

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

STAFF REPORT FOR REGULAR MEETING OF JULY 7-8, 2005

Prepared on June 13, 2005

ITEM NUMBER: 7

SUBJECT: Administrative Civil Liability Order No. R3-2005-0067; City of Santa Cruz, Department of Parks and Recreation, De Laveaga Golf Course

KEY INFORMATION

Discharger: City of Santa Cruz, Department of Parks and Recreation
Location: De Laveaga Golf Course, Santa Cruz, Santa Cruz County
Discharge Type: Construction Storm Water
Existing Order: Order No. 99-08-DWQ, NPDES General Permit No. CAS000002

SUMMARY

This item recommends that the Central Coast Water Board assess civil liability in the amount of one hundred fifty thousand dollars (\$150,000) for Permit violations that occurred at the De Laveaga Golf Course in Santa Cruz from September 20, 2004 through April 4, 2005. This enforcement action helps accomplish a primary goal of the Central Coast Water Board—to take meaningful enforcement action when necessary as a deterrent to future violations.

On December 8, 2004 and January 12, 2005, Central Coast Water Board staff inspected all construction areas at the De Laveaga Golf Course at 401 Upper Park Road in Santa Cruz, Santa Cruz County (Site). After each inspection staff determined the City of Santa Cruz, Department of Parks and Recreation (Discharger) was in violation of *Order No. 99-08-DWQ National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002* (Permit) requirements. Based on observations of Site conditions, discussions with Site personnel, and information later submitted by the Discharger, the period of violation is at least from September 20, 2004

through April 4, 2005, a total of one hundred ninety-seven (197) days. The Discharger's violations during this period include failure to implement the Site's Storm Water Pollution Prevention Plan (SWPPP), failure to have an adequate SWPPP, and failure to submit requested information.

After considering factors as required in California Water Code Section 13385, the Executive Officer issued a Complaint for these violations, in the amount of one hundred fifty thousand dollars (\$150,000).

DISCUSSION

Background

The Discharger owns and operates the 108.5-acre De Laveaga Golf Course, located at 401 Upper Park Road in Santa Cruz, Santa Cruz County.

Construction activities at the Site include installing two restrooms, repaving an existing parking lot, replacing existing cart paths, remodeling three Greens, and remodeling eighteen Tees. Conflicting documents submitted by the Discharger indicate the

disturbance area totals either ten or approximately twenty-eight acres.

Site runoff discharges to storm drain inlets and to canyons that discharge to Arana Gulch and Branciforte Creek.

Timeline

August 19, 1999 – The State Water Resources Control Board (State Water Board) adopted *Order No. 99-08-DWQ National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002* (Permit). The Permit regulates storm water discharges from construction sites that disturb one acre or more.

May 27, 2003 – Mr. Steve Hammack, City of Santa Cruz Superintendent of Parks, signed the *DeLaveaga Golf Course Master Plan Initial Study/Mitigated Negative Declaration, May 2003* on behalf of the City of Santa Cruz. Mitigation Measure #3 of the document specifically addresses mitigation for potential erosion, sedimentation, and potential water quality impacts to adjacent drainages due to grading and construction.

July 22, 2003 – The Santa Cruz City Council adopted the *DeLaveaga Golf Course Master Plan Initial Study/Mitigated Negative Declaration, May 2003*.

September 12, 2003 – At the September 12, 2003 Central Coast Water Board meeting, Ms. Lori Fallon-Hobbs, a member of the public, raised concerns about the upcoming construction project and past pesticide usage at the Site.

March 19, 2004 – Central Coast Water Board staff, Mr. Chris Adair, prepared a status report stating Site construction was initially scheduled to begin in Spring 2004, but was postponed to Fall 2004. Staff indicated the Site would be inspected after construction began. The staff report also included information about the pesticides of concern.

September 16, 2004 – Mr. Hammack signed a Notice of Intent (NOI) to comply with the Permit on behalf of the City of Santa Cruz.

September 20, 2004 – Construction began (according to the NOI).

October 4, 2004 – Central Coast Water Board staff, Ms. Amanda Bern, called Mr. Miles Hicks, the Site contact, to notify him that she intended to inspect the Site the following day.

