

**Enforcement Summary Report  
February 11, 2009**

- ITEM: 9
- SUBJECT: FORMAL HEARING: A formal hearing will be held to consider the issuance of Tentative Cleanup and Abatement Order (CAO) No.R9-2008-0152. The proposed CAO would be issued to Dr. William & Lori Moritz for the alleged unauthorized discharge of fill to an unnamed, ephemeral stream that is tributary to Rattlesnake Creek and ultimately Poway Creek in violation of Sections 13260(a) and 13264(a) of the California Water Code, and waste discharge prohibitions 1, 3, and 14 contained in the in the Water Quality Control Plan for the San Diego Basin.  
(Christopher Means)
- PURPOSE: To Consider the Adoption of Tentative Cleanup and Abatement Order No. R9-2008-0152.
- PUBLIC NOTICE: The Agenda notice for the February 11, 2009, Regional Board meeting serves as the public notice for this item. Copies of the Agenda notice were provided to interested parties via email on January 26, 2009.
- DISCUSSION: On November 12, 2008 and pursuant to California Water Code section 13304, the Assistant Executive Officer issued Tentative Cleanup and Abatement Order (CAO) No. R9-2008-0152 (Supporting document No. 2) to Dr. William and Lori Moritz for the unauthorized discharge of fill to an unnamed, ephemeral stream that is tributary to Rattlesnake Creek and ultimately Poway Creek at their residential property located at 14272 Jerome Drive, in the City of Poway (Supporting Document No.1).
- The Tentative CAO supersedes CAO No. R9-2008-0074 which was issued by the Assistant Executive Officer on July 9, 2008 and rescinded on October 30, 2008 to allow Dr. Moritz to have the issue brought before the Regional Board for a hearing.

### Background Discussion

In May 2007 Dr. Moritz and his wife purchased an approximately 2.5-acre single family residence located at 14272 Jerome Drive in the City of Poway. On or about February, 2008, Dr. Moritz began grading activities with a tractor on his property that impacted the ephemeral stream that crosses his property. On February 7 & 8, 2008 the City of Poway issued stop work orders to Dr. Moritz for performing grading without a permit and impacting the ephemeral stream. Subsequently, the City of Poway received anonymous calls from residents in the neighborhood alleging that Dr. Moritz was continuing unauthorized grading activities, and that a rain event had resulted in erosion and sediment being discharged into the stream and adjacent properties.

Despite numerous written and verbal Stop Work Orders, Notices of Violation, and conversations with the City of Poway, Dr. Moritz continued unauthorized grading activities on his property (A chronology of the City of Poway's communications and enforcement actions against Dr. Moritz is provided in Supporting Document No. 3). On May 19, 2008, the City of Poway issued Dr. Moritz a Notice of Violation (Supporting Document No. 4) which Dr. Moritz interpreted to be a demand from the City of Poway to immediately complete his "stormwater and silt management" project, and culminated on Memorial Day weekend of 2008 (May 24-26, 2008) in the stream being filled in and the flow across his property being routed across the property through a 24-inch pipe.

On May 19, 2008 the City of Poway referred the matter to the Regional Board. On June 9, 2008, Christopher Means of the Central Watershed Unit inspected the site with the City of Poway and Department of Fish and Game (Supporting document No. 5). Immediately after the inspection, a meeting was held at the City of Poway with a representative of Dr. Moritz to discuss the issue (Supporting document No. 6).

As a result of the June 9, 2008 inspection and meeting, on July 9, 2008 Cleanup and Abatement Order No. R9-2008-0074 was issued by the Assistant Executive Officer. The CAO required Dr. Moritz to:

- (1) Immediately implement erosion and sediment best management practices to stabilize the site. If the area of soil disturbance is one acre or over then immediately apply

for coverage under the Statewide General Construction Stormwater Permit Order No. 99-08-DWQ.

- (2) By August 15, 2008 develop and begin implementation of a Stream Restoration Plan. The plan must be prepared by a qualified professional with at least 5 years of stream restoration experience.
- (3) By October 24, 2008, cleanup and abate the existing and threatened pollution by removing all waste, restoring and realigning the ephemeral stream to pre-project conditions,

On August 7, 2008 Dr. Moritz filed a petition with the State Board for review of the issuance of the original, now rescinded CAO, and a request to stay the enforcement of the CAO. On October 3, 2008 the State Board dismissed the petition and denied the request for a stay, concluding that the petition failed to raise substantial issues that are appropriate for review by the State Board.

