.

20 Q. Do you recall if you discussed with anyone
21 at the site on that day --

22 A. I don't recall.

23 Q. Let me finish my question.

24 A. Sorry.

25 Q. I guess you didn't recall talking about it

1 **Q. Do you know if you talked to anyone about**
2 **whether the stockpiles had been moved?**

3 **A. I don't recall for sure. But from the**
4 **January 6th inspection, again, I would say it's**
5 **likely I talked to the contractor or their**
6 **representative, based on the note I had about a**
7 **stockpile being reported as active.**

8 **Q. Do you --**

9 **A. And that was on the 6th.**

10 **Q. Do you normally note in your Inspection**
11 **Reports anywhere if you've talked to anyone about**
12 **anything?**

13 **A. No. There's no field for that. Yeah, so**
14 **I will sometimes make a note, such as the one on the**
15 **6th, that suggested that there was a conversation,**
16 **but there's no --**

17 **Q. -- specific documentation?**

18 **A. Yeah, place. Whatever time you indicate**
19 **whether or not you spoke to someone.**

20 **Q. Does anything in your January 14th**
21 **Inspection Report identify whether a specific area is**
22 **inactive?**

23 **A. Let's see. I don't see any specific**
24 **indication that a particular area is inactive in my**
25 **notes here.**

1 Q. As of January 14, your inspection January
2 14, did you think that the storm water controls at
3 the site were in better condition than when you
4 inspected the site in December?

5 A. I don't recall at this point.

6 Q. Based on your reports, can you say whether
7 or not you thought it was in better condition?

8 MR. BOYERS: Objection. Vague as to "better
9 condition."

10 THE WITNESS: Yeah, can you clarify?

11 MS. BERESFORD: Sure. Let's go to the next
12 exhibit and we can go from there. So this will be
13 Exhibit 12. Exhibit 12 to the deposition is
14 indicated as Exhibit 23 at the top.

15 (Exhibit Number 12 was marked for
16 identification.)

17 BY MS. BERESFORD:

18 Q. Have you seen this document before?

19 A. Yes.

20 Q. Can you please describe what it is.

21 A. This is a Memo that I sent to the City on
22 January 16th, 2015, summarizing inspections and
23 sampling from December and January.

24 Q. Based on this Memo, can you say whether
25 you thought the storm water, the BMPs, and other

1 protections at the site were better at the site in
2 January than they were in December?

3 A. I would say that compared to early
4 December, like the December 9th time, that they did
5 implement a significant number of BMPs that they
6 had -- that had been deficient before. So yes, they
7 did improve several of the deficiencies they had,
8 specifically with erosion control in December -- or
9 December 9th.

10 Q. And your last inspection of the site was
11 January 14; is that correct?

12 A. Prior to this letter, I believe so.

13 Q. I'd like to go to the third page of the
14 Memo. The second row up discusses stockpiles. Do
15 you see that?

16 A. "The stockpiles were placed close to a
17 drain inlet." That one?

18 Q. Yes.

19 A. Yes.

20 Q. If you move to the next column over, the
21 second sentence says, "On January 14, the stockpiles
22 had been covered." Do you see that?

23 A. Yes.

24 Q. Do you know the date when the stockpiles
25 had been covered?

1 protections at the site were better at the site in
2 January than they were in December?

3 A. I would say that compared to early
4 December, like the December 9th time, that they did
5 implement a significant number of BMPs that they
6 had -- that had been deficient before. So yes, they
7 did improve several of the deficiencies they had,
8 specifically with erosion control in December -- or
9 December 9th.

10 Q. And your last inspection of the site was
11 January 14; is that correct?

12 A. Prior to this letter, I believe so.

13 Q. I'd like to go to the third page of the
14 Memo. The second row up discusses stockpiles. Do
15 you see that?

16 A. "The stockpiles were placed close to a
17 drain inlet." That one?

18 Q. Yes.

19 A. Yes.

20 Q. If you move to the next column over, the
21 second sentence says, "On January 14, the stockpiles
22 had been covered." Do you see that?

23 A. Yes.

24 Q. Do you know the date when the stockpiles
25 had been covered?

1 A. I don't know the exact date they were
2 placed on there.

3 Q. Is it possible that they had been covered
4 on January 13th?

5 MR. BOYERS: Objection. Speculation.

6 THE WITNESS: Let me see on my January. Yeah,
7 I guess from these materials, all I can tell is that
8 they were -- it sounds like they were not covered on
9 the 6th, and they were covered when I returned on the
10 14th. I don't know the timing of anything in
11 between.

