

# BEST BEST & KRIEGER

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November 25, 2007

John H. Robertus, Executive Officer  
California Regional Water Quality Control Board,  
San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

Re: Administrative Civil Liability Complaint No. R9-2007-0093

Dear Mr. Robertus:

The North County Transit District ("NCTD") respectfully submits this letter in response to the Administrative Civil Liability Complaint No. R9-2007-0093 ("ACL") issued by the California Regional Water Quality Control Board, San Diego Region ("Regional Board") on August 31, 2007.

As you are aware, the Regional Board issued two notices of violation ("NOVs") to NCTD on March 19, and April 3, 2007. The NOVs were based on the Regional Board's assessments of the Sprinter Rail Project construction site ("Sprinter site") during inspections on February 20, and March 21, 2007. The NOVs alleged that the Sprinter site was in violation of the Statewide General Permit for Stormwater Discharges Associated with Construction Activity ("Permit"), and requested that NCTD prepare technical reports documenting the measures taken to bring the Sprinter site into compliance. Please note that Regional Board staff conducted the second inspection on March 21, 2007, just two days after issuing the first NOV, and before the responsible NCTD staff had notice of the March 19 NOV. NCTD generated the required reports, and filed them with the Regional Board on April 6, and 24, 2007. Both reports made clear that NCTD wanted to work with the Regional Board to resolve any outstanding issues related to the Sprinter site, and invited the Regional Board to contact NCTD if any further actions were necessary.

The Regional Board did not contact NCTD regarding the Sprinter site until August 31, 2007 when it issued the ACL. NCTD provided the Regional Board with a response to the ACL on October 4, 2007, and again requested that the Regional Board contact NCTD if any further issues involving the Sprinter site came up. Despite this request, Regional Board staff conducted an unannounced inspection of the Sprinter site on October 5, 2007. This inspection provided the basis for an additional NOV issued on October 26, 2007. Although the third NOV accurately

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assessed some short-comings at the Sprinter site, it also alleged many violations that were unrelated to the Sprinter Project. These oversights could have been avoided had the Regional Board contacted NCTD prior to conducting its inspection.

NCTD has an ongoing relationship with the Regional Board, a relationship that in the past has been based on cooperative efforts to maintain water quality in the North County. NCTD would like to preserve that relationship, and continue to work collaboratively with the Regional Board. To that end, NCTD would like to resolve any outstanding issues involving the Sprinter Project and site. The following is a description of NCTD's position on a number of issues related to the ACL, and a proposed settlement of the ACL.

**DESPITE THE NOV'S, NCTD HAS BEEN A GOOD ENVIRONMENTAL STEWARD, AND HAS SPENT SIGNIFICANT AMOUNTS OF MONEY ON IMPROVING STORM WATER CONDITIONS ON AND OFF THE SPRINTER SITE.**

The Sprinter site is 22 miles long, and required a large financial commitment to maintain. Through August, 2007, NCTD has used:

- a) 3,502,425 square feet of soil binders for a total cost of \$175,121.
- b) 149,667 linear feet of silt fences for a total cost of \$598,668.
- c) 13,497 gravel bags for a total cost of \$53,988.
- d) 193,647 linear feet of fiber rolls for a total cost of \$774,588.

NCTD has additionally spent over \$1 million on miscellaneous BMPs throughout the Sprinter site. In total, through August, 2007, NCTD has spent \$2,655,995 on BMPs at the Sprinter site. (See photos, attached.) NCTD additionally installed Bio-retention Cell BMPs at six of its Sprinter stations. NCTD was required to implement these BMPs where feasible, and took an independent, additional step to install them wherever it could, at substantial cost. NCTD spent more than \$780,000 on these BMPs – money that it could have avoided spending by implementing other, less expensive BMPs.

In addition to its efforts to control storm water at the Sprinter site, NCTD has spent more than \$7 million on other environmental projects. NCTD conducted award winning habitat rehabilitation projects at Rancho del Oro, and in Harmony Grove. (See news article attached.) NCTD reconstructed wetlands on the Sprinter site, and has conducted Oak tree rehabilitation in offsite areas. NCTD has removed exotic species from the Sprinter right-of-way, and engaged in significant on-sight re-vegetation. In total, NCTD has spent \$7,192,103 on environmental projects. Water Code section 13385(e) requires the Regional Board to consider such factors when imposing fines for violations of the Clean Water Act. The fines sought in the ACL do not take any of these factors into account, and instead seeks to impose the maximum penalties available.

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**THE VIOLATIONS ALLEGED IN THE ACL AND THE NOVS WERE NOT "SERIOUS" WITHIN THE MEANING OF THE WATER CODE.**

The State and Regional Boards are required to impose mandatory minimum penalties where a violation is "serious" within the meaning of Water Code § 13385(h)(2). In order to be serious, a discharge of sediment must exceed the requirements in the Permit by 20%. The ACL does not allege that this occurred, and seeks to impose a penalty that is three times higher than the mandatory minimum required by Water Code section 13385. Absent an allegation that the discharges in the ACL were "serious", the penalties sought should be lower than those required as the mandatory minimum.

**THE REGIONAL BOARD DID NOT SEEK MAXIMUM PENALTIES IN RESPONSE TO OTHER RECENT, MORE SEVERE VIOLATIONS.**

***Scripps Ranch Middle School (San Diego Unified) ACL***

The Regional Board recently issued an ACL to the San Diego Unified School District for violations at its Scripps Ranch Middle School construction site. The Regional Board had previously imposed a Cleanup and Abatement Order on the site. This order was in place at the time of the violations. Site maintenance and discharges were significantly worse than those at the Sprinter site. Active discharges of sediment-laden water that had visible impacts on Carroll Canyon Creek were observed during site inspections. Gasoline cans were stored outside, and overall site maintenance was significantly worse than the conditions at the Sprinter site. The Regional Board did not impose the maximum penalties available, and instead imposed a \$128,000 fine. (See ACL, attached.)

***Garden Road Elementary (Poway Unified) ACL***

The Regional Board issued an ACL to Poway Unified School District in 2006 for violations at its Garden Road Elementary construction site. The School District failed to obtain Permit coverage before starting construction, and failed to implement any kind of a SWPPP on site for at least 12 days. School District contractors ruptured a water line and flooded the site with 200,000 gallons of chlorinated water, causing discharges of sediment-laden water to nearby storm drains. The site operator refused to stop pumping sediment laden water into a nearby storm drain even after being ordered to by the City of Poway. The Regional Board imposed a \$20,000 fine for two days of discharge, but did not seek a per gallon fine. This was the maximum penalty available for the sediment discharges. (See ACL, attached.)

***Pioneer Builders, Inc. ACL***

The developer failed to obtain permit coverage before starting construction. The developer additionally, over a 34-day period, the developer discharged soil, rock and other materials to a nearby wetland that had been designated "jurisdictional" by the U.S. Army Corps of Engineers. The developer additionally failed to implement BMPs on the site over a 32-day period. The Regional Board fined the developer \$1,000 per day for the illicit discharge, and

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\$1,000 a day for inadequate BMP installation. The Regional Board imposed a \$73,750 fine, an amount significantly lower fine than the maximum available. (*See ACL, attached.*)

***JRMC Real Estate ACL***

The Regional Board had imposed a Cleanup and Abatement Order on the site that was in place at the time of some of the violations. The developer discharged sediment to the City of Escondido's MS4 and into Escondido Creek on at least 93 days. The developer additionally failed to implement BMPs on at least 217 days, and failed to adequately report site conditions on at least 16 days. The Regional Board imposed a \$400,000 fine. The ACL did not break that down into individual violations, but spread equally the ultimate fine provides a \$1227 penalty for each violation. (*See ACL, attached.*)

**PROPOSED SETTLEMENT**

***Maximum Penalties Available***

The ACL seeks a \$160,000 fine for a total of 16 violations that took place over two, two-day periods. The ACL allocates a \$10,000 fine for each violation. Pursuant to Water Code section 13385(c), the maximum penalty available for violations of the Clean Water Act is \$10,000 per day that a site is in violation, and \$10 per gallon of discharge over 1,000 gallons. The \$10,000 per day maximum applies regardless of how many violations occur on an individual day. (*State of California v. City and County of San Francisco* (1979) 94 Cal.App.3d 522, 529-30.) Because the ACL covers a total of four days, and does not seek per gallon penalties, the maximum penalty available is \$40,000.

***Failure to Implement Best Management Practices***

Pioneer Builders had 32 violations, and was fined \$1000 per violation. JRMC Real Estate had 217 violations, and was fined the equivalent of \$1227 per violation. NCTD had two violations. Based on what these private developers were required to pay, and the fact that NCTD had far fewer violations, we believe NCTD should not be fined more than \$1,000 per violation, or \$2,000.

***Failure to accurately assess and report site conditions in four inspection reports***

The Regional Board recently cited San Diego Unified School District for similar violations at the Scripps Ranch Middle School construction site. San Diego Unified was fined \$2,000 per violation for a total of 42 violations. Likewise, JRMC Real Estate had 16 violations and was fined the equivalent of \$1227 per violation. NCTD had four violations, and because it had so few violations of this type, we believe NCTD should not be fined more than \$1,000 per violation, or \$4,000.



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*Discharges of sediment to MS4 and Waters of the United States*

The discharges were not serious within the meaning of § 13385 and thus did not require mandatory minimum penalties. The San Diego and Poway Unified School Districts each received a \$10,000 per day fine for discharge violations, but their violations were significantly worse. (See Scripps Ranch, and Poway Unified ACLs, attached.) Both discharged more sediment, and Poway Unified refused to stop when ordered to do so by the City of Poway. Moreover, Pioneer Builders Inc., was fined \$1,000 per day for 34 days of illicit discharges, and JRMC Real Estate Inc., was fined the equivalent of \$1227 per day for 93 days of illicit discharges.

The ACL alleges that NCTD had 10 illicit discharges on two separate days. The maximum fine available by law is \$20,000 - \$10,000 for each day of discharge. Because its violations were not "serious", and did not result in significant environmental damage, we believe NCTD should not be fined more than \$3,000 for each individual violation, or \$30,000. Because the alleged discharges occurred on the same day, this amount is greater than the maximum penalty a court would allow the Regional Board to impose. NCTD recognizes that there are costs involved with appealing Regional Board decisions, and would like to find a compromise that is mutually agreeable.

*Total Proposed Fine*

In light of the above, NCTD proposes to settle the ACL for \$36,000.

- 1) Failure to implement BMPs - \$2,000
- 2) Failure to adequately record on-site conditions - \$4,000
- 3) Illicit discharges - \$30,000

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NCTD believes that this is a reasonable settlement offer in light of the Water Code's restrictions on fines, and NCTD's ongoing efforts to work with the Regional Board on water quality issues. As we noted in our November 4, 2007, NOV response, the Sprinter project is the last major construction project that NCTD will engage in. Further, the Sprinter Project is close to completion. For these reasons, and in light of the information provided above, we request the Regional Board consider this reduced fine.

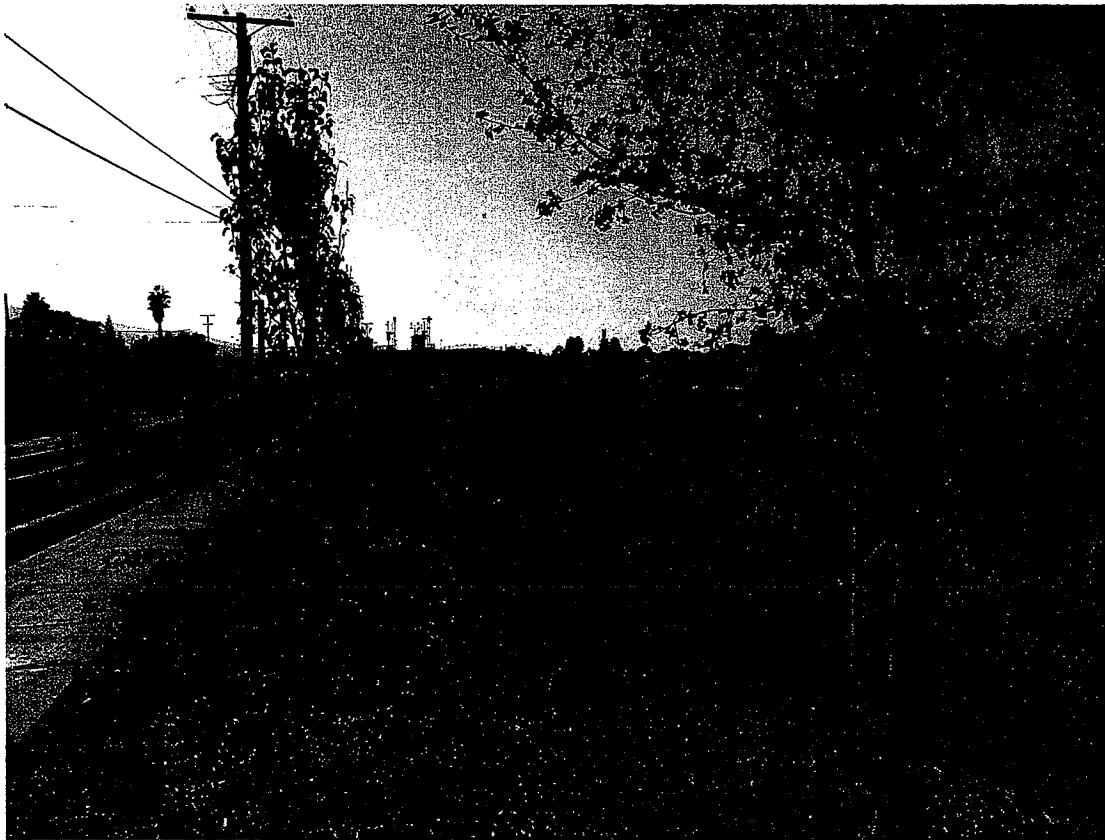
Sincerely,



Marguerite S. Strand  
of BEST BEST & KRIEGER LLP

MSS:AM

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Sprinter Project Permanent BMP's along San Marcos Loop and Barham Drive. Nov 2007





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**Sunday, November 25, 2007**

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## Transit district restores Harmony Grove site

By: PAUL SISSON - Staff Writer

Project to make up for Sprinter damage wins environmental award

**HARMONY GROVE** -- Though the Sprinter's 22-mile rail line comes nowhere near the tranquil trails of Harmony Grove, the project was responsible for restoring animal habitat in that area, a mostly rural community between Escondido and San Marcos near the San Elijo recreational reserve.

The North County Transit District picked a nearly 4-acre parcel in Harmony Grove that once held a mobile-home park to help pay Mother Nature back for the damage done to native plants during construction of the Sprinter. The piece of land that has been restored sits along Escondido Creek, several miles south of the rail route.

Today at the site, what had been a line of concrete slabs behind a long earthen berm has been transformed into a stepped field planted with mule fat, live oak and other native plants that will one day grow and merge with the dense trees closer to the edge of the creek.

Paul Walsh, a habitat restoration specialist with Dudek Engineering and Environmental, walked the property Wednesday and said the area should provide new real estate for the plants and animals that live in the surrounding area.

He said removing the earthen berm from the edge of the creek was key to restoring the natural flow of the waterway, which climbs its banks in the rainy winter months.

"Having the appropriate hydrology is very important. Without it, you wouldn't be able to have the right kinds of plants to create the riparian habitat that supports the native animals and birds," Walsh said, adding that the least Bell's vireo and the southernwestern willow flycatcher are two endangered birds that are prevalent in the area.

Sprinter construction damaged a total of 5.6 acres along the Oceanside to Escondido rail route and a formula mandated by California environmental laws requires that 14.5 acres of new or enhanced habitat must be provided to undo that damage. The district has also set aside land near Rancho del Oro Road in Oceanside for that purpose.

The Harmony Grove project recently won an award for best environmental project under \$2 million from the American Public Works Association.

Barry Bevier, an engineer who chairs the association's awards committee, said Wednesday that the project stood out for one main reason.

"They went above and beyond what was necessary just for the environmental mitigation," Bevier said, noting that the project excavated more than 23,000 cubic yards of soil to remove the old creek embankment and used it to cover ugly concrete slabs still visible on the other side of the creek.

Rather than buy the property, which would have been costly, the transit district reached an agreement with the

landowner, who granted the transit district a permanent environmental easement to do the environmental work. Bevier said the deal saved money on the project, which ultimately cost about \$1.5 million.

"Just finding a piece of property suitable for the environmental mitigation, and yet is not enormously costly, is an accomplishment in and of itself," Bevier said.

– Contact staff writer Paul Sisson at (760) 901-4087 or [psisson@nctimes.com](mailto:psisson@nctimes.com).

## NCTD Sprinter BMP Feasibility Study

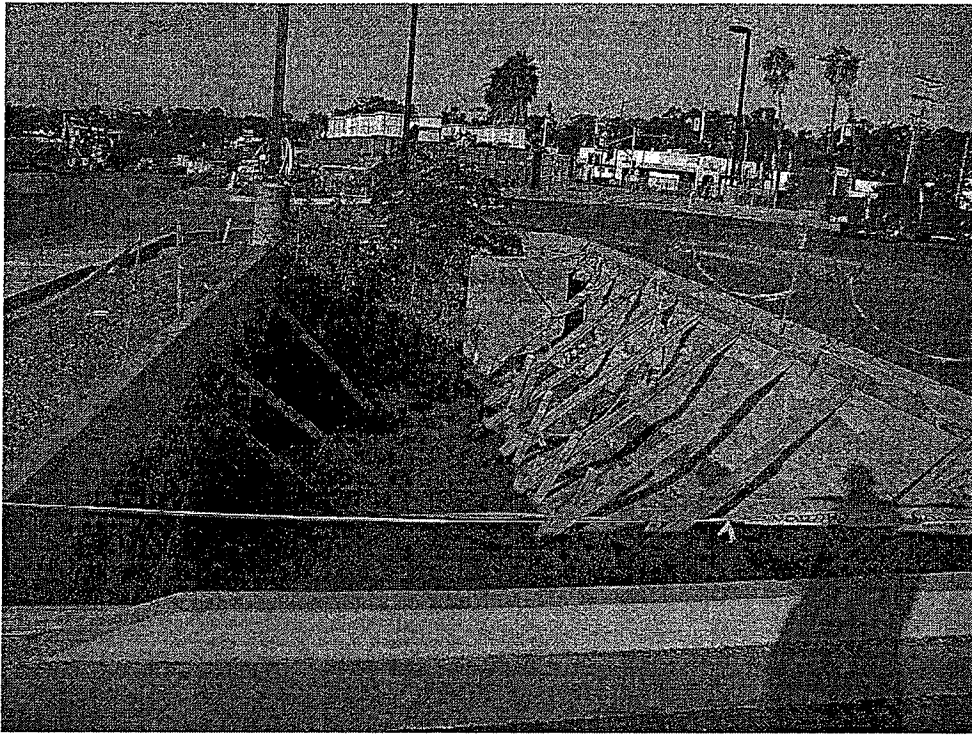
**Table 2  
BMP Implementation Costs**

Station	Design & Construction	Credits	Net BMP Cost
Oceanside TC	N/A	N/A	N/A
Coast Highway	N/A	N/A	N/A
Crouch Street	\$53,983	\$11,200	\$42,783
El Camino Real	\$51,998	\$4,900	\$47,098
Rancho Del Oro	\$43,909	\$8,800	\$35,109
College Ave.	N/A	N/A	N/A
Melrose Avenue	\$134,496*	N/A	\$134,496*
Vista TC	\$53,081	\$13,300	\$39,781
Escondido Ave	N/A	N/A	N/A
Buena Creek Rd	N/A	N/A	N/A
Palomar College	\$61,583	\$5,900	\$55,683
San Marcos CC	N/A	N/A	N/A
CSUSM	N/A	N/A	N/A
Nordahl	\$72,281	\$3,900	\$68,381
Escondido TC	\$360,209*	N/A	\$360,209*
<b>Total without Escondido TC and Melrose</b>	<b>\$336,835</b>	<b>\$48,000</b>	<b>\$288,835</b>
<b>Total</b>	<b>\$831,540*</b>	<b>\$48,000</b>	<b>\$783,540*</b>

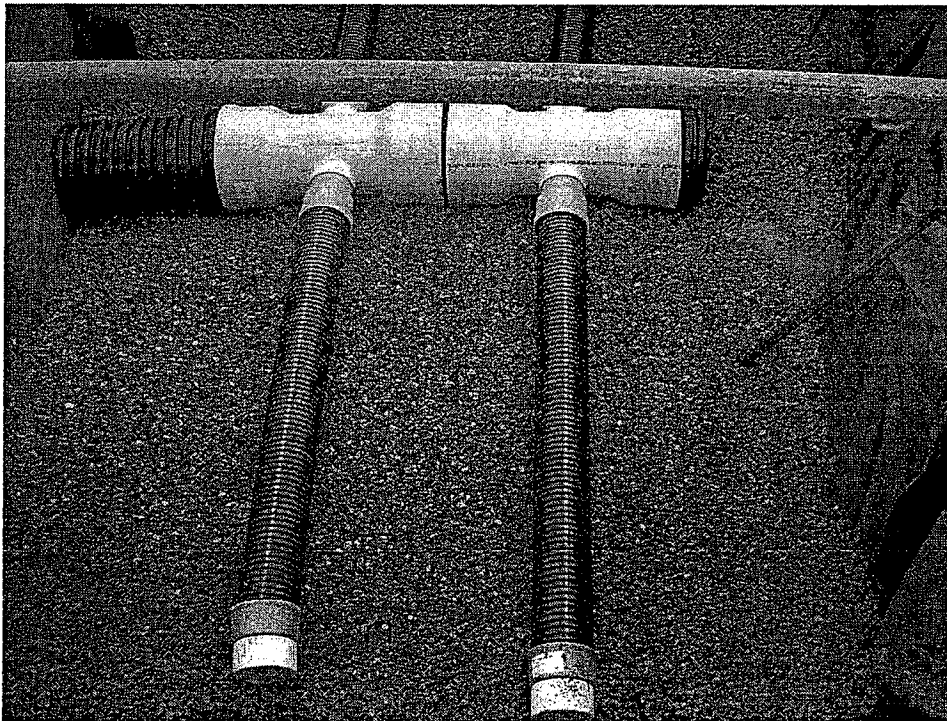
\* Includes costs for Bioretention Systems at Melrose and Escondido TC, which were not deemed to be feasible.

