

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R3-2005-0012

In the Matter of:

**Coast Unified School District
Cambria Elementary School
San Luis Obispo County**

COAST UNIFIED SCHOOL DISTRICT IS HEREBY GIVEN NOTICE:

Coast Unified School District (hereby Discharger) is alleged to have violated provisions of law and an Order of the State Water Resources Control Board (State Board), for which the Regional Water Quality Control Board (Regional Board) may impose civil liability pursuant to California Water Code Section 13385.

Unless the Discharger waives its right to a hearing, a hearing on this matter will be held before the Regional Board within 90 days of receipt of this administrative civil liability complaint (Complaint). The Discharger and/or the Discharger's representative(s) will have the opportunity to be heard, and to contest the allegations in the Complaint and the imposition of civil liability by the Regional Board. A hearing is tentatively scheduled for March 25, 2005, in San Luis Obispo, California.

An agenda will be mailed to you separately, not less than ten days before the hearing date. At the hearing, the Regional Board will consider whether to affirm, reject, increase or decrease the proposed administrative civil liability, or whether to refer the matter to the State Attorney General for recovery of judicial civil liability.

ALLEGATIONS

1. The Discharger is the owner of a 22.45-acre construction project known as Cambria Elementary School (Site), 3223 Main Street, Cambria, San Luis Obispo County.
2. On August 19, 1999, the State Board adopted *Order No. 99-08-DWQ National Pollutant Discharge Elimination system (NPDES) General Permit No. CAS000002* (Permit). The Permit, as amended, serves as waste discharge requirements regulating storm water discharges associated with construction activity for sites disturbing one acre or more in accordance with the Clean Water Act (United States Code, Title 33, Chapter 26) and the Porter-Cologne Water Quality Control Act (California Water Code Sections 13000 et seq.).
3. On March 12, 2004, the RRM Design Group signed a Notice of Intent (NOI) to comply with the Permit. The NOI states that construction began on March 15, 2004.

4. The NOI identifies Coast Unified School District as the owner, and the developer/contractor as A.J. Diani Construction Co., Inc. The NOI specifies the Site contact person as Marcia Walther, Construction Manager.
5. The Site storm water runoff flows into storm drains and drainage ways that discharge to an unnamed blue line stream sometimes referred to in monitoring reports or letters concerning this Site as Fiscalini Creek or Fitzhugh Creek. The unnamed blue line stream is tributary to Santa Rosa Creek, habitat for the “threatened” California Red-legged frog and Steelhead trout, and the “endangered” Tidewater Goby. Santa Rosa Creek flows to the Pacific Ocean, less than a mile away. The Site is bounded on the north and south by areas of wetland vegetation. There is an approximate 165 foot change in elevation from the west boundary to the east boundary of soil disturbance.
6. Below is a list of Permit requirements and alleged violations.

a. **Storm Water Discharges** (*Discharge Prohibition A.3*) – Discharge Prohibition A.3 of the Permit states,

“Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.”

“Pollution” includes an alteration of water quality to a degree that unreasonably affects beneficial uses. (CWC 13050(l).) “Nuisance” means “anything which meets all of the following requirements: (1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. (2) Affects at the same time an entire community or neighborhood, or any considerable number of persons ... (3) Occurs during, or as a result of, the treatment or disposal of wastes.” (CWC 13050(m).)

October 18, 2004 – Morro Group, Inc., acting as San Luis Obispo County’s agent on this construction project, documented in their monitoring report that “silt/sediment left the boundaries of the construction site and entered nearby drainages.” This non-compliance was reported to the Regional Board office in writing on October 20, 2004.

October 19, 2004 – Morro Group documented in their monitoring report that “Large volumes of sediment left the site boundaries and entered the wetland area to the south, and the three culvert pipes conveying storm flow underneath Main Street resulting in heavy sedimentation in Fiscalini Creek. Fiscalini Creek is a tributary to Santa Rosa Creek located approximately 800 hundred yards downstream. The observed sediment plume from the site extended several hundred yards downstream along Fiscalini Creek.”

October 26, 2004 – Regional Board staff witnessed sediment laden storm water being discharged from the site to Fiscalini Creek.

December 7, 2004 – Morro Group documented in their monitoring report that “silt/sediment left the boundaries of the construction site and entered nearby drainages.”