October 5, 2004 – Ms. Bern inspected portions of the Site, spoke with Mr. Hicks about the lack of Best Management Practices (BMPs) on Site, took photographs of the Site, and obtained a copy of the Site's unsigned SWPPP (dated August 2004).

December 1, 2004 – Central Coast Water Board staff, Ms. Kimberly Gonzalez, called Mr. Hicks and left a message on his voice mail informing him of her plans to inspect the Site. Mr. Hicks later returned Ms. Gonzalez's call and confirmed the inspection date of Wednesday, December 8, 2005.

December 8, 2004 – Ms. Gonzalez met Mr. Hicks and Mr. Lee Bilberry (of Golf Course Builders International) at the Site and conducted a compliance inspection. Central Coast Water Board staff inspected all construction areas at the Site, took photographs, and spoke to Mr. Hicks and Mr. Bilberry regarding BMP failure and lack of erosion controls at the Site. Ms. Gonzalez briefly reviewed the Site's SWPPP at the end of the inspection.

December 21, 2004 – Central Coast Water Board staff issued a Notice of Violation for violations observed and documented during staff's December 8, 2004 compliance inspection. The Notice of Violation required the Discharger to submit information regarding Corrective Action and Cleanup Efforts, Inspection Records, Monitoring and Reporting Program, and Storm Water Pollution Prevention Plan by January 27, 2004. (The intended due date was January 27, 2005.)

January 12, 2005 – Ms. Gonzalez arrived at the Site unannounced and met with Mr. Hicks to conduct a compliance inspection. Ms. Gonzalez inspected all construction areas at

the Site, took photographs, and spoke to Mr. Hicks regarding BMPs in need of maintenance, improper BMP installation, and lack of erosion controls. Mr. Hicks stated the SWPPP Site map (which prescribes BMPs by type and location) had not yet been updated since the previous inspection.

January 14, 2005 – Mr. Hammack signed a revised SWPPP.

January 21, 2005 – Central Coast Water Board staff, Peter von Langen, inspected some portions of the Site, but did not take any photographs and did not meet with the Site contact. Mr. von Langen was concerned about the Site's potential water quality impacts to Arana Gulch because of inadequate erosion and sediment control measures at the Site.

January 21, 2005 – Mr. Hammack signed a second NOI containing a change of information. The changes included:

- a. NOI Section VIII.A – Adding “01/14/05” as the Storm Water Pollution Prevention Plan (SWPPP) amendment date.
- b. NOI Section VIII.B – Listing “Miles Hicks, Golf Course Superintendent, City of Santa Cruz, California” as the qualified person assigned responsibility for pre-storm and post-storm BMP inspections to identify BMP effectiveness and necessary repairs or design changes.

January 24, 2005 – Mr. Hammack responded to the Notice of Violation and submitted a copy of the Notice of Violation, an amended Site map, amended Storm Water Pollution Prevention Plan (pages 5, 7, 8, and 17), amended NOI, list of Corrective Action and Cleanup Efforts, Site inspection log, monitoring and reporting log, photographs, and description of photographs.

March 14, 2005 – The Central Coast Water Board Executive Officer issued a Notice of Violation via Certified Mail for violations observed and documented during the January 12, 2005 compliance inspection, and for failure to submit all the information required by the first Notice of Violation.

March 30, 2005 – Ms. Gonzalez spoke with Ms. Suzanne Healy, the contact person for City of Santa Cruz's compliance with the Statewide General Small Municipal Separate Storm Sewer System Permit. Ms. Healy had spoken to Mr. Hammack and said he sent copies of only the SWPPP pages that had been amended. Ms. Gonzalez also inquired as to the SWPPP length, as the initial SWPPP had 16 pages (plus BMP fact sheets) and the subsequent submittal of SWPPP amendments indicated there were 17 pages (plus BMP fact sheets). According to Ms. Healy and Mr. Hammack, this was due to the way the SWPPP was printed, not due to an additional page. Ms. Healy said she would see that a full copy of the SWPPP, including amendments, was sent to the Central Coast Water Board office as soon as possible.