### CONCLUSIONS

The Sprinter Stations have a total parking lot drainage area of approximately 16.56 acres, excluding the deferred parking areas. As a result of this feasibility study, it appears feasible to incorporate Bioretention cells to treat 28% of the total runoff with minimal modifications to the parking lots except at Melrose and Escondido TC stations and Escondido Avenue station requiring costly rock excavation. Drain Inlet Filters will treat another 65%. The remaining 7%



Excavation at Crouch Street Station.



Perforated Collector pipes on gravel bed.



Sprinter Bioswale Construction. October 2007

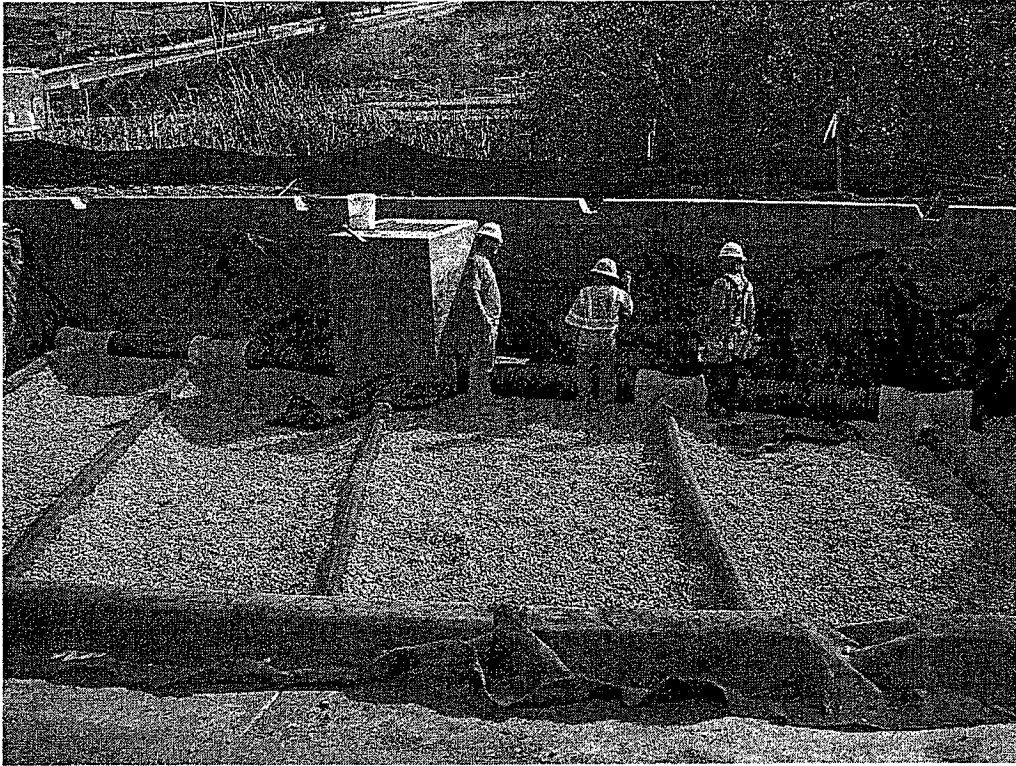


Backfilled with specified soil mix.



Water Testing at Crouch Street Station Parking lot.

Sprinter Bioswale Construction. October 2007



El Camino Real Parking Lot Bioswale Construction.



MITIGATION COSTS				as of 11/20/2007
Item	Capital Costs (Design & Construction)	Operating Costs (Long Term Maintenance)	Total Costs	Notes
Uplands & Wheelan Ranch	\$607,500		\$607,500	100% completed
Reveg Wetlands Onsite	\$772,000	\$314,000	\$1,086,000	95% complete
Rancho Del Oro Offsite	\$1,280,184	\$1,034,000	\$2,314,184	Construction complete - in maintenance
Harmony Grove Offsite	\$1,081,067	\$391,000	\$1,472,067	Construction complete - in maintenance
Oak Tree Mitigation Offsite	\$606,000	\$203,000	\$809,000	currently out to bid
Exotic Removal on ROW	\$340,000	\$0	\$340,000	complete by WCRC
Cowbird Trapping Program	\$98,161	\$0	\$98,161	completed by Dudek
RDO Slide Revegetation	\$365,191	\$100,000	\$465,191	design being finalized
<b>Total</b>	<b>\$5,150,103</b>	<b>\$2,042,000</b>	<b>\$7,192,103</b>	
Notes:				
1 costs exclude costs incurred prior to May 2006, ie Lake Val Sereno, etc				

## Comparison of Recent Construction General Permit ACLs

	Scripps Ranch Middle School	Garden Road Elementary	Pioneer Builders, Inc.	JRMC Real Estate, Inc.	Sprinter
	ACL R9-2007-0061	ACL R9-2006-0127	ACL R9-2003-0301	ACL R9-2005-0237	ACL R9-2007-0093
Failure to Obtain Permit Coverage	N/A	8 days, \$100 per day	31 days, \$150 per day	N/A	N/A
Failure to Implement SWPPP	N/A	12 days, \$1,000 per day	N/A	N/A	N/A
Failure to Implement BMPs	7 violations, \$2,000 per violation	N/A	32 violations, \$1000 per violation	217 violations, \$1227 per violation*	2 violations, \$10,000 per violation
Inadequate Reporting	42 violations, \$2000 per violation	N/A	N/A	16 violations, \$1227 per violation*	4 violations, \$10,000 per violation
Discharge of Sediment or Sediment-laden Stormwater	Discharge over a 3 day period, \$10,000 per day	Discharge over a day period, \$10,000 per day	Discharge over a 34 day period, \$1,000 per day	Discharge over a 93 day period, \$1227 per day*	10 violations, \$10,000 per violation
<b>Total Fine</b>	<b>\$128,000</b>	<b>\$32,800</b>	<b>\$73,750</b>	<b>\$400,000</b> (\$800,000 waived)	<b>\$160,000</b>

\* Estimated fine per violation based on total number of violations in ACL and ultimate fine.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

**PRELIMINARY  
TECHNICAL ANALYSIS  
SUPPORTING**

**ADMINISTRATIVE CIVIL LIABILITY  
AGAINST**

**SAN DIEGO UNIFIED SCHOOL DISTRICT  
FOR  
FAILURE TO COMPLY  
WITH**

**ORDER NO. 99-08-DWQ  
WASTE DISCHARGE REQUIREMENTS  
FOR DISCHARGES OF STORMWATER RUNOFF  
ASSOCIATED WITH CONSTRUCTION ACTIVITY  
(WDID No. 9 37C329152)**

Prepared by  
Peter Peuron  
Environmental Scientist  
Central Watershed Unit

## **INTRODUCTION**

For the reasons set forth below, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) issued Administrative Civil Liability Complaint No. R9-2007-0061 to the San Diego Unified School District for the Scripps Ranch Middle School, under the authority of Water Code Section 13385. The analysis presented herein is preliminary in that it does not include all factors addressing liability as set forth in Section 13385(e) of the Water Code. A final analysis will be completed, prior to a hearing, as needed.

## **BACKGROUND**

This preliminary technical analysis focuses on the construction of a school that is subject to the requirements of *Order No. 99-08-DWQ, NPDES General Permit No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity* (Order No. 99-08-DWQ or the Construction Storm Water Permit or the Permit).

On August 4, 2004 the San Diego Unified School District (hereinafter the District) filed a Notice of Intent (NOI) for coverage under the Construction Storm Water Permit. As a school district, the District is not subject to regulation by the local municipality (i.e., the City of San Diego) and therefore, is not subject to local storm water program oversight, including regular inspections by the municipality (under Order No. 2001-01, the Municipal Storm Water Permit).

The project site (Site) is located on 36 acres of land southeast of the intersection of Pomerado Road and Avenue of Nations in the City of San Diego. Runoff from the north side of the Site is collected in a drainage channel which extends along the north property line of the Site (along the Avenue of Nations) where it runs generally westward before discharging to Carroll Canyon Creek which is located about 200 feet from the west end of the Site. Runoff from the south side of the Site enters a drainage swale (referred to as the southwest swale) that runs along the southern property line and also discharges to Carroll Canyon Creek (after flowing in a northwestern direction) at another location about 200 feet west of the western edge of the Site. The NOI proposes that about 11 acres of the 36-acre site would be disturbed by construction activities. Subsequent documents such as inspection reports indicate, however, that the entire 36 acres would be disturbed. Much of the perimeter area of the Site consists of steep slopes.

On April 12, 2005 the Regional Board issued Cleanup and Abatement Order No. R9-2005-0116 (CAO). The CAO was issued after an inspection by the Regional Board on March 18, 2005 revealed numerous BMP violations as well as discharge violations. The CAO directed the District to cleanup and abate the effects of the unauthorized discharge of waste into an unnamed tributary of Carroll Canyon Creek. The CAO also required implementation of effective erosion controls, sediment controls and pollutant source control measures including proper containment/coverage of construction materials and trash. Directive No. 6 of the CAO requires the discharger to submit Technical Reports after each rainfall event in which "1 or more inches of rain occurs from the start of precipitation to the end of precipitation, followed by three consecutive dry days." The

stated purpose of these reports is to, "demonstrate to the satisfaction of the Regional Board that the BMPs are effective in reducing sediment discharges from the Site to the BAT/BCT performance standard." The reports must include photo-documentation of BMPs and photocopies of all site inspection reports. This includes inspection reports mandated by Sections A.11 and B.3 of the Permit (self-inspections that must be performed when rainfall events occur). Two consulting firms (Soltek Pacific and URS) have performed these site inspections during the last two rainy seasons. To date, three Technical Reports, which included a total of 87 self-inspection reports; have been submitted. These Technical Reports, along with two inspection reports written by Regional Board staff, are the basis for citing reporting violations, BMP violations, and discharge violations as discussed below.

**Allegation No. 1**

**District Prepared Incomplete Inspection Reports: Violation of Construction Storm Water Permit § A.11 and § B.3.**

Between February of 2005 and March of 2007, the discharger violated the requirements of Sections A.11 and B.3 of Order No. 99-08-DWQ by failing to include required information in 42 of 87 inspection reports submitted to the Regional Board. The Permit requires that before and after storm events, as well as during storm events that last at least 24 hours, information be recorded that conveys whether or not Best Management Practices (BMPs) were adequate at the time of the inspection. BMP adequacy cannot be determined from these 42 reports because two sections of the inspection report form that convey the information necessary to determine BMP adequacy were not completed. All 42 reports failed to provide necessary information as to whether or not the Site was in compliance with the Storm Water Pollution Prevention Plan (SWPPP) or whether BMPs were installed adequately and in accordance with the SWPPP. In addition, none of the 42 reports cited were signed as required by the Permit.

**Factual Basis**

Sections A.11 and B.3 of Order No. 99-08-DWQ specify the conditions for inspections that are to be performed by the discharger, "before and after storm events and once during each 24-hour period during extended storm events." The Permit notes that the purpose of these self-inspections is to "identify BMP effectiveness and implement repairs or design changes as soon as feasible." The reports are, therefore integral to the goal of ensuring that BMPs are implemented and adequately maintained. Pursuant to Section A.11 of the Permit, information that must be recorded in a completed inspection checklist includes:

1. Inspection date.
2. Weather information.
3. A description of any inadequate BMPs.
4. A list of observations of all BMPs or (depending on accessibility constraints) results of visual inspection of outfalls, discharge points or "downstream location and projected required maintenance activities."
5. Corrective actions required.
6. Inspectors name, title, and signature.

Three Technical Reports (dated March 7, 2006, April 18, 2006 and February 26, 2007) contain copies of a total of 87 inspection reports required by Sections A.11 and B.3 of Order No. 99-08-DWQ. Attachments No. 1 and 2 are representative copies of inspection reports prepared by each of the two consultants (Soltek Pacific and URS) that performed the self-inspection. Forty-two of these 87 reports (each of which was prepared by Soltek Pacific) are in violation of the requirements in Sections A.11 and B.3 because they fail to indicate whether BMPs are adequate, and do not accurately represent whether BMPs were adequate or inadequate, and were not signed. The 42 incomplete reports provide evidence of 42 days of violation of Sections A.11 and B.3 of Order No. 99-08-DWQ. The specific violations are discussed below.

- Each report failed to indicate whether or not the Site was in compliance with the Storm Water Pollution Plan (SWPPP) or was not in compliance with the SWPPP. In Section 3 of the reports that are cited, the following choices are noted (see Attachment 1).
  1. SITE IS IN COMPLIANCE WITH THE SWPP. ACTION: INSPECTION REPORT IN SWPP BINDER
  2. SITE IS NOT IN COMPLIANCE WITH SWPP BUT NO RELATED DISCHARGE TO A WATER BODY OF THE STATE. ACTION: Corrective action report to be filed in the SWPP binder.

In each of the 42 reports, neither selection was chosen. The reports, therefore, fail to indicate whether BMPs are effective and therefore whether repairs or design changes are needed.

- Each report failed to provide an answer to the first question in Section 2 of the report. The question asks, "Are BMPs installed properly and in accordance with the SWPP?". As shown in Attachment 1, an "X" was placed in between the choices "No" and "N/A" (for all 42 reports) thereby providing no answer to indicate whether BMPs were effective. In addition, the possible need for any necessary repairs or design changes was not likely to be properly addressed, as required by the Permit because this question was not answered.
- Each report was not signed. Section A.11 of the Construction Storm Water Permit requires that the inspector's name, title and signature be included in each inspection report.

Taken together, these violations, which are multiple violations in each report, cause these reports to be ineffective for the purpose of evaluating BMPs "for adequacy and proper implementation and whether additional BMPs are required" (Section B.3 of the Permit).



## **Factors Affecting Liability (Pursuant to Water Code Section 13385)**

### Gravity of Violations

As discussed earlier, in this preliminary technical analysis, only a partial evaluation of the factors to be considered in assessing liability (pursuant to Section 13385(e) of the Water Code) is contained herein, pending the acquisition of additional relevant information. There is considerable gravity associated with incomplete and inaccurate reporting because the self-monitoring reports required by the Construction Storm Water Permit are intended to serve as a means of assuring compliance with the Permit, and as such, when these reports are inadequate, it can be expected that compliance will be deficient. Moreover, when the reports fail to note the inadequacy of BMPs, it should be expected that impacts to the environment will result. In fact, significant impacts to the environment did occur as a direct result of inadequate BMPs. Allegation No. 2 discusses repeated failure to adequately implement BMPs. Three reports that document discharge of highly turbid water to Carroll Canyon Creek (discussed in Allegation No. 3) demonstrate how the failure to implement and maintain adequate BMPs resulted in impairment to the quality of receiving waters and to the beneficial uses of those waters. Inadequate self-monitoring reports resulted in inadequate BMPs which, in turn, lead to discharges of sediment to receiving waters. For these reasons, the inadequate reports are judged to be a relatively significant violation.

### Violations History

Liability is also enhanced to some degree by the history of violations at this site. The CAO that was issued in April of 2005 identified numerous significant BMP violations. Under these circumstances, the District should have been aware that the obviously incomplete self-monitoring reports allowed for the possibility that non-compliance with BMP requirements would continue through 2006 and 2007.

### Allegation No. 2

#### **District Failed to Implement and Maintain Best Management Practices: Violation of Construction Storm Water Permit § A.6, § A.7 and § A.8.**

On March 18, 2005, February 27, 2006, February 28, 2006, April 4, 2006, April 5, 2006, February 19, 2007 and February 27, 2007 the District failed to implement effective erosion control, stabilization, and sediment control Best Management Practices (BMPs), in violation of Sections A.6, A.7 and A.8 of Order No. 99-08-DWQ. This includes two days on which Regional Board staff observed BMP violations during site inspections (March 18, 2005 and February 27, 2007) and five days for which BMP violations were documented in Technical Reports submitted by the District (February 27, 2006, February 28, 2006, April 4, 2006, April 5, 2006, and February 19, 2007).

### **Factual Basis**

Sections A.6, A.7 and A.8 of Order No. 99-08-DWQ require implementation of effective erosion control (A.6), stabilization (A.7) and sediment control (A.8) BMPs. On March 18, 2005, Dat Quach of the Regional Board inspected the Site and observed, documented and photo-documented evidence of inadequate BMPs (inspection report provided as Attachment No. 3). The lack of effective BMPs included inadequate erosion control BMPs and inadequate sediment control BMPs. During a second inspection by Regional Board staff (Pete Peuron and Ben Neill) on February 27, 2007, numerous BMP violations were again observed, documented and photo-documented (inspection

report provided as Attachment No. 4). Both inspection reports reveal numerous BMP violations and include photographs of improper or inadequately maintained BMPs, as well as areas where BMPs were not implemented when they should have been. The Regional Board inspection reports provide evidence of two days of failure to implement adequate BMPs.