The Water Quality Control Plan, Central Coast Basin (Basin Plan) lists the beneficial uses for Santa Rosa Creek as Municipal and Domestic Supply, Agricultural Supply, Industrial Process Supply, Ground Water Recharge, Contact and Non-contact Water Recreation, Wildlife Habitat, Warm and Cold Fresh Water Habitat, Migration of Aquatic Organisms, Spawning, Reproduction, and/or Early Development, Rare, Threatened, or Endangered Species, Freshwater Replenishment, and Commercial and Sport Fishing. The Basin Plan assigns the beneficial uses of Municipal and Domestic Supply, Contact and Non-contact Water Recreation, and Migration of Aquatic Organisms to surface water bodies within the Region that are not listed by name, such as the unnamed blue line creek tributary to Santa Rosa Creek.

The amount of sediment that left the site was such that Regional Board staff and the Department of Fish and Game staff requested the clean up of the deposition in Fiscalini Creek. The area of Fiscalini Creek in which deposited sediment was removed is estimated to be four feet wide by 50 feet long. The depth of sediment removed was measured to be approximately 8-12 inches deep. The estimated amount of sediment removed from Fiscalini Creek was approximately six cubic yards.

Therefore, the Discharger was in violation of Permit Section A.3 for a total of at least four days.

b. Receiving Water Limitations (*Receiving Water Limitation B.1*) – Receiving Water Limitation B.1 of the Permit states,

“Storm water discharges ... to any surface or ground water shall not adversely impact ... the environment.”

The factors stated in paragraph 6.a. demonstrate that the storm water discharges adversely impacted the environment in receiving waters in Fiscalini Creek. The Discharger was in violation of Permit Section B.1 for a total of at least four days.

c. Storm Water Pollution Prevention Plan (SWPPP) (*Special Provisions for Construction Activity C.2; Section A: Storm Water Pollution Prevention Plan, items 1.c and 4.a*) – Special Provisions for Construction Activity C.2 of the Permit states,

“All dischargers shall develop and implement a SWPPP in accordance with Section A: Storm Water Pollution Prevention Plan. The discharger shall implement controls to reduce pollutants in storm water discharges from their construction sites to the (Best Available Technology Economically

Achievable) BAT/BCT (Best Conventional Pollutant Control Technology) performance standard.”

Section A: Storm Water Pollution Prevention Plan, item 1.c states,

“A Storm Water Pollution Prevention Plan (SWPPP) shall be developed and implemented to address the specific circumstances for each construction site covered by this General Permit. The SWPPP shall be certified in accordance with the signatory requirements of section C, Standard Provision for Construction Activities (9). The SWPPP shall be developed and amended or revised, when necessary, to meet the following objectives: Identify, construct, implement in accordance with a time schedule, and maintain Best Management Practices (BMPs) to reduce or eliminate pollutants in storm water discharges and authorized nonstorm water discharges from the construction site during construction.”

Section A: Storm Water Pollution Prevention Plan, item 4.a states,

“The discharger shall amend the SWPPP whenever there is a change in construction or operations which may affect the discharge of pollutants to surface waters, ground waters, or a municipal separate storm sewer system (MS4). The SWPPP shall also be amended if the discharger violates any condition of this General Permit or has not achieved the general objective of reducing or eliminating pollutants in storm water discharges. If the Regional Board determines that the discharger is in violation of the General Permit, the SWPPP shall be amended and implemented in a timely manner, but in no case more than 14-calendar days after notification by the RWQCB. All amendments should be dated and directly attached to the SWPPP.”

October 14, 2004 – Regional Board staff found the SWPPP on site to be outdated and discussed the matter with Site personnel.

October 15, 2004 – Regional Board staff requested that an updated SWPPP be submitted to the Regional Board office on or before October 29, 2004.

October 29, 2004 – A.J. Diani Construction Co., Inc. submitted an amended SWPPP and a letter stating, “this plan was originally designed around the storm water and permanent erosion control measures being complete and installed.”