April 5, 2005 – The Central Coast Water Board office received from the Discharger a SWPPP including SWPPP amendments and a Monitoring and Reporting Program.

April 13, 2005 – The Central Coast Water Board Executive Officer issued a Complaint in the amount of one hundred fifty thousand dollars (\$150,000) for violations occurring between September 20, 2004 and April 4, 2005.

April 21, 2005 to May 18, 2005 – The Discharger requested review of the following:

1. “Any and all documents regarding De Laveaga Golf Course;
2. “Any and all documents consisting of and pertaining to investigations regarding the Permit, Complaint, and De Laveaga Golf Course;
3. “Any and all documents consisting of and pertaining to minutes of Board meetings regarding the Permit, Complaint, and De Laveaga Golf Course;
4. “Any and all documents of and pertaining to staff reports regarding the Permit, Complaint, and De Laveaga Golf Course;

5. "Any and all documents consisting of and pertaining to communications between any Board Member (including Russell M. Jefferies and Bruce K. Daniels) and any other person regarding the Permit, Complaint, and De Laveaga Golf Course;
6. "Any and all documents, including but not limited to those consisting of and pertaining to investigations, regarding Carbonera Creek, Branciforte Creek, Arana Gulch, Twin Lakes, and the Santa Cruz Harbor."

Since the request did not specify time periods or programs of interest, it took staff considerable effort to come up with a list of relevant and potentially relevant records. The Discharger copied the De Laveaga Storm Water file, Schwan Lake Total Maximum Daily Load (TMDL) file, and Carbonera Creek TMDL file. After a subsequent identical request, the Discharger obtained electronic copies of a large number of staff emails generally regarding De Laveaga Golf Course, Carbonera Creek, and Santa Cruz Harbor dredging. The Discharger also obtained copies of digital photographs from Water Board staff's December 8, 2004 and January 12, 2005 site inspections, and October 2004 Water Board tour of the Arana Gulch watershed. Staff provided the Discharger with an additional list of files that might be of interest, but as of June 13, 2005, the Discharger did not request to review or copy those records.

April 21, 2005 to May 19, 2005 – The Discharger waived the right to a hearing within 90 days of the Complaint's issuance, and requested a continuance. The Water Board granted a continuance to the July 7/8, 2005 Board Meeting in San Luis Obispo. The Discharger was agreeable to the new date, then later determined that Mr. Hammack would be on vacation during that time, and asked for continuance to a subsequent Water Board Meeting. The Water Board denied further continuance but will allow the Discharger to submit Mr. Hammack's written declaration without requiring Mr. Hammack to be present at the hearing to affirm his testimony. If Mr. Hammack wishes to testify at the hearing by telephone, he will be able to do so. Otherwise, staff requested the Discharger to produce

another employee at the hearing who could answer the Water Board's questions about Mr. Hammack's testimony.

April 27, 2005 to June 13, 2005 – Water Board staff requested revenue data for green fees and golf cart rentals. The Discharger provided the data electronically. Upon review of the data, staff had questions about the data. The Discharger responded to staff's inquiries, but the responses were not complete, as they did not provide sufficient information to calculate the revenue for various dates. As of June 13, 2005, Central Coast Water Board and State Water Board staff did not have any evidence that the initial economic benefit estimate was incorrect, or sufficient evidence to prepare a more precise estimate.

Proposed Order Contents

Staff drafted Administrative Civil Liability Order No. R3-2005-0067 for the Central Coast Water Board's consideration pursuant to California Water Code Section 13385 to address the Discharger's violations from September 20, 2004 to April 4, 2005.

Violations

- a. **Storm Water Pollution Prevention Plan** (*Permit item C.2*) – The Discharger must develop and implement a SWPPP in accordance with Permit 'Section A'.

Violation Discussion – The Site's SWPPP was not developed in accordance with Permit 'Section A' from the start of construction (September 20, 2004) to at least April 4, 2005. (The Discharger submitted SWPPP amendments on January 14, 2005; however, the amended SWPPP was still deficient.) The Site's SWPPP was not implemented on the Site in accordance with Permit 'Section A' from the start of construction (September 20, 2004) to at least staff's January 12, 2005 compliance inspection.