On March 7, 2006, April 20, 2006 and February 26, 2007, the District submitted Technical Reports (prepared by URS) as required under Order No. 6 of the CAO. The Technical Reports provide narrative and photographic evidence of inadequate BMPs including inadequate erosion control BMPs, inadequate stabilization and inadequate sediment control BMPs.

- Section 5 of the March 7, 2006 report summarizes BMP status and includes the following deficiencies:
  - Lack of a sediment barrier along the southwest swale.
  - Lack of stabilization of the southwest access road.
  - Lack of stabilization of the storm water conveyance on Avenue of Nations.
  - Lack of adequate containment volume of a pit that was used to capture turbid water and inefficient pumping of this pit during the storm.
  
- Section 5 of the April 20, 2006 Technical Report summarizes BMP status and includes the following deficiencies:
  - Continued lack of stabilization of the southwest access road.
  - Continued lack of stabilization of the storm water conveyance on Avenue of Nations.
  - Inadequate implementation of a berm and fiber rolls on the southwest access road.
  
- Section 6 of the February 26, 2007 Technical Report identifies two major deficiencies that contributed to the discharge of turbid water to Carroll Canyon Creek on this date. These are:
  - Lack of storm drain inlet protection on more than 30 storm drain inlets.
  - Sediment and erosion control deficiencies on vulnerable slopes including:
    - Slope along Avenue of Nations.
    - Three internal unstable slopes.
    - Portions of the southwest swale slope.

Attachment No. 5 shows two pictures of unprotected storm drain inlets from the February 26, 2007 Technical Report.

The three Technical Reports cover a total of five days of BMP violations (for February 27, 2006, February 28, 2006, April 4, 2006, April 5, 2006 and February 19, 2007). The two Regional Board inspection reports (for inspections on March 18, 2005 and February 27, 2007) provide documentation of two additional days of BMP violations for a total of seven days of BMP violations.

## **Factors Affecting Liability**

### Gravity of Violations

As with the self-monitoring report violations, the failure to maintain adequate BMPs is a relatively grave violation because it resulted in the discharge of significant amounts of sediment to Carroll Canyon Creek (discussed in Allegation No. 3). Evidence that inadequate BMPs were a direct result of such discharges includes documentation of rills on slopes, documentation of turbid water entering storm drain inlets on-site and the observed flow of turbid water in areas that drain only the construction site.

### History of Violations and Culpability

Once again, the fact that numerous BMP violations were identified in the CAO and that both the self-monitoring and technical reports continued to identify numerous violations over a period of about a year-and-a-half (from September of 2005 to late February of 2007) indicates a history of violations that must be considered in determining the District's culpability. Culpability may be offset somewhat by the lack of local storm water regulation. Regular inspections by the municipality (had they been required by the Construction Storm Water Permit) would likely have resulted in a more timely regulatory response and would likely have caused corrective actions to have been implemented sooner. Similarly, culpability is offset to a degree by the lack of a more timely response by the Regional Board to the March 7, 2006 and April 18, 2006 Technical Reports which identified numerous BMP violations. However, it should be noted that these reports contained many self-monitoring reports which, as discussed earlier, did not adequately describe the state of BMPs at the Site and therefore, contributed to a lack of an appropriate response by all involved parties. Nevertheless, it is the District's responsibility to comply with the Construction Storm Water Permit and to ensure its own compliance through self-monitoring inspections. Regulating agencies do not have the resources, or in some cases the necessary authority to compel compliance with the Permit through enforcement actions alone. Hence, the District is responsible and therefore liable for all violations listed herein.

### Economic Benefit to District

Failure to implement adequate BMPs has thus far resulted in an economic benefit to the extent that funds were not expended to implement adequate BMPs. While the amount of this benefit cannot be determined at this time, given the relatively large size of the Site (apparently 36 acres of disturbed area, as updated in recent documents) and the widespread nature of the BMP violations, it appears that the economic benefit of not implementing BMPs was significant, especially since the lack of compliance covers at least two rainy seasons.

## **Allegation No. 3**

### **District Discharged Sediment to Waters of the State: Violation of Construction Storm Water Permit Discharge Prohibition A.2.**

For at least three days, on March 18, 2005, February 19, 2007 and February 27, 2007, the District discharged sediment-laden water either into an unnamed tributary to Carroll Canyon Creek, or directly into Carroll Canyon Creek, in violation of Discharge Prohibition A.2 of Order No. 99-08-DWQ.

### **Factual Basis**

Discharges of a significant quantity of turbid water either directly to Carroll Canyon Creek, or to a tributary to Carroll Canyon Creek, were observed, documented and photo-documented by Regional Board staff during the March 18, 2005 and February 27, 2007 inspections (Attachments No. 3 and 4). In addition, a Technical Report dated February 26, 2007 documents descriptively and photographically, a discharge of turbid storm water to Carroll Canyon Creek that occurred on February 19, 2007. Two photographs from this report showing highly turbid water entering Carroll Canyon Creek are shown in Attachment No. 6. Such discharges are violations of Discharge Prohibition A.2 of Order No. 99-08-DWQ. These reports provide evidence of a minimum of three days of discharge violations.

### **Factors Affecting Liability**

#### Gravity of Violations

Discharges to receiving waters are generally of significant gravity because they constitute direct impacts to the environment. The Water Quality Control Plan for the San Diego Basin (9) (Basin Plan), contains a water quality objective for sediment which concludes that the suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.

The Scripps Ranch Middle School construction site lies within the Penasquitos Hydrologic Unit, Miramar Reservoir Hydrologic Area (9.06.10), which has the following beneficial uses:

- a. Industrial Process Supply (IND)
- b. Agricultural Supply (AGR)
- c. Contact Water Recreation (REC-1)
- d. Non-Contact Water Recreation (REC-2)
- e. Warm Freshwater Habitat (WARM)
- f. Wildlife Habitat (WILD)
- g. Rare, Threatened, or Endangered Species (RARE)

As stated above, sediment is a pollutant that can have substantial biological and physical effects on receiving waters. These include increased turbidity (loss of clarity) and resulting decreased light transmittance, biological productivity, and aesthetic value; and physical suffocation of bottom dwelling (benthic) organisms. Sediment can also physically clog gills causing fish mortality; reduce reproduction; impair commercial and recreational fishing resources; increase water temperature, and fill in lagoons and wetlands converting them from aquatic to terrestrial habitat. It should be noted that these water quality impacts occur both during sediment transport and sediment deposition. In addition to the problems associated with "clean" sediment, sediment is also an excellent transport mechanism for toxics (i.e., metals and synthetic organics), which bind to sediment particles. Based on the above considerations, discharges of sediment to Carroll Canyon Creek, and to tributaries of Carroll Canyon Creek constitute significant environmental impacts. There is a high degree of gravity associated with these actual, documented environmental impacts.

**ATTACHMENT 1**  
**Soltek Pacific Inspection Report**



**ATTACHMENT 2**  
**URS Inspection Report**

*Attachment A*  
**SDCS SWPPP/BMP INSPECTION FORM**

**PROJECT INFORMATION**

School Site: Scripps Ranch Middle School	Site Inspector: Greg Smith
Contract No.: C-	Site Construction Manager: Carl Schneider
SDCS BMP Inspector(s): Jerome Pitt	SDCS Site Phone: 858.566.6326
Date: 12/1/05	Contractor Representative: John Robbins
Time: 1330	Contractor Phone: -

Inspection Type:	Initial <input type="checkbox"/>	Routine (weekly – wet season) <input checked="" type="checkbox"/>	Pre-Storm <input type="checkbox"/>
		Routine (biweekly – dry season) <input type="checkbox"/>	Post-Storm <input type="checkbox"/>
Inspection Participant(s):	<input type="checkbox"/> SDCS Construction Manager	<input checked="" type="checkbox"/> SDCS Inspector (GS)	<input type="checkbox"/> Contractor

**Project Compliance Rating**

**1 General Compliance:** The project has no significant deficiencies that require correction.

**2 Minor Deficiencies:** The project has minor deficiencies and no major deficiencies were observed.

**3 Major Deficiencies and/or Minor Deficiencies:** Excessive minor deficiencies and/or major deficiencies encountered.

**4 Critical Deficiencies:** There are critical deficiencies that would likely result in a violation of the permit if a storm event were to occur.

**5 Uncontrolled Discharge:** Notify inspector and construction manager.

Notice of Non-Compliance Recommended:  Yes\*       No

Deficiencies shall be corrected within 48 hours or prior to the next storm event, whichever occurs first.

Date of last BMP/SWPPP Inspection conducted by Contractor personnel: 12/1/05 (pre-storm)

Date of last BMP/SWPPP Inspection conducted by SDCS BMP inspector: 11/17/05

Est. Size of Disturbed Area: <u>36.6</u> acres
Will Revisit Site within: One week <input checked="" type="checkbox"/> Two Weeks <input type="checkbox"/> Anticipated Date: _____

Jerome Pitt	December 1, 2005	<i>Jerome L. Pitt</i>	12/1/05
<b>Inspector Signature</b>			

\* Site still does not meet requirements of the GCP predominantly because of 1) unstabilized status of SW access road leading to pit and 2) incomplete plan and stabilization of conveyance along Ave. of Nations (including anticipated runoff).





**ATTACHMENT 3**  
**Regional Board Inspection Report**  
**March 18, 2005**

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

FACILITY INSPECTION REPORT

INSPECTION DATE: March 18, 2005 TIME: 1:30 PM WDID: 9 37C329152

FACILITY REPRESENTATIVE(S) PRESENT DURING INSPECTION: Greg Smith of the san Diego City Schools

San Diego Unified School District  
NAME OF OWNER, AGENCY OR PARTY RESPONSIBLE FOR DISCHARGE

Greg Smith (858) 637 6266  
OWNER CONTACT NAME AND PHONE #

San Diego Unified School District  
FACILITY OR DEVELOPER NAME (if different from owner)

Same as above  
FACILITY OR DEVELOPER CONTACT NAME AND PHONE #

Southeast of Pomerado Road and Willow Creek Road  
FACILITY STREET ADDRESS

San Diego, CA 92131  
FACILITY CITY AND STATE

APPLICABLE WATER QUALITY LICENSING REQUIREMENTS

- MS4 URBAN RUNOFF REQUIREMENTS NPDES NOS. CAS0108758, CAS0108740 or CAS0108766
- GENERAL PERMIT ORDER NO. 99-08-DWQ, NPDES NO. CAS000002 - CONSTRUCTION
- GENERAL PERMIT ORDER NO. 99-06-DWQ, NPDES NO. CAS000003 - CALTRANS
- GENERAL OR INDIVIDUAL WASTE DISCHARGE REQUIREMENTS
- GENERAL OR INDIVIDUAL WAIVER OF WASTE DISCHARGE REQUIREMENTS
- SECTION 401 WATER QUALITY CERTIFICATION
- CWC SECTION 13264

INSPECTION TYPE (Check One)

- A1  "A" type compliance--Comprehensive inspection in which samples are taken. (EPA Type S)
- B1  "B" type compliance--A routine nonsampling inspection. (EPA Type C)
- 02  Noncompliance follow-up--Inspection made to verify correction of a previously identified violation.
- 03  Enforcement follow-up--Inspection made to verify that conditions of an enforcement action are being met.
- 04  Complaint--Inspection made in response to a complaint.
- 05  Pre-requirement--Inspection made to gather info. relative to preparing, modifying, or rescinding requirements.
- 06  No Exposure Certification (NEC) - verification that there is no exposure of industrial activities to storm water.
- 07  Notice of termination request for industrial facilities or construction sites - verification that the facility or construction site is not subject to permit requirements (Type, NOT I or NOT C - circle one).
- 08  Compliance Assistance Inspection - Outreach inspection due to discharger's request for compliance assistance.

INSPECTION FINDINGS

- Y Were violations noted during this inspection? (Yes/No/Pending Sample Results)
- N Were samples taken? (N=no) If YES then, G= grab or C= Composite and attach a copy of the sample results/chain of custody form

COMPLIANCE HISTORY:  
No violation found in SWIM

FACILITY: Scripps Ranch Middle School (WDID) 937C329152 INSPECTION DATE: 03/18/2005

II. FINDINGS

Inspection was performed in response to complaint.

GENERAL PERMIT ORDER NO. 99-08-DWQ, NPDES NO. CAS000002 - CONSTRUCTION

There was a forecast of more than 50% chance of rain in the next 24 hours.

1. No erosion BMPs for the eastern and northern slopes.
2. No erosion BMPs for all dirt piles on the construction site.
3. Sediment control is insufficient. Desiltation basin at the northeast corner is too small, filled with sediment, and not maintained. Sediment BMPs such as gravel bags and silt screens installed in waters of the state of CA. These BMPs filled with sediment and not been maintained.
4. Sediment discharged to an unnamed tributary to the Carroll Canyon.
5. Continued working on slopes.
6. No sign of working on erosion and sediment BMPs.

III. SIGNATURE SECTION

Dat Quach

3/18/05

STAFF INSPECTOR

SIGNATURE

INSPECTION DATE

STAFF INSPECTOR

SIGNATURE

INSPECTION DATE

IV. (For Internal use only)

Reviewed by Supervisor: <u>Shirley Bartz</u>	Date: <u>4/1/05</u>
cc: Jeremy Johnstone (EPA), John Norton (SWRCB), City _____	Storm Drain Enforcer
Inter-office Referral: 1) _____ 2) _____ 3) _____ 4) _____ 5) _____	

Image IMG P0683 W/DID #9 37C329152;

Taken by Dat Quach, RWQCB-SD, between 1400 and 1500 on 03-18-2005

Site: Scripps Ranch Middle School

Location: South of Pomerado Road, San Diego City

Image shows: BMPs installed in the water of state. BMPs not maintained. Sediment discharged to Carrol Canyon downstream.



Image IMG P0685 WDID #9 37C329152;  
Taken by Dat Quach, RWQCB-SD, between 1400 and 1500 on 03-18-  
2005

Site: Scripps Ranch Middle School

Location: South of Pomeroado Road, San Diego City

Image shows: BMPs installed in the water of state. BMPs not maintained.  
Sediment discharged to Carrol Canyon downstream.

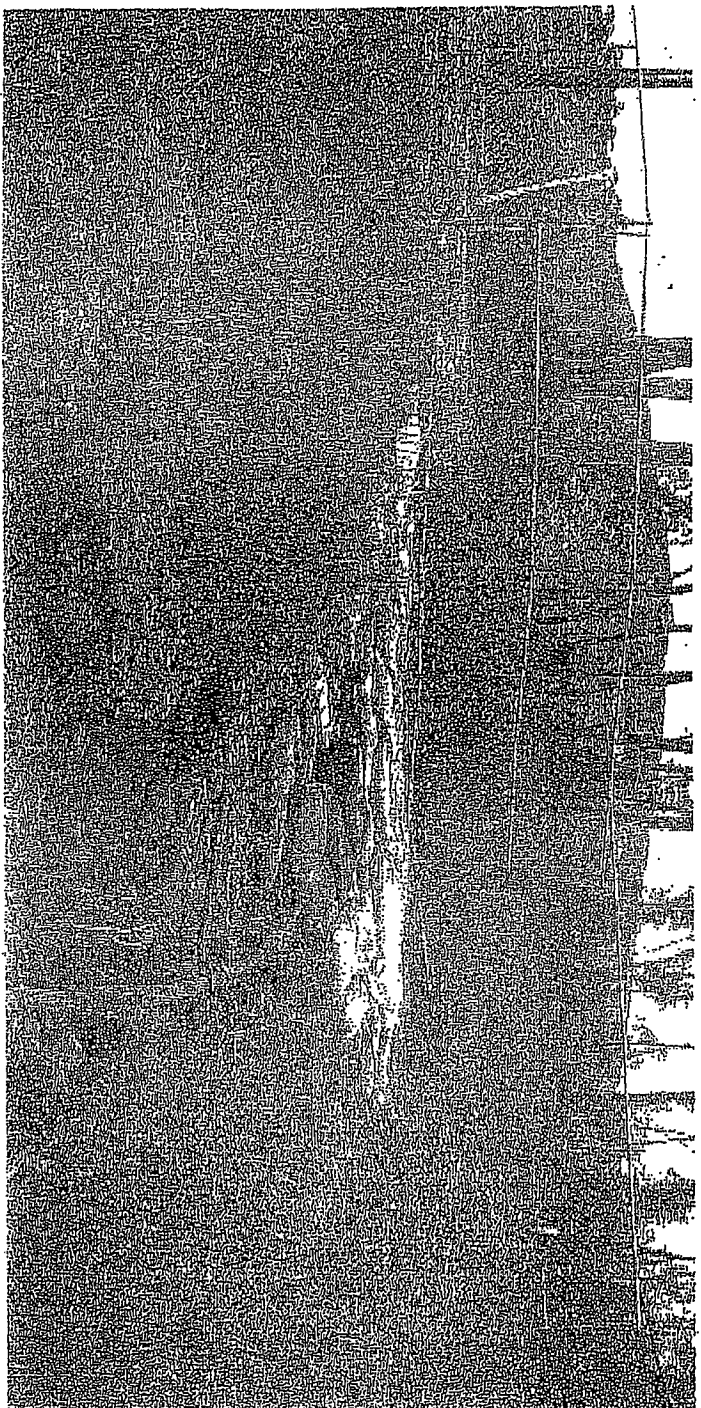


Image IMG P0688 WDID #9 37C329152;  
Taken by Dat Quach, RWQCB-SD, between 1400 and 1500 on 03-18-  
2005

Site: Scripps Ranch Middle School

Location: South of Pomarado Road, San Diego City

Image shows: BMPs installed in the water of state. BMPs not maintained.  
Sediment discharged to Carrol Canyon downstream.





Image IMG P0690, WDID #9 37C329152;

Taken by Dat Quach, RWQCB-SD, between 1400 and 1500 on 03-18-2005

Site: Scripps Ranch Middle School

Location: South of Pomerado Road, San Diego City

Image shows: No BMPs for erosion and sediment control for mass grading and dirt piles when there was more than 50 percent of chances of rain.