November 10, 2004 – Regional Board staff sent a Notice of Violation stating, “Our letter requested design calculations for the sediment traps in the amended SWPPP. However, the SWPPP we received on October 29, 2004 does not contain sediment trap design calculations specific to the sediment traps shown on the site plan (revised 10/28/04).” Another amended SWPPP was requested by and received on November 24, 2004. In the amended SWPPP, sediment traps were omitted and retention basins were added. The cover letter states, “we have updated our BMP system based upon the premise of capturing any and all of the water from a storm event, and filtering it before it is discharged off site.”

Therefore, the Discharger was in violation of Permit Section C.2 for a total of at least 41 days (October 14, 2004 through November 24, 2004).

d. Sediment Control (*Special Provisions for Construction Activity C.2; Section A: Storm Water Pollution Prevention Plan, items 1.c and 8*) – Section A: Storm Water Pollution Prevention Plan, item 8 states,

“The SWPPP shall include a description or illustration of BMPs which will be implemented to prevent a net increase of sediment load in storm water discharge relative to preconstruction levels. Sediment control BMPs are required at appropriate locations along the site perimeter and at all operational inlets to the storm drain system at all times during the rainy season. Sediment control practices may include filtration devices and barriers (such as fiber rolls, silt fence, straw bale barriers, and gravel inlet filters) and/or settling devices (such as sediment traps or basins). Effective filtration devices, barriers, and settling devices shall be selected, installed and maintained properly. A proposed schedule for deployment of sediment control BMPs shall be included in the SWPPP. These are the most basic measures to prevent sediment from leaving the project site and moving into receiving water...”

“During the nonrainy season, the discharger is responsible for ensuring that adequate sediment control materials are available to control sediment discharges at the downgrade perimeter and operational inlets in the event of a predicted storm. The discharger shall consider a full range of sediment controls, in addition to the controls listed above, such as straw bale dikes, earth dikes, brush barriers, drainage swales, check dams, subsurface drain, sandbag dikes, fiber rolls, or other controls. At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season....”

The rainy season is commonly defined as October 1 through April 15.

March 17, 2004 - Morro Group documented in their monitoring report that, “Grading activities began before installation of erosion (and sediment) control measures was complete.”

April 9, 2004 - Morro Group documented in their monitoring report that, “Exposed loose stockpile areas in top northwest corner of site have no erosion/sediment controls in place.”

April 16, 2004 - Morro Group again documented in their monitoring report that, “Exposed loose stockpile areas in top northwest corner of site have no erosion/sediment controls in place.”

April 29, 2004 - Morro Group documented in their monitoring report for the third time that, “Exposed loose stockpile areas in top northwest corner of site have no erosion/sediment controls in place.”

October 14, 2004 – Regional Board staff inspected the site and discussed concerns about unprotected stockpiles on site with Site personnel.

October 15, 2004 – Regional Board staff sent a letter stating, “Regional Board staff found many unprotected stockpiles located throughout the site. Staff are concerned that, although there are sediment control Best Management Practices (BMPs) stockpiled on site for use, due to the size of some of the stockpiles, sediment control measures may be overwhelmed.”

October 18, 2004 – Morro Group documented in their monitoring report that, “Soil stockpile areas are not adequately protected.”

October 26, 2004 – During an inspection, Regional Board staff photo-documented stockpiles without adequate sediment control measures.

Permit Section C.2 and Section A: Storm Water Pollution Prevention Plan, items 1.c and 8 require the Discharger to include adequate BMPs in the SWPPP and to implement BMPs to the BAT/BCT performance standard. The Discharger failed to implement adequate BMPs. Therefore, the Discharger was in violation of Permit Section C.2 for a total of at least 41 days during the rainy season (only the days of violation within the rainy season period were counted; March 17, 2004 through April 15, 2004 and October 14, 2004 through October 26, 2004).

e. BMP Maintenance, Inspections, and Repair (Special Provisions for Construction Activity C.2; Section A: Storm Water Pollution Prevention Plan items, 1.c and 11) – Section A: Storm Water Pollution Prevention Plan, item 11 states,

“The SWPPP shall include a discussion of the program to inspect and maintain all BMPs as identified in the site plan or other narrative documents throughout the entire duration of the project. A qualified person will be assigned the responsibility to conduct inspections. The name and telephone number of that person shall be listed in the SWPPP document. Inspections will be performed before and after storm events and once each 24-hour period during extended storm events to identify BMP effectiveness and implement repairs or design changes as soon as feasible depending upon field conditions. Equipment, materials, and workers must be available for rapid response to failures and emergencies. All corrective maintenance to BMPs shall be performed as soon as possible after the conclusion of each storm depending on worker safety...”