- b. **Pollutants** (*Permit item C.2 and 'Section A' item 1.c*) – The Discharger must implement measures to reduce or

eliminate pollutants in storm water discharges.

Violation Discussion – The Site’s SWPPP specifies how materials and chemicals must be stored. However, during the December 8, 2004 and January 12, 2005 inspections, Central Coast Water Board staff observed and photographed gasoline containers, batteries, and/or other chemical containers not stored in accordance with SWPPP specifications.

- c. **Erosion Control** (*Permit item C.2 and ‘Section A’ item 6*) – The Discharger must implement an effective combination of erosion and sediment controls on all disturbed areas during the rainy season.

Violation Discussion – The Site’s SWPPP specifies erosion controls are required before the onset of the first major winter storms and prescribes ‘seeding and planting’ as an erosion control measure. However, the SWPPP was not clear as to when the ‘seeding and planting’ BMP was to be implemented. The SWPPP only specified that the BMP was required. The BMP fact sheet said ‘seeding and planting’ were suitable for stabilizing disturbed areas both during construction and post-construction.

- If the SWPPP intended the ‘seeding and planting’ BMP to be implemented during construction (such as after grading), the Discharger failed to comply with the SWPPP.
- If the SWPPP intended the BMP to be implemented as a post-construction measure, the SWPPP was deficient for not requiring an effective combination of erosion and sediment controls on all disturbed areas during the rainy season.

In either case, the Discharger failed to implement an effective combination of erosion and sediment controls on all disturbed areas during the rainy season.

Additionally, the project’s Initial Study and Mitigated Negative Declaration

specify erosion controls to be implemented during and after construction to mitigate for otherwise potentially significant impacts. The Discharger did not fully implement mitigation measures.

- d. **Sediment Control** (*Permit item C.2 and ‘Section A’ item 8*) – The Permit requires sediment controls at appropriate locations along the site perimeter and at all operational storm drain inlets. Effective filtration devices, barriers, and settling devices shall be selected, installed, and maintained properly. Sediment controls are required at all times during the rainy season.

Violation Discussion – In December 2004 and January 2005, staff observed that Site sediment controls (when present) were not effectively filtering sediment, were in need of maintenance, and were improperly installed. Site BMPs were not installed in accordance with the SWPPP map. Despite the Discharger’s efforts to implement and maintain BMPs after the December inspection, the Site lacked effective sediment controls and the Discharger failed to implement and maintain sediment controls in accordance with the SWPPP.

- e. **Non-Storm Water Management** (*Permit item C.2 and ‘Section A’ item 9*) – Non-storm water discharges should be eliminated or reduced to the extent feasible. Unavoidable non-storm water discharges and associated BMPs must be described in the SWPPP. The SWPPP must include the location of non-storm water discharges and descriptions of all BMPs designed for the control of pollutants in such discharges. One-time discharges must be monitored during the time that such discharges are occurring. The SWPPP must list a person responsible for ensuring no materials other than storm water are discharged in quantities that will have an adverse effect on receiving waters or storm drain systems. Discharge of sediment-laden water that will cause or contribute to a violation of the Basin Plan from a dewatering site or sediment basin

into any receiving water or storm drain is prohibited without filtration or equivalent treatment.

Violation Discussion – The SWPPP specifies discharges of “unpolluted groundwater and other discharges from excavated dewatering” are allowed, and specifies “BMP’s [sic] require Contractor to avoid or minimize the use of water that may result in a discharge.” However, the SWPPP fails to clarify that discharge of sediment-laden water that will cause or contribute to a violation of the Basin Plan from a dewatering site or sediment basin into any receiving water or storm drain is prohibited without filtration or equivalent treatment; therefore the SWPPP is deficient.

In December 2004 and January 2005, sediment-laden water was discharging from the onsite pond without treatment. In January, sediment-laden water (from dewatering) was being pumped from the clubhouse parking lot landscaped area without filtration and without monitoring of the discharge area. Staff observed the person pumping water as he finished pumping and left the parking lot without checking the discharge area. During the January 2005 inspection, Mr. Hicks assured Central Coast Water Board staff that future excavation dewatering would be appropriately filtered, disposed, and monitored.