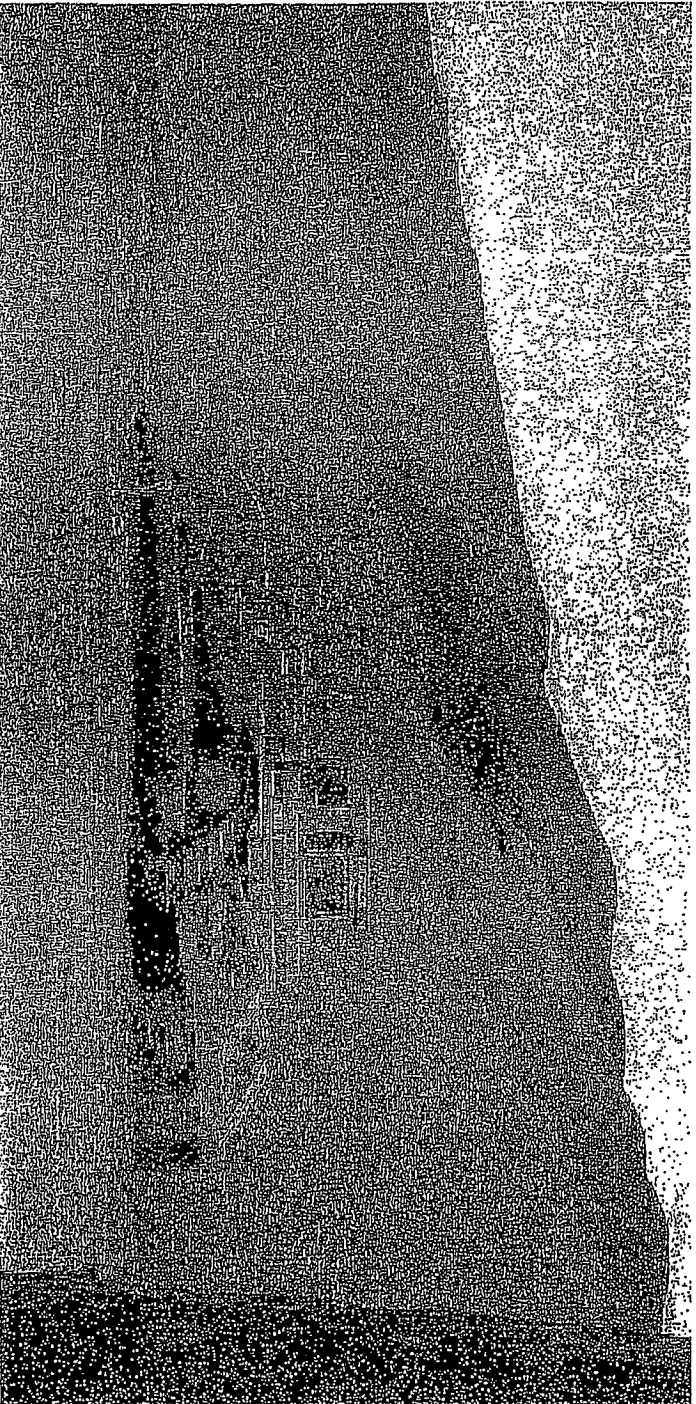




Image IMG P0693 WDID #9 37C329152;  
Taken by Dat Quach, RWQCB-SD, between 1400 and 1500 on 03-18-  
2005

Site: Scripps Ranch Middle School

Location: South of Pomarado Road, San Diego City

Image shows: No BMPs for erosion and sediment control for mass  
grading and dirt piles when there was more than 50 percent of chances  
of rain.

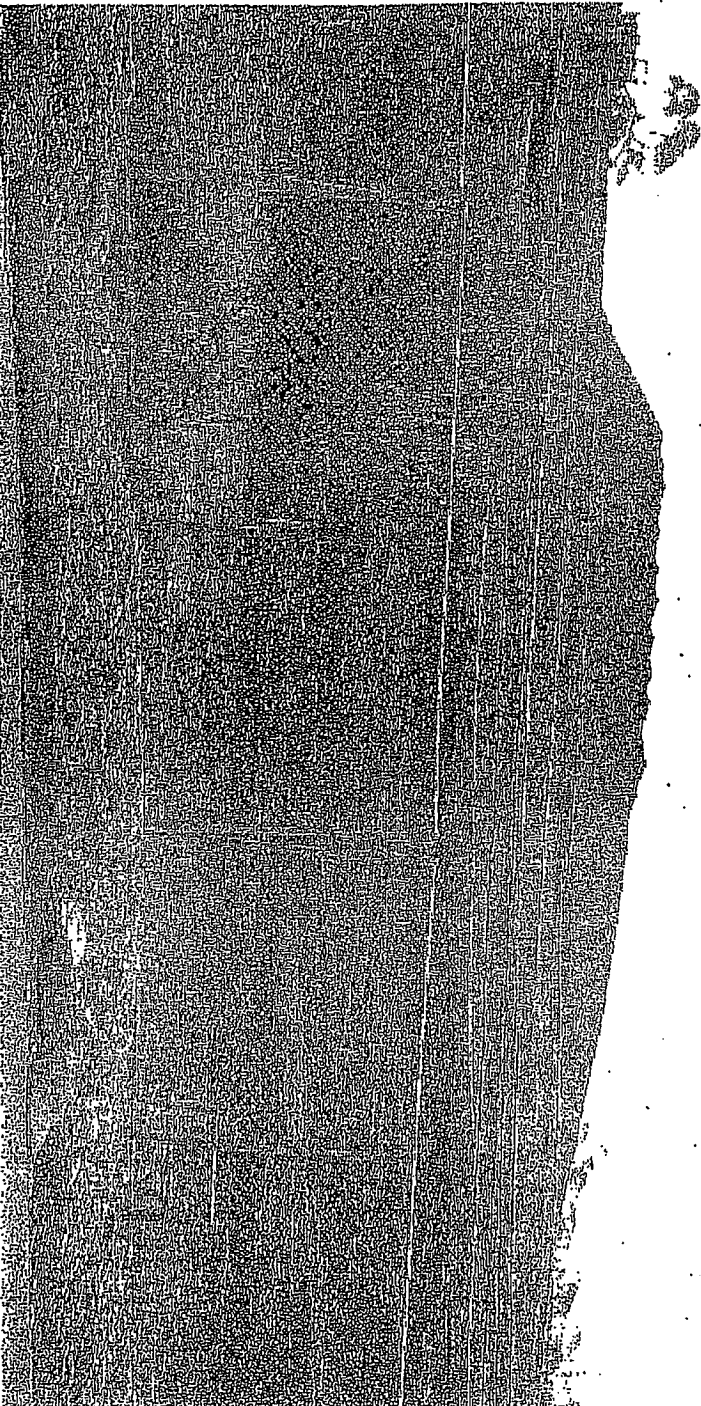


Image IMG P0696 WDID #9 37C329152;

Taken by Dat Quach, RWQCB-SD, between 1400 and 1500 on 03-18-2005

Site: Scripps Ranch Middle School

Location: South of Pomarado Road, San Diego City

Image shows: No BMPs for erosion and sediment control for mass grading and dirt piles when there was more than 50 percent of chances of rain.



**ATTACHMENT 4**  
**Regional Board Inspection Report**  
**February 27, 2007**

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

FACILITY INSPECTION REPORT

INSPECTION DATE: February 27, 2007 TIME: 10:30 AM WDID: 937C329152

FACILITY REPRESENTATIVE(S) PRESENT DURING INSPECTION: Jerry Pitt, Engineer, Water Quality Consultant, URS; Greg Smith, Construction Inspector, City of San Diego Schools; Joe Claccio, Superintendent, Soltek Pacific.

San Diego Unified School District  
NAME OF OWNER, AGENCY OR PARTY RESPONSIBLE FOR DISCHARGE

Anthony Raso (858) 637-6222  
OWNER CONTACT NAME AND PHONE #

Scripps Ranch Middle School  
FACILITY OR DEVELOPER NAME (if different from owner)

John Robbins (858) 566-8565  
FACILITY OR DEVELOPER CONTACT NAME AND PHONE #

Pomerado Road and Willow Creek Road  
FACILITY STREET ADDRESS

San Diego, CA  
FACILITY CITY AND STATE

APPLICABLE WATER QUALITY LICENSING REQUIREMENTS

- MS4 URBAN RUNOFF REQUIREMENTS NPDES NOS. CAS0108758, CAS0108740 or CAS0108766
- GENERAL PERMIT ORDER NO. 99-08-DWQ, NPDES NO. CAS000002 - CONSTRUCTION
- GENERAL PERMIT ORDER NO. 99-06-DWQ, NPDES NO. CAS000003 - CALTRANS
- GENERAL OR INDIVIDUAL WASTE DISCHARGE REQUIREMENTS
- GENERAL OR INDIVIDUAL WAIVER OF WASTE DISCHARGE REQUIREMENTS
- SECTION 401 WATER QUALITY CERTIFICATION
- CWC SECTION 13264

INSPECTION TYPE (Check One)

- A1      "A" type compliance--Comprehensive inspection in which samples are taken. (EPA Type S)
- B1 XX "B" type compliance--A routine nonsampling inspection. (EPA Type C)
- 02      Noncompliance follow-up--inspection made to verify correction of a previously identified violation.
- 03 XX Enforcement follow-up--inspection made to verify that conditions of an enforcement action are being met.
- 04      Complaint--inspection made in response to a complaint.
- 05      Pre-requirement--inspection made to gather info. relative to preparing, modifying, or rescinding requirements.
- 06      No Exposure Certification (NEC) - verification that there is no exposure of industrial activities to storm water.
- 07      Notice of termination request for industrial facilities or construction sites - verification that the facility or construction site is not subject to permit requirements (Type, NOT I or NOT C - circle one).
- 08      Compliance Assistance Inspection - Outreach inspection due to discharger's request for compliance assistance.

INSPECTION FINDINGS

- Y Were violations noted during this inspection? (Yes/No/Pending Sample Results)
- N Were samples taken? (N=no) If YES then, G= grab or C= Composite and attach a copy of the sample results/chain of custody form

I. COMPLIANCE HISTORY:

CAO R9-2005-0116 was issued on April 12, 2005 for unauthorized discharge of fill to waters of the State, sediment discharges, and inadequate construction site BMPs.

FACILITY: Scripps Ranch Middle School (WDID) 937C329152 INSPECTION DATE: February 27, 2007

## II. FINDINGS

On Tuesday, February 27, 2007, Ben Neill, Water Resource Control Engineer (reporting), and Pete Peuron, Environmental Scientist, both of the Central Watershed Unit conducted an unannounced construction inspection of the San Diego Unified School District's Thurgood Marshall (Scripps Ranch) Middle School, (TMMS). TMMS is located at 9700 Avenue of Nations, south of Pomerado Rd., and east of I-15. North of Pomerado Rd., the Avenue of Nations is called Willow Creek Road. Major grading has been completed at the project. Construction has been ongoing for the several school buildings on site. Sports fields to the east have been currently used for stockpiles. The Avenue of Nations' culvert crossing of Carroll Canyon Creek has been completed.

The site has an active Cleanup and Abatement Order (CAO) No. R9-2005-0116. The CAO was issued for several reasons. The site operator discharged fill to waters of the State without Waste Discharge Requirements or waiver of requirements by a Clean Water Act (CWA) §401 Water Quality Certification. The construction site operator violated the statewide General Construction Permit. Violations included inadequate erosion controls, inadequate sediment controls, inadequate sediment basins, best management practices (BMPs) in water of the State, and an unauthorized discharge of sediment. The ongoing requirements of the CAO include compliance with the construction permit, BMPS to prevent the discharge of sediment, gravel and sediment-laden water to unnamed tributaries to Carroll Canyon River (Creek) and post rainfall reporting requirements.

The site discharges directly to Carroll Canyon Creek. Carroll Canyon Creek is not on the 2006 CWA section 303d list of water quality limited segments. The downstream receiving water, Los Penasquitos Lagoon, is on the list for sediment/siltation. On the day of the inspection, the weather was rainy. The National Weather Service's Miramar rain gauge reports 0.19 inches of rainfall that day. The site's rain gauge read 0.18 inches of rain.

We started the inspection along the south side of Avenue of Nations behind the orange cones. We walked to the discharge points to Carroll Canyon Creek. The site was discharging sediment and sediment-laden water to Carroll Canyon Creek. The water was extremely turbid and looked like chocolate milk (Photos 149, 150, 151, 196). The creek's water upstream of the construction site discharge was crystal clear (Photo 207). Downstream, the creek's water was cloudy on the south bank which is the side of the construction site discharge. The creek's water was clear along the north bank away from the construction site discharge (Photos 205, 206).

We traced the sediment source upstream to a storm drain inlet across Avenue of Nations at the North West corner of the construction site (Photo 152). The inlet had filter fabric and gravel bags protection but this was not enough to prevent sediment-laden water from discharging. This inlet received runoff from the east along a plastic lined ditch and also from the surrounding dirt areas (Photos 153 and 154). The dirt was not stabilized and did not have erosion controls such as straw blankets or bonded fiber matrix. A few fiber rolls were laid across the flow line but were ineffective because they were not trenched and staked in.

We traveled east on Avenue of Nations following the plastic lined ditch. The plastic lined ditch had sediment and sediment laden water flowing in it (Photo 157). At various points along the slope above the ditch, we saw slope failures and sediment laden runoff discharges to the plastic lined ditch (Photos 156 and 159). The plastic lined ditch ended at a storm drain outlet at the east end of the construction project (Photo 160). Joe Ciaccio, superintendent for Soltek Pacific, stopped on the street to speak with us. We told him that we would go meet with him at the construction trailer. We entered the school site but could not find the construction trailer. We walked around the school's front paved entrance. A storm drain inlet was overwhelmed with sediment and sediment-laden water at the paved entrance to the school (Photo 163). The medians in the parking lot did not have sediment controls on the perimeter and sediment-laden water was flowing off them (Photo 164). Sediment tracking was observed and no perimeter sediment controls were implemented behind the curb (Photo 166). Gasoline cans were stored outside without cover or containment to minimize exposure to storm water (Photo 167).

We asked where the construction trailer was and were directed to the playing fields (under construction) at the south east corner of the site. At the trailer we met with Greg Smith, San Diego City Schools inspector; Joe Ciaccio, superintendent for Soltek Pacific; Matt McPherson, another superintendent for Soltek Pacific; and Jerry Pitt; engineer for URS consulting. A review of the Storm Water Pollution Prevention Plan found no signed annual certification; training logs were not up to date, and the last SWPPP inspection was on February 19, 2007. Jerry Pitt accompanied us on the remainder of the inspection. In discussing with site personnel, we learned that the project did not initially budget for storm water compliance expenses. A change order was needed to accommodate those expenses.

FACILITY: Scripps Ranch Middle School (WDID) 9 37C329152 INSPECTION DATE: February 27, 2007

The rain stopped by the time we were through reviewing the SWPPP. We left the trailer and walked around the playing fields along the east side of the project. The fields were still bare. The field farthest north was being used for stockpiles; but the silt fence was damaged and missing in places around the stockpile (Photo 174). A portion of the runoff on the dirt access road and east of the ball fields drained towards the drain inlet at the school's main entrance that was overwhelmed with sediment (Photo 176). The dirt access road did not have gravel bags on the road and runoff was flowing down the road (Photo 179). Gravel bags were implemented at the sides of the road. A slope fronting the east side of the ball fields did not have sediment controls along the concrete v-ditch (Photo 178). The inlet had sediment-laden water entering it (Photo 177). From the playing fields, we could see in the school yard below, a large material wash water spill by a mixer (Photo 173). We returned to the trailer to drive to the main school buildings. Before we left we saw a bag of concrete mix broken and left out in the rain (Photo 181).

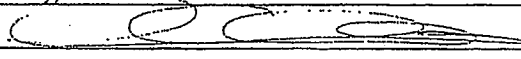
We drove to the main school entrance and parked our cars. We then walked around the school buildings. No landscaping has been done yet. Bags of lime and construction materials were left out in the rain even though plastic sheets were available to cover those bags (Photos 182 and 183). Inlets either were missing inlet protection or had inadequate sediment controls (Photos 185, 186, and 187). Slopes and rough cut access roads usually did not have any sediment controls (Photos 188, 189, 192, 200, and 201). Dirt from a trenching job was stored on pavement without any BMPs to cover or contain the dirt and minimize exposure to storm runoff (Photo 193). Excessive sediment tracking was observed onto the paved access road on the southwest side of the project (Photo 198). A large material spill was on the ground near a mixer with no BMPs to minimize contact with storm water runoff (Photo 199). Trash containment was not covered (Photo 204).

After walking around the school buildings, we went back to the discharge point into Carroll Canyon Creek. Dirt stockpiles near the creek were not covered (Photo 210). The discharge flow rate had lessened but the water was still sediment-laden. Throughout the inspection we informed Mr. Pitt of the violations.

III. SIGNATURE SECTION

<i>Ben Neill</i>		2/27/07
STAFF INSPECTOR	SIGNATURE	INSPECTION DATE

IV. (For internal use only)

Reviewed by Supervisor: 	Date: 3/20/07
cc: Jeremy Johnstone (EPA), John Norton (SWRCB), City <span style="float: right;">Storm Drain Enforcer</span>	
Inter-office Referral: 1) _____ 2) _____ 3) _____ 4) _____ 5) _____	

D:\Construction\Scripps Ranch Middle School\02-27-07\FIR.doc

CIWQS: 771284

**Scripps Ranch Middle School**  
**WDID # 9 37C329152**  
**February 27, 2007**

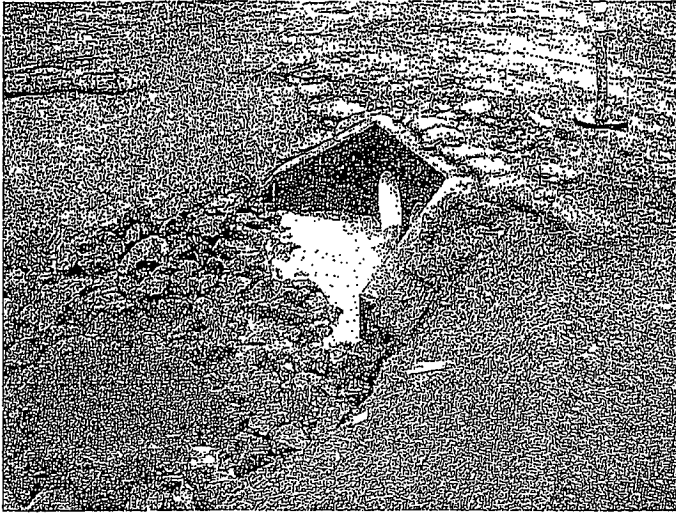
All photos taken by Ben Neill, Water Resource Control Engineer, of the San Diego Regional Board's Central Watershed Unit accompanied by Pete Peuron, Environmental Scientist. Not all photos taken are included in this report. Blurred spots on the photos are raindrops. All photo file names are of the form "IMG1XXX.JPG". For ease of reporting only the final 3 numbers, XXX, reference the photo number. Photos are not in numerical order.



149. Sediment and sediment-laden water entering Carroll Canyon Creek. Arrow points to the culverts for Carroll Canyon Creek going under Avenue of Nations.



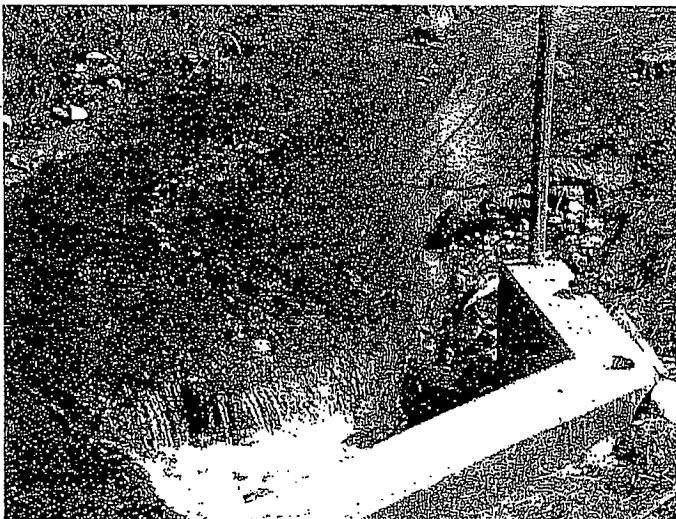
150. Photo is looking upstream of the discharge in photo 149. Sediment-laden runoff is flowing from a storm drain culvert outlet pointed out by the arrow.



151. A closer look at the storm drain culvert discharging the sediment-laden runoff.

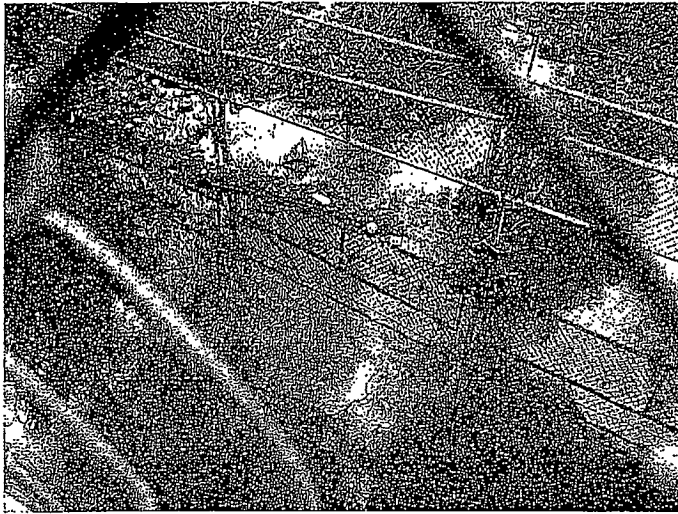


196. Photo taken later in the day after the rain has stopped. This photo was taken from above at the school site shows an overview of the discharge.