March 19, 2004 - Morro Group documented in their monitoring report that, “Straw wattles placed at the toe of construction site slope were not installed properly.”

March 22, 2004 - Morro Group again documented in their monitoring report that, “Straw wattles placed at the toe of construction site slope were not installed properly.”

March 25, 2004 - Morro Group documented in their monitoring report for the third time that, "Straw wattles placed at the toe of construction site slope were not installed properly."

April 9, 2004 - Morro Group documented in their monitoring report that silt fence along the boundary of the site has large dirt boulders that have breached the perimeter control. "Silt fence is damaged and needs to be repaired."

April 16, 2004 - Morro Group documented again in their monitoring report that silt fence along the boundary of the site has large dirt boulders that have breached the perimeter control. "Silt fence is damaged and needs to be repaired."

April 29, 2004 - Morro Group documented in their monitoring report a third time that the silt fence along the boundary of the site has large dirt boulders that have breached the perimeter control. "Silt fence is damaged and needs to be repaired."

June 10, 2004 - Morro Group documented in their monitoring report that one of the gravel bag barriers around a storm drain inlet had "ruptured and needs to be cleaned up and replaced with a new gravel bag."

June 18, 2004 - Morro Group documented in their monitoring report that several of the gravel bag barriers around a storm drain inlet had "ruptured and needs to be cleaned up and replaced with a new gravel bag."

June 29, 2004 - Morro Group again documented in their monitoring report that several of the gravel bag barriers around a storm drain inlet had "ruptured and needs to be cleaned up and replaced with a new gravel bag."

October 19, 2004 - Morro Group documented in their monitoring report that, "Erosion and sediment control measures were already overburdened as a result of the weekends rain event. As a result, major failures occurred throughout the site..."

November 4, 2004 - Morro Group documented in their monitoring report that, "The site still requires concentrated efforts in general clean up of deposited material on and off-site, and repair and clean up of on-site erosion control measures and/or structures."

November 9, 2004 - Morro Group documented in their monitoring report that, "The toe of the fill slopes along Main Street still contain deposited material on the outside of the silt fence, hay bale, and straw wattle control measures."

November 16 and 17, 2004 - Morro Group documented in their monitoring report that, "Several of the temporary small culverts on the upper portions of the site that

convey stormwater to the large detention basin are plugged and/or buried underneath excess material.”

Permit Section C.2 and Section A: Storm Water Pollution Prevention Plan items 1.c and 11 require the Discharger to construct, implement and maintain BMPs and to perform corrective maintenance as soon as possible. The Discharger was in violation of Permit Section C.2 for a total of at least 41 days during the rainy season (only the days of violation during the rainy season period were counted; March 19, 2004 through March 25, 2004 and April 9, 2004 through April 15, 2004 and October 19, 2004 through November 17, 2004).

6. Regional Board staff discussed potential violations and current violations with Site personnel during the October 14, 2004 and October 26, 2004 inspections, and documented potential violations in a letter dated October 15, 2004, and issued a Notice of Violation letter on November 10, 2004. Both letters were mailed to the Discharger, and mailed and faxed to Site personnel.
7. The Discharger violated the Permit a minimum of one hundred and thirty one days during the period of March 17, 2004 to December 7, 2004.

PROPOSED CIVIL LIABILITY

In determining any liability to be imposed, California Water Code Section 13385 requires the Regional Board to consider the following factors and any other factors as justice may require:

- a. **Nature, circumstances, extent, and gravity of the violation:** This Complaint is issued to address the Discharger’s failure to comply with permit requirements.

The Discharger violated Permit requirements, the Federal Clean Water Act, and the California Water Code by discharging sediment laden storm water to waters of the state, not having an updated SWPPP on site, not implementing effective BMPs, and not maintaining BMPs.

Self-monitoring and voluntary compliance with Permit requirements is an important aspect of the Storm Water Program.

Non-compliance with Permit requirements is a serious violation. In addition, discharge of large amounts of sediment to waters of the state directly impacted water quality. This consideration warrants the maximum liability because of the extent of the impacts to water quality.