- f. **BMP Maintenance, Inspections, and Repair** (*Permit item C.2 and ‘Section A’ item 11*) – BMP inspection, maintenance, and repair are required as soon as possible (with respect to worker safety) after conclusion of each storm and after a problem is noted. Inspections are required before and after storms, and every 24 hours during an extended storm event. Inspection reports must contain the inspection date, weather information, description of inadequate BMPs, BMP observations, required corrective actions, and inspector’s name, title, and signature.

Violation Discussion – The SWPPP specifies the Contractor will maintain BMPs throughout construction; but during the December and January compliance inspections, Central Coast Water Board staff did not see any maintenance person or maintenance crew repairing failing or damaged BMPs. The Discharger was not implementing the SWPPP.

Inspection reports submitted by the Discharger did not contain the minimum required information, such as weather information (estimate of beginning of storm event, duration of event, and time elapsed since last storm), and inspector’s title and signature. Additionally, the SWPPP specified the Contractor was responsible for Site inspections. However, Mr. Hicks (with the City of Santa Cruz) conducted Site inspections, not the Contractor as specified in the SWPPP.

- g. **Training** (*Permit item C.2 and ‘Section A’ item 12*) – Site BMP installation, inspection, maintenance, and repair are the responsibility of trained Site personnel. Training must be documented in the SWPPP.

Violation Discussion – The SWPPP specifies: “Contractor will be responsible for employees and subcontractors training...”, but does not document personnel that have been trained. Information the Discharger submitted on April 5, 2005, stated that Mr. Hicks was first trained in “storm water management, erosion and sedimentation control measures” on October 6, 2004. From the start of construction to that date, the Discharger failed to have trained individuals responsible for BMP installation, inspection, maintenance, and repair.

- h. **Proper Operation and Maintenance** (*Permit item C.6 and ‘Section C’ item 5*) – At all times the discharger must properly operate and maintain facilities, treatment systems, and control systems that are installed or used by the discharger to

achieve compliance with Permit conditions and SWPPP requirements.

Violation Discussion – Although the SWPPP specified erosion and sediment control BMPs and included BMP fact sheets (with information about appropriate BMP applications, installation, limitations, and maintenance), sediment controls were not effective, not maintained, and not properly implemented. In December 2004, sediment-laden water was discharging from various locations due to lack of erosion controls and ineffective sediment controls. In January 2005, many areas had improperly-installed sediment controls and sediment controls in need of maintenance or repair. Silt fences were not effectively filtering runoff due to pipes intentionally placed through or under silt fences. The Discharger failed to implement, operate, and maintain BMPs in accordance with SWPPP specifications.

- i. **Duty to Provide Information** (*Permit item C.2 and 'Section A' item 15, and Permit item C.6 and 'Section C' item 7*) – The Discharger is required to provide the Central Coast Water Board with a copy of the SWPPP upon request. The Discharger is required to provide to the Central Coast Water Board any information requested to determine Permit compliance, including copies of records the Permit requires Dischargers to keep.

Violation Discussion – In a Notice of Violation dated December 21, 2004, Central Coast Water Board staff requested a copy of the Discharger's SWPPP, Monitoring and Reporting Program, and other documents. The Discharger submitted an incomplete SWPPP (pages were missing), and failed to submit the Monitoring and Reporting Program. Staff called the Discharger in late March 2005, and learned that the Discharger intentionally submitted only amended portions of the SWPPP. The Discharger submitted the whole SWPPP and the Monitoring and Reporting Program on April 5, 2005.

- j. **Signatory Requirements** (*Permit item C.6 and 'Section C' item 9.a and 9.b*) – All SWPPPs must be signed by a principal executive officer, ranking elected official, or duly authorized representative (for a municipality).

Discussion – The SWPPP was not signed by a principal executive officer, ranking elected official, or duly authorized representative (for a municipality), until January 14, 2005.