207. The point where the sediment-laden runoff enters the clean stream. This photo was taken after the rain has stopped and sediment-laden runoff flow rates were less than during the rainstorm.





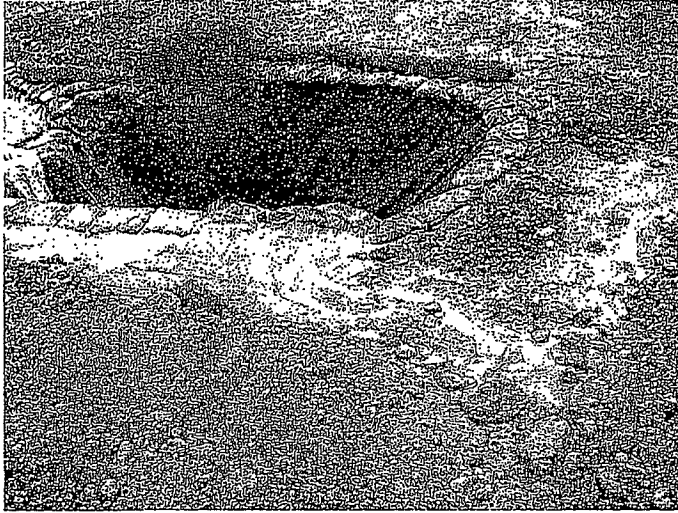
205. Downstream of the Avenue of Nations culverts crossing Carroll Canyon Creek, the creek water is very turbid along the south bank where the construction site discharges.



206. Downstream of the Avenue of Nations culverts crossing Carroll Canyon Creek, the creek water is clear along the northern bank not receiving construction site discharges.



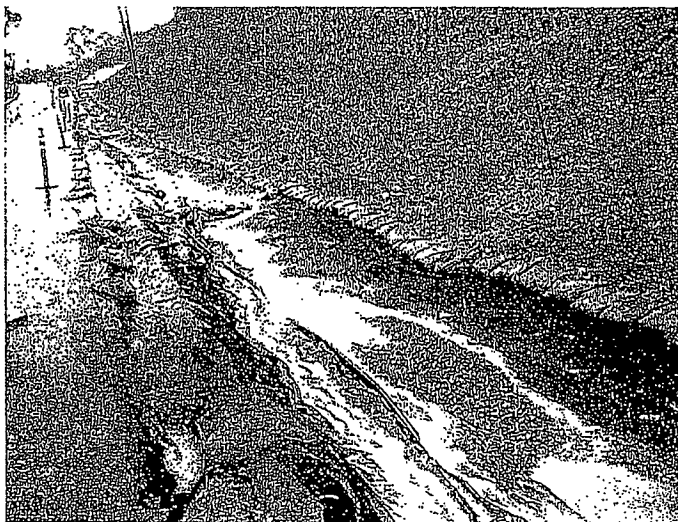
152. This is the culvert entrance to photo 151 on the south side of Avenue of Nations receiving sediment-laden runoff.



153. Another view of the culvert entrance on the south side of Avenue of Nations, shows sediment and sediment-laden water entering the storm drain culvert from another side.



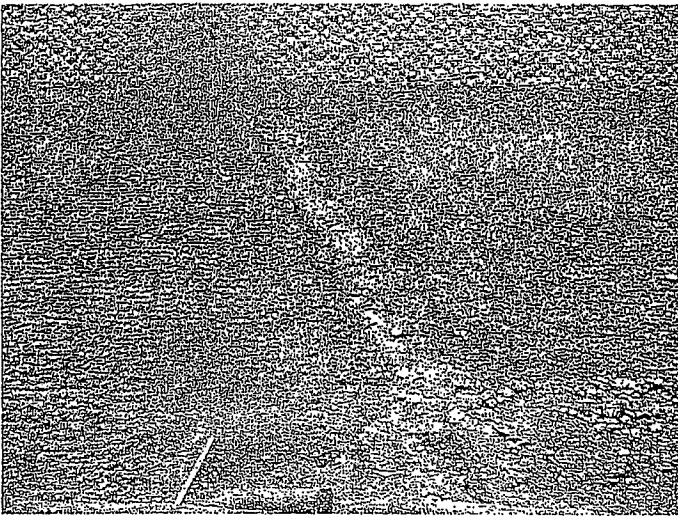
154. Upstream of the culvert entrance on the western side, no erosion controls have been implemented. Fiber rolls have not been trenched in and staked therefore they are doing little to stop the sediment flows.



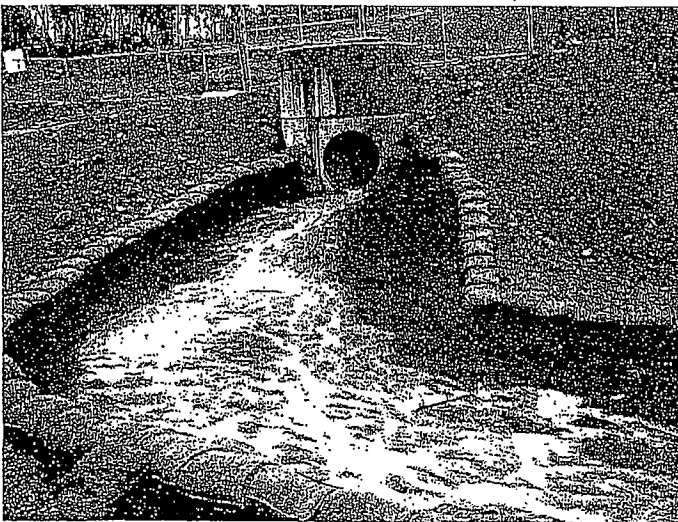
157. This plastic lined ditch is along the south side of the Avenue of Nations. The ditch terminates at the culvert in photo 153. Inadequate sediment controls along the face of the slope and the toe of the slope. Sediment laden water and sediment in the ditch.



156. A runoff discharge point upstream to the east of the culvert in photo 153. Sediment-laden runoff flows out of the pipe across the gravel bags and into the plastic lined ditch.



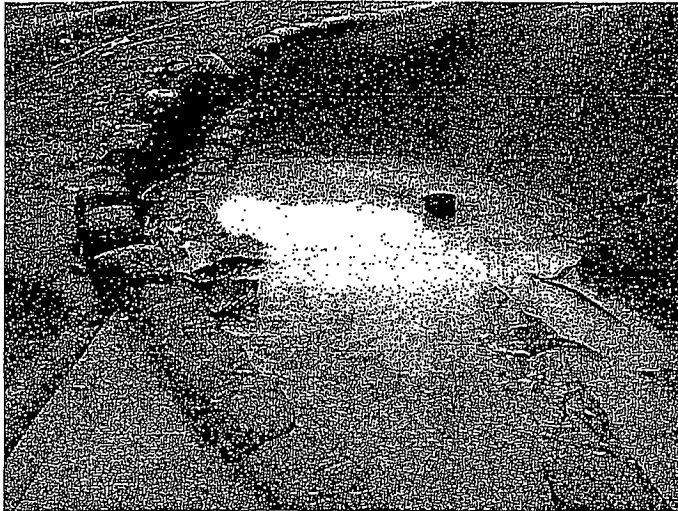
159. Slope failure is causing a discharge of sediment and sediment laden water. Slope face has no fiber rolls.



160. Storm drain outfall to the plastic lined ditch along the south side of Avenue of Nations.

Scripps Ranch Middle School  
WDID # 9 37C329152

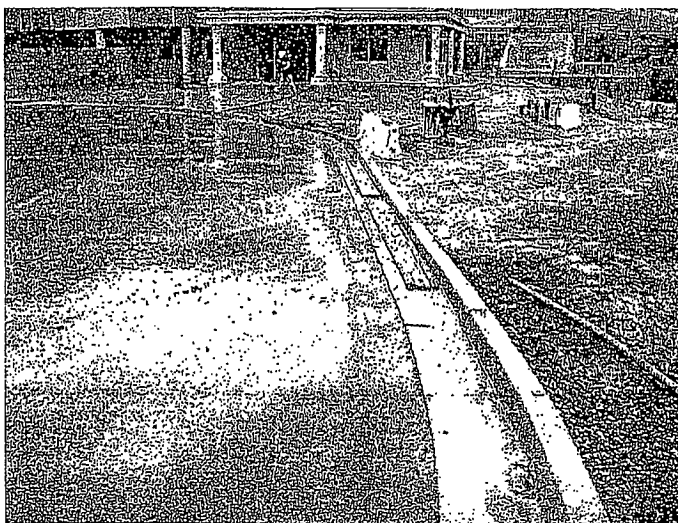
February 27, 2007 5



163. A storm drain inlet that goes to the discharge point in photo 160. The inlet is overwhelmed with sediment and sediment-laden water.



164. Medians in the school parking lot did not have any sediment controls.



166. Sediment is tracked onto the street. No sediment controls have been implemented behind the curb.

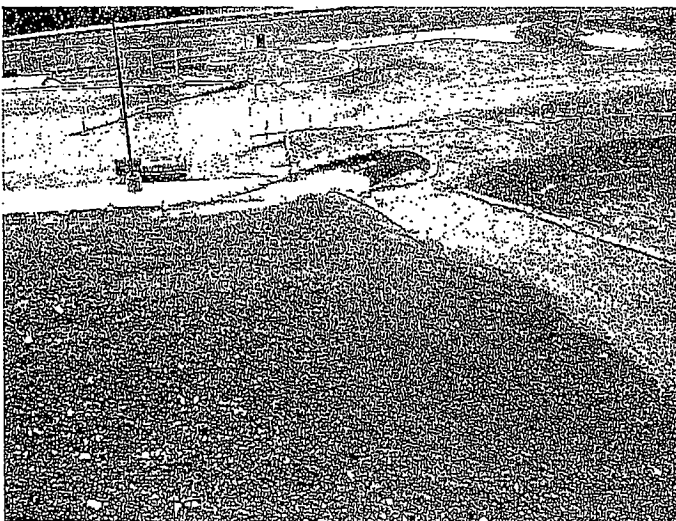




167. Gasoline storage has inadequate cover or containment to minimize storm water exposure.



174. Silt fence around a stockpile is damaged and missing.



176. Looking downhill from the south towards the inlet in photo 163. Inadequate sediment and erosion controls are on the hill.

Scripps Ranch Middle School  
WDID # 9 37C329152  
February 27, 2007 7



179. Farther uphill than photo 176, but also looking down towards the inlet in photo 163. The arrow points to 2 small rivulets of sediment-laden water running down the access road.



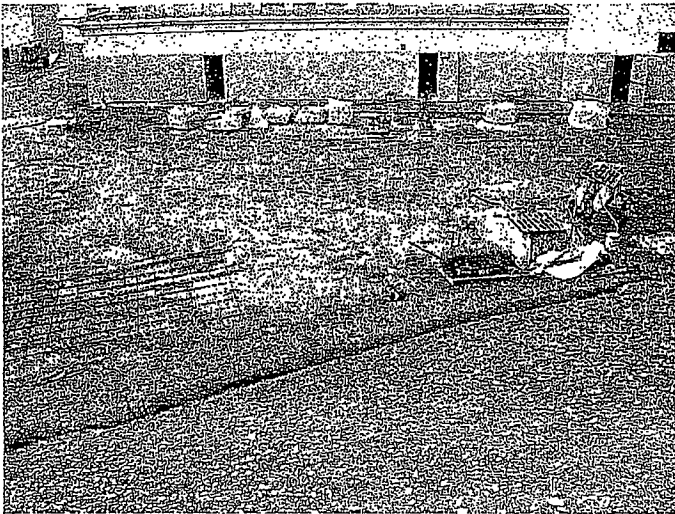
178. Upstream of the inlet in photo 177, the slope has no sediment controls along the toe of slope or in the concrete v-ditch.



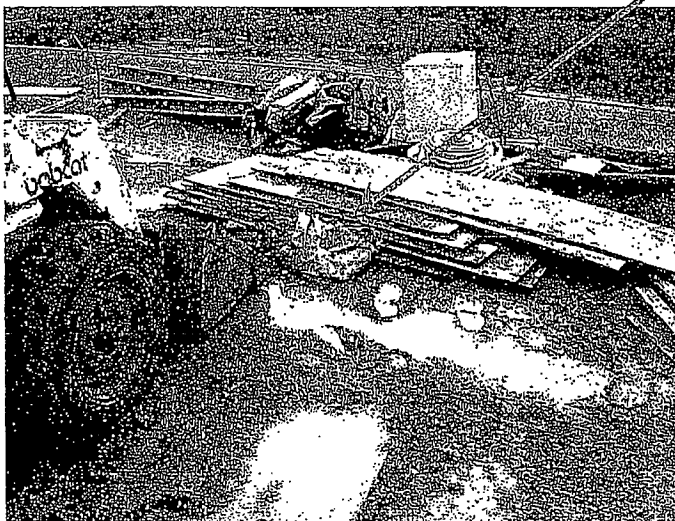
177. A storm drain inlet with sediment laden water.



175. Looking uphill to the south from photo 179.



173. Material wash water spills are on the ground.



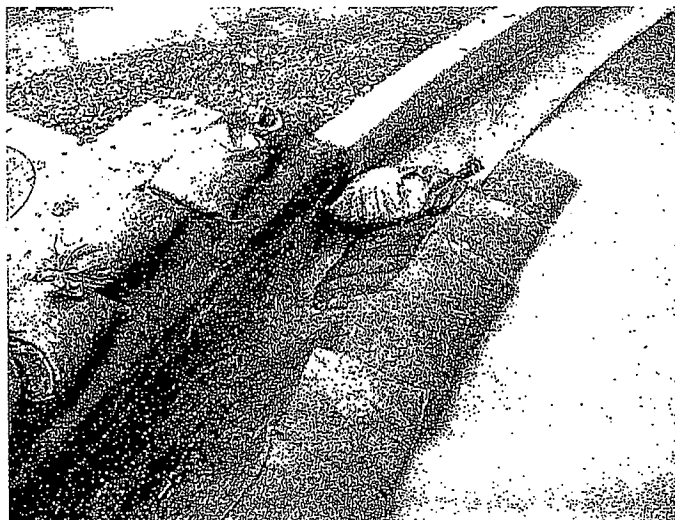
181. The arrow points to an open bag of concrete mix left out in the rain.



182. Bags of lime left out in the rain without cover.

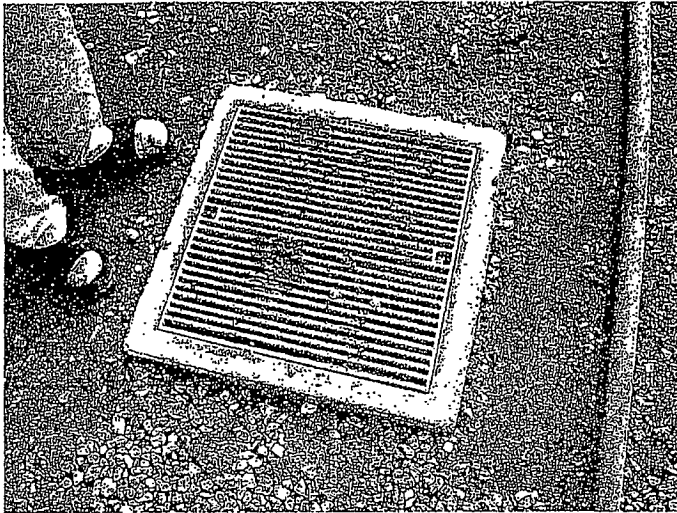


183. More material bags left out in the rain.

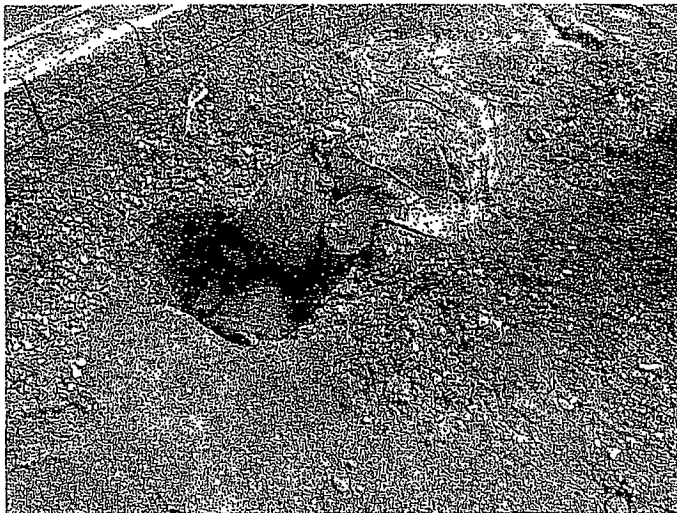


185. Sediment laden water entering a storm drain inlet with inadequate protection.





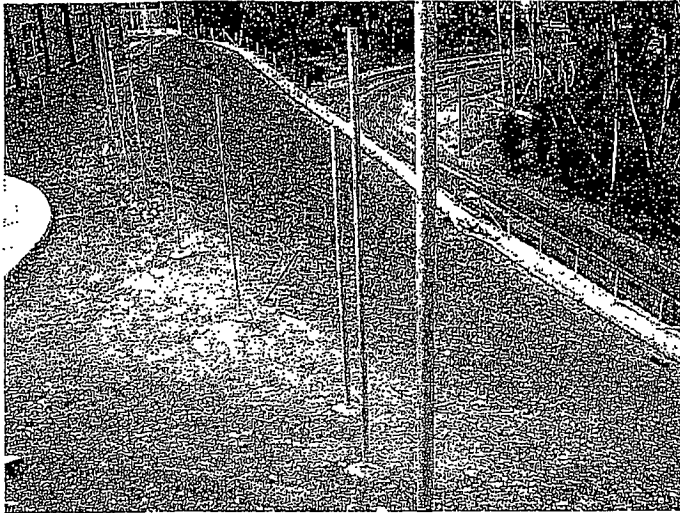
186. Storm drain inlet has no sediment protections.



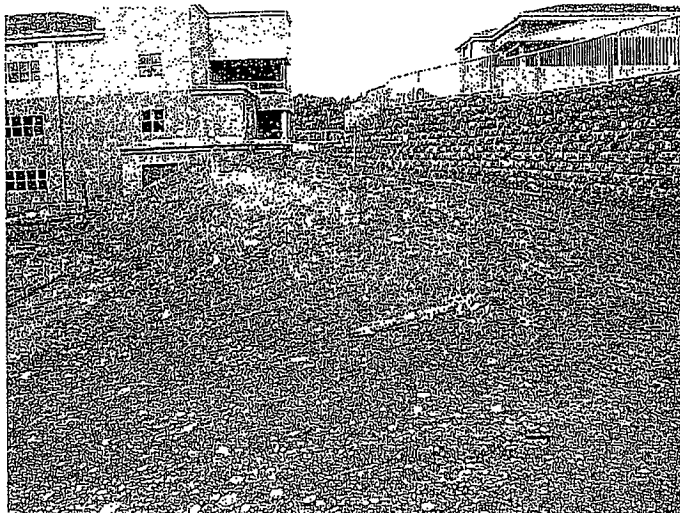
187. Storm drain inlet that is covered with filter fabric and gravel bags has been overwhelmed by sediment flows.