On August 15, 2008 the Regional Board received a conceptual Stream Restoration Plan, in compliance with Directive No. 3 of the original CAO, on behalf of Dr. Moritz. Subsequently a meeting was held on August 25, 2008 with the Regional Board, City of Poway, Fish & Game, and Dr. Moritz's legal counsel to discuss the conceptual plan and obtain consensus on a strategy for compliance with the CAO (Supporting document No. 7). A proposed action plan was developed, and Dr. Moritz was requested to revise the Stream Restoration Plan and provide a reasonable timeline for compliance with the CAO Directives.

On August 29, 2008 the Regional Board inspected the site to assess the adequacy of the interim sediment and erosion control controls implemented on site as required by Directive No. 1 of the original CAO (Supporting document No. 8). As result of the inspection the Regional Board offered guidance on how the controls could be improved.

On September 19, 2008 Dr. Moritz submitted an amended Stream Restoration Plan which included a timeline for compliance with the original CAO (Supporting document No. 9). According to the timeline Dr. Moritz would begin restoration of the stream and removal of the drainage pipe on October 24, 2008. Upon receipt of the proposed timeline, on October 1, 2008 the Regional Board amended the CAO to adjust the compliance dates to parallel the timeline provided in the Stream

Restoration Plan provided by Dr. Moritz. To date, no stream restoration activities have taken place.

On December 4, 2008, the City of Poway went to Superior Court and obtained an abatement warrant to implement additional erosion controls on the Moritz Property in an attempt to augment the existing sediment controls put in place by Dr. Moritz (Supporting Document No. 10).

#### Issuance of Tentative CAO R9-2008-0152

On October 27, 2008 Dr. Moritz requested an evidentiary hearing before the Regional Board on the issuance of the original CAO. On October 30, 2008 the Assistant Executive Officer rescinded CAO R9-2008-0074. On November 12, 2008 the Assistant Executive Officer issued Tentative CAO R9-2008-0152. The compliance dates in the Tentative Order were revised on January 9, 2008 to reflect the postponement of the December 10, 2008 original hearing date.

Tentative CAO R9-2008-152 requires Dr. Moritz to:

- (1) Continue the implementation and maintenance of interim site stabilization measures (sediment and erosion control best management practices) to prevent the discharge of waste off-site.
- (2) By March 20, 2009 apply for and obtain all necessary permits and authorizations required to implement the September 2008 Stream Restoration Plan.
- (3) By April 24, 2009, cleanup and abate the existing and threatened pollution by removing all waste, restoring and re-aligning the ephemeral stream to pre-project conditions.

**KEY ISSUE:** Should the Regional Board adopt the proposed CAO to require Dr. Moritz to remove the unauthorized fill and associated pipe and restore the ephemeral stream to its pre-project condition.

**LEGAL CONCERNS:** Legal concerns associated with this item will be addressed in the Prosecution Team's rebuttal to Dr. Moritz's evidence submission in the supplemental mailing and in comments at the hearing.

#### **SUPPORTING DOCUMENTS:**

1. Location Map and Historic Pre-Impact Aerial Photos.

2. Tentative Cleanup and Abatement Order No.R9-2008-0152.
3. City of Poway Complaint (Chronology of Enforcement).
4. May 19, 2008 City of Poway Notice of Violation.
5. June 9, 2008 Regional Board Inspection Report.
6. June 12, 2008 City of Poway Meeting Summary letter.
7. August 25, 2008 Meeting Summary.
8. Regional Board Inspection Report, June 9, 2008.
9. Dr. Moritz proposed compliance timeline.
10. Photos of City of Poway Erosion Control BMPs.

**COMPLIANCE:**

Since issuance of the original Cleanup and Abatement Order No. R9-2008-0074 Dr. Moritz has implemented sediment but not erosion controls to stabilize the site, and has developed, but not implemented the Stream Restoration Plan.

**RECOMMENDATION:**

The Prosecution Team recommends the adoption of Tentative Cleanup and Abatement Order No. R9-2008-0152.