12 BY MS. BERESFORD:

13 Q. Let's go back to your January 14th
14 inspection.

15 A. Okay.

16 Q. And your January 6th inspection. Let's go
17 to the second page there.

18 A. Uh-huh.

19 Q. On January 6th, which is Exhibit 10, in
20 the third row down it says, "Uncovered stockpiles
21 reported as active." Do you see that?

22 A. Yes.

23 Q. And then on January 14th, on Exhibit 11,
24 on the third row down, can you say again what that
25 says to me.

1 A. I don't know the exact date they were
2 placed on there.

3 **Q. Is it possible that they had been covered**
4 **on January 13th?**

5 MR. BOYERS: Objection. Speculation.

6 THE WITNESS: Let me see on my January. Yeah,
7 I guess from these materials, all I can tell is that
8 they were -- it sounds like they were not covered on
9 the 6th, and they were covered when I returned on the
10 14th. I don't know the timing of anything in
11 between.

12 BY MS. BERESFORD:

13 **Q. Let's go back to your January 14th**
14 **inspection.**

15 A. Okay.

16 **Q. And your January 6th inspection. Let's go**
17 **to the second page there.**

18 A. Uh-huh.

19 **Q. On January 6th, which is Exhibit 10, in**
20 **the third row down it says, "Uncovered stockpiles**
21 **reported as active." Do you see that?**

22 A. Yes.

23 **Q. And then on January 14th, on Exhibit 11,**
24 **on the third row down, can you say again what that**
25 **says to me.**

1 A. "Wood/scrap piles should be removed or
2 protected."

3 Q. Do you think that's the same stockpile
4 that you were talking about on January 6th?

5 A. Probably not, I would wager.

6 Q. Okay.

7 A. I would --

8 Q. At some point --

9 A. Can you hold on a second, so I can see if
10 I can find the corresponding part on the map?

11 Q. Sure.

12 A. So the one on January 14th of 2015?

13 Q. Yes.

14 A. That was wood/scrap pile. As it's shown
15 on the map, that is not in the same location as the
16 one that -- that's not the same stockpile that is
17 referred to on the January 16th report about being
18 placed too close to the drain. Those are two
19 separate stockpiles.

20 Q. Okay. And is there any note about the
21 stockpiles near the drain, about whether those were
22 covered or not?

23 A. Not specifically. It is possible on the
24 January 6th report that the uncovered stockpiles
25 reported as active may be referring to that, or may

EXHIBIT H

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 BRIAN ALAN NEMEROW, witness
herein, noticed by Oppen & Varco, taken at
225 Broadway, Suite 1900, San Diego,
California, on Tuesday, December 29, 2015, at
3:37 p.m., before Marc Volz, CSR 2863, RPR, CRR

Hutchings Number 599122

1 A. That's correct.

2 Q. The next -- or the first sentence of the second
3 sentence says, "Evidence of sediment discharge was
4 observed at the Akins entrance/exit location and along
5 the curb farther downstream." Do you see that sentence?

6 A. Yes.

7 Q. I particularly want to look at photo 3.

8 A. Okay.

9 Q. There is a car in photo 3, do you see that?

10 A. I see that.

11 Q. Is that the same car that's in photo 4?

12 A. I'm not sure.

13 Q. If you look at photo 4, there's some areas that
14 appear to be dirt alongside the car and the mailbox. Do
15 you see that?

16 A. I see in photo 4 where the car is, it is kind
17 of back a little far in the photo and the mailbox. It's
18 kind of hard to make out what's actually over there.

19 Q. Do you recall if that area was open dirt?

20 A. Open dirt in the street?

21 Q. No. The area by the -- above the curb by the
22 mailbox.

23 A. Oh, I see where you're saying. I believe it
24 was not landscaped. Or not vegetated.

25 Q. Going back up to photo 3, do you know if some

1 of the sediment along that curb, could that have been
2 contributed by those adjacent properties?

3 A. I'm not sure.

4 Q. The second sentence in the second paragraph
5 says, "A crew from Downstream Services was power washing
6 the curb along Akins to remove accumulated sediment.
7 This indicates that there likely had been a noticeable
8 sediment discharge earlier in the day." Did you ask the
9 crew if there had been a big sediment discharge earlier
10 in the day?