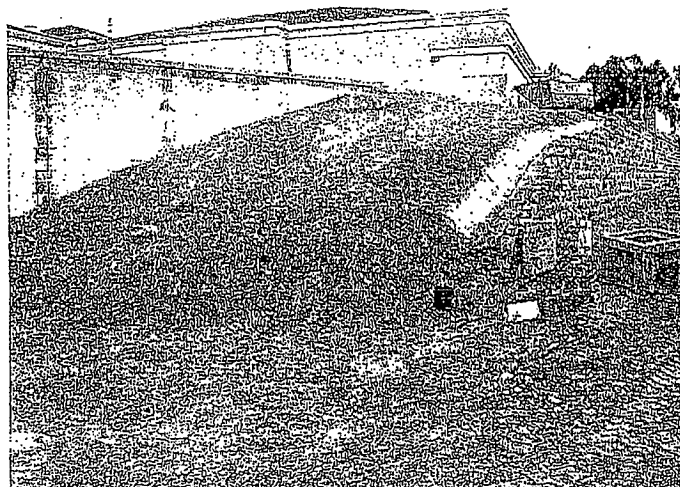
188. A slope with inadequate sediment controls. The fiber roll has failed. An erosion gully is running along the slope next to the wall.



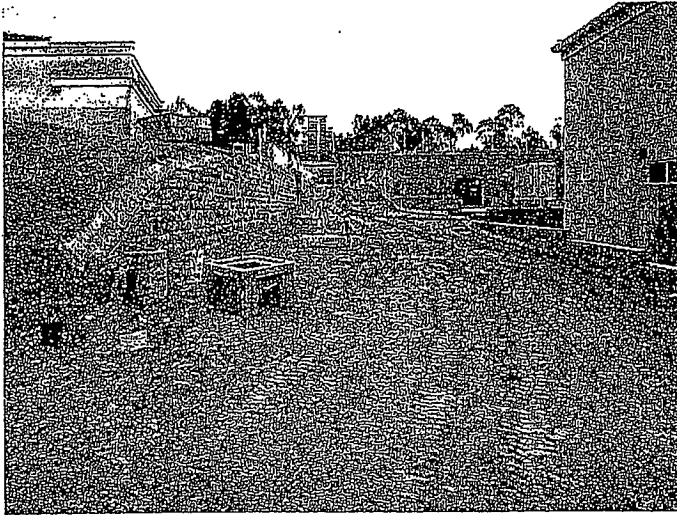
189. A large slope does not have fiber rolls along the face of the slope.



192. A slope has no erosion or sediment controls. A construction access road has no sediment controls.



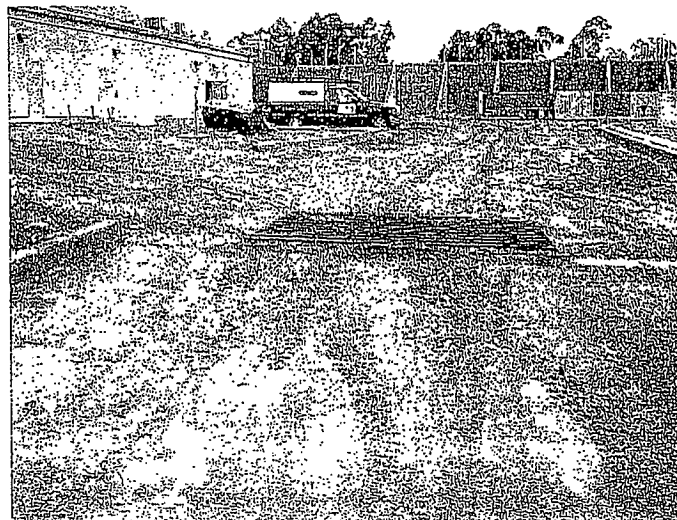
200. A slope with no erosion or sediment controls.



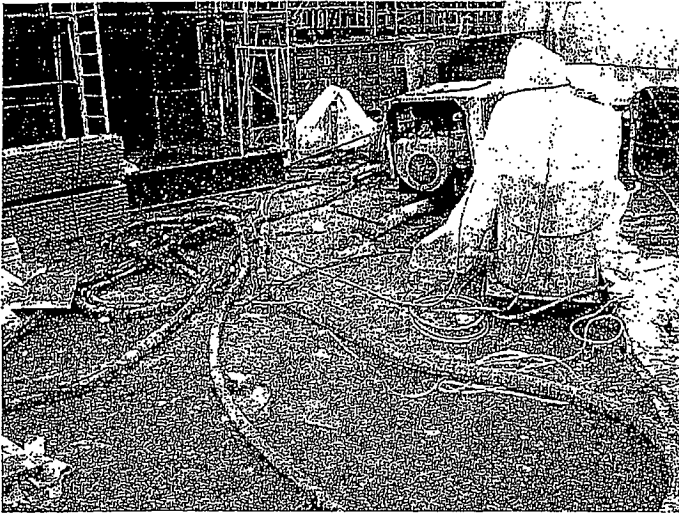
201. A construction access road with no sediment controls.



193. Dirt stockpiled on the street with no controls to minimize contact with runoff.



198. Construction exit has inadequate BMPs to prevent sediment tracking. They have one rumble plate and no gravel. Significant amounts of sediment have been tracked onto the paved surface.



199. Material spills are on the ground with no containment to minimize contact with runoff.



204. Construction trash is not covered to minimize contact with storm water.

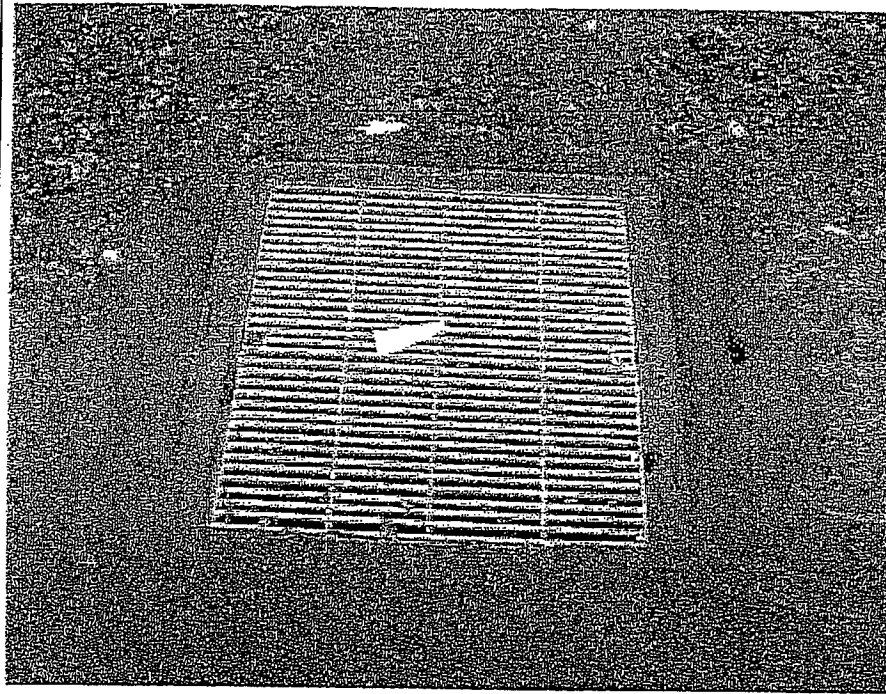


210. Soil stockpiles near Carroll Canyon Creek do not have cover or containment.

Scripps Ranch Middle School  
WDID # 9 37C329152  
February 27, 2007 14

**ATTACHMENT 5**  
**Photographs of Inadequate Inlet Protection**  
**From February 26, 2007 Technical Report**

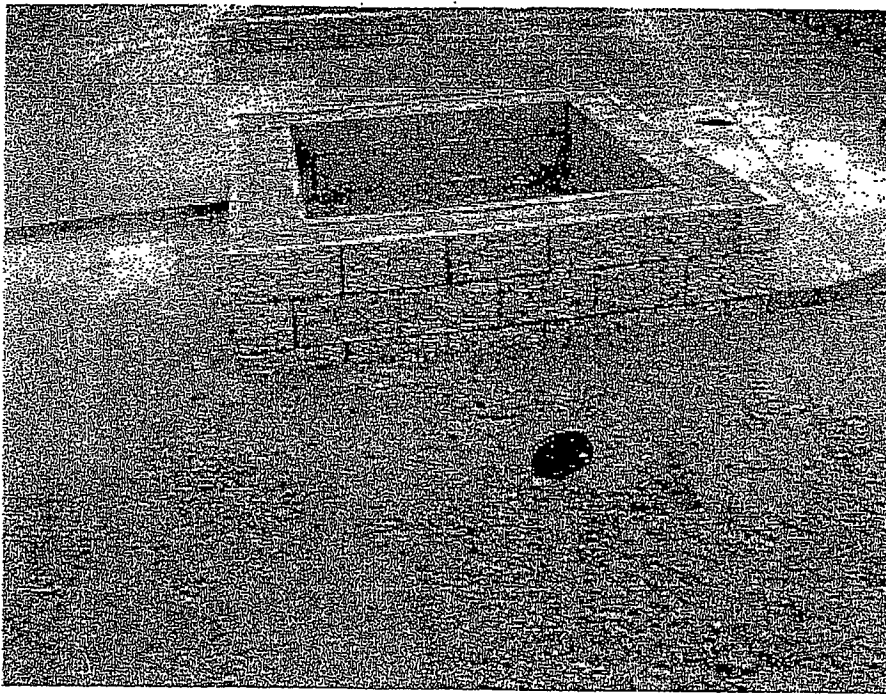




**Photograph #11**

**Date:** February 19, 2007; 12:59

**Comments:**  
Drain inlet near building in north central portion of site with no protection.



**Photograph #13**

**Date:** February 19, 2007; 12:58

**Comments:**  
Storm drain stub up located at grade and receiving runoff.

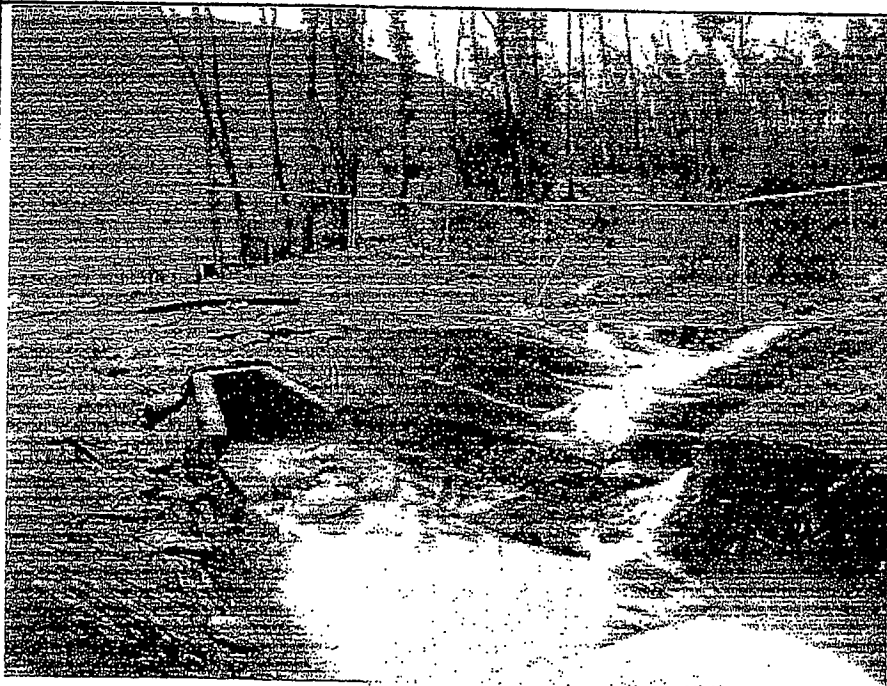
**ATTACHMENT 6**  
**Photographs of Discharges to Carroll Canyon Creek**  
**From February 26, 2007 Technical Report**



**Photograph #5**

**Date:** February 19, 2007; 12:08

**Comments:**  
Stormwater runoff from north of Avenue of Nations outfall commingling with Carroll Canyon Creek.



**Photograph #6**

**Date:** February 19, 2007; 12:04

**Comments:**  
Stormwater runoff from the northwest outfall commingling with flow from the southwest swale. Flows discharge to Carroll Canyon Creek.



CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION

TENTATIVE

ORDER NO. R9-2006-0127

ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY  
AGAINST  
POWAY UNIFIED SCHOOL DISTRICT  
GARDEN ROAD ELEMENTARY SCHOOL  
FOR  
NONCOMPLIANCE WITH WATER CODE §13376  
AND  
STATE BOARD ORDER NO. 99-08-DWQ

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), having received a signed waiver of public hearing form and a payment of \$32,800 on September 12, 2006, and having reviewed the allegations contained in Complaint No. R9-2006-0105 dated August 15, 2006, having provided public notice thereof and not less than thirty (30) days for public comment, and on the recommendation for administrative assessment of civil liability pursuant to California Water Code section 13385 in the amount of \$32,800, finds as follows:

1. The State Water Resources Control Board (hereafter State Board) has issued updated statewide general waste discharge requirements for discharges of storm water runoff associated with construction activities involving disturbance of one acre of soil, or more.
2. Poway Unified School District (hereafter District) owns and operates the Garden Road Elementary School, located at 14614 Garden Road, Poway, CA 92064. The District commenced construction activities at the site on July 19, 2006, without first filing a Notice of Intent (NOI), as required by Section A.2 of State Board Order No. 99-08-DWQ, *National Pollutant Discharge Elimination System General Permit No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Associated with Construction Activities*. The District filed a NOI, eight days late, on July 27, 2006.
3. The District failed to prepare and implement a storm water pollution prevention plan (SWPPP) prior to commencing construction activities, in violation of Section C.2 of State Board Order No. 99-08-DWQ. Reports

submitted by the District state that a SWPPP was delivered on-site July 31, 2006; twelve days late.

4. On July 25 and 26, 2006 the District had unauthorized discharges of sediment-laden, chlorinated water to an unnamed tributary to Poway Creek, in violation of Section A.2 of State Board Order No. 99-08-DWQ.
5. On August 14, 2006, the Executive Officer issued Administrative Civil Liability Complaint No. R9-2006-0105 to the District proposing imposition of \$32,800, in liability for the above violations.
6. Liability in the amount of \$32,800 is based on consideration of the factors prescribed in subdivision (e) of the Water Code Section 13385 as applied to the allegations contained in Complaint No. R9-2006-0105. The liability is as follows:
  - a. \$100 per day for failing to file a NOI for 8 days of violation of Water Code 13376 for a total of \$800; and
  - b. \$1,000 per day for failing to prepare and implement a SWPPP for 12 days of violation of Order No. 99-08-DWQ Section C.2, for a total of \$12,000.
  - c. \$10,000 per day for unauthorized discharges for 2 days of violation of Section A.2 of State Board Order No. 99-08-DWQ, for a total of \$20,000.
7. On September 12, 2006, the District paid to the Regional Board the proposed liability amount of \$32,800 for failure to timely file a NOI, failure to prepare and implement a SWPPP, and unregulated discharges of sediment-laden, chlorinated water, and waived its right to a public hearing before the Regional Board.
8. Consideration of the factors prescribed in California Water Code section 13385(e) based upon information available to the Regional Board supports the assessment of civil liability in the amount of \$32,800.
9. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) in accordance with Section 15521, Chapter 3, Title 14, California Code of Regulations.
10. The Regional Board incurred costs of \$2,000 to prosecute the enforcement action, including: investigation, inspections, preparation of enforcement documents, communications with the Discharger, and preparation of materials for public review and hearing.

Tentative ACL Order  
No. R9-2006-0127  
Poway Unified School District

3

**IT IS HEREBY ORDERED** that pursuant to section 13385 of the California Water Code, civil liability is imposed on Poway Unified School District in the amount of \$32,800.

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of an Order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region, on November 8, 2006.

**TENTATIVE**  
\_\_\_\_\_  
JOHN H. ROBERTUS  
Executive Officer



Linda S. Adams  
Secretary for  
Environmental Protection

# California Regional Water Quality Control Board

## San Diego Region

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August 14, 2006

**CERTIFIED MAIL**

7006 0100 0002 8367 2521

Donald A. Phillips  
Superintendent  
Poway Unified School District  
13626 Twin Peaks Road  
Poway, CA 92064

In reply refer to:

**CWU:10-3042741:clemc**

10-30-42741.n'y

Dear Mr. Phillips:

**COMPLAINT NO. R9-2006-0105 FOR ADMINISTRATIVE CIVIL LIABILITY AGAINST POWAY UNIFIED SCHOOL DISTRICT FOR VIOLATION OF WATER CODE § 13376 AND STATE BOARD ORDER NO. 99-08-DWQ, GARDEN ROAD ELEMENTARY SCHOOL, WDID NO. 9 37C342741**

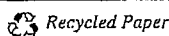
Enclosed find Administrative Civil Liability Complaint No. R9-2006-0105 against the Poway Unified School District (District) for the Garden Road Elementary School construction site located at 14614 Garden Road, WDID No. 9 37C342741. The Complaint in the amount of \$32,800 is for violations of Water Code section 13376 and California State Water Resources Control Board (State Board) Order No. 99-08-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity* (General Permit).

**Waiver of Hearing**

The District may elect to waive its right to a hearing before the California Regional Water Quality Control Board, San Diego Region (Regional Board). Waiver of the hearing constitutes admission of the validity of the allegation of violations in the Complaint and acceptance of the assessment of civil liability in the amount of \$32,800 as set forth in the Complaint. For the Regional Board to accept the waiver of the District's right to a public hearing, the District must submit the following by 5 P.M., Wednesday, September 13, 2006:

1. The enclosed waiver form signed by an authorized agent of the District;
2. A check for the full amount of civil liability of \$32,800 made out to the California State Water Resources Control Board; and
3. Verification that the enclosed public notice has been published in a newspaper circulated in the Poway area.

*California Environmental Protection Agency*



August 14, 2006

Please note that any waiver will not be effective until reasonable opportunity for public participation has been provided for pursuant to federal NPDES regulations (40 Code of Federal Regulations [CFR] Parts 122, 123, and 124). Waivers submitted after September 13, 2006 will not be accepted.

**Public Hearing**

If the District does not elect to waive its right to a public hearing, a hearing is tentatively scheduled to be held at the Regional Board meeting on November 8, 2006. The meeting is scheduled to begin at 9 A.M. If the District intends to present any written exculpatory evidence, or written evidence in mitigation at the hearing in response to Complaint No. R9-2006-0105, it must be received by 5 P.M. November 1, 2006 in order to be considered by the Regional Board at the public hearing.

The *Submittal of Written Information Procedures* further describing the written materials and prescribed submittal dates required by the Regional Board and *Hearing Procedures* for the public hearing will be mailed to you not less than 30 days before the hearing date. An agenda for the hearing will also be mailed to you approximately 10 days before the hearing date.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

The Regional Board has no other comments on the above-mentioned complaint at this time. Please contact Chiara Clemente of my staff at (858) 467-2359 or [cclemente@waterboards.ca.gov](mailto:cclemente@waterboards.ca.gov) if you have any questions concerning this matter.