Overall, the Discharger did not bring the Site into compliance with Permit and SWPPP requirements (from September 20, 2004 to at least January 12, 2005), and did not bring the SWPPP into compliance with Permit requirements (from September 20, 2004 to at least April 4, 2005).

Changes to Proposed Order

From April 21, 2005 to June 13, 2005, Water Board staff and supervisors spent additional time responding to the Discharger's record review requests and requests for hearing continuance. Central Coast Water Board and State Water Board staff also spent time reviewing and inquiring about golf course revenue data. This Staff Report and the Order have been revised to include additional staff costs as of June 13, 2005. Water Board legal counsel also spent time on these matters, but the estimated staff costs do not include counsel's time.

The due date for liability payment was changed from June 12, 2005 to August 8, 2005 due to the Discharger's request for hearing continuance.

Factors to Consider

The Central Coast Water Board Executive Officer considered relevant factors as required by California Water Code Section 13385. Staff's analysis of these factors is included in the proposed Administrative Civil Liability Order No. R3-2005-0067 (Attachment 3).

Maximum Liability

Pursuant to California Water Code Section 13385, the Central Coast Water Board can impose civil liability up to ten thousand dollars per day of violation of waste discharge requirements. The Discharger was in violation of the Permit for at least 197 days, from September 20, 2004 through April 4, 2005. Maximum liability that may be imposed is one million nine hundred seventy thousand dollars (\$1,970,000). This is a conservative estimate because the Discharger violated multiple provisions of the Permit during this period, and the calculation considers only one violation per day.

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 acts that constitute the violations. State Water Board and Central Coast Water Board staff estimate the Discharger's economic benefit to be up to one hundred thirty thousand, five hundred dollars (\$130,500).

State Water Board staff prepared the attached economic benefit analysis (Attachment 4). The economic benefit analysis relies on Central Coast and State Water Board staff's estimates and assumptions (as presented in the analysis). Central Coast Water Board staff verbally requested actual revenue and user data from the Discharger shortly before the Complaint was issued. Although Mr. Hicks agreed to provide any necessary information, the person who had access to the information was on vacation. The Complaint went out before more information could be obtained from the Discharger.

Water Board staff later requested revenue data for green fees and golf cart rentals. The Discharger provided revenue data; however, as of June 13, 2005, Central Coast Water Board staff and State Water Board staff had some unanswered questions about the data (Attachment 5), did not have any evidence that the initial economic benefit estimate (Attachment 4) was incorrect, and did not have

sufficient evidence to prepare a more precise estimate.

The proposed liability is greater than the maximum estimated economic benefit realized by the Discharger, and would therefore meet California Water Code Section 13385 specifications for assessing at least the minimum penalty.

Staff Time

Central Coast Water Board staff spent time traveling to and inspecting the Site; preparing, reviewing, and revising enforcement documents; and responding to Discharger requests and correspondence. Estimated staff costs (including Central Coast Water Board technical staff, administrative staff and supervisors) are fifteen thousand dollars (\$15,000).

$$\$75/\text{hour} * 200 \text{ hours} = \$15,000$$

Additionally, State Water Board staff spent nine hours preparing the economic benefit analysis and reviewing golf course revenue data. Estimated costs for State Water Board staff time total six hundred seventy-five dollars (\$675).

$$\$75/\text{hour} * 9 \text{ hours} = \$675$$

As of June 13, 2005, total estimated staff costs are fifteen thousand six hundred seventy-five dollars (\$15,675).

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 fifty thousand dollars (\$150,000) for the Discharger's violations of the Permit from September 20, 2004 through April 4, 2005.

ATTACHMENTS

1. Notice of Violation Correspondence
2. De Laveaga Rainfall Data

3. Administrative Civil Liability Order No.
R3-2005-0067
4. Economic Benefit Analysis
5. Email Correspondence Regarding Golf
Course Revenue Data

CKG\\S:\Storm Water\Construction\Santa Cruz Co\330064 De LaVeaga Golf\ACL\2005.07 Bd Mtg\R3.2005.0067
Staff Report 2005.07 DeLaveaga.doc
File: Storm Water 3 44C33064 De Laveaga Golf Course
Task: Storm Water Enforcement