11 A. I don't remember. But I remember talking to
12 the crew of Downstream Services.

13 Q. Why do you think that there was a noticeable
14 sediment discharge earlier in the day?

15 A. It was my understanding through talking with
16 the crewmember that they were out there due to --
17 someone from the construction site had contracted them
18 to come out to power wash the street, and based on my
19 other observations it seemed like it was likely there
20 was sediment discharge onto the street from the
21 construction site.

22 Q. Did you see the sediment discharge on the
23 street?

24 A. I saw sediment on the street but I didn't see
25 active discharge from the construction site.

1 of the sediment along that curb, could that have been
2 contributed by those adjacent properties?

3 A. I'm not sure.

4 Q. The second sentence in the second paragraph
5 says, "A crew from Downstream Services was power washing
6 the curb along Akins to remove accumulated sediment.
7 This indicates that there likely had been a noticeable
8 sediment discharge earlier in the day." Did you ask the
9 crew if there had been a big sediment discharge earlier
10 in the day?

11 A. I don't remember. But I remember talking to
12 the crew of Downstream Services.

13 Q. Why do you think that there was a noticeable
14 sediment discharge earlier in the day?

15 A. It was my understanding through talking with
16 the crewmember that they were out there due to --
17 someone from the construction site had contracted them
18 to come out to power wash the street, and based on my
19 other observations it seemed like it was likely there
20 was sediment discharge onto the street from the
21 construction site.

22 Q. Did you see the sediment discharge on the
23 street?

24 A. I saw sediment on the street but I didn't see
25 active discharge from the construction site.

1 Q. Could it be that they had just received a lot
2 of inspections and just wanted to do an extra good job
3 to clean it up?

4 A. I don't know.

5 MR. BOYERS: Objection. Speculation.

6 Now you can answer.

7 THE WITNESS: I don't know.

8 MS. BERESFORD:

9 Q. The last sentence of your memo says, "A sample
10 of the power washing discharge water was collected and
11 turbidity was measured at 52"; is that correct?

12 A. That's correct.

13 Q. Is that before the end of the construction site
14 or where exactly is that?

15 A. I believe that was at a downstream inlet, a
16 storm drain inlet that was outside the property, outside
17 of the construction site property.

18 Q. Maybe you can look at page 4. I don't know if
19 that will help refresh your recollection. Do you know
20 if the power washing, were they completing that before
21 the inlet?

22 A. Upstream of the inlet, that's correct.

23 Q. Do you know, did you calibrate your instrument
24 before you took that sample?

25 A. I believe so.

EXHIBIT I

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 JOHN ROBERT QUENZER, witness
herein, noticed by Oppen & Varco, taken at
225 Broadway, Suite 1900, San Diego,
California, on Tuesday, December 29, 2015, at
1:19 p.m., before Marc Volz, CSR 2863, RPR, CRR

Hutchings Number 599122

1 typically sampled under the Construction General Permit
2 when sampling is required.

3 Q. Did you perform this sampling?

4 A. Yes, I did.

5 Q. Did you calibrate the instrument before you
6 took the sample?

7 A. Yes, I did.

8 Q. Did you produce a calibration log with the
9 documents that you produced?

10 A. No, I did not.

11 Q. Do you have a calibration log?

12 A. I did not find one, no.

13 Q. What EPA method did you use when you analyzed
14 these samples?

15 A. I don't know the name of the EPA method. I
16 used a Hanna Instruments turbidity meter. I don't
17 recall the exact model number of the meter, although I
18 certainly could find that.

19 Q. Did you have a QA/QC log?

20 A. Is that different than a -- are you talking
21 about the calibration log.

22 Q. Yes. The quality assurance/quality control
23 log.

24 A. I did not have one, no.

25 Q. So you did not have one. I just want to be

1 Q. Why did you do it on that day?

2 A. At the time that I went to the site there was
3 no discharge anymore because there was no rain and no
4 runoff at the time that I was there. But there was
5 water that had collected immediately next to the
6 discharge point from the Valencia site. And so the
7 reason that I took the sample and then agitated it is
8 that most likely -- not most likely, typically what
9 happens is that after water that has sediment in it is
10 still in a ponded location for a matter of time, then
11 sediment particles will start to drop out of the water,
12 and therefore the turbidity of the water that is sampled
13 after its been sitting for some time will typically be
14 lower than what it was at the time it was flowing
15 before.

16 Q. Are there EPA methods that you're supposed to
17 follow when taking turbidity sampling?

18 A. Are there EPA methods for any kind of turbidity
19 sampling? Are we talking about sampling analysis or
20 turbidity.