Respectfully,



JOHN H. ROBERTUS  
Executive Officer

JHR:mpm:cmc

- Attachments: 1. ACL Complaint No. R9-2006-0105  
2. Waiver of Hearing Form  
3. Public Notice of Waiver of Hearing  
4. Regional Board Inspection Report, July 26, 2006  
5. Regional Board Inspection Report, August 9, 2006

*California Environmental Protection Agency*

Poway Unified School District  
Garden Road Elementary School

- 3 -


August 14, 2006

Copy with Enclosures to:

1. Ellen Blake, US EPA Region IX
2. Mike Derouin, Poway Unified School District
3. Danis Bechter, City of Poway
4. Pamela Mark, Soltek Pacific
5. Myrna Taylor, Soltek Pacific

*California Environmental Protection Agency*

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 Recycled Paper

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

IN THE MATTER OF: )

POWAY UNIFIED SCHOOL DISTRICT )  
GARDEN ROAD ELEMENTARY SCHOOL )  
NONCOMPLIANCE WITH WATER CODE )  
§ 13376, AND STATE BOARD ORDER )  
NO. 99-08-DWQ )

COMPLAINT NO. R9-2006-0105  
FOR  
ADMINISTRATIVE CIVIL LIABILITY

August 15, 2006

**POWAY UNIFIED SCHOOL DISTRICT IS HEREBY GIVEN NOTICE THAT:**

1. The Poway Unified School District (hereinafter District) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (Regional Board) may impose civil liability under section 13385 of the Water Code.
2. On July 19, 2006, the District commenced construction activities for a 4-acre site located at 14614 Garden Road, Poway, California. Seven days later, the District submitted a Notice of Intent (NOI) to the State Water Resources Control Board (State Board) on July 26, 2006, after receiving notification by the City of Poway. The State Board issued WDID #9 37C342741 on July 27, 2006.
3. On July 26, 2006, the Regional Board inspected the site and observed, documented and photo-documented evidence of inadequate Best Management Practices (BMPs) and a discharge of sediment-laden water to an unnamed tributary to Poway Creek (inspection report attached). At the time of the inspection, the District had neither filed a NOI nor prepared or implemented a Storm Water Pollution Prevention Plan (SWPPP) at the site.
4. On August 9, 2006, the Regional Board conducted a follow-up inspection and confirmed that a SWPPP had been prepared and BMPs were on-site (inspection report attached).
5. Reports submitted by Soltek Pacific on behalf of the District dated July 28, 2006 and July 31, 2006 documented that the SWPPP was delivered on-site July 31, 2006 and confirm that the subject site had unauthorized discharges to the MS4 on July 25 and 26, 2006.

**ALLEGATIONS**

6. **Failure to Prepare and Implement Storm Water Pollution Prevention Plan**  
The District failed to prepare and implement its SWPPP by failing to create or provide a SWPPP on-site and implement adequate BMPs at the site, in violation of

California State Water Resources Control Board (State Board) Order No. 99-08-DWQ section C.2 for at least 12 days (July 19 through July 30, 2006).

7. **Failure to File Notice of Intent**

The District failed to file a NOI for coverage under State Board Order No. 99-08-DWQ, *NPDES General Permit No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity* prior to the commencement of construction activity at the site on July 19, 2006 as required by Water Code section 13376, and Order No. 99-08-DWQ section C.1. The State Board received a NOI for the site on July 27, 2006, for a total of 8 days in violation. The Garden Road Elementary School site will continue to be regulated under State Board Order No. 99-08-DWQ until its expected completion, on August 30, 2006.

8. **Sediment Discharge**

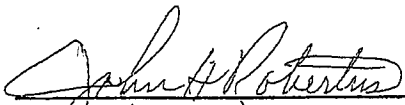
On July 25 and 26, the District discharged sediment laden, chlorinated water into a Municipal Separate Storm Sewer System (MS4) conveyance system to an unnamed tributary to Poway Creek, in violation of Discharge Prohibition A.2 of Order No. 99-08-DWQ for 2 days.

**PROPOSED CIVIL LIABILITY**

The maximum liability for each violation is \$10,000 per day. Therefore, based on the summary of all alleged violations, the total maximum liability is \$220,000. Based on consideration of the factors listed in section 13385 of the Water Code, the total recommended civil liability for alleged violations is \$32,800. The recommended liability is based on the following:

9. Failure to prepare and implement the SWPPP occurred for a minimum of 12 days; therefore, the maximum liability is \$120,000. Civil liability for failure to prepare and implement the SWPPP should be imposed on the District in the amount of \$1,000 per day, for 12 days, for a liability of \$12,000.
10. The discharger failed to file a NOI for 8 days; therefore the maximum liability is \$80,000. Civil liability for failure to file a NOI should be imposed on the District in the amount of \$100 per day, for 8 days, for a liability of \$800.
11. The discharge of sediment laden, chlorinated water occurred for 2 days; therefore the maximum liability is \$20,000. Civil liability for an unregulated discharge should be imposed on the District in the full amount, for 2 days for a liability of \$20,000.

Dated this 14<sup>th</sup> day of August, 2006

  
\_\_\_\_\_  
JOHN H. ROBERTUS  
Executive Officer





Linda S. Adams  
Secretary for  
Environmental Protection

# California Regional Water Quality Control Board San Diego Region



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**WAIVER  
OF RIGHT TO A  
PUBLIC HEARING**

Donald A. Phillips  
Superintendent  
Poway Unified School District  
13626 Twin Peaks Road  
Poway, CA 92064

Complaint No. R9-2006-0105  
For  
Administrative Civil Liability  
**\$32,800**

WDID No. 9 37C342741  
Garden Road Elementary School

By signing below, I agree to waive the District's right to a public hearing before the California Regional Water Quality Control Board, San Diego Region with regards to the violations alleged in the above referenced Complaint and to remit payment for the civil liability imposed. I understand that I am authorized to give up the District's right to be heard, and to argue against the allegations made by the Executive Officer in the Complaint, and against the imposition of, or the amount of, civil liability proposed. I have enclosed a check or money order made payable to the State Water Resources Control Board for the civil liability imposed.

Signature

Title

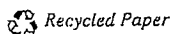
Date

Print your name

**Send this signed form to:**

John H. Robertus, Executive Officer  
C/O Compliance Assurance Unit  
California Regional Water Quality Control Board – San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

*California Environmental Protection Agency*



NOTICE OF WAIVER OF PUBLIC HEARING

**California Regional Water Quality Control Board, San Diego Region  
Issuance of Administrative Civil Liability (ACL) Order  
Against Poway Unified School District**

On August 14, 2006, the California Regional Water Quality Control Board, San Diego Region (Regional Board) issued Complaint No. R9-2006-0105 to the Poway Unified School District (District) in the amount of \$32,800 for alleged violations of 1) failure to file a Notice of Intent, 2) failure to prepare and implement a Storm Water Pollution Prevention Plan, and 3) an unregulated discharge of sediment-laden water to an unnamed tributary to Poway Creek.

The District has elected to waive its right to a public hearing in this matter. Waiver of the hearing constitutes admission of the validity of the alleged violations in the Complaint and acceptance of the assessment of civil liability as set forth in the Complaint. The District will provide full payment of \$32,800 to the State Water Resources Control Board.

The Regional Board will consider accepting the District's waiver at its November 8, 2006 meeting. Written comments regarding the allegations contained in Complaint No. R9-2006-0105, and/or acceptance of the waiver will be accepted through Wednesday, November 1, 2006.

The Regional Board's November 8, 2006 meeting will be at the Regional Board office located at 9174 Sky Park Court, San Diego, California. The meeting will begin at 9:00 a.m. Oral comments for this item may be made during the meeting upon receipt of a request to speak. For more information regarding this matter please call Chiara Clemente at (858) 467- 2359 or visit the Regional Board's web site at <http://www.waterboards.ca.gov/sandiego/>

John H. Robertus  
EXECUTIVE OFFICER

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

**FACILITY INSPECTION REPORT**

INSPECTION DATE: July 26, 2006 TIME: 1:30 PM WDID: none

FACILITY REPRESENTATIVE(S) PRESENT DURING INSPECTION: Doug Mann of Poway Unified School District, Myrna Taylor of Soltek Pacific, and Pamela Mark of Soltek Pacific.

Poway Unified School District  
NAME OF OWNER, AGENCY OR PARTY RESPONSIBLE FOR DISCHARGE

Doug Mann (858) 679 2522  
OWNER CONTACT NAME AND PHONE #

Garden Road School  
FACILITY OR DEVELOPER NAME (if different from owner)

Same as above  
FACILITY OR DEVELOPER CONTACT NAME AND PHONE #

Garden Road in Poway  
FACILITY STREET ADDRESS

Poway, CA  
FACILITY CITY AND STATE

APPLICABLE WATER QUALITY LICENSING REQUIREMENTS

- MS4 URBAN RUNOFF REQUIREMENTS NPDES NOS. CAS0108758, CAS0108740 or CAS0108766
- GENERAL PERMIT ORDER NO. 99-08-DWQ, NPDES NO. CAS000002 - CONSTRUCTION
- GENERAL PERMIT ORDER NO. 99-06-DWQ, NPDES NO. CAS000003 - CALTRANS
- GENERAL OR INDIVIDUAL WASTE DISCHARGE REQUIREMENTS
- GENERAL OR INDIVIDUAL WAIVER OF WASTE DISCHARGE REQUIREMENTS
- SECTION 401 WATER QUALITY CERTIFICATION
- CWC SECTION 13264

**INSPECTION TYPE (Check One)**

- A1  "A" type compliance--Comprehensive inspection in which samples are taken. (EPA Type S)
- B1  "B" type compliance--A routine nonsampling inspection. (EPA Type C)
- 02  Noncompliance follow-up--inspection made to verify correction of a previously identified violation.
- 03  Enforcement follow-up--inspection made to verify that conditions of an enforcement action are being met.
- 04  Complaint--inspection made in response to a complaint.
- 05  Pre-requirement--inspection made to gather info. relative to preparing, modifying, or rescinding requirements.
- 06  No Exposure Certification (NEC) - verification that there is no exposure of industrial activities to storm water.
- 07  Notice of termination request for industrial facilities or construction sites - verification that the facility or construction site is not subject to permit requirements (Type, NOT I or NOT C - circle one).
- 08  Compliance Assistance Inspection - Outreach inspection due to discharger's request for compliance assistance.

**INSPECTION FINDINGS**

- Y Were violations noted during this inspection? (Yes/No/Pending Sample Results)
- N Were samples taken? (N=no) If YES then, G= grab or C= Composite and attach a copy of the sample results/chain of custody form

I. COMPLIANCE HISTORY:  
No violation found in SWIM

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD-SAN DIEGO REGION Page 2 of 2

FACILITY: Garden Road School (WDID) None INSPECTION DATE: 07/26/2006

II. FINDINGS

Inspection was performed in response to complaint.

GENERAL PERMIT ORDER NO. 99-08-DWQ, NPDES NO. CAS000002 - CONSTRUCTION

1. No NOI
2. No SWPPP
3. Sediment tracking to street.
4. Entrances have no BMPs or insufficient BMPs to prevent sediment tracking to street.
5. No BMPs for erosion and sediment control implemented on site. Two dirt piles are within 20 feet from the creek and have no BMPs for erosion and sediment control. No sign of working on erosion and sediment BMPs.
6. No erosion BMPs for all dirt piles on the construction site.
7. Very little material for erosion and sediment control BMPs observed on site.
8. Sediment discharged to an unnamed tributary to the Poway Creek.
9. Pump is on site.
10. According to Pamela Mark, Safety Manager of Soltex Pacific: The pipe was broken at 7:00 AM on 7/25/06, and the water shut off at 7:30 AM. There were about 200,000 gallons of water discharged to the site. Some of water spilled to storm drain, majority was contained on site. Mr. Gary Mlinch, Superintendent of the construction site, wanted to continue grading, so he ordered a big pump to pump the water retained on site to storm drain inlet. Pump arrived at site about 10:00 AM. Pump was hooked up and pumped water onsite to storm drain inlet without any filtration. Ms. Mark and the City of Poway inspector ordered the pumping to stop at 11:00 AM. However, Mr. Mlinch ordered the pumping again at 12:30PM, still with no filtration. Thirty minutes later the pump was stopped again. Water on street and onsite showed visible turbidity exceedances; confirmed by results from contracted lab >1000 NTU. On Wednesday 7/26/06, the water onsite was pumped again to the storm drain inlet after it is filtered through the sediment bag. The City of Poway inspector ordered the pumping to stop and requested the School District to sample of the filtered water. No samples taken.
11. Attached is an email from Danis Bechter of the City of Poway and pictures taken by the City of Poway's inspector.

III. SIGNATURE SECTION

Dat Quach

STAFF INSPECTOR

  
SIGNATURE

7/26/06  
INSPECTION DATE

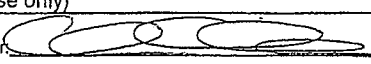
STAFF INSPECTOR

SIGNATURE

INSPECTION DATE

IV. (For internal use only)

Reviewed by Supervisor:

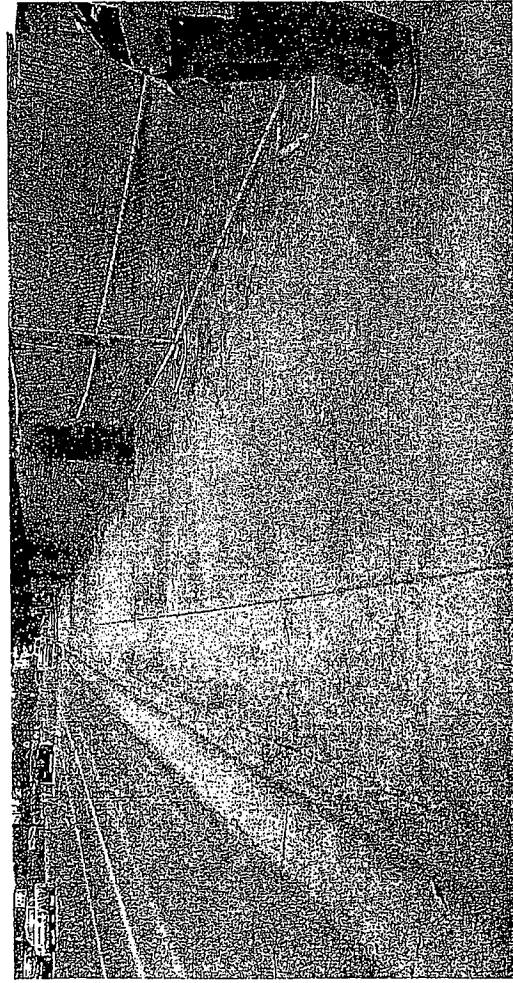


Date: 8/8/06

cc: Jeremy Johnstone (EPA), John Norton (SWRCB), City

Storm Drain Enforcer

Inter-office Referral: 1) \_\_\_\_\_ 2) \_\_\_\_\_ 3) \_\_\_\_\_ 4) \_\_\_\_\_ 5) \_\_\_\_\_

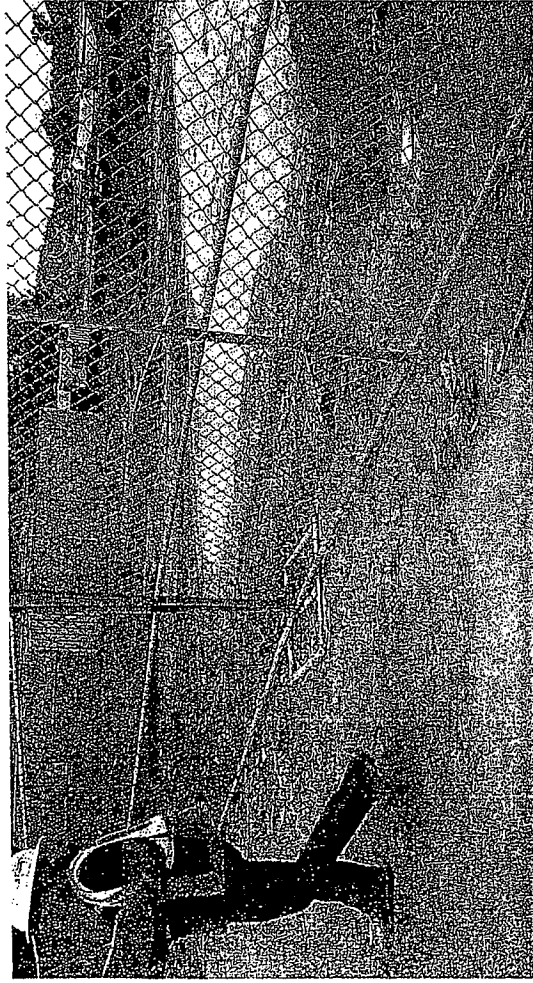


Picture No. 1

Evidence on side walk that water with sediment run-off the school site to street. No sediment BMPs seen.

Picture taken by Dat Quach on 7/26/06 at Garden Road School

WDID: None



Picture No. 2

Evidence on side walk that water with sediment run-off the school site to street. No sediment BMPs seen.

Picture taken by Dat Quach on 7/26/06 at Garden Road School

WDID: None

Picture No. 3

Filter bag and gravel bag at the storm inlet

Picture taken by Dat Quach on 7/26/06 at Garden Road School  
WDID: None



Picture No. 4

Water with high content of sediment discharged to an unnamed tributary to the Poway Creek.  
Picture taken by Dat Quach on 7/26/06 at Garden Road School  
WDID: None





Picture 5

Couples dirt piles placed close to the creek without any erosion and sediment BMPs

Picture taken by Dat Quach on 7/26/06 at Garden Road School

WDID: None



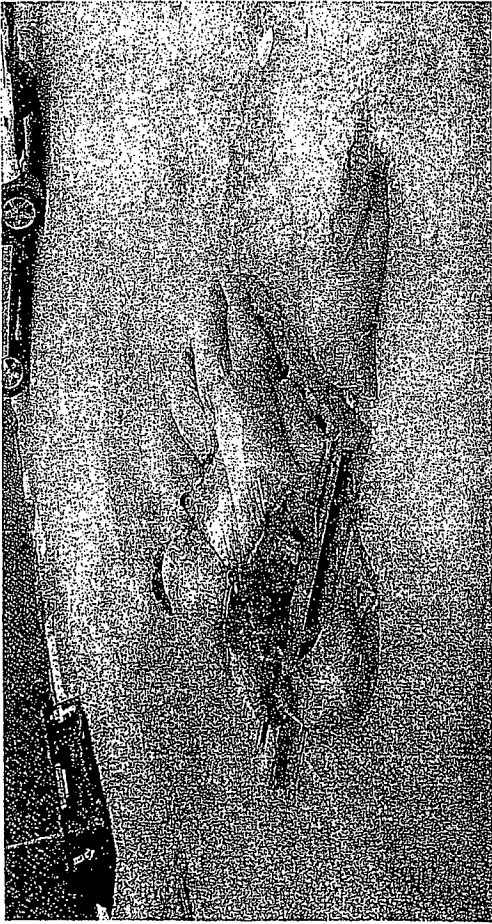
Picture 6

Sediment left on street after the discharge

Picture taken by Dat Quach on 7/26/06 at Garden Road School

WDID: None



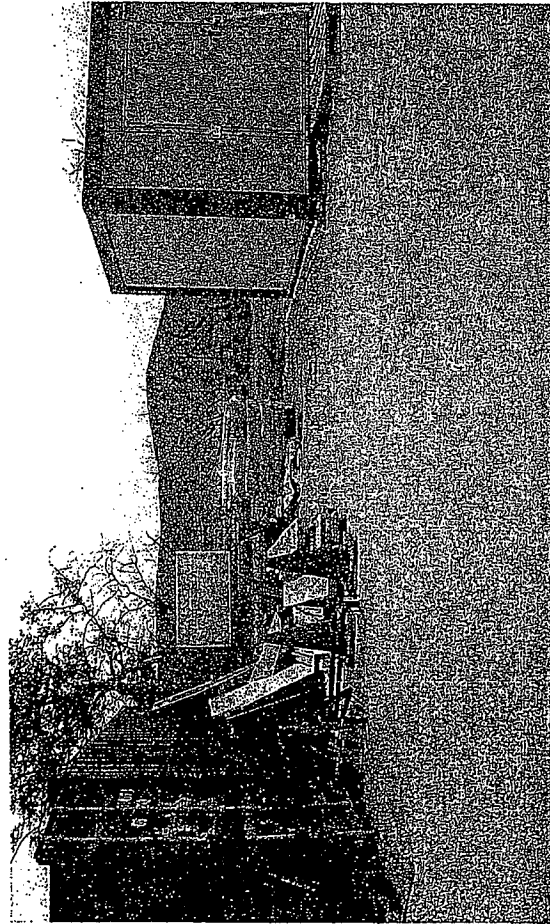


Picture 7

Minimum amount of material for BMPs on site.