- b. **Discharge susceptibility to cleanup or abatement:** In general, storm water discharge is not susceptible to complete cleanup because contaminated storm water often moves rapidly downstream to other receiving waters, and disperses over

extensive areas. In this case, the Discharger did perform some cleanup under the direction of Department of Fish and Game staff and Regional Board staff. However, it was not possible to clean up or abate all of the sediment impacts. The fact that even some of the sediment discharge susceptible to cleanup illustrates the magnitude of the discharge.

This consideration warrants the maximum liability because of the extent of the impacts to water quality.

- c. **Discharge toxicity:** There is evidence of sediment-laden storm water runoff discharged to Fiscalini Creek which flows to Santa Rosa Creek, which is habitat to the "threatened" California Red-legged frog and Steelhead trout, and the "endangered" Tidewater Goby.

This consideration warrants the maximum liability because of the extent of the impacts to water quality.

- d. **Ability to pay and effect on ability to continue business:** The Regional Board has no specific information regarding the Discharger's financial status. However, the Regional Board recognizes that the Discharger is a public school and presumes that the Discharger has limited resources. This consideration warrants liability that is less than maximum.
- e. **Violation history:** There have been no previous Regional Board enforcement actions against the Discharger for this project. This consideration warrants liability that is less than maximum.
- f. **Voluntary cleanup efforts:** The sediment that was deposited in the bottom of the Fiscalini Creek channel was removed. The clean up was documented by the Morro Group in their November 16 and 17, 2004 monitoring report.

However, the Discharger performed the cleanup at the request of Department of Fish and Game staff and Regional Board staff. This factor is neutral in terms of its impact on liability that is less than maximum.

- g. **Degree of culpability:** As the permitted party and owner of the Site, the Discharger is responsible for permit compliance. Morro Group's monitoring reports and Regional Board staff's letters informed the Discharger of Site violations and Permit requirements. This degree of culpability warrants the maximum liability.
- h. **Economic benefit or savings:** Although the Discharger may have enjoyed economic benefit or savings by not having an updated SWPPP on site, not implementing adequate BMPs, and not maintaining BMPs, Regional Board staff does not have sufficient information to calculate economic benefit or savings realized by the Discharger. Since the Discharger is required to install the appropriate BMPs and the Discharger is not a for-profit entity, economic savings in this case is limited to

assumed interest on delayed costs. It is reasonable to assume that this savings was less than \$150,000.

i. **Other matters as justice may require:** Regional Board staff spent time traveling to and inspecting the Site, and preparing and reviewing enforcement documents. Estimated staff costs (including Regional Board technical staff, administrative staff, supervisors, and legal council) are five thousand five hundred fifty dollars (\$5,550).

$$\$75/\text{hour} * 74 \text{ hours} = \$5,550$$

RECOMMENDATION

Upon consideration of factors as required by California Water Code Section 13385, the Executive Officer recommends civil liability in the amount of **one hundred and fifty thousand dollars (\$150,000)** for the Discharger's violations of the Permit from March 17 through December 7, 2004.

Maximum Liability – Pursuant to California Water Code Section 13385, the Regional Board can impose civil liability up to ten thousand dollars (\$10,000) per day of violation of waste discharge requirements. Waste discharge requirements include NPDES permits (California Water Code Section 13374). The Discharger was in violation of the Permit for at least one hundred and thirty one days. Maximum liability that may be imposed is one million three hundred and ten thousand dollars (\$1,310,000).

Minimum Liability – In accordance with California Water Code Section 13385, the minimum liability that may be imposed is recovery of economic benefits (if any) derived from the violations. Although the discharger likely realized some cost savings from noncompliance (having an inadequate SWPPP, not implementing appropriate BMPs, and not maintaining BMPs), Regional Board staff does not have sufficient information to determine the actual economic benefit derived by not yet complying with the Permit. Since the project is not complete, the Discharger must still incur these costs to avoid further Permit violations. It is assumed that the proposed liability of one hundred and fifty thousand dollars (\$150,000) is greater than any economic savings realized by the Discharger during the period of violation, and would therefore meet California Water Code Section 13385 specifications for assessing at least the minimum liability.

Roger W. Briggs, Executive Officer

Date