21 Q. I'm talking about when you take a sample. Is
22 there a protocol that's supposed to be followed when
23 you're taking a sample?

24 A. Yes, there is.

25 Q. Does disturbing a pond follow any sort of

1 standard protocol that is recommended for this type of
2 sampling?

3 A. I'm not aware of a standard protocol prepared
4 by anyone about that, no.

5 Q. About swirling a puddle.

6 A. I am not aware of a standard protocol about
7 swirling a puddle, no.

8 Q. Did you calibrate the instrument before you
9 took any of your samples?

10 A. Yes, I did.

11 Q. Did you find the calibration log for this
12 event?

13 A. No, I did not.

14 Q. So you did not produce it.

15 A. That is correct.

16 Q. Is that unusual that you can't find your
17 calibration logs?

18 A. It is somewhat unusual, yes.

19 Q. Does it surprise you that you couldn't find
20 them for either of the sampling events for this
21 property?

22 A. No, it did not.

23 Q. Why not?

24 A. It didn't surprise me because I remembered
25 that -- I should clarify my answer. It didn't surprise

1 me because I couldn't remember where I put the
2 calibration logs.

3 Q. Does D-Max have a protocol of where you're
4 supposed to put them?

5 A. We do. But typically they go into a binder
6 that we have. So I guess it would be surprising that I
7 did not find them in that binder.

8 Q. You did not observe stormwater with sediment in
9 it being discharged to the storm drain on December 31st;
10 is that correct?

11 A. That is correct.

12 Q. Did you discuss this memo with anyone from the
13 city of Lemon Grove after you prepared it?

14 A. I don't remember details of any discussions. I
15 know that I emailed it to them. And I remember letting
16 them know that I was not able to take a sample of
17 stormwater runoff because it was not raining at the time
18 that I was there.

19 Q. Did you ever talk to anyone at the Regional
20 Board about this memo?

21 A. I did not, no.

22 Q. The memo, the version that you have there's
23 yellow highlighting on there. Did you do that
24 highlighting?

25 A. I did not, no.

EXHIBIT J

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,)
)
)
_____)

THE DEPOSITION OF MALIK TAMIMI, a witness
herein, noticed by Oppen & Varco, LLP,
at 225 Broadway, Suite 1900, San Diego,
California, at 3:33 p.m., on Monday,
December 28, 2015, before R. Jerrod Jones,
CSR 11750, RPR

Litigation Services Number 598612

1 A. Yes.

2 Q. And when you had Mr. Harper conducting
3 inspections, was the goal of those inspections to
4 evaluate sites for the consistency with your JURMP?

5 A. Consistency with JURMP and with the
6 grading ordinance.

7 Q. Was the goal for Mr. Harper to inspect
8 sites to evaluate consistency with the General
9 Construction Storm Water Permit?

10 A. No.

11 MS. BERESFORD: All right. And let's mark that
12 as Exhibit 5. This is Exhibit 5 to the deposition,
13 although it says Exhibit Number 8 at the top of the
14 document.

15 (Exhibit Number 5 was marked for
16 identification.)

17 THE WITNESS: What would you like me to do with
18 this exhibit?

19 BY MS. BERESFORD:

20 Q. Have you seen this document before?

21 A. I may have seen it, but I may have not
22 read it.

23 Q. Okay. For purposes of the record, I will
24 represent that Exhibit 5 is a Facility Inspection
25 Report dated December 15, 2014, by the California

1 A. I did not make my own independent. But I
2 was provided information that there were discharges;
3 and that the site did not adequately erosion control
4 deployed; therefore, warranting follow-up inspections
5 as if there was a rain event, as the City does not
6 want a discharge into its storm drain system.

7 **Q. Was the City concerned about getting**
8 **penalties, the Water Board issuing penalties to the**
9 **City?**

10 A. Yeah, that would be a fair statement.

11 **Q. And why was the City concerned about that?**

12 A. Because I think every city is concerned
13 about getting a penalty from the Regional Board for
14 program implementation; in other words, not enough
15 was done to prevent the discharge.

16 **Q. So would you say some of the purposes of**
17 **your visits to the Valencia Hills site was to**
18 **demonstrate that the City was doing enough?**

19 A. I would say the follow-ups were intended
20 to comply with our JURMP and our ordinance; to make
21 sure that if a follow-up is required, that we
22 followed up, and we didn't drop the ball by not
23 following up.

24 **Q. Does the JURMP have specific requirements**
25 **about when follow-up is required?**