Picture taken by Dat Quach on 7/26/06 at Garden Road School

WDID: None



Picture 8

Minimum amount of material for BMPs on site.

Picture taken by Dat Quach on 7/26/06 at Garden Road School

WDID: None



**From:** "Danis Bechter" <dbechter@ci.poway.ca.us>  
**To:** <cclemente@waterboards.ca.gov>  
**Date:** 7/26/2006 12:27:47 PM  
**Subject:** Garden Road School discharge to Poway's MS4

Chiara,

These are some of the photos that were taken on Tuesday (7/25/06) of the Garden Road School discharge to the City of Poway's MS4. As you can see, the water has turbidity and sediment. The discharge occurred due to the contractor breaking an 8" potable water line. Samples of the water were taken. The findings are preliminary since they also sampled for chlorine and TSS but the turbidity was >1,000 NTU.

The City of Poway issued a stop work notice to the School District on Tuesday. In conversation with Myrna Taylor, Project Manager of Soltek Pacific, and the safety/storm water person it was agreed that a sock would be used on the discharge hose and samples would be taken to assure water quality. As of 10:30 this morning, Wednesday 7/26/06, the City inspector Dave Rizzuto visited the site and noticed that the sediment-laden water was once again being discharged into the City of Poway's MS4. As far as I know the water from the discharge hose was never sampled. The City of Poway inspector issued a second stop work notice for the illegal discharge. A copy of this stop work notice and the first were sent to RWQCB.

I wanted to bring you up to speed on the latest developments since our phone conversation yesterday. Please contact me if you need any additional information.

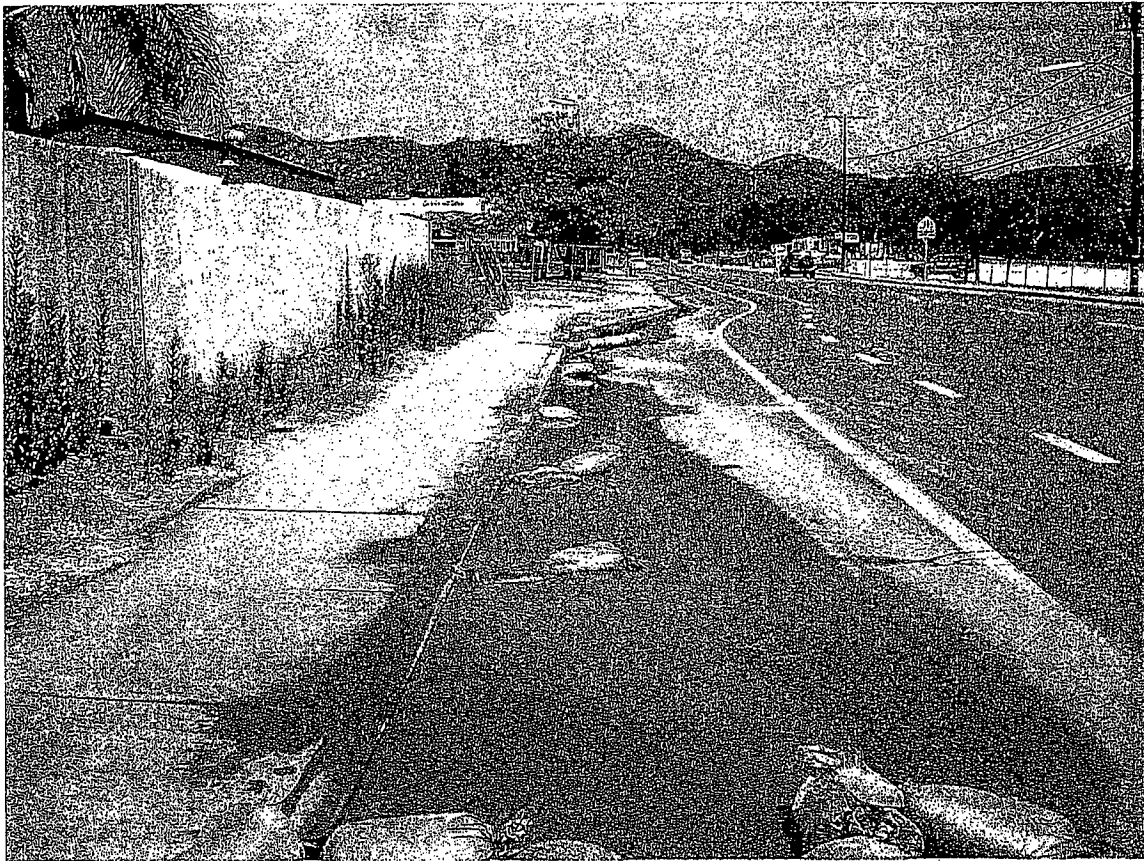
Thanks,

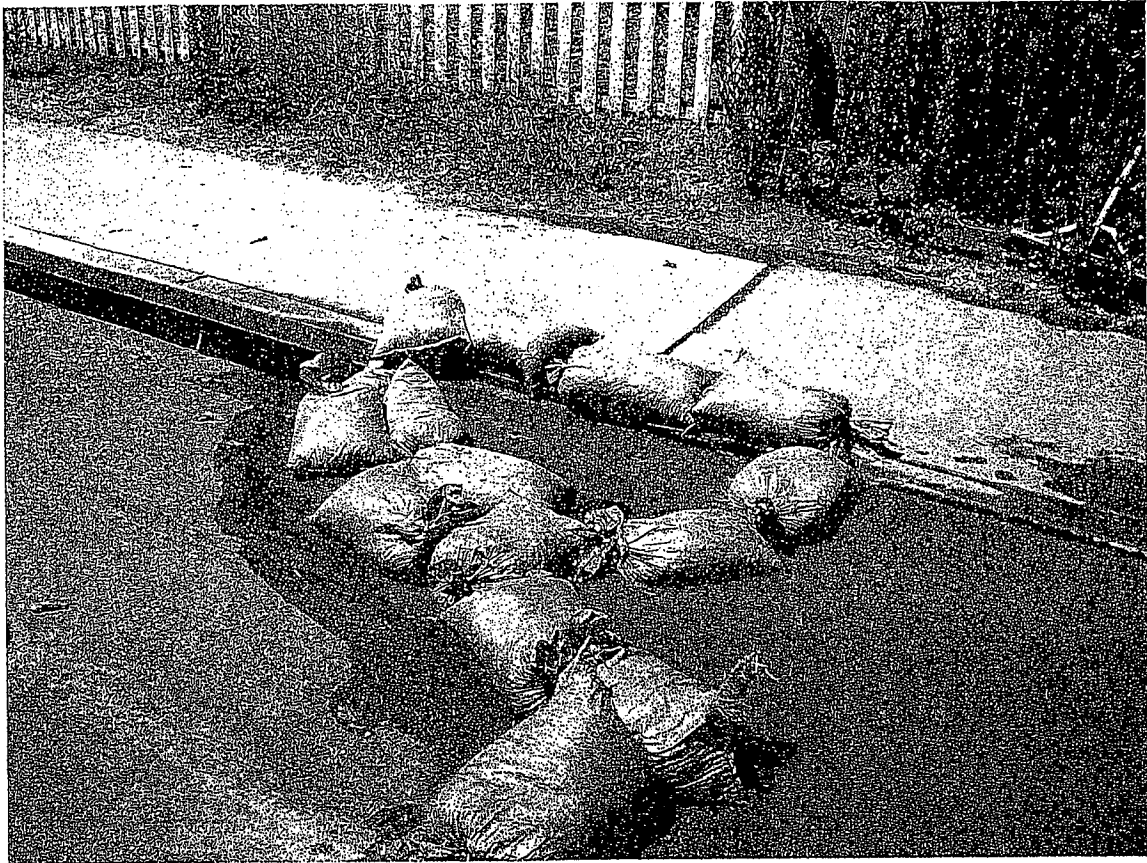
Danis

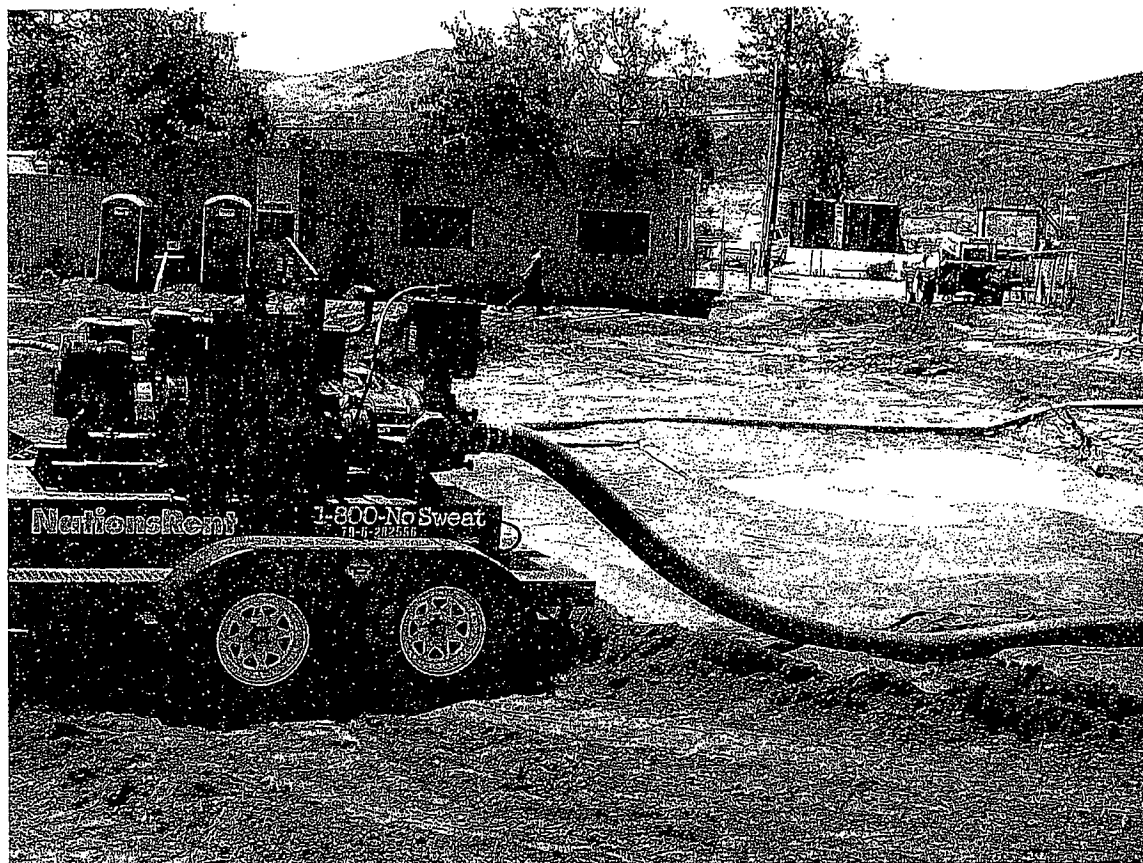
"Official City Correspondence"  
Danis Bechter  
Engineering Inspection Supervisor/  
NPDES Coordinator  
858-472-0250 (cell)  
858-668-4630 (office)

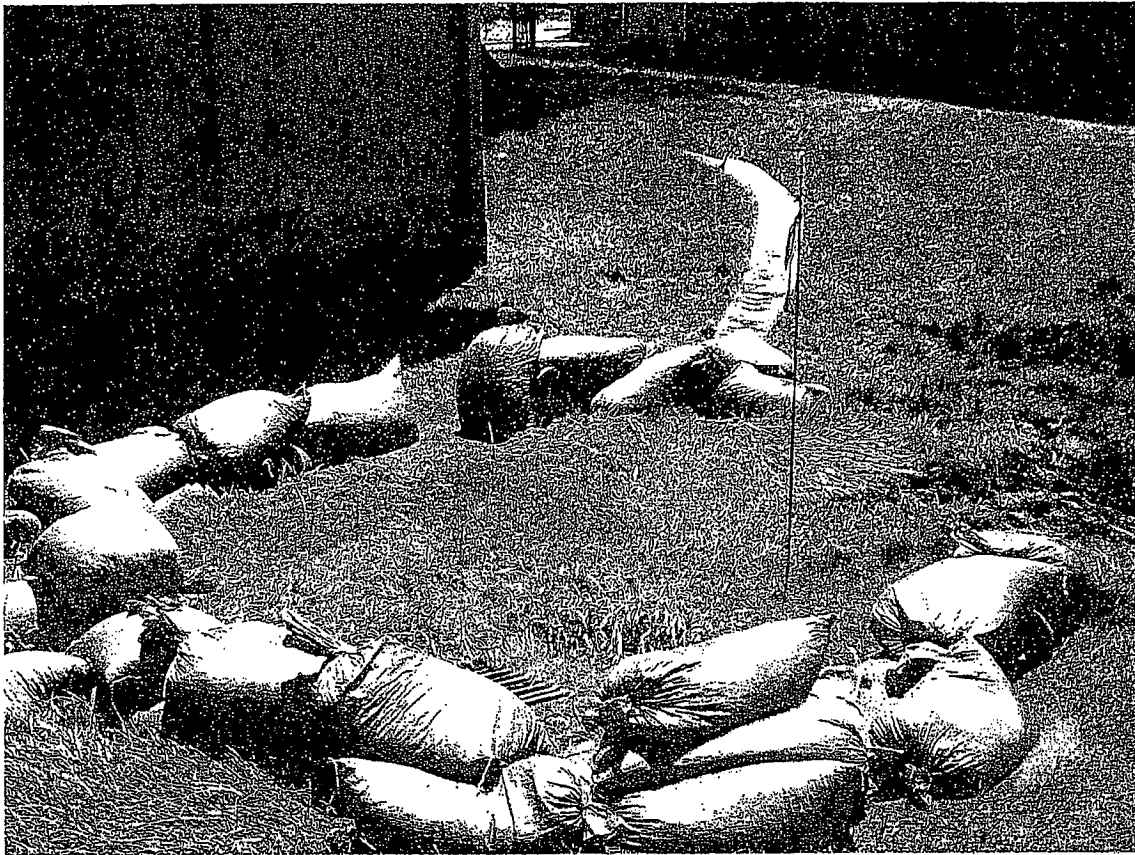
City of Poway - Incorporated December 1, 1980 - Celebrating 25 Years of Service

**CC:** "Dave Rizzuto" <drizzuto@ci.poway.ca.us>, "Frank Casteleneto" <FCasteleneto@ci.poway.ca.us>, "Niall Fritz" <nfritz@ci.poway.ca.us>, <phammer@waterboards.ca.gov>











CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD - SAN DIEGO REGION

FACILITY INSPECTION DATA ENTRY FORM

DATE: Aug. 9, 2006 TIME: 4 PM WDID: 937C342741 ORDER NO. 99-08-DWQ FILE NO. 10-3042741.02

FACILITY REPRESENTATIVE(S) PRESENT DURING INSPECTION: Bill, Foreman for Soltek Pacific

Poway Unified School District  
NAME OF OWNER, AGENCY OR PARTY RESPONSIBLE FOR DISCHARGE

Mike Derouin (858) 679-2597  
OWNER CONTACT NAME AND PHONE #

Soltek Pacific  
FACILITY OR DEVELOPER NAME (if different from owner)

Pamela Mark (619) 296-6247  
FACILITY OR DEVELOPER CONTACT NAME AND PHONE #

Garden Road Elementary School, 14614 Garden Road  
FACILITY STREET ADDRESS

Poway, CA  
FACILITY CITY AND STATE

APPLICABLE WATER QUALITY LICENSING REQUIREMENTS (CHECK ALL THAT APPLY)

- MS4 URBAN RUNOFF REQUIREMENTS NPDES NOS. CAS0108758, CAS0108740 or CAS0108766
- GENERAL PERMIT ORDER NO. 99-08-DWQ, NPDES NO. CAS000002 - CONSTRUCTION
- GENERAL PERMIT ORDER NO. 99-06-DWQ, NPDES NO. CAS000003 - CALTRANS
- GENERAL PERMIT ORDER NO. 97-03-DWQ, NPDES NO. CAS000001 - INDUSTRIAL
- GENERAL OR INDIVIDUAL WASTE DISCHARGE REQUIREMENTS OR NPDES
- GENERAL OR INDIVIDUAL WAIVER OF WASTE DISCHARGE REQUIREMENTS
- SECTION 401 WATER QUALITY CERTIFICATION
- CWC SECTION 13264,

INSPECTION TYPE (Check One)

- A1  "A" type compliance--Comprehensive inspection in which samples are taken. (EPA Type S)
- B1  "B" type compliance--A routine nonsampling inspection. (EPA Type C)
- 02  Noncompliance follow-up--Inspection made to verify correction of a previously identified violation.
- 03  Enforcement follow-up--Inspection made to verify that conditions of an enforcement action are being met.
- 04  Complaint--Inspection made in response to a complaint.
- 05  Pre-requirement--Inspection made to gather info. relative to preparing, modifying, or rescinding requirements.
- 06  Miscellaneous - inspection type is not included on this list, may include NOT, NEC, NONA or other types
- 07  Pretreatment Audit (every five years)
- 08  Pretreatment Compliance (yearly except audit year)

INSPECTION FINDINGS

- Y Were violations noted during this inspection? (Yes/No/Pending Sample Results)
- N Were samples taken? (N=no) If YES then, G= grab or C= Composite and attach a copy of the sample results/chain of custody form

I. COMPLIANCE HISTORY:

A previous inspection during the week of July 24-28, 2006 noted NO NOI, NO SWPPP, discharges of sediment-laden water and inadequate BMPs.

FACILITY: Garden Road Elementary School (WDID) 9.37C342741 INSPECTION DATE: Aug. 9, 2006

II. FINDINGS

SWPPP is onsite. The owner's certification is unsigned. Onsite personnel did not know the exact date when the SWPPP arrived onsite.

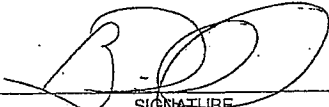
Adequate BMP materials are stockpiled and implemented.

The street is dirty.

The concrete washout had inadequate capacity and construction to contain the wash water. Wash water was observed spilling onto the ground.

IV. SIGNATURE SECTION

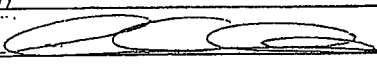
Ben Neill  
STAFF INSPECTOR



SIGNATURE

Aug. 9, 2006  
INSPECTION DATE

IV. (For internal use only)

Reviewed by Supervisor: 	Date: 8/10/06
cc: City _____	Contact _____
Program: NPDES STORM NON15-WDR 401 NPS TITLE 27 AGT DoD LNDISP PTPRG RCRA SLIC REC	
Inter-office Referral: 1) _____ 2) _____ 3) _____ 4) _____ 5